Protect NSW Electricity Security and NSW Taxpayers from Capital 2 Wind Farm

Submission to PAC by

Residents Against Jupiter wind turbines

April 28th 2017

The Department's submission to the PAC is an advocacy paper for the wind farm, not an impartial assessment. It contains no risk analysis for the State and no comprehensive cost-benefit analysis for the State.

If accepted, its recommendations will put NSW, its taxpayers and its citizens at risk in a number of ways that is both wilful and scandalous. The consequences include:

1. Contributing to increased electricity insecurity and to the destruction of $billions of wealth in NSW;
2. Virtually guaranteeing that the NSW Government or councils will eventually have to pay for decommissioning the Capital 2 wind farm.

Both the Department and the developer have failed to provide a proper evaluation of the proposal and to make a valid case to resurrect the lapsed approval.

If the PAC is to act with integrity and act within the law, and act to protect the State of NSW, it must ***unconditionally reject this proposal and allow the approval granted in 2011 to lapse.***

Failure to do so will constitute misfeasance by the PAC members and a wilful decision to create harm to NSW and the NSW Government to benefit a developer.

The Department has presented the PAC with a travesty of a planning document. Given that the project will lapse completely unless reinstated by the PAC, *in order to decide what is in the best interests of the State*, the PAC is obliged to consider all the pros and cons of either reinstating approval for the project or allowing it to lapse.

The Department, and the developer, have failed to provide the PAC with a comprehensive view of the alternative consequences for the State. There is no detailed cost-benefit analysis for the State in the Department's document. There is no comprehensive risk analysis. Nor was any provided by the developer.

The Department's submission, like that of the developer:

- ignores most of the social and economic costs for the State;
- ignores the likely decommissioning costs to future NSW taxpayers;
- ignores the damage to NSW electricity security from approving more intermittent and unpredictable power generators; and
- excludes proper consent terms for the protection of the environment, including people.

If such a document were submitted directly to the PAC by a developer it arguably would be in contravention of sections 307A and 307B of the NSW *Crimes Act 1900 No 40*.

> ***If the PAC is to act with integrity and act within the law, and act to protect the State of NSW, it must unconditionally reject this proposal and allow the approval granted in 2011 to lapse.***

Proposal is Not a Modification

This proposal is not for a modification, despite the Department's claims. It is an attempt to resurrect a project whose approval has lapsed. It is the Department's sleight of hand attempt to bring the project back from the dead.

This is not semantics. When the PAC considers real modifications, for instance to increase turbine power, the PAC's position has been that it can consider only the incremental effects of the modification proposal. The reason being that, should the PAC reject such a modification, the developer still has approval to build the previously approved configuration.

That is not the case with this proposal. If you reject Infigen's belated request to reinstate its lapsed approval, then the wind farm cannot be built in any form. Equally, if you approve the request, then the wind farm can be built, if Infigen can find a customer.

Unlike a real modification, if you reject this proposal, Infigen has no right to do anything.

That has consequences for you and consequences for the Department in how the matter is considered. Since you are not considering an incremental change but whether Infigen shall be empowered to build a wind farm in this location, you have a responsibility to consider all the factors that relate to the decision – as those factors are understood today.

The Department had an obligation to present you with all information relevant to that decision and an assessment which takes account of all the considerations relevant, as if you were

considering a new proposal. The Department failed to do so. The Department failed in its duty to the people of NSW.

In June last year the Department gave an extension to the Silverton wind farm. The Department wants you to validate its reckless decision at the time and to create an environment where "the policy" will be that wind farms get automatic extensions beyond the time granted in their consent conditions.

And the Department wants you to do that irrespective of the adverse consequences for the NSW electricity supply, the NSW tax payer, and for people living near proposed wind farms.

In a document replete with false and misleading statements, the Department trots out the argument that "The project was declared to be 'critical infrastructure' by the NSW Government in 2009" and, according to the Department's logic, it is still critical and should be resurrected.

If this was 'critical infrastructure' in 2009, why has it not been built by now? Uncertainty about the RET is a red herring. It would not stop something from being built if the infrastructure was actually critical to the state. The fact that it has not been built more than 7 years later clearly shows it was not 'critical infrastructure'. Someone lied in 2009, just as they are lying now.

Remember, there has been a RET scheme since 2000 and the Large-scale Renewable Energy Target, with its massive subsidies for parasite power, was introduced in January 2011 by the Gillard Government. Capital 2 was approved on 1 November 2011. The alleged uncertainty only emerged in 2013, after the Abbott Government decided to undertake a review of the RET, which simply reduced the RET from 41,000 GWH p.a. to 33,000 GWH by 2020.

