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18 July 2023

The Hon. Sonya Kilkenny
Minister for Planning
Level 16, 8 Nicholson Street,
EAST MELBOURNE VIC 3002
Lodged by email: michael.juttner@delwp.vic.gov.au

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Our reference: DBC 0033 Delburn Wind Farm Section 971 Application Letter (Updated)

Dear Minister Kilkenny,

**SECTION 971 APPLICATION TO AMEND PLANNING PERMITS FOR DELBURN WIND FARM
PLANNING PERMIT NOS. PA2001063 (LATROBE); PA2001064 (BAW BAW); PA2001065
(LATROBE) AND PA2001066 (SOUTH GIPPSLAND)
STRZELECKI HIGHWAY DELBURN**

1. INTRODUCTION

DB Consulting Pty Ltd continues to act on behalf of Delburn Wind Farm Pty Ltd (Delburn), which is part of the OSMI Australia group of companies. Delburn is the proponent of the Delburn Wind Farm in Central Gippsland, Victoria, which spans three local government areas: Latrobe, South Gippsland, and Baw Baw.

As you would be aware, the Minister for Planning issued four planning permits for the Project in March 2022, comprising:

- Planning Permit No. PA2001063 – Wind Energy Facility, Latrobe;
- Planning Permit No. PA2001064 – Wind Energy Facility, Baw Baw;
- Planning Permit No. PA2001066 – Wind Energy Facility, South Gippsland;
- Planning Permit No. PA2001065 – Terminal Station, Latrobe

In undertaking a review of these permits when they were issued last year, it became apparent that there were a number of instances where corrections were required to the permits to address errors. To address these matters corrections requests were lodged in May 2022 and May 2023, which were approved on 20 April 2023 and 22 May 2023 respectively.

In undertaking the review, it also became apparent that there were a number of conditions, on all of the permits, where changes would be beneficial/appropriate. This includes circumstances where changes are required:

- to ensure consistency of wording and that the requirements of the conditions are clear;
- to address agreed amendments by referral authorities (specifically the Country Fire Authority for all four permits and AusNet in the case of the Latrobe wind energy facility permit);
- in the case of the Latrobe wind energy facility permit, to the conditions associated with the setbacks to the Strzelecki Highway to ensure the requirements for setbacks are clear, unambiguous and appropriately reflect the intent of the Panel.

Accordingly, the purpose of this letter is to seek a Section 971 amendment to make these various minor changes to various conditions of the planning permits.

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The following sections of this letter outline the Section 971 amendment request, which are further supported by a tracked changes version of each of the permits at Appendix A. Explanation for the requested changes is provided in the sections below, as well as in Appendix A, where it is provided as comments associated with each of the tracked changes.

It is noted that this letter is an updated version of a letter originally submitted on 31 May 2023, following further discussions with planning officers in relation to wording of conditions. This letter accompanies the resultant Section 50 amendment request.

2. REQUESTED AMENDMENTS

2.1 Consistency/Rewording Amendments

In each of the permits there are a number of instances where the terminology used is inconsistent within the permit, or where a condition is drafted in a way that could be interpreted in a number of different ways. Examples of these include (but are not limited to) the following (using the Latrobe wind energy facility permit as an example in this instance).

- Use of the term wind 'farm' when it should be wind 'energy facility' (Condition 8 – and in other conditions).
- Clarification that the off-site landscaping program applies to any dwelling that exists at the date the program is endorsed (Condition 9.a.).
- Use of the term 'the Project' when it isn't defined, so replacing it with 'wind energy facility' or 'utility installation' (Condition 12.c. and in other conditions).
- Grammatical 'tidy-ups' such as adding the word 'specify' to the start of Conditions 19.g. and h. (and others).

Each of the permits have the proposed changes shown at Appendix A with an accompanying explanation for each change. Whilst these changes are all relatively minor in nature, they are, nonetheless, very important to ensure there is consistency in terminology both within each permit, and across all four of the permits, to ensure there is no ambiguity in what the conditions mean and how they are to be applied.

2.2 Referral Authority Conditions – Agreed Amendments

Country Fire Authority (CFA)

In each of the permits a range of minor changes are proposed to the 'Bushfire Risk and Mitigation' conditions, which in the case of the Latrobe wind energy facility permit, are Conditions 44 to 59 (inclusive). All of these changes have been agreed to by the CFA, refer correspondence confirming this at Appendix B.

The majority of these changes are proposed to improve clarity and readability of the conditions, and to again ensure there is no ambiguity in what the conditions mean and how they are to be applied.

In addition to these minor edits there are also changes proposed to each of the wind energy facility permits to the condition on each that relates to the installation of static water supply tanks. This is Condition 45. f. of the Latrobe wind energy facility permit and it currently states the following.

