

**STATEMENT OF REASONS FOR DECISION UNDER SECTION 133 OF THE
ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999**

I, IAN GORDON CAMPBELL, Minister for the Environment and Heritage, provide the following statement of reasons for my decision of 3 April 2006, under section 133 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), to not approve the proposed action by Wind Power Pty Ltd to construct and operate a wind farm at Bald Hills, south-east of Tarwin Lower, Victoria (EPBC 2002/730).

Legislation

1. Section 130 of the EPBC Act relevantly provides:

- (1) Within whichever of the following periods is relevant, the Minister must decide for the purposes of each controlling provision whether or not to approve the taking of a controlled action:
 - (a) 30 business days, or such longer period as the Minister specifies in writing, if the action is the subject of an assessment report;
 - (b) 40 business days, or such longer period as the Minister specifies in writing, if a commission has conducted an inquiry relating to the action.
- (1A) The relevant period starts on the first business day after the day the Minister receives the assessment report or the report of the commission (as appropriate).
- (1B) However, if the action is to be taken in a State or self-governing Territory and is covered by subsection (1C), the relevant period starts on the later of the following days:
 - (a) the day worked out under subsection (1A);
 - (b) the first business day after the day the Minister receives from the State or self-governing Territory a notice:
 - (i) stating that the certain and likely impacts of the action on things other than matters protected by the controlling provisions for the action have been assessed to the greatest extent practicable; and
 - (ii) explaining how they have been assessed.
- (1C) Subsection (1B) applies to an action only if it:
 - (a) is to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or
 - (b) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.
- (2) An *assessment report* is a report given to the Minister as described in:

(a) subsection 87(4) (about assessments by accredited assessment processes);

2. Section 131 of the EPBC Act provides:

- (1) Before the Minister (the *Environment Minister*) decides whether or not to approve the taking of an action, and what conditions (if any) to attach to an approval, he or she must:
 - (a) inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the action of the decision the Environment Minister proposes to make; and
 - (b) invite the other Minister to give the Environment Minister comments on the proposed decision within 10 business days.
- (2) A Minister invited to comment may make comments that:
 - (a) relate to economic and social matters relating to the action; and
 - (b) may be considered by the Environment Minister consistently with the principles of ecologically sustainable development.

This does not limit the comments such a Minister may give.

3. Section 132 of the EPBC Act provides:

If the Minister believes on reasonable grounds that he or she does not have enough information to make an informed decision whether or not to approve for the purposes of a controlling provision the taking of an action, the Minister may request any of the following to provide specified information relevant to making the decision:

- (a) the person proposing to take the action;
- (b) the designated proponent of the action;
- (c) if a commission has conducted an inquiry under Division 7 of Part 8 relating to the action – the commission.

4. Section 133 of the EPBC Act relevantly provides:

- (1) After receiving an assessment report relating to a controlled action, or the report of a commission that has conducted an inquiry relating to a controlled action, the Minister may approve for the purposes of a controlling provision the taking of the action by a person.
- (2) An approval must:
 - (a) be in writing; and
 - (b) specify the action that may be taken; and
 - (c) name the person who may take the action; and

- (d) specify each provision of Part 3 for which the approval has effect; and
- (e) specify the period for which the approval has effect; and
- (f) set out any conditions attached to the approval.

5. Section 136 of the EPBC Act provides:

- (1) In deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the Minister must consider the following, so far as they are not inconsistent with any other requirement of this Subdivision:
 - (a) matters relevant to any matter protected by a provision of Part 3 that the Minister has decided is a controlling provision for the action;
 - (b) economic and social matters.
- (2) In considering those matters, the Minister must take into account:
 - (a) the principles of ecologically sustainable development; and
 - (b) the assessment report relating to the action; and
 - (c) if the action was assessed under Division 5 or 6 of Part 8 (which deal with public environment reports and environmental impact statements) – the report or statement about the action finalised by the designated proponent; and
 - (d) if an inquiry was conducted under Division 7 of Part 8 in relation to the action – the report of the commissioners; and
 - (e) any other information the Minister has on the relevant impacts of the action (including information in a report on the impacts of actions taken under a policy, plan or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and
 - (f) any relevant comments given to the Minister by another Minister in accordance with an invitation under section 131.
- (4) In deciding whether or not to approve the taking of an action by a person, and what conditions to attach to an approval, the Minister may consider whether the person is a suitable person to be granted an approval, having regard to the person's history in relation to environmental matters.

