

Bango Wind Farm EIS Does Not Comply with the Regulations

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ABSTRACT

Contrary to the explicit requirements of Schedule 2, Part 3, s 6(f) of the *Environmental Planning and Assessment Regulation 2000*, the EIS submitted for Bango wind farm does not provide an **unequivocal** certification that “the information contained in the statement is neither false nor misleading” nor that “the statement contains all available information that is relevant to the environmental assessment of the development, activity or infrastructure to which the statement relates”.

In addition it includes a disclaimer which further reduces the extent to which any party, including the NSW Government, can rely on the content of the document.

The EIS submitted does not comply with the Regulations and must be rejected until covered by a statement that wholly complies with the Regulations. Acceptance of the EIS in its current form would involve the Department in a deliberate breach of the regulations, and a breach whose sole purpose is to benefit the developer.

The certification on the Environmental Impact Statement does not comply with the relevant NSW regulations and must be rejected and the matter not proceed until an EIS conforming with the regulations is submitted.

Failure of person preparing the EIS to make a declaration complying with the regulations

The alleged “certification” given in the EIS, signed by Ed Mounsey states:

I certify that I have prepared the contents of this Environmental Impact Statement in accordance with the Secretary's Environmental Assessment Requirements issued 4th November 2015. The document has also been prepared in accordance with the previously issued Director-General's Requirements dated 31st March 2011 and amendments dated 16th August 2011, 18th April 2012 and to the best of my knowledge, the information contained in the Environmental Impact Statement is not false or misleading. The professional qualifications of the document manager and reviewing manager include Environmental Science and Management and Business.

Schedule 2 of the *Environmental Planning and Assessment Regulation 2000*, Part 3, s 6(f) requires:

- a declaration by the person by whom the statement is prepared to the effect that:
- (i) the statement has been prepared in accordance with this Schedule, and
 - (ii) the statement contains all available information that is relevant to the environmental assessment of the development, activity or infrastructure to which the statement relates, and
 - (iii) that the information contained in the statement is neither false nor misleading.

There is no provision in the regulation for a “to the best of my knowledge” statement about the above. The person responsible is obliged to assert, ***without equivocation***, that:

- the statement contains all available information relevant to the environmental assessment of the development, and
- the information in the statement is neither false nor misleading.

The wording of the regulation makes it the business of the responsible person to do whatever is necessary so that they can state with certainty that the information is complete and that it is not false or misleading.

The Environmental Assessment submitted for Bango wind farm does not provide an unequivocal statement to this effect as required by the regulation. It attempts to evade the requirement by applying the caveat “to the best of my knowledge”, which is a caveat the regulations do not allow. Nor does the “certification” make any explicit statement, as required by s 6(f)(ii) that:

the statement contains all available information that is relevant to the environmental assessment of the development, activity or infrastructure to which the statement relates

The signatory is actually saying:

I cannot or will not warrant that

- the statement contains all available information relevant to the environmental assessment of the development, and

- the information in the statement is neither false nor misleading.

Disclaimer which future eliminates responsibility for the EIS

In addition, at the bottom of the certification page is an explicit disclaimer:

This report has been prepared on behalf of and for the exclusive use of Bango Wind Farm Pty Ltd and is subject to and issued in accordance with the agreement between Bango Wind Farm Pty Ltd and CWP Renewables Pty Ltd. CWP Renewables Pty Ltd accepts no liability or responsibility whatsoever for it in respect of any use of or reliance upon this report by any third party. Copying this report without the permission of Bango Wind Farm Pty Ltd and CWP Renewables Pty Ltd is not permitted.

The document says it was prepared by CWP Renewables Pty Ltd, so Mr Mounsey appears to have signed the document on behalf of that company. The disclaimer then says CWP Renewables has done it for Bango Wind Farm Pty Ltd and “accepts no liability or responsibility whatsoever for it in respect of any use of or reliance upon this report by *any* third party (*my emphasis*).”

According to the document, the NSW Government and DPE are third parties and so unable to rely on either the document or the Clayton’s certification provided in it.

Failure to meet regulatory requirement to provide professional qualifications of person preparing the EIS

Further, Schedule 2 Part 3, s 6(a) explicitly requires a statement of the “professional qualifications of the person by whom the statement is prepared”. The certification statement does not say what are the professional qualifications of Mr Mounsey who says he prepared the document. Instead there is a sleight of hand sentence that: “The professional qualifications of the document manager and reviewing manager include Environmental Science and Management and Business.”

The regulations do not require anything about “document managers” and “reviewing managers”. The requirements are explicitly about the person who prepared the EIS and *that* person’s qualifications. Instead of providing the information required by the regulations, the statement attempts to blur the supposed qualifications of several people.

Even those qualifications are not clearly stated. What does it mean to say they “include Environmental Science and Management and Business”? Does the person preparing the EIS have a bachelor degree in Environmental Science, or a Masters in that field, or have they simply read a book? And what are the alleged qualifications in Management and Business (and what is their relevance to the EIS)? Does the person have an MBA? Or they claiming to have experience as a manager. If so, experience is not normally regarded as a “professional qualification” in the terms of the regulation. Experience may be pertinent but if so exactly what is the experience and how does it qualify the person for the preparation of the EIS. “Management and Business” can range from running a lemonade stand to running very large companies – and even the latter does not necessarily particularly qualify someone to prepare an EIS.

Multiple failures to comply with explicit and straightforward requirements of the Regulations

Thus, *the EIS submitted does not comply with the Regulations and must be rejected until covered by a statement that wholly complies with the Regulations*. Acceptance of the EIS in its current form would involve the Department in a deliberate breach of the regulations, and a breach whose sole purpose is to benefit the developer.

If resubmission involves any changes to the content of the EIS then it must be publicly exhibited again so that the public can comment on the assessment then tendered.