

ASSESSMENT REPORT

Capital 2 Wind Farm

Extension of Approval Lapse Date (MP 10_0135 - MOD 4)

EXECUTIVE SUMMARY

The Capital 2 Wind Farm (the project) is an approved renewable energy development located on the eastern shores of Lake George, approximately 10 kilometres (km) north of Bungendore. The project is adjacent to the operational Capital Wind Farm within the Queanbeyan-Palerang Regional Council (Council) local government area (LGA).

Both the Capital 1 and 2 Wind Farms are owned by Infigen Pty Ltd (Infigen), with Capital Wind Farm 2 Pty Limited, a subsidiary of Infigen, managing the construction and operation of the project.

The project was declared to be “critical infrastructure” by the NSW Government in 2009, and was approved by the NSW Planning Assessment Commission (Commission) in November 2011. The project involves:

- the development and operation of 41 wind turbines with a tip height of 157 metres (m);
- a net generating capacity of 143.5 megawatts (MW) of electricity;
- connection to a separate 33 kilovolt (kV) overhead transmission line; and
- connection to TransGrid’s Canberra-Kangaroo Valley 330 kV transmission line.

Infigen is yet to commence construction of the project, and is now seeking to modify the project approval to extend the lapse date by an additional 5 years from the current lapse date of 1 November 2016.

The Department publicly exhibited the modification application and accompanying documentation from 23 September until 10 October 2016. During the exhibition period, the Department received 92 submissions, including 86 from the general public (85 objections, 1 support), 6 from agencies (no objections) and a supplementary letter of support from Council.

Matters raised in submissions included cumulative impacts, property prices, uncertainty about the commencement of the project, currency of the original Environmental Assessment, the duration of the public exhibition for the application, and the status of the Capital Community Committee established by Infigen.

In its application, Infigen states that the key reason for the delay in the development of the project has been the uncertainty created by the Australian Government’s Renewable Energy Target (RET) policy review. However, with the recent resolution of the RET, Infigen claims that market conditions have substantially improved and there are likely to be opportunities to secure a commercial off-take agreement to facilitate the development of the project.

Infigen also points to the benefits of the project, including:

- production of enough renewable energy to power more than 60,000 homes;
- creation of up to 120 full time jobs during construction and 6 full time jobs during operations; and
- direct capital investment of \$240 million into the NSW economy.

Infigen has also made significant investment in the approvals process, including three modifications, which demonstrates a strong commitment to the project and its development.

In assessing the merits of the application, the Department considered the information provided by Infigen to support its application; the existing conditions of approval; public and agency submissions; the applicant's Response to Submissions; and the requirements of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The Department acknowledges that the RET review has affected investor confidence in renewable energy development over a number of years, and that the prospects of developing the project have improved significantly since this matter has been resolved at the Commonwealth level.

The Department also acknowledges the environmental benefits of the project, including the renewable energy generated, reduction in greenhouse gas emissions and subsequent contribution to the RET scheme; and the economic benefits of the project to the local and regional economies.

The Department considers that these benefits can be realised through an extension in the lapse date of the approval without any increase in the environmental impacts that have already been assessed, approved and subject to the stringent conditions that were imposed when the project was approved by the Commission. There have also been no significant changes in the receiving environment since the original consent or subsequent modifications (as recently as 2015) that warrant re-assessment or significant amendments to the existing conditions of approval.

In addition, the Department notes that the declaration of the project as "critical infrastructure" means that the project was, in the opinion of the then Minister for Planning, essential for the State of NSW for economic, environmental or social reasons.

Given the above, 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 to develop the project.

Notwithstanding, the Department acknowledges the concerns of the public regarding ongoing uncertainty and delays associated with the project, and the need to realise the benefits of the project as soon as practicable.

In this regard, the Department notes that Infigen is seeking a 5 year extension to the approval, meaning it may be 10 years from the original approval before there is any material progress in developing the project. The Department does not consider it is reasonable for the local community to have to live with ongoing uncertainty for another 5 years, and the Department considers that the applicant should be required to commence development in a shorter timeframe.

