

ASSESSMENT REPORT

Flyers Creek Wind Farm

Deferred Commencement Modification (MP08_0252 MOD1)

1 BACKGROUND

The Flyers Creek Wind Farm is located 20 kilometres (km) south of Orange and 15 km west of Blayney in Central Western NSW and wholly within the Blayney Shire Local Government Area (see Figure 1).

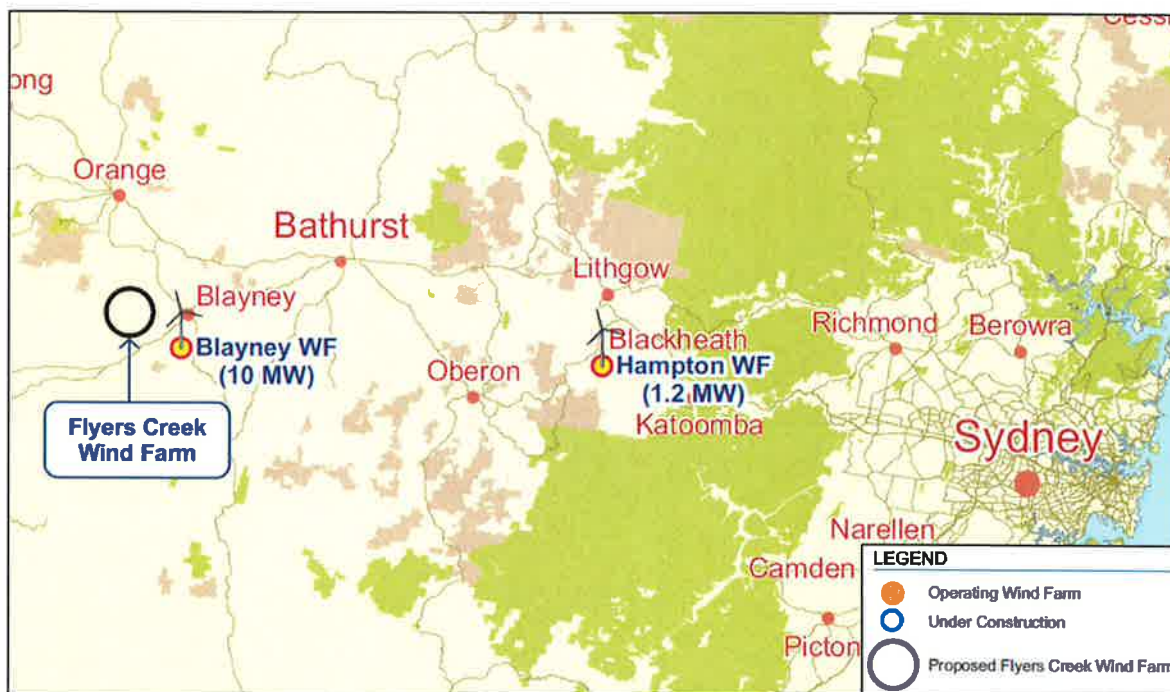


Figure 1: Regional Location

On 11 November 2009, the then Minister for Planning declared a number of renewable energy projects, including the proposed Flyers Creek Wind Farm, to be critical infrastructure pursuant to Section 75C of the *Environmental Planning and Assessment Act* (EP&A Act).

The declaration of the proposed Flyers Creek Wind Farm as 'critical infrastructure' means that the project was, in the opinion of the Minister, essential for the State of New South Wales for economic, environmental or social reasons.

The Flyers Creek Wind Farm was approved by the NSW Planning Assessment Commission on 14 March 2014. The approval allows for (see Figure 2):

- construction and operation of a wind farm with up to 41 turbines which would generate up to 123 MW;
- associated infrastructure including access tracks, local road infrastructure upgrades and electrical connections between the turbines (both underground cable and above ground power lines);
- an on-site substation including a switch room, a control room and auxiliary services building; and
- a transmission line from the on-site substation to the Essential Energy 132 kV transmission line on the Cadia Mine site to the north-west of the site.

