



21 June 2019

Crudine Ridge MOD 1 – SSD 6697

1. INTRODUCTION

1. On 17 May 2019, the NSW Independent Planning Commission (**Commission**) received from the NSW Department of Planning and Environment (**Department**) a modification application Mod 1 (**Application**) under section 4.55(2) of the Environmental Planning and Assessment Act 1979 (**EP&A Act**) from CWP Renewables (**Applicant**) to modify the development consent SSD 6697 (**Project Approval**) for Crudine Ridge Wind Farm (**Project**). The Application was accompanied by the Department's Assessment Report dated 15 May 2019 (**Department's AR**)
2. The Commission is the consent authority in respect of the Application under section 4.55 of the EP&A Act and clause 8A of the *State Environmental Planning Policy (State and Regional Development) 2011* (**SEPP SRD**). This is because:
 - the Project constitutes State significant development under section 4.36 of the EP&A Act as the Project is an electricity generating works pursuant to clause 20 – Schedule 1 of SEPP SRD; and
 - the Department received more than 25 submissions from the public objecting to the Application.
3. Professor Mary O'Kane AC, Chair of the Commission, nominated Peter Duncan AM (Chair) and Peter Cochrane to constitute the Commission determining the Application.

1.1 Site and locality

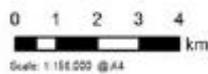
4. From the Commission's inspection of Aarons Pass Road and the locality (in proximity to the Project) on 11 June 2019, the Commission has formed the view that the site and locality is dominated by sparse low intensity residential settlement in support of intensive agricultural practices such as cropping and grazing. The topography of the site and locality consists of low-lying riverine flats, undulations and steeper hill country. Vegetation is generally cleared in the riverine flats and undulating terrain with some substantial areas of remnant vegetation located in the hill country adjacent to the road.
5. Aarons Pass Road rises from its east and the west ends to wind along a ridge line and is for the most part flanked by mature trees with a relatively continuous canopy cover. Land use is predominantly grazing and low density rural residential
6. The Project site is defined in Figure 1 below and is located at its closest point approximately 34 kilometres (**km**) to the south of Mudgee (Line of Sight - **LOS**) and approximately 42 km to the north of Bathurst (LOS), in the NSW Central Tablelands. This figure also shows the location of Aarons Pass Road. The Project site is predominately located within the Mid-Western Regional Council (**MWRC**) local government area (**LGA**), including Aarons Pass Road, with small portion of the Project site located within the Bathurst Regional Council (**BRC**) LGA.

Figure 1 – Project Site and Locality



- Northern site access point
- Aarons Pass Road upgrades
- Project site
- ▭ Local government area boundary
- Waterbody

**Crudine Ridge Wind Farm MOD 1
Site Context**



Source: Department's AR

1.2 Background to Development Application

7. According to the Department's AR, the Project "was originally approved on 10 May 2016 by the Independent Planning Commission (formerly the Planning Assessment Commission) under Part 4 of the Environmental Planning and Assessment Act 1979 (EP&A Act) following a comprehensive assessment process." The Project included approval for the "construction and operation of:
 - up to 77 turbines (up to 160 m in height), associated infrastructure and access tracks;
 - a project substation, internal access tracks and transmissions cabling; and
 - grid connection of the switchyard to Transgrid's existing 132 kilovolt (kV) transmission line."
8. In relation to public road access for construction vehicles and materials, the Department's AR stated that "CWP currently has approval to transport over-dimensional turbine components to the northern entry point of the site via a local road (Aarons Pass Road), subject to the completion of road upgrades to the satisfaction of Mid-Western Regional Council (MWRC). The existing conditions of consent require CWP to complete these upgrades prior to transporting any wind turbine components to the site. These upgrades were identified during the assessment of the project to facilitate safe access and delivery of over-dimensional turbine components to the wind farm. The safety of Aarons Pass Road was raised as a key issue of concern during the assessment of the project, and MWRC was supportive of the proposed upgrades given that they would also benefit the local community and residents on Aarons Pass Road by improving the safety of the road during both construction and operations."
9. According to the Department's AR, post-approval the Project "also required approval from the Commonwealth Minister for the Environment under the Environment Protection and Biodiversity Conservation Act 1979 (EPBC Act). The project received Commonwealth approval on 4 April 2017 (EPBC 2011/6206) [EPBC Approval]. However, this approval only allows construction of up to 37 wind turbines. The remaining 40 turbines were not approved under the EPBC Act due to social (amenity) impacts."
10. The Department's AR also referred to construction problems encountered by the Project post-approval and stated that "Construction of the project commenced on 2 August 2018. This involved the commencement of clearing of approximately 0.3 hectares (ha) of vegetation at the eastern end of Aarons Pass Road. However shortly after construction commenced, the Department received several complaints from the local community in relation to the nature and extent of the clearing of vegetation approved for the road upgrades.

In response, the Department initiated an investigation into the clearing and CWP voluntarily ceased further work on the road upgrades. The Department's investigation found that the clearing undertaken by CWP did not exceed the estimated 1.54 hectares (ha) of vegetation clearing for the road upgrades as documented in the Preferred Project Report (PPR) for the original project.

However, CWP identified that it would need to clear more than 1.54 ha to implement the proposed civil works package required to satisfy MWRC's requirements for road safety.

The Department separately imposed a penalty notice of \$15,000 on CWP for breaching its conditions of consent by commencing construction on the wind farm site before completing the road upgrades on Aarons Pass Road. All construction along Aarons Pass Road and at the site currently remains suspended."

