

# ALBERTON WIND FARM

## Planning Permit Application No. PA1700284

Use and development of land for a wind energy facility including the construction of buildings and the carrying out of works; the removal of native, non-native and dead vegetation; and the creation and alteration of access to a Road Zone Category 1




# Summary

Key Information	Details
<b>Application No:</b>	PA1700284
<b>Received:</b>	15 September 2017 (amended 3 August 2018)
<b>Proponent:</b>	Synergy Wind Pty Ltd
<b>Planning Scheme:</b>	Wellington Shire Council
<b>Address of the Land:</b>	Land about 3km (nearest point) southwest of Yarram in the Wellington Shire of the Gippsland Region with an overall site area of approximately 3,200 hectares. For full 'Address of the Land', refer Appendix A
<b>Proposal:</b>	Use and development of land for a wind energy facility including the construction of buildings and the carrying out of works; the removal of native, non-native and dead vegetation; and the creation and alteration of access to a Road Zone Category 1
<b>Detail:</b>	The proposal is for 34 wind turbines; 30 with a maximum height of 200m and 4 with a maximum height of 180m. It is anticipated the wind turbines may produce a capacity of about 120 megawatts (MW). The removal of 1.195 hectares of remnant patch native vegetation and 16 scattered trees is also proposed
<b>Development Value:</b>	\$450,000,000





## Zones and Overlays:


### Zones

Most of the site is within the:

- Farming Zone (FZ) 

Parts of the site are within the:

- Industrial 1 Zone (IN1Z) 
- Public Conservation and Resource Zone (PCRZ) 
- Road Zone Category 1 (RDZ1) 
- Road Zone Category 2 (RDZ2) 





Zone Map – with proposed wind energy facility extent shown as :

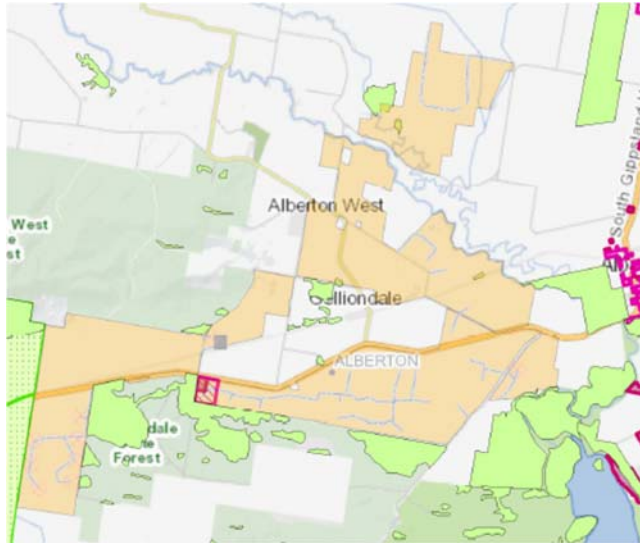


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

## Overlays

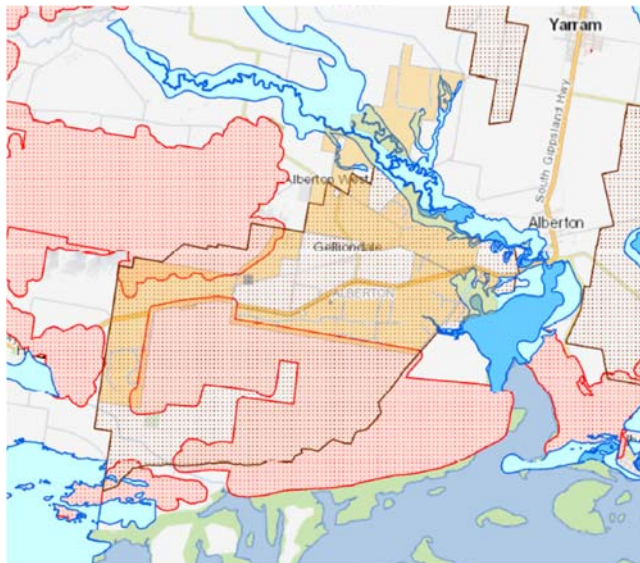
The site is partly affected by the following **Environment and Landscape** overlays and **Heritage and Built Form** overlays:

- Environmental Significance Overlay – Schedule 1 (Coastal and Gippsland Lakes Environs) (ESO1) 
- Environmental Significance Overlay – Schedule 2 (Wetlands) (ESO2) 
- Design and Development Overlay – Schedule 1 (Industrial Areas) (DDO1) 
- Heritage Overlay – Schedule (HO81 Gelliondale Briquette Plant – VHR Ref. No. H1058) 



The site is partly affected by the following **Land Management** overlays and **Other** overlays:

- State Resource Overlay – Schedule 1 (Gippsland Brown Coalfields) (SRO1) 
- Bushfire Management Overlay (BMO) 
- Floodway Overlay (FO) 
- Land Subject to Inundation Overlay (LSIO) 



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**Permit Triggers:**

A permit is required for use of land for a wind energy facility under:

- Clause 33.01-1 (IN1Z) Any other use
- Clause 35.07-1 (FZ) Use of a wind energy facility
- Clause 36.03-1 (PCRZ) Use of a wind energy facility

A permit is required for development of a wind energy facility under:

- Clause 33.01-4 (IN1Z) Buildings and works
- Clause 35.07-4 (FZ) Buildings and works
- Clause 36.03-2 (PCRZ) Construct a building or construct/carry out works
- Clause 42.01-2 (ESO1 and ESO2) Construct a building or construct/carry out works
- Clause 43.02-2 (DDO1) Construct a building or construct/carry out works
- Clause 44.03-2 (FO) Construct a building or construct/carry out works
- Clause 44.04-2 (LSIO) Construct a building or construct/carry out works

A permit is required to remove vegetation under:

- Clause 42.01-2 (ESO1 and ESO2) to remove vegetation, including dead vegetation
- Clause 52.17-1 (Native Vegetation) Remove, destroy or lop native vegetation, including dead native vegetation

A permit is required to alter access to a Road Zone Category 1 under:

- Clause 52.29-2 (Land Adjacent to a RDZ1) Create or alter access to a road in a Road Zone Category 1

A permit is required to develop and use land for a wind energy facility under:

- Clause 52.32-2 (Wind Energy Facility) Use and develop land for a wind energy facility

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**Clause 52.32-3  
(Turbine within one  
kilometre of a  
dwelling):**

Written consent is required from the owner of an existing dwelling within one kilometre of a proposed turbine:

- The application includes seventeen dwellings within one kilometre of a proposed turbine that were existing as at the date of the application. The application is accompanied by a plan showing the seventeen existing dwellings as well as evidence of the written consent of the owner of these dwellings as at the date of the application.

Reference is made to the following properties:

- Two properties on Ti Tree Road at Lot 2 PS603015B and Lot 3 PS603015B; and
- A dwelling on Ti Tree Road understood to be at Allotment 7C Parish of Alberton West, for which Occupancy Permit ref. BS-U1590/20170312/0 was issued on 5 February 2019.

Although these properties have planning approval for, or contain, a dwelling within one kilometre of a proposed turbine, the dwellings did not exist at the date of the application (15 September 2017).

Although their written consent is not required, amenity impacts on these properties will be assessed.

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<b>Responsible Authority:</b>	Under Clause 72.01-1, the <b>Minister for Planning</b> is the responsible authority for the use and development of land for a permit application for a wind energy facility.
<b>Objections following public notice</b>	150
<b>EPBC</b>	On 22 August 2019, <b>approval</b> for EPBC ref. 2017/7854 was issued against the controlling provisions of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> . The approval was issued subject to conditions, including mitigation measures to limit impacts on listed threatened bird species and listed migratory bird species (including turbine locations and turbine shutdown) as well as monitoring protocols, including through an approved Bat and Avifauna Management Plan.
<b>EES</b>	On 28 December 2017, the Minister for Planning determined that an Environmental Effects Statement (EES) was <b>not required</b> (ref. 2017R12).

## Proposal

It is proposed to construct a wind energy facility comprising thirty-four (34) wind turbines about 3km southwest of Yarram (at its nearest point) in the Wellington Shire of south-eastern Victoria (Gippsland region). The proposal is known as the Alberton wind farm. In this regard, an application has been made pursuant to the provisions of the *Planning and Environment Act 1987* ('the Act'). The Alberton wind farm proposal includes the following components:

- Thirty-four wind turbines. Thirty of the turbines (1-30) are proposed to have a maximum height of 200m, minimum clearance of 60m and maximum rotor diameter of 140m. Four of the turbines (31-34) are proposed to have a maximum height of 180m, minimum clearance of 40m and a maximum rotor diameter of 140m. The turbine footings have a radius of approximately 15m.
- A concrete hardstand adjacent to each of the 34 turbines, approximately 25m by 45m in area.
- Access tracks approximately 23km in total length, 4-6m wide during construction but reducing to 2.5m wide after construction.
- Underground cabling with associated trenching (3m wide), including to align with existing and new access tracks where possible.
- One large electrical substation and two small electrical substations near the intersection of Coal Mine Road and the former South Gippsland rail line. The application materials note that substations may not be required depending on the type of turbine used.
- Four works compounds approximately 0.575 to 2.773 hectares in area.
- The removal of 2.321 hectares of native vegetation, comprising 1.195 hectares of remnant patch native vegetation and 16 scattered trees.
- The creation/alteration of access to a road in a Road Zone Category 1 (the South Gippsland Highway) as well as the construction or carrying out of works, such as underground cabling.

A specific turbine model is not proposed. Instead, the application is presented as a 'maximum footprint' assessing up to seven turbine models with maximum potential impacts for each.

The application includes conceptual details of power lines. However, the final connection to the electricity network and electrical infrastructure will be determined if a permit is granted, a turbine model selected, and a connection agreement signed. A further planning permit application (or applications) will be required for any power lines to connect the proposal to the electricity network.

The turbines are not proposed to be lit with aviation obstacle/safety lighting.

The application does not propose a control building, operations and maintenance facility, car parking, water tanks or signage.

## Subject Site

The proposed Alberton wind farm is located about 3km (at its nearest point) to 15km (at its further point) southwest of Yarram in the Wellington Shire of the Gippsland Region. The overall site area is approximately 3,200 hectares; however, the development footprint within this is 59.39 hectares – or about 1.8 per cent of the area. The proposed turbines would be located entirely on private property.

The image below shows the proposed wind farm site, shaded in orange, in context. This includes the surrounding towns of Yarram, Alberton, Port Albert and Port Welshpool, the South Gippsland Highway running through the site (purple), a 66-kv power line also running through the site (grey), as well as the northern part of the Corner Inlet to the south of the site.



The site is largely cleared agricultural land used for grazing stock; primarily dairy farms. There are scattered farm dwellings and other buildings and structures on the site. The land is generally flat coastal plains – with minimum and maximum altitudes of 6m and 25m above sea level respectively. Introduced pasture grasses dominate, although there are dispersed patches of remnant vegetation (mainly small, fenced areas of native scrub) with a range of flora and fauna species present. This includes various Ecological Vegetation Classes (EVCs).

The Albert River, Jack River, Stony Creek and various unnamed drainage lines traverse the site. However, they are not in the development footprint. Surface water drains into the nearby Corner Inlet to the south. The South Gippsland Highway, an important road in the region, bisects the site while other surrounding roads are a mixture of sealed and unsealed surfaces. An existing 66kV power line runs across the site and the proposed wind farm anticipates using this to connect into the grid (with additional infrastructure in place).

The former Gelliondale Briquette Plant site is located on the corner of Coal Pit Road and the South Gippsland Highway, about 40m to the north of the location for turbine T08. This is listed on the Victorian Heritage Register (H1058). No works are proposed within the heritage area. A site visit revealed that there appears to be limited remains of the former Gelliondale Briquette Plant.

The application materials assert the proposal's design has avoided all designated areas of Aboriginal cultural heritage sensitivity. A voluntary Cultural Heritage Management Plan (ref. 15167) for the project was approved on 15 February 2018.

## Land Restrictions

Most of the land parcels are not affected by restrictive covenants, encumbrances or agreements that would prevent the issue of the planning permit.

However, several land parcels are subject to Section 173 Agreements and the former Gelliondale Briquette Plant site is subject to a Notice under section 16(2) of the *Historic Buildings Act 1981*. None of these prevent the issue of the planning permit. The Section 173 Agreements prevent the further subdivision of land and/or the establishment of further dwellings, while the Historic Buildings Act Notice notes the land contains the former Gelliondale Briquette Plant site that is listed on the Victorian Heritage Register.

## Surrounding Area

The surrounding area reflects much of the characteristics of the subject site. It is largely flat land that has been cleared of vegetation and is used for agricultural purposes. There are large, extensive remnant forests, woodlands, heathlands, sedgeland and areas of scrub abutting the subject site. The Alberton West State Forest lies immediately to the northwest and the Gelliondale State Forest abuts to the south. There is a range of habitat values and actual or potential presence of various flora and fauna species, including listed species of an endangered or vulnerable nature.

The Corner Inlet is nearby to the south and supports a variety of wetland types, an array of habitats and abundant flora and fauna. This is an expansive RAMSAR site – a wetland of international importance – and the nearest turbine is 962m at its closest point from the RAMSAR site boundary. The Bass Strait coastline is around 10km to the southeast from the closest site boundary.

