

Chapter 24, Where to from here.

Phase 2 begins.

At the end of the exhibition period, the status of the Jupiter wind farm will change to “Collating submissions”. See below.

Out of that process, the developer will receive all public and Government/Agency submissions. The status will change to “Proponent reviewing submissions”.

How long will this stage last? Who knows. Some wind farm applications languish there for years, Paling Yards for nearly three so far and Liverpool Range for over two. Why the Department allows this to happen is another mystery, but that can wait for a future quiet period. I have a genuine interest having cut my teeth with submissions to both.

Remember, the reason given by Departmental management for accepting the equally flawed Jupiter EIS Version 2, was to bring “finality and closure”. Where is the finality and closure for the Paling Yards and Liverpool Range communities.

Your community will read every Jupiter submission. We will extract the key issues raised with both the Department and the developer that require answers in order to check whether they have been addressed.

Deficiencies in the Response to Submissions Process.

This community has responded strongly to the exhibition of this flawed EIS.

From now on, unfortunately, the planning process lets us down. Theoretically, our next input is at the Planning Assessment Commission meeting (some time in 2018 I would guess) where we get to speak for 5 minutes.

The developer, Epyc, through the same set of consultants, is now obliged to formally address all submissions.

The Response to Submissions (RTS) process is ineffective, particularly as it relates to public submissions. Much time and effort is expended by members of the public in highlighting the considerable impacts of wind farms on local communities and the inevitable and glaring deficiencies in EISs.

Any fair minded assessment of the RTS process over the last 3 years would conclude that the Department has been lenient on wind farm developers, and by extension it believes public submissions are not important.

The Department tells us the RTS is important.

The recent Crudine Ridge wind farm Conditions of Consent states that:

“2. The Applicant shall carry out the development:

- (a) generally in accordance with the EA; and
- (b) in accordance with the conditions of this consent.”

Where EA is partially defined as:

“The environmental assessment for the Crudine Ridge Wind Farm, prepared by CWP and dated December 2012, as modified by:

- Crudine Ridge Response to Submissions and Preferred Project Report, prepared by CWP and dated November 2013;”

The Response to Submissions is therefore a central and crucial part of the Consent conditions.

The Department tells us that public submissions are key

The Department advises in relation to the 12,866 public submissions received for the Westconnex new M5 that:

“The Department undertook a thorough audit of all submissions to identify and

categorise the information for assessment.” and,
 “The proponent is required to respond to all the issues raised by the community in submissions and the Department will now take community’s views and this response into consideration while finalising its assessment.”

This is precisely what any community would expect, although the word finalising implies that the Assessment is nearly set in concrete at that stage.

We can reasonably anticipate the Department and the developer would follow an identical process for a typical wind farm application.

The implication above is that the Department M5 planners read and absorbed **all** public submissions and confirmed that the developer had adequately responded to them **all**. If so, I applaud the diligence of the M5 planners. This should be somewhat easier for a project such as the Jupiter wind farm where the expectation would be numbers of submissions in the hundreds.

Recent experiences

One of the most recent wind farms to have gone through that process is Biala. It is very relevant to the Jupiter project in that all the major Biala consultants are also preparing the Jupiter EIS and a number of Jupiter residents made submissions when the Biala EIS was on exhibition.

There is no evidence offered that the departmental “audit” in the first quote above took place.

However, it should be easier to determine whether the latter of the two Departmental requirements quoted above was addressed.

Let us concentrate on the adequacy of the developer’s Response to Submissions by examining one submission which is quite narrow in its criticism and therefore the ERM response is a little easier to find. Please read response number 20 (ERM’s numbering system which may or may not align with the one used by the Department), which in a summary sentence says:

“the proponent was supposed to consult with and survey the local Biala community on visual values and they didn’t.”

