

## ASSESSMENT REPORT Flyers Creek Wind Farm MODIFICATION (MP08\_0252 MOD2)

### 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).



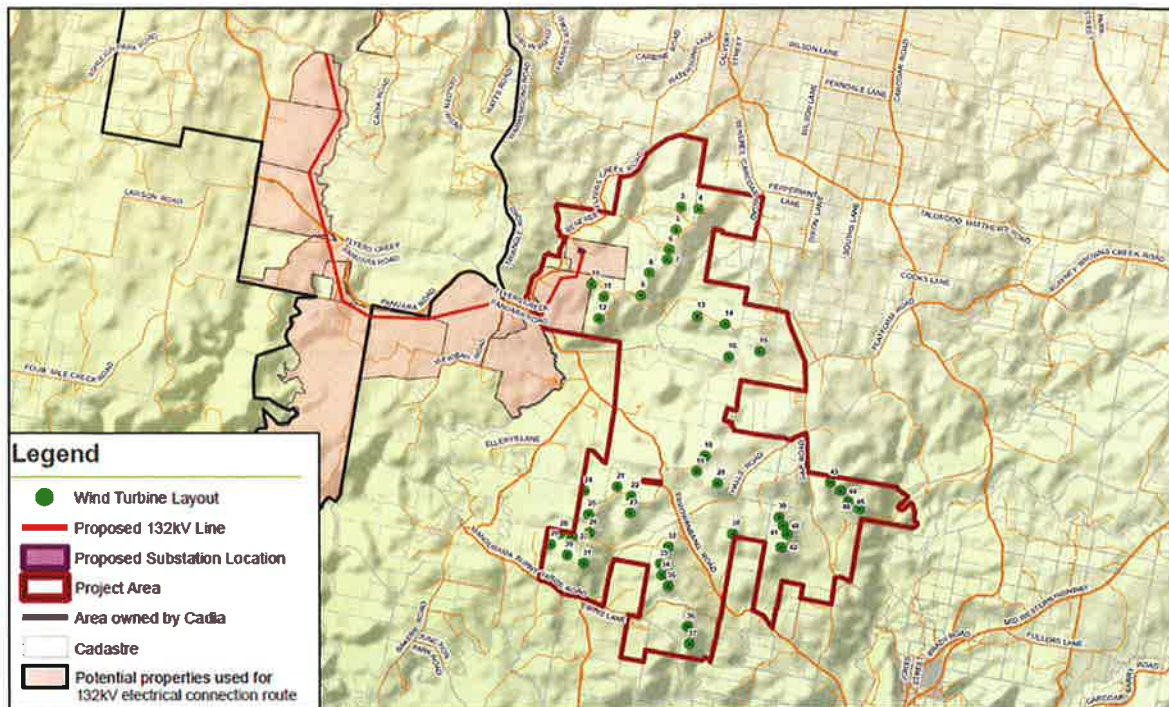
**Figure 1: Regional Location**

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 42 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**

Schedule B of the Flyers 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.

On 13 March 2015, a modification application to extend the time frame to comply with deferred commencement conditions of the project approval from 12 to 18 months was approved by the Executive Director, Resource Assessments and Business Systems.

Accordingly, unless the deferred commencement conditions are complied with within 18 months from the date of the project approval (i.e. by 14 September 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 and on the alignment 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.

## 2 PROPOSED MODIFICATION

On 13 August 2015, the Proponent lodged a modification application under Section 75W of the EP&A Act. The proposed modification aims to amend elements of the deferred commencement conditions by:

- modifying the location for additional background noise monitoring in relation to property 89; and
- removing the 132kV transmission line that would connect the wind farm substation to the electricity grid (on the existing Orange to Cadia Mine 132kV line) from the scope of the project approval.

In its application, the Proponent also advised that it would be seeking a further modification to the project approval to excise an additional 3 properties from the project area, and an alternative alignment for a 33kV transmission line.