Accordingly, the Department considers that the modification is approvable but recommends extending the lapse date by another 2 years after the date on which current modification is granted, instead of 5 years.

The Department considers this outcome provides an appropriate balance between addressing the concerns of the community and realising the significant economic and environmental benefits that the project would bring to the region and the State as a whole.

It is also consistent with similar decisions for other wind farms in NSW, including the Silverton Wind Farm which was recently granted a 2 year lapse date extension following an initial request for 5 years.

1 BACKGROUND

The Capital 2 Wind Farm (the project) is an approved renewable energy development located on the eastern shores of Lake George, approximately 10 km north of Bungendore (see Figure 1).

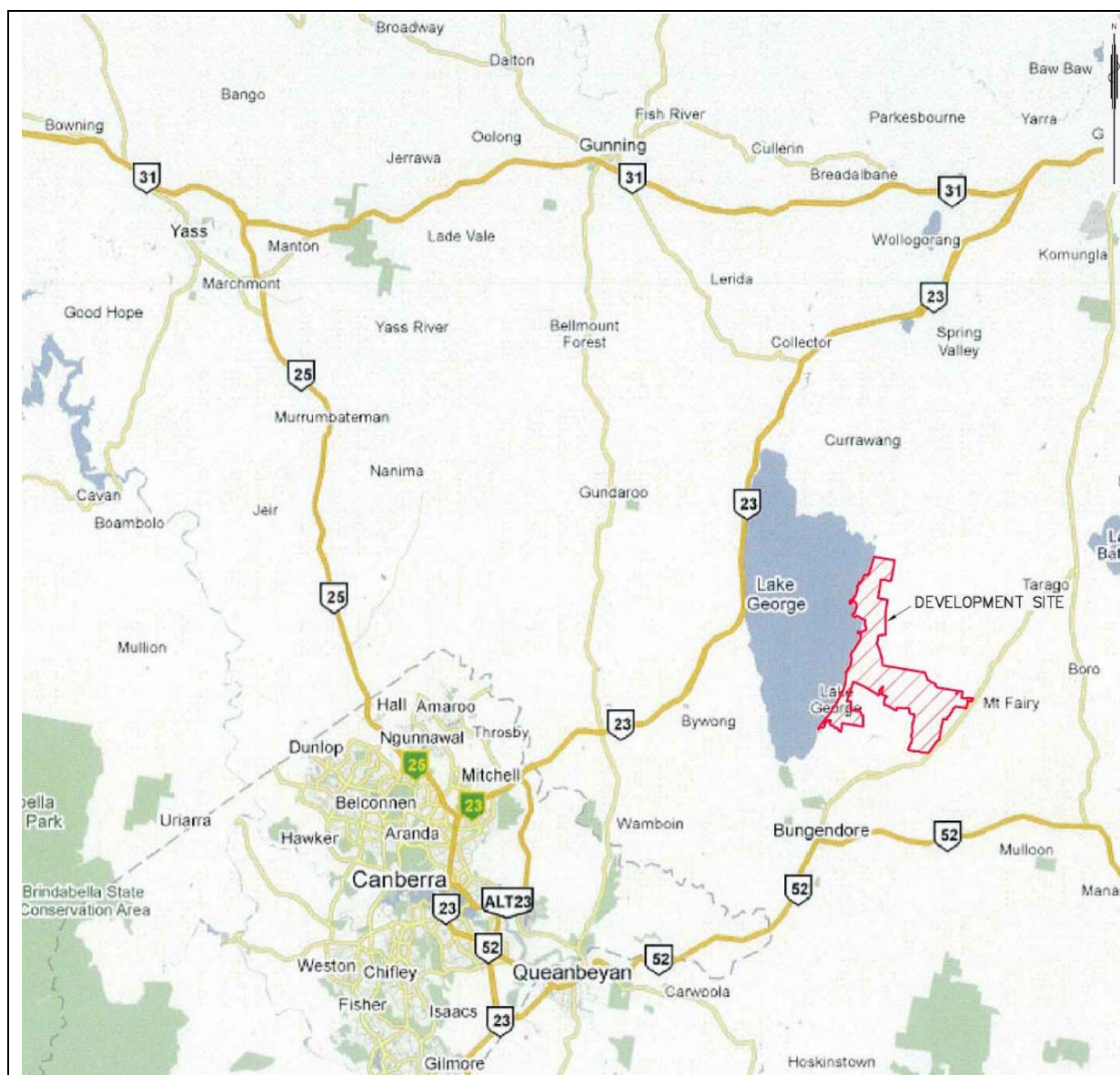


Figure 1: Project Location

The project is adjacent to the operational Capital Wind Farm within the Queanbeyan-Palerang Regional Council LGA (see Figure 2). Both projects are owned by Infigen Pty Ltd (Infigen), with Capital Wind Farm 2 Pty Limited, a subsidiary of Infigen, managing the construction and operation of the project.

