

Modification of Minister's Approval

Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning and Environment under delegation dated 14 September 2011, the Planning Assessment Commission of New South Wales approves the modification of the project application referred to in schedule 1, subject to the conditions in schedule 2.

MEMBER OF THE COMMISSION

Sydney

2014

SCHEDULE 1

Project Approval:

MP 07_0118 granted by the Land and Environment Court on 7 May 2010.

For the following:

The construction and operation of a wind farm and associated infrastructure known as the Gullen Range Wind Farm.

Modification Application:

The Proponent seeks to modify the existing approval to relocate 69 turbines within the approved project footprint

SCHEDULE 2

DEFINITIONS

1. Insert within the definitions table

Secretary, the Secretary of the Department of Planning and Environment (or delegate)

CONDITIONS

1. Delete condition 1.1 and replace with the following:

Terms of Approval

1.1 The Proponent shall carry out the project generally in accordance with:

- a) Major Project Application 07_0118;
- b) *Proposed Development of the Gullen Range Wind Farm, Southern Tablelands, New South Wales Part 3A Environmental Assessment (Project Application 07_0118)*, prepared by Epuron Pty Ltd and dated July 2008;
- c) *Proposed Development of the Gullen Range Wind Farm, Southern Tablelands, New South Wales Response to Submissions to the Environmental Assessment*, prepared by Epuron Pty Ltd and dated November 2008;
- d) *Proposed Development of the Gullen Range Wind Farm, Southern Tablelands, New South Wales Final Statement of Commitments*, prepared by Epuron Pty Ltd and dated November 2008;
- e) *Gullen Range Wind Farm – Modification Application – Environmental Assessment – Volume 1* prepared by Goldwind Australia Pty Ltd and dated March 2014;
- f) *Gullen Range Wind Farm – Modification Application – Environmental Assessment – Volume 2* prepared by Goldwind Australia Pty Ltd and dated March 2014;
- g) *Gullen Range Wind Farm – Modification Application – Submissions Report* prepared by Goldwind Australia Pty Ltd and dated 13 June 2014; and
- h) the conditions of this approval.

2. Delete condition 1.2 and replace with the following:

1.2 In the event of an inconsistency between:

- a) the conditions of this approval and any document listed from condition 1.1 a) and 1.1g) inclusive, the conditions of this approval shall prevail to the extent of the inconsistency; and
- b) any document listed from condition 1.1 a) and 1.1 g) inclusive, and any other document listed from condition 1.1 a) and 1.1 g) inclusive, the most recent document shall prevail to the extent of the inconsistency.

3. Insert after condition 1.6

Limits of Approval

1.6A

- a) Notwithstanding the turbine locations as described in the documents identified within condition 1.1e) to 1.1g), turbines BAN_9 and BAN_15 are to be constructed in accordance with the locations as described in 1.1b) to 1.1d), or as otherwise determined within condition 2.25A.
- b) turbines BAN_9 and BAN_15, constructed in locations as described in condition 1.1e) to 1.1g) are to be dismantled and the sites returned, as far as practicable, to their condition prior to construction within 1 year from the date of determination of modification 1, in

consultation with the relevant landowner(s) and to the satisfaction of the Secretary, subject to condition 2.25A

c) To reduce the impact on the Little Eagle, turbines POM_3 and POM_4 are to be completely switched off during the fledgling period of the Little Eagle, from 1st November through to the 31st of March, every year.

4. Delete conditions 1.9, 1.10 and 1.11 and replace with the following

DECOMMISSIONING

1.9

Unless otherwise agreed by the Secretary, within 18 months of the cessation of operation of the Project, the site shall be decommissioned and returned by the Proponent, as far as practicable, to its condition prior to the Project commencement, in consultation with the relevant landowner(s) and to the satisfaction of the Secretary (and in accordance with the Decommissioning and Rehabilitation Plan to be prepared in condition 1.10).

All generating facilities and associated infrastructure (including but not necessarily limited to the substation and transformers, switchyard, operation and maintenance facility, overhead transmission lines and access roads) shall be removed from the site unless otherwise agreed by the Secretary. Project related infrastructure (including access roads) may only be retained on site, where the Proponent has demonstrated to the satisfaction of the Secretary prior to the commencement of decommissioning, that these components: are permissible under the site's statutory landuse provisions in force upon commencement of the decommissioning; would not pose an ongoing impediment to permissible landuse at the properties; and their retention has been agreed to in writing (with evidence provided to the Secretary) by the relevant landowners.

This condition does not apply to any infrastructure which, as at the relevant date, is owned by a network operator under the *Electricity Supply Act 1995 (NSW)* (or any equivalent provisions which are in force as at the relevant date).

