

UPPER LACHLAN SHIRE COUNCIL

FILE NOTE

DATE: 26 FEBRUARY 2018

FROM: MANAGER ENVIRONMENT & PLANNING – ROLAND WONG

SUBJECT: DEVELOPMENT APPLICATION 122/2017 – ERECTION OF BUILDINGS AND CARRYING OUT OF WORKS FOR THE PURPOSE OF ELECTRICITY GENERATING WORKS, Lot 6 DP1115749, Lots 1 & 2 DP1115746, Lots 185, 186, 187, 188, 197, 204, 224, 226 & 319 DP754126, Lot 7 DP1119818, Lots 1 & 2 DP877769, Lot 4 DP1031856, Lot 100 DP1026064, Lot 103 DP750043, Lot 2 DP1168750 AND Lot 101 DP1083286, GRABBen GULLEN ROAD, BIALA/GURRUNDAH; BANNISTER LANE, GURRUNDAH/BANNISTER; PRICES LANE, BANNISTER; STORRIERS LANE, BANNISTER.

ULSC TRIM RECORD NO: D2018/1506

The subject application was advertised and notified to surrounding land owners with a submissions period from 7 December 2017 to 19 January 2018. Council received three submissions from the public during the submissions period.

Council completed its assessment of the application on 12 February 2018, and forwarded its assessment report and relevant documents to the Southern Joint Regional Planning Panel (the Panel) on 14 February 2018. Council's assessment report identifies and details consideration of four valid issues raised by the abovementioned three public submissions:

- Issue 1: Identification of affected land
- Issue 2: Construction impact
- Issue 3: Ongoing operational impact
- Issue 4: Cumulative traffic impact.

On 15 February 2018, a member of the public advised Council that they made a submission regarding the application by e-mail on 22 December 2017. However, Council had not received any such submission. On further investigation, Council's Information Technology department suggested the submission may have been rejected due to e-mail size constraints, although the submitter claims they did not receive any notification that delivery of the submission had failed.

On 15 and 16 February 2018, Council received the abovementioned submission by e-mail, broken down into several smaller parts. It does not appear possible to prove or disprove the submitter's assertion that the submission was originally made during the submissions period. However, it is considered prudent to consider the issues raised by the submission and convey Council's consideration of those issues to the Panel. The four additional issues discussed by the submission are therefore identified and discussed below.

- Issue 5: Impact on neighbour visual amenity

The submitter asserts the development will exacerbate a violation of their adjoining land's visual amenity.

The submission refers to the NSW Land and Environment Court (LEC) judgment of 7 May 2010 in "King & anor v Minister for Planning; Parkesbourne-Mummel Landscape Guardians Inc v Minister for Planning; Gullen Range Wind Farm Pty Limited v Minister for Planning" (LEC files 10517; 10545; 10700 of 2009). In that matter, the LEC found the Gullen Range Wind Farm development's visual impact on the submitter's property would be prevented or minimised by distance, vegetation and topography. The submission quotes:

