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HEYMANN COHEN
PART OF THE DONALD CANT WATTS CORKE GROUP

Monday, 14 November, 2016

Major Projects Assessment
Department of Planning & Infrastructure
GPO Box 39 SYDNEY NSW 2001

Attention: **Ms Elle Donnelley**
Email: elle.donnelley@planning.nsw.gov.au

5 Pages

Copy:
Attention: **Ms Anna Trimbell:**
Email: anna.trimbell@planning.nsw.gov.au

CROOKWELL III WIND FARM: PUBLIC SUBMISSION

Regarding the recent application amendment by the proponent of Crookwell III, I write to enquire regarding the validity or otherwise of the proposed wind farm both in individual siting of various turbines, as well as the permissibility of the project as a whole.

I. **Decommissioning Bonds** to be held by council (it is still a council right under the planning regime). Including decommissioning bonds to be managed by the local council for each turbine will go a long way to alleviating the concerns of the community. NSW Planning maintains the right to set conditions pertaining to securities via the relevant SEPP & EPA section 80A (6)

However, under section 21 (2,b) of the SEPP (State & Regional Planning 2011) a council maintains the right over the setting of bonds / securities. Hence there is a shared oversight. Would also have the added benefit of providing interest on the sum available to the applicant to assist with their community contribution obligations.

This in detail is referred to in the Environmental Planning & Assessment Act 1979, under section 80A (7 to 10)

(6) ***Conditions and other arrangements concerning security***

A development consent may be granted subject to a condition, or a consent authority **(NSW Planning / The Minister)** *may enter into an agreement with an applicant, that the applicant must provide security for the payment of the cost of any one or more of the following:*

(a) making good any damage caused to any property of the consent authority (or any property of the corporation) as a consequence of the doing of anything to which the consent relates,

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(b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent,

(c) remedying any defects in any such public work that arise within 6 months after the work is completed.

(7) The security is to be for such reasonable amount as is determined by the consent authority. **(Council)**

(8) The security may be provided, at the applicant's choice, by way of:

(a) deposit with the consent authority, or

(b) a guarantee satisfactory to the consent authority.
(one would assume this to be by way of bank guarantee from a big four bank, free from expiry and requiring supplementation every 2 or 5 years in line with construction cost escalation as determined by either the Property Council of Australia / ATO / AIQS (Australian Institute of Quantity Surveyors).

(9) ***The security is to be provided before carrying out any work in accordance with the development consent*** *or at such other time as may be agreed to by the consent authority.*

(10) ***The funds realised from a security may be paid out to meet any cost referred to in subsection (6).*** *Any balance remaining is to be refunded to, or at the direction of, the persons who provided the security.*

II. **Incorrect Application Form:** In reference to page 3 of the applicants project application form (refer appendix 1a), the applicant has noted that there is no requirement for approval under the Roads Act (section 138).

This is incorrect. Approval is required due to the disturbance required to roads in the construction of the road, including damage to the surface, widening requirements etc. Hence the current application form as submitted should be resigned and reissued by all applicants and property owners. There is case law to support this; NSW Planning should be aware of as will Urbis who are consulting to the project. Woodhouselee Road is a public road and Crookwell Road is a classified road under the Act.

Please refer to attached appendices 1a highlighting the application form incorrectly filled & 1b, the proponents admission via correspondence of works required in Goulburn as an example of necessary road works.

138 Works and structures

(1) A person must not:

(a) erect a structure or carry out a work in, on or over a ***public road****, or*

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*(b) dig up or disturb the surface of a **public road**, or*

*(c) remove or interfere with a structure, work or tree on a **public road**, or*

*(d) pump water into a **public road** from any land adjoining the road, or*

(e) connect a road (whether public or private) to a classified road,

otherwise than with the consent of the appropriate roads authority.

(2) A consent may not be given with respect to a classified road except with the concurrence of RMS.

Irrespective of whether approval would be granted; the application is incorrectly submitted and must be resubmitted.

III. **Zoning:** The eastern part of the project is located in an area that renders the a prohibited development under the 2010 Upper Lachlan LEP. The eastern side of Crookwell Road is zoned E3 – Environmental Management. Prohibited Uses include; Industry, Service Stations, Any other development not specified in Permitted Uses (which include only; Environmental Protection Works, Extensive Agriculture, Home Occupations, Dwelling Houses, Roads).

Given Section 89C of the SEPP (State & Regional Development) 2011 states that a state significant development is only such if "*the development on the land concerned is, by the operation of an environmental planning instrument, not permissible without development consent under Part 4 of the Act".*

The fact remains that the application is, by virtue of its zoning under the LEP, not permissible without development consent**. Hence, an application for rezoning of the land in accordance with the LEP provisions must be accompanied with the Crookwell III Wind Power Station application.**

IV. **Application of Planning Instruments**: The above question III is of course subject to the terms highlighted within the Upper Lachlan LEP applicable from circa July 2010.

Given the points raised in question II previously, and the fact that application No. 10_0034 is not highlighted within the transitional schedules 1-5 for projects within the SEPP (State & Regional Development) 2011; the application should be therefore be assessed under the current planning regime and the above should be applied by the panel / consent authority.

Furthermore; the transitional requirements for part 3A projects dictated that where projects were required to respond to Director Generals requirements after April 8th 2011, then the Part 3A status of the project should be revoked.

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As the supplementary requirements were issued by the department on August 16th 2011 and again on April 18th 2012 (after the expiry of the original DGR's), there remains nothing short of a very tenuous and contestable hold on Part 3A by the project & it's proponent.

Of particular note is the fact that the supplementary requirements of August 2011 were issued in response to the proponents lack of fidelity with the originally issued DG requirements; hence the impost on the proponent of the implications of these supplementary requirements is not the fault of the DoPE, but an effect of poor administration by the proponent.

Given the administrative errors and contestability of the current applications validity, the current application should be revoked in accordance with the transitional arrangements for Part 3A, with the fullest opportunity given to the proponent to resubmit under the current planning regime for the site.

V. **Visual Impact (Highland Park):** It can be demonstrated that the visual impact assessment is flawed and that the impacts on affected residences has not been accurately assessed under the NSW Governments own guidelines. Therefore, what is the process or feasibility of requesting the relocation of one or more turbines that will greatly effect neighbouring residences? It can be demonstrated quite clearly.

In reference to the attached visual assessment tool from the visual assessment guidelines issued by the NSW Government (appendix 2a); the house 104 ("Highland Park") is assessed incorrectly in the project visual assessment lodged with the application.

1. It shows incorrect distances to the closest turbine (2.7km vs actual at 2.6km)
2. It assesses the scenic quality in lesser terms to that which is accurate and described in the foreword of the report and
3. Assesses the visual impact of the towers and blades as negligible which is manifestly false.
4. Under the guidelines for visual assessment as noted in the attached; the closest turbine should be a minimum of 3.2km from the residence numbered in the visual assessment as 104 "Highland Park".

Currently there are up to 5 turbines proposed within said 3.2km zone. (refer appendix 2b)

At no time did the visual impact consultant contact the owners or residents of Highland Park, nor was any site visit requested or undertaken (according to both personal confirmation and CCTV surveillance records)

What interrogation of the visual assessment has been undertaken against the Wind Energy: Visual Impact Assessment Bulletin issued by DoPE?.

Given there has been no contact with me as an affected property owner? What steps will the Department take to ascertain the level of actual site investigation by Grean Bean Design, rather than mere assumptions made via desktop review?

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Given the house 104 (Highland Park Homestead) is at a similar RL to the closest and incorrectly sited turbines A3, A4, A5 & A9 – Will the department stipulate a review of house 104 and other affected residences?

VI. **Potential Neurological Impact (Highland Park):** An issue for our family more personally is the potential impact on my younger brother who suffers from an acute neurological impairment as a result of brain damage caused by SIDS as an infant.

Throughout the local area wind farm planning & consultation process now extending to many years the planning department has consistently overlooked the requests for more considered studies relating to the potential adverse effects wind turbines may have on my brother and likely other citizens with similar conditions.

We have since 2004 sought clarity on this issue with cursory statements in response noting that the health department "may" look into it. To date this has come to nought.

I note for the benefit of the proponent, host land owners and the Department that should adverse health impacts present themselves upon my brother post construction, it will be considered an egregious form of nuisance which will be pursued fully.

I also note for their benefit that my younger brother has regular and trackable visits to a neurologist of very high standing, who consistently monitors my brothers neurological activity. Should adverse effects present themselves; we would be more than willing to share those findings for both the proponent and the Department for critical review, and as part of any potential associated legal proceedings.

Should you wish to discuss any of the items above in more detail I will be more than willing to meet or discuss via telephone.

Many thanks in advance for your consideration.
Warm Regards

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