Regional cities, townships and localities surrounding the proposal include (at approximate distances to the nearest boundary of the wind farm): Yarram (3km to the northeast), Alberton (2km to the east), Port Albert (6km to the southeast), Welshpool (7km to the west) and Port Welshpool (7km to the southwest). The operational Toora wind farm is approximately 15km to the west from the nearest site boundary of the proposal, while the operational Bald Hills wind farm is about 50km to the west of the proposal.

The Gippsland region contains much of Victoria's coal resources. The coalfields that are currently being mined are located about 50km to the northwest around Morwell, Loy Yang and Yallourn.

Seventeen dwellings are located within 1km of a proposed turbine – all of which have provided written consent to the application (including three that are not used as permanent dwellings and that would be unoccupied after the construction of the wind farm).

There are just over 100 dwellings within approximately 3km of the proposed turbines.

## Zones and Overlays

Under the Wellington Planning Scheme, the proposed turbines are primarily located within the Farming Zone (FZ). However, one proposed turbine is in the Industrial 1 Zone (IN1Z). Other zones within the site area include the Public Conservation and Resource Zone (PCRZ) as well as Road Zone Category 1 (RDZ1) and Road Zone Category 2 (RDZ2). The South Gippsland Highway is a RDZ1 and Gelliondale Road is a RDZ2. While no turbines are to be located within a RDZ1, it is proposed to create and alter access to the South Gippsland Highway as well as to construct or carry out works, such as underground cabling.

The site is partially affected by the following overlays:

- Bushfire Management Overlay (BMO)
- Design and Development Overlay – Schedule 1 (Industrial Areas) (DDO1)
- Environmental Significance Overlay – Schedule 1 (Coastal and Gippsland Lakes Environs) (ESO1)
- Environmental Significance Overlay – Schedule 2 (Wetlands) (ESO2)
- Floodway Overlay (FO)

- Heritage Overlay – Schedule HO81 Gelliondale Briquette Plant – VHR Ref. No. H1058
- Land Subject to Inundation Overlay (LSIO)
- State Resource Overlay – Schedule 1 (Gippsland Brown Coalfields) (SRO1)

## Other Planning and Environmental Approvals

It is the proponent's responsibility to ensure all relevant approvals outside of the *Planning and Environment Act 1987* are in place. However, comment is made on the following relevant legislation.

### Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)

On 29 March 2017, the delegate for the Commonwealth Minister for the Environment decided the proposal is a **controlled action** under section 75 of the EPBC Act (ref. EPBC 2017/7854). As such, it required assessment and a decision about whether approval should be given under the EPBC Act. The controlling provisions of (or the matters protected by) the EPBC Act were:

- Listed threatened species and communities (sections 18 and 18A);
- Listed migratory species (sections 20 and 20A); and
- The ecological character of a declared RAMSAR wetland (sections 16 and 17B).

Priority matters of national environmental significance (MNES) were identified through the assessment of the Referral. The Commonwealth delegate noted in their decision that further investigation into the potential for significant impact was warranted for the Swift Parrot, Orange-bellied Parrot, Growling Grass Frog, White-throated Needletail, Fork-tailed Swift, and Corner Inlet, including Nooramunga Marine and Coastal Park (a RAMSAR site).

The planning permit process is being used to assess the potential impacts to MNES, as an accredited process under Bilateral (Assessment) Agreement between the Commonwealth and Victoria under section 45 of the EPBC Act. This accredited process helps avoid process duplication whilst enabling an integrated and efficient consideration of impacts on relevant State and Commonwealth matters.

On 17 March 2019, the Victorian Minister for Planning provided the Commonwealth Minister for the Environment with his Assessment Report under the Bilateral Agreement between the Commonwealth of Australia and the State of Victoria. This report concluded the environmental effects and risks of the project to MNES are acceptable, provided specific mitigation and avoidance measures are adopted. The provision of the Assessment Report concluded Victoria's assessment requirements under the Bilateral Agreement, in terms of informing the Commonwealth's approval decision and conditions for EPBC 2017/7854 under the EPBC Act.

On 22 August 2019, **approval** EPBC 2017/7854 was issued under the EPBC Act on behalf of the Commonwealth Minister for the Environment. The approval was issued subject to various conditions, which must be separately referred to and complied with. Broadly speaking, and relevant to this permit application, the conditions address the protection of listed threatened bird species and listed migratory bird species via required mitigation measures (including turbine locations and turbine shutdown) as well as monitoring protocols, including through a Bat and Avifauna Management (BAM) Plan, which must be implemented for the life of the project.

### Flora and Fauna Guarantee Act 1988 (FFG Act)

The *Flora and Fauna Assessment* sets out the proponent's view that targeted surveys have been undertaken for Clover Glycine, Eastern Spider-orchid, Maroon Leek-orchid, Metallic Sun-orchid and Strzelecki Gum as FFG Act listed flora species that are considered to potentially occur in the area. However, it is stated that none of these were found within the surveyed impact areas.

Further, the *Flora and Fauna Assessment* sets out the White-bellied Sea-Eagle (an FFG Act listed fauna species) was considered as being susceptible to impacts from the wind farm. However, it is stated the frequency of collisions is likely to be very low and population consequences are not



considered significant, given the State population is estimated at 100 adult pairs plus sub-adults, with the Corner Inlet area in South Gippsland supporting about 25 of these pairs. The *Flora and Fauna Assessment* states the proponent's view that it will be important to monitor for the presence of this species as part of any impact monitoring and mitigation plan and have a plan involving investigation – with a targeted mitigation response if repeated collision is detected.

### **Environment Effects Act 1978 (EE Act)**

The application materials note a Referral was previously submitted, with the Minister for Planning issuing his decision on 28 December 2017 that an EES is not required.

Furthermore, the *Flora and Fauna Assessment* sets out the proponent's view that a Referral is not required under the EE Act because the effects of the project on the environment are below the biodiversity impact criteria of the Ministerial Guidelines on Referral, as follows:

- Potential clearing of 10 hectares or more of native vegetation: the project will remove an estimated 1.195 hectares of native vegetation plus 16 scattered trees.
- Potential removal of one per cent or more of the habitat of a State threatened species: the project will have no impact on the habitat of a threatened species.
- Potential long-term change in the ecological character of a wetland listed under the RAMSAR Convention or in the national directory of important wetlands: impacts on the nearby Nooramunga and Corner Inlet Marine and Wildlife Reserves will not be significant due to the distance separating the project from the upper shores of these wetland areas.
- Extensive major impacts on the health and biodiversity of aquatic, estuarine or marine ecosystems: impacts on nearby aquatic, estuarine and marine ecosystems will not be significant due to the distance separating the project from the upper shores of these wetland areas.

Additionally, the *Cultural Heritage Assessment* includes comment on the EE Act, and sets out the proponent's view that a Referral is unlikely to be required on Aboriginal Heritage grounds.

### **Aboriginal Heritage Act 2006 (AH Act)**

The application materials include the *Cultural Heritage Assessment*, which considers implications relating to the AH Act. This report provides the proponent's due diligence for the proposal under the Aboriginal Heritage Act 2006 and sets out a mandatory CHMP is not required because the activity area of the proposed wind farm will avoid all areas of designated cultural heritage sensitivity.

However, the *Cultural Heritage Assessment* acknowledges Aboriginal Victoria has indicated that cultural heritage for this area is relatively unknown, and that whilst low risk, there is a chance of encountering undiscovered cultural heritage. This reflects the comments received from Aboriginal Victoria on 6 March 2018.

Accordingly, the proponent prepared a voluntary CHMP (ID. 15167), which was approved on 15 February 2018. If a planning permit is issued, the use and development will need to be undertaken in accordance with the requirements of the CHMP.

## **Referrals – Statutory**

### **Creation/alteration of access to a Road Zone Category 1 (VicRoads)**

The application was referred to VicRoads pursuant to section 55 of the Act. VicRoads is a **determining** referral authority pursuant to Clause 66.03 of the Planning Scheme for applications to create or alter access to a Road Zone Category 1.

On 12 October 2018, 5 April 2019 and 11 September 2019, VicRoads responded and confirmed they have no objection to the application being granted a permit, subject to conditions being imposed. These conditions include the preparation of a traffic and asset management plan to the satisfaction of VicRoads as well as other conditions generally relating to design and construction requirements.

VicRoads also requested a note be placed on any permit for a viewing area to maintain road safety, whereby vehicles can be safely parked off the roadway should be considered as a mitigating response to the safety of road users. The conditions and note will be included in any permit issued.

#### **Application under the Floodway Overlay (FO) and Land Subject to Inundation Overlay (LSIO) - West Gippsland Catchment Management Authority**

The application was referred to the West Gippsland Catchment Management Authority (CMA) pursuant to section 55 of the Act. The West Gippsland CMA is a **recommending** referral authority pursuant to Clause 66.03 of the Planning Scheme as the Relevant Floodplain Management Authority for applications under the FO and applications under the LSIO outside the waterway management district of Melbourne Water Corporation.

On 20 June 2018 and on 29 March 2019, the West Gippsland CMA responded and confirmed they do not object to the issue of a planning permit, subject to a condition being included for a Construction Management Plan to be developed to their satisfaction. This Plan must identify how all designated waterways will be protected during the construction phase of the project as well as earthworks, vegetation removal and sediment and erosion control measures. The West Gippsland CMA also requested a note be placed on any planning permit that all works within 30m of a designated waterway will require a Works on Waterways permit. The condition and note will be included in any permit issued.

#### **Native vegetation removal (Secretary of the Department of Environment, Land, Water and Planning)**

The application was referred to the Secretary to the Department of Environment, Land, Water and Planning (DELWP) pursuant to section 55 of the Act. The Secretary to DELWP is a **recommending** referral authority pursuant to Clause 66.02-2 of the Planning Scheme for applications for native vegetation removal in the High-Risk Pathway. It is noted the application was lodged before the gazettal of Amendment VC138 on 12 December 2017, and therefore the transitional provisions of Clause 52.17-6 apply.

On 20 October 2017, DELWP Gippsland responded, including comments in relation to the risk location of the native vegetation to be removed and the required offsets to mitigate the proposed removal. They suggested a suitable offset strategy should be presented but are satisfied that adequate effort has been given to minimising the removal of native vegetation. DELWP Gippsland observed recommendations within the application materials and have recommended that these be incorporated into conditions if a planning permit is granted; these include mitigating impacts to native species and for an Environmental Management Plan (EMP). Overall, DELWP Gippsland have confirmed they have no objection to the application being granted a permit, subject to conditions being imposed. These conditions include the preparation of a native vegetation management plan and the securing of native vegetation offsets. The conditions will be included in any permit issued.

#### **Other**

The Wellington Planning Scheme requires the referral of certain kinds of applications to develop land in the SRO1 to be referred to the Secretary to the Department administering the *Mineral Resources (Sustainable Development) Act 1990* ('the MRSD Act'). This includes applications to develop land for such things as an education centre, hospital, major sports and recreation facility, or an office with a floor area exceeding 2,000 square metres. However, it does not include a statutory requirement for an application to develop land for a wind energy facility to be referred.

There are no statutory referral requirements for the application under the BMO, DDO1, ESO1, ESO2 or HO81. With respect to the ESO1 and ESO2, this is because the application does not involve the development of land for a type of use specified in Clause 66.04 of the Planning Scheme. Further, there is no statutory referral requirement for the application under Clause 66.02-4 of the Planning

Scheme (Major electricity line or easement) because it is not proposed to construct a building or carry out works on land within 60 metres of a major electricity transmission line (220 kv or more).

## Advice – Non-Statutory

### Buildings and works within the State Resource Overlay (SRO) – Department of Jobs, Precincts and Regions

Advice was sought from the Department of Jobs, Precincts and Regions (DJPR) about buildings and works within the SRO. It is noted there is no statutory referral requirement to the DJPR under the Planning Scheme, as the application is not of a kind specified in a schedule to the SRO.

On 15 March 2019, the DJPR responded from the perspective of coal resource protection. The DJPR noted the site area is affected by the SRO1 (Gippsland Brown Coalfields) and by Retention Licence 2013, which allows an eight-year program to investigate the coal resource for commercial use. The DJPR submit the planning policy framework for coal resources is based on the principle of providing certainty of access over the long term, which is important to both industry and community. The DJPR note the Victorian Government's *Statement on the Future Uses of Brown Coal* outlines the policy position on new brown coal projects and commits to using the State's brown coal resource in a manner that maximises its long-term value and provides for jobs and investment consistent with economic, social and environmental priorities.

In their response, the DJPR observe the application materials assert the proposed turbines take up a small footprint with limited impact on access to the coal resource. The DJPR suggest the matter is more complex. They state that turbines are spread over an area approximately 10km long and 8km wide in several clusters and set 400-800m apart within these clusters. They observe the rotor diameter of the turbines, the concrete hardstand areas adjacent to the turbines (each approximately 1,125m<sup>2</sup> in area), the 23km of access tracks, the below and above-ground cabling, as well as other infrastructure such as substations. The DJPR state that, rather than a small footprint, the proposed wind farm will comprise much of the SRO1 extent. The DJPR note the proponent's statement the facility can co-exist with any future coal related activities but seem to question this possibility.