(5) In deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the Minister must not consider any matters that the Minister is not required or permitted by this Subdivision to consider.

6. Section 139 of the EPBC Act provides:

In deciding whether or not to approve for the purposes of a subsection of section 18 or section 18A the taking of an action, and what conditions to attach to such an approval, the Minister must not act inconsistently with:

(a) Australia's obligations under:

(i) the Biodiversity Convention; or

(ii) the Apia Convention; or

(iii) CITES; or

(b) a recovery plan or threat abatement plan.

7. Section 140 of the EPBC Act provides:

In deciding whether or not to approve for the purposes of section 20 or 20A the taking of an action related to a listed migratory species, and what conditions to attach to such an approval, the Minister must not act inconsistently with Australia's obligations under whichever of the following conventions and agreements because of which the species is listed:

(a) the Bonn Convention;

(b) CAMBA;

(c) JAMBA;

(d) an international agreement approve under subsection 209(4).

Background

8. The action as originally referred by Wind Power Pty Ltd on 23 July 2002, involved the construction and operation of a wind farm consisting of approximately 80 turbines, underground and overhead cabling and other related infrastructure on about 1340 hectares of land at Bald Hills in South Gippsland, Victoria. The development was proposed to occur at two locations, approximately 4.7 kilometres apart. The northern section would extend over four land ownerships covering an area of about 730 hectares. The southern section would extend over one land ownership covering an area of about 610 hectares. Aspects of the proposal were subsequently changed by Wind Power Pty Ltd during the course of the assessment process.

9. On 21 August 2002, Mr Gerard Early, a delegate of the Minister for the purposes of section 75 of the EPBC Act, decided that the proposed action is a controlled action for which the controlling provisions are:
 - sections 18 and 18A (Listed threatened species and ecological communities); and
 - sections 20 and 20A (Listed migratory species).
10. On 23 September 2002, the Victorian Minister for Planning was invited to provide information relevant to deciding on the approach to be used for the assessment of the relevant impacts of the action under section 87 of the EPBC Act. The Victorian Minister responded on 11 October 2002 expressing the view that the action should be assessed on the basis of an accredited assessment process being an Environment Effects Statement (EES) under the Victorian *Environment Effects Act 1978*.
11. On 28 October 2002, Mr Malcolm Forbes, a delegate of the Minister for the purposes of section 87 of the EPBC Act, decided that the action would be assessed by an accredited process, and that the accredited process is the Environment Effects Statement under the Victorian *Environment Effects Act 1978*.
12. The Victorian EES for the Bald Hills wind farm proposal was exhibited for public comment from 10 June 2003 to 22 July 2003. Two hundred and seventy four submissions were received by the Victorian Department of Sustainability and Environment.
13. In September 2003, after reviewing the public submissions to the Victorian EES, Wind Power Pty Ltd revised the proposed Bald Hills Wind farm proposal (the revised proposal). The revised proposal involved reducing the number of turbines from approximately 80 to 52, reducing the height of the turbines from 125 metres to 110 metres, and increasing the distance between the location of turbines and nearby residences, the Bald Hills wetland reserve and the Cape Liptrap Coastal Park. The Victorian Minister for Planning subsequently advised Wind Power Pty Ltd that it should submit a new Victorian planning permit application and Supplement to the EES for the modified proposal and its impacts.
14. In October 2003, a revised Victorian planning permit application, the EES and a Supplement to the EES were exhibited for public comment. More than 1100 submissions were received on the revised Bald Hills wind farm proposal.
15. On 23 January 2004, the Victorian Minister for Planning appointed a Panel pursuant to the *Environment Effects Act 1978* and the *Planning and Environment Act 1987* to consider all submissions received in respect of the Bald Hills wind farm on the earlier exhibition of the EES, and the later exhibition of the EES, the

EES Supplement and the revised planning permit application. The Panel conducted public hearings from 15 March to 29 April 2004 and submitted its report to the Victorian Minister for Planning on 24 June 2004.