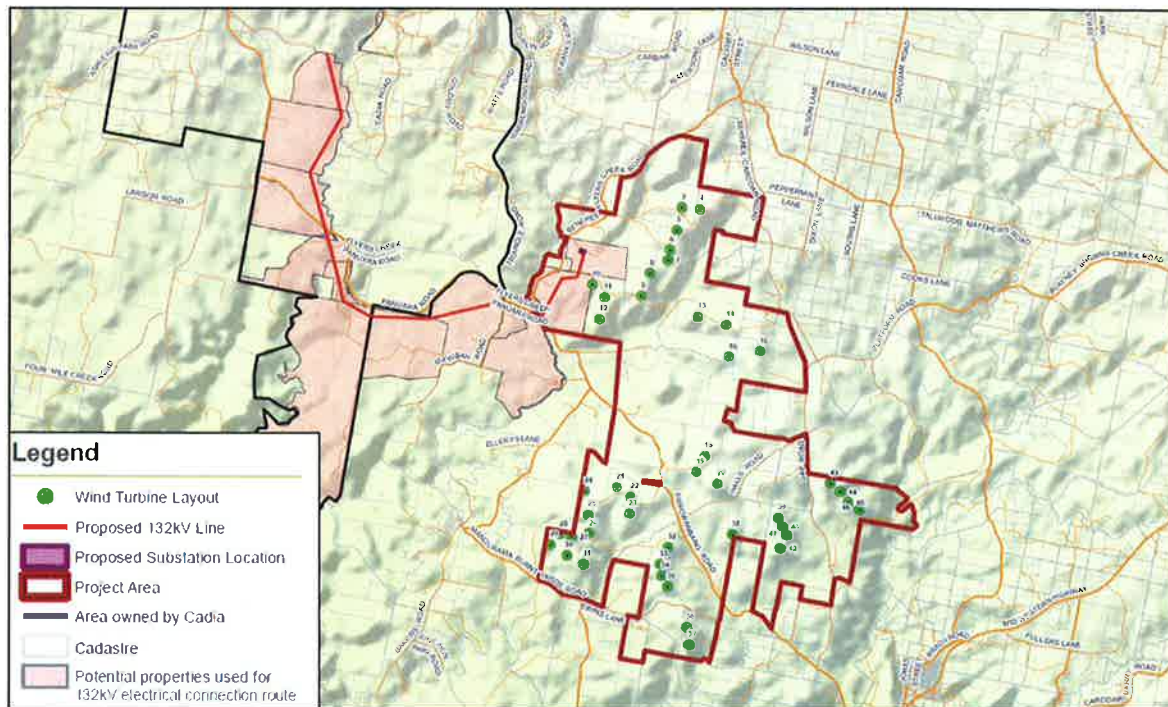


Figure 2: Project Layout

2 PROPOSED MODIFICATION

Schedule B of the Flyer Creek Wind Farm project approval includes deferred commencement conditions that must be complied with to the satisfaction of the Secretary before the project approval operates.

Unless the deferred commencement conditions are complied with within 12 months from the date of the project approval (i.e. by 14 March 2015), the project approval will lapse.

The deferred commencement conditions require that the Proponent (Flyers Creek Wind Farm Pty Ltd):

- provides evidence demonstrating that appropriate access arrangements are in place for all affected properties within the project area or on the path used for the proposed 132kV electricity transmission line; and
- submits various documents including:
 - a flora and fauna survey for the proposed 132kV transmission line;
 - an Aboriginal cultural heritage assessment for the 132kV transmission line;
 - a noise report for two of the sensitive receivers (at locations 78 and 89); and
 - a revised substation plan and associated impact assessment.

The Proponent has not yet fully complied with the relevant deferred commencement conditions and has advised the Department that it will not be able to do so by 14 March 2015.

On 25 February 2015, the Proponent lodged a modification application under section 75W of the EP&A Act. The proposed modification seeks an additional 12 months to comply with the deferred commencement conditions under Schedule B of the project approval (i.e. until 14 March 2016).

3 STATUTORY CONTEXT

3.1 Section 75W

The project application for Flyers Creek Wind Farm was originally lodged under Part 3A of the EP&A Act. Although Part 3A was repealed on 11 October 2011, the project remains a 'transitional Part 3A project' under Schedule 6A of the EP&A Act, and hence any modification to this approval is to be made under the former Section 75W of the Act.

Based on its assessment, the Department is satisfied that the application can be characterised as a modification to the existing approval (rather than a new project in its own right) as the proposal is administrative in nature, would not alter the approved footprint of the wind farm, and would not increase the environmental impacts of the approved project.

3.2 Approval Authority

The Minister for Planning and Environment is the approval authority for the modification application. However, under the Minister's delegation of 16 February 2015, the Executive Director, Resource Assessments, may determine the application. This is because there were less than 10 public objections received, the relevant local council (Blayney Shire Council) has not objected to the proposal, and a political disclosure statement has not been made on this application (although a disclosure was made in regard to a previous related application).

4 CONSULTATION

Upon receiving the modification application, the Department made it available on the Department's website from 3 March 2015. The Department has not received any submissions from the public, but is aware that a number of affected landowners continue to oppose the project and any extension to the deferred commencement conditions.