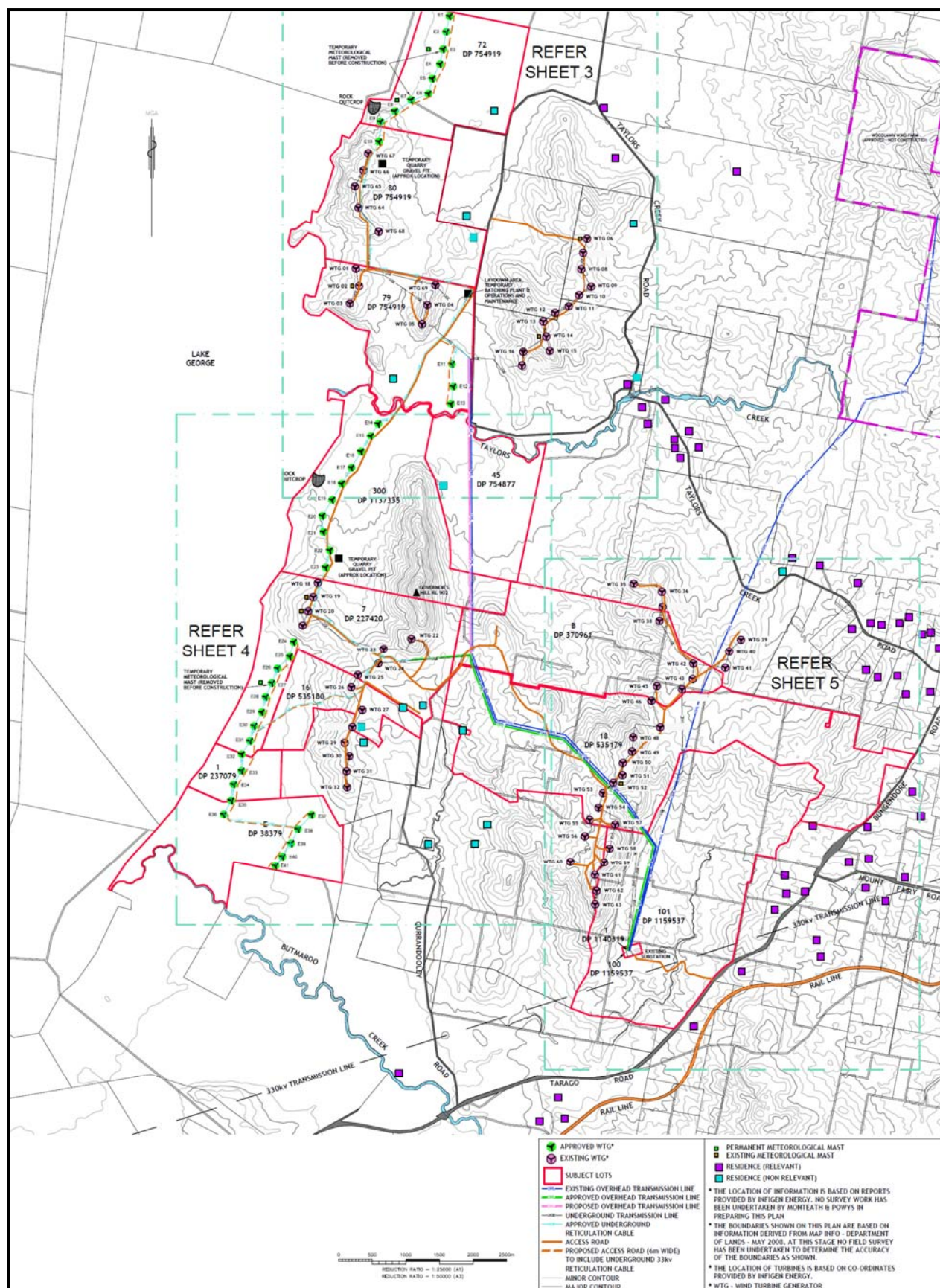


Figure 2: General Layout of Capital 1 and Capital 2

Capital 1 Wind Farm

The Capital 1 Wind Farm was approved by the then Minister for Planning in 2006, and commenced operations in 2009. The project approval allows development and operation of 67 wind turbines, arranged in three groups on the ridges of the eastern shore of Lake George. The Capital 1 Wind Farm can generate up to 450,000 MW hours of electricity per year, with the majority of the electricity generated contracted to supply the Sydney Water Desalination Plant at Kurnell.

Capital 2 Wind Farm

The Capital 2 Wind Farm essentially forms an extension to the Capital 1 Wind Farm, and was approved by the NSW Planning Assessment Commission (Commission) in November 2011 and is yet to be developed.

Since it was approved, the project approval has been modified 3 times, as follows:

- Modification 1: Increase in turbine capacity from 3 MW to 3.5 MW (approved 4 July 2013);
- Modification 2: Increase in blade diameter from 114 m to 126 m (approved 29 June 2015); and
- Modification 3: Extension to the overhead transmission line (approved 17 March 2015).

The project, as approved, currently allows:

- the development and operation of 41 wind turbines with a tip height of 157 m;
- a net generating capacity of 143.5 MW of electricity;
- connection to a separate 33 kV overhead transmission line; and
- connection to TransGrid's Canberra-Kangaroo Valley 330 kV transmission line.

Once operational, the project would produce approximately 315,000 MW hours of electricity per year.

The project was declared to be a "critical infrastructure project" under the EP&A Act on 11 November 2009 concerning energy generating developments with a capacity to generate at least 30 MW. The declaration of Capital 2 as "critical infrastructure" means that the project was, in the opinion of the then Minister for Planning, essential for the State of NSW for economic, environmental or social reasons.

2 PROPOSED MODIFICATION

Infigen is seeking to modify the Capital 2 Wind Farm project approval to extend the approval lapse date by an additional 5 years.

In its Response to Submissions, Infigen also advises that it would accept a 4 year extension to commence construction activities.

Infigen states that the delays surrounding the Australian Government's Renewable Energy Target (RET) was the key driver in preventing the construction of Capital 2 before the approval lapse date of 1 November 2016.

Infigen provides the following reasons to justify why the modification should be approved:

- *Public Interest* – generating approximately 143.5 MW of renewable energy, the project would provide sufficient energy needs for an estimated 60,600 homes and reduce CO₂ by approximately 400,000 tonnes per annum;
- *Economic Benefits* – the project is expected to deliver a range of economic benefits, including the equivalent of up to 120 full time construction jobs and 6 full time operational jobs, and direct investment of approximately \$240 million into NSW;
- *Improvements in Technology* – the extension of the currently approved lapse date would allow a more efficient output per turbine; and
- *Unchanged Project Footprint* – the proposed modification is minor in nature and does not involve a change in any physical attributes of the approved project.

3 STATUTORY CONTEXT

3.1 Section 75W Modifications

The project was originally approved under the former 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 is to be assessed and determined under Section 75W of the EP&A 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). The proposed modification would not alter the approved footprint of the wind farm, and would not increase the environmental impacts of the approved project. Consequently, the Department considers the proposal to be within the scope of Section 75W of the EP&A Act.

Although the lapse date in the existing project approval has now passed, the approval is taken to remain in force until the current modification is determined in accordance with Clause 11A of Schedule 6A of the EP&A Act. Accordingly, the modification may be determined.

3.2 Approval Authority

The Minister for Planning was the approval authority for the original project application. Consequently, the Minister for Planning is the approval authority for this modification request. However, under the Minister’s delegation of 14 September 2011, the Planning Assessment Commission must determine the modification application as there were more than 25 public objections.

4 CONSULTATION

The Department publicly exhibited the application and accompanying documentation from 23 September 2016 until 10 October 2016.

During the public exhibition period, the Department:

- advertised the exhibition of the application in the Canberra Times, Goulburn Post and Bungendore Mirror;
- made the application and accompanying documentation available on its website and at Council offices (both Queanbeyan and Bungendore locations), the Nature Conservation Council, and the Department’s Sydney office; and
- consulted with key government agencies.

To supplement the formal exhibition process, Infigen:

- presented an overview of the proposed modification at its Capital Community Committee meeting on 29 September 2016;
- provided copies of the modification application via email to Capital Community Committee members, landholders and the Council; and
- advised the community through its website and by advertising in the Bungendore Weekly.

It is noted that many submissions criticised the consultation process undertaken by the Department, including the duration of the exhibition period. However, the Department considers that the extent of consultation was commensurate with the nature of the proposed modification, and that the local community and other stakeholders have been provided with sufficient access to relevant documentation and had sufficient time to make an informed submission.

4.1 Summary of Submissions

During the exhibition period, the Department received 92 submissions: 86 from the general public and 6 from agencies (see Appendix D).

As summarised in Table 1:

- of the 86 public submissions, 85 objected and 1 supported the proposed modification;
- none of the agencies raised any concerns with the proposed modification; and
- Council provided a supplementary letter in support of the proposed modification (see Appendix F).

Table 1 also indicates the location of the submissions relative to the wind farm. The Department notes that the majority of submissions were from residents between 10 and 50 km from the site, and there were no submissions from people living in close proximity (i.e. within 5 km) to the Capital 2 turbines (noting that 6 submissions were from unknown locations, and there are 15 associated dwellings and 13 non-associated dwellings within 5 km of the turbines).

Table 1: Summary of submissions

Submitters	Number	Objection / Support
Agency	6	
<ul style="list-style-type: none"> • Queanbeyan-Palerang Regional Council 		Support
<ul style="list-style-type: none"> • Office of Environment and Heritage (OEH) • Environment Protection Authority • Department of Primary Industries • Department of Industry (Resources and Energy) • Roads and Maritime Services 		No objections
Public	86	85 objections 1 support
<i>Approx. distance from Capital 2 turbines:</i>		
< 5 km	0	
5 - 10 km	8	
10 - 50 km	49	
> 50 km	23	
Unknown (PO Box)	6	
TOTAL	92	

The Department has summarised the matters raised in the submissions in Table 2.

Table 2: Summary of matters raised in submissions

Issue
ENVIRONMENTAL
<ul style="list-style-type: none"> - Currency of EIS: The EIS is not current, as the local ecosystem and fauna community of Lake George has changed since the original EIS, particularly bird and bat populations. - Land Management: Noxious weeds on the site have not been properly managed, resulting in infestations of adjoining properties and an extension of the lapse date would exacerbate this issue. - Cumulative Impacts: The surrounding area already hosts a large number of wind farms.
SOCIAL
<ul style="list-style-type: none"> - Property Values: Devaluation of local property prices due to the delay in development of the project. - Uncertainty: Uncertainty surrounding the commencement of development has caused a significant social impact on the local community.

