I object to the proposed modification of the Glen Innes wind farm. The EIS, as exhibited is in breach of the *Environmental Planning and Assessment Regulation 2000*.

The fact that the Department has exhibited the EIS, with an obvious and critical breach, shows a partiality to the developer by the Department such that other parties affected by the proposal have a reasonable expectation of bias by the Department in the conduct of its assessment.

The Department has already, by allowing this breach, acted in a way that denies procedural fairness to other parties. It has done so by allowing the agent submitting the proposal to avoid ensuring the document is not false or misleading.

The EIS needs to be returned to the developer and not accepted for exhibition until it wholly conforms with requirements of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.

Failure to comply with the *Environmental Planning and Assessment Regulation 2000*

The Regulation is quite explicit about a number of things that **MUST** be part of an EIS. One of those, according to Schedule 2, is that it **must** contain:

> s6(f) 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.

On p ii, the EIS contains the following declaration:

> "The declaration relates to the submission of this Environmental Assessment prepared for Glen Innes Windpower Pty Ltd in respect of a proposed wind farm site at Glen Innes, NSW.
>
> The opinions and declarations in this document are ascribed to Environmental Property Services (EPS) and are made in good faith and trust that such statements are neither false nor misleading.
>
> In preparing this document, EPS has considered and relied upon information obtained from the public domain, supplemented by discussions between key EPS staff, representatives from Glen Innes Windpower Pty Ltd and other consultants."

It is obvious from inspection that the declaration does not comply with any one of (i), (ii) or (iii) of s6(f).

There is no statement that the EIS has been prepared in accordance with Schedule 2 [s6(f)(i)]. There is no statement that it "contains all available information that is relevant to the environmental assessment of the development" [s6(f)(ii)]. There is no statement "that the information contained in the statement is neither false nor misleading" [s6(f)(iii)].

The declaration does say it "trust"(s), i.e. hopes, the "statements are neither false nor misleading". It then goes on to say it has relied on information from multiple parties, something about which the regulation expresses no interest.

It appears the last inclusion is some sort of pleading that if it turns out there is false or misleading information in the EIS that somehow it is not the fault of the responsible person but of the information sources upon whom they claim to have relied.

The Regulation makes no provision for responsible persons hoping what they submit is neither false nor misleading. It is, in fact, their job to ensure the information is neither false nor misleading. If they are unwilling or unable to do so, they have no right to submit the EIS.

Critical nature of the section 6(f) declaration

Section 6(f) of Schedule 2 is not an optional component of an EIS. It is **MANDATORY**.

It is also not an arbitrary or insignificant part of what is required in the EIS. In fact it is one of the most important things required.

S148B of the Act states:

> (1) A person must not provide information in connection with a planning matter that the person knows, or ought reasonably to know, is false or misleading in a material particular.

Sections 307A and 307B of the *Crimes Act 1900* have similar terms, though wider than planning matters.

It is noteworthy that under s148B, the offence does not depend on the person knowing the information is false or misleading but on whether they "ought reasonably to know" it is.

It is not the job of either the Department or the community to check that everything relevant is included in an EIS and that nothing is false or misleading. That is the responsibility the developer takes on when they propose a project. The Act and the Regulation make that responsibility very clear. That placement of responsibility is a central principle of the planning process, as conducted in NSW.

The declaration required by s6(f) is to ensure that the person responsible for an EIS has, so far as reasonably possible, determined that the EIS omits nothing that is relevant to the environmental assessment and that it is not false or misleading in any way. The declaration was meant to leave the responsible person in no doubt as to what they must ensure about the completeness and veracity of the document and that they have done everything necessary in order to truthfully make the declaration.

What the actual declaration in the EIS tells us

The fact that there is a declaration at the front of the EIS very vaguely related to the requirements of s6(f) tells us that the responsible person knows that s6(f) requires them to make a declaration.

The fact that they have chosen to not use the simple, straightforward words of s6(f) but instead something which does not have the same meaning as s6(f), but is far more vague, tells us they are quite unwilling to make the required declaration and that therefore they cannot be assumed to have done the checking that would be necessary in order to honestly signoff on the s6(f) requirement.

Perhaps they believe that only committing to a far looser statement somehow absolves them from the provisions of s148B of the *Environmental Planning and Assessment Act 1979* **AND** that if the Department accepts their non-compliance under s6(f) that they have been given official approval to not comply with s6(f).

Implications of DPE acceptance of non-compliant declaration

By accepting the EIS with its non-compliant declaration, the DPE planner has made themselves, and the Department, complicit in this breach of the Regulation. They have become an accomplice in a situation where other affected parties have been given a planning document which may well be false or misleading in material ways, and which is presented with the concurrence of the Department.

Members of the community consequently misled about the true impact of the proposal, on a matter about which many of them are not expert, may therefore fail to lodge objections based on false or misleading information.

Since the Department has allowed them to be presented with potentially false or misleading information, the Department has denied them procedural fairness from the point at which it exhibited the non-compliant EIS.

Even if the Department now forces the proponent to do what is necessary to properly check the content of the EIS and make it compliant with the Regulation, unless the revised document is re-exhibited, the damage is done. Indeed unless the Department advises everyone who is potentially affected that a changed EIS is re-exhibited and they should check, few people are like to return to the Department's site and discover a new EIS, thus making the Department further culpable in depriving them of procedural fairness.

Apprehended bias

The Department's willingness to accept a non-compliant EIS, in a matter which works to the disadvantage of other parties, evidences a bias in favour of the developer and contrary to the interests of other parties.

It is noted the Department has twice given the proponent a time extension when they failed to comply with previously set timeframes as part of their consent conditions. It also appears the Department has accepted the developer's misleading statement that it has started construction on the project in January, when in August the developer is still trying to get approval for changes to determine the precise size and form of turbines to be installed, with all the implications for ordering, engineering design, construction etc.

Thus there is a history of partiality towards the developer and against the local community, of which this latest breach is a further instance.