The Department claims:

> "There have also been no significant changes in the receiving environment since the original consent or subsequent modifications (as recently as 2015) that warrant re-assessment or significant amendments to the existing conditions of approval." (p. 2)

What is noticeable here is that the Department totally fails to mention critical, relevant changes relating to the whole state economy and to significant policy revelations since the approval of Capital 2. The Department also drags in a red herring about no changes since subsequent modifications, ignoring the fact that those modification decisions were based solely on incremental effects not on considering the whole project on its overall merits. In mentioning 2015 in that context, the Department is trying to argue that the whole project has been reviewed only recently when in fact it has not. It is a dishonest argument.

The Department also claims that:

> "The Department considers that these benefits can be realised through an extension in the lapse date of the approval without any increase in the environmental impacts that have already been assessed, approved and subject to the stringent conditions that were imposed when the project was approved by the Commission." (p. 2)

In fact the conditions imposed by the original approval were not in any way "stringent", as will be shown, and the Department does not propose changes to rectify that situation.

Critically, since the project has been approved, there have been a number of revelations and national developments which totally change the context for evaluating wind farm proposals and ensure that no reliance can be placed on any evaluation made in 2011 as valid for today.

Consider the following matters critical to any approval of a wind farm, for each of which there have been major developments since Capital 2 was approved:

- visual impact assessment;
- decommissioning surety;
- adverse impact on NSW electricity security.

The PAC cannot properly decide whether approving the resurrection of the Capital 2 wind farm project is in the interests of NSW without taking full and proper account of each of these points. The Department has totally avoided them in its advice to the PAC. The Department has failed to do its job of fully setting out risks, so the PAC can consider them. As it happens, all of these omissions favour the developer.

Visual Impact Assessment

It is now generally understood that visual impact is one of the two major forms of wind farm direct impact on people. The Department's wind energy planning framework, published late last year, has separate bulletins only for two areas of assessment: noise impact and visual impact.

There have been significant developments in knowledge of and the process of visual impact assessment since Capital 2 was approved. It is reckless to reapprove Capital 2 without reviewing its visual impact in the light of current knowledge and policies. The Department's recommendations to the PAC provide no evidence of having done so. It expects the PAC to make a decision without having access to information on visual impact based on contemporary knowledge and approaches.

Capital 2 was approved in November 2011. The following year (2012), a team from the Argonne National Laboratory (a prestigious research group, part of the US Department of Energy) published a scientifically conducted study[1] on the visibility of wind farms at various distances.

Most of the turbines in that study had a tip height of about 120m. It was the first research published on the visibility of turbines over 100m (Capital 2 proposes 157m turbines).

In 2013, another team from Argonne National Laboratory published a second study[2] involving off shore wind farms, with turbine heights slightly over 120m.

[1] Sullivan, Robert G., et. al., 2012. *Wind Turbine Visibility and Visual Impact Threshold Distances in Western Landscapes*. Argonne National Laboratory and the U.S. Department of the Interior, Bureau of Land Management. USA. It is commonly known as the Bureau of Land Management Study.

[2] Sullivan, Robert G., et. al., "Offshore Wind Turbine Visibility and Visual Impact Threshold Distances", *Environmental Practice* 15(01):33-49, March 2013. It is commonly known as the Offshore Study.

In 2016, the Department of Planning & Environment published its *Wind Energy Visual Assessment Bulletin 2016*, proposing a particular methodology for conducting visual impact assessments and evaluating impact.

Obviously none of that information was available at the time Capital 2 was assessed and approved with a 5 year time limit. Consequently neither the Department, nor the PAC was in a position to draw on that information.

There was some published research available at the time, scientifically conducted on wind farms with shorter turbines. That included research[3] by the University of Newcastle (UK), published in 2002, with wind farms with turbines averaging around 60m high, and prior research by Stevenson & Griffiths, with turbines around 40+m high, which had been published in 1994[4].

The Department's 2011 assessment and recommendations to the PAC made no mention of any of this research, nor did the EIS by Infigen. Reading the documents does not give the impression that the authors were aware of any of it. If they were, they did not allow it to influence their comments.

The Department apparently wants the PAC to believe that somehow the VI assessment made for Capital 2 in 2011 miraculously is consistent with what would be produced today taking account of the Department's new VI guidelines and taking account of all the published research, the most important of which was not available in 2011. The Department offers no evidence to support this ludicrous claim. It expects the PAC to accept it despite also offering no evidence that those making this claim have any demonstrable expertise in making accurate VI assessments.

In the context of the Department's 2016 VI Bulletin, it is certainly arguable that the proposed wind farm would produce an unacceptable visual impact from the Federal highway along Lake George and in particular from recreation and viewing points along that part of the highway.