1.3 Summary of Development Application

11. The Application before the Commission for determination, as detailed by the Department's AR, includes the following components:

Project layout changes:

"A reduction in the maximum number of wind turbines from 77 to 37 and associated ancillary infrastructure to align the development consent with the Commonwealth approval.

*This change would lead to a reduction in the overall footprint of the wind farm and associated biodiversity, heritage, noise and visual impacts attributed to the number of turbines and associated surface disturbance for the wind farm as assessed and approved under the development consent. There would also be reduced traffic impacts due to the reduced number of over-dimensional and construction material deliveries. The project layout showing the locations of the 77 turbines approved under the development consent is shown on **Figure 2**. The amended project layout is shown on **Figure 3**."*

Revised road design for Aarons Pass Road:

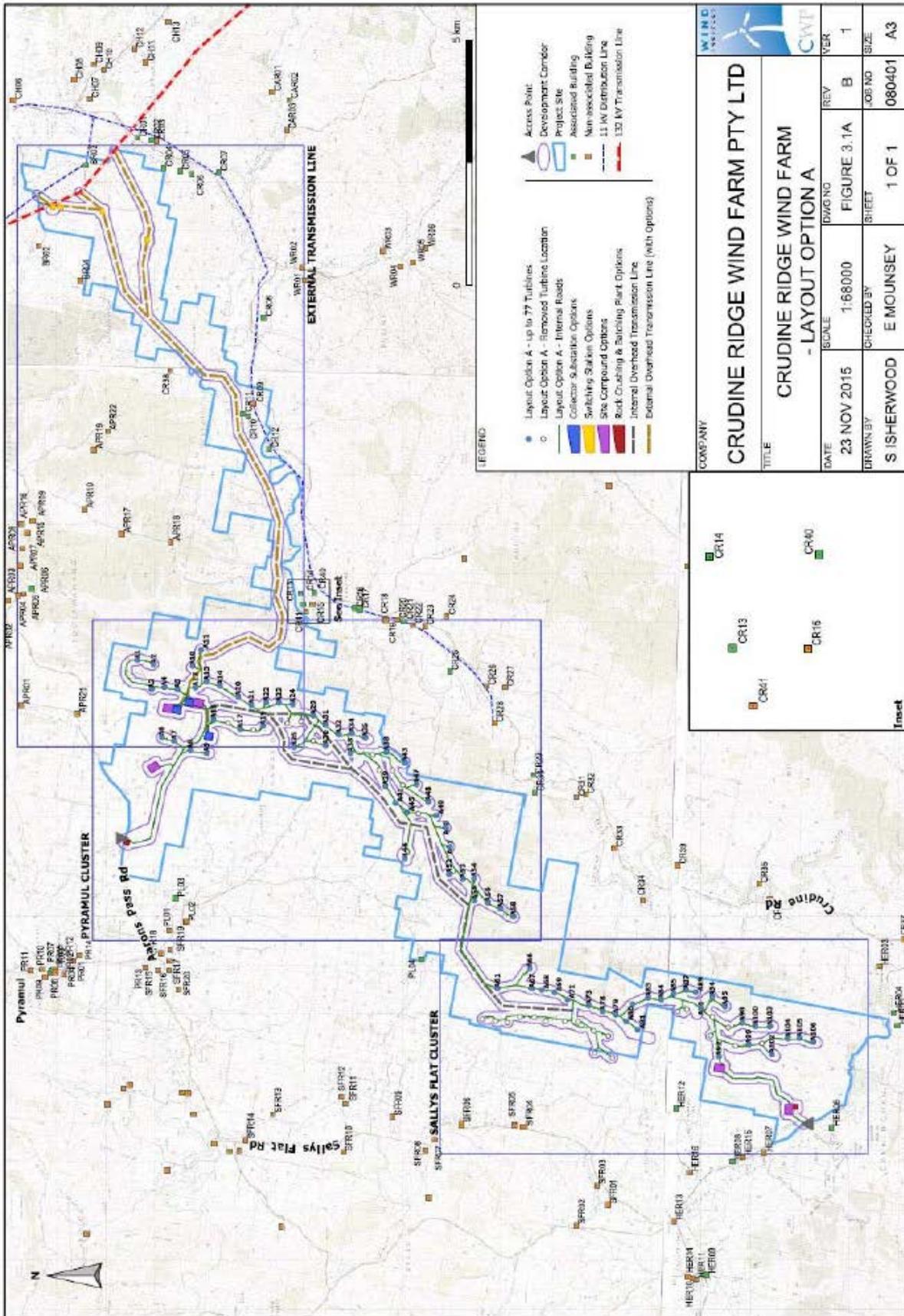
"Revised road design for Aarons Pass Road to accommodate the delivery of over-dimensional components to the wind farm.

This change would lead to a localised increase in the total disturbance footprint and associated vegetation clearing for the road upgrades from approximately 1.54 ha to 6.59 ha (an incremental increase of 5.05 ha)."

1.4 Stated need for proposal/modification

12. According to the Department's AR, *"Without the modification to enable the delivery of wind turbine components via Aarons Pass Road, the project is unable to proceed, and the benefits of improved road safety and the project are unable to be realised."* This was confirmed by both the Department and Applicant during their meetings with the Commission on 5 June 2019 (see section 3.0).

