



Modification to the Minister's Approval for the Capital Wind Farm

Modification Report

July 2007

Purpose

Renewable Power Ventures (the Proponent for the Capital Wind Farm), under section 75W of the Environmental Planning and Assessment Act, 1979 (the Act), has sought a modification to the Minister's approval for the Capital Wind Farm.

The modification was sought to modify Condition of Approval No.7 (Planning Agreement for the upgrade of Taylors Creek Road) so that it addresses Palerang Council's most recent resolution on the upgrade of Taylors Creek Road; and to amend the preparation time frame for the Planning Agreement. This report considers the modification request.

Background

On 7th November, 2006, approval was granted to the construction and operation of the Capital Wind Farm under Part 3A of the Act. The Project comprises 63 2.1 megawatt wind turbines and associated infrastructure (including substation, facilities building, wind monitoring towers, cabling and access roads). The Project will be located approximately 40 kilometres north-east of Canberra and about 10 kilometres south-west of Tarago on ridges of the Great Dividing Range to the east of Lake George in three groups: Grose Hill; Ellenden; and Hammonds Hill (Refer to Figure 1).

Separate to the Department's assessment of the wind farm proposal, the Proponent entered into negotiations with Palerang Council about the provision of community benefits from the development of the proposed wind farm. These benefits included the sealing of Taylors Creek Road. Taylors Creek Road serves many rural/rural residential properties in the vicinity of the proposed wind farm.

The Director-General's assessment report on the wind farm proposal stated *"It is noted that the Proponent has agreed to enter into a Planning Agreement in accordance with Section 93F of the EP&A Act with Palerang Council. The agreement covers a commitment by the Proponent to seal the unsealed sections of Taylors Creek Road. This commitment is above what would be required to mitigate the traffic and transport impacts associated with the Project. By making this commitment the Proponent has imparted a gesture of goodwill and demonstrated a corporate social responsibility which provides a wider community benefit."*

The Minister subsequently imposed Condition of Approval No. 7. This condition states:

Planning Agreement

- 7 The Proponent must, prior to the commencement of construction, enter into a Planning Agreement with Palerang Council, in accordance with Section 93F of the Act. The Planning Agreement must address the terms of the offer made by the Proponent in its Submissions Report response to Palerang Council's submission (letter to the Department from the Proponent dated 28 May 2006 i.e. the sealing of the whole of Taylors Creek Road to an appropriate engineering standard and in consultation with Palerang Council, post construction of the wind farm).*

The Department understands that the Proponent was prepared to fully seal Taylors Creek Road, as part of its wind farm works contract (at an estimated cost of \$1.5-2m). However, Palerang Council has indicated its preference to undertake the works, at a higher cost.

Following negotiations between Palerang Council and the Proponent, Council resolved that it would agree to a modification of Condition 7 (i.e. to the content of the Planning Agreement). This would require that the Proponent pay Council an amount of \$2.62m (excluding GST, and subject to rises in the RTA Road Cost Index) for site specific works on Taylors Creek Road, to be undertaken by Council.

The full text of Council's resolution is contained in the attached letter dated 16th July, 2007, from Council to the Department (attachment A). This includes the specific works to be undertaken. It should be noted that a portion of the gravel road will be upgraded but not sealed. Council has advised this section of the road receives low usage.

It should also be noted that a portion of Taylors Creek Road is within the Goulburn-Mulwaree Council area. This is not part of the Planning Agreement, but it is understood that the Proponent has agreed to seal the 350 metres of road within Goulburn-Mulwaree.

On 16th July, 2007, Renewable Power Ventures wrote to the Director-General (attachment B) seeking:

- 1) that the Planning Agreement reference Council's resolution 309/2007, in lieu of the offer made by the Proponent in its Submissions Report; and
- 2) that the Planning Agreement must now be entered into by 31st March, 2008 (or as otherwise agreed to by the Director-General), instead of prior to the commencement of construction.

Consideration of Issues

In accordance with 75X (2) of the Act, the modification request was made publicly available on the Department's website. Due to the nature of the proposed modifications there was no need to issue environmental assessment requirements under section 75W (3) of the Act or to publicly exhibit the modification. Palerang Council will subsequently need to give public notice of the proposed agreement under section 93G of the Act.

As indicated above, the upgrading of Taylors Creek Road is above what would be required to mitigate the traffic and transport impacts associated with the Project. It is essentially a matter between Palerang Council and the Proponent. Council has now resolved to accept funds for specific upgrading works in lieu of the full sealing of Taylors Creek Road. Accordingly, the proposed change to the content of the Planning Agreement is considered acceptable.

Condition 7 currently requires that the Planning Agreement must be entered into prior to the commencement of construction. The Proponent has requested that this time period be amended to 31st March, 2008, or as otherwise agreed by the Director-General.

The Proponent has stated that it could take some time to finalise the Planning Agreement, and this could delay the commencement of Project construction.

Finalisation of the Planning Agreement will require a public notification period, and the Department accepts that the process could take some time.