1.10

Within 6 months of the determination of modification 1, the Proponent shall prepare from the commencement of operation (and update every 5 years) a **Decommissioning and Rehabilitation Plan**, to the satisfaction of the Secretary, until decommissioning and rehabilitation is completed. A copy of each updated version of the plan shall be provided to the Secretary and Council and made publicly available. The updated Plan shall be consistent with the requirements of the *draft NSW Planning Guidelines – Wind Farms* (December 2011), as updated. The updated Plan shall include estimated costs of and funding arrangements for decommissioning, including provision for a decommissioning bond or other funding mechanisms, where the Plan concludes that estimated costs and funding arrangements are inadequate.

1.11

Any individual turbine that ceases operating for a period of more than 12 consecutive months shall be dismantled within 18 months after the 12 month period. The Proponent shall keep independently-verified annual records of the use of wind turbines for electricity generation. Copies of these records shall be provided to the Secretary upon request. The relevant wind turbine and any associated infrastructure is to be dismantled and removed from the site by the Proponent within 30 months from the date that the wind turbine was last used to generate electricity.

1.11A

Unless otherwise agreed by the Secretary, the Proponent shall commission an independent, qualified person or team to undertake the following in consultation with the relevant road authority:

- a) prior to the commencement of decommissioning, review the proposed route and existing access provisions to the Wind Farm Site to determine whether the route and existing provisions allow for safe access of decommissioning vehicles associated with the Project (including appropriate site distances and provisions for over-mass or over-dimensional transport and safety with other road users). Where improvements or changes to the proposed route are required, the Proponent shall implement these in consultation with the relevant road authority, prior to the commencement of decommissioning and at the full expense of the Proponent; and
- b) assess all roads proposed to be used for over-mass and / or over-dimensional transport (including intersections, bridges, culverts and other road features) prior to the commencement of decommissioning to determine whether the existing road condition can accommodate the proposed over-mass and / or over-dimensional haulage. Where improvements are required, the Proponent shall implement these in consultation with the relevant road authority, prior to the commencement of decommissioning and at the full expense of the Proponent.

Upon determining the haulage route(s) for decommissioning vehicles associated with the Project, and prior to decommissioning, undertake a **Road Dilapidation Report**. The Report shall assess the current condition of the road(s) and describe mechanisms to restore any damage that may result due to traffic and transport related to the decommissioning of the Project. The Report shall be submitted to the relevant road authority for review prior to the commencement of haulage.

Within three months of completion of decommissioning, a subsequent Report shall be prepared to assess any damage that may have resulted from the construction of the Project (including mechanisms to restore any damage) and submitted to relevant road authority for review.

Measures undertaken to restore or reinstate roads affected by the Project shall be undertaken in accordance with the reasonable requirements of the relevant road authority (including timing requirements), and at the full expense of the Proponent.

1.11B

Prior to commencement of construction, the Proponent shall provide written evidence to the satisfaction of the Secretary that the lease agreements with the site landowners have adequate provisions to require that decommissioning occurs in accordance with this approval.

1.11C

Prior to the commencement of decommissioning, or as otherwise agreed by the Secretary, the Proponent shall prepare and implement (following approval) a **Decommissioning Environmental Management Plan** for the Project. The Plan shall outline the environmental management practices and procedures that are to be followed during decommissioning, and shall be prepared in consultation with the relevant agencies and in accordance with the *Guideline for the Preparation of Environmental Management Plans* (Department of Infrastructure, Planning and Natural Resources, 2004). The Plan shall include, but not necessarily be limited to:

- a) a description of activities to be undertaken during decommissioning of the Project (including staging and scheduling);

- b) statutory and other obligations the Proponent is required to fulfil during decommissioning, including approval / consents, consultations and agreements required from authorities and other stakeholders under key legislation and policies;
- c) a description of the roles and responsibilities for relevant employees involved in the decommissioning of the Project, including relevant training and induction provisions for ensuring that employees, including contractors and sub-contractors are aware of their environmental and compliance obligations under these Conditions of Approval;
- d) an environmental risk analysis to identify the key environmental performance issues associated with the decommissioning phase; and
- e) details of how environmental performance will be managed and monitored to meet acceptable outcomes, including what actions will be taken to address identified potential adverse environmental impacts (including any impacts arising from the staging of the decommissioning of the Project). In particular, the following environmental performance issues shall be addressed in the Plan:
 - i. compounds and ancillary facilities management;
 - ii. noise and vibration;
 - iii. traffic and access;
 - iv. soil and water quality and spoil management;
 - v. air quality and dust management;
 - vi. hazardous material and waste management; and
 - vii. hazard and risk management, including bushfire risk.