Figure 2 – Approved Project Layout



Source: Department's AR

2. THE DEPARTMENT'S ASSESSMENT OF THE APPLICATION

13. The Department's AR provided a detailed analysis in section 4.0 which describes the steps taken by the Department as part of its assessment of the Application, which included public engagement and notification.
14. In relation to public engagement, the Department's AR stated that "*The Department held a community information session at Pyramul Hall, Pyramul on 12 December 2018, which was attended by approximately 50 people, mostly comprised of local landholders and CWP employees or contractors in support of the modification.*"
15. In relation to public notification, the Department's AR stated that the Application was publicly notified "*from 5 December 2018 until 19 December 2018 on the Department's website, the offices of MWRC and BRC, the Nature Conservation Council, and advertised in the Bathurst Western Times and Mudgee Guardian.*" and that "*The Department's consultation satisfies the requirements of the EP&A Act and Regulations regarding public notification requirements.*"
16. As a result of the public notification, the Department's AR stated that 242 submissions were received – including six from government agencies, six from special interest groups and 230 from members of the public. None of the government agencies objected to the Application; however, there was one objection from a special interest group and 98 objections from members of the public.
17. In relation to public submissions, the Department's AR provided a summary of matters raised which included:
 - biodiversity – increased clearing of native vegetation and loss of endangered and vulnerable species;
 - misleading / inadequate information – misrepresentation of the amount of clearing along Aarons Pass Road (both undertaken and proposed), CWP misleading the community about the true purpose of the modification and the claim of reduced environmental impact is misleading as the EPBC Approval of 37 wind turbines overrides the development consent for 77 wind turbines;
 - compliance – compliance with the development consent (including turbine blade length) and concerns about impacts of longer blades including associated biodiversity and amenity (visual, noise) impacts;
 - community consultation – lack of adequate consultation with the surrounding land owners and local community about the wind farm;
 - increased dust generation during road upgrades; and
 - objection to the project as approved (including concerns from some residents on Crudine Road about noise levels when construction commenced) and wind farms in general including ongoing concerns about depreciation of land values, noise impacts, visual impacts/changes in landscape character and increased bushfire risk.
18. The Department's AR further stated that "*The key issues of concern raised in the objections relating to the impacts of the modification are the increased clearing on Aarons Pass Road and associated biodiversity impacts. More broadly, a strong theme in the objections related to the level of trust in the adequacy and accuracy of the environmental assessment and ongoing concerns about CWP's compliance (or ability to comply) with the development consent. The compliance performance of CWP is not a determinative issue in the merit assessment of this modification.*"
19. In relation to the assessment of the Application the Department's AR stated that "*In assessing the merits of the modification application, the Department has considered the:*
 - *existing conditions of approval;*

- *previous documentation associated with the original application for the project,*
 - *EA, submissions, RTS and additional information for the proposed modification;*
 - *relevant environmental planning instruments, policies and guidelines; and*
 - *relevant provisions of the EP&A Act, including the objects of the Act.”*
20. The Department’s AR identified the key issues relating to the Application to be related to the amended road design and biodiversity impacts (as a result of the amended road design).
21. The Department’s AR concluded that “*without the modification to enable the delivery of wind turbine components via Aarons Pass Road, the project is unable to proceed, and the benefits of improved road safety and the project are unable to be realised.*

Given these benefits can be achieved without resulting in any significant additional adverse impacts on the environment or the local community, the Department considers that the proposed modification is approvable, subject to the imposition of the recommended revised conditions of consent.”

3. THE COMMISSION’S MEETINGS AND SITE INSPECTION

3.1 Meeting with the Department

22. On 5 June 2019, the Commission met with the Department and discussed the Department’s AR and its assessment of the Application. A copy of the meeting transcript has been available on the Commission’s website since 6 June 2019.

3.2 Meeting with the Applicant

23. On 5 June 2019, the Commission met with the Applicant and discussed the Application and the Department’s AR. A copy of the meeting transcript has been available on the Commission’s website since 6 June 2019.

3.3 Public Meeting

24. To hear the community’s views on the proposal, the Commission held a public meeting at the Pyramul Hall, Pyramul Road, Pyramul on 11 June 2019. A list of the 14 speakers that presented to the Commission was made available on the Commission’s website. A transcript of the public meeting has been available on the Commission’s website since 12 June 2019. A copy of the material tendered at the public meeting is also available on the Commission’s website.
25. An opportunity to lodge any written comments was afforded until seven days following the public meeting. All comments were made available on the Commission’s website. 42 comments were received during this period.
26. In summary, the main issues raised were:
- economic benefits to host landholders, local businesses and communities;
 - improvements to local road safety through the upgrade of Aarons Pass Road; and
 - environmental and ecological impacts associated with vegetation clearing along the road.
27. During the public meeting, some of the registered speakers requested a ‘private’ meeting with the Commission as part of their presentation. The request was made on the basis of affording the community the same opportunity to discuss the Application that the Department and Applicant had been given. The Commission also received one written request after the public meeting, although no reasons were provided. The Commission considered the requests and, in this instance, declined to meet.

28. The Commission takes this opportunity to state that it is within its discretion to have 'private' meetings with any stakeholders, noting that all meetings are fully transcribed consistent with the Commission's Meeting Record Policy with the transcripts made publicly available on the Commission's website. The meetings with the Department and Applicant are part of the Commission's standard practices and transcripts of these meetings have been available on the Commission's website since 6 June.

The public meeting held by the Commission in Pyramul on 11 June 2019 afforded interested individuals and groups an opportunity to raise issues with the Commission Panel. The Commission had allocated a full day for the public meeting and notes that all registered speakers were afforded their full requested allocation to speak. The chair also exercised his discretion to allow all speakers to finish their presentations even when they exceeded their time allocation.

Furthermore, the public was provided the opportunity following the public meeting to provide written comments to the Commission up until 5:00pm on Tuesday 18 June 2019.