16. On 19 August 2004, the Victorian Minister for Planning wrote to the Minister providing a copy of the assessment report for the Bald Hills wind farm.
17. On 27 August 2004, a delegate of the Victorian Minister for Planning, provided a notice under section 130 (1B)(b) of the EPBC Act that the certain and likely impacts of the Bald Hills wind farm proposal, on things other than the matters protected by the relevant provisions under the EPBC Act for the proposal, had been assessed to the greatest extent practicable, and explaining how they had been assessed.
18. On 11 October 2004, Mr Malcolm Forbes, a delegate for the purposes of section 132 of the EPBC Act, wrote to Wind Power Pty Ltd, requesting further information from the proponent relating to the impacts of the 35 kilometre distribution line connecting the Bald Hills wind farm to the electrical grid.
19. On 12 November 2004, Wind Power Pty Ltd wrote to the Department of Environment and Heritage (my Department), providing a response on potential impacts associated with the distribution line connecting the Bald Hills wind farm to the electrical grid.
20. On 9 November 2004, Mr Malcolm Forbes, of my Department, engaged Dr Penny Olsen of Latitude 42 Environmental Consultants Pty Ltd, to undertake a review of the assessment documentation for the Bald Hills wind farm proposal and consider the adequacy of the assessment of the impacts of the wind farm on listed threatened and migratory bird species under the EPBC Act.
21. On 18 January 2005, Dr Penny Olsen provided a final report to my Department concluding that the assessment documentation for the Bald Hills wind farm was adequate.
22. On 23 May 2005, my Department commissioned Biosis Research Pty Ltd to undertake a study to assess the cumulative impacts of birdstrike from wind farms (including Bald Hills wind farm) on priority EPBC Act listed bird species.
23. On 22 February 2006, Biosis Research Pty Ltd finalised the assessment of the cumulative impacts of birdstrike from wind farms. The cumulative assessment assessed two listed species relevant to the proposed Bald Hills wind farm - the Orange-bellied Parrot and the Swift Parrot and reviewed the likelihood of collision risk of a number of EPBC Act listed species (primarily wader and water birds) with wind farms in Gippsland.

24. In accordance with section 131 of the EPBC Act, my proposed decision was discussed with the Minister for Industry, Tourism and Resources.

25. On 3 April 2006, I decided not to approve the taking of the action in accordance with sections 133, 136, 139 and 140 of the EPBC Act.

Evidence or other material on which the decision-maker's findings were based

26. The evidence or other material upon which my findings were based is listed below:

- A brief from my Department, dated 10 March 2006 and the following attachments:
 - Information on my legal obligations on decision-making under Part 9 of the EPBC Act;
 - A copy of reports on the Orange-bellied Parrot, Swift Parrot and listed wader and water birds at risk from birdstrike with wind farms in Gippsland;
 - A copy of the independent review of the assessment documents addressing the potential impact of the wind farms on listed threatened and migratory bird species;
 - A copy of the Victorian Assessment Report;
 - A copy of the Victorian Environment Effects Statement (including Main Document 2003, Supplementary EES November 2003, and Appendices 2003);
 - A copy of the Victorian Panel Report;
 - A copy of the Section 130(1B) notice from the Victorian Government;
 - A copy of public submissions received by my Department; and
 - A copy of information provided by the proponent on the electricity distribution line.
- A brief from my Department dated 16 March 2006 and the following attachments:
 - Summary of the wind farm birdstrike cumulative risk assessment report;
 - Modelled cumulative impacts on the Orange-bellied Parrot of wind farms across the species' range in south eastern Australia (December 2005);
 - Modelled cumulative impacts on the Tasmanian Wedge-tailed Eagle of wind farms across the species' range (September 2005);
 - Modelled cumulative impacts on the Swift Parrot of wind farms across the species' range in south eastern Australia (December 2005);
 - Modelled cumulative impacts on the White-bellied Sea Eagle of wind farms across the species' Australian range (December 2005);
 - Risk level to select species listed under the EPBC Act of collision at wind farms in Gippsland, Victoria (December 2005); and

- Impacts of avian collisions with wind power turbines: an overview of the modelling of cumulative risks posed by multiple wind farms (January 2006).

Findings on material questions of fact

Listed Threatened Species and Ecological Communities

27. I found that no listed ecological communities under the EPBC Act were identified to be potentially present in the vicinity of the site of the proposed action.
28. I found that the Cream Spider-orchid (*Caladenia fragrantissima* subsp. *orientalis*), the Maroon Leek-orchid (*Prasophyllum frenchii*) and the Leafy Greenhood (*Pterostylis cucullate*) are species that may occur in the vicinity of the Bald Hills wind farm and that these species were not detected during the spring flora investigations undertaken as part of the EES.
29. I found that the Orange-bellied Parrot (*Neophema chrysogaster*), Swift Parrot (*Lathamus discolor*), Southern Brown Bandicoot (*Isodon obesulus obesulus*), Southern-Bell Frog, Growling Grass Frog (*Litoria raniformis*), Spot-tailed Quoll (south-east mainland and Tasmanian subspecies) (*Dasyurus maculatus maculatus*), Long-nosed Potoroo (south-east mainland) (*Potorous tridactylus tridactylus*), Dwarf Galaxius (*Galaxiella pusilla*) and the Australian Grayling (*Prototroctes maraena*) are species that may occur in the vicinity of the Bald Hills wind farm and that these species were not detected during the fauna investigations undertaken as part of the EES.
30. I found that listed fish species are unlikely to be affected by the proposal due to the lack of suitable streams to support such species on the site.
31. I found that there are few records of the Orange-bellied Parrot occurring near the proposed Bald Hills wind farm site, however, six Blue-winged Parrots (same genus as the Orange-bellied Parrot) were recorded during the EES investigations. I found that there are two important regional foraging sites that Orange-bellied Parrots utilise (Corner Inlet 35 kilometres to the east and Anderson's Inlet 10-20 kilometres to the west of the Bald Hills wind farm site). I found that the proposed wind farm would be located almost in a direct line between these two sites and information available indicates that is likely the species would be flying through the site to utilise these foraging areas. I found that the proposal would be likely to contribute to the ongoing decline of the Orange-bellied Parrot as it would occur directly within the known species migration route. I found that given the difficulty of identifying Orange-bellied Parrots in the wild, due to their size and small numbers, the failure to identify Orange-bellied Parrots at the Bald Hills wind farm site does not mean that Orange-bellied Parrots do not use this area.

32. I found that there is estimated to be between 99 and 200 Orange-bellied Parrots left in Australia and they are predominantly recorded within two kilometres of Australia's coastline.
33. I found that on the basis of extinction modeling undertaken for the Orange-bellied Parrot, this species has a high probability of becoming extinct within the next 50 years, even in the absence of any mortality due to wind turbine collision.
34. I found that there is a risk that Orange-bellied Parrot mortalities may occur as a result of collisions with wind turbines at the Bald Hills wind farm. While the risk of such an impact is small, almost any negative impact on the Orange-bellied Parrot would threaten its continued existence.
35. In light of my findings in paragraphs 31-34 above, I found that there is a threat of serious and irreversible impact on the Orange-bellied Parrot from the Bald Hills wind farm.
36. I found that the habitat on the Bald Hills wind farm site is not particularly attractive for the Swift Parrot and that, accordingly, it is likely to only be an occasional visitor to the area near the Bald Hills wind farm site.

Listed Migratory Species

37. I found that the Orange-bellied Parrot is also a listed migratory species under the EPBC Act and my comments in paragraphs 31-35 above apply for this species.
38. I found that the White throated Needletail (*Hirundapus caudacutus*) and Latham's Snipