



ENVIRONMENT PROTECTION AUTHORITY



Your Reference : 08/01659-1
Our Reference : FIL07/7-02; DOC11/55672
Contact : Matthew Corradin (02) 6332 7603

The Manager
Infrastructure Projects
Department of Planning and Infrastructure
GPO Box 39
SYDNEY NSW 2001

Attention: Mr Toby Phips



14 December 2011

Dear Mr Snow

**EXHIBITION OF ENVIRONMENTAL ASSESSMENT FOR THE FLYERS CREEK WIND FARM
(MP08_0252)
COMMENTS**

I refer to your letter dated 12 October 2011 to the Environment Protection Authority (EPA) seeking comment on the exhibited Environmental Assessment (EA) for the proposed Flyers Creek Wind Farm Pty Ltd Project at Flyers Creek (the Proposal).

Please note that the regulatory responsibilities of the Office of Environment and Heritage are now carried out by the EPA.

The EPA wishes to advise that the regulation of environmental pollution matters under the *Protection of the Environment Operations Act 1997* (POEO Act) during both construction and operation will be the responsibility of Blayney Shire Council because:

1. the Proposal is not currently a Scheduled Activity and therefore an environment protection licence issued by the EPA under Schedule 1 of the POEO Act is not required; and
2. the Proposal is not being undertaken by or on behalf of a State Agency/Authority.

However; the EPA does maintain a strong statutory interest in terms of potential impacts to items of Aboriginal Cultural Heritage and Biodiversity/Land Use as a result of the Proposal.

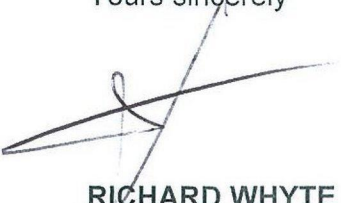
The EPA has therefore reviewed the EA in relation to these two areas of interest and has a number of comments to make as well as to recommend conditions of approval should approval be granted by the Department of Planning and Infrastructure (DoPI). These comments and recommended conditions of approval are detailed at Attachment 1.

The regulatory responsibilities of the Office of Environment and Heritage (OEH) are now carried out by the Environment Protection Authority (EPA).

The EPA does wish to highlight that the development and operation of a Wind Farm is often seen as a positive environmental project due to the production of energy/electricity from a renewable resource. Therefore, every effort must be taken to put in place effective environmental management and mitigation measures to ensure that environmental impacts are appropriately managed, reduced, or removed.

Should you have any further enquires in relation to this matter, please do not hesitate to contact Mr Matthew Corradin at the Bathurst Office of the EPA by telephoning (02) 6332 7603.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Richard Whyte', with a long horizontal stroke extending to the right.

RICHARD WHYTE
Manager Bathurst
Environment Protection Authority

Enclosed: Attachment 1 – EPA Comments

ATTACHMENT 1

Comments on Exhibited Environmental Assessment – Flyers Creek Wind Farm (DECEMBER 2011)

ABORIGINAL CULTURAL HERITAGE MATTERS

The EPA is of the opinion that developments/proposals that have some inherent flexibility in the selection of high intensity footprint locations (i.e. wind farms) are therefore potentially capable of avoiding harm to items/objects of Aboriginal Cultural Heritage (ACH) with the aid of thorough ACH assessments that include a test excavation program, given the limitations of visual assessments.

This is consistent with Recommendations 1 and 2 of the ACH Assessment undertaken by Austral Archaeology Pty Ltd for Aurecon Pty Ltd on behalf of the proponent.

Recommendation 1: The EPA recommends that the DoPI Conditions of Approval, if approval is granted, incorporate Recommendations 1 and 2 of the ACH Assessment and be addressed through the development of an ACH Management Plan as part of the Construction Environmental Management Plan (CEMP) to which the proponent has committed.

The EPA is of the opinion that the proponent would therefore need to fully demonstrate the reasons as to why items/objects of ACH would need to be impacted upon.

The EPA notes that if high intensity footprint locations and associated infrastructure cannot avoid items/objects of ACH, then these items/objects will need to be salvaged.

This is consistent with Recommendations 3 and 4 of the ACH Assessment.

Recommendation 2: The EPA recommends that the DoPI Conditions of Approval, if approval is granted, incorporate Recommendations 3 and 4 of the ACH Assessment. Furthermore, if objects are to be salvaged, the proponent will be required to apply for a Care and Control agreement from the EPA.

The EPA notes that Section 1.6 of the ACH Assessment does not mention ground coverage as a limitation even though the pictures of the areas assessed support that there would have been an issue with ground coverage.

This should be identified in the EA and addressed by the proponent.

BIODIVERSITY/LAND USE MATTERS

The Director-General's Requirements for both the EPA and the DoPI requires proponents to present justification of their preferred option/s based on four key principles, including *'whether or not the proposal, together with actions to avoid or mitigate impacts or compensate to prevent unavoidable impacts, will maintain or improve biodiversity values'*.

The EPA also evaluates offset proposals against the EPA's *'Principles of the use of biodiversity offsets in NSW'*.

The EPA has reviewed the EA and has concluded that:

- a) Avoidance: Avoidance measures proposed are adequate;
- b) Mitigate: Mitigation measures are generally adequate, however; further clarification is required; and
- c) Offset: Offset requirements should be agreed as part of any approval, should approval be granted.

Avoidance and Mitigation

The EPA generally supports the avoidance measures identified.

The EPA is of the opinion that the mitigation measures require further clarification. It also appears that there may be some conflict between some of the proposed avoidance and mitigation measures.

The EPA notes that the overall design of the proposed wind farm has considered a number of environmental variables as well as design and layout variations to minimise impacts (as discussed above). The EPA also notes that the proponent intends to:

1. Avoid impacts as far as possible by using 'micro-citing' to ensure the retention of habitat trees, including hollow bearing trees; and
2. Restrict impacts to Native Vegetation to 1.1 hectare (ha) or less.

However, the EA (Chapter 8, page 8-5) also proposes to remove dead tree habitats from within 100 metres (m) of turbines. It is not clear from the EA whether:

1. This proposed measure has been taken into account in the assessment of habitat impacts and calculation of the 1.1 ha Native Vegetation impact estimate; or
2. This proposed measure will be taken into account in citing the turbines to avoid the need for tree removal.

The EPA also notes and supports the proposed additional targeted Superb Parrot surveys. The EA states that these surveys will be undertaken in the breeding season (September to December). The EPA therefore assumes that these surveys are in fact underway or in fact completed. Similarly, the proponent commits to *'targeted monitoring in 2011, at the time of year when Eastern Bent-wing Bats migrate from the breeding caves (March-April), with detectors at relevant turbine locations to confirm that this species is not present in significant numbers at the wind farm site'*. If any of these Superb Parrot or Eastern Bent-wing Bat surveys have now been undertaken/completed, the results should be taken into account in the impact assessment and project design as far as possible prior to any determination of the Proposal.

In addition, the EA proposes the monitoring of any bird and bat impacts as a result of the operation of the wind farm over a 12 month period. The EPA supports the proposed monitoring, however; believes that the proposed timeframe is too short to provide meaningful data which takes into account seasonal and other variations.

Recommendation 3: The EPA recommends that the proponent be required to clarify the proposed 100 m turbine buffer mitigation measure prior to a determination of the Proposal being made by DoPI.

Recommendation 4: The EPA recommends that the proponent be required to update the impact assessment and project design as necessary after taking into consideration the result of any additional

targeted Superb Parrot and Eastern Bent-wing Bat surveys undertaken to date prior to a determination of the Proposal being made by DoPI.

Recommendation 5: The EPA recommends that the DoPI Conditions of Approval, if approval is granted, require the proponent to undertake bird and bat monitoring during operation of the wind farm over a minimum 5 year period, with the result of said monitoring being submitted annually to the EPA.

Offset Proposal

The EPA is of the opinion that offset proposals/requirements be clearly defined prior to the approval of the Proposal.

The EPA notes that the proponent intends to avoid impacts as far as is practical and proposes to determine the offset required once the exact loss has been calculated following detailed design and micro-citing prior to construction. In this particular situation, the EPA has no objection to this approach, however; the EPA again strongly recommends that an agreed offset metric be determined upfront which will be then used to calculate the offset required for the actual individual tree and remnant Native Vegetation losses. Failure to specify an offset metric prior to determination of the Proposal being made will increase the likelihood of an inadequate offset being obtained.

Consideration of potential offset sites should also consider the indirect impact of the proposal on birds and bats and how this may increase the project footprint beyond that associated with direction construction impacts.

From the EA, it appears that a high proportion of the site is described as exotic grassland. However, the EPA cautions that any areas of derived native grassland that may be determined to meet the National or Stated Endangered Ecological Community definitions must be avoided where possibly.

In addition, the Statement of Commitments states that *'security of tenure and financial arrangements for the conservation management of proposed offsets, should they be required, will be undertaken once the offsets have been determined'*. It is important that the Statement of Commitments include a specific commitment to provided suitable legal, in-perpetuity security of tenure for any offset established.

Recommendation 6: The EPA recommends that the DoPI Conditions of Approval, if approval is granted, specify an agreed offset metric to be used to determine the offset/s required.

Recommendation 7: The EPA recommends that the DoPI Conditions of Approval, if approval is granted, requires the proponent to commit to establishing suitable legal, in-perpetuity protection arrangement for any offset required.