3.4 Aarons Pass Road and Locality Inspection

29. On 11 June 2019, the Commission conducted an inspection of Aarons Pass Road, commencing at the intersection of Aarons Pass Road, Pryamul Road, Sallys Flat Road and Prices Lane. The inspection proceeded to the east along Aarons Pass Road to the Project entrance and onto the Castlereagh Highway. The Commission did not conduct an inspection of the Project site and instead focused on the components of the Application that would generate additional impacts to those already approved.
30. The inspection by the Commission was conducted independently of the Applicant, Department and members of the public.

4. THE COMMISSION'S CONSIDERATION

4.1 Material considered by the Commission

31. In this determination, the Commission has carefully considered the following material (**Material**):
- Crudine Ridge Wind Farm SSD 6697 – including the Department of Planning and Environment's 'Assessment Report - State Significant Development Assessment Crudine Ridge Wind Farm SSD 6697 dated 18 December 2015 and 'NSW Planning Assessment Commission Determination Report' dated 10 May 2016 and Development Consent dated 10 May 2016;
 - Environmental Assessment dated 30 November 2018 prepared by CWP Renewables Pty Ltd, and its accompanying appendices;
 - Response to Submissions dated January 2019 prepared by CWP Renewables and its accompanying appendices;
 - Response to Submissions – Supplementary Information dated February 2019 prepared by CWP Renewables and its accompanying appendices;
 - Crudine Ridge Wind Farm – Modification 1 – BDAR Clarification dated 9 April 2019 prepared by Ecological Australia;
 - Crudine Ridge Wind (MOD1) – State Significant Development Modification Assessment (SSD 6697 MOD 1) dated 15 May 2019 prepared by the Department of Environment and Planning and its accompanying appendices;
 - all submissions made to the Department during the public exhibition of the Application;
 - all government agency submissions made to the Department;

- all presentations made to the Commission at the public meeting on 11 June 2019 and all written comments received to the Commission up to and including 18 Jun 2019; and
- visual observations made during the inspection of Aarons Pass Road on 11 June 2019.

4.2 Mandatory considerations

32. According to the Department's AR, the Application has been lodged pursuant to section 4.55(2) of the EP&A Act which permits an existing development consent to "*be modified by the consent authority if it is satisfied that the proposed project as modified is substantially the same as the project for which consent was originally granted.*"
33. In this regard the Department's AR stated that "*The proposed modification does not seek to significantly alter the approved project as:*
- *there would be no change to the land associated with the wind turbines (i.e. the 'host' properties);*
 - *the proposed revised road design is generally in accordance with the approved project;*
 - *40 turbines have been removed; and*
 - *no changes to the turbine dimensions or locations (subject to micro-siting limits) are proposed.*

Consequently, the Department is satisfied that the application can be characterised as a modification to the existing consent under Section 4.55(2) of the EP&A Act, as it would result in substantially the same project as the project for which consent was originally granted."

The Commission, having regard to the Material before it, finds that the Application is consistent with the requirements of section 4.55(2), as discussed in paragraph 32. for the reasons provided by the Department in paragraph 33.

34. In determining this Application under section 4.55(2), the Commission has taken into consideration the following relevant mandatory considerations, as provided in section 4.15 of the EP&A Act (**Mandatory Considerations**):
- the provisions of all:
 - environmental planning instruments;
 - proposed instruments that are or have been the subject of public consultation under the EP&A Act and that have been notified to the Commission (unless the Secretary has notified the Commission that the making of the proposed instrument has been deferred indefinitely or has not been approved);
 - development control plans;
 - planning agreements that have been entered into under s 7.4 of the EP&A Act, and draft planning agreements that a developer has offered to enter into under s 7.4; and
 - the *Environmental Planning and Assessment Regulations 2000 (Regulations)* to the extent that they prescribe matters for the purposes of s 4.15(1) of the EP&A Act; that apply to the land to which the Application relates;
 - the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality;
 - the suitability of the site for the development;
 - submissions made in accordance with the EP&A Act and Regulations; and
 - the public interest.
35. As required by section 4.55(3), the Commission has also considered the Project (as currently approved) and '*the reasons given by the consent authority for the grant of the consent*' which included:
- "*acceptable visual impact for non-associated landholders*";
 - "*robust and appropriate conditions are in place for noise monitoring*";

- “the adoption of the amended micro-siting condition the potential for any increase of adverse impact on non-associated residences is obviated”;
- “concerns relating to bat and bird strikes are able to be addressed through the bat and bird strike monitoring program”;
- “The Commission has added conditions related to transport with the inclusion of an upgrade of the Bombandi Road/Castlereagh Highway, and for staged construction; and an additional requirement for on-site fire procedures. The Commission has also added a definition for shadow flicker and revised the definition of residences to include DA approved residences.”

36. The Commission has considered the assessment of relevant environmental planning instruments (**EPIs**) undertaken as part of the Project which included:
- State Environmental Planning Policy (State and Regional Development) 2011;
 - State Environmental Planning Policy (Rural Lands) 2008;
 - State Environmental Planning Policy No.44 – Koala Habitat Protection;
 - State Environmental Planning Policy (Infrastructure) 2007;
 - Mid-Western Regional Local Environmental Plan 2012.

The Commission finds that the assessment undertaken for the Project (as currently approved) and set out in the Department of Planning and Environment’s ‘Assessment Report - State Significant Development Assessment Crudine Ridge Wind Farm SSD 6697 dated 18 December 2015 and’ ‘NSW Planning Assessment Commission Determination Report dated 10 May 2016 remains applicable and current.

4.3 Likely impacts of the development on both natural and built environments

37. Based on the Material, the Commission finds that the key impact issue associated with the Application relates to the upgrade of Aarons Pass Road, and the associated biodiversity impacts that will result from such works. The Commission notes that this view is consistent with that of the Department, as outlined in paragraph 20.
38. The Commission understands the public has raised a broad range of concerns in submissions to the Department and through oral and written comments to the Commission; however, many of these concerns (approval of the Project for instance) are ‘outside of the scope’ of the Application and are not open to the Commission to reconsider or reassess.

