

Commissioners Duncan and Cochrane

In my opinion, you have been misled.

One of the great improvements to the IPC Determination process of recent times has been the publication of transcripts of meetings between Commissioners and the Department of Planning (DPE) and also with the proponent. These transcripts complement the public meeting transcript. Examining the three transcripts for Crudine Ridge Wind Farm (CRWF) Modification 1, a case can be made for all three that Commissioners have been misled. I would like to single out one such example in the transcript of your 30 minute meeting with DPE on Wednesday, June 5, 2019.

The transcript shows, on Page 11: (my bolding):

MR COCHRANE: Yes. Yes. Okay. Okay. So, you talked – in the assessment report, mentioned the – there was a possible question of the reduction of clearing because of the smaller number of turbines playing into this for the road clearing, but the EBPC – according to the assessment report, the EBPC rejection, if you like, of the 77 was on social and amenity impacts, not on - - -

MR YOUNG: That's right.

MR COCHRANE: - - - clearing.

MR YOUNG: That's right.

MR COCHRANE: So it's a kind of different issue.

MR YOUNG: Yes.

MR COCHRANE: Do you know what's on the ridge, what is being cleared? It must be woodland of some sort.

*MR YOUNG: Well, once you see the site, you will see that it's the – the site for the wind farm itself is largely cleared. There are clearing involved with both the turbines, the cabling between the turbines, the access tracks and the transmission line, but both the planning assessment commission and the Commonwealth – well, certainly the Planning Assessment Commission approved on the basis of 77 turbines and the appropriate offset for that being that 674 hectare offset. **The issue of the potential impacts on biodiversity, particularly in regard to matters of national environmental significance, so those EBPC listed species, was not something that was determinative in the reduction of turbines. It was clearly for social and amenity impacts on nearby neighbours.***

MR COCHRANE: Yes.

MR YOUNG: There is a question as to – or it would be fair to say that, under most assessments done at the Commonwealth level, it focuses on matters of national environmental significance, which are obviously listed there, being mostly

biodiversity in this case, and it's not typical that a decision would be made at that level for grounds other than potential impacts on matters of national environmental significance.

MR COCHRANE: No. That's interesting.

MR DUNCAN: It is interesting.

It could possibly be interesting if it was true, but when two out of two decision makers say something "is interesting", a little light goes on.

Reading the above, it would appear to me that both Commissioners went away from the DPE meeting with the impression, strongly and clearly reinforced on multiple occasions by Mr Young, that the Federal Department of Environment and Energy (DEE) reduced the number of turbines from 77 to 37 for reasons other than national environmental significance. DPE colleagues, by their silence, provided further reinforcement.

My evidence for saying that you have potentially been misled is the published document: **Statement of Reasons for Approval under the *Environment Protection and Biodiversity Conservation Act 1999***

http://epbcnotices.environment.gov.au/_entity/annotation/4b671d3a-7b46-e711-998c-005056ba00a8/a71d58ad-4cba-48b6-8dab-f3091fc31cd5?t=1560400087205

It is hard to believe that anyone in the June 5 IPC/DPE meeting had read this document at that stage.

Otherwise, one would have noted that biodiversity was the primary and overwhelming consideration for approval.

However Minister Frydenberg is obliged by the Act to consider economic and social matters.

In deciding whether or not to approve an action and what conditions to attach to the approval, I am required to consider economic and social matters, so far as they are not inconsistent with any other requirement of Subdivision B, Division 1 of Part 9 of the EPBe Act.

Having done so, Minister Frydenberg's Staff agreed with the DPE Assessment.

Based on the conclusions of the proponent's assessment documentation and the NSW Assessment Report, the Department considered that the economic and social benefits of the action to outweigh its costs. I agreed with this conclusion.

(Comment – Department means DDE)

(So far, no evidence that the 37 turbine variant was proposed by DEE)

The DEE document, signed by Minister Frydenberg, then advises:

On 17 January 2017, the proponent proposed a reduced wind turbine layout for consideration to achieve environmental gains and to accommodate the concerns of neighbouring residents.