The Plan shall be submitted for the approval of the Secretary no later than one month prior to the commencement of decommissioning, or as otherwise agreed by the Secretary. The Plan may be prepared in stages, however, decommissioning works shall not commence until written approval has been received from the Secretary.

5. Insert after condition 2.3

2.3A

- a) A Substation Landscape Management Plan to screen the substation (utilising advanced and mature plantings (to a minimum height of 2m at planting to ensure the screening is established as quickly as possible), is to be prepared and reviewed by an independent Landscape Architect.
- b) Screening of the substation is to occur within 3 months from the date of determination of modification 1.
- c) The Substation Landscape Management Plan must also make provision for ensuring that landscaping of the substation and surrounds is maintained in an adequate condition to screen the substation by providing details of a monitoring program. Monitoring must be carried out pursuant to the monitoring program every 6 months for the first two years from the commencement of planting and thereafter every 2 years by an independent and suitably qualified and experienced arborist. The monitoring program must include the following features:
 - i. identification of mature trees surrounding the site which afford screening of the substation from the property of receiver PW4 (as identified within Figure 1-2 Turbine Layout – Approved and Final Design Locations as detailed within condition 1.1e)) and other non-associated properties;
 - ii. provision for assessing and regularly monitoring the health of planted landscaping on the site and the trees adjacent to the substation site. The objective of the monitoring is to determine the health of the trees and to recommend measures (if required) to improve the health of the trees;
 - iii. description of the health of each tree identified under condition (i);

- iv. recommendation of reasonable measures to ensure that mature trees within the corridor adjacent to the substation are retained and protected, including trees that lie within the transmission line easement;
- v. recommendation of any watering or fertilising that needs to be implemented to maintain the landscaping and surrounding trees;
- vi. recommendation of how to manage the landscaping to promote the maximisation of growth to maturity.

The results and recommendations of the monitoring program must be submitted to the Secretary within one month of the conclusion of each stage of monitoring.

d) The screening must be effective in visually screening the substation from the time the planting occurs until the substation is decommissioned.

2.3B

Independent Audit

The Proponent shall commission and pay the full cost of an Independent Audit of the performance of the mitigation measures implemented in the Substation Landscape Management Plan to prevent and minimise the visual impacts of the substation, including landscaping, preservation of existing trees, and night-lighting effects (if any). The audit must be conducted within 6 months of the operation of the project and every 2 years thereafter, unless the Secretary directs otherwise. This audit must:

- i. Be conducted by an independent landscape expert who is suitably qualified and experienced and whose appointment has been approved by the Secretary;
- ii. Assess the performance of the visual mitigation measures with specific reference to the effectiveness of mitigation measures in screening the substation and any lighting from the substation;
- iii. Review the adequacy of the Substation Landscape Management Plan;
- iv. Recommend actions or measures to improve the performance of the visual mitigation measures and the adequacy of the Substation Landscape Management Plan (if required); and

Within 2 months of commissioning each audit the Proponent shall submit a copy of the audit report to the Secretary and provide a detailed response to the recommendations in the audit report. A copy of the Independent Audit, and/or the results and recommendations of any monitoring carried out under condition 2.3A will be provided to the owner of PW4 (as identified within Figure 1-2 Turbine Layout – Approved and Final Design Locations as detailed within condition 1.1e) by the Secretary upon request, and be made publicly available on the dedicated web-site.

2. 3C

Within 1 month of the date of determination of modification 1 and if the landowner agrees, the Proponent is to plant mature sized plantings (up to a minimum height of 2m on planting) to ameliorate the visual impact of turbines KIA_01 and KIA_02 on residence K2 (as identified within Figure 1-2 Turbine Layout – Approved and Final Design Locations as detailed within condition 1.1e).

6. Delete 2.19 and replace with the following

For the purposes of condition 2.21 of this Approval, the presence of excessive tonality (a special noise characteristic) is consistent with that described in *ISO 1996.2: 2007 Acoustics – Description, measurement and assessment of environmental noise - Determination of environmental noise levels*.

If tonality is found to be a repeated characteristic of the wind turbine noise, 5dB(A) should be added to measured noise level from the wind farm. If tonality is only identified for certain wind directions and speeds, the penalty is only applicable under these conditions.

The tonal characteristic penalty applies only if the tone from the wind turbine is audible at the relevant receiver. Absence of tone in noise emissions measured at an intermediate location is sufficient proof that the tone at the receiver is not associated with the wind farm's operation.

