

# **APPENDIX 1**

## **Assessment of the Thunderbolt Wind Farm Modification 1 BDAR (Appendix 5)**

### **Including Compliance Analysis Under BOTH the Pre-2025 EPBC Act and the EPBC Amendment Regulations 2025**

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**Date: 15<sup>th</sup> December 2025**

## 1. INTRODUCTION

This document provides a comprehensive assessment of the *Thunderbolt Wind Farm Modification 1 – Biodiversity Development Assessment Report (BDAR)*. The BDAR went on public exhibition on 3 December 2025, immediately following the passing of major reforms to the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) on 28 November 2025.

Because the proposal falls within a regulatory transition window, this submission evaluates the BDAR against:

1. The EPBC Act and Regulations in force immediately prior to exhibition (pre-reform); and
2. The EPBC Amendment Regulations 2025 and associated measures already commenced or binding on decision-making post-reform.

Both frameworks are relevant because:

- The pre-reform standards govern whether exhibition documentation was legally adequate, and
- The post-reform standards govern current assessment and approval obligations.

<b>This dual-framework analysis shows the BDAR is non-compliant under both regimes.</b>
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## 2. REGULATORY CONTEXT & DUAL-REGIME OBLIGATIONS

### 2.1 Timing and Transitional Relevance

The Thunderbolt Wind Farm Modification 1 BDAR was placed on public exhibition on 3 December 2025, five days after the passing of significant EPBC Act reform legislation on 28 November 2025.

According to official government sources:

- Some EPBC reform provisions commence immediately or shortly after assent (e.g., transparency measures, certain decision-making obligations).
- Other major elements, particularly those requiring new institutions or standards, will commence later under transitional arrangements.

Because of this timing, the BDAR must withstand scrutiny under:

*(1) The EPBC Act and Regulations in force at the time of exhibition (pre-reform), which govern whether the BDAR met the minimum standard required for legally valid public consultation; and*

*(2) The EPBC reforms as far as they have commenced, and the clear direction and expectations established by the Government's Nature Positive Plan and statutory amendments.*

Thus, a dual-regime assessment is both reasonable and necessary.

## 3. FAILINGS UNDER THE PRE-REFORM EPBC ACT

The BDAR was legally inadequate when placed on exhibition because:

### 4.1 No identification of MNES

The BDAR omits key Matters of National Environmental Significance (MNES) species, including Bell's Turtle, despite known habitat and known presence (M.Dillon, Northern Tablelands Local Land Services, pers comm., 10/12/2025).

### 4.2 No MNES significance test

No pathways analysis or Federal referral consideration.

#### **4.3 No aquatic or hydrological assessment**

Despite proximity to sensitive creek systems.

#### **4.4 Incomplete information for public consultation**

An exhibition is legally flawed where foundational ecological information is absent.

**Result: Under the pre-reform EPBC law, the BDAR fails the minimum standard required for proper public exhibition.**

### **4. FAILINGS UNDER THE EPBC AMENDMENT MEASURES (POST-REFORM, CURRENT AND FORTHCOMING OBLIGATIONS)**

The EPBC reform package passed by Parliament in late 2025 introduces strengthened environmental expectations, including:

- increased transparency
- improved MNES identification
- stronger emphasis on cumulative impacts
- heightened protections for freshwater ecosystems
- a shift toward more rigorous assessment frameworks.

Some of these measures have commenced, while others are publicly confirmed but not yet fully operational.

The BDAR fails against both categories.

To maintain full factual accuracy, obligations below are described in two classes:

#### **A. Confirmed post-reform obligations (commenced or clearly in force)**

The following expectations are already operative or directly tied to the commencement of the 2025 EPBC reforms:

##### **A1. Requirement for clearer MNES assessment inputs and transparent identification processes**

The BDAR contains no MNES screening, contrary to heightened transparency and assessment integrity obligations now in force.

##### **A2. Stronger Federal scrutiny of high-risk MNES, including freshwater species**

Bell's Turtle is EPBC-listed and known to inhabit connected waterways.

The BDAR's omission cannot be reconciled with post-reform expectations for MNES handling.

##### **A3. Greater emphasis on scientifically robust ecological information**

Reforms mandate improved evidence quality and decision-maker transparency.

The BDAR relies on incomplete survey effort and is inconsistent with these expectations.

#### **B. Expected obligations under EPBC reforms (not yet fully commenced, but publicly confirmed)**

These reforms form the Government's stated direction, and although not all are operative, they are relevant to assessing whether documentation prepared during the transition is adequate or future-proof.

### B1. Strengthened freshwater ecosystem protection framework

Government announcements and reform papers indicate a major uplift in expectations for:

- sedimentation assessment
- hydrological modelling
- riparian protection
- downstream impact analysis.

The BDAR contains none of these assessments, even though the project affects waterways that support Bell's Turtle.

### B2. Explicit cumulative impact requirements

The Government has repeatedly stated cumulative impact assessments will be central to Nature Positive reforms.

The BDAR treats the project as isolated, despite heavy REZ development proposed.

### B3. Greater emphasis on alternatives and avoidance

EPBC reforms clearly emphasise “avoid, mitigate, offset” hierarchy and alternatives analysis.

BDAR includes none.

### B4. Strengthened offset standards for MNES

Reforms point toward tighter offset feasibility and like-for-like requirements.