The DJPR note the application materials state the proposal is expected to have a 20 to 30-year life. However, they comment the application does not seek a temporary planning permit and the wind farm could be continued rather than decommissioned. Based on this and the design of the proposal, the DJPR suggest there is potential to compromise access to the coal resource in the short and long term.

The DJPR consider the purpose of the SRO and the management objective of the SRO1, the objectives and strategies of Clause 21.15-4 (Wellington Coal Fields), and the objectives and policy of Clause 22.06 (Coal Resources Policy) are the most pertinent provisions of the Planning Scheme to assessing the application. Further, the DJPR consider the following provisions of the Planning Scheme are also relevant to assessing the application: 14.03-1S (Resource exploration and extraction), 17.01-1R (Diversified economy – Gippsland), 19.01-1S (Energy Supply), 21.01-4 (Municipal Profile: Natural Resource Management), 21.02-4 (Key Issues and Influences: Natural Resource Management), 21.02-6 (Key Issues and Influences: Economic Development), 21.03-2 (Strategic Framework Land Use Plan) and 21.15-3 (Coal Resources).

As outlined in the Assessment section of this report, the proponent proposed a 'sunset clause' condition for the wind farm to be removed at the end of its operating life to allow coal mining to occur. On 11 November 2019, the DJPR commented on this proposed condition. The DJPR reviewed the wording and proposed alternative conditions, including coexistence between the proposed wind farm and Retention Licence 2013 by relocating turbines to maximise future coal winning areas. These conditions are considered further within this report.

## Bats, avifauna and wetlands (DELWP Gippsland)

Advice was sought from DELWP Gippsland about bat, avifauna and wetlands impacts.

On 27 November 2017, DELWP Gippsland responded with comments, including noting the proposal is being assessed by both the Victorian and Commonwealth Governments.

The first part of the advice related to the potential for significant adverse effects on bats, avifauna or RAMSAR wetland values. In terms of listed avifauna species, DELWP Gippsland state the potential for significant impact on Swift Parrot, Fork-tailed Swift and White-throated Needletail is uncertain, while the potential for significant impact on Orange-bellied Parrot is uncertain but probably low. No significant adverse impacts are anticipated for other avifauna species, such as migratory shorebirds and terns. DELWP Gippsland state while the risk to avifauna values is likely to be low, there is uncertainty in the assessment stemming from limited or outdated data as well as a lack of analysis of cumulative impacts, including from other wind farms.

DELWP Gippsland consider there are no anticipated adverse impacts that would directly affect the values of the Corner Inlet. The proposal is about 1km to the north of this RAMSAR wetland at its closest point. However, DELWP Gippsland consider there are potential impacts for avifauna species that utilise the wetland. While this risk is deemed to be low, there is uncertainty regarding the impact for some species, such as Orange-bellied Parrot. DELWP Gippsland does not believe the proposal will impact on Growling Grass Frog.

The second part of DELWP Gippsland's advice related to the effectiveness of proposed avoidance and mitigation measures. DELWP Gippsland acknowledge the proponent has included design measures to mitigate impacts on avifauna. However, they suggest other recommendations in the application materials would provide effective mitigation measures if implemented. These include:

- Separation of turbines and associated infrastructure from the Albert River, its tributaries, drainage lines, ponds, dams and marshes by at least 100m;
- Having a minimum of 30m separation between the development footprint and the Albert River and any significant tributaries on the site; and
- Requiring a Construction Environmental Management Plan to address any residual risks to wetland values.

Despite the proposed mitigation measures, DELWP Gippsland state potential impacts are uncertain – particularly to Swift Parrot, Orange-bellied Parrot, White-throated Needletail and Fork-tailed Swift. They consider part of this uncertainty needs to be addressed through the EPBC controlled action assessment, with the remaining uncertainty monitored through a BAM Plan if a planning permit is granted. DELWP Gippsland recommend the BAM Plan should include both general and species-specific monitoring programs for certain timeframes (with options to extend if impact thresholds are exceeded), the implementation of mitigation measures depending on the data collected (including potential curtailment of turbines), and a data-sharing agreement.

DELWP Gippsland consider the uncertainty of impacts is a key factor in determining the regulatory response to the proposal. DELWP Gippsland note the Commonwealth Department of the Environment have taken a stronger precautionary principle approach in their assessment under the EPBC Act and have noted, *'a lack of scientific certainty about the potential impacts of an action will not itself justify a decision that the action is not likely to have a significant impact on the environment'*.

DELWP Gippsland state the key areas of uncertainty that are a high priority for addressing are Swift Parrot movement through the area; the likelihood of Orange-bellied Parrot presence in suitable habitat at Corner Inlet and movement through wind farm site; and White-throated Needletail and Fork-tailed Swift population impacts from expected bird strikes. DELWP Gippsland suggest this uncertainty can be reduced through the controlled action assessment; expert review of potential for significant impact to key species; reviewing survey history and intensity around the area for Swift

Parrot and Orange-bellied Parrot; and requiring an effective BAM Plan. The EPBC controlled action assessment has sought to do this.

The final part of DELWP Gippsland's advice related to recommendations. DELWP Gippsland recommend there is unlikely to be a significant impact on various species. However, they consider there is potential for significant impacts on Swift Parrot, Orange-bellied Parrot, Fork-tailed Swift and White-throated Needletail, although there is uncertainty about the likelihood of impacts. DELWP Gippsland recommend a BAM Plan to reduce this uncertainty.

#### **Aboriginal cultural heritage (Aboriginal Victoria)**

Advice was sought from Aboriginal Victoria about Aboriginal cultural heritage.

On 6 March 2018, Aboriginal Victoria responded they consider a Cultural Heritage Management Plan (CHMP) is required under the *Aboriginal Heritage Regulations 2007* because the proposal is a change of land use and as the proposal constitutes a high impact activity in an activity area that includes cultural heritage sensitivity areas. Aboriginal Victoria consider a CHMP is the only way to manage risks in relation to Aboriginal cultural heritage in accordance with the *Aboriginal Heritage Act 2006*.

Accordingly, the proponent prepared a voluntary CHMP (ID. 15167), which was approved on 15 February 2018. If a planning permit is issued, the use and development will need to be undertaken in accordance with the requirements of the CHMP.

#### **Aviation safety (Civil Aviation Safety Authority)**

Advice was sought from the Civil Aviation Safety Authority (CASA) about aviation safety.

On 9 March 2018, CASA responded with comments, consistent with their obligations under Guideline D: Managing the risk to aviation safety of turbine installations (wind farms/wind monitoring towers) of the National Airports Safeguarding Framework (NASF). CASA noted the operator of Yarram Airport, the Wellington Shire Council, has advised CASA the proponent consulted them about the proposal and the Council advised the proponent the proposal would be outside the airport's Obstacle Limitation Surfaces (OLS). CASA has recommended DELWP seek the views of Emergency Management Victoria and the Aerial Application Association of Australia regarding the potential for impacts on aerial firefighting operations and aerial agricultural operations respectively. This occurred in the giving of notice. CASA noted the proponent does not appear to have consulted these stakeholders. CASA recommended the wind farm be lit with steady red medium-intensity lighting at night, and a lighting plan be developed consistent with Guideline D of the NASF. CASA commented they could provide advice on the adequacy of any lighting plan.

#### **Airservices Australia**

While advice was not sought from Airservices Australia by DELWP, the proponent has supplied comments dated 29 March 2018 from this organisation.

Airservices Australia have advised that with respect to airspace procedures designed by them in accordance with ICAO PANS-OPS and Document 9905, at a maximum height of 217.7m Australian Height Datum, the proposed wind farm will not affect any sector or circling altitude, nor any instrument approach or departure procedure at Yarram Airport. It is noted procedures not designed by Airservices Australia at Yarram Airport were not considered in this assessment. Further, Airservices Australia have stated the wind farm will not adversely impact the performance of any their communications, navigation or surveillance facilities.

## **Notice of the Application**

Notice of the application was given in accordance with section 52(1) of the Act by:

- Mail to:
  - Owners and occupiers of all land within 5km of the subject site

- Wellington Shire Council
- South Gippsland Shire Council
- Country Fire Authority
- Environment Protection Authority
- Aboriginal Victoria
- Parks Victoria
- Department of Economic Development, Jobs, Transport and Resources
- West Gippsland Catchment Management Authority
- VicRoads
- Emergency Management Victoria
- Aerial Application Association of Australia
- Publishing notice in the following newspapers:
  - The Australian
  - Yarram Standard Newspaper
  - Port Albert Tattler
  - Yarram Drum Community Newsletter
  - Foster Mirror
- Erecting public notices at:
  - At the intersection of South Gippsland Highway and Birds Road South
  - At the intersection of South Gippsland Highway and Gelliondale Road
  - At the intersection of South Gippsland Highway and Ti Tree Road
  - Welshpool Post Office, 20 Main St, Welshpool VIC 3966
  - Port Welshpool General Store, 93 Lewis St, Port Welshpool VIC 3965
  - Yarram Service Centre (Wellington Shire Council), 156 Grant St, Yarram VIC 3971
  - Victoria Hotel, 53 Turnbull St, Alberton VIC 3971
  - Port Albert General Store, 49 Tarraville Rd, Port Albert VIC 3971
- Hosting a copy of application materials on the proponent's website

## Objections and Submissions

At the time of writing this report, 154 submissions had been received – 150 of which objected to the planning permit application. This includes a neutral submission from the Wellington Shire Council

### Wellington Shire Council

The Council's submission is generally supportive of renewable energy investment and therefore supports the proposal in principle – subject to conditions and compliance with Clause 52.32 of the Wellington Planning Scheme. However, the Council's submission raises several concerns, primarily to be addressed through the inclusion of permit conditions. This includes noise, aviation, traffic, complaints, decommissioning, shadow flicker, environmental management plan, and electrical infrastructure matters.

### Objecting submissions

The matters raised in of the 150 objections are summarised as follows:

- Amenity impacts including noise, shadow flicker, electromagnetic interference, blade glint and proximity to dwellings and townships
- Landscape and visual amenity impacts, including that these cannot be mitigated by landscaping
- Impacts on birds and bats, especially listed threatened species and listed migratory species, as well as that surveys and assessments that have been undertaken are deficient
- Native vegetation impacts, including loss of habitat and unacceptability of offset approach
- Impacts on wetlands, including RAMSAR values

- Aviation impacts, including on aerial agriculture and requirements for obstacle lighting
- Decommissioning concerns
- Traffic safety impacts, including road surface degradation and driver distraction
- Cultural heritage and historic heritage impacts
- Impacts on the Gippsland Brown Coalfields as a State-significant resource
- Economic impacts, including a lack of local jobs and reduced local population growth
- Health impacts, including from infrasound or low frequency noise
- The proposal being an incompatible land use, including with zoning
- Impacts the agricultural productivity of the land and the surrounding area
- Inaccuracies in the submitted application materials, including misidentification of all existing and proposed dwellings and uncertainty over the final turbine model
- Limited information on the design and location of power lines and other infrastructure
- Lack of public engagement/consultation and benefit sharing resulting in significant community opposition as well as the creation of divisions in the community
- Hazards such as flooding and other geotechnical risks as well as increased risk of bushfire
- Impacts on tourism
- No Environmental Effects Statement (EES) undertaken
- Preference for an alternative, off-shore location
- Impacts on property values

These matters are addressed below, where relevant.

### **Supporting/neutral submissions**

Submissions commented on the benefits of renewable energy generation, the project's contribution to energy supply and downward impact on energy prices, the benefits to the local area (jobs and revenue as well as the community fund), and the provision of diversified incomes for landowners.

## **Assessment**

The assessment below addresses the effects of the proposed use and development may have with discussion against the Wellington Planning Scheme and the objectives of planning in Victoria. This includes assessment against policies from the Planning Policy Framework (PPF) and the Local Planning Policy Framework (LPPF). Further, where relevant, the assessment addresses objections and submissions received as well as the decisions and comments of referral authorities. In this regard, the assessment of the application is consistent with section 60 of the Act.

Since the planning permit was first lodged on 15 September 2017, the following relevant amendments have been made to the Wellington Planning Scheme:

- VC148 (31 July 2018) amended the Victoria Planning Provisions (VPP) and all planning schemes from the Government's Smart Planning program. This program aims to simplify and modernise Victoria's planning policy and rules and achieve a more efficient, accessible and transparent system (i.e. improving the operation of planning schemes and removing unnecessary regulation).
- VC149 (4 October 2018) amended the VPP and all planning schemes by revising Clause 52.32 (Wind Energy Facility) to implement the recommendations of the EPA Inquiry. This had the effect of inserting mandatory application requirements and conditions for statutory environmental audits of pre-construction and post-construction noise assessments.
- VC157 (15 March 2019) amended the VPP by requiring planning approval for power lines to connect new large-scale electricity generation facilities to the electricity network.

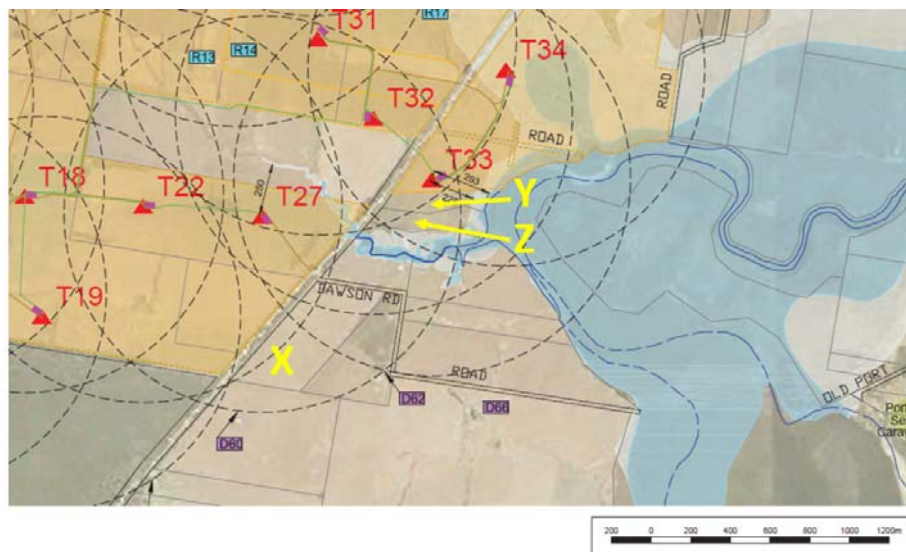
- VC159 (8 August 2019) amended the VPP and all planning schemes, including the definition of 'Utility installation' to include transmit, distribute or store power, including battery storage.
- VC161 (17 September 2019) amended the VPP and all planning schemes to introduce new requirements for renewable energy facilities and a State planning policy for the protection of declared irrigation districts as well as to make an administrative correction to Amendment VC157. This included making the Minister for Planning the responsible authority for all new planning permits for renewable facilities 1 MW or greater.

### Sites where dwellings did not exist when the application was made

Three sites are considered throughout this assessment that did not contain an existing dwelling at the time the application was made:

- A dwelling on Ti Tree Road, Alberton understood to be at Allotment 7C Parish of Alberton West. Occupancy Permit ref. BS-U1590/20170312/0 was issued on 5 February 2019 and the dwelling is now a completed dwelling. For this report, this dwelling will be known as 'Dwelling X'.
- Two properties on Ti Tree Road, Alberton at Lot 2 PS603015B and Lot 3 PS603015B. These have approved planning permits for dwellings, due to expire on 16 June 2020 (ref. P57/2014 and P58/2014). It is understood dwellings have not been constructed on either property, while the Wellington Shire Council have advised they have no record of building permits being issued. For this report, the properties will be known as 'Properties Y and Z'.

The approximate location of the three sites and their proximity to turbines is shown below:



### Key Considerations

The assessment is broken down into several matters:

- What is the policy context for the proposed use and development?
- What are the implications of the site's location in the State Resource Overlay – Schedule 1 and the existence of a retention licence?
- Are impacts on the natural environment and natural systems acceptable?
- Are impacts on amenity values, such as noise, shadow flicker, electromagnetic interference and blade glint acceptable?
- Are landscape and visual amenity impacts acceptable?
- Are aviation impacts acceptable?
- Are traffic impacts acceptable?



- Are cultural and historic heritage impacts acceptable?
- Are social and economic impacts acceptable?
- What are the implications of any hazards?
- Any other matters

### **What is the policy context for the proposed use and development?**

#### High-level renewable energy policy

On 23 February 2017, the *Climate Change Act 2017* (CCA) was passed by the Victorian Parliament. The CCA provides a foundation to manage climate change risks and supports Victoria's transition to a net zero emissions, climate resilient economy. Section 20 of the CCA requires the Victorian Government to ensure its decisions appropriately take climate change into account.

Victoria's *Climate Change Framework* was prepared under the CCA. It identifies four pillars that underpin the transition to a climate resilient and net zero emissions Victoria by 2050, including to: *move to a clean electricity supply by increasing renewable energy generation.*

The Victorian Government has adopted the Victorian Renewable Energy Targets (VRET) of 25 per cent by 2020, 40 per cent by 2025 and 50 per cent by 2030, which are legislated in the *Renewable Energy (Jobs and Investment) Act 2017*. The additional VRET of 50 per cent by 2030 was embedded when the *Renewable Energy (Jobs and Investment) Amendment Bill 2019* passed the Victorian Parliament on 30 October 2019. *Victoria's Renewable Energy Action Plan 2017* outlines government actions to assist in achieving the VRET, encourage investment in the energy sector and ensure Victorians benefit from a renewable, affordable and reliable energy system. Relevant actions include Action 1 – Setting and delivering on ambitious and achievable renewable energy targets and Action 6 – Streamlining renewable energy projects processes and approvals.

In August 2015 the Victorian Government released *Victoria's Renewable Energy Roadmap: Delivering jobs and a clean energy future*. It outlines the Government's objective to accelerate development of renewable energy generation in Victoria to reduce emissions, create jobs, and reduce energy prices.

In July 2017, the Victorian Government published its *Statement on Future Uses of Brown Coal* (the Statement), which comments the share of brown coal-fired power generation will reduce over the coming decades with the retirement of existing generators, market conditions and the need to respond to climate change. Further, it notes Australia's targets to reduce greenhouse gas emissions under the Paris Agreement and under the CCA, and states decisions regarding new uses of brown coal will be made against the backdrop of these commitments.

#### The Victoria Planning Provisions

##### *Renewable energy*

PPF **Clauses 15.02-1S (Energy and resource efficiency)**, **Clauses 19.01-1S (Energy supply)** and **19.01-2S (Renewable energy)** support a renewable energy-led transition to a low-carbon economy with reduced greenhouse emission and promote the provision of renewable energy in a manner that ensures appropriate siting and design considerations are met. Particular Provisions **Clause 52.32 (Wind energy facility)** has the purpose of facilitating the establishment of wind energy facilities, in appropriate locations, with minimal impact on the amenity of the area.

##### *Gippsland Brown Coalfields & State Resource Overlay – Schedule 1*

PPF **Clause 14.03-1S (Resource exploration and extraction)** encourages the exploration and extraction of natural resources while LPPF **Clauses 21.01-4 (Natural Resource Management)** and **21.02-4 (Natural Resource Management)** set out that natural resources, including brown coal reserves, are important State assets that must be protected for future use. LPPF **Clauses 21.15-3 (Coal Resources)**, **21.15-4 (Wellington Coal Fields)** and **22.06 (Coal Resources Policy)** as well as

Overlay **Clause 44.07 (State Resource Overlay)** provide more specific policy direction about these matters. These are addressed in more detail below.

#### *The natural environment and natural systems*

PPF **Clauses 12.01-1S (Protection of biodiversity)** and **12.01-2S (Native vegetation management)**, LPPF **Clauses 21.02-2 (Environment and Landscape Values)** and **21.13-2 (Biodiversity)** as well as Particular Provisions **Clause 52.17 (Native vegetation)** promote the protection and conservation of Victoria's biodiversity (including endangered flora and fauna species) and ensure there is no net loss to biodiversity from the removal, destruction or lopping of native vegetation.

PPF **Clauses 12.03-1S (River corridors, waterways, lakes and wetlands)**, **12.05-1S (Environmentally sensitive areas)** and **14.02-1S (Catchment planning and management)**, LPPF **Clauses 21.01-2 (Environment and Landscape Values)** and **21.02-2 (Environment and Landscape Values)** and Overlay **Clause 42.01 (Environmental Significance Overlay)** aim to protect and enhance river corridors, waterways, wetlands, catchments and the marine environment as well as to protect and conserve environmentally sensitive areas. This includes wetlands that provide a haven for bird life and are recognised under the RAMSAR Convention on Wetlands of International Importance.

#### *Amenity values*

PPF **Clause 13.07-1S (Land use compatibility)** seeks to safeguard community amenity while facilitating appropriate uses with potential off-site effects. This is consistent with PPF **Clause 13.05-1S (Noise abatement)**, which focuses on controlling noise effects on sensitive land uses.

#### *Landscape and visual amenity*

PPF **Clauses 11.03-5S (Distinctive areas and landscapes)** and **12.05-2S (Landscapes)** and LPPF **Clauses 21.02-2 (Environment and Landscape Values)**, **21.13-1 (Rural and Natural Landscapes)** and **21.13-3 (Coastal Landscape Character and Significance)** direct the protection and enhancement of valued attributes of distinctive areas and landscapes, especially significant landscapes, that contribute to character and identity. The relevant policy acknowledges that coastal landscapes are highly sensitive to change and refers to the *Coastal Spaces Landscape Assessment Study 2006*.

#### *Aviation*

PPF **Clause 18.04-1S (Planning for airports and airfields)** and LPPF **Clause 21.17-4 (Aviation)** seek to protect the ongoing operation of Victoria's airports and airfields and ensure their safety and efficiency is not prejudiced by any new use or development.

#### *Traffic*

PPF **Clause 18.01-1S (Land use and transport planning)**, LPPF **Clause 21.18-2 (Road Infrastructure)**, Zones **Clause 36.04 (Road Zone)** and Particular Provision **Clause 52.29 (Land Adjacent to a Road Zone, Category 1)** recognise the importance of the South Gippsland Highway and ensure that development respects the role of this key highway and protects its safety and efficiency.

#### *Cultural and historic heritage*

**Clause 15.03-2S (Aboriginal cultural heritage)**, LPPF **Clause 21.16-2 (Heritage)** and Overlay **Clause 43.01 (Heritage Overlay)** support the protection and conservation of places of Aboriginal cultural heritage significance. PPF **Clause 15.03-1S (Heritage conservation)**, LPPF **Clause 21.16-2 (Heritage)** and Overlay **Clause 43.01 (Heritage Overlay)** aim to protect and conserve places of heritage significance and ensure that development does not adversely affect their heritage significance.

#### *Hazards*

PPF **Clauses 13.01-1S (Natural hazards and climate change)**, **13.01-2S (Coastal inundation and erosion)** and **13.03-1S (Floodplain management)**, LPPF **Clause 21.02-3 (Environmental Risks)** as well as Overlay **Clauses 44.03 (Floodway Overlay)** and **44.04 (Land Subject to Inundation Overlay)** seek

to minimise the impacts of natural hazards by ensuring that development maintains the free passage and temporary storage of floodwater, does not cause any significant rise in flood level or flow velocity, is compatible with flood hazard conditions, and minimises flood damage.

PPF Clauses **13.01-1S (Natural hazards and climate change)** and **13.02-1S (Bushfire planning)**, LPPF Clause **21.02-3 (Environmental Risks)**, and Overlay Clause **44.06 (Bushfire Management)** support strengthening the resilience of communities to bushfire and ensuring that development is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level.

#### *Agriculture*

PPF Clause **14.01-1S (Protection of agricultural land)** aims to protect the State’s agricultural base by preserving productive farmland. Zoning Clause **35.07 (Farming Zone)** seeks to ensure that non-agricultural uses do not adversely affect the use of land for agriculture and encourages the retention of productive agricultural land as well as the retention of rural employment and population.

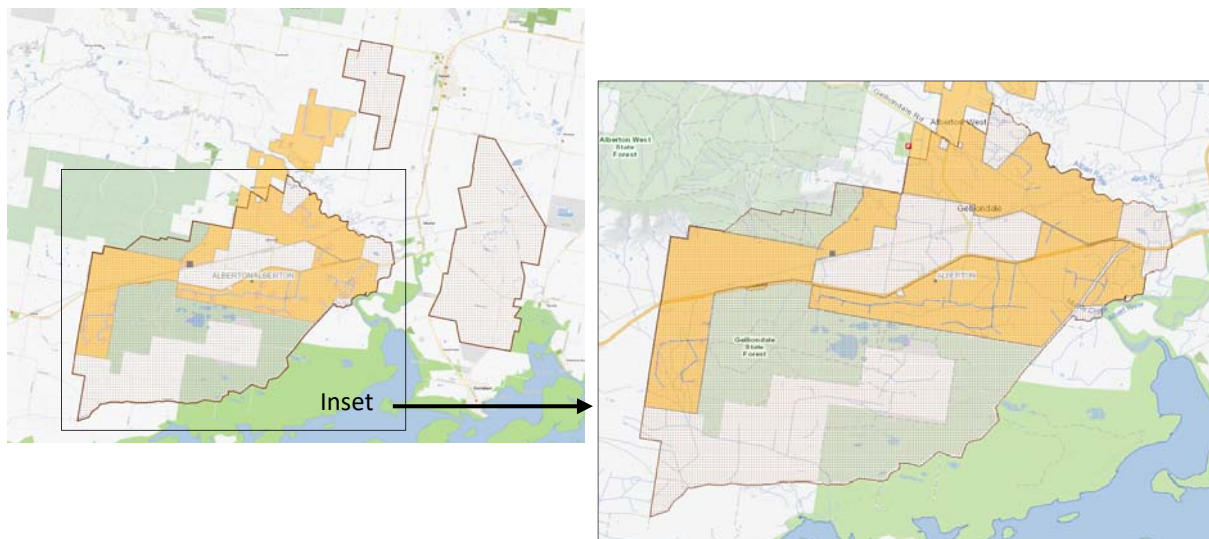
#### *Economy*

PPF Clauses **17.01-1S (Diversified economy)** and **17.01-1R (Diversified economy – Gippsland)** as well as LPPF Clauses **21.02-6 (Economic Development)** and **21.17 (Economic Development)** promotes strengthening and diversifying the economy and encouraging sustainability as a critical consideration for economic development and employment creation.

### **What are the implications of the site’s location in the State Resource Overlay – Schedule 1 and the existence of a retention licence?**

#### The State Resource Overlay – Schedule 1 (Gippsland Brown Coalfields)

The figure below shows the location of the wind farm, in orange, as well as the extent of the SRO1, shown in brown hatching.



#### *Protecting and conserving the coal resource*

The Gippsland region contains significant identified coal resources that are an important energy resource – suitable as a fuel source for the generation of electricity but also having potential for alternative fuels and other products. The need to protect and conserve the coal resource for current or future utilisation is recognised as a primary planning consideration for the application. Relevant policy sets out the use and development of any land overlying the coal resource must not prejudice or inhibit the current or future productive use of the resource. These considerations are perhaps best exemplified by the purpose of the SRO and the management objective of the SRO1:

- The purpose of the SRO is: *to protect areas of mineral, stone and other resources, which have been identified as being of State significance, from development that would prejudice the current or future productive use of the resource.*
- The management objective of the SRO1 states: *in order to ensure the medium to long term extraction and use of the coal resource for power generation, building, works, and subdivision of land over the resource should be of a type that will not inhibit, by way of community significance or cost of removal, the eventual productive use of that resource.*

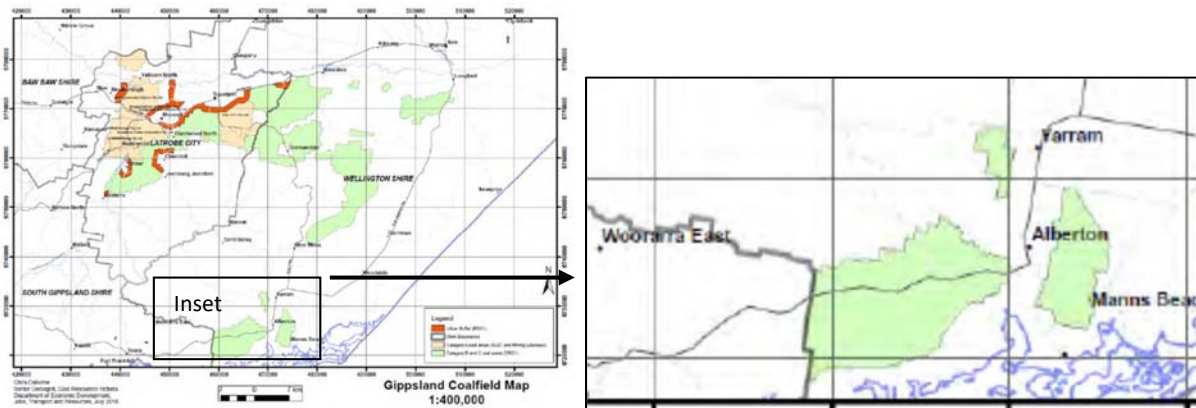
#### *Strategies to protect and conserve the coal resource*

Strategies in achieving the identified strategic planning outcomes for the coal resource include:

- Considering other uses on a temporary basis if it can be demonstrated they would not adversely affect future development of the coal resource.
- Discouraging uses that could prejudice the winning or processing of the underlying coal resource.
- Protecting the coal resource from the encroachment of incompatible use or development.
- Ensuring coal resources are developed in accordance with a broad strategy that provides for the conservation and use of the coal as well as for other important planning considerations.

#### *The expected development of land in the State Resource Overlay – Schedule 1*

Variations in coal characteristics and quality within and between the coalfields are important factors for the planning and development of the coal resource, as are the different development controls on land overlying coalfields that are expected to be developed first (Category A coalfields) compared with land overlying coalfields that are expected to be developed later (Categories B and C coalfields). This is illustrated in the *Gippsland Coalfields Map* (below), which shows the subject land for the planning permit application falls within Category B and C coal areas:



#### *The wind farm in the State Resource Overlay – Schedule 1*

The objective to facilitate orderly development of the coal resource is recognised. However, coal in the area that is the subject of this application is only likely to be extracted after the utilisation and exhaustion of the Category A coalfields. This timeframe is potentially decades away, in which time the wind farm – if approved – may have been decommissioned and removed (with an expected operational life of 20-30 years). In this sense, the proposal would not prejudice the future development of the coal resource given that extraction is not expected for decades. The wind farm could also possibly be decommissioned earlier if extraction of the coal resource becomes more economically and environmentally viable in the short to medium term.

It is unlikely the proposed wind farm could co-exist with a coal-related activity given the proposed locations of turbines and infrastructure. However, the nature of the proposal is that all equipment (including underground infrastructure) could be removed allowing coal-related activities to be established. As such, the proposed use and development is not seen as being a wholly incompatible use or development, nor is it seen as prejudicing the potential future winning of the coal resource.

Rather, the productive use of the resource can still be contemplated and will be preserved. However, in the meantime, the land overlying the coal resource can be used in another manner consistent with State and local strategic planning (i.e. for renewable energy generation) and this has regard to social, environmental, physical and economic considerations.

Although a planning permit, if granted, would not be for a temporary activity, the expected operational life of 20-30 years is acceptable in the context of developing the State's coal resources (i.e. long term). Furthermore, if coal extraction was to be proposed in the location, it would need to obtain extensive planning and environmental approvals, none of which have yet been sought – except for Retention Licence 2013.

The proponent has proposed a 'sunset clause' requiring the permit to end and decommissioning to commence if, after 35 years of the permit being granted, certain conditions are met. These conditions include a mining licence being granted, a work plan being approved, a rehabilitation bond being entered into, and all other necessary permits, consents or licenses being obtained to enable mining to be carried out on the land, and the mining being incompatible with the wind farm. If a planning permit is issued, it is recommended that a suitable condition be imposed in this regard.

It is noted the DJPR have proposed reworded conditions with the aim of allowing coexistence between the proposed wind farm and Retention Licence 2013 as well as relocating turbines away from the best coal areas. However, these conditions are not considered to be warranted or practical in the circumstances, and it is recommended they are not imposed.

#### *Changes in policy*

The Wellington Planning Scheme emphasises the protection of coal resources for current or future utilisation. However, much of this policy could be considered outdated. For instance, the SRO1 was applied in central Gippsland in the 1980s as recommended by the *Framework for the Future* report (Minister for Industry, Technology and Resources, and Minister for Planning and Environment, 1987). This applied a simple formula of identifying coalfields for protection, being those that contained coal seams thicker than 3m, were less than 300m deep, and had a maximum strip ratio of less than 1:2 (coal to overburden).

The age of these coal policies is relevant when considered against more recent legislation and policies of the Victorian Government, which aim to promptly transition the State towards a net zero emissions, climate resilient economy, with a significantly increased share of renewable energy generation.

#### *Conclusion*

On balance, the proposal is acceptable in relation to the need to protect and conserve the coal resource for current or future utilisation. The wind farm can be viewed as being an acceptable activity in the context of developing the State's coal resources and could potentially be removed, allowing coal-related activities to be established if a viable financial and environmental situation existed for coal extraction on the site. The proponent's proposed 'sunset clause' contributes to this outcome being achieved. As such, the proposed wind farm will not inherently prejudice or inhibit the use of the coal resource. However, if a permit is granted, suitably detailed conditions should be imposed for decommissioning. This should include the removal of all infrastructure/equipment (including any below ground), reinstatement of the site to the condition it was in prior to the commencement of development as well as the 'sunset clause' requirement.

While there are competing policy interests, it is considered the proposal will achieve the interests of net community benefit and sustainable development, as set out at Clause 71.02-1.

#### The Retention Licence

It is acknowledged a retention licence has been granted under the MRSD Act and the holder of the licence, Gelliondale Resources, has objected to the planning permit application. This is a relevant consideration in terms of section 60(1)(c) of the Act. The primary purpose of a retention licence is to allow the licence holder to undertake further evaluation and low impact exploration work on a

mineral resource, so they can assess its viability. The retention licence also retains rights to a mineral resource that is not economically viable but may become so in the future. However, neither the existence of the retention licence nor any clause of the MRSD Act prohibits the grant of a planning permit. The retention licence does not give holders automatic rights to explore for minerals, nor does it restrict or prohibit other uses and development of land covered by the licence.

Gelliondale Resources has asserted the proposed wind farm would frustrate their exploration rights. However, no further evidence of this has been submitted and the level of impact Gelliondale may suffer if the application is granted is unclear. It is also uncertain whether Gelliondale Resources has been meeting the milestones required by the retention licence. Conversely, the proposed wind farm and its supporting infrastructure only covers around 1.8% of the site area. Therefore, it seems that exploration and evaluation activities could continue on the majority of the site even if the wind farm was constructed.

Overall, it is concluded the proposal is acceptable with respect to the existence of the retention licence and the objection of Gelliondale Resources.

#### [Are impacts on the natural environment and natural systems acceptable?](#)

Matters considered to fall under this heading include flora (particularly native vegetation), fauna (especially birds and bats) as well as wetlands.

#### [Flora](#)

Impacts have been considered in the *Flora and Fauna Assessment* by Brett Lane & Associates, dated August 2017. DELWP Gippsland, as a recommending referral authority, has reviewed this information and provided comments on 20 October 2017.

The *Flora and Fauna Assessment* sets out a range of design responses to avoid and minimise impacts on flora, such as locating proposed access tracks to follow existing farm tracks where feasible and positioning most of the development footprint within cleared agricultural land. Despite this, the proposed wind farm will result in the removal of 1.195 hectares of remnant patch native vegetation and sixteen scattered trees. Combined, this is an 'extent' of 2.321 hectares of native vegetation removal. The *Flora and Fauna Assessment* states that potential impacts on listed threatened flora species are very unlikely, as none of the relevant species were recorded in the area during seasonally appropriate survey times. Further, targeted surveys of threatened ecological communities found none occur within the proposed development. In this regard, the proposal is not assessed as harming known remaining habitat or populations of threatened fauna species.

The removal of 2.321 hectares of native vegetation is assessed under the high-risk assessment pathway under relevant planning provisions. The *Flora and Fauna Assessment* has determined the Strategic Biodiversity Score of each area of native vegetation removal. Combined, the native vegetation proposed to be removed is estimated to have a general Biodiversity Equivalence Score of 0.257. Based on that, the offsets required to compensate for the native vegetation removal are 0.386 general Biodiversity Equivalence Units with a minimum Strategic Biodiversity Score of 0.286 and being within the West Gippsland Catchment Management Authority area or Wellington Shire Council area. The *Flora and Fauna Assessment* confirms these offsets are achievable and they will be secured prior to the removal of native vegetation.

DELWP Gippsland, under delegation from the Secretary of DELWP have not objected to the proposed native vegetation removal and have stated adequate effort has been given to avoiding and minimising removal. They have recommended conditions including an EMP, Native Vegetation Management Plan and the securing of offsets. If a permit is issued, it is recommended suitable conditions be imposed in this regard.

Overall, the proposal is assessed as being acceptable in terms of flora impacts, based on suitable conditions being imposed.

## Fauna

Impacts have been considered in the *Flora and Fauna Assessment* by Brett Lane & Associates, dated August 2017. This is supported by the *Bird and Bat Surveys* report also by Brett Lane & Associates, dated August 2016. DELWP Gippsland has reviewed this information and provided comments on 27 November 2017. Further, it is relevant to consider the Victorian Minister for Planning's Assessment Report under the Bilateral Agreement, which was provided to the Commonwealth Minister for the Environment on 17 March 2019, as well as EPBC 2017/7854, which was approved on 22 August 2019 under the relevant controlling provisions of the EPBC Act. EPBC 2017/7854 was issued subject to various conditions, which must be separately complied with. In general, the conditions address the protection of listed threatened bird species and listed migratory bird species via required mitigation measures (including turbine locations and turbine shutdown) as well as monitoring protocols, including through an approved BAM Plan. Although any planning permit and EPBC Act approval must be separately complied with, it is relevant and appropriate the two be consistent and capable of both being met.

The *Flora and Fauna Assessment* states field assessments recorded 120 fauna species; 101 birds (ten introduced), ten mammals (five introduced), six reptiles, three frogs and various invertebrates. Breaking this down further, the report contains an assessment of the likelihood of listed fauna species occurring in the area. This includes eight bird species, ten migratory bird species, and four mammal species (no reptiles, frogs, fish or invertebrates are expected). The *Flora and Fauna Assessment* examines the susceptibility of both listed and non-listed fauna species to the potential impacts of the proposal and concludes that, despite design responses to mitigate impacts, the Powerful Owl, Fork-tailed Swift and White-throated Needletail (all bird species) could be impacted as they fly at relevant heights and are likely to forage over the area. In terms of the Powerful Owl, the report concludes that the likelihood of an ongoing impact is very low. Concerning the Fork-tailed Swift and White-throated Needletail, the report concludes their movements are effectively random over time, across a range of habitats, and on a continental scale.

The *Flora and Fauna Assessment* notes the White-bellied Sea-Eagle (a listed species under the *Flora and Fauna Guarantee Act 1988*) may be susceptible to impacts from the proposal. While it is concluded the frequency of collisions is likely to be very low, the report states it is important to monitor for the presence of this species and to have a targeted mitigation response if repeated collision is detected.

The *Flora and Fauna Assessment* recommends a BAM Plan should be prepared as a mitigation measure to ensure procedures and strategies exist to respond to any unanticipated impacts on bats and birds (especially the White-bellied Sea-Eagle and Powerful Owl). In addition, the report recommends turbines and associated infrastructure avoid the Albert River, tributaries, drainage lines, ponds, dams and marshes by at least 100m as well as there being a minimum separation of 30m between the development footprint and the Albert River and any significant tributaries. Finally, the report recommends an EMP to address any residual risks. Conditions are recommended to be imposed in relation to the mapping of the relevant features and for suitable setbacks to be achieved.

DELWP Gippsland state the potential for significant impact on Swift Parrot, Fork-tailed Swift and White-throated Needletail is uncertain, while the potential for significant impact on Orange-bellied Parrot is uncertain but probably low. No significant adverse impacts are anticipated for other avifauna species, such as migratory shorebirds and terns. DELWP Gippsland endorse the proposed mitigation measures referred to in the paragraph above. However, despite these mitigation measures, they state potential impacts are uncertain – particularly to Swift Parrot, Orange-bellied Parrot, White-throated Needletail and Fork-tailed Swift. They consider part of this uncertainty needs to be addressed through the EPBC controlled action assessment, with the remaining uncertainty monitored through a BAM Plan if a planning permit is granted. DELWP Gippsland recommend the BAM Plan should include a both general and species-specific monitoring program for certain timeframes (with options to extend if thresholds are exceeded), the implementation of mitigation

measures depending on the data collected (including potential curtailment of turbines), and a data-sharing agreement.

DELWP Gippsland's advice is particularly concerned with the uncertainty of impacts. They suggest two approaches to reducing uncertainty, including to review the information that will be required under the controlled action assessment and for expert review of the potential for significant impacts to key species.

In this regard, it is relevant to refer to the EPBC controlled action assessment and the Victorian Minister for Planning's Assessment Report under the Bilateral Agreement. This report concluded the environmental effects and risks of the project are acceptable, provided specific mitigation and avoidance measures are adopted. Risks for Fork-tailed Swift were deemed acceptable and no recommendations were made. However, regarding Swift Parrot, Orange-bellied Parrot and White-throated Needletail, mitigation measures were considered necessary and warranted. This assessment contributed towards EPBC 2017/7854 being approved subject to various conditions, which broadly include the following:

Orange-bellied Parrot: configuration of the wind farm layout to provide a 1km buffer around their habitat. A figure has been provided showing the extent of habitat. Analysis suggests up to three of the 34 turbines in the south-eastern part of the proposal (T32, T33 and T34) will need to be deleted or relocated to meet this requirement. A condition is recommended in this regard for relocation or deletion of turbines, so they are not located within 1km of mapped Coastal Saltmarsh habitat.

Swift Parrot: a BAM Plan that details specific actions to mitigate potential impacts, including active monitoring of surrounding habitat at the start and during Swift Parrot season to identify resource availability and their presence as well as scenario plans requiring the shutdown of high-risk turbines.

White-throated Needletail: a BAM Plan that details specific actions to mitigate potential impacts, including seasonal monitoring for the presence of White-throated Needletail and mortality monitoring as well as scenario plans requiring the shutdown of high-risk turbines.

If a planning permit is issued, it is recommended suitable conditions be imposed in line with EPBC 2017/7854 relating to Swift Parrot, Orange-bellied Parrot and White-throated Needletail. The requirement for a BAM Plan should also address, among various typical requirements, bird and bat monitoring more generally as well as strategies to detect, avoid and mitigate impacts and mortalities.

It is noted the Minister for Planning's Assessment Report under the Bilateral Agreement considers the Growling Grass Frog. However, any impacts on this species can be suitably captured in the general condition for an EMP, including managing construction activities to avoid impacts in downstream environments.

Overall, the proposal is assessed as being acceptable in terms of fauna impacts, based on suitable conditions being imposed.

### Wetlands

The Albert River, Jack River, Stony Creek and various unnamed drainage lines all traverse the site, although they are not within the development footprint. However, surface water drains through the site into the nearby Corner Inlet, which is an expansive RAMSAR site – a wetland of international importance. The Corner Inlet supports a variety of wetland types, an array of habitats and abundant flora and fauna (including a significant proportion of the total global population of numerous waterbird species). The Corner Inlet is located to the south of the proposed wind farm, with the nearest turbine being 962m at its closest point from the RAMSAR site boundary.

Although the proposal is located at some distance from the Corner Inlet, it has the potential to cause impacts through the release of sediments from construction activities, such as turbine foundations, access tracks and underground cabling. Flow on impacts could occur to the habitat of fauna such as



migratory birds, Growling Grass Frog and the Orange-bellied Parrot. However, it is not expected the proposal would generate significant runoff, affect stream flows or drainage patterns, or increase flood hazards. Further, it is noted the proposal does not involve direct modification of the Corner Inlet and is located outside of its boundary.

The West Gippsland CMA have recommended the inclusion of permit condition relating to the development of a Construction Management Plan to their satisfaction. The basis for this is that a considerable number of waterways traverse the area and that, while these may be low in ecological value, they provide an important drainage function and are directly connected to Corner Inlet such that any adverse impact on them will result in an adverse impact on the RAMSAR wetland itself. If a planning permit is issued, it is recommended a suitable condition be imposed in this regard. The West Gippsland CMA have also requested a note be placed on any planning permit that all works within 30m of a designated waterway will require a Works on Waterways permit.

It is considered any wetlands impacts can be avoided or mitigated through a suitable permit condition for a Construction Environmental Management Plan, consistent with the recommendation of the West Gippsland CMA. The proposed design includes a buffer of at least 50m from waterways and wetland habitat (except for specified creek crossings), and it is recommended a condition also be included to secure suitable buffers.

Overall, given the scale and nature of the proposal and with the inclusion of suitable conditions, the proposal is unlikely to result in significant impacts to wetlands, with emphasis on the protection of the Corner Inlet RAMSAR site from construction impacts such as sediment flows and erosion.

#### **Are impacts on amenity values, such as noise, shadow flicker, electromagnetic interference and blade glint acceptable?**

##### Noise

Impacts have been considered in the *Noise Assessment* by Marshall Day Acoustics, dated 19 April 2018. This report assesses predicted noise impacts for 102 residential (or noise sensitive) receivers near the proposed wind farm in accordance with the New Zealand Standard NZS6808:2010, Acoustics – Wind Farm Noise (NZS 6808:2010). This includes eighty-five non-stakeholders and seventeen stakeholders. This report meets the mandatory noise assessment requirement at Clause 52.32 of the Wellington Planning Scheme for: *a pre-construction (predictive) noise assessment report demonstrating that the proposal can comply with the New Zealand Standard NZS6808:2010, Acoustics – Wind Farm Noise, including an assessment of whether a high amenity noise limit is applicable under Section 5.3 of the Standard.*

The findings in the *Noise Assessment* have been confirmed in the *Environmental Audit Report: S.53V Risk of Harm* by EnviroRisk, dated 30 October 2019. This report states: *the auditor has formed the opinion that the noise assessment report processes are based on sound methodology and have been undertaken by skilled and experienced personnel in accordance with the Standard.* This report meets the mandatory noise assessment requirement at Clause 52.32 of the Wellington Planning Scheme for: *an environmental audit report of the pre-construction (predictive) noise assessment report prepared under Part IXD, Section 53V of the Environment Protection Act 1970 by an environmental auditor appointed under Part IXD of the Environment Protection Act 1970. The environmental audit report must verify that the acoustic assessment undertaken for the purpose of the pre-construction (predictive) noise assessment report has been conducted in accordance with the New Zealand Standard NZS6808:2010, Acoustics – Wind Farm Noise.*

##### Candidate turbine models

The application does not seek a planning permit for a specific turbine model. Rather, it is intended a final turbine model would be selected after a permit is issued, if one is issued. The selection of the final model would involve detailed design work, which may require modification of the turbine

layout through deletion of turbines or micro-siting and would need to achieve compliance with noise limits at nearby noise-sensitive locations.

For the purposes of the assessment, seven possible candidate turbine models have been considered; Senvion 3.4M140; Siemens SWT 3.3-130; Vestas V136-3.45; Siemens SWT 3.15-142; Siemens SWT 3.6-130; Gamesa G132-3.465; and Vestas V136-3.6. The assessment of the candidate models is mainly to demonstrate that compliance with relevant noise limits can be practically achieved. It is noted the predicted noise levels correspond to the highest sound power level for each of the candidate models.

#### *Non-stakeholder receivers*

The predicted noise levels for each candidate turbine model have been assessed against a base noise limit of 40dB  $L_{A90}$  for all non-stakeholder receivers that are 'noise sensitive locations' in accordance with NZS 6808:2010.

It is noted that 'high amenity noise limits' are not deemed applicable in this instance as non-stakeholder receivers are within the Farming Zone, which is not associated with a higher degree of protection or expectation of acoustical amenity.

The *Noise Assessment* finds compliance with the base noise limit from NZS 6808:2010 is achieved for all candidate turbine models for the 85 non-stakeholder, noise sensitive receivers assessed. For all other non-stakeholder receivers in the surrounding area, the *Noise Assessment* confirms that predicted noise levels will be below 35dB  $L_{A90}$  and will comply with the lowest possible NZS 6808:2010 noise limit for all candidate turbine models.

However, it is observed that noise levels above 39dB  $L_{A90}$  are predicted for receivers D30, D51, D60 and D62 for the Siemens SWT 3.3-130, Vestas V136-3.45 and Gamesa G132-3.465 turbine models, meaning a small margin between the predicted noise level and compliance with the base noise limit in these instances. Predicted noise levels are as high as 39.9dB  $L_{A90}$  for receiver D60 for the Vestas V136-3.45 model, meaning a very small margin for compliance. In this regard, the Noise Assessment comments, '*given the margin of compliance...it is likely a permit requirement will require that once the final turbine selection and layout...are confirmed, that compliance with the relevant noise limit will also need to be reassessed*'. To address this, it is recommended a condition be included on any permit issued requiring a further pre-construction noise assessment to be undertaken based on the final turbine model and final turbine locations.

If a planning permit is issued, a condition should be included allowing non-stakeholder landowners to enter into an agreement with the wind farm waiving the noise limits. This must be a form of agreement that applies to the land for the life of the wind farm.

#### *Stakeholder receivers*

Stakeholder receivers are not a 'noise sensitive location' in accordance with NZS 6808:2010, as they are on the wind farm site. However, they have nonetheless been assessed in the *Noise Assessment* and a base noise limit of 45dB  $L_{A90}$  applied, as recommended by *The European Working Group on Noise from Wind Turbines* (ETSU-R-97). The results of the assessment for stakeholder receivers is as follows:

- Senvion 3.4 M140: Compliance with the recommended base noise limit is achieved at all stakeholder receivers;
- Siemens SWT 3.3-130: Predicted noise levels exceed the base noise limit at three stakeholder receivers; R02, R14 and R17 by 1.9dB, 1.3dB and 0.4dB respectively;
- Vestas V136-3.45: Predicted noise levels exceed the base noise limit at three stakeholder receivers; R02, R14 and R17 by 1.8dB, 1.3dB and 0.5dB respectively;
- Siemens SWT-3.15-142: Predicted noise levels exceed the base noise limit at one stakeholder receiver; R02 by 0.5dB;

- Siemens SWT-3.6-130: Predicted noise levels exceed the base noise limit at two stakeholder receivers; R02 and R14 by 1.0dB and 0.3dB respectively;
- Gamesa G132: Predicted noise levels exceed the base noise limit at three stakeholder receivers; R02, R14 and R17 by 1.7dB, 1.2dB and 0.4dB respectively; and
- Vestas V136-3.6: Predicted noise levels exceed the base noise limit at two stakeholder receivers; R02 and R14 by 1.2dB and 0.6dB respectively.

As dwellings located on the wind farm site are not 'noise sensitive locations' under the NZS 6808:2010, there is no noise limit that applies. However, noise levels at these locations should be addressed as a private matter between the wind farm and the dwelling owners.

#### *Dwelling X*

Impacts on Dwelling X have been assessed in the report titled *Predicted Noise Levels – Receiver S01* by Marshall Day Acoustics, dated 5 November 2018. Dwelling X, also referred to as receiver S01 in the report, is a non-stakeholder, noise-sensitive location. The report sets out the highest predicted noise levels at S01 for the candidate turbines are 39.0, 40.9, 41.3, 39.5, 39.8, 41.1 and 40.2 (all dB LA90). This means three of the candidate turbines can comply with the base noise limit of 40dB LA90 under NZS 6808:2010 for Dwelling X, but four of the candidate turbines are predicted to be above the base noise limit. To address this, it is recommended a condition be included on any permit issued requiring a further pre-construction noise assessment to be undertaken based on the final turbine model and final turbine locations. The results of this further assessment will need to show that compliance with relevant noise limits will be achieved. If not, it may be necessary to relocate or delete turbines to achieve compliance, and conditions are recommended in this regard. A further condition should be imposed for ongoing compliance with the performance requirements of NZS 6808:2010.

#### *Properties Y and Z*

Properties Y and Z have approved planning permits for dwellings, due to expire on 16 June 2020. It is understood dwellings have not been constructed on either property, but conditions should be included to manage the situation in case they are built. If the approved dwellings are constructed under the extant planning permits, conditions should require turbines to be relocated or deleted to achieve compliance with the performance requirements of NZS 6808:2010. However, the conditions would not apply if the extant planning permits expire (i.e. if the dwellings are not built) and there would be no need to relocate or delete turbines in this instance.

#### *Conclusion*

Compliance with NZS 6808:2010 can be achieved for the proposed layout for the different candidate turbine models. If a permit is issued, it is recommended that conditions be included to avoid, mitigate and (if necessary) remedy noise impacts and to ensure the wind farm is constructed and operates acceptably. In this regard, conditions from the *Policy and Planning Guidelines: Development of Wind Energy Facilities in Victoria* (the Wind Farm Guidelines) should be included in relation to performance requirements, a pre-construction noise assessment, a post-construction noise assessment, a noise management plan, and environmental audit reports. Where necessary, assessments will need to be based on background noise monitoring being undertaken, on detailed design and micro-siting layout work, and a final turbine model being selected.

#### *Shadow flicker*

Impacts have been assessed in the *Shadow Flicker and Blade Glint Assessment* by DNV GL, dated 15 September 2017. This excludes Dwelling X and Properties Y and Z, which are considered further below. The report states that for all non-stakeholder dwellings, theoretical shadow flicker is within the limit of 30 hours and predicted actual shadow flicker is within the limit of 10 hours.

The *Shadow Flicker and Blade Glint Assessment* notes some stakeholder dwellings are very close to the proposed turbines, which is likely to lead to high levels of shadow flicker. The nearest dwelling is about 355m from a turbine and there are seven dwellings within 600m of a turbine. However, this can be dealt with by applying the standard condition from the Wind Farm Guidelines relating to shadow flicker. This requires that shadow flicker from the wind farm must not exceed 30 hours per year at any dwelling existing as of the date of the planning permit application, unless the operator has entered into an agreement with the relevant landowner waiving this requirement (with evidence of the agreement submitted to the satisfaction of the responsible authority).

Within the *Shadow Flicker and Blade Glint Assessment*, it is proposed that Dwellings R02 and R14 (both receiving high levels of theoretical and predicted actual shadow flicker) will be uninhabited if the wind farm is constructed and operating. The proponent has advised they have reached agreements with dwelling owners in this regard. If a permit is issued, it is recommended a condition be included requiring a Section 173 Agreement to be entered into in this regard.

#### *Dwelling X*

Impacts on Dwelling X have been assessed in the report *Re: Alberton Shadow Flicker Assessment* by DNV GL, dated 23 November 2018. The modelling shows shadow flicker at Dwelling X will exceed 30 hours per year. As such, the report states it will be necessary to relocate the turbines contributing to shadow flicker at Dwelling X. Investigations have found relocating Turbine T18 approximately 50m to the north is expected to reduce shadow flicker at Dwelling X to less than 30 hours, with levels at other surrounding dwellings expected to remain less than or equal to the results in the original *Shadow Flicker and Blade Glint Assessment*. However, it may also be necessary to relocate or delete turbines other than Turbine 18 to achieve compliance with a shadow flicker level of less than 30 hours for Dwelling X, and conditions are recommended in this regard.

#### *Properties Y and Z*

Properties Y and Z have approved planning permits for dwellings, due to expire on 16 June 2020. It is understood dwellings have not been constructed on either property, but conditions should be included to manage the situation if they are built. If the approved dwellings are constructed under the extant planning permits, conditions should require turbines to be relocated or deleted so shadow flicker levels do not exceed 30 hours per year at the dwellings. However, the conditions would not apply if the extant planning permits expire (i.e. if the dwellings are not built) and there would be no need to relocate or delete turbines in this instance.

#### Electromagnetic interference

The application materials include the *Investigation of Possible Impacts on Broadcasting and Radiocommunications Services* by Lawrence Derrick & Associates, dated 19 June 2016. This report does not raise any significant concerns with the proposed wind farm in relation to actual or potential electromagnetic interference impacts. The Wind Farm Guidelines contain standard conditions relating to electromagnetic interference. Firstly, a Television and Radio Reception Strength Survey should be undertaken, with testing at selected locations within 5km of the wind farm. Secondly, any complaints about effects on reception should be suitably investigated and, if any detrimental effects are found, reception should be restored to at least the quality determined in the Survey. If a planning permit is issued, it is recommended suitable conditions be imposed in this regard. However, the conditions should be expanded to address mobile phone coverage and not just television and radio reception strength.

#### Glint

Glint is unlikely to be problematic, provided non-reflective finishes are used. If a planning permit is issued, it is recommended a standard condition from the Wind Farm Guidelines be included requiring the colours and finishes of all buildings and works (including turbines) to be non-reflective to minimise the visual impact of the development on the surrounding area.

## Are landscape and visual amenity impacts acceptable?

The proponent has submitted their *Landscape and Visual Impact Assessment (LVIA)* by Green Bean Design, dated 18 December 2018. The LVIA sets out that the viewshed for the proposed wind farm is 20km – essentially the surrounding area the turbines may potentially affect. The proposal would be visible from some areas beyond the 20km viewshed; however, it would have a low level of visual significance at such distances.

The LVIA addresses the area's landscape character, concluding it has a moderate sensitivity and that while distinguishable characteristics may be altered by the proposal, the area has the capability to absorb some change. The landscape character of the site and surrounds is well represented (or common) in the Wellington Shire and within the eastern portion of the Gippsland region.

Turning to key views and visual effects, the LVIA addresses concludes the following:

- Towns/settlements: moderate/low impacts as views will be partially restricted by development and built structures in urban areas as well as by areas of vegetation.
- Nooramunga Marine and Coastal Park: moderate impacts as views toward the turbines would be partially screened by coastal vegetation and tree cover between the Park and the site. The *Coastal Spaces Landscape Assessment Study* identifies the Park as being a State-significant landscape area and valued by the community for panoramic 'out views' of Wilsons Promontory, particularly from Snake Island. The Park is noted as being visually significant and is generally located between 3-5km from the closest turbine. However, turbines would not be visible within the general extent of 'out view' from either Sunday Island or Snake Island to the west.
- Highways and local roads: moderate/low impacts as the sensitivity of receivers travelling along roads tends to be low in combination with views generally being transitory and of short duration. This is despite views being proximate and direct towards turbines, especially on local roads.
- Agricultural land: moderate/low impacts as the sensitivity of visual impacts is less for those employed or carrying out work in rural areas compared to views from residential dwellings. Ultimately, the level of impact would depend on the type of activities engaged in, the location of the activities, the degree of vegetation screening, and the perception of the viewer.
- Publicly accessible locations: moderate/low impacts as the influence of both distance and existing vegetative cover is likely to screen any potential views toward the wind farm site.

In terms of views from residential dwellings, the LVIA assesses 103 non-associated dwellings within a 3km viewshed and determines 18 would have a high visual effect, 56 a high/moderate visual effect, 20 a moderate visual effect, 7 a moderate/low visual effect, 1 a low visual effect, and 1 a negligible visual effect. However, it is noted many of these dwellings already benefit from privacy and/or shelter planting, reducing the visibility of the wind farm from these locations. The LVIA considers most dwellings beyond a 3km viewshed would be unlikely to be significantly impacted by the proposal given the influence of topography and vegetative screening.

The LVIA recommends mitigation measures to reduce visual impacts of the proposal – and this is especially crucial for the residential dwellings identified above. The first measure is to minimise the visual contrast between the turbines and the landscape. In this regard, it is recommended to include a condition requiring the use of non-reflective finishes. The second measure is to screen views. It is not considered any on-site landscaping is necessary. However, if a permit is issued, it is recommended a standard condition from the Wind Farm Guidelines be included requiring off-site landscaping to be provided for farm dwellings within 5km of any turbine – where a turbine is visible. While it is noted the LVIA has only assessed dwellings within a 3km viewshed, the provision of landscaping to dwellings within 5km is justified in this instance, given the height of the proposed turbines and to achieve consistency with other wind farm projects elsewhere in Victoria. Dwellings

within Township, Commercial, Industrial or Residential Zones are excluded from the requirement. The screening requirement is only for dwellings in the Rural Zone.

Regarding Wilsons Promontory, it is noted the proposed wind farm would be located around 30km from this prominent landscape feature. At this distance, is considered the proposal is unlikely to dominate or detract from the visual amenity or landscape character of this feature.

In terms of cumulative visual impacts, the LVIA notes the Toora wind farm is located 20km to the west of the proposal. At this distance and given the nature and location of the Toora wind farm, any cumulative impacts would be unlikely.

Finally, it is acknowledged the LVIA has not assessed potential effects associated with obstacle lighting. This is not considered necessary in the circumstances as lighting is not proposed or required (refer aviation assessment below).

Concluding, it is considered the proposed wind farm can be successfully incorporated into the landscape whilst suitably maintaining visual amenity values. Impacts on existing landscape values are not significant or unreasonable.

### **Are aviation impacts acceptable?**

The proponent has submitted their *Aviation Impact Assessment* by SGS Hart Aviation, dated 16 December 2015. Comments have been received from CASA, dated 9 March 2018. The proponent has made comments available from Airservices Australia, dated 29 March 2018.

Yarram Airport, a registered aerodrome, is about 8.3km to the northeast of the site. It is understood to be used mainly for ultra-light aircraft, light aircraft and aerial agriculture operations. The *Aviation Impact Assessment* identified five other airfields as being within or near 30km of the proposed wind farm site. However, all of these are either no longer operating or are located at distances and with operational natures where they would be unaffected by the presence of the proposed wind farm.

The proponent's view is that the overall risk to aviation operations near the proposed wind farm is sufficiently low such that the installation of obstacle lighting is not necessary. However, CASA has recommended lighting at night – despite the proposed wind farm being outside of the OLS for Yarram Airport. CASA is not a statutory referral authority and are unable to require lighting be installed. Further, such lighting can have adverse visual and ecological impacts. Overall, it is not considered the proposal presents unacceptable risks to aviation safety to warrant a requirement for lighting, and any benefits may be outweighed by adverse impacts. However, if lighting becomes a requirement through future legislation or regulation, it could be retrofitted to the turbines.

CASA have recommended the views of Emergency Management Victoria and the Aerial Application Association of Australia are sought regarding the potential for impacts on aerial firefighting operations and aerial agricultural operations. Public notice was given to both these organisations, who did not make submissions in response. The *Aviation Impact Assessment* expects that aerial agriculture activities will be able to continue in the area, while aerial firefighting activities would also still be able to occur as required.

If a planning permit is issued, it is recommended a condition be included requiring the endorsed Development Plans to be sent to various organisations, so aeronautical charts can be updated. This is essential risk mitigation, especially in relation to Airservices Australia, who would publish a Notice to Airmen (NOTAM) to alert aircraft pilots of the wind farm being a potential hazard that could affect the safety of the flight.

Overall, the proposal is acceptable in aviation terms.

### **Are traffic impacts acceptable?**

The construction, operation and decommissioning of the proposal has the potential to give rise to adverse traffic impacts – particularly due to the creation/alteration of access to the South Gippsland

Highway, which is an important Category 1 road. However, it is considered these impacts can be avoided, remedied and mitigated provided appropriate traffic management measures are in place.

Impacts have been considered in the submitted *Preliminary Transport Management Plan* by Cardno, dated 13 October 2016. Based on a preliminary route assessment, it is considered that with moderate upgrades and modifications, loads could physically be delivered to all proposed turbine locations. It is noted a turbine blade length of 70m was adopted for the assessment; this should not be exceeded without further consideration. In addition, load heights will need to be confirmed and checked for adequacy. The preliminary route is predominantly good quality highway, except for the more localised access routes. Port Anthony has reasonable amounts of storage and would require little work to accommodate the various wind farm equipment. However, its final suitability will need to be confirmed with the Port Authority.

It is observed that VicRoads have not objected to the proposal. However, as a determining referral authority, the conditions they have required must be included in any planning permit issued. The principal of these conditions is for a Traffic and Asset Management Plan to be prepared to the satisfaction of VicRoads. This Plan must include an existing conditions survey of public roads to be used, the designation of appropriate vehicle routes, the identification and scheduling of any works, a program of regular inspections, the completion of any required maintenance works, a program to rehabilitate roads following construction, and a communications plan. Other conditions required by VicRoads include (but are not limited to) the completion of road upgrade works, legal agreements for road maintenance and repair, and the payment of fees.

The Wellington Shire Council has also submitted that traffic impacts should be managed through permit conditions. This includes managing the condition and integrity of roads throughout the duration of the project, requiring repair and reinstatement, and addressing financial security.

The Wind Farm Guidelines include standard conditions relating to traffic management. It is recommended suitable conditions be imposed where these matters are not already addressed in the conditions required by VicRoads and recommended by the Wellington Shire Council.