'prior to the commencement of construction, install 5 x 100,000 litre static water supply tanks and ensure they are filled;'

It is proposed to replace this with an amended condition, to ensure that it is clear that only five tanks are required in aggregate across all elements of the Delburn Wind Farm project (Wind Energy Facility and Terminal Station) as was recommended by Fire Risk Consultants (rather than the potential interpretation of it being five tanks for each permit). The proposed amended condition is as follows.

'prior to the commencement of construction, install up to 5 x 100,000 litre static water supply tanks within the wind energy facility site or surrounding area and ensure they are filled;'

One final proposed amendment to the bushfire related conditions that we also wish to highlight is the proposed deletion of a condition in each of the wind energy facility permits which requires the following (Condition 51.a. of the Latrobe wind energy facility permit).

'Fire breaks must:

At the perimeter, commence from the boundary of the facility or from the vegetation screening (landscape buffer) inside the property boundary;'

This is a requirement that is associated with solar and battery energy storage systems (BESS) but not wind energy facilities. It was not included in the risk assessment prepared by Fire Risk Consultants nor their recommended conditions. The evidence of Fire Risk Consultants that the fire risk was acceptable did not assume a facility perimeter fire break and this evidence of Fire Risk was accepted by the Panel. It was also not included in the draft recommended conditions of the CFA. Whilst we acknowledge that it formed part of the Panel's recommended conditions the basis for its inclusion is not clear. A perimeter fire break is referred to in a section of the CFA guidelines which is relevant to solar and Bess facilities but not for wind energy facilities. As you are aware, the BESS was not supported by the Panel and has not been approved. It appears therefore that this condition may have been included in the Panel's recommendations in error.

The CFA has agreed that this requirement is not relevant or necessary for a wind energy facility and can be removed, refer to Appendix B correspondence.

AusNet Services

Amendments are proposed to Condition 60 of the AusNet Services (AusNet) conditions on the Latrobe wind energy facility permit. The amendments are proposed in accordance with AusNet's revised position in relation to minimum setbacks between turbine and transmission lines.

The previous position of AusNet was that a distance of 630 metres was required between a wind turbine and an AusNet easement. However, as a result of the publication of the Energy Networks Australia Document 047-2022 (Guideline for Wind Turbines Proximity to Electricity Transmission Lines) on 10 June 2022, this requirement has now changed. On the basis of the new Guideline, AusNet is supportive of the following revised Condition 60 and new Condition 61:

60. *'The minimum distance required between a wind turbine (as measured at the centre point of the tower) and any transmission line is the greater of the below distances:*
- a) *Maximum height of the blade tip plus the extent of the easement from the transmission line centreline; or*
 - b) *Three times the rotor diameter.*
61. *No guyed lattice masts shall be constructed within 176 metres of AusNet Transmission Group's easement'.*

AusNet's support for these conditions is confirmed in correspondence included at Appendix B.

2.3 Strzelecki Highway Setback Conditions Proposed Amendments

Currently the Latrobe wind energy facility permit includes within the specifications section at Condition 2.g. the following requirement.

'Within the micro siting footprint, wind turbines should be set back from the Strzelecki Highway to the maximum extent possible'.

As has been discussed at previous meetings, the drafting of this condition is problematic. This is due to the fact that it refers broadly to wind turbines within Latrobe, rather than relating specifically to the turbines which gave rise to the discussion of setbacks at the Panel hearing i.e. those which were proposed to be sited within 200m of the Strzelecki Highway road reserve. Those turbines were discussed as they gave rise to community concerns about blade throw, driver distraction and so forth and it is logical that any contemplation of setbacks to address community concerns would relate to those particular turbines. Unfortunately, as it is currently worded, the condition could be interpreted

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to apply to all wind turbines within the Latrobe permit, rather than only those specific turbines that were the subject of the setback assessment.

In addition, the condition provides that the turbines should be set back from the highway to the 'maximum extent possible' within the micro-siting footprint. The maximum set back within the micro-siting footprint could be up to 100 metres from the turbine as shown in the endorsed development plans, noting that there is no qualification on 'maximum extent possible'. The condition wording is also problematic in that the micro-siting provisions of the permit do not become activated until after the development plans are endorsed, and thus it is unclear how the setbacks are to be considered in preparing the development plans.

Due to the fact that the specific turbines haven't been singled out, and that there is no qualification on 'maximum extent possible' Condition 2.g. could potentially be interpreted as requiring all wind turbines within Latrobe to be set back as far as the micro-siting footprint allows (up to 100 metres), irrespective of other relevant factors such as maximising the wind resources and energy capture (when also accounting for impacts from other nearby wind turbines) and minimising noise impacts on neighbours.

