

The approval for the Glen Innes wind farm has lapsed.

Modification 3, submitted 23 May 2014, requesting a 12 month extension for the approval which would otherwise lapse on 18 August 2015, was approved by the Department on 19 January 2016, extending the construction start date to 31 January 2017.

From the Conditions of Approval:

“This approval shall lapse on 31 January 2017 unless the Proponent has physically commenced the project”

(the mathematics, whereby a timely 12 months extension request became 17 months, and logic of that process are unclear to me!)

The developer through the EA author advises on page 1 of the Modification 4 EA:

“Physical commencement in accordance with Section 95(4) of the EP&A Act, occurred in January 2017”

Section 95 of the Act states:

“(4) Development consent for:

(a) the erection of a building, or

(b) the subdivision of land, or

(c) the carrying out of a work,

does not lapse if building, engineering or construction work relating to the building, subdivision or work is physically commenced on the land to which the consent applies before the date on which the consent would otherwise lapse under this section.

Knowing they had little chance of a third construction date extension, my first reaction was that the developer appeared to have employed an unknown variation of the Crookwell 2 wind farm pretence, where construction, according to the Department, was supposed to have commenced nearly a decade ago. (Crookwell 2 is still before the Department awaiting approval for its latest variant)

Remember, we are constructing a wind farm. So what “construction work” has taken place?

The Department must believe that construction had commenced in January 2017 otherwise they would not have accepted this modification for a lapsed approval.

The conditions of approval, clause 1.5, as modified coincident with the Determination for Modification 1 for the Glen Innes wind farm state:

“This approval shall lapse four years after the date on which it is granted unless the Proponent has confirmed to the satisfaction of the Director-General that orders have been placed for wind turbines, or demonstrated that work subject of this approval has been completed on the site before that time. Work for the purposes of this condition includes at least one of the following:

(a) internal track construction;

(b) civil works associated with the construction of the foundations for the wind turbine footings;

(c) control room construction;

(d) electrical substation construction;

(e) underground cabling; or

(f) internal overhead transmission line construction”

Given the scope of the current modification, it is not feasible for **at least** one (or any) of the items (a) to (f) to have been **completed** by January 31, 2017.

For some reason not clear at this stage, this clause was replaced in the consolidated conditions of approval for Modifications 2/3 with:

“The approval shall lapse on 31 January 2017 unless the Proponent has physically commenced the project.”

Perhaps the Department can explain the reasons for the change. In the meantime, we can only conclude it is another unsubtle pro-developer action. On reflection, I suspect some wind farm lawyer challenged it and the Department, entitled as it is to interpret the legislation, retreated, as it has done on previous occasions.

Regardless, the original clause 1.5, as above, is indicative of the Department’s view of what constitutes commencement of construction. (If the Department has a revised view, perhaps they can share it with us, and the logic for the revision)

Given the above, as at January 31, 2017 or before, on what basis did the Department reach this very important decision that the approval had not lapsed?

What information had the developer provided, as at January 31, 2017 or before, that convinced the Department to make this very important decision? Could the Department please share it?

Has the Department agreed formally with the developer that construction has commenced? Can they share the correspondence with us? Is there any other correspondence on the same topic, especially relating to what has to be done to satisfy the conditions in the Act?

Has the Department obtained a legal opinion to confirm that construction has commenced as per the legislation? Can they share that opinion with us?

Who takes responsibility for the departmental decision?

There is certainly nothing more in the EA other than the above one line claim to justify this very important decision. On what basis therefore has the EA author made the claim that construction has commenced as per the legislation?

A Google search fails to find any mention of construction commencement. As my grandson would say, if it is not on Google, it hasn’t happened.

There is no mention of construction commencement on the wind farm website.

Nor does the Glen Innes wind farm developer, Nexif, make any mention of the commencement of construction on its website.

In a 2017 media release relating to its other Australian wind farm development, Lincoln Gap wind farm (LGWF), Nexif states:

“Construction is expected to start later this year with the project generating electricity by mid 2018.”

LGWF has all required approvals and has a Power Purchase Agreement, so we are being asked to believe that a wind farm, much closer to physical reality hasn’t yet commenced construction, but the Glen Innes wind farm has.

The local NSW Government member and his advisors were unaware that construction had commenced when referring to this Modification 4. However, they knew the actual construction status of White Rock and Sapphire:

“Mr Marshall said the NSW Government’s planning department was evaluating the taller towers and larger blades for the project, located on the eastern side of the White Rock Wind Farm, for any additional impact on the environment and neighbours.

