

Draft guidelines on orders prohibiting connection to network infrastructure in Renewable Energy Zones

Energy Corporation of NSW

June 2022





Acknowledgement of Country

The Energy Corporation of NSW acknowledges it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Definitions

Term	Meaning
Connection prohibition order	An order made by the infrastructure planner under section 29(1) of the EII Act
Consent authority	Has the same meaning as in the EP&A Act
Department	Department of Planning and Environment
EII Act	Electricity Infrastructure Investment Act 2020
EnergyCo	The Energy Corporation of NSW established under section 7 of <i>Energy and Utilities Administration Act 1987</i>
EP&A Act	Environmental Planning and Assessment Act 1979
Local area	Has the same meaning as in the EII Act
Minister	The Minister for Energy
Network infrastructure	Has the same meaning as in the EII Act
Notice of intent	A notice of intent to make a connection prohibition order - see section 4.7
Proponent	A person or body who proposes to construct or operate proposed infrastructure
Proposed infrastructure	Has the same meaning as in the EII Act
Relevant operator	Has the same meaning as in the EII Act
REZ	Has the same meaning as in the EII Act
REZ declaration	An order declaring a REZ made by the Minister under section 19(1) of the EII Act
REZ geographical area	The geographical area of the State specified in the REZ declaration
SSD	State significant development, has the same meaning as in the EP&A Act
SSI	State significant infrastructure, has the same meaning as in the EP&A Act

Foreword

These guidelines are made by EnergyCo (in its capacity as the infrastructure planner) under section 29(6) of the EII Act. The EII Act enables the NSW Government's Electricity Infrastructure Roadmap 2020 (the Roadmap). A key element of the Roadmap is the delivery of five or more REZs in NSW. REZs involve coordinated development of renewable energy generation (such as wind and solar farms), transmission lines, electricity storage and firming infrastructure in specified geographic areas of NSW.

This coordination is essential to ensuring timely and efficient development of new energy infrastructure and that this infrastructure is located where communities support it and share in the benefits of hosting it. Fostering local community support for investment in new energy generation, storage, network and related infrastructure is a key objective of the EII Act¹.

Under section 29 of the EII Act, EnergyCo (as the appointed infrastructure planner) may make orders prohibiting network operators from allowing a Proponent to connect certain proposed generation or storage infrastructure to network infrastructure in a specified area within a REZ. The purpose of this function is to enable the infrastructure planner to take steps to prevent a proposed generation or storage project connecting to network infrastructure where there is significant local community opposition to the project that risks community support for other infrastructure in the relevant REZ.

EnergyCo encourages projects in REZs to undertake genuine and meaningful engagement with local communities and be designed in ways that consider existing land uses and support local communities. EnergyCo acknowledges projects will be subject to existing planning and assessment processes in NSW under the EP&A Act which include a comprehensive, triple bottom line assessment including extensive community consultation and detailed consideration of any environmental, social and economic impacts.

EnergyCo may only issue a prohibition to connect order in limited circumstances. For example, an order can only be made if the opposition of the local community is significant, the order is in the public interest, the order is reasonably necessary to maintain community support in the local area and the project does not already have development consent under the EP&A Act to construct and operate the proposed infrastructure.

These draft guidelines provide guidance on the exercise of the infrastructure planner's function under section 29 of the EII Act.

¹ Section 3(1)(d) of the EII Act, see Appendix 2 of these guidelines.

Introduction

The purpose of these guidelines is to provide information about the connection prohibition order and how the infrastructure planner may exercise its functions regarding these orders under section 29 of the EII Act.²

These guidelines will address the following:

1. What is a connection prohibition order?
2. What is the purpose of the connection prohibition order?
3. Scope of the connection prohibition order.
4. How will the infrastructure planner exercise its function regarding connection prohibition orders?

These guidelines are intended to provide guidance only and do not restrict the operation of section 29 or other provisions of the EII Act or any other Act.

1 What is a connection prohibition order?

A prohibition order is an order made by the infrastructure planner in accordance with section 29 of the EII Act. Section 29(1) of the EII Act provides:

The infrastructure planner may, by order served on a relevant operator, prohibit the relevant operator from allowing a proponent to connect proposed infrastructure to the relevant operator's network infrastructure.

A connection prohibition order is to apply to network infrastructure in a specified area within a REZ. EnergyCo is the infrastructure planner appointed to exercise the functions under section 29 for a REZ or part of a REZ.³ EnergyCo is also subject to the control or direction of the Minister for Energy in the exercise of its functions under the EII Act.⁴

Part 4 below describes how the infrastructure planner may exercise its functions in relation to a prohibition order under section 29.

