

2 October 2014

**NSW Planning Assessment Commission Determination Report
Gullen Range Wind Farm Project (MP07_0118), Upper Lachlan Shire LGA**

Background

The Gullen Range Wind Farm Project was granted approval by the then Minister for Planning and Infrastructure in June 2009 under Part 3A of the Environmental Planning and Assessment Act 1979 ('the Act').

The proposal was to construct and operate up to 73 wind turbines near the township of Crookwell, approximately 25kms north-west of Goulburn. The project includes associated infrastructure including access tracks, road upgrades, a control room and maintenance facilities and a substation.

The project approval was subject to an appeal in the Land and Environment Court (the Court) where the Minister's decision was upheld. The Court's approval included a condition (Condition 1.5) which removed "*the ability of the Proponent to relocate turbines from the locations indicated.....by up to 250 metres, without further assessment and approval*".

The Court acknowledged the Department's view that the *Environmental Planning and Assessment Act 1979* ("the Act") provides the proponent the flexibility to make minor amendments where such amendments would not be inconsistent with the approved project, or they could seek the Minister's approval to modify the approval if the amendments were in fact deemed to be inconsistent.

The Commission was advised that the former s75W(5) of the Act allowed a proponent to appeal a decision to modify a project approval if it was dissatisfied with it, within 3 months of a notice of determination. However, the original approval of this wind farm project was granted by the Land & Environment Court, which triggers s75W(6) of the Act. The section states that the appeal provision in s75W(5) "*does not apply to a request to modify .. an approval granted by the Court on appeal*".

Delegation to the Commission

The Commission received the referral to determine the project under delegation from the Minister for Planning on 28 July 2014.

Mr Garry Payne AM (chair) and Mr Richard Thorp constituted the Commission to determine the project.

Project Modification

The proposed modification by Gullen Range Wind Farm Pty Ltd sought approval to modify the final location of 69 of the 73 wind turbines. The Commission notes the modification is sought retrospectively with the location for the majority of turbines having already been moved and constructed.

COMMISSION'S ROLE AND APPROACH

Commission's role

A number of submissions at the public meeting urged the Commission to refuse this application arguing the principle that a proponent who commits a breach of the planning legislation should not be rewarded for committing that breach by the grant of a modification

approval effectively validating the wrongdoing. In particular, it was argued that the turbines have been erected in breach of the original approval and this breach should be remedied or restrained before any consideration given to an application to modify the original approval.

It may be helpful at this point to explain the scope of the Commission's role in determining this application.

The Commission must consider every modification application on its merits even if a breach has occurred. This means that the Commission must consider the application in the same way it would have done if the turbines had not yet been erected. A breach of the original conditions of approval is not a reason to refuse an application. However, equally it cannot take into account the cost to the applicant of having to move the turbines if this application is not approved.

The planning legislation provides separate processes for any breach of approval conditions under its enforcement provisions (sections 123 and 125). Furthermore, a modification approval does not operate retrospectively.

The Commission notes from the Department's report that it is considering taking separate compliance action on this matter.

Commission's approach to assessment of the application

In considering this application, the Commission is conscious of the implication of its decision. It is of significant concern to the Commission that this modification application seeks approval to modify the locations of 69 turbines out of a total 73. Although 68% of the turbines moved less than 50m, others are of significant distance, up to 187 metres away from the approved location. This raises the question of the adequacy of the original application for suitability of the locations and their impacts on residences, particularly those non-associated residences.

In the circumstances, the Commission is of the view that it should not confine itself to just considering the magnitude of the change in impact between what has been approved and what is now proposed.

Department's Assessment Report

The Secretary's Environmental Assessment Report detailed the following key issues:

- Verification of wind turbine locations;
- Visual impact;
- Noise impact; and
- Biodiversity.

Other issues considered in the report include: archaeology, air safety, telecommunications, soil and water management, traffic and transport, shadow flicker, health and a Crown Road.

The Department concluded that with the implementation of measures outlined in the recommended conditions along with the proponents proposed mitigation measures, the potential impacts of the modification would be appropriately mitigated and/or managed to an acceptable level of environmental and social performance.

The project modification was, subject to conditions, recommended for approval.

Site Visit and Meetings

Meeting with the Proponent at the PAC office, Sydney

On 15 August 2014 the Commission was briefed on the project by the proponent.