On reading the Panel report it is clear this is not what was intended. The Panel states the following at Section 6.6, page 106, of its report.

'As outlined in this chapter the Panel has concluded there is no statutory requirement for turbine setback from the Strzelecki Highway and no demonstrated need to increase setbacks for driver safety, particularly on the Strzelecki Highway.'

The Panel notes the recommendations of the Australian Energy Infrastructure Commissioner for setback from roads and has already identified that this is not a recommendation that has been picked up by the State Government for implementation in planning schemes.

As for many wind farms, the possibility of 'micro-siting' turbines has been suggested, to allow for movement of turbine locations within a small localised distance to improve environmental outcomes or turbine performance. This is an issue that is normally considered at the detailed design stage.

The Panel considers that at this time, the opportunity could be taken, and considering the flow on impacts to other matters associated with turbine locations, to maximise the distance the turbine base is from the Strzelecki Highway.

As the Panel has concluded, there is no specific road safety need to do this, but it may give comfort to submitters to move turbines away from the Highway where possible. The Panel has not made a specific recommendation to this effect given its findings in the preceding chapters but considers it should be pursued in detailed design. The Panel has suggested a draft planning permit condition on this basis'.

It is therefore clear that the Panel's intention was:

- to focus on turbines near the Strzelecki Highway which were of concern to the submitters; and
- for turbines to be set back as far as possible when doing so would not impact 'other matters associated with turbine locations' presumably including maximising the wind resource and energy capture, geological/geotechnical consideration, flora and fauna impacts, telecommunication pathways, noise and so forth.

This is not reflected by the condition as included on the permit. Therefore, modifications to the wording of Condition 2.g) to better capture the panel's intent, and also provide compliance certainty, are suggested, as outlined below.

2.g) *the following wind turbines (as referenced on Dwf_Ovr_36-04a-V3-5 Site Plan (Rev 3.5)) must be set back from the Strzelecki Highway no less than the corresponding distances listed below:*

- T09 – 103.3 m;*
- T10 – 188.4 m;*
- T11 – 200.0 m;*

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- iv. T12 – 200.0 m;
- v. T15 – 141.4 m;
- vi. T16 – 102.9 m;
- vii. T20 – 102.1 m;
- viii. T27 – 177.4 m;

It is considered that this alternative condition addresses the requirements of the Panel in relation to this issue and clearly identifies the wind turbines where setback limitations in relation to the Strzelecki Highway should be considered.

3. NOTICE REQUIREMENTS

The nature of the amendments that are proposed to each of the permits, as outlined in the previous section, are all relatively minor in nature and in most instances represent rewording or neutral changes to clarify the intent of particular conditions - for example, the revised wording to confirm the water tank requirements or the replacement conditions proposed to address the Strzelecki Highway setback issue discussed in the previous section. It is considered that these matters are not likely to cause 'material detriment' to any person and accordingly would not warrant public notice being given.

In the case of the proposed deletion of the perimeter fire break requirement, we note again that this requirement is not something that is required for fire protection purposes for a wind energy facility, as confirmed by the CFA in its attached correspondence. Accordingly, it is considered that this change to the permits is also something that, in practical terms, should not result in a material detriment to any person.

Nonetheless, based on preliminary discussions about this issue, Department of Transport and Planning (DTP) considers that this element of the proposed amendments may warrant the need for public notice. Accordingly, if that is the confirmed view of DTP once a review of this amendment request has been undertaken, then we would support such notice being given to those landholdings that directly abut the wind energy facility boundary for a 14 day period. Given the changes that are proposed, in our view it should not require the extent of notice that was given for the original permit applications.

With this in mind, we have included a map at Appendix C which shows these adjacent properties and trust that this will assist in your consideration of notice requirements.

4. CONCLUSION

The changes that are proposed to the four planning permits associated with the Delburn Wind Farm are all relatively minor in nature. In most instances they seek to ensure consistency of language and clarity of interpretation. The only requirement that is proposed to be 'removed' from the permits is the perimeter fire break condition, which, as previously discussed, the CFA has agreed is not required for a wind energy facility.

Given the above, it is considered that if DTP determines that notice is required of the proposed amendments, such notice should be limited only to the owners and occupiers of allotments or lots adjoining the land to which the wind energy permits apply, and as shown at Appendix C.

We look forward to your consideration of this amendment request further and would be pleased to discuss with you any aspect of the proposed amendments. Any enquiries should be directed either to the undersigned on 0448 565 896 or via email at dbutcher@dbconsulting.au or to Peter Marriott on 0438 635 276 or via email petermarriott@osmi.com.au

Yours sincerely,



Debra Butcher
Director

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Appendix A – Tracked Changes Planning Permits

Appendix B – CFA and AusNet Correspondence

Appendix C – Adjacent Land Map

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