### 3 STATUTORY CONTEXT

#### 3.1 Section 75W

The project application for the Flyers Creek Wind Farm was originally approved under Part 3A of the EP&A Act. Although Part 3A was repealed on 1 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 would reduce 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 is the approval authority for the modification application. However, under the Minister's delegation of 16 February 2015, the Executive Director, Resource Assessments and Business Systems, 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 publicly available on its website. The Department also notified the landowners directly affected by the proposed modification, including the owner of property 89 and private landowners along the route of the transmission line.

Since the application was made publicly available on 14 August 2015, the Department has received 4 submissions. All the submissions objected to the proposal and raised a number of concerns, as summarised below:

- **Flyers Creek Wind Turbine Awareness Group** - the submission raised a large number of concerns, principally in regard to administrative and process related issues. These matters include concerns about:
  - whether the application involves land outside the existing project boundary;
  - the implications of the project's 'Critical Infrastructure' status for landowners;
  - the manner in which contract negotiations have taken place between the Proponent and landowners;
  - the validity of the proposed noise monitoring approach;
  - the viability of the project in the absence of an approved gird connection option, and various technical concerns about the impacts of the wind farm on the performance of the electricity network; and
  - the retention of the deferred commencement provisions, including an additional requirement that the project should not be allowed to proceed without agreements in place with landowners along any new transmission line route.
- **Property 89** – the owners of this property supported the concerns raised by the Flyers Creek Wind Farm Awareness Group, but also indicated that they would be prepared to allow noise monitoring on their property, subject to certain conditions being met.
- **Transmission Line** – two submissions from owners of land along the external 132kV transmission line route were received. These submissions raised concerns about potential impacts of the wind farm, such as noise, shadow flicker and health. Concerns were also raised about the time and effort spent in negotiating with the Proponent and that the costs of such should be reimbursed.

The Department has considered the submissions in detail, and acknowledges the continuing concerns that members of the local community have in regard to the wind farm in general. However, this assessment must focus on issues directly relevant to the modification application in accordance with the EP&A Act. These issues are considered in detail in Section 5 below.



## 5 ASSESSMENT

### 5.1 Background Noise Monitoring – Property 89

Under the deferred commencement conditions, additional background noise monitoring is required at two properties, identified in the Preferred Project Report as properties 78 and 89.

The Proponent has undertaken additional monitoring at property 78 and submitted documentation to the Department (Appendix B). The Department has reviewed the report and is satisfied it adequately addresses the requirements of the condition.

In the case of property 89, the landowners have previously declined access to the property, so it has not been possible for the Proponent to comply with the condition's requirements. Therefore, the Proponent has requested an alternative method of identifying background noise levels at this property. This involves undertaking background monitoring at an alternative location with similar characteristics to property 89. The proposed location is in proximity, and at a similar elevation, to the residence on property 89 (see Figure 3).



**Figure 3: Alternative Noise Monitoring Location**

The submission from the Flyers Creek Wind Turbine Awareness Group included a review prepared by acoustic consultants L Huson and Associates. This review raised some issues with the proposed modification and made some suggestions about how the monitoring should be undertaken, including that:

- the proposed approach to modelling would not be consistent with the current conditions of approval that require monitoring to be undertaken within 30 metres of a residence;
- monitoring should compare the noise with the turbines operating and again with the turbines not operating to measure the difference in noise levels; and
- the equipment is not sufficiently sensitive to measure the background noise levels on the site.

However, the Department has considered these matters in detail, including obtaining advice from the Department's internal noise expert. In summary, the Department considers the alternative location would provide a very similar (or even slightly lower) background noise result to the residence on property 89.

Accordingly, in the absence of access to property 89, the Department is satisfied that the proposed approach provides a practical and acceptable means of determining background levels, and subsequently of determining compliance with operational noise levels, at property 89.

In regard to the concerns raised by Huson and Associates, the Department notes that it is common practice to extrapolate noise monitoring results from representative locations to nearby receivers, and is an approach accepted by the Environment Protection Authority (EPA) under the *NSW Industrial Noise Policy* and under the *Draft NSW Planning Guidelines: Wind Farms*.

The practice of establishing background noise levels, and then monitoring compliance with applicable operational criteria is also accepted practice, and there would be no material benefit in requiring a wind farm operator to have to switch off turbines to establish compliance with the criteria in the project approval. Given that operational noise monitoring for wind farms often takes

several days (or even weeks) to obtain sufficient data, adopting the suggested approach would also result in significant operational disruptions to the wind farm.