² EnergyCo is required to publish guidelines about the exercise of its functions under section 29(6) of the EII Act.

³ Section 29(7) of the EII Act.

⁴ Section 63(8) of the EII Act.

2 What is the purpose of the connection prohibition order?

The purpose of the connection prohibition order is to maintain community support for REZs over the long term. The infrastructure planner may, by serving a connection prohibition order, prevent a proposed generation or storage project connecting to network infrastructure (in a specified area within the REZ) where there is significant local community opposition to the project that risks community support for other infrastructure in the relevant REZ.

This function is intended to assure local communities that:

1. the generation and storage projects that will be connected to network infrastructure in REZs will be in appropriate locations, and
2. the proponents of generation or storage projects will take the time to genuinely engage communities and build local support.

Providing this assurance is critical to meeting an objective of the EII Act, which is to foster local community support for new generation, storage, network and related infrastructure⁵.

3 Scope of the connection prohibition order

3.1 Who can the infrastructure planner give a connection prohibition order to?

The infrastructure planner may serve a connection prohibition order on a relevant operator. Relevant operator is defined in the EII Act to mean:

1. a transmission operator within the meaning of the *Electricity Supply Act 1995*,
2. a distribution network service provider within the meaning of the National Electricity Rules, or
3. a network operator being a person who owns, controls or operates, or proposes to own, control or operate, network infrastructure.⁶

3.2 What network infrastructure can a connection prohibition order apply to?

A connection prohibition order can apply to a relevant operator's network infrastructure in a specified area within a REZ.⁷ Depending on what network infrastructure is specified in the REZ declaration (which may include both transmission and distribution networks), this may include network infrastructure within the REZ that:

1. exists at the date the REZ declaration is made, or
2. is commissioned after the date the REZ declaration is made.

⁵ Section 3(1)(d) of the EII Act, see Appendix 2 of these guidelines.

⁶ EII Act, Dictionary.

⁷ Section 29(2) of the EII Act.

3.3 What types of projects can a connection order apply to?

The infrastructure planner may only serve a connection prohibition order in relation to the connection of proposed infrastructure that has not received development consent under the EP&A Act.⁸

Proposed infrastructure is defined in the EII Act as proposed generation or storage infrastructure with a capacity of at least 30 megawatts.

4 How will the infrastructure planner exercise its function regarding prohibition orders?

4.1 A prohibition to connect order may only be made in limited circumstances

The infrastructure planner must not make a connection prohibition order unless it is satisfied that:

1. there is significant opposition from the community in the area in which the proposed infrastructure will be located (the local area),
2. making the order is reasonably necessary to maintain community support in the local area for other infrastructure in the REZ,
3. making the order is in the public interest, and
4. making the order is consistent with the objects of the EII Act⁹.

The infrastructure planner will consider this guideline when determining whether to make a connection prohibition order.

In exercising this function, the conduct of the infrastructure planner is authorised under section 72 of the EII Act for the purposes of the *Competition and Consumer Act 2010* (Cth) and the Competition Code of New South Wales to the extent that conduct would otherwise contravene any restrictive trade practices under Part IV of the *Competition and Consumer Act 2010* or the Competition Code of New South Wales.

4.2 Commencing the process

The infrastructure planner may initiate the process of making a connection prohibition order on its own initiative or when directed by the Minister¹⁰.

The infrastructure planner can commence the process to make a connection prohibition order in relation to proposed infrastructure at any time before that infrastructure receives development consent under the EP&A Act.

However, to provide greater certainty for local communities and proponents, the infrastructure planner will generally:

⁸ Section 29(5) of the EII Act.

⁹ Section 29(4) of the EII Act, section 3(3) of the EII Act.

¹⁰ EnergyCo (in its capacity as infrastructure planner under section 29 of the EII Act) is subject to the control and direction of the Minister when exercising its function under section 29 (section 63(8) EII Act).

- seek to commence a process to make a connection prohibition order as soon as practicable after it becomes aware that there may be significant community opposition to the proposed infrastructure, and
- not commence a process to make a connection prohibition order in relation to proposed infrastructure after the Department has made a recommendation to the consent authority if the project is State significant development (SSD) or the Minister if the project is State significant infrastructure (SSI) in relation to the development application for the proposed infrastructure, or where the Development Application (DA) is on appeal in the Land and Environment Court under Division 8.3 of the EP&A Act.

4.3 Initial consultation with the Proponent

Before commencing any broader consultation on making a connection prohibition order in respect of proposed generation or storage infrastructure, the infrastructure planner may initially consult with the Proponent of the project.