If a proper VI assessment had been done using modern knowledge, DPE might have been able to substantiate a claim that VI from Capital 2 would be at an acceptable level. But simply wishing the problem away, without evidence, as it has attempted to do, is untenable.

Given that there is quite clearly substantial, relevant, research evidence not previously applied to evaluating Capital 2 VI, as well as a new guideline, the PAC would be guilty of misfeasance if it reapproved the Capital 2 project without having the benefit of a currently proper VI assessment.

Decommissioning

The Department claims that decommissioning is the responsibility of the wind farm owner but fails to provide any mechanism for ensuring that funds will be available to remove turbines

[3] University of Newcastle (2002) *Visual Assessment of Windfarms Best Practice*. Scottish Natural Heritage Commissioned Report F01AA303A.

[4] University of Newcastle (2002) *Visual Assessment of Windfarms Best Practice*. Scottish Natural Heritage Commissioned Report F01AA303A.

and other structures. Without certainty of necessary funds at the end of life, the claim that the wind farm owner must decommission is just a fraud on the NSW public by the Department and by PAC members if they approve on that basis.

For several years the Department used to get the PAC to agree to a condition that the Department would impose a "bond" on the wind farm owner if it judged that the wind farm decommissioning costs were likely to exceed the value of residual assets – and the PAC went along with this nonsense.

The relevant officials in the Department never had any economic ability to judge whether there would be a net shortfall and no basis to assume that their successors in 20 or 30 years would have either. It was just a blatantly dishonest ploy by Department officials to avoid having to require either the developer or hosts, to put the necessary money aside up front.

In its recommendations for the Crudine Ridge wind farm, the Department informed the PAC that it had discovered the Department and PAC had no legal power to impose a bond on the developer, apparently because the development consent conditions are in relation to the land involved which is not owned by the wind farm developer. In other words, the Department has admitted that for some years it had misled the PAC about the legal powers of both.

The Department then did not suggest any remedy to the PAC to ensure funds would be available to remove turbines and other structures at the end of wind farm life.

In response to questions about who would pay if a wind farm is insolvent at the end of life, the Secretary of the Department advised the costs would probably fall on the land owner, since consent is provided in relation to the land[5].

Epuron, in its DA/EIS for the Liverpool Range wind farm, estimated the cost of removal at $380,000 **per turbine**. This is substantially more than hosts would normally earn per turbine over the life of a wind farm. So they are unlikely to have the funds to remove turbines, and pressure will fall on the State or local government to meet these costs.

At the time of the 2011 approval for Capital 2, the Department apparently totally ignored the possibility of a wind farm operator being insolvent at the end of wind farm life. So there was no mention of any requirement, in any form, to provide the necessary funds.

Given that the Department has realised it cannot legally impose a bond on the developer, it has again simply totally ignored the matter in its recommendations to the PAC. It expects you to conspire with it in an arrangement to benefit the developer by imposing future costs on the taxpayers of NSW or the Queanbeyan Palerang Regional Council.

Once again this makes a mockery of the claim by the Department in its current recommendations to the PAC that the consent conditions in 2011 were "stringent".

The Department should not be blind to the possibility, indeed likelihood, of the owner at end of life being insolvent. Infigen was formed in 2009 when Babcock and Brown, which was in the wind farm business, became insolvent and was placed into receivership. Infigen acquired

[5] Advice from the Department to the Jupiter CCC and also in letters from the Secretary to community members near the proposed Jupiter wind farm.

the Babcock and Brown wind farm assets which had commercial value at the time, thanks to the RET scheme forcing electricity consumers to subsidise these power projects.

That acquisition of infrastructure was solely dependent on it having some commercial value at the time. No one will buy wind farms at the end of life from an insolvent operator (since the wind farm does not own the land on which they sit) – and any competent operator will ensure there are no funds left in the owning corporate entity at the end of wind farm life.

The Department's recommendations to the PAC provide zero discussion of this critical matter, and consequently they offer no advice to the PAC on how best to ensure the land owners will be required to arrange certainty of funding to remove the structures at end of wind farm life.

If the PAC approves without ensuring that provision of funds, it will be a clear act of misfeasance, intentionally and without integrity, pushing an undeclared cost onto future taxpayers in order to benefit Infigen.

Adverse Impact on NSW Electricity Security

In the last six months the whole country has been alerted to the devastating threat to electricity security caused by excessive proportions of intermittent power generators (particularly wind and solar) in the grid. As a consequence, there is now a national review underway under Dr Alan Finkel, the Australian Government's Chief Scientist. There is also a Review of NSW Energy Security led by the NSW Chief Scientist. In addition, Hazelwood Power Station, with its capacity of 1,600 MW has recently closed.

