

Director – Energy, Industry & Compliance
Department of Planning, Housing and Infrastructure
GPO Box 39
Sydney NSW 2001

15th December 2025

Dear Sir/Madam,

Re: Formal Objection – Thunderbolt Wind Farm Modification 1 (SSD-10807896 – Section 4.55(2) Application)

I write to object to the Modification 1 application for the Thunderbolt Wind Farm under s4.55(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act).

The proposed modification fails to satisfy the statutory threshold for approval under s4.55(2), and its supporting documentation contains material omissions, insufficient analysis, and untested assertions regarding impacts.

The changes collectively give rise to significant environmental, social, traffic, heritage, and amenity consequences.

Below, I set out the legal grounds for objection, including case law relevant to modifications, as well as specific deficiencies in the Modification Report.

1. The modification is not “substantially the same development” (s4.55(2))

A modification under s4.55(2) may only be approved if the development as modified is “substantially the same development” as the originally approved project.

NSW Land and Environment Court authorities confirm this requires a qualitative and quantitative assessment, including whether the essence or identity of the development is retained.

A relevant case is AQC Dartbrook Management Pty Ltd v Minister for Planning [2021] NSWCA 112.

The cumulative magnitude of proposed changes—including a 22-month construction extension, enlarged disturbance footprint, new tower, changed traffic routes and heavy vehicle profiles—means the modified project is not substantially the same development.

2. The environmental impacts are not “minimal” – required for s4.55(2)

The EP&A Act requires that the modification have minimal environmental impact. Here, impacts are clearly non-minimal due to:

- prolonged construction
- increased traffic intensity
- new clearing
- new structures
- additional ground disturbance
- new transport routes.

Case law (e.g., Kimberley Quarry v Gosford City Council) confirms that new and additional environmental impacts cannot be considered “minimal”.

3. Inadequate assessment of extended construction impacts (additional 22 months)

The Modification Report provides no detailed modelling of:

- noise and vibration
- dust and air quality
- traffic loadings
- community disruption
- worker accommodation pressures.

The claim that these impacts are trivial is unsupported by evidence.

4. Biodiversity impacts understated and assessed in a limited manner

The BDAR only assesses the new disturbance area rather than the impacts of the modified project as a whole.

The additional 7.23 ha includes habitat for several threatened species (Koala, Squirrel Glider, various forest owls, Eastern Pygmy Possum, threatened flora).

Offsets are speculative and not demonstrated to be feasible or available, contrary to Gloucester Resources Ltd v Minister for Planning.

See Appendix 1 for a more extensive review of the inadequacy of the Modification's BDAR report.

5. Failure to assess impacts on Bell's Turtle habitat in Pine Creek Dam and Copes Creek

The Modification Report does not identify or assess the presence of the endangered species, Bell's Turtle (*Myuchelys bellii*) in the Pine Creek / Copes Creek system, despite clear evidence—including expert advice provided in my submission to the IPC in April 2024—that:

- Pine Creek and Copes Creek are confirmed habitat and movement pathways for Bell's Turtle.
- The species depends on both in-stream habitat and adjacent riparian vegetation, including nesting areas located close to the water's edge.
- The survival of individuals downstream of Pine Creek Dam relies on specific water flow conditions and stable in-stream habitat, which can be disrupted by construction, sedimentation, and erosion.
- Two potential nesting areas fall within or near the disturbance footprint, yet the Modification contains no assessment of impacts on nesting success or juvenile survival.
- These waterways form a critical connectivity corridor necessary for movement and genetic exchange.
- The species is already threatened and declining, making further disturbance particularly significant.

Since I submitted this expert advice to the IPC in April 2024, Northern Tablelands Local Land Services have confirmed the presence of Bell's Turtles in Pine Creek Dam (M. Dillon, pers comm, 10/12/2025).

Courts have repeatedly held that failure to properly assess threatened species renders a modification legally deficient (e.g., Chapman v Minister for Planning, Kimberley Quarry v Gosford).

Given the species' sensitivity to disturbance and reliance on stable riparian margins, the proposed clearing, road upgrades, sediment impacts, and extended construction duration pose non-minimal and unassessed risks. This is fundamentally incompatible with the "minimal environmental impact" requirement under s4.55(2).

6. Cumulative impact assessment is incomplete

The Modification stretches the project timeline to overlap with numerous other REZ projects. Yet:

- no cumulative traffic modelling was undertaken
- interactions with other OSOM freight movements were not assessed
- impacts are dismissed despite lack of data.

This contradicts *Gray v Minister for Planning* (2006) and *Bulga Milbrodale Progress Association v Minister for Planning* (2013), which require genuine cumulative impact analysis.

7. Cultural heritage assessment is insufficient

There is no evidence of comprehensive survey work for the new 7.23 ha disturbance, nor meaningful engagement with the Armidale LALC or Anaiwan traditional knowledge holders. This fails the standards established in *Tickner v Chapman* (1995), which, in essence, reinforced that procedural fairness demands genuine, personal engagement with relevant material, preventing decision-makers from simply passing off the responsibility for considering crucial, culturally significant evidence.

8. Visual and noise impacts not properly updated

The new 50 m microwave tower has no updated Zone of Theoretical Visibility (ZTV) modelling or photomontages.

Additionally, noise assessments exclude:

- construction noise for new roadworks
- night-time over size over mass (OSOM) deliveries
- updated receiver mapping
- Farrer Memorial Agricultural High School and its boarding students as an Identified Noise Sensitive Receiver.

This renders the assessment incomplete.

9. Inadequate reassessment of water use for extended construction

Despite the extension of the construction period by nearly two years, no updated assessment of water use has been provided. This omission poses a significant risk to local water availability, particularly under dry conditions.

Pine Creek Dam, beyond its ecological value—especially as habitat for Bell’s Turtle—also serves as a crucial water source for local firefighting operations. During prolonged construction periods, and in times of drought, increased water demand for dust suppression, roadworks, and other construction activities places further strain on dam reserves. This situation jeopardises not only the health of aquatic and riparian ecosystems but may also impact the community’s capacity to respond effectively to bushfires, which remain an ever-present threat in the region.

The Modification Report fails to adequately reassess the total water use or the sustainability of water sources for the extended construction period. It also does not address the compounded risks posed to both threatened species and critical emergency services. Given the dual role of Pine Creek Dam in supporting both ecological systems and firefighting operations, it is essential that any project modification includes a comprehensive and updated assessment of water demand, source sustainability, and contingency measures for both ecological and emergency requirements.

Request to the Department

Given the above, I respectfully request that the Department:

1. Reject Modification 1, as it does not meet the statutory requirements of s4.55(2),

or

2. Require a full Environmental Impact Statement, with updated biodiversity surveys—particularly including Bell’s Turtle surveys—traffic modelling, cultural heritage fieldwork, noise and visual assessments, and cumulative impact analysis.

Approval of this modification in its current form would be legally vulnerable and inconsistent with NSW planning law and precedent.

Thank you for considering this submission. Please confirm that my objection has been received and recorded.

Yours faithfully,



BSc (Env) Hon 1, GAICD, MICDA

Enc.

- Appendix 1 – Technical review of the Mod-1 BDAR.
- Appendix 2 – Submission to IPC (with reference to Bell’s Turtle), April 2024.