In undertaking this initial consultation, the infrastructure planner will:

1. notify the Proponent of its reasons for considering the making of a connection prohibition order and seek information from the Proponent in relation to the proposed project, which may include:
 - information about the type, size and location of the proposed project
 - the stage of project development
 - the type and level of community engagement undertaken by the Proponent on the project and the issues and concerns raised by the community during that engagement; and
2. invite the Proponent to provide an initial response to the infrastructure planner, including how it proposes to respond to the issues and concerns raised during community engagement.

Any feedback received during this informal consultation step will help inform the infrastructure planner's decision as to whether to proceed with the process described below.

4.4 Determination of the relevant local area

If the infrastructure planner proceeds with the process of making a connection prohibition order, the infrastructure planner must consider the geographical area that will be the 'local area' for the purposes of making the order. This is because –

- before making a connection prohibition order, the infrastructure planner must seek and consider submissions from relevant operators in the local area and the council in the local area (section 29(3)(a)).
- the infrastructure planner must not make an order unless it is satisfied that there is significant opposition from the community in the local area (section 29(4)(a)).

The local area is defined in the EII Act as the area in which the proposed infrastructure will be located.

In considering the local area for the purposes of making an order, the infrastructure planner may have regard to the nature and location of the proposed generation or storage infrastructure, the objects of the EII Act, the purpose of its function under section 29 of the EII Act (see section 2

above) and any other relevant matters such as, but not limited to, the location and proximity of landowners or communities that may be potentially impacted by the project.

4.5 Consultation

The infrastructure planner must consult with certain parties before making a connection prohibition order. During this consultation stage the infrastructure planner will:

1. seek written submissions from:
 - the relevant operator who would be the subject of the order,
 - other relevant operators in the local area,
 - the Proponent, and
 - the local council in the local area¹¹, and
2. invite feedback from the community in the local area by publishing on its website an invitation to the community to provide their views on the proposed generation or storage project and details of how the community can provide that feedback.

The period for consulted parties to make written submissions and community members to provide their feedback to the infrastructure planner will be at least 20 business days.

4.6 Initial assessment

Following the close of the period for submissions referred to in section 4.5, the infrastructure planner will undertake an initial assessment as to whether to make a connection prohibition order in relation to the proposed infrastructure.

As part of its initial assessment, the infrastructure planner:

1. will consider submissions made by the parties referred to in section 4.5¹²
2. will consider the views of the community in the local area of the proposed infrastructure and the nature and extent of community support or opposition to the proposed infrastructure, including by considering any views provided in relation to similar projects in the REZ and/or following the invitation for feedback referred to in section 4.5 and any action taken by the community in the local area or by community leaders on their behalf, and
3. may consider additional matters that the infrastructure planner considers relevant to its assessment including, but not limited to:
 - any publicly available information gathered by the consent authority if the project is SSD or the Minister if the project is SSI in connection with the application for development consent for the proposed infrastructure under the EP&A Act. This may include the public submissions made on the Proponent's environmental impact statement and the Proponent's response to those public submissions,
 - any information gathered by other entities under the EII Act in relation to the proposed infrastructure. For example, information gathered by the Consumer Trustee or infrastructure planner in connection with the allocation of rights under an access scheme or a tender for long-term energy service agreements under the EII Act,
 - whether the Proponent has been granted rights under an access scheme or long-term energy service agreement under the EII Act in respect of the proposed infrastructure,

¹¹ Section 29(3) of the EII Act.

¹² Section 29(3) of the EII Act.

- the extent and quality of community engagement undertaken by the Proponent in respect of the proposed infrastructure, including the Proponent's consultation and negotiation with local Aboriginal communities¹³, and
- the plan for the NSW renewable energy sector under section 7(4)(a) of the EII Act.

In considering any of the matters above the infrastructure planner will act in a manner consistent with the objects of the EII Act¹⁴.

4.7 Notice of intent to make a connection prohibition order

Following the consultation and assessment process described in sections 4.5 and 4.6 above, the infrastructure planner will either:

1. provide written notice to the Proponent and the relevant operator that it does not propose to make a connection prohibition order¹⁵, or
2. issue a notice of intent to make a connection prohibition order (notice of intent) to the Proponent of the proposed infrastructure and the relevant operator.

A notice of intent will be in writing and include:

1. the reasons why the infrastructure planner intends to make a connection prohibition order,
2. a request for a written response from the Proponent to be provided within 15 business days of the notice being issued. The written response should include any reasons why the Proponent considers a connection prohibition order should not be made, including:
 - any plans of the Proponent to address the concerns raised including the timeframes within which it will address the concerns,
 - any information in the notice of intent the Proponent considers is incorrect, including the reasons for that view, and
 - any new information the Proponent considers is relevant to the infrastructure planner's decision.
3. an invitation for a written response from the relevant operator to be provided within 15 business days.

4.8 Basis for making a connection prohibition order

The infrastructure planner will only make a connection prohibition order if it is satisfied that:

- there is significant opposition from the community in the local area to the proposed infrastructure,
- making the order is reasonably necessary to maintain community support in the local area for other infrastructure in the REZ,
- making the order is in the public interest, and
- making the order is consistent with the objects of the EII Act¹⁶.

In deciding whether to make a connection prohibition order, the infrastructure planner will consider:

¹³ Local Aboriginal community is defined in section 4(7) of the EII Act.

¹⁴ Section 3(3) of the EII Act.

¹⁵ Such a notice will not prevent EnergyCo from subsequently issuing a connection prohibition order in relation to the proposed infrastructure after following the process in section 4 of this guideline.

¹⁶ Section 29(4) of the EII Act, section 3(3) of the EII Act.

1. the matters considered in its initial assessment, including all consultation (see section 4.5),
2. any written response to the notice of intent provided by the Proponent in accordance with section 4.7, and
3. any written response submission made by the relevant network operator in response to the notice of intent in accordance with section 4.7.

4.9 Notification of decision and reasons

Within 20 business days following the expiry of the period for the provision of a response by the Proponent to a notice of intent issued under section 4.7 (or other timeframe agreed by the parties) the infrastructure planner may either:

1. make a connection prohibition order, providing reasons for its decision, or
2. notify the Proponent and the relevant operator that it does not propose to make a connection prohibition order.

A connection prohibition order will be served on the relevant operator, with a copy provided to the Proponent and the consent authority. The infrastructure planner will also make a copy of the order made publicly available on its website. The order will specify:

1. the Proponent
2. the proposed generation or storage infrastructure to which the order relates, including the location of that infrastructure,
3. an acknowledgement that the proposed generation or storage infrastructure has not at the date of the order received development consent under the EP&A Act, and
4. the network infrastructure within the REZ geographical area to which the order applies.

Appendix 1- Section 29 of the *Electricity Infrastructure Investment Act 2020*

29 Orders prohibiting connection to network infrastructure

- (1) The infrastructure planner may, by order served on a relevant operator, prohibit the relevant operator from allowing a proponent to connect proposed infrastructure to the relevant operator's network infrastructure.
- (2) An order is to apply to network infrastructure in a specified area within a renewable energy zone.
- (3) Before making an order, the infrastructure planner must seek and consider submissions from —
 - (a) the relevant operator and other relevant operators in the local area, and
 - (b) the proponent, and
 - (c) the local council in the local area.
- (4) The infrastructure planner must not make an order unless satisfied that —
 - (a) there is significant opposition from the community in the local area to the proposed infrastructure, and
 - (b) making the order is reasonably necessary to maintain community support in the local area for other infrastructure in the renewable energy zone, and
 - (c) making the order is in the public interest.
- (5) An order may not be made if the proponent has development consent under the Environmental Planning and Assessment Act 1979 to construct and operate the proposed infrastructure.
- (6) The infrastructure planner is to publish guidelines on its website about the exercise of its functions under this section.
- (7) The Energy Corporation is appointed as the infrastructure planner to exercise the functions under this section for a renewable energy zone or part of a renewable energy zone.
- (8) In this section —

local area means the area in which the proposed infrastructure will be located.

proponent means a person or body who proposes to construct or operate proposed infrastructure.

proposed infrastructure means proposed generation or storage infrastructure with a capacity of at least 30 megawatts.

Appendix 2- Objects of the *Electricity Infrastructure Investment Act 2020*

3 Objects of Act

(1) The objects of this Act are —

- (a) to improve the affordability, reliability, security and sustainability of electricity supply, and
- (b) to co-ordinate investment in new generation, storage, network and related infrastructure, and
- (c) to encourage investment in new generation, storage, network and related infrastructure by reducing risk for investors, and
- (d) to foster local community support for investment in new generation, storage, network and related infrastructure, and
- (e) to support economic development and manufacturing, and
- (f) to create employment, including employment for Aboriginal and Torres Strait Islander people, and
- (g) to invest in education and training, and
- (h) to promote local industry, manufacturing and jobs, and
- (i) to promote export opportunities for generation, storage and network technology.

(2) The following objects also apply to Parts 4–6 —

- (a) to increase employment and income opportunities for Aboriginal and Torres Strait Islander people in New South Wales, and
- (b) to promote consultation and negotiation with the traditional Aboriginal owners of land on which generation, storage and network infrastructure is proposed to be constructed or operated under this Act.

(3) A person or body exercising a function under this Act must do so in a way that is consistent with the objects of this Act.