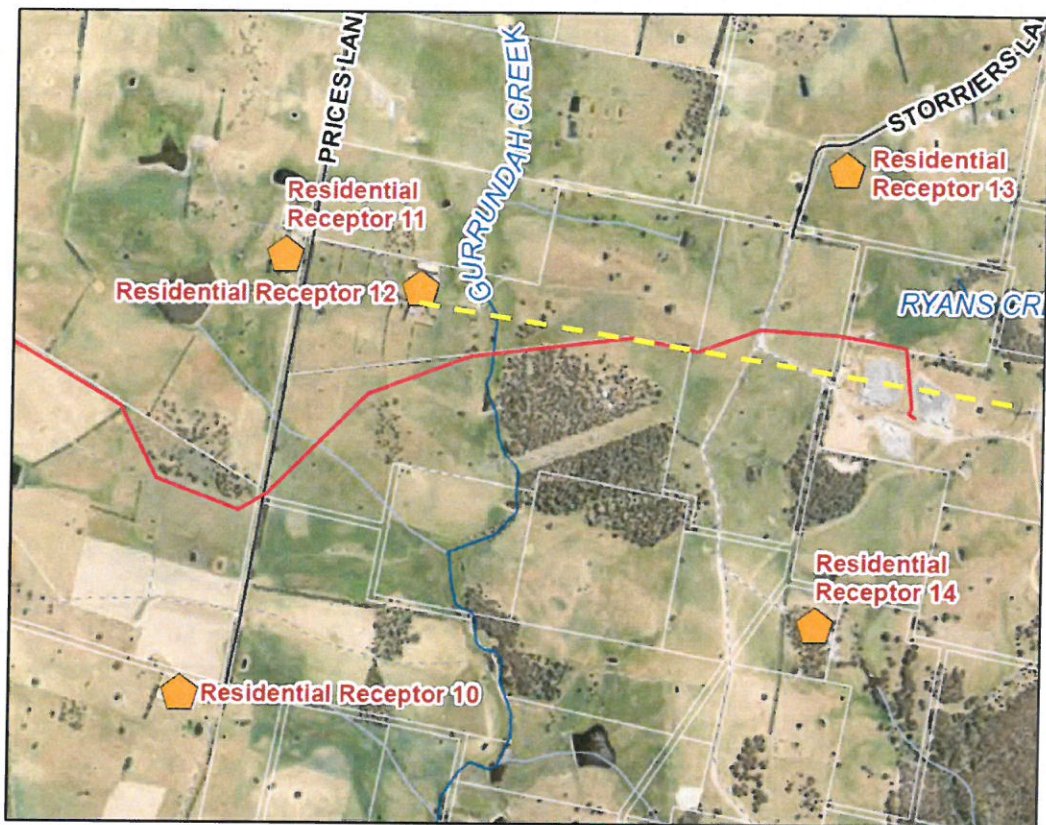
"312 The [submitter's] property (PW4) was purchased for the purpose of a horse stud. [The submitter] stated that he has made considerable improvements to the property and has planted over 3000 trees. As a self-funded retiree, he believes that the approval of the wind farm will devalue his property and jeopardise his future. The view towards the closest turbine POM_01 at about 1.8 km away will be screened by remnant vegetation, planted vegetation and the topography.

"313 Although this property is almost due west of POM_01, the intervening vegetation and topography, coupled with the separation distance, means that there will be no shadow flicker impact on this property. There is no likelihood of noise non-compliance for this dwelling."

The submission expresses concern that the proposed development's transmission line component will necessitate clearing of vegetation that the LEC found likely to screen the submitter's property from the Gullen Range Wind Farm development's visual impact, and will consequently reduce visual amenity on the submitter's property. It also suggests the proposed expansion of the Gullen Range Wind Farm substation will exacerbate the substation's negative visual impact upon the submitter's property.

Figure 1 below is an extract from Figure 4.5 in the statement of environmental effects accompanying the application. It indicates the proposed transmission line alignment in red and identifies the submitter's property as "Residential Receptor 12". A yellow dashed line has been added to illustrate the direct line between the submitter's property and the Gullen Range Wind Farm substation, as well as wind turbine "POM_01" (as erected). The image suggests the transmission line alignment will not necessitate significant vegetation removal in any direct line of sight between the submitter's property and the Gullen Range Wind Farm development.

In addition, the proposed Gullen Range Wind Farm substation expansion is not expected to significantly detract from visual amenity on the submitter's land. The submitter's property is located some 1.3km west of the existing substation, and the proposed substation expansion is located immediately east of the existing substation, as illustrated by Figure 2 below. The existing substation is thus located between the submitter's property and the proposed substation expansion. Any visual impact of the proposed substation expansion upon the submitter's property is thus expected – perhaps ironically – to be largely screened by the existing substation.



- Issue 6: Impact on waterways

The submission expresses concern that the proposed transmission line will traverse a “sensitive wetland area”, being the headwaters of Gurrundah Creek, and in doing so will cause significant negative environmental impact, including a reduction in water quality. It disputes the statement of environmental effects’ description of Gurrundah Creek as “ephemeral”, asserting springs in and adjacent to the creek are permanently charged. The submitter indicates their property depends on Gurrundah Creek for agricultural and domestic purposes.