4.3.1 Reduction in Turbines from 77 to 37

Public comments

39. The Commission heard concerns from speakers at the public meeting and received written comments about the proposed reduction in the number of turbines being inconsistent with previous statements (pre-Application) attributed to the Applicant that the Project would not be financially viable should the number of turbines be reduced.

Applicant’s consideration

40. The Applicant’s EA stated that the “EPBC Act Approval (EPBC 2011/6206) was issued on 4 April 2017 under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) permitting up to 37 WTGs to be constructed within 57 of the 77 WTG locations approved under the Development Consent. The 37 WTGs which are planned to be constructed are shown in Figure 1.”

41. The Applicant further stated that “As a result, 40 WTGs which were approved under the Development Consent were removed, a further reduction of more than 50 %. The reduction in impacts would substantially reduce visual impacts to a number of sensitive residences, including some listed as high, moderate and low. The reduction from 77 WTGs to 37 WTGs would also see a substantial reduction in biodiversity, heritage, noise (construction and operational) and transport impacts.”

Department’s assessment

42. The Department’s AR stated that “The reduction in the number of wind turbines and ancillary infrastructure would reduce the overall disturbance footprint of the project as approved under the development consent ...there would be a reduction of around 36 ha in overall vegetation clearing for the project (from around 105 ha to 69 ha)...”
43. The Department’s AR further stated that “there would be no significant additional impacts compared to the approved project. In many instances, these impacts would be reduced due to the removal of 40 turbines and associated infrastructure.”
44. In relation to biodiversity impacts, the Department’s AR stated that “The Department acknowledges that the construction of a maximum of only 37 turbines means that including the proposed additional clearing on Aarons Pass Road, there would be a net reduction of 31 ha in the total approved clearing for the project as a whole. However, it is noted that the project as approved only estimated clearing of 1.54 ha of native woodland vegetation along Aarons Pass Road (including 0.28 ha of EEC). It is also noted that CWP is not seeking to use the reduced clearing across the site as a way of offsetting the impacts of the modification but has separately assessed the increase in biodiversity impacts of the proposed additional clearing required for the revised road design.”
45. In relation to biodiversity offsets, the Department’s AR stated that “The existing approval conditions require CWP to make arrangements for the establishment of a 674 ha land-based offset area. CWP has proposed to meet this requirement by establishing a biodiversity stewardship site through a Biodiversity Stewardship Agreement for the “Glen Maye” property, as identified in the development consent.”

Commission’s determination

46. The Commission has considered the Material and the comments made by the public. The Commission accepts the conclusions of the Department, outlined in paragraphs 43 and 44, and the Applicant, as outlined in paragraph 41 because these conclusions are consistent with the information submitted by the Applicant and are considered by the Commission to be statements of fact.
47. Based on the Material, the Commission finds that the reduction in the number of turbines is in response to the EPBC Approval as outlined in paragraph 9 and will create consistency across both the EPBC Approval and Project Approval (as modified by this Application). The Commission further finds that the reduction in the number of turbines will reduce overall Project impacts within the locality and will provide an additional benefit due to the retention of biodiversity offsets required under the Project Approval, as outlined in paragraph 44, and because of the information outlined in paragraph 45.
48. The Commission’s consideration of biodiversity impacts pertaining to Aarons Pass Road is addressed below in section 4.3.2.

Road Upgrade & Biodiversity Impacts

Public comments

49. The Commission heard concerns from speakers at the public meeting and received written comments regarding the impacts of the Application due to the proposed increased clearing to facilitate the upgrade of Aarons Pass Road. These concerns, both positive and negative, included:
- the Application had no additional benefits to offset the additional clearing;
 - the current character of the road would be lost;
 - wildlife corridors along roads created safety issues;
 - improved safety for road users;
 - loss of koala habitat;
 - increased dust impacts from additional traffic movements; and
 - road should be sealed.

Applicant's consideration

50. In relation to the need for the Application, the Applicant's EA stated that "*Following selection of the WTG to be installed for the Project, and once the component specifications and engineered transport requirements were available, further detailed design of APR was undertaken to generate a 3D model of the design. Some route constraints were identified along APR for longer blades due to the turning radius and vertical clearance requirements identified by the Project contractor for the WTG blades.*"

"The Extendable Trailer option would involve use of a single trailer for each blade from the Port of Newcastle to the northern site entrance. This option was selected as the preferred OSOM transport option as it would involve fewer logistical complications causing less traffic and transport impacts for the local community, would be a faster vehicle traversing APR and would require substantially less trimming of overhead vegetation along the length of APR. The option would require an area of 5.05 ha of native vegetation clearing along APR, additional to the 1.54 ha of clearing identified within the PPR. This option has been used as the basis of the Revised Design discussed in Section 2, as assessed in the technical reports and summarised in Section 4."

51. In relation to the nature of upgrade works required, the Applicant's EA stated that the "*Revised Design (the Works) involve adjustments to the horizontal and vertical alignment, localised widening, and installation of culvert and drainage structures. The works will enhance visibility, increase safe passing opportunities, improve the overall road alignment and condition, and provide a safer roadway for all users during Project construction and beyond.*"

"The Revised Design will require an additional area of 5.05 ha of native vegetation clearing along APR, beyond the 1.54 ha stated within the PPR. Key impact assessments have been undertaken for this clearing with mapping presented in the Biodiversity Development Assessment Report (BDAR; Appendix H), as summarised in Section 4. Despite the increase in localised impacts, total impacts to vegetation clearing will be reduced by approximately 31 ha under this Modification."