Issue**COMMUNITY CONSULTATION**

- **Exhibition:** The exhibition time should have been longer - lodging the application 6 weeks prior to the lapse date was a deliberate tactic to ensure the Department and community were not provided with sufficient time to assess the proposal.
- **CCC:** The proponent has misled the Department and community by creating a Capital Community Committee, which is similar to a Community Consultative Committee (CCC), but does not provide the same function and covers several projects in the surrounding area.

JUSTIFICATION

- **Lapse Date:** Wind farms or SSDs should not be able to extend their approval lapse dates, and approving the application would set a poor precedent.
- **Further Delays:** The project may never be developed and the delays show there is a lack of funding or investor interest that is unlikely to change over the next 5 years.
- **Economic Benefits:** The project's investment in renewable energy would deliver economic benefits to the area.

The Department notes that many of the issues raised related to the merits of the project as a whole, rather than the specifics of the proposed modification. In this regard, the Department notes that no physical changes are proposed to the approved project, and the economic, social and environmental costs and benefits were fully considered in accordance with the EP&A Act when the project was approved by the Commission in 2011. Therefore, this assessment has been confined to consideration of the application to extend the approval lapse date.

4.2 Response to Submissions

Infogen provided the Department with a Response to Submissions on 28 October 2016 (see Appendix E).

In its assessment of the modification application, the Department has considered all issues raised during the exhibition period, as well as Infogen's response to these submissions.

5 ASSESSMENT

In assessing the merits of the modification application, the Department has considered the:

- modification application and existing conditions of approval;
- public and agency submissions;
- applicant's Response to Submissions; and
- requirements of the EP&A Act.

5.1 Lapse Date Justification

The Department acknowledges that the request by Infogen to extend the project approval lapse date has been primarily as a result of uncertainties associated with the Australian Government's RET. The Department recognises that this has affected investor confidence in renewable energy development over a number of years, and has been an issue for other NSW renewable energy projects and the communities in which they are proposed.

In its Response to Submissions, Infogen states that the recent commitment to the RET has improved the market circumstances and would provide opportunities for identifying more favourable turbine technology and securing an off-take agreement. Infogen has also made significant investment in the approvals process, including three modifications, which demonstrates a strong commitment to the project and its development.

The Capital 2 Wind Farm was declared to be "critical infrastructure" by the NSW Government in 2009, as it would bring a range of economic benefits to the local and regional economy as well as contributing to the NSW Government's plans to encourage the development of cleaner sources of energy for the community of NSW.

In this regard, the project would generate up to approximately 143.5 MW of renewable energy, the project would reduce greenhouse gas emissions by up to 400,000 tonnes annually for the life of the project, which is sufficient for the average consumption of approximately 60,600 homes.

The project would therefore contribute to the Australian Government's RET scheme, which has set a target for large-scale renewable energy generation of 33,000 gigawatt hours (GWh) in 2020.

The project also has a capital investment value of approximately \$240 million, would employ the equivalent of up to 120 full time jobs during construction and provide up to 6 full time jobs during operation. This level of investment would also stimulate flow-on economic benefits in the local and regional economies.

Based on its assessment, the Department considers that these benefits can be realised through an extension in the lapse date of the approval without any increase in the environmental impacts that have already been assessed, approved and subject to stringent conditions when the project was approved in 2011.

The Department also accepts that there have been no significant changes in the receiving environment since the original consent or subsequent modifications (as recently as 2015) that warrant re-assessment or significant amendments to the existing conditions of approval (see Table 3 below).

The Department notes Council's support for the proposal, particularly in relation to the environmental, economic and social benefits, and that no objections were raised by agencies or from residences located within 5 km of the proposed turbines.