The Proponent explained:

- They were not the owner of the project when the 3 merit appeals were lodged;
- 68 of the 73 approved turbines have been installed with nearly all having been commissioned;
- The project approval only provided an indicative turbine layout and the final layout is consistent with the project approval;
- The turbines have an expected life of 20 years following which they will be decommissioned.

The proponent also provided supplementary information in correspondence of 12 September, 17 September, 25 and 26 September and 30 September 2014 which the Commission considered as part of this determination.

Meetings with the Department of Planning and Environment at the PAC office, Sydney

On 15 August 2014 the Commission met with representatives of the NSW Department of Planning and Environment for a briefing on the project.

The Department advised that the majority of turbines had been located at varying distances from their approved locations. Current approval conditions do not contain a numerical value to allow micro-siting, that is, relocation within a certain distance without the need for approval.

On 12 September 2014 the Commission again met at the PAC office with representatives of the NSW Department of Planning and Environment to discuss the issues raised at the public meeting. The Commission noted that considerable concern had been raised at the public meeting in relation to how the breach of approval conditions was handled and the use of the modification process to resolve the breach. A second major concern raised was the loss of property values due to the increased proximity of the turbines to non-associated residences.

The Department advised the modification was reviewed on the premise of assessing the acceptability of the modified turbine locations. The Department also acknowledged during this meeting that one of the turbines, BAN 08, had not been adequately considered within the assessment and should be considered by the Commission for relocation.

With regard to perceived property value impacts, the Department advised property value is not a planning matter and therefore cannot be taken into consideration.

On 17 September 2014 the Commission had a further meeting with the General Counsel and other representatives of the NSW Department of Planning and Environment. The Department requested the meeting to discuss further the rationale for its recommendations in the assessment report.

Gullen Range Locality Visit

On 4 September 2014 the Commission travelled to Gullen Range for meetings and to also visit the Gullen Range area to inspect the site and surrounds of the wind farm.

Meeting with owners of B29 (Bernhard and Sam Hyde)

The Commission met with Mr and Mrs Hyde who raised concern about the impact of the turbines on their property value and the noise of the turbines during operation. The background noise level of 48 dBA was regarded as unreasonable for a rural property. While their property was on the market and had been viewed on a number of occasions, potential purchasers lost interest because of the presence of the turbines even with the sale price being reduced by 33%.

Meeting with owners of B12 (Humphrey and Jennifer Price-Jones)

The Commission met with Mr and Mrs Price-Jones who raised the following concerns:

- The Department should not distinguish between working and lifestyle blocks in its consideration;
- No photomontage was prepared for turbine number B12;
- While turbine number BAN 08 has been relocated further away, its elevation has increased by 14.8 metres;
- The relocation and construction of nearly all turbines was raised with the Department in April 2013. However it was not until November 2013 that the Department acknowledged the turbines had been relocated from the locations indicated in the approval;
- The independent environmental representative had actually worked on the project for the proponent and therefore was not independent notwithstanding the Department approving the appointment;
- The turbines should be relocated to their approved locations;
- Proposed landscaping is satisfactory however tube stock is not acceptable, mature plants should be provided on their property to fully screen views of the turbines;
- Turbines relocated more than 40 metres should not be commissioned; and
- The modification application should be considered by the Land and Environment Court, not the Planning Assessment Commission, as the court determined the original application.

Meeting with Upper Lachlan Shire Council

The Commission met with Council's Mayor, John Shaw, along with senior Council staff including the General Manager, Mr John Bell.

Council has been involved with the application since the beginning and had discussions with both the objectors and supporters.

Council raised concerns about social impacts and the damage done through the modified turbine locations without prior community consultation. The Council also raised the following matters:

- The communities' demands for a judicial enquiry;
- Loss of confidence with the Department of Planning and Environment;
- Proponent did not agree to repair public roads damaged as a result of heavy truck movements associated with the project;
- Discussions/negotiations with the proponent were always reactive, not pro-active;
- The erected turbines are impacting on radio frequencies; and
- Dilapidation reports for public roads are not adequate and roads should be repaired in their entirety as patch fixing causes ongoing road surface issues.

Public Meeting

On Friday 5 September 2014 the Commission held the public meeting at the Crookwell RSL Services Club, Goulburn Street, Crookwell. The Commission heard from 39 speakers at the meeting. The speakers are listed in Appendix 1. A few speakers supported the proposal, while most raised concerns or objections to the project. Issues raised both for and against the proposal and the key points from the submitted written comments are summarised in Appendix 2.