"The works to deliver the Revised Design (the Works) will include detailed pre-clearance surveys and demarcation of biodiversity values in accordance with the procedures in the approved Biodiversity Management Plan (BMP)."

52. The Applicant's EA concluded that *"There are a number of important considerations which have been made in the development of this Modification by the Proponent in order to minimise the impacts of the proposed changes.*
- 1. The reduction in WTG and ancillary infrastructure substantially reduces the vegetation clearing and other impacts associated with the development. The EIS identified 104.9 ha of clearing whereas the revised wind farm layout would reduce this impact by approximately 31 ha, after consideration of the localised 5.05 ha increased clearing along APR due to the Revised Design.*
 - 2. The Proponent commits to establish further environmental offsets to compensate for unavoidable impacts to the Revised Design. This is additional to the 674 ha biodiversity offset which was designed to offset both permanent and temporary impacts of the 106 WTG layout, as outlined in the Development Consent and the Biodiversity Offset Strategy, and shown in Appendix A.*
 - 3. Overall, the Modification is expected to reduce key impacts associated with the Project, in particular: visual, noise (construction and operational), biodiversity, heritage and traffic impacts as described in Section 4 and the associated appendices.*
 - 4. The Proponent has undertaken extensive and detailed consultation with key stakeholders and the community regarding design works for APR. This includes consultation with MWRC over approximately 18 months prior to the TMP being approved, a number of presentations to Council, direct landowner and neighbour consultation, as well as forums such as the Project CCC.*

These considerations have been fundamental to the development of the proposed Modification to ensure that the Project can continue to deliver a net gain to the local community."

Department's assessment

53. In relation to the biodiversity impacts associated with the upgrading of Aarons Pass Road, the Department's AR stated that *"the vegetation along Aarons Pass Rd comprises of both exotic and woodland vegetation, the latter of which contains habitat for threatened species and EECs."*
- "The proposed modification would increase the native vegetation clearing by 5.05 ha, of which 0.67 ha is EEC listed under the Biodiversity Conservation Act 2016 (BC Act) and 0.32 ha of which meets the criteria for Critically Endangered Ecological Community (CEEC) under the EPBC Act."*
54. In relation to the existing Project approval, the Department's EA stated that *"it is noted that the project as approved only estimated clearing of 1.54 ha of native woodland vegetation along Aarons Pass Road (including 0.28 ha of EEC). It is also noted that CWP is not seeking to use the reduced clearing across the site as a way of offsetting the impacts of the modification but has separately assessed the increase in biodiversity impacts of the proposed additional clearing required for the revised road design."*
55. In relation to the adequacy of the information submitted by the Applicant for the Application, the Department's AR stated that *"The EA included a BDAR undertaken by Eco Logical Australia, which assessed the impacts of the clearing required for the revised road design prepared in accordance with the NSW Biodiversity Offset Scheme and the supporting Biodiversity Assessment Methodology (BAM). A revised BDAR was provided in the RTS which included updated survey results to address seasonal survey requirements for fauna species in accordance with the BAM."*

56. In relation to the classification of vegetation types, the Department's AR stated that "OEH representatives also visited the site in January 2019 to inspect the road-side vegetation and threatened flora populations, which lead to a reclassification of one flora species. The BDAR was subsequently revised in February 2019 to reflect the identification of *P. cotoneaster* and not *P. Reperta*. *P. cotoneaster* is listed as endangered under both the BC Act and the EPBC Act."
57. In relation to the extent of impacts to vegetation community impacts proposed by the Application, the Department's AR stated that "Two Plant Community Types (PCT) are present along the length of Aarons Pass Road and have been mapped as PCT 277 and PCT 290.
- The entire area of PCT 277 (0.67 ha) meets the criteria for the Endangered Ecological Community (EEC) 'White Box Yellow Box Blakely's Red Gum Woodland', listed under the BC Act. Smaller patches of this PCT (0.32 ha, intact condition) also meets the criteria for CEEC 'White Box Yellow Box - Blakely's Red Gum Grassy Woodland and Derived Native Grassland', listed under the EPBC Act.*
- In summary, the modification would increase the native vegetation clearing requirements for Aarons Pass Road by 5.05 ha, from 1.54 ha to 6.59 ha comprised of woodland/forest vegetation. The revised road design would increase the required clearing of EEC from 0.28 ha to 0.95 ha."*
58. In relation to PCT 290 (Red Stringybark – Red Box – Long-leaved Box – Inland Scribbly Gum tussock grass shrub low open forest on hills in the southern part in the NSW South Western Slopes Bioregion), the Department's AR stated that an additional 4.38 ha of this PCT would be cleared over the Project Approval.
59. In relation to flora species impacts the Department's AR stated that "Nine threatened flora species were identified as known, likely or having the potential to occur within the proposed disturbance area, with two of these identified and confirmed during field surveys." These two species have been identified as *Acacia meiantha* (listed as endangered under the BC Act and EPBC Act) and *Pomaderris cotoneaster* (listed as endangered under the BC Act and EPBC Act).
60. The Department's AR confirmed that "The proposed modification would impact up to 59 individual *A. meiantha*, some of which are proposed to be removed and translocated to a safe area to be identified in an updated Biodiversity Management Plan (BMP)" and that "A number of *P. cotoneaster* individuals are within the blade swept path of the road upgrade and would not be directly impacted by vegetation clearing. Only one individual *P. cotoneaster* would be impacted by the revised road design and OEH has advised that it is not a species suitable for translocation."
61. The Department's AR stated that it has "recommended a new condition requiring CWP to prepare a translocation plan for *A. meiantha* in consultation with OEH as part of the updated BMP" and that "CWP would also be required to fully offset the impacts on these species in accordance with the NSW Biodiversity Offset Scheme."
62. In relation to fauna impacts, the Department's AR stated that "Thirty-one threatened fauna species were identified from the data audit as known, likely or having the potential to occur within the development site area, with three of these identified and confirmed during the field survey namely *Artamus cyanopterus cyanopterus* (Dusky Woodswallow), *Daphoenositta chrysoptera* (Varied Sittella) and *Petroica boodang* (Scarlet Robin). All are listed as Vulnerable under the BC Act (not listed under the EPBC Act) and identified as ecosystem credit species. Threatened fauna habitat was also assessed, comprising mainly 150 individual hollow-bearing trees to be removed for the revised road design."