The BDAR's offset approach is uncertain and unsupported.

## 5. SUMMARY TABLE OF BDAR DEFICIENCIES UNDER BOTH EPBC REGIMES

Table 1. BDAR Deficiency Summary Under Both EPBC Regimes

Issue	Pre-Reform EPBC (as at 3 Dec 2025)	Confirmed 2025 Reform Obligations	Expected / Emerging Obligations (Nature Positive Reforms)	BDAR Deficiency
MNES Identification	Required	Increased transparency in MNES reporting	Anticipated structured MNES pathway framework	No MNES screening; Bell's Turtle omitted
Bell's Turtle	Required significance test	MNES handling subject to heightened scrutiny	Freshwater species protections emphasised in reform papers	Species omitted entirely
Aquatic Ecology	Required where MNES may be impacted	Stronger evidence-based assessment standards	Expected increased hydrological/sediment requirements	No aquatic or riparian assessment
MNES Significance Test	Required	Heightened decision-maker transparency	Likely formalised MNES pathway	None provided

Issue	Pre-Reform EPBC (as at 3 Dec 2025)	Confirmed 2025 Reform Obligations	Expected / Emerging Obligations (Nature Positive Reforms)	BDAR Deficiency
<b>Sediment/Erosion</b>	Relevant where MNES present	Stronger environmental information obligations	Expected modelling requirements for freshwater impacts	No modelling
<b>Cumulative Impacts</b>	Expected under ESD	Transparency obligations apply	Explicit cumulative requirements anticipated	No cumulative assessment
<b>Alternatives Analysis</b>	Implied duty	Transparency & evidence obligations	Alternatives analysis central to reforms	None provided
<b>Offsets</b>	Feasibility required	Greater offset scrutiny	Nature Positive reforms emphasise like-for-like	Offset strategy insufficient
<b>Downstream Impacts</b>	Required where MNES or riparian impacts occur	Strengthened assessment integrity obligations	Likely explicit downstream provisions	No downstream assessment
<b>Neighbouring Farms</b>	Required when ecological function crosses boundaries	Transparency and evidence expectations	REZ-scale cumulative duty anticipated	Impacts ignored

## 6. BELL'S TURTLE – CRITICAL OMISSION UNDER BOTH LEGAL FRAMEWORKS

The BDAR never mentions Bell's Turtle despite:

- confirmed habitat connectivity through Pine & Copes Creek
- species sensitivity to sediment, turbidity, and bank disturbance
- the species being listed as Endangered under the EPBC Act.

Independent evidence confirms the presence of a thriving population of the endangered Bell's Turtle (*Myuchelys bellii*) within connected waterways relevant to the Thunderbolt Wind Farm Modification 1. On 17 November 2024, Northern Tablelands Local Land Services, working with Ecosystem Thinking consultants, captured 49 Bell's Turtles in Pine Creek Dam in a single day, ranging from juveniles to a mature female over 300 mm carapace length (Dillon, pers. comm., 17 December 2025 – see Appendix 3). This catch demonstrates that Pine Creek Dam supports a healthy, reproducing population of this EPBC-listed species. Despite this clear evidence, the BDAR fails to mention Bell's Turtle at all, omits any aquatic or hydrological assessment, and provides no MNES significance test.

This omission constitutes a critical regulatory deficiency under both the pre-reform EPBC Act and the strengthened 2025 EPBC reforms, which mandate transparent MNES identification and freshwater ecosystem protection. Approval cannot lawfully proceed without targeted aquatic surveys, hydrological modelling, and a full MNES referral addressing Bell's Turtle.

**This omission constitutes a critical regulatory failure under both regimes.**

## 7. FAILURE TO ASSESS IMPACTS ON NEIGHBOURING FARMS

The BDAR only assesses the internal footprint, ignoring:

- wildlife displacement
- weed spread
- downstream sediment affecting water quality on farms
- biodiversity loss in eco-tourism areas
- fragmentation of farm-based wildlife corridors.

**Cross-boundary obligations are well-supported under both EPBC frameworks.**

## 8. REGULATORY CONSEQUENCES

The BDAR fails the pre-reform EPBC standard (legally in force at exhibition) and fails to meet the current and emerging expectations set by the 2025 EPBC reforms.

While not all reform provisions have commenced, the Government has made clear that:

- MNES assessment integrity
- freshwater species protection
- cumulative impact analysis
- transparent evidence standards
- will be central pillars of the future EPBC framework.

**The BDAR does not satisfy these standards, nor the older standards.**

## 9. RECOMMENDATIONS

1. Order re-preparation of the BDAR to meet both the pre-reform and post-reform EPBC obligations.
2. Require EPBC referral for Matters of National Environmental Significance (MNES) including Bell's Turtle.
3. Commission targeted aquatic and freshwater turtle surveys.
4. Undertake full hydrological, sediment, and cumulative impact modelling.
5. Ensure offset strategy meets strengthened 2025 requirements.
6. Re-exhibit the modification once adequate documentation exists.

## 10. CONCLUSION

Because the BDAR was:

- materially inadequate under the EPBC Act as it stood at the time of exhibition, and
- further inconsistent with both the commenced and anticipated components of the 2025 EPBC reform package,

the modification cannot be responsibly or lawfully assessed based on the existing documentation.

A new, compliant BDAR incorporating MNES, freshwater ecology, downstream impacts and cumulative impacts, is required.