Gurrundah Creek is in the Warragamba catchment, which forms part of Sydney’s water supply. The application was referred to Water NSW, which responded that the development is considered able to achieve a neutral or beneficial impact on water quality, and that Water NSW concurs to the application being favourably determined subject to recommended concurrence conditions that must be imposed on any consent granted for the development.

It is noted that the proposed transmission line’s intersection with Gurrundah Creek is outside and downstream from the submitter’s property, which itself includes at least one farm dam within the creek. The development is thus not expected to significantly affect availability of water from Gurrundah Creek for the submitter’s agricultural or domestic purposes.

- Issue 7: Vegetation removal

The submission asserts the transmission line’s installation will necessitate extensive vegetation removal by “clear felling”.

The statement of environmental effects accompanying the application assumes the transmission line will necessitate clearing of a maximum 20m wide easement, with the loss of up to 1.67ha of native vegetation over the alignment’s approximately 12km length. Submitted plans of the proposed alignment indicate it will largely avoid treed areas. Furthermore, the following conditions are recommended for inclusion on any consent granted for the development:

7. *The consent does not permit any earthworks or removal of vegetation other than:*
 - (a) *indicated by the stamped approved development drawings,*
 - (b) *indicated by information accompanying the development application, or*
 - (c) *identified by an environmental planning instrument as not requiring development consent.*
32. *No work in the development shall be permitted to commence unless the final proposed transmission line alignment has been confirmed to, and accepted in writing by, Council and the NSW Office of Environment & Heritage.*

In this regard, neither Council nor the Office of Environment & Heritage shall accept the proposed final transmission line alignment unless the applicant has prepared, and supplied to Council and the Office of Environment & Heritage, an Aboriginal Cultural Heritage Assessment Report (ACHAR), supported by a full archaeological survey of the project area and archaeological testing of any identified potential archaeological deposit (PAD). The survey shall include all areas of direct impact such as the substation expansion footprint, both transmission line alignment options as indicated by information accompanying the development application, and access roads.

49. NSW Office of Environment & Heritage – refer to Schedule 3

Noting the advice conveyed by the attached NSW Office of Environment & Heritage letter of 19 January 2018:

- (a) An Aboriginal Heritage Impact Permit shall be obtained under the National Parks and Wildlife Act 1974 prior to carrying out any activity or component in the development that will cause any impact to Aboriginal cultural heritage. Such permit shall require consultation with the Aboriginal community in accordance with the standard Office of Environment & Heritage guidelines.
- (b) The transmission line shall be micro-sited in consultation with the Office of Environment & Heritage to avoid impacts to:
 - Tablelands Snow Gum, Black Sallee, Candlebark and Ribbon Gum Grassy Woodland (Endangered Ecological Community)
 - Hollow bearing trees.
- (c) A full archaeological survey and program of subsurface test excavation shall be undertaken prior to development of detailed design plans.

In the context of the development's overall scale, and provided recommended consent conditions are complied with, the proposed development is not expected to involve excessive clearing of vegetation.

- Issue 8: Contradiction of Land and Environment Court decision

As discussed earlier, the submission refers to the LEC judgment in "King & anor v Minister for Planning; Parkesbourne-Mummel Landscape Guardians Inc v Minister for Planning; Gullen Range Wind Farm Pty Limited v Minister for Planning", in which the LEC found the Gullen Range Wind Farm development's visual impact on the submitter's property would be prevented or minimised by distance, vegetation and topography. It suggests that favourable determination of the subject application would be contrary to this basis of the LEC judgment.

The submission is founded on the assertion that the proposed development will necessitate extensive vegetation removal and so will eliminate the visual amelioration effects of the vegetation to be removed. However, as discussed regarding issue 7, the development is not expected to involve excessive vegetation removal. In addition, as discussed regarding issue 5, there appears to be little or no significant vegetation in any direct line of sight between the submitter's property and Gullen Range Wind Farm that appears likely to require removal for the proposed development.

The proposed development is thus not expected to have any significant impact on the ameliorative effect of vegetation on visual amenity on the submitter's property.

The above should be submitted to the Panel for consideration in its determination of development application 122/2017.



Roland Wong
Manager Environment & Planning
27 February 2018.