It has been reported[6]:

> "some of the best energy engineers in the country tell me: Without urgent action residents of NSW, Victoria and South Australia have a 75 per cent chance of blackouts next summer if the Hazelwood power station shuts on April 2. Those blackouts will cost the nation tens and tens of billions of dollars in the food, medicine and processing industries."

In the face of the developing electricity disaster, the Prime Minister has now proposed adding a 2,000 MW pumped hydroelectric facility to the Snowy Hydro scheme, despite no feasibility study and therefore no accurate costing conducted on the proposal, and if undertaken it is necessarily many years away.

The public has realised politicians have created an ongoing disaster with their wind farms, and it is biting now. So politicians are frantically trying to unscramble the egg, each step with more cost to consumers, without admitting that they and their complicit officials in government have caused this massive disaster.

In a series of articles in Australia's national newspaper, one of Australia's most respected journalists has reported on the power disaster now unfolding

6 Robert Gottliebsen, *The Australian*, 20 March 2017.

The Australian | 8:46AM April 20, 2017 257 Save

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Melbourne and Sydney normally have 10 to 15 very hot days each year where the wind does not blow. If we have a "normal" summer in 2017-18 in our two largest cities it is absolutely certain we will have blackouts covering 10 to 15 days.

Robert Gottliebsen, *The Australian*, 20 April 2017

The NSW and Victorian state politicians who deny that we face this situation are either lying or have not been told. Because Labor politicians in Victoria and South Australia and the Coalition in NSW caused this crisis, they know that voters in their next elections will be severe if there are widespread blackouts.

Robert Gottliebsen, *The Australian*, 20 April 2017

As I pointed out yesterday, power prices are set to double and gas prices will rise substantially over the next 12 to 18 months. Blackouts in New South Wales and Victoria will take place on hot days when there is no wind (that is usually about 10 — 15 days a year).

Robert Gottliebsen, *The Australian*, 21 April 2017

If there are blackouts I suspect the enraged community will demand that legal action be taken personally against the politicians and public servants, which naturally they will defend in the courts. The 1995 legislation provides for them to be jailed for a year if they make misleading statements. As of this weekend, politicians are now put

Robert Gottliebsen, *The Australian*, 21 April 2017

The legislation to which Gottliebsen refers is Commonwealth legislation. There are similar provisions in sections 307A and 307B of the NSW *Crimes Act 1900 No 40.*

In this context, the NSW Department of Planning & Environment steps up and says "*PAC, throw some more petrol on the fire. Approve another wind farm.*" Hopefully the PAC is not going to be conned into being the Department's glove puppet in an act of sabotage directed at NSW electricity supply and future blackouts wilfully inflicted on the people of NSW.

Gottliebsen may or may not be right in his assessment for next summer. What is unavoidable is that his articles, together with the real world experience of South Australia's electricity debacle, provide incontrovertible evidence that there is a major issue which must be carefully evaluated before approving additions of more intermittent power to the NSW electricity grid.

No wind farm proposal should be approved unless there has been a thorough assessment of the consequences for grid security over time in order to provide certainty the proposal will not contribute to NSW soon having South Australian levels of electricity security. And especially no wind farm should be approved until the NSW Chief Scientist has completed the Review of NSW Energy Security.

Electricity Grid Security

Real Planning

Wind farms and indeed any major power plants are wholly unlike any other projects considered by government. The reason is that they normally operate as part of a complex, integrated system, connected by the grid, where their outputs have to be continuously in synchronisation not just in terms of volume but in terms of particular characteristics (e.g. frequency and phase). That synchronisation has to be on a second-by-second basis and when it fails there can be major consequences throughout the whole of the grid.

In addition, since the power plants connected to the grid compete economically, and "renewable energy" power plants are given a large subsidy, over time the plants with the large subsidies drive the others out of the system and, in so doing, progressively degrade the robustness of the grid – since unlike traditional power plants, the subsidised power plants provide only intermittent and unpredictable supply.

Real planning involves the anticipation of such problems and not approving anything that may have such widespread dire effects without ensuring (not hoping) arrangements have been instituted to ensure the dire effects will not happen.

NSW Electricity System

Since the recent system-wide blackout in South Australia, and the subsequent other blackouts in that state, one would have hoped the NSW Government and its Planning Department would have recognised the threat and instituted a thorough technical and economic assessment to determine under what conditions wind farms can be added to the NSW electricity system without degrading the integrity and security of that system. It may be the Review of Electricity Security under the NSW Chief Scientist is meant to provide that assessment but, if so, the Department expects the PAC to proceed as if it is irrelevant.