Finally, the Department notes that there is no legal impediment to Infigen applying for this modification, or preventing the Department assessing the modification application based on its merits. In this regard, the Department has assessed numerous approval lapse date extension applications on similar state significant projects, including the Glen Innes and Silverton Wind Farms.

In light of the matters set out above, and given the 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 to develop the project.

5.2 Lapse Date Duration

Notwithstanding the above discussion, the Department acknowledges the concerns of the public regarding ongoing uncertainty and delays associated with the project, and the need to realise the benefits of the project as soon as practicable. In this regard, the Department notes that Infigen is seeking a 5 year extension to the approval, meaning it may be 10 years from the original approval before there is any material progress in developing the project.

The current lapsing condition in the project approval states that the:

"approval shall lapse five years after the date on which it is granted, unless works subject of this approval have commenced before that time."

This means that Infigen does not need to have fully developed the wind farm within the lapsing period. Rather, it only needs to have commenced some of the work required to develop the project under this approval.

However, the Department does not consider it is reasonable for the local community to have to live with ongoing uncertainty for another 5 years, and that Infigen should be required to commence development of the project within a shorter timeframe.

In this regard, the Department considers that there is no fundamental environmental or policy constraint (such as the previous review of the RET) that would prevent Infigen commencing the project sooner than 2022 (i.e. within 5 years). It is noted that Infigen has already flagged that a 5 year extension is not necessary in its Response to Submissions, where it accepts that a 4 year extension would be sufficient to commence construction activities.

Accordingly, the Department considers that extending the lapse date by another 2 years after the date on which the current modification is granted, instead of 5 years, would provide sufficient time for Infigen to make meaningful progress in developing the project and formally commencing construction activities.

The Department considers this outcome provides an appropriate balance between addressing the concerns of the community and realising the significant economic and environmental benefits that the project would bring to the region and the State as a whole.

It is also consistent with similar decisions for other wind farms in NSW, including the Silverton Wind Farm which was recently granted a 2 year lapse date extension following an initial request for a 5 year extension.

5.3 Other issues

The Department's consideration of other issues raised in submissions is summarised in Table 3.

Table 3: Assessment of Other Issues

Issue	Department's Consideration	Recommendation
Biodiversity	<ul style="list-style-type: none"> - Submissions were concerned about potential impacts on the increased population of water birds using Lake George and bats in the locality, since the original consent (approved by the Commission in November 2011). - The Department notes that as part of Modification 2 (approved by the Commission in June 2015), an additional bird and bat impact assessment was undertaken which concluded that negligible additional risks would likely result from the proposed increase. OEH accepted these findings and considered that the increased turbine blade lengths would not increase the risk of impacts to birds and bats at the site. - The Department considers that there have been no significant changes in the receiving environment since the original consent or subsequent modifications (as recently as 2015) that warrant re-assessment or amendments to the existing conditions of approval. 	No additional conditions required.
CCC	<ul style="list-style-type: none"> - The Department acknowledges the concerns raised in submissions regarding the confusion between the Capital Community Committee currently being operated by Infigen and the formal Community Consultative Committee (CCC) which must be established under the existing conditions of approval. - In order to clarify this matter, the Department has recommended the current CCC condition be amended to include a date on which the CCC must be formally established (i.e. 4 months from the approval date of this modification), and that it must be operated in accordance with the Department's recently published CCC guidelines (2016), including appointment of an independent chair and members of the CCC by the Secretary of the Department. 	Amend the existing CCC condition to include a commencement date and that it be established and operated in accordance with the <i>Community Consultative Committee Guidelines for State Significant Projects (2016)</i> .
Land Management	<ul style="list-style-type: none"> - Submissions were concerned about land management, particularly in regard to management of weeds on the site. - The Department notes that the obligation for controlling weeds under the <i>Noxious Weeds Act 1993</i> rests with the owner of the land. The Act is implemented and enforced by the Local Control Authority for the area, which is usually the local council. - Notwithstanding, the existing conditions of approval contain a requirement for a Flora and Fauna Management Plan, including procedures for managing weeds on the site. - If the community has concerns about this matter, it should be raised with the Department as a compliance matter so that it can be properly investigated. 	No additional conditions required.