The aim of the existing condition is to require the sealing of Taylors Creek Road, after the wind farm has been constructed. Construction is estimated to take up to 8 months. The Proponent has not yet provided the Department with a proposed starting date, nor completed

a number of the requirements under the Conditions of Approval, that must occur prior to construction commencing eg submission of a Pre-construction Compliance Report, sought and obtained approval for a Construction Environmental Management Plan, etc

Therefore, it is unlikely that the wind farm would be completed much before mid 2008. That is, delaying the finalisation of the Planning Agreement should not significantly impact on the timing of the road upgrade. It would, however, enable an earlier commencement of wind farm construction. Allowing the Director-General to vary the time for completion would provide some flexibility if unforeseen circumstances arose, and any such time changes would need to be justified to the Director-General. The actual timing of the Taylors Creek Road upgrade would depend on the final agreement between the Proponent and Palerang Council.

Palerang Council supports varying the completion date so that the Planning Agreement does not need to be finalised prior to the commencement of construction. However, Council has requested that the date be changed to 14th December, 2007. The Proponent has agreed to the revised date.

On this basis, the Department considers that the proposed change to the timing of Condition 7 is acceptable.

Delegation

Under the instrument of delegation dated 7th June 2007, the Minister for Planning has delegated to the Executive Director, Major Project Assessments Division his powers and functions under section 75W (Modification to the Minister's Approval) of Part 3A of the Act, subject to conditions relating to capital value, the number of submissions and floor area/height of buildings.

The proposed modifications do not have a capital investment value in terms of the wind farm itself, no submissions were received (the Project was not exhibited), and the modification does not increase the gross floor area or maximum height of any approved buildings. Therefore, the Acting Executive Director may exercise powers under the delegation.

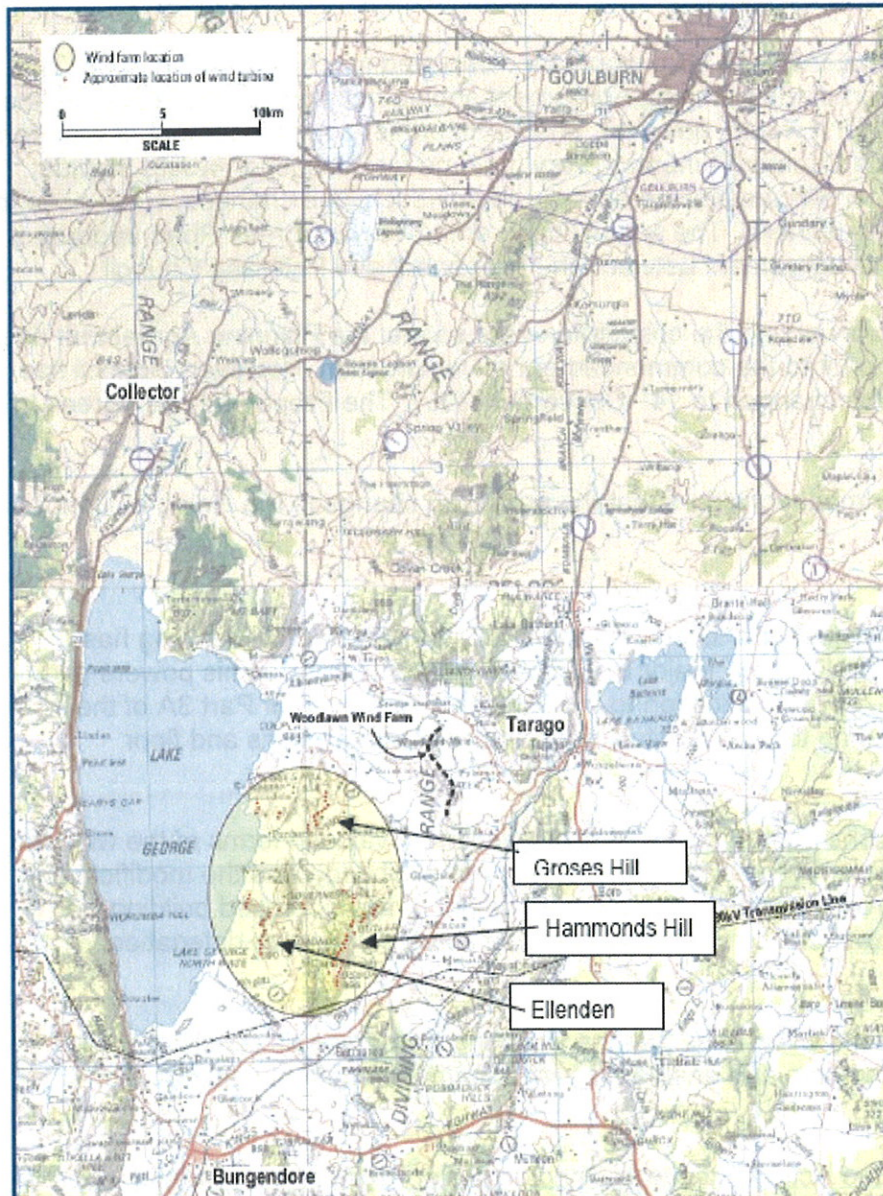
Conclusion

The proposed modifications will ensure that the Planning Agreement is consistent with Palerang Council requirements and enable an early commencement of construction.