The project assessment provided by the Department makes no reference to such analysis, though it does contain the usual guff about how many homes will allegedly be powered by the wind farm. Since there is little growth in Australia's demand for electricity from the grid, this means that, in order to power those homes, the Capital 2 wind farm would be contributing to the displacement of existing generation capacity from the system.

The unsubsidised capacity in the system is mainly coal-fired generators that provide inertia and stability to the grid. So what the Department lauds as a positive, is almost certainly a negative in terms of grid security.

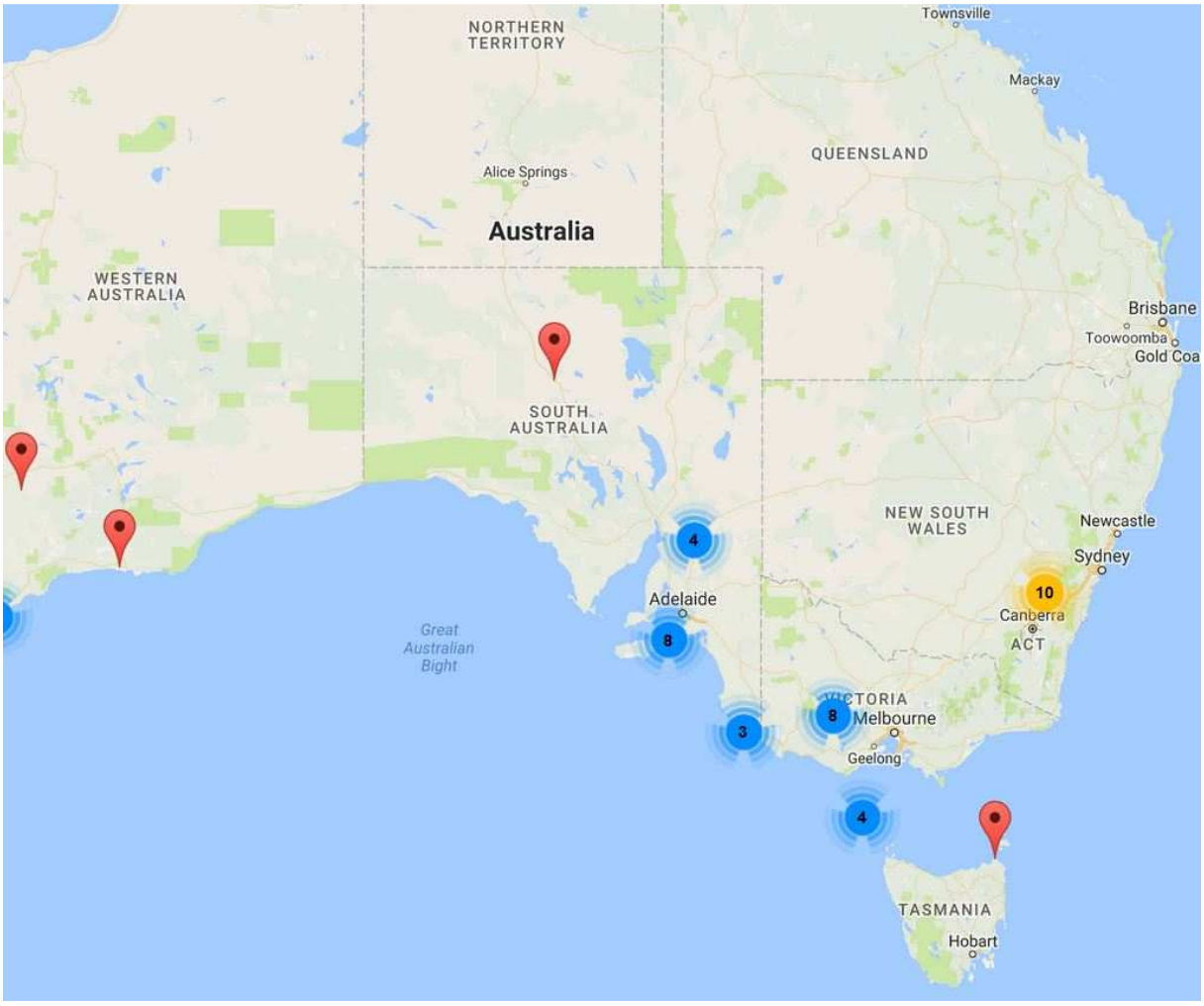
What the Department has been, and appears to be still proposing, is a total laissez-faire approach to wind farm approval and construction without concern for how the output, the location and the timing of construction will affect the stability of the electricity grid in NSW and the supply of electricity to all the people and businesses in the state.

The NSW Government may outsource the actual production and transmission of electricity but the electorate expects the Government to properly plan our electricity system so it is highly reliable and provides cheap electricity. If we have South Australia's experience they

will not be blaming the producers. The rightful anger at the Government, and at the PAC, will be enormous.