Commission's Consideration

Although the approval of the original application pre-dated the *Draft NSW Planning Guidelines: Wind Farms*. (the draft guidelines), the Commission considers it is an important

document to guide its decision making as it provides the guidelines on the proposed regulatory framework for the assessment and determination of wind farm proposals.

The original application was approved in June 2009 and the determination was upheld by the Court in August 2010. The draft guideline was exhibited between December 2011 and March 2012. According to the Department, it advised wind farm proponents that the draft guidelines would apply to all new wind farm applications where Director General's Requirements had not been issued.

This modification application was lodged in April 2014, two years after the public exhibition of the draft guidelines. Although this is a modification application to an already approved wind farm, the Commission considers it should have regard to the intent and spirit of the draft guidelines in determining this application.

The two key matters that are relevant for the Commission's consideration are proximity of turbines to existing residential dwellings and visual amenity.

The draft guidelines provide:

(a) Proximity of turbines to existing residential dwellings

If a wind farm proposal seeks to place turbines within 2km of existing residences, whether they are proposed hosts of the turbines or non-host residences, an additional upfront assessment requirement applies. A Gateway for an increased level of initial assessment of the proposed development applies if the applicant does not receive written consent from landowners with residences within 2km of proposed turbines.

If written consent from all existing landowners with residences within a 2km radius of proposed turbines is not secured, the proponent must apply for a Site Compatibility Certificate.

(c) Visual Amenity

These guidelines set out a comprehensive framework for assessing visual amenity impacts with a focus on visual impacts on neighbours close to turbines. The visual impact of a wind farm depends on the extent of change to the landscape caused by the development, taking into account:

- the visibility of the proposed development*
- the locations and distances from which the development can be viewed*
- landscape values and their significance*
- the sensitivity of the landscape features to change*

Proximity to existing residential dwellings

The original wind farm approval has up to 49 non-associated residences within 2km of a turbine. As stated earlier, the approval predated the draft guidelines. However, the current modification application seeks to locate many of these turbines even closer to non-associated residences. The proposal is inconsistent with the intent and spirit of the draft guidelines, which proposes a 2km distance between a turbine and any non-associated residence unless agreed by the relevant landowner or a site compatibility certificate has been issued.

Visual Amenity

The assessment of visual amenity/impact is complex and highly subjective. Some people are not concerned about the aesthetics of wind turbines, while many others dislike them.

Many speakers at the public meeting expressed concern that the area had become industrial in character as a result of the project particularly when noting the scale and height of the turbines.

As part of its consideration of the modification application, the Commission travelled on the local road networks and visited two non-associated residences to obtain a better understanding of how the wind farm would be, and is, viewed from both the private and public domains. It agrees that the construction of the turbines has changed the landscape character of the area. However, the Commission also recognise that approval has been granted for the construction of 73 turbines in the area.

Many speakers at the public meeting placed significant emphasis on the value of the rural landscape and concluded that the construction of the turbines has already detrimentally impacted on the landscape value and non-associated residences. To locate the turbines even closer to these residences is not acceptable. The failing of the assessment report to consider the re-siting of turbine number BAN08 demonstrated the inadequacy of the assessment of the modification and the impacts on the community.

The Commission agrees that the increased proximity of the turbines to non-associated residences will result in visual impact on these properties. The proposed vegetation screening may in some instances be ultimately sufficient to reduce/block the view when it has achieved adequate height, but the vegetation screen itself will change the outlook and vista of the residence. In other cases, the screen will not be adequate to mitigate the imposing view of a close-by turbine.

Property Value

Some speakers at the public meeting advised the Commission that impacted neighbours should have the option for their properties to be purchased by the proponent or, alternatively, that financial compensation for any reduction in their property values attributable to the wind farm be provided.

The *Draft NSW Planning Guidelines: Wind Farms*, requires non-associated residences to be located at least 2 km's from the nearest turbine which the Commission considers, in part, to be a mitigating measure in addressing this issue.

During the public meeting, the Commission observed an understandable tension between host property owners who receive a significant financial benefit and their neighbours who see themselves receiving no benefit but having visual and potentially property value impacts without compensation. These impacts will be exacerbated by the proposal to locate turbines closer to their properties.