The Department accepts that some equipment may not be sufficiently sensitive to adequately capture very low background noise levels. However, this is not relevant to the current situation as the equipment required need only detect noise levels down to around 30 dB(A). This is because the minimum application criteria is either background plus 5 dB(A) or 35 dB(A), whichever is the greater. The Department notes that standard monitoring equipment can readily record noise levels well below 30 dB(A). Consequently, there should be no technical impediment to determining compliance using the equipment proposed by the Proponent.

Finally, the Department notes that the owner of property 89 has indicated that they would be willing to allow noise monitoring at the residence, subject to certain caveats.

The Department's view is that there is no technical need to access the property to determine compliance. However, it has recommended a flexible approach in the conditions which would allow noise monitoring to be undertaken at either Location A or at property 89 (should suitable access arrangements be agreed).

## **5.2 Offsite 132kV Transmission Line**

The approved project includes a 132kV transmission line connecting the wind farm with the electricity grid (see Figure 2).

The transmission line is also subject to the deferred commencement conditions. Condition B1a) requires that the Proponent provide evidence to the Secretary that it has 'appropriate access arrangements' in place for land required for the transmission line.

However, the Proponent has advised that it does not have appropriate access arrangements for the subject land, and has requested that the approved transmission line route be removed from the project approval. It has also advised that it is developing an alternative route for the transmission line, and would seek separate planning approval for the transmission line once its plans are further developed.

While the final alignment for the transmission line has not been finalised, the Proponent has advised that it is most likely to utilise part of the road reserve along Panuara Road, and that it has written confirmation from Blayney Shire Council that it has no objection to the road reserve being used for this purpose.

The Department acknowledges that a grid connection is fundamental to the operation of a wind farm. However, it considers that based on information presented in the Environmental Assessment and the Preferred Project Report for the original project, as well as the additional information provided to address the deferred commencement conditions (see Section 5.3 below), there are suitable alternatives available that would not result in unacceptable environmental impacts.

Of course whatever option is selected, the Proponent (or a relevant public authority such as Essential Energy) would be required to obtain planning approval and undertake an assessment of the associated environmental impacts in accordance with the requirements of the EP&A Act.

Given that the removal of the transmission line from the project approval will not, in itself, have any environmental impacts, and there are mechanisms in place to ensure that these changes are adequately assessed, the Department has no objection to the requested change.

## **5.3 Deferred Commencement Conditions**

In light of the changes already proposed to the deferred commencement conditions, the Department considers it appropriate to review the need to retain these conditions in the project approval.

Condition B1(a) - requires appropriate access arrangements be in place for land along the offsite 132kV transmission line. However, the removal of the offsite transmission line as proposed in this modification means that this requirement is no longer necessary or applicable.

Condition B1(b) – requires appropriate access arrangements to land within the project area.

The Proponent has submitted evidence of contractual arrangements with all landowners within the project area. The Department acknowledges that some parties to these contracts now appear to be reluctant to participate in the wind farm development. However, the Department's examination of the contracts has concluded that they have been validly executed, and while they include provisions for early termination, no evidence has been presented to the Department to suggest that the leases have been terminated.

On this basis, the Department has concluded that appropriate access arrangements are in place to satisfy the requirements under Condition B1(b), and there is no need to retain this provision in the project approval.

Notwithstanding the above, the Proponent has advised the Department that it intends to lodge a further modification application to remove at least 3 additional properties from the project area, and make some consequential changes to the internal transmission line alignments. The Department understands these properties are owned by landowners that have valid agreements with the Proponent, but have indicated they no longer wish to participate in the project. In the event, that such an application is lodged, the Department notes that the impacts on these properties would have to be re-assessed as 'non-associated residences'.

Conditions B2(a) and (b) – requires additional flora and fauna and Aboriginal/cultural heritage surveys of the offsite transmission line to be undertaken. The justification for these conditions would be negated by the removal of the offsite transmission line from the project approval. Nevertheless, the Proponent has submitted documentation to the Department to address these conditions. The Department has reviewed these documents and concluded that impacts on both biodiversity and cultural heritage are likely to be minimal.