6 RECOMMENDED CONDITIONS

The Department has drafted a Notice of Modification (see Appendix A) and consolidated approval (see Appendix B), and has recommended that the approval should lapse 2 years after the date on which approval for this modification is granted.

In modifying the project approval, the Department has also taken the opportunity to update and strengthen the existing conditions to focus more on outcomes and to better reflect contemporary conditions applying to other wind farms in NSW.

In line with this approach, a micro-siting condition has been included in the consent to ensure that no turbine is moved more than 100 m from its proposed location (as identified by the GPS coordinates shown in Appendix A of the Consolidated Approval). This is consistent with the original Environmental Assessment for the project which proposed a micro-siting of 100 m, and provides greater certainty about this matter for all stakeholders as the project moves into construction. It also aligns with other recent wind farm approvals which have incorporated an allowance for micro-siting of at least 100 m.

The Department has also recommended a number of changes to the conditions to align with contemporary regulation of wind farms in NSW, including in regard to:

- ensuring the Department and the CCC are notified prior to construction, operations and decommissioning, including details of any staging of the project;
- ensuring local residents are notified about their rights to request visual screening;
- requiring appropriate reporting of any environmental incidents;
- allowing strategies, plans or programs to be staged over the life of the project;
- providing detailed final layout plans for the project, including any micro-siting and revised GPS coordinates; and
- establishing and operating a CCC within 4 months of the granting of approval for this modification, in accordance with the Department's latest CCC guidelines.

Infigen does not object to the proposed amendments to the project approval.

7 CONCLUSION

The Department has assessed the modification application, submissions on the proposal, the existing conditions of approval, and the applicant's Response to Submissions in accordance with the requirements of the EP&A Act.

This has included careful consideration of the concerns raised in submissions about the delays in the development of this project, and the uncertainty this has generated for local residents.

The Department agrees that the lapsing dates of planning approvals for State Significant Developments should not be allowed to be extended indefinitely, and that there should be an incentive for proponents to realise the benefits of these projects within a reasonable timeframe.

The Department acknowledges there has been considerable uncertainty in the renewable energy industry over the last 3 to 4 years as a result of the review of the RET, and this has resulted in delays in the development of a number of wind farm projects across NSW, including the Capital 2 Wind Farm.

Given this, the Department does not consider it would be reasonable to allow the Capital 2 Wind Farm approval to lapse without providing a further opportunity for Infigen to realise the considerable benefits of the project, which were recognised by the NSW Government and the Commission when it was approved in 2011.

On balance, the Department considers that a 2 year extension to the lapse date (instead of 5 years) strikes an appropriate balance between addressing the concerns of the community and realising the significant economic and environmental benefits that the project would bring to the region and the State as a whole.

8 RECOMMENDATION

It is RECOMMENDED that the Planning Assessment Commission, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report, noting that the Department considers the application is approvable, subject to conditions; and
- if the Commission determines to grant approval to the application under Section 75W of the EP&A Act, **signs** the attached Notice of Modification (see Appendix A).


Mike Young
Director
Resource Assessments

23/3/17


David Kitto
Executive Director
Resource Assessments & Business Systems

23/3/17

APPENDIX A: NOTICE OF MODIFICATION

APPENDIX B: CONSOLIDATED APPROVAL

APPENDIX C: MODIFICATION APPLICATION

Refer to: http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7937

APPENDIX D: SUBMISSIONS

Refer to: http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7937

APPENDIX E: RESPONSE TO SUBMISSIONS

Refer to: http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7937

APPENDIX F: ADDITIONAL COUNCIL LETTER