“An updated BDAR was provided in the RTS, which reflected the results of additional targeted fauna surveys undertaken in December 2019 for seven threatened species credit species (Bush stone curlew, Gang-gang Cockatoo, Eastern Pygmy Possum, Squirrel Glider, Brush tailed Phascogale, Barking Owl, and Koala). No signs or observations were made for six of these species. However scratches on tree trunks and a possible Koala scat was found indicating that Koalas potentially utilise the habitat within the proposed modification area. Three of these species (the Glossy Black Cockatoo, Powerful Owl and Masked Owl) were also not able to be surveyed as the timing of the surveys were outside of the survey period. Therefore, all four threatened fauna species were presumed to be present, and species credits were calculated accordingly for these species.”

“Potential Koala habitat was assessed in accordance with State Environmental Planning Policy No. 44 – Koala Habitat Protection (SEPP 44) and the ‘EPBC Act referral guidelines for the vulnerable Koala’ (Department of the Environment [DoE], 2014). The impact area was not determined to be either potential or core Koala habitat in accordance with SEPP 44. The impacts to koala were also not found to be significant based on the EPBC Act referral guidelines, therefore, no further assessment under the EPBC Act was undertaken.”

63. In relation to fauna species offsets, the Department’s AR stated that “CWP is proposing to supplement the existing biodiversity offset strategy for the project with an additional offset strategy to compensate for these residual biodiversity impacts.”

“The BAM Credit Calculator determined that the additional clearing associated with the modification would require a total of 139 ecosystem credits as well as 154 species credits each to offset the Glossy Black-Cockatoo, Powerful Owl, and Masked Owl. A total of 156 species credits would also be required for the Koala to offset any potential impacts.”

64. The Department’s AR concluded that “the impacts of the revised road design, and proposed offsets, are reasonable and there are limited opportunities to further avoid the residual impacts on roadside vegetation. Overall, the Department considers that the modified project could be undertaken in a manner that maintains the biodiversity values of the locality over the medium to long term, with the implementation of appropriate mitigation and offsetting measures.

The Department has also consulted with OEH to develop strengthened biodiversity conditions for the project to manage the residual biodiversity impacts associated with the additional clearing. These conditions include requirements to:

- adhere to revised operating conditions including vegetation clearing limits for the wind farm and the Aarons Pass Road upgrades;*
- minimise impacts on threatened species including A.meiantha and P.cotoneaster as well as to minimise limb-logging of hollow bearing trees along Aarons Pass Road;*
- retire the required biodiversity offset credits for the proposed modification within 2 years of the commencement of construction; and*
- update the Biodiversity Management Plan for the project to include a translocation plan for A.meiantha and to include a detailed program to monitor and report on the effectiveness of the biodiversity measures, including a clear methodology to calculate and verify the clearing required for the upgrades on Aarons Pass Road.”*

“Importantly, the Department and OEH note that the existing offset commitments for the project would not be reduced in response to the reduced total area of clearing resulting from fewer turbines, representing a total reduction of around 31 ha including the new clearing for the revised road design. Notwithstanding, CWP is still required to secure a 674 land-based offset based on the original turbine configuration.

The Department has strengthened the conditions by requiring this offset to be secured via a Biodiversity Stewardship Agreement within 2 years of commencing construction.”

Commission’s determination

65. The Commission has considered the Material and the comments made by the public. The Commission accepts the conclusions of the Department, outlined in paragraph 64, and the Applicant, as outlined in paragraph 52 because the Material provided, and assessment provided identifies that biodiversity impacts associated with the upgrade of Aarons Pass Road can be effectively managed and mitigated.
66. The Commission finds that upgrades to Aarons Pass Road are necessary to facilitate the construction of the Project, and that the additional biodiversity impacts associated with the Application and upgrade are acceptable as appropriate conditions of consent have been proposed to minimise and mitigate biodiversity impacts in accordance with the EPBC Act and the BC Act, as outlined in paragraph 64, and that the Applicant will be required to maintain their existing offset requirements for the Project despite the reduction in turbines, as outlined in paragraph 45.

4.4 Social and economic impacts in the locality

67. The Commission notes the Department’s AR did not re-assess the social and economic impacts of the Application and stated that *“the modification would allow the socio-economic benefits of the Project to be realised. In this regard, the project would deliver a range of economic benefits, including up to 240 construction jobs, capital investment of up to \$200 million, and CWP’s proposed funding contributions of up to \$168,000 a year through voluntary planning agreements with MWRC and BRC.”*
68. The Commission notes that because of the reduction in turbines from 77 to 37 there will be an associated net reduction to social and economic benefits within the locality; however, the Commission finds that as this reduction in turbines has not been as a result of any process under the EP&A Act but rather as a by-product of the EPBC Act approvals process, it is not necessary to reconsider the social and economic impacts associated with the reduction in turbines. The Commission also finds that the assessment of the need for the Aarons Pass Road upgrade was satisfactorily undertaken during the initial assessment and determination of the Project and, as such, that assessment remains valid.