This is a typical wind farm developer ploy. Commissioner Duncan in his role as Chair of the Crookwell 3 IPC Panel would have heard the very next day, the Crookwell 3 developer, during the public meeting of all places, offer a further turbine reduction.

(This January 17 letter is preceded by an email, obtained under FOI, from Mr Mounsey to DEE dated December 20, 2016, which says:

I would like to restate that CWP Renewables would be prepared to accept a further reduction to the maximum number of wind turbine locations within the project if it would assist with the Ministers decision making process.)

Note the word restate. We clearly have a number of instances where the developer proposed a reduction in turbine numbers.

Unfortunately, the January 17 letter is not easily found online. Over five years of dealing with wind farm developers has told me not to believe anything at first glance and not much more if they put it in writing.

The developer would appear, at this stage, to confirm that turbine reductions were at least partly for environmental gain, despite Mr Young's statement that environmental issues weren't determinative in the turbine reduction decision. (read further- it appears he was right for the wrong reasons.) The February 16, 2017 email (mentioned below) might provide further evidence. Unfortunately it too, appears to be unpublished.

Minister Frydenberg continues:

In their letter of 17 January 2017, the proponent proposed a reduced wind turbine layout for consideration. The final reduced layout of 37 turbines, put forward by the proponent was less than half of the 77 turbines approved under the NSW PAC approval. In their email of 16 February 2017 to the Department, the proponent stated that the reduction in wind turbines is expected to have the following environmental gains:

- Vegetation clearance for the turbine foundations and crane hardstands will be reduced by approximately half.*
- Bird collision risk potential will be reduced, improving outcomes for Regent Honeyeater (*Anthochaera phrygia*), Swift Parrot (*Lathamus discolor*) and migratory bird species.*

To accommodate the 37 turbine layout, I applied three conditions to the EPBC Act approval.

- a. Condition number five explicitly limits the number of turbines to 37 that can be constructed, operated, replaced and upgraded.*
- b. Condition number six identifies specific areas where the turbines must not be located.*
- c. Condition number seven limits the construction of any additional turbines at a future time, except for those covered by the approval.*

So, what we appear to have is a rebuttal of the facts proposed by Mr Young. The reduction from 77 to 37 turbines was not a DEE decision but a persistent proposal from the developer. DEE accepted their proposal and applied three conditions as above.

Mr Young could also be telling the truth and Minister Frydenberg the opposite.

If not, I maintain that you have been misled in a material way. Is that not an offence?

Finally the truth comes out.

Mr Young, with all his experience, would know that the chances of reduced turbine numbers was high and that a wind farm with fewer, larger turbines has distinct financial advantages.

Mr Young, with all his experience, would know that higher capacity turbines are always in development from multiple suppliers. Mr Young or his staff, if at all inquisitive, would have asked about the capability of the local grid to absorb the ultimate configuration. DEE staff asked the question, to which Mr Mounsey replied in an email of February 24, 2017 that he, on behalf of the proponent:

can confirm that limiting the number of available wind turbine sites in the project to 37 (which can result in a maximum generation capacity of 135 MW) will restrict further development of wind turbine sites along the Crudine Ridge and the nearby surrounds. This is owing to the capacity limitations associated with the 132kV transmission line identified in the proposed action as the point of connection.

Further proof that the developer decided on 37 turbines, not DEE, and that figure had little to do with social and amenity issues or environmental issues of national significance. For the turbine configuration chosen, that is the maximum number the local grid could handle. Further proof that you have been misled.

Mr Young will one day take up our suggestion to charge one of these developers for providing material false or misleading information which he in turn passes on. Now, being in charge of Compliance, he may get tired of being misled. Equally Commissioner Duncan can start the process right away.

This developer deserves no sympathy. Reject the modification.

Anthony Gardner