VicRoads have requested a note be added to any planning permit issued relating to their recommendation for a viewing area to be established. This is only a note and is not required by VicRoads as a condition. VicRoads considers the construction and operation of the proposed wind farm could attract the attention of road users, and a viewing area whereby vehicles can be safely parked off the road should be considered as a mitigating response.

The proponent will also be required to comply with the requirements of the *Road Management Act 2004*, the *Road Safety Act 1986* and the *Code of Practice for Workplace Safety – Traffic Management* published under the Road Safety Act.

With the inclusion of suitable conditions, the proposal will result in an acceptable traffic outcome.

#### **Are cultural and historic heritage acceptable?**

The proponent has prepared a voluntary CHMP (ID. 15167), approved on 15 February 2018. If a planning permit is issued, the use and development will need to be undertaken in accordance with the requirements of the CHMP. The proposal is acceptable in relation to cultural heritage.

The former Gelliondale Briquette Plant is the only relevant non-Aboriginal historic heritage item on the site and is recorded on the Victorian Heritage Register (H1058), Heritage Inventory (H8220-0008) as well as under the Heritage Overlay (H081). It lies 40m to the north of the proposed location for Turbine T08. However, the turbine and its infrastructure have been located and designed to not impact on the former Plant site. Further, there appears to be limited remains of the former Plant and the heritage significance. The proposal is acceptable in relation to historic heritage.

### **Are social and economic impacts acceptable?**

Sections 60(1)(f) and 60(1B) of the Act requires consideration of any significant social and economic effects the use or development may have, including having regard to the number of objectors in considering whether the use or development may have a significant social effect.

Significant social and economic effects have traditionally been recognised as those affecting the community at large, rather than an individual. That there may be an exploitable coal resource on the land, that Gelliondale Resources holds a retention licence in relation to that resource, and the possibility that the use and development of land for a wind farm may inhibit the utilisation, is potentially a significant social and economic effect. The need to protect the State's significant coal resources for current or future use is a primary consideration and recognition is given to avoiding uses or development that prejudice or inhibit the use of the resource. However, the assessment above has found the proposal is acceptable in respect of considerations around the coal resource and retention licence. Further, the Victorian Government's 2017 *Statement on Future Uses of Brown Coal* affirms the share of brown coal-fired power generation will reduce over the coming decades, including with the need to respond to climate change. Against this backdrop, the proposed wind farm reaches a positive balance with other social, economic and environmental outcomes that support it achieving a net community benefit. This includes climate change matters, direct and indirect jobs, as well as diversification and investment in rural and regional economies.

It is noted 150 objections have been received. While this is a significant number of objections, it does not, by itself, mean the proposed use and development will have significant social effects, which are impacts affecting the wellbeing of the community. These types of impacts could include noise impacts as well as flow-on effects from visual impacts, traffic or economic impacts. As has been seen from the assessment above, while there will be some evident adverse impacts caused by the use and development, these are within acceptable limits.

Overall, it is considered the proposal has acceptable social and economic effects.

### **What are the implications of any hazards?**

Portions of the wind farm site are located within the Floodway Overlay (FO), the Land Subject to Inundation Overlay (LSIO) and the Bushfire Management Overlay (BMO). Furthermore, objections received have raised concerns with geotechnical risks.

Regarding the FO and LSIO, the West Gippsland CMA is a recommending referral authority, and have not objected to the proposal. The West Gippsland CMA have noted that most of the proposed turbines are on higher land, with only two turbines located in flood depths of greater than 0.5m and Turbine 34 likely to be on flood-prone land. However, the West Gippsland CMA have stated the wind farm proposal is unlikely to increase the flood hazard at the site or to adjoining properties. Overall, it is considered the proposal will not be at undue risk to flood hazards or that it will cause undue flood hazard risks itself.

There is no permit trigger from the application being within the BMO. However, the proposed wind farm will be required to meet other requirements outside of the planning permit process in relation to fire safety and emergency management. For instance, *AS 3745: Planning for emergencies in facilities* requires an Emergency Management Plan – and this must incorporate a Fire Management Plan. There is nothing to suggest the proposal will present unacceptable bushfire risks.

A condition should be included requiring the wind farm developer to provide spatial data information about wind turbines, gates and access tracks to Land Use Victoria. This is to assist emergency service dispatchers.

With regards to geotechnical matters, the proponent has submitted a *Preliminary Geotechnical Investigation* by Golder Associates, dated 17 January 2017. The report presents the results of both desktop studies and site investigations and provides initial discussions and recommendations



regarding the design and construction of turbines at the site. There is nothing to suggest the proposal presents significant geotechnical risks.

### **Any other matters**

The proposed wind farm's decommissioning is a consideration, given its expected life of 20-30 years. If a planning permit is granted, it is recommended that decommissioning can be suitably governed via permit conditions. A condition should be included for an Decommissioning Management Plan, which must address measures to minimise any amenity and environmental impacts from decommissioning activities. Further, standard conditions from the Wind Farm Guidelines should be included. These include a Decommissioning Traffic Management Plan; the removal of all infrastructure, plant, equipment and access tracks that are no longer required; and the reinstatement of the site to the condition it was in prior to the commencement of development.

Property devaluation has been raised in various instances. However, this is not a valid planning consideration and no further assessment is given to this matter.

It has been asserted that the application materials contain inaccuracies, including existing and proposed dwellings being misidentified. In this regard, the application has been assessed and critiqued by DELWP officers. It is noted that the expert reports supporting the application have been prepared by professionals and their objectivity and accuracy must be taken in good faith. In terms of the misidentification of dwellings, the Wellington Shire Council has been consulted to check this matter and it is considered that the application materials have identified all relevant dwellings and suitably assessed the proposal in relation to them. This includes proximity of turbines to existing dwellings as well as noise and shadow flicker impacts to both existing and proposed dwellings.

Objections have stated that an alternative, off-shore location should be supported. However, the exercise in this case is to assess the proposal's suitability and impacts in the proposed location, not to consider alternative settings.

The absence of an EES has been raised. It is noted that the Minister for Planning issued their decision not to require an EES on 28 December 2017, with five reasons attached to this.

Objections have raised a lack of public engagement/consultation and benefit sharing and state that this has resulted in significant community opposition. The application materials assert that a range of public consultation and engagement activities have occurred and that there is a commitment to a Community Support Fund of up to \$80,000 per year.

## **Conclusion**

The proposal generally accords with the Wellington Planning Scheme and with other relevant policy and planning considerations. Although a significant number of objections have been received, the proposal is acceptable in planning terms and no referral authorities have raised objections. Further, any actual or potential adverse effects can be suitably avoided, remedied or mitigated by the inclusion of detailed permit conditions.

As such, it is recommended a Notice of Decision to Grant Planning Permit PA1700284 be issued for the use and development of land for a wind energy facility including the construction of buildings and the carrying out of works; the removal of native, non-native and dead vegetation; and the creation and alteration of access to a Road Zone Category 1, subject to suitable conditions.

**Prepared by: Tim Wild**

I have considered whether there is a conflict of interest in assessing this amendment and I have determined that I have:

**No Conflict**

Conflict and have therefore undertaken the following actions:

- Completed the [State Planning Services declaration of Conflict/Interest form](#).
- Attached the State Planning Services declaration of Conflict/Interest form on to the hardcopy file.
- Attached the State Planning Services declaration of Conflict/Interest form into the relevant electronic workspace.

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Name: Tim Wild

Signed:

Title: Senior Planner, Renewables

Phone: 5275 2100

Dated: 2 / 12 / 2019

**Reviewed by:**

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Name: Michael Juttner

Signed:

Title: Manager, Renewables

Phone: 5275 2100

Dated: 2 / 12 / 2019

**Approved by:**

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Name: Matt Cohen

Signed:

Title: Director, Development Approvals and Design

Phone: 5275 2100

Dated: 6 / 12 / 19

## **Appendix A: Address of the Land**

### **Land**

Lot 1 on Title Plan 578219F VOLUME 09793 FOLIO 782  
Crown Allotment 1 Section A Parish of Alberton West VOLUME 10360 FOLIO 155  
Crown Allotment 23A Section A Parish of Alberton West VOLUME 08418 FOLIO 802  
Crown Allotment 23B Section A Parish of Alberton West VOLUME 06276 FOLIO 023  
Lot 1 on Title Plan 380462X VOLUME 06186 FOLIO 193  
Crown Allotments 3 and 3A Section A Parish of Alberton West VOLUME 06157 FOLIO 231  
Lot 1 on Title Plan 578908F VOLUME 09810 FOLIO 905  
Lot 1 on Title Plan 110485V VOLUME 10183 FOLIO 193  
Crown Allotment 24B Section A Parish of Alberton West VOLUME 09406 FOLIO 298  
Lots 1 and 2 on Title Plan 865659A VOLUME 04729 FOLIO 636  
Crown Allotments 53, 54, 59 and 60 Parish of Alberton West VOLUME 05387 FOLIO 290  
Lot 2 on Plan of Subdivision 092727 VOLUME 09060 FOLIO 386  
Crown Allotment 55A Parish of Alberton West VOLUME 10684 FOLIO 163  
Crown Allotment 49B Parish of Alberton West VOLUME 03387 FOLIO 244  
Lot 2 on Plan of Subdivision 404524N VOLUME 10316 FOLIO 253  
Lots 1, 2 and 3 on Title Plan 943340C VOLUME 08820 FOLIO 377  
PC362145 VOLUME 10415 FOLIO 520  
Crown Allotment 13 Parish of Alberton West VOLUME 09323 FOLIO 052  
Crown Allotment 8A Parish of Alberton West VOLUME 07288 FOLIO 434  
Crown Allotments 13B and 13B1 Parish of Alberton West VOLUME 08403 FOLIO 204  
Crown Allotment B Section 9 Parish of Alberton West VOLUME 11986 FOLIO 622  
Crown Allotment A Section 9 Parish of Alberton West VOLUME 10932 FOLIO 575  
Lot 7 on Plan of Subdivision 004703 VOLUME 03173 FOLIO 544  
Lot 2 on Plan of Subdivision 617385M VOLUME 11082 FOLIO 236  
Lot 5 on Plan of Subdivision 004703 VOLUME 03141 FOLIO 079  
Lot 8 on Plan of Subdivision 315529X VOLUME 10841 FOLIO 764  
Crown Allotments 14F Parish of Yarram Yarram VOLUME 11933 FOLIO 984  
Crown Allotment 14B1 Parish of Yarram Yarram VOLUME 04801 FOLIO 127  
Lot 1 on Plan of Subdivision 619482D VOLUME 11096 FOLIO 595  
Crown Allotment 12A Parish of Alberton West VOLUME 08137 FOLIO 959  
Lot 1 on Title Plan 109933C VOLUME 10060 FOLIO 723  
Lot 1 on Title Plan 221442V VOLUME 08137 FOLIO 957  
Lot 2 on Plan of Subdivision 714292D VOLUME 11439 FOLIO 676  
Lot 1 on Plan of Subdivision PS714292 VOLUME 11439 FOLIO 675  
Crown Allotments 14A, 14K and 14A1 Parish of Yarram Yarram VOLUME 03792 FOLIO 307  
Crown Allotment 14L Parish of Yarram Yarram VOLUME 09060 FOLIO 895  
Lot 3 PS 004703 VOLUME 03437 FOLIO 310  
Lot 1 TP 864748G VOLUME 06410 FOLIO 974  
Lot 1 on TP 004297P VOLUME 10233 FOLIO 349  
Lot 1 on TP 221443T VOLUME 08137 FOLIO 958  
Lot 1 TP128952 VOLUME 09083 FOLIO 984  
Lot 1 on Plan of Subdivision 603015B VOLUME 10999 FOLIO 280

## **Roads**

Road Reserve of Pound Road West (approximately 1100m southeast of Lower Jack Road)  
Road Reserve of Wests Road (approximately 50m east of Lanes Road)  
Road Reserve of Old Alberton West Road (approximately 400m east of Crangs Road and at 1130m east of Crangs Road)  
Road Reserve of Old Alberton West Road (approximately 1130m east of Crangs Road)  
Road Reserve of Old Alberton West Road (approximately 1100m west of Crangs Road)  
Road Reserve of Crangs Road (approximately 440m south of Old Alberton West Road)  
Road Reserve of Coal Mine Road (approximately 525m north of the South Gippsland Highway)  
Road Reserve of Old Alberton West Road (approximately 960m west of the South Gippsland Highway)  
Old Railway Reserve South Gippsland Rail Trail (approximately 710m east of Old Alberton West Road)  
Road Reserve of Ti Tree Road (approximately 1150m south of the South Gippsland Highway)  
Road reserve of South Gippsland Highway (approximately 25m east of Birds Road South)  
Road Reserve of Coal Mine Road (approximately 10m south of the South Gippsland Highway)  
Road Reserve of Ti Tree Road (approximately 1500m south of the South Gippsland Highway)  
Road Reserve of Ti Tree Road (approximately 2840m south of the South Gippsland Highway)  
Road reserves of South Gippsland Highway and Private Access Road (approximately 1200m east of Birds Road South)  
Road reserves of South Gippsland Highway and Coal Mine Road  
Road reserves of South Gippsland Highway and Old Alberton Road  
Road reserves of South Gippsland Highway and Ti Tree Road  
Road reserves of South Gippsland Highway and Pound Road West