Wind power is inherently expensive and inherently unreliable. Due to the RECs subsidy, renewable energy facilities ***gradually*** drive low cost thermal plants out of the electricity system.

Note that last point. Subsidised renewable electricity gradually reduces the availability of non-subsidised production as plant becomes too unprofitable to operate and is decommissioned some time after introduction of the renewable plant that ultimately forced its closure – as we have seen with Hazelwood and other plants. So at the point a new wind farm is opened, the system may still look reasonably robust – so long as all the existing thermal generating plants remain, except that eventually they will not because of the subsidised intermittent power plants.



Source: http://www.thewindpower.net/country_maps_en_16_australia.php

However, if you are determined to inflict higher electricity prices on the people of NSW there are at least some things that can be done in planning to reduce the risks that accompany this policy.

As can be seen from the map above, almost all South Australia's wind farms are concentrated in a small part of the state. That makes it particularly vulnerable to a local absence of wind or

excessive levels of wind. It is, in fact, begging for the sort of wind farm outage that recently occurred in that state when most of them stopped simultaneously.

The map also makes clear that ***concentration in NSW*** (as in Victoria) ***is even worse***. We have an enormous state area which allows the dispersal of wind farms in a way that would make the portfolio more robust against wind volatility.

That will not happen without conscious planning and control about where and when future wind farms are constructed in NSW.

Developers site to maximise ***their*** returns. The fact that the wind farm and the state's electricity system may be out for a day or two, and that electricity-dependent process industries may then experience weeks of disruption (because of spoilage and damage during the outage, as happened in South Australia), is irrelevant to the wind farm proprietors.

They bear none of the costs for their harmful siting of wind farms. All the costs fall on the community while the developers walk off with the profits.

South Australia has relied on backup from coal-fired production in Victoria and NSW. That works, to a degree, as long as other states maintain an excess of such capacity. But as you no doubt know, under Premier Andrews, Victoria has been eliminating some of its coal-fired capacity and South Australia has wiped theirs out. There will be no external backup for NSW if its wind farms all have an off day. The State needs to ensure that it is not at risk of all its wind farms going out at the same time.

Electricity is unlike any other industry. Almost every other activity in our society depends on the instantaneous availability of electricity. No other industry produces output so pervasive and so extensively time critical. The Government can afford to take a relatively hands-off position about the location and timing of most other industrial developments. It cannot do so with electricity supply and in particular when concentrated placement of generators can imperil the operation of the whole system.

The NSW Government needs to plan the placement, across the State, of all future wind farms to minimise the risk of simultaneous outages due to weather. The greater the number of wind farms the greater the need for widespread dispersion.

The Government needs to have a plan for the geographic dispersion of wind farms and advertise what area of the state each new wind farm is to go to in order to ensure that dispersion. The Government also needs to have a strict time requirement for building approved wind farms, such as three years, so that the plan cannot be disrupted by the decision of a wind farm developer to get approval and then bank it.

There is an additional consideration, which is the financial exposure of the NSW Government if the project is approved at this time.

If the review led by the Chief Scientist, or other reviews, shows that adding this project to the grid would be unsafe and harmful for NSW, and the NSW Government subsequently refuses to allow the wind farm to connect to the grid after the PAC had previously approved the project, the NSW Government will be exposed to a massive damages suit. The PAC cannot take that risk on behalf of NSW.

PAC Responsibility

Until now the outrage about wind farms has been only in affected rural areas. People in the cities haven't cared. That is about to change and you PAC members are going to be in the spotlight.

When the power goes off in NSW over the next few years, as a consequence of approving parasite power plants, there will be outrage across the whole of NSW.

When the lights go out, air-conditioning, TVs and computers go off, trains stop running, food spoils in refrigerators and freezers, businesses shut and send their staff home, the community is going to want blood.

It is possible Premier Berejiklian will stand up and tell the public "Clearly, I and Mike Baird, and our sundry planning ministers deserve to be tarred and feathered for our vandalism in trashing our State's once reliable and cheap electricity supply."

It is also possible that, with an election approaching, she will instead say "Decisions about infrastructure developments are made by an independent body, the Planning Assessment Commission. It was established long before my time. The people appointed to it were supposed to be experienced and they were supposed to thoroughly consider all relevant aspects of projects they approved. Clearly they did not. What has happened has been a disaster recklessly inflicted on the State by people who should have known better and were paid to behave carefully."

Perhaps the Premier will just refer to the PAC and not go on to name names. But the names of the PAC members who have been approving wind farms in NSW are on the record.