The assessment for tonality should only be made for frequencies of concern from 25Hz to 10KHz and for sound pressure levels above the threshold of hearing (as defined in *ISO 389.7: 2005 Acoustics - Reference zero for the calibration of audiometric equipment - Part 7: Reference threshold of hearing under free-field and diffuse-field listening conditions*).

The maximum penalty to be added to the measured noise level from the wind farm for any special noise characteristic individually or cumulatively is 5 dB(A).

Note - For the purposes of this condition, tonality is defined as a repeated characteristic if it occurs for more than 10% of an assessment period. This equates to being identified for more than 54 minutes during the 9 hour night from 10pm – 7am, or for more than 90 minutes during the 15 hour day from 7am – 10pm. This definition refers to valid wind farm noise only.

7. Insert after condition 2.20

2.20A

For the purposes of condition 2.15 of this Approval, the presence of excessive low frequency noise i.e. noise from the wind farm that is repeatedly greater than 65dB(C) during the day time or 60dB(C) during the night time at any relevant receiver will incur a 5dB(A) penalty, to be added to the measured noise level for the wind farm, unless a detailed internal low frequency noise assessment demonstrates compliance to the *Proposed criteria for the assessment of low frequency noise disturbance* (UK Department for Environment, Food and Rural Affairs (DEFRA, 2005)) for a steady state noise source.

Note – For the purposes of this condition, low frequency noise is defined as a repeated characteristic if it occurs for more than 10% of an assessment period. This definition refers to verified wind farm noise only.

8. Insert after condition 2.21

2.21A

The Noise Compliance Monitoring, as detailed within condition 2.21, is to be made publicly available on the dedicated web-site.

9. Insert after condition 2.24

2.24A

Any landowner or resident whose residence is within 3 kilometres of a turbine may ask the Secretary in writing for an independent review of the noise impacts of the Project on his / her land. If the Secretary is satisfied that an independent review is warranted, then the Secretary may require the Proponent to commission a suitably qualified independent expert, whose appointment has been agreed to by the Secretary, to consult with the landowner / resident to determine his / her concerns, and conduct monitoring to determine whether the Project complies with the criteria identified in condition 2.15.

The results of the monitoring shall be reported to the Secretary and the landowner / resident within one month of the completion of monitoring, and where the monitoring indicates that noise from the wind turbines exceeds the noise limits specified under condition 2.15, as relevant, the provisions of conditions 2.17 to 2.20 apply.

10. Insert after condition 2.25

Land Acquisition and Criteria

2.25A

Notwithstanding the requirements of condition 1.6A, BAN_09 may be constructed and operated in the location as identified within the documents identified in condition 1.1e) to 1.1g), if the owner of the property known as B29 (as identified within Figure 1-2 Turbine Layout – Approved and Final Design Locations as detailed within condition 1.1e)) agrees to this location in writing within 3 months of the date of determination of modification 1.

If the owner of residence B29 so agrees, then the owner may request in writing, within 6 months of the date of the agreement, the proponent to acquire the property. The proponent shall proceed to acquire the property in accordance of the requirements of condition 2.27 to 2.29.

2.25B

The Proponent shall acquire the property known as PW34 (as identified within Figure 1-2 Turbine Layout – Approved and Final Design Locations as detailed within condition 1.1e)) within three months of the determination of modification 1.

11. Amend condition 2.27 to insert “or 2.25A” after “under condition 2.26”.

12. Delete condition 2.35 and replace with the following:

2.35

- a) Within 6 months of the date of determination of modification 1, the Proponent shall in consultation with the Office of Environment and Heritage (OEH), finalise (and following approval implement all the actions of the package within 3 months or as otherwise agreed to by OEH) a revised compensatory habitat package (CHP) to offset in perpetuity the value of habitat lost as a result of the project, to the satisfaction of the Secretary. Unless otherwise agreed to by the Secretary, the package shall comprise, but not necessarily be limited to:
- i. a minimum of 2:1 ‘like for like’ offset of the vegetation communities to be removed or otherwise disturbed on site utilising a “Worst Case Scenario” impact assessment.
 - ii. an extended area of box gum woodland, determined in consultation with OEH.
 - iii. measures to prohibit rabbit baiting within the foraging areas of the Little Eagle that is within the vicinity of any turbines (to be determined in consultation with OEH).
 - iv. measures to actively rehabilitate any Box Gum Woodland to within the NSW Vegetation Biometric benchmark level for Yellow Box - Blakely's Red Gum grassy woodland on the tablelands, South Eastern Highlands in the Hawkesbury Nepean CMA. This rehabilitation must be within benchmark by 30 June 2019.
 - v. no spraying using a boom spray or aerial spraying within the areas of box gum woodland, or within the other areas of the compensatory habitat areas. Spraying for noxious weeds is to be undertaken using a hand held spray device on target species only. Other woody weeds should be removed by hand.
 - vi. no grazing within the CHP area without consultation with OEH and approval of the Secretary.