The difficulty of precisely determining what loss of value, if any, can be attributed to a wind farm is an issue that requires further research and consideration. Although the Commission shares the concern and potential loss of property value, it notes the Department's advice that property value is not a planning consideration. It is the Commission's view that this issue should be further investigated as it appears that many affected, non-associated property owners may suffer a financial devaluation of their asset in the future.

Noise and Health Impacts

One of the concerns raised with the proposal relates to potential noise impacts and associated health effects. A number of dwellings are located within 2km of a turbine and these turbines are proposed to be sited even closer to dwellings. The main issue is 'sleep deprivation' which leads to other health related issues.

Some speakers also questioned the Department of Planning and Environment's ability to investigate noise related non-compliances.

The Commission has been advised that electricity works (wind farms) is a scheduled activity under the *Protection of the Environment Operations Act 1997* and therefore the Environment Protection Authority (EPA) is the regulatory authority, not the Department of Planning and Environment. The EPA, with technical specialists in the field of noise, is equipped to ensure the wind farm complies with noise conditions through the project's Environmental Protection Licence.

In its correspondence of 26 September 2014, the proponent advised the Commission the EPA have issued Environment Protection Licence 20365 for the project.

Other Issues

The Commission notes that speakers at the public meeting and in correspondences pointed out that the project has generated both positive and negative economic and social impacts on the community. Some issues are socially divisive. These issues are potentially further compounded by the proposal to relocate turbines closer to non-associated properties.

It is also a concern to many speakers that a number of matters had not been addressed within the Secretary's Environmental Assessment Report. These included:

- The modified proposal sought to locate a turbine within an area of EEC;
- The modified location of turbine number BAN 08 and the impact on an adjoining non-associated property had not been identified, or discussed;
- The substation is larger than that indicated from the original project approval however potential impacts (such as noise and lighting) have not been addressed.

Commission's Conclusion and Findings

The Assessment Report carried out an analysis of the proposed modified turbine locations and their relationship with adjoining non-associated properties and concluded that the proposed modified locations would have an acceptable impact on amenity when considering key issues of visual bulk, and noise. The mitigation measures rely heavily on landscape screening to be provided. Where screening was not considered to be adequate to mitigate the visual impact of the turbines, the Department has recommended acquisition of the affected property.

A number of the most affected residents disputed the Department's conclusion and held the view that the assessment is flawed and misleading as the turbines are located closer to non-associated properties and have higher elevations therefore landscape screening is inadequate. The community raised concern that the siting of turbines and in some cases, their increased elevations, will visually overwhelm the rural landscape.

Following careful review of the assessment report and associated documents, the *Draft NSW Planning Guidelines: Wind Farms*, the proposed modified turbine locations, concerns raised by the community, and the observations made during the site visit, the Commission finds that:

- 1) The original approval has up to 49 non-associated residences within 2km of a turbine. The relocation of some of these turbines even closer to residences is inconsistent with the intent and spirit of the *Draft NSW Planning Guidelines: Wind Farms*.
- 2) Many of the relocated turbines will have significant visual impact on non-associated residences, notwithstanding the proposed vegetation screening.

- 3) Impact on property value is not a planning consideration.
- 4) Monitoring of noise compliance is a matter for the Environment Protection Authority through the Environmental Protection Licence system, not the Department of Planning and Environment.
- 5) The proposed relocation of turbine number BAN08 should have been assessed and included in the assessment report.
- 6) The indirect impacts on an environmental sensitive area with Endangered Ecological Community have not been adequately addressed given the Office of Environment and Heritage's concern about its long term survival.

Commission's Determination

The Commission has carefully considered the proposal, its associated impacts, the Secretary's Assessment Report, stakeholder submissions and views expressed at various meetings including the public meeting. The Commission has also had regard to the *Draft NSW Planning Guidelines: Wind Farms* in making this determination.

On balance, the Commission does not consider the benefit of the proposed modification outweighs the potential adverse impacts on the community, the rural and natural environment or on non-associated properties.

Having regard to the findings above, the Commission determines not to approve the modification application (MP07_0118 (MOD 1)) for the following reasons:

1. The application is inconsistent with the intent and spirit of the *Draft NSW Planning Guidelines: Wind Farms*.
2. The application, if approved, would have significant visual impact on non-associated residences and the proposed vegetation screening would not be able to mitigate the impact on all affected residences to an acceptable level.