In the last couple of years, we have:

PAC Commissioners Making Determination

Wind Farm	**PAC Members**
Biala	Garry West, Prof Zada Lipman, Dr Maurice Evans
Crudine Ridge	Annabelle Pegrum, Andrew Hutton, Dr Maurice Evans
Rye Park	Gordon Kirkby, John Hann, Ross Carter
Yass Valley	Lynelle Briggs, Annabelle Pegrum, Robyn Kruk

and if this proposal is approved for resurrection:

Capital 2	John Hann, Annabelle Pegrum, Stephen O'Connor

If the government does not publicise your names, people in affected communities will. You deservedly will not escape the reputational equivalent of a tar and feathering. Your families and friends and professional colleagues will all come to know that you played your part in shutting off their power and harming their lives and their businesses.

They will know that you played a part in destroying tens of billions of dollars of wealth in the State and in materially lowering the standard of living of its citizens.

Department officials will of course claim, like the politicians, that they bear no responsibility for the harm done to the NSW electricity supply and to the people throughout the whole of the State. They will claim they only offer advice, which the PAC receives along with other

advice, and the actual decisions to approve the harmful projects was solely in the hands of the PAC members.

Whether intentionally or otherwise, PAC members have been set up to take the fall for the reckless harm being inflicted on the NSW electricity supply. Those who originally approved Capital 2 could claim the consequences of adding parasite power to the grid were not recognised by anyone at the time. The statement is not true, but in political terms it is defensible.

No one who approves a wind or solar farm after the South Australian blackouts can have any hope of selling that claim. The media is waking up to what has been done. The public is starting to become aware, so they will expect you to be aware. Anyone who now approves a parasite power project without having demanded and been provided with absolutely impeccable professional advice demonstrating the proposal will inflict no future harm on NSW power supply will be publicly seen as wantonly reckless with the most critical infrastructure in the State.

When the lights go out you will be publicly exposed. The fact that wind farms you have approved have yet to be built will be irrelevant. You will be shown to have approved new wind farms without care, in an environment where you should have been aware of the consequence. And when the NSW Government has to offer compensation to developers with projects whose approval it is then forced to cancel, you will be the ones responsible for those massive taxpayer losses.

And what has the Department of Planning done to prepare you to effectively consider this issue? Nothing. In their advice to you, they have not even raised the possibility of a threat to the NSW power supply, let alone tendered any evidence to prove there is no risk. Their failure to mention it clearly indicates they know that any consideration of the issue will be damaging to the case they are arguing to approve the wind farm.

Failure to Ensure Environmental Protection

In the consent conditions for the Yass Valley Wind Farm (30/3/2016), the very first condition (Schedule 2) says:

> **OBLIGATION TO MINIMISE HARM TO THE ENVIRONMENT**
>
> 1. In addition to meeting the specific environmental performance criteria established under this consent, the Applicant shall implement all reasonable and feasible measures to prevent and/or minimise any material harm to the environment that may result from the construction, operation, or decommissioning of the development.

The definitions section of the consent defines “Material harm to the environment” as “Actual or potential harm to the health or safety of human beings or to ecosystems that is not trivial”

This same consent condition and definition has been applied to:

- Crudine Ridge Wind Farm (10/5/2016)
- Biala Wind Farm (12/4/2017)

It has also been recommended for the Rye Park Wind Farm currently under consideration by the PAC.

Its application has not been confined to wind farms. The Department has recommended the same condition and definition in proposed consents for:

- Drayton South (coal mine, DPE recommendation 15/9/2016)
- Gunlake Quarry Extension (quarry, DPE recommendation 13/12/2016)
- Wilpinjong Extension (coal mine, DPE recommendation 14/3/2017)

and the Department applied it to the consent for the Dolwendee Quarry, which was approved by the Department (25/11/2016).

There is nothing remotely like this consent condition in the original approval for Capital 2 Wind Farm, nor in the consolidated revised conditions recommended by the Department.

Note that this consent condition, which appears to have been introduced in the last few years, prohibits "Actual or potential harm *to the health or safety of human beings*". It provides some protection not just for bats, birds and flora but for people.

Since the approval for Capital 2 included no such protection for people (nor indeed the broader requirement in relation to the environment generally), the Department's claim to the PAC that those conditions were "stringent" is plainly ridiculous.

And since that broad protective condition has now been applied to, or recommended for (at least) Yass Valley wind farm, Crudine Ridge wind farm, Biala wind farm, Rye Park wind farm, Drayton South coal mine, Wilpinjong coal mine extension, Gunlake Quarry extension and Dolwendee Quarry, we all must wonder why the Department is recommending that Infigen not be subject to this quite reasonable condition which is being imposed on everyone else.

The Department cannot justifiably claim it is because this is a "modification" since, as earlier noted, the approval has actually lapsed and unless the PAC authorises resurrection, there is no prior approval to which Infigen can return.