(Let us put aside the fact that this requirement has been advantageously deleted from the revised Jupiter EARs)

| Subject | DPE / ERM Submission Reference No. | Issue Raised | Response |
|---------|------------------------------------|---|--|
| | | The visual impact assessment has not been undertaken in accordance with any established, independent framework. Specifically, the consideration of the effect of distance as a factor affecting visual impact. | An LCVIA is by its nature not an exact science and consequently is subject to varied methodologies both in Australia and overseas. Potentially subjective assessment material and differences of opinion about how to best assess visual characteristics, qualities, degrees of alteration and viewer sensitivity often arise. As a consequence, and as identified by the NSW Land and Environment Court, the key to a robust process is to explain clearly the criteria upon which an assessment is made. The LCVIA is based on a compiled set of assessment criteria and is consistent with the Wind Farms and Landscape Values National Assessment Framework - NAF (June 2007). Viewing distance is a key (but not sole) determiner of the level of visual impact. Three broad distance categories have been used within the assessment matrix tables: 0-2km - High, 2-7km - moderate and further than 7km - low. All the viewpoints studied had a distance rating of moderate or high. Many other factors make up the overall visual impact rating, including whether the view is screened or blocked by topography and vegetation. A dwelling may be 1km from WTGs but a topographical feature renders them invisible. The overall visual impact is likely to be negligible or low despite the close proximity of the WTGs to the dwelling. Likewise, a dwelling at over 5km viewing distance may have a wide, panoramic view of the WTGs and record a higher overall impact despite the lower viewing distance rating. Many arguments could be put forward for exactly how these distance bands should be calculated, however the overall visual impact rating for any given viewpoint is decided upon by a considered judgement of all qualitative and quantitative factors, not just one factor. |
| | | The DGRs require that the assessment of visual impact be in relation to 'community and stakeholder values of the local and regional visual amenity and quality' and that the description of those values be evidence-based ('surveys and consultation'). The EIS provides neither a description of those community values nor reference to any evidence base for the visual values of the affected community. | The Landscape Character and Visual Impact Assessment (LCVIA) undertaken for the Project (refer Annex I of the EIS) included an assessment of the character of the surrounding landscape, which identified the distinct landscape character zones within the study area, upon which an assessment of potential impacts was undertaken. The findings of the LCVIA were supported by those of published research in consideration of community values towards local and regional visual amenity based on community consultation and survey, as outlined in Section 11.3.3 of the EIS. |

ERM summarised the submission as follows (page 43 as above – sorry about the clarity):

“The DGRs require that the assessment of visual impact be in relation to ‘community and stakeholder values of the local and regional visual amenity and quality’ and that the description of those values be evidence-based (‘surveys and consultation’). The EIS provides neither a description of those community values nor reference to any evidence base for the visual values of the affected community.”

In response ERM answered:

“The Landscape Character and Visual Impact Assessment (LCVIA) undertaken for the Project (refer Annex I of the EIS) included an assessment of the character of the surrounding landscape, which identified the distinct landscape character zones within the study area, upon which an assessment of potential impacts was undertaken. The findings of the LCVIA were supported by those of published

research in consideration of community values towards local and regional visual amenity based on community consultation and survey, as outlined in Section 11.3.3 of the EIS.”

The first sentence has little if anything to do with the “Issue Raised” as summarised by ERM.

We are therefore left with the last sentence. They revert back to the three “studies” referenced in section 11.3.3, totally ignoring the fact that submission 20 demolished all three of them. On top of that they stated in 11.3.3 that they didn’t rely on these studies anyway! To a casual reader of the Response, it may appear that the answer given addressed the issue. How wrong would they be?

This is but one example of a genuine issue raised by a member of the public where no genuine attempt to answer was made. If left to stand, it is also but one example where the answer was accepted by the Department as adequate when it clearly wasn’t.

(We consciously chose not to highlight these many deficiencies with the Biala RTS at the time it was published as that may have influenced the Jupiter EIS for the better.)

Jupiter Community Expectations

We will be looking for evidence that each Jupiter submission has been read by the departmental planners. How can they be taken into account in finalising the assessment otherwise?

We will expect the Department to compel Epyc to answer the issues raised and that any further responses received from the proponent during the status period “More information required” is published.

That gives rise to another process issue.

The document from the Department requesting “More information” is never published and should be. The subsequent information received must also be published. Without both of these pieces of information, the community cannot assess the deficiencies as seen by the Department nor can it assess the adequacy of the response. Nor can it formally comment.

We should not have to invoke the painful GIPA process.