4.5 Other impacts

Department’s assessment

69. The Department’s AR provided a concise assessment of other impacts, including Aboriginal heritage, visual, air quality and noise, and concluded that the existing conditions remained adequate and that no additional conditions of consent were required as a result of the Application.

Commission’s determination

70. The Commission has considered the Material and the comments made by the public. The Commission accepts the conclusion of the Department, outlined in paragraph 67, because the Application does not have any additional impacts on other issues beyond those identified in the current Project approval and the existing conditions of consent are satisfactory for these management and mitigation of these issues.

4.6 The public interest

Department's assessment

71. The Department's AR did not specifically address public interest. It did, however, address what the Department considered the relevant objects of the EP&A Act, including Ecologically Sustainable Development (**ESD**), and accordingly stated that:

"The Department considers that the proposal would permit the continued proper management and development of the wind farm (Object 1.3(a)).

The Department has considered the principles of ecologically sustainable development (ESD, Object 1.3(b)) in its assessment of the proposed modification and given that there are minimal incremental impacts compared to the approved project, considers that the proposed modification is able to be carried out in a manner that is consistent with the principles of ESD and consistent with the determination of the approved project. The Department's assessment has sought to integrate all significant environmental, social and economic considerations.

Consideration of the protection of the environment and heritage (Objects 1.3(e) and(f)) is provided in Section 5 of this report.

The Department exhibited the modification application and accompanying EA and made them publicly available Object 1.3(j))."

Commission's determination

72. In determining the public interest of the Application, the Commission has had regard to the objects of the EP&A Act.
73. Under section 1.3 of the EP&A Act, the Commission considers the relevant objects applicable to the Application are:
- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
 - (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
 - (c) to promote the orderly and economic use and development of land,
 - (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
 - (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
 - (j) to provide increased opportunity for community participation in environmental planning and assessment.
74. A key relevant object of the EP&A Act to the Application, as outlined in paragraph 66, is the facilitation of ESD. The Commission notes that section 6(2) of the *Protection of the Environment Administration Act 1991* states that ESD requires the effective integration of social, economic and environmental considerations in its decision-making, and that ESD can be achieved through the implementation of:
- the precautionary principle;
 - inter-generational equity;
 - conservation of biological diversity and ecological integrity; and
 - improved valuation, pricing and incentive mechanisms.

75. The Commission finds that the Application, as proposed, is generally consistent with the principles of ESD, the objects of the EP&A Act, and the public interest because the Application:
- will facilitate the development of the Project and 37 turbines;
 - will result in potential reductions in other impacts because of the reduction of 40 turbines such as noise and visual;
 - will have an incremental increase in the clearing of vegetation along Aarons Pass Road to enable its upgrading;
 - will reduce the overall vegetation clearing of the Project due to the reduction of 40 turbines whilst still providing the vegetation offset originally required for the development of 77 turbines, which is an improved biodiversity outcome;
 - will result in the upgrade and improvement of Aarons Pass Road with safety improvements to road users within the locality;
 - involved the engagement of different government agencies at both a State and Local level; and
 - provided the opportunity for public participation during the assessment and determination of the Application.

5. HOW THE COMMISSION TOOK COMMUNITY VIEWS INTO ACCOUNT IN MAKING DECISION

76. The views of the community were expressed through:
- public submissions received as part of the consultations as outlined in paragraphs 13 – 18; and
 - members of the public who spoke at the public meeting as outlined in paragraph 24 and public comments received as part of the Commission’s determination process, as outlined in paragraph 25.
77. The Commission carefully considered the views of the public (as outlined in paragraphs 26, 39 and 49) as part of making its decision. The way in which these concerns were considered by the Commission is set out in **section 4** above.
78. The Commission notes that there were several submissions and written comments that raised concerns about issues and/or impacts that related directly to the Project Approval, but which were not related or of relevance to the Application before the Commission. The Commission acknowledges that whilst these issues and impacts are of importance to the public they are beyond the scope of the Application and therefore have not been considered in the Commission’s determination.

6. CONCLUSION: THE COMMISSION’S FINDINGS AND DETERMINATION

79. The Commission has carefully considered the Material before it.
80. The Commission finds that the Application is within the scope of section 4.55(2), and therefore can be modified accordingly.
81. The Commission has determined that the consent should be granted, subject to conditions, for the following reasons:
- the reduction in the number of turbines will reduce overall Project impacts within the locality and will provide an additional benefit due to the retention of biodiversity offsets required under the Project Approval, as outlined in paragraph 47;
 - the Commission finds that upgrades to Aarons Pass Road are necessary to facilitate the construction of the Project, as outlined in paragraph 66;

- that the assessment of the need for the Aarons Pass Road upgrade was satisfactorily undertaken during the initial assessment and determination of the Project and, as such, that assessment remains valid, as outlined in paragraph 68;
- the Application does not have any additional impacts on other issues identified in the current Project approval and the existing conditions of consent are satisfactory for the management and mitigation of these issues, as outlined in paragraph 70; and
- the Application, as proposed, is generally consistent with the principles of ESD, the objects of the EP&A Act, and the public interest because the Application, as outlined in paragraph 75.

82. As noted above at paragraph 81, the Commission has determined that the consent should be granted subject to conditions. These conditions are designed to:

- prevent, minimise and/or offset adverse environmental impacts;
- set standards and performance measures for acceptable environmental performance
- require regular monitoring and reporting; and
- provide for the on-going environmental management of the development.



Peter Duncan (Chair)
Member of the Commission



Peter Cochrane
Member of the Commission