Under incident reporting, the proposed consolidated consent does require the wind farm to advise the Secretary of any "material harm to the environment" (condition A14) but does not oblige the wind farm to take measures to prevent such harm. Condition A14 is essentially a restatement of s148 of the *Protection of the Environment Operations Act 1997*, identifying the Secretary of the Department as a party to be notified.

In its recommendations to the PAC, the Department claims:

> "The Department has also recommended a number of changes to the conditions to align with contemporary regulation of wind farms in NSW"

Since the Department has excluded a very important condition which has been applied to wind farms at Biala, Crudine Ridge, Rye Park and Yass Valley, it is at best misleading to claim to the PAC that the Department has added conditions to "align with contemporary regulation of wind farms in NSW".

Thus, in relation to broad protection against material harm to the environment, including people, the Department's recommendations to the PAC mislead about the stringency of the original conditions, mislead about aligning now proposed conditions with "contemporary regulation of wind farms in NSW", and attempt to avoid having Capital 2 subject to the now common protective conditions. The PAC ought to be wondering about why the Department is being so considerate of Infigen and in how many other ways that consideration is woven into the advice and recommendations to the PAC.

NSW Crimes Act

If the document you received from DPE was actually presented by the developer, arguably it would be in breach of sections 307A and 307B of the NSW *Crimes Act 1900 No 40*. Note that s307A of the Act prohibits someone who is seeking a government benefit from making a statement to the public decision maker where they know the statement is false or misleading **OR** are ***reckless*** as to whether the statement is false or misleading.

It might even be argued that those sections apply also to members of the Department who have provided the assessment and recommendations to the PAC. The Department does not appear to be providing impartial advice but instead is seeking a benefit from the PAC in having the PAC approve this particular wind farm.

The PAC might want to carefully consider the extent to which sections 307A and 307B, or 307C, of the *Crimes Act* apply to what the Department has tendered. In any case, integrity in government requires that something which, if presented to the PAC by a private party would breach the Act, cannot be accepted and relied upon when presented by public officials.

As Gottliebsen has warned, when the lights go out, and when billions of dollars in assets and many jobs have been destroyed, the public is likely to want legal action against someone in the Government.

Conclusion

Any competent planning document provides a comprehensive risk analysis. The Department's document does not. Instead it fails to mention the most significant risks.

Any competent planning document provides a cost-benefit analysis, which in cases like this must necessarily include opportunity costs. The Department's document does not.

It ignores most of the social and economic costs, including alternative uses of the massive area that will be economically sterilised by the wind farm and the economic activity that otherwise would occur in that area.

It entirely ignores the likely decommissioning costs to future NSW taxpayers.

It entirely ignores the potential contribution to the further destruction of electricity security in NSW and the massive increase in power prices as a consequence of adding more subsidised, unpredictable, intermittent power to the grid.

It entirely ignores the cost to NSW taxpayers if this proposal is approved and subsequently the NSW Government has to compensate its owners when rescinding the approval in order to protect NSW electricity security.

Aside from the unjustifiable recommendation to approve the proposal, the document advocates consent conditions benefiting the developer and harming others, such as failing to include the now standard condition requiring the wind farm to prevent material harm to the environment (including people) and proposing no mechanism to ensure funding for decommissioning.

The document is not an impartial assessment attempting to provide PAC members with a comprehensive and balanced view of all factors relevant to their decision. It is actually an advocacy paper which could have been written by the developer.

The proposal should be unconditionally rejected.

It should not be returned to the Department and the developer for more consideration, since that simply allows the developer to continue as though approval has not lapsed.

Both the developer and the Department had the opportunity to prepare a thorough proposal and assessment, explicitly noting and examining all the risks and other costs which have been mentioned here, and presenting arguments attempting to show that on balance those costs and risks ought to be accepted, or to show ways to offset them.

Neither the developer nor the Department did so, despite plenty of time (the developer had 5 years, the Department 6 months). Either they knew that once these costs and risks were raised, there was no basis on which the project would be justifiable; or they wanted to do everything on the cheap without concern for what was omitted.

Of course, if the latter is true, the developer would seem to be in breach of s307A of the *Crimes Act* by recklessly providing false or misleading statements. And if the alternative is true, i.e. they deliberately omitted material that would harm their case, then that also would appear to be a breach of s307A, as well as of s148B of the *Environmental Planning & Assessment Act 1979*.

If the PAC is to act with integrity and act within the law, and act to protect the State of NSW, it must unconditionally reject this proposal and allow the approval granted in 2011 to lapse.

The developer will then have the option of properly preparing a comprehensive EIS for a new wind farm, taking account of all current knowledge, factors and policy.