5 ASSESSMENT

5.1 Access Agreements

The Department notes that as the project was declared 'critical infrastructure', the consent of the various landowners was not required at the time that the project was lodged and approved, in accordance with Clause 8F of the *Environmental Planning and Assessment Regulation 2000*.

However, as with any wind farm (or any other development for that matter), the Proponent must reach an agreement with the owners of the land where infrastructure is proposed to be located before any construction on that land can commence. This reality is reflected in the deferred commencement provisions in the project approval.

The Department has been advised by the Proponent that it believes it has valid agreements with all but 2 of the 30 applicable landowners. However, the Department also understands that the majority of these agreements expired during 2013 and 2014, and the Proponent claims that these agreements remain valid because there were significant delays in the assessment process.

Irrespective of whether the agreements remain valid, the Proponent has advised that it is currently re-negotiating any agreements that may have expired, and expects to finalise these access arrangements in the coming months.

In considering this matter, the Department notes that the Proponent has every incentive to reach agreements with applicable landowners and comply with the deferred commencement provisions, as the project cannot proceed unless both of these matters are finalised.

The Department also acknowledges that preparing and finalising access arrangements with affected landowners is often a long process, and that the 12 month timeframe originally imposed is a relatively short period of time to re-negotiate these agreements, particularly given that there are over 30 landowners involved.

However, the Department considers that it would not be reasonable for these negotiations to be prolonged unnecessarily, and has recommended a 6 month extension to the deferred commencement provisions instead of the 12 month extension requested by the Proponent. The Department considers that this should provide the Proponent with sufficient time to finalise any negotiations, and to comply with the deferred commencement conditions.

5.2 Other Requirements

The Proponent has submitted the following documents in accordance with Schedule B of the project approval, namely:

- additional background noise monitoring for property 78;
- additional flora and fauna assessment for the revised transmission line route; and
- a revised substation plan and associated impact assessment.

The Department has also been advised that an Aboriginal archaeological and cultural heritage assessment within the revised transmission line route will be completed and submitted in the near future. In regard to noise monitoring on property 89, the landowner has refused access to the property and therefore the Proponent is unable to comply with this condition at the present time.

5.3 Benefits of the Project

The Flyers Creek Wind Farm has been declared 'critical infrastructure' and would bring a range of economic benefits to the local and regional economy as well as to the NSW Governments' plans to encourage the development of cleaner sources of energy for the community of NSW.

In this regard, the project has a capital investment value of \$195 million, would employ over 100 people, and generate up to 123 MW of clean energy for NSW consumers. It would also contribute to Australia's Renewable Energy Target of sourcing 20 per cent of electricity from renewable sources by 2020.

Using the NSW Wind Farm Greenhouse Gas Saving Tool developed by the NSW Office of Environment and Heritage (OEH), it has been estimated that the Flyers Creek Wind Farm would reduce greenhouse gas emissions by up to 305,000 tonnes annually (at maximum capacity), which is equivalent to removing approximately 70,000 cars off Australian roads.

Given these significant economic and environmental benefits, the Department does not consider it would be reasonable or in the broader public interest to allow the project approval to lapse without providing additional time for the Proponent to try to meet its obligations under the deferred commencement provisions.

6 RECOMMENDED CONDITIONS

The Department has drafted recommended conditions for the proposal (see Appendix A) which provide a 6 month extension to the deferred commencement conditions under Schedule B of the project approval.

7 CONCLUSION

The Department has assessed the merits of the proposed modification in accordance with the requirements of the EP&A Act.

The Department accepts that the negotiation of private access arrangements is difficult and time-consuming, and believes the Proponent should therefore be given additional time to meet the deferred commencement conditions of the approval.

The Department also notes that the proposal would not modify the project (as approved) or result in any additional environmental impacts.

Overall, the Department considers the potential benefits of the approval of the proposed modification far outweigh the alternative, which would result in the Flyers Creek Wind Farm not being developed and the loss of a range of significant economic and environmental benefits to the region and the State as a whole.


Consequently, the Department considers that the proposed modification is in the public interest, and should be approved, subject to a 6 month extension to the deferred commencement provisions.

8 RECOMMENDATION

It is RECOMMENDED that the Executive Director, Resource Assessments & Business Systems:

- **consider** the findings and recommendations of this report;
- **determine** that the proposed modification is within the scope of section 75W of the EP&A Act;
- **approve** the proposed modifications under section 75W of the EP&A Act; and
- **sign** the attached notice of modification (Appendix A).


Mike Young
A/Director
Resource Assessments
12.3.15.

 13/3/19
David Kitto
Executive Director
Resource Assessments & Business Systems

APPENDIX A – NOTICE OF MODIFICATION