Issues raised requiring Departmental response.

Many community submissions will have issues addressed to the Department. They are neither acknowledged nor answered by the Department. There is no evidence they were of any influence or even recognized for prior wind farms. Is it unreasonable to expect the Department to address them, even if it means the process must be broadened to include a Departmental RTS? Just because it is not in the planning process as currently written is not an acceptable justification. After all, some of these issues raised must be valid you would think.

Therefore, with Jupiter, in addition to raising department specific issues through the submissions process, we may also have to raise them with senior management if that is the only way we can have those issues addressed.

On issues related to deficiencies with the project we will be looking for changes Epyc make in their Preferred Project Response that have been prompted by community input. They have been extraordinarily hard to find for recent wind farms. We of course are used to Epyc in the CCC and other forums not giving in on any issue, even for those that would have been to their advantage. It is their strange form of community consultation on display.

The format of the Response to Submissions

Both the community and the Department needs a better format for answering public submissions, especially if you get two, three or four hundred in response to the Jupiter EIS. How would Government and Agency submitters react if their submissions were all lumped together?

At a minimum we need to have each individual response/entry in the “Issue Raised” column numbered.

Without that, I do not believe the departmental planners can perform their responsibilities as listed above.

Community submitters certainly can’t if there is a repetition for the Jupiter RTS by ERM of answers barely addressing the issues raised.

Can you imagine all Visual Impact issues raised by Jupiter residents combined as one subject in column 1, with scores of numbers adjacent in column 2? (see RTS example above)

Responses need to be relevant and complete.

We do not need references to the original EIS or even multiple (and repetitive) cut and pastes from that document. Submitters have done their homework and are disputing or rejecting the EIS contents.

Is there any part of the process whereby the Department can send the RTS back to the proponent as being unfit for publication? If not, I believe there should be. It should have been done with the Biala RTS and others before it and most certainly for Jupiter if the quality of the document is similarly deficient.

If no improvements are made, both in the process and in the quality of the RTS, we can only conclude that is a considered reaction by the Department.

Does the Department agree that public submissions should be treated as significantly less important than Government and Agency submissions?

The Department can expect many follow-on submissions should ERM produce a document of similar shallowness. Community members put considerable effort into their submissions and should not be expected to accept the sort of treatment we received in the Biala RTS.

The collated responses.

At the close of the exhibition period, the community responses are collated by the Department. We don't know what that process entails or the output. Even if it is the production by the Department of a sorted and combined document (or series for projects that attract large numbers of submissions), then that would be of significant assistance to the community.

In the responsive and sympathetic email (March 30, 2016) in reply to my request for community access to "collated responses", Mike Young said:

"I appreciate the utility of the suggestion in your case, but I think it assumes that the community has a role in considering the submissions from other members of the community."

Like it or not, we have.

Whilst it may not have happened previously, recent experience dictates that individually and as a community we will set out to read every submission and examine every response and provide the Department of an assessment of the process. I appreciate the Department might not require this assistance. So, the request is repeated for a copy of collated responses, together with any advice or interpretation that goes with them.

I'm not sure the Department needs another example, perceived or otherwise, where the Department is seen as favouring developers to the detriment of the community.

Should:

- the RTS from EPYC not address the issues raised by community members and should:
- the Department not address the key issues raised that can only be answered by the Department, then the Department might expect, directed at a level higher than those planners and management who have overseen this process thus far, further submissions restating the issues and the deficient responses.

Further, if the community and authority submissions result in a PPR which raises new issues or downgrades matters of importance to the community, I would anticipate further community submissions as happened, for example, with Camden Gas part 3.

If the response to the public submissions is not of a similar standard to that for the Agency submissions, then the Department must reject it.

The Assessment

We anticipate the Jupiter Assessment will be the most internally and externally reviewed wind farm planning document ever.

The Assessment will either recommend in favour of the Jupiter wind farm, or against it.

Being optimistic, I don't plan to comment on the former, but experience has shown that the Department, both its management and its in-house legal team, don't have the experience to write a rejection Assessment and likewise defend a rejection recommendation against counter arguments from developers and their legal teams. I'm not, for one minute saying it is easy, but there is enough active and retired legal experience in the impacted Jupiter community to assist. Whilst Epyc's Spanish owners continue to throw money at this project, despite our briefings, the local management are unlikely to give up the fight. This one is likely to go to the Land & Environment Court, should the decision go against them.