Recommendation

It is recommended that the Acting Executive Director, Major Project Assessments, approve, under delegation, the modification as set out in the attached Modifying Instrument.

Figure 1 – Locality Map



PALERANG COUNCIL

Attachment A

For contact: Bill Ellison
Our Ref: Capital Wind Farm

16 July 2007

Mr Neville Osborne
Major Infrastructure Assessment
Department of Planning
GPO Box 39
Sydney NSW 2001



Dear Sir

Re: Capital Wind Farm Planning Agreement

I advise that Council at its meeting held on 12 July, 2007 formally agreed to accept that a modification of condition 7 of the consent for the Capital Wind Farm project can be made to allow the planning agreement for the upgrading of Taylors Creek Road to be based on the payment to Council of a set amount of \$2.62million for specific upgrading works in lieu of the current requirement for the full length of Taylors Creek Road to be sealed.

The full resolution of Council is as follows:

309/2007 RESOLVED that Council

- 1. Indicate to both the proponent and the Department of Planning its agreement to a modification of condition 7 of the consent for the Capital Wind Farm project, that will allow the planning agreement for the upgrading of Taylors Creek Road to be based on the payment to Council of an amount of \$2.62m (excluding GST and subject to rises in the RTA Road Cost Index from November 2006) for site specific works to be undertaken by Council as indicated below in lieu of the general requirement for the entire length of road to be sealed:*
 - a) Type 7 sealed road from Goulburn/Mulwaree boundary to sealed strip at Sunnybrook;*
 - b) Type 6 sealed road from Sunnybrook to Western Leg Road;*
 - c) Gravel road upgrading from Western Leg Road to Collector Road;*
 - d) Survey, investigation and design;*
 - e) Allowance for minor road widening land acquisitions.*
- 2. Authorise the Mayor and General Manager to sign and seal an agreement consistent with 1. above.*

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Council will now work with RPV to amend the draft planning agreement to include the agreed payment arrangements and a description of the agreed extent of road works to be covered by the payment. Once Council is satisfied Public Notice of the intended agreement will be given in accordance with 93G of the EP & A Act.

It is understood that a separate but related exercise will involve RPV making a formal application to the Department for the appropriate modification of Condition 7.

Our Mayor and General Manager are ready to formally execute the agreement once the period of public notice has been given and after all matters are cleared through the Department.

A copy of the planning agreement will be forwarded once it is finalised for public notice

Yours sincerely



W P Ellison
Director Community Development



16th July 2007

Director General
Attn: Mr Neville Osborne
NSW Department of Planning
23-33 Bridge St
Sydney NSW 2000

Dear Director General,

On 12 July 2007, Palerang Council resolved to agree to RPVs request for a specific value (subject to an agreed form of escalation) and design standard to be undertaken in relation to the upgrade of Taylors Creek Road. The wording of the resolution is as follows:

309/2007 RESOLVED that Council

1. *Indicate to both the proponent and the Department of Planning, its agreement to a modification of condition 7 of the consent for the Capital Wind Farm project, that will allow the planning agreement for the upgrading of Taylors Creek Road to be based on the payment to Council of an amount of \$2.62m (excluding GST and subject to rises in the RTA Road Cost Index from November 2006) for site specific works to be undertaken by Council as indicated below: in lieu of the general requirement for the entire length of road to be sealed:*
 - a) *Type 7 sealed road from Goulburn/Mulwaree boundary to sealed strip at Sunnybrook;*
 - b) *Type 6 sealed road from Sunnybrook to Western Leg Road;*
 - c) *Gravel road upgrading from Western Leg Road to Collector Road;*
 - d) *Survey, investigation and design;*
 - e) *Allowance for minor road widening land acquisitions.*
2. *Authorise the Mayor and General Manager to sign and seal an agreement consistent with 1. above.*

This agreement between RPV and Palerang will be reflected in the final agreed form of Planning Agreement required by Capital Wind Farm Project Approval, Condition of Approval No.7.

Palerang Council has informed RPV that they have written to the Department of Planning requesting the Department's agreement to this cost and design standard. RPV supports this request. Condition of Approval No. 7 also requires that the Planning Agreement be executed prior to commencing construction.

For legislative reasons only, it will take some months before the agreement can be executed. This requirement will therefore cause significant delay to the commencement of construction, with severe impacts for the commercial viability of the project. RPV therefore requests that the condition be amended such that the Planning Agreement must be executed by no later than 31 March 2008, unless otherwise agreed by the Director General.

Your consideration of this request is greatly appreciated.

Yours sincerely,



David Griffin
CEO