The instrument of refusal is attached in Appendix 3.



Garry Payne AM
Member of the Commission



Richard Thorp
Member of the Commission

Appendix 1

List of Speakers

PLANNING ASSESSMENT COMMISSION PUBLIC MEETING, GULLEN RANGE WIND FARM PROJECT

Date: Friday 5 September 2014, 9.30 am

Place: Crookwell RSL Services Club, 127 Goulburn Street, Crookwell

Speakers:

Walgala & Gundangara People – Shane Mortimer

James Hutson

Upper Lachlan Landscape Guardians – Dr John Formby

Parkesbourne/Mummell Landscape Guardians – David Brooks

Nicholas Winberg

Waubra Foundation – Michael Crawford

Gullen Range Community Support Group – Charley Barber

Jennifer Price-Jones (on behalf of Caillin Price-Jones)

Sara Brown

Prof. Laurie Brown

Friends of Collector – Malcolm Barlow

Member for Burrinjuck – Katrina Hodgkinson MP

Charlie Prell

Michelle Edwards

John Carter

Chris Knight

Rosemary Howe

Brett Edwards

Jane Keany (on behalf of Paige Davis)

Victoria Mendl

Greg Faulkner

Brett Edwards (on behalf of Chris Edwards)

Barry O'Neill (on behalf of Denise O'Neill)

Australian Industrial Wind Turbine Awareness Network – Patricia Schneider

John Mendl

Grant Windberg

Doug Werrin

NSW Landscape Guardians - Humphrey Price Jones

Justine Mooney

Glenys Walkom

Rob Post

Mark Tomlinson

Mrs Briggs (on behalf of Duncan Briggs)

Crookwell Landscape Guardians - Jennifer Price-Jones

John Benjamin

Jack Williams

Carl Banfield

Jenny Hajek

Jayne Apps

Appendix 2

Speakers in favour of the proposal highlighted the need for community support of the project, suggesting that wind turbines reduce greenhouse gas emissions; are a source of renewable energy; are important for addressing climate change and provide economic benefit to the local community. One speaker noted that while the project does not provide significant employment, it would drought proof a number of host pastoral properties.

Some speakers emphasised a particular concern about visual impact from their properties with the modified locations of the turbines becoming the predominant feature of their rural landscape.

Speakers from the local community questioned the validity of the proponent's visual assessment. Concerns were also raised over the impact on property values and the effect on future subdivision potential of rural properties.

A number of speakers requested a judicial enquiry into government's handling of the modified turbine locations.

Another issue raised was the potential for health impacts arising from low frequency noise and infrasound. Some objectors argued there are clearly documented health impacts particularly as turbines had been sited closer to residential dwellings and turbines had been located closer to each other contrary to relevant standards, while others suggested there is significant uncertainty regarding the health impacts.

Impacts on amenity that were raised included noise and visual impacts, particularly given the size, scale and industrial qualities of the turbines and the fact they were now closer to rural properties.

It was argued by some speakers that property values and marketability were being impacted. It was claimed that some properties were being taken off the market as they could not sell and those that were being sold had their value reduced by up to 30%. It was also noted that rural properties represent a significant investment asset, and the sale of the property is relied on as a source of superannuation for many farmers. Some nearby landowners are now concerned the value of their properties has been significantly reduced, or that they are not able to sell, or subdivide, their properties as the turbines have now been constructed and the impacts are realised.

Social impacts were said to have already occurred, noting that the proposal has divided the community. Speakers also questioned the level of community benefit with some suggesting the proposal should include additional local contributions.

Concerns with the Department's assessment were also raised particularly in that it was considered to be biased in its retrospective support for the unauthorised works. Further the lack of action taken by government was also a concern when advised by the community that the turbines were being erected in locations other than those approved. Speakers also suggested that the Department's assessment had not addressed the community's concerns or relevant planning legislation.

Other issues raised included:

- concerns regarding decommissioning and disposal of the turbines;

- bushfire risks, noting the nearby airfield utilised by the local Rural Fire Service does not have a standard operating procedure for wind farms; and
- concerns approval of the project would set a precedent for other developers who might undertake unauthorised works then seek retrospective approval through a modification application.

A large number of documents were submitted at the public meeting and/or sent by email following the meeting.