- vii. a program of feral animal control, including control and removal of feral goats, pigs and foxes. A feral animal control plan is to be developed which clearly outlines the types of control and when the feral animal control will occur.
 - viii. protection of the known nesting tree and roosting area of the Powerful Owl. As such the CHP area is to include all known roosting and nest trees of the Powerful Owl within the project boundary. The boundary of the CHP area must be finalised in consultation with OEH. These nest trees and surrounding habitat should be protected in perpetuity, using either a conservation PVP or biobanking agreement.
 - ix. measures for minimising the impact of the wind farm on the Powerful Owl, inclusive of monitoring requirements as stipulated within condition 2.35A.
 - x. a monitoring and reporting program for the CHP area, to be determined in consultation with OEH.
- b) Within 3 months of the date of determination of modification 1, the Proponent shall provide an updated biodiversity assessment of the amount and type of vegetation that is impacted by the project, to the OEH and the Secretary.

13. Insert after condition 2.35

2.35B

Within 1 month from the date of determination of modification 1, consultation is to be undertaken with OEH regarding the monitoring for the impact of the wind farm on the Powerful Owl population, particularly for turbines POM_3, POM_4, POM_6 and POM_7.

The monitoring program is to be approved by OEH prior to implementation.

14. Insert after condition 3.3

3.4

The Proponent must prepare and submit to the Secretary, an Annual Environmental Management Report (AEMR) throughout the life of the project, or as otherwise required by the Secretary. The AEMR must review the performance of the project against the Operation Environmental Management Plan, the conditions of this approval and other licences and approvals relating to the project. The AEMR must include, but not necessarily be limited to:

- (a) details of compliance with the conditions of this approval;
- (b) a copy of the Complaints Register (referred to in Condition 5.5) for the preceding twelve-month period (exclusive of personal details), and details of how these complaints were addressed and resolved;
- (c) a comparison of the environmental impacts and performance of the project against the environmental impacts and performance predicted in those documents listed under Condition 1.1 of this approval;
- (d) results of all environmental monitoring required under this approval and others, including interpretations and discussion by a suitably qualified

person;

- (e) a list of all occasions in the preceding twelve-month period when environmental performance goals for the project have not been achieved, indicating the reason for failure to meet the goals and the action taken to prevent recurrence of that type of incident;
- (f) identification of trends in monitoring data over the life of the project to date;
- (g) a list of variations obtained to approvals applicable to the project and to the site during the preceding twelve-month period; and;
- (h) environmental management targets and strategies for the following twelve month period, taking into account identified trends in monitoring results.

Note: It is not intended for this annual review to result in any additional review of plans, programs and strategies where those plans, programs and strategies also have a review component that addresses this condition.

15. Insert after condition 5.1

5.1A

Community Consultative Committee

The Proponent shall establish and continue operation of the **Community Consultative Committee** for the life of the Project, unless otherwise agreed by the Secretary. The Proponent shall ensure the Committee is in operation within 3 months from the date of determination of modification 1, and operate in a manner consistent with the requirements of *Appendix C: Guidelines for wind farm consultative committees*, as contained in the *draft NSW Planning Guidelines – Wind Farms* (December 2011), as updated, unless otherwise directed by the Secretary.

16. Insert after condition 5.2

5.2A

The results of all monitoring, as required under the conditions of approval, shall be made publicly available on the dedicated web-site.

17. Delete condition 5.5 and replace with the following

5.5 The Proponent shall record details of all complaints received through the means listed under condition 5.4 of this approval in an up-to-date Complaints Register. The Register shall record, but not necessarily be limited to:

- a) the date and time, where relevant, of the complaint;
- b) the means by which the complaint was made (telephone, mail or email);
- c) any personal details of the complainant that were provided, or if no details were provided, a note to that effect;
- d) the nature of the complaint;
- e) any action(s) taken by the Proponent in relation to the complaint, including any follow-up contact with the complainant; and
- f) if no action was taken by the Proponent in relation to the complaint, the reason(s) why no action was taken.

The Complaints Register shall be made publicly available on the dedicated web-site, with the personal details of the complainant removed, unless otherwise advised by the complainant.

18. Insert after condition 7.5b)

7.5c) the Landscape Management Plan, as detailed within condition 7.5b) is to be updated within 3 months of the date of determination of modification 1 to include measures to be implemented as part of a weed management strategy to remove risks of the spread of noxious weeds between properties.