Condition B2(c) – requires background noise monitoring to be undertaken at properties 78 and 89. The Proponent has submitted a report addressing property 78 (Appendix B), and the Department is satisfied that this report adequately addresses the requirements of the condition in regard to property 78. As discussed above, the Department considers that it has not been possible for the Proponent to fulfil the requirement in regard to property 89, and that there is a technically robust alternative available to address the intent of the deferred commencement provision. Accordingly, the Department considers that this condition can be removed from the project approval.

Condition B2(d) – requires the submission of a revised substation plan. The plan has been submitted by the Proponent (Appendix C). The plan proposes a revised substation location which would now be over 1000 metres from the nearest non-associated residence, consistent with the condition which requires that it be at least 800 metres from the nearest non-associated residence. The plan also addresses visual, access and noise issues as required by the condition.

The Department has assessed these matters and concluded that the impacts are acceptable and likely to be lower than the location identified in the original Environmental Assessment. Separately, the flora and fauna report required by condition B2(a) addressed biodiversity issues at the substation site, and concluded there would be no significant impacts on biodiversity. The Department concurs with this conclusion.

In light of the changes requested by the Proponent in relation to offsite properties and noise monitoring, and the Proponent's response to the other deferred commencement conditions, the Department considers that these conditions have been satisfied or are no longer necessary.

Accordingly, the Department considers that these conditions should be removed from the project approval so that the Proponent can commence the development, subject to meeting the applicable conditions of approval.

Importantly, the project approval also includes lapsing provisions to ensure that the Proponent makes meaningful progress in developing the project within 5 years of the date of approval (i.e. by 14 March 2019). This gives nearby landowners some assurance that the development rights over the land will not remain in place over an indefinite period of time.

## 6 RECOMMENDED CONDITIONS

The Department has drafted recommended conditions for the proposal (see Appendix A) which:

- remove the offsite transmission line from the scope of the project approval;
- remove the deferred commencement conditions (B1 and B2);
- formalise the revised substation location;
- provide for an alternative location to monitor background noise at property 89, if the landowners' agreement cannot be obtained;
- ensure that the results of further background noise monitoring at property 78 and 89 are utilised in project development and operational noise compliance monitoring; and
- update the names of various NSW Government agencies.

## 7 CONCLUSION

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

The Department accepts that the Proponent has not been able to establish appropriate access arrangements for the properties along the offsite transmission line and property 89. This has prevented the Proponent from complying with the deferred commencement conditions under the project approval.

Under the circumstances, the Department considers that it is reasonable to remove the proposed transmission line from the project approval. The Department also considers there would be a range of technically feasible and environmentally acceptable alternative alignments that would enable the wind farm to be connected to the electricity network. In saying this, any of these alternatives would require a separate approval and an associated environmental assessment in accordance with the EP&A Act.

The Department is satisfied that the proposal to undertake noise monitoring at an alternative location to property 89 would provide a practical and acceptable solution, if the Proponent cannot reach an appropriate access agreement with the landowner.

The Proponent has submitted a range of additional information to satisfy the requirements set out under the deferred commencement conditions. Based on a detailed review of these documents, the Department is satisfied that the aims of the deferred commencement conditions have been met. Accordingly, the Department considers these conditions can be deleted, subject to the outcomes of the reviews required under these conditions being suitably incorporated in the project approval.

Overall, the Department considers the proposed modification would:

- not result in any additional environmental impacts;
- avoid impacts on private property where the landowners do not wish to participate in the project; and
- facilitate the development of the project with its 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 number of amendments to the project approval.

## 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).

*Neville Osborne 7/9/15*  
Neville Osborne  
Team Leader  
Resource Assessments

*Michael Young*  
Mike Young  
Acting Executive Director  
Resource Assessments & Business Systems  
14.9.15.

## **APPENDIX A – NOTICE OF MODIFICATION**



**APPENDIX B – BACKGROUND NOISE MONITORING PLAN – PROPERTY 78**

**APPENDIX C- REVISED SUBSTATION PLAN**