He said the renewables industry had delivered major economic growth to Glen Innes and Inverell, with the White Rock and Sapphire Wind Farms in the construction phase.”¹

The developer advises that construction commenced over 6 months ago. So, six months into construction of a typical wind farm, we would expect to find evidence, even if they are not completed, of extensive earthworks such as turbine base construction. Unfortunately not, as turbine locations as per this current modification have not been approved. Similarly for access tracks.

So, what construction activities have taken place this year, particularly before lapse date? The developer and the Department need to share this information with the broader community.

I can find reference to “Geotech” activities. That could be as little as drilling a few holes and digging a ditch or two with a back hoe. A host could do that. Even if extensive, these are normally recognized as pre-construction activities. They certainly don’t make the Department’s list of acceptable construction activities above.

Senvion (the prospective turbine supplier) has been appointed the Principal Contractor for both the developer’s Australian wind projects, although you get the clear picture that Nexif’s priority is the Lincoln Gap wind farm, with Glen Innes being tacked on. Has the Department seen the Nexif/Senvion contracts? Do they specify the expected construction activities for the Glen Innes wind farm starting in January 2017?

Was a final contract signed with Senvion as Principal Contractor before the lapse date?

If not, who carried out the “Geotech” activities?

After all these years, we still find:

“A Transmission Connection Agreement is currently being negotiated with TransGrid”

Glen Innes wind farm would appear to have no PPA, although I smiled when I read from the minutes of the June 2014 CCC meeting:

“Power Purchase Agreement (PPA) is going great. Final outcome is to be advised”

The EA has also provided no evidence that the developer has firm finance. A PPA (or a statement that the developer was willing to risk selling power on the open market) and finance are in many cases fundamental prerequisites for genuine construction commencement.

There is no evidence provided of firm orders for turbines for the Glen Innes wind farm and no evidence of the hiring of contractors. From my experience contractors are very thin on the ground in January when construction was said to have commenced.

In the consolidated Conditions of Approval, there were conditions that were required to be complied with before construction could commence. Evidence of their completion prior to January 31, 2017 would slightly strengthen their claim. Mr Homewood from GBD writes in the EA that these conditions remain valid rather than confirm they have been completed.

On page 22 of the EA we find:

“No changes to the relevant consent conditions (2.1, 2.1a, 2.2,2.3, 2.4, 2.7and 6.5) are sought as all remains relevant to the proposed modification.”

Conditions 2.1 and 2.2 are required to have been completed before construction commenced. The wording above, by the EA author, clearly indicates that those conditions had not been addressed on January 31, 2017. Remember, the EA was written six months after lapse date.

¹ <https://www.wind-watch.org/news/2017/08/09/glen-innes-wind-farm-looks-to-build-bigger-turbines/>

Further on page 23, the EA author wants DPE to modify a condition in the approval which will include the following:

“Prior to the commencement of construction, the Proponent shall consult with the Civil Aviation Safety Authority on the need for aviation hazard lighting in relation to the wind turbines.”

Why would you require this wording when construction had commenced 6 months previously?

Conclusion

In the absence of any evidence to the contrary the conclusion must be drawn that construction, in accordance with the Act, had not commenced by the deadline.

Therefore the approval for the Glen Innes wind farm lapsed on January 31, 2017. This Modification, therefore, is invalid.

Environmental Property Services, who made the declaration on page ii, by stating that construction commenced in January 2017, could be accused of making false and misleading statements in contravention of the law should they not be able to justify that statement.

Addendum

I will be submitting separately on Visual Impact, but a few additional items have so far caught my eye:

Shadow Flicker

The shadow flicker section of the EA has been done by Senvion, the proposed turbine supplier. Massively conflicted.

Glen Innes CCC

From the wind farm website, minutes have not been published since 2014 and the last meeting would appear to be ineffective:

“GLEN INNES COMMUNITY CONSULTATION COMMITTEE (GCCC)

Minutes of the Committee Members Meeting Held Thursday 4th December 2014 at the New England Club West Avenue, Glen Innes at 6 pm

Present: Dr Paul Stangroom (Glen Innes Wind Power) and Max Elphick (Chairman), Apologies: J Newsome, D Burton and G Putland.”

Has the Department audited the Glen Innes wind farm CCC process, specifically in relation to their compliance with the current guidelines eg:

- membership
- independence of the Chair
- conflicts of interest
- frequency of meetings
- effectiveness?