The Planning Assessment Commission, should it agree with a rejection Assessment, also do not have that experience to defend it. We will all need to strengthen the case. I hope the assistance is accepted.

On the other hand given a PAC approval, heaven forbid, the Australian Financial Review summed up the challenges then facing approved wind farms.¹

“Despite this growing momentum, the industry faces four distinct challenges in funding projects in time to meet the RET 2020 target.

First, it takes time to agree and arrange finance for projects. Given it takes between 18 months and two years to construct a wind farm from financial close (less for solar), most new projects will need to reach financial close by 2018 to make the 2020 timeframe. But, reaching financial close itself requires six-to-twelve months of work, depending on the complexity of EPC, O&M and Power Purchase Agreements (PPAs), arranging grid connection, securing financing arrangements and obtaining the necessary approvals/licences.”

Firstly, though, EPYC has to find a buyer for its approval.²

This community will refocus its attention on potential buyers and provide assistance on the non-technical portions of the due diligence process. Our detailed submissions will help.

Only then can the 6 – 12 months required to close a financial deal commence. We will make sure it takes much longer, by then switching our focus to potential financiers

“Second, funding – both debt and equity – needs to be matched to projects. On the debt side, the domestic banks have made bold statements on their appetite for renewables. However, local projects are having to look to overseas markets for competitive pricing and debt tenor reflective of the project's timeframes. On the equity side, strong appetite exists for operating and/or construction projects with a PPA, but investors are less willing to take forward renewable projects on a pure "merchant" basis (or with short term PPAs).”

“Third, developing future projects economically will become difficult within the RET penalty price. Given today's cost structures, the current \$93 Large-scale Generation Certificates penalty price (pre-tax equivalent), plus the underlying power value, may be adequate to recover project capital costs by 2030 (the final year of RET obligations). However, over time, and assuming the most economically viable projects are developed first, those remaining projects may struggle under the current penalty price and the shorter time within which to recover their investment. Falling cost structures can only address this for so long.”

Jupiter will be last in the queue and with no hope of being part of any 2020 target

“Fourth, PPAs are difficult to strike with appropriate duration. A PPA – often a key enabler for projects – offers revenue certainty and is essential for many projects to reach financial close. Although a number of PPAs from new (typically government related)”

¹ <http://www.afr.com/opinion/will-australian-renewables-meet-the-ret-20160614-gpimwg>

² from EPYC's 2015 Annual Report (Page 19) “On 16 December 2014, the company set up a 100% wholly owned subsidiary, Jupiter Wind Farm Pty Ltd. The subsidiary is set up as a vehicle to sell its Jupiter Wind Farm project.” Repeated in the 2016 Annual Report.

NSW wind farms have lost their main Government market, the ACT. Victoria and Queensland will only contract within their respective states. The only hope is for a NSW Government change, as the current one won't help. Even then Jupiter will be last on the list

“schemes are coming to market, those developers pushing ahead to meet the remaining (typically retailer-led) demand are facing headwinds in reaching financeable agreements.”

Retailers will not take the risk. Their commercial and industrial customers aren't prepared to sign energy contracts for typically more than 3 years. Why should the retailers? The only opportunity is for government guarantees, but that will require a change of government for a start.

“A developing market in corporate PPAs (selling directly to large commercial and industrial end users) is expected to provide the sector with a much needed viable alternative – this sub-industry is already vibrant in the UK and US.”

Won't help Jupiter. Corporates with shareholders to placate will not sign PPAs with wind farm developers with a presence in this community if we can help it. Anyway they will be short term. Public companies don't take unnecessary risks. Only Governments do with taxpayer funds.

In addition to these, the industry also faces the ongoing challenges of grid capacity constraints, accounting and credit rating treatment, taxation treatment/planning and a social license to operate.

and recently the predictable happened. A retailer prefers to pay the penalty rather than be part of the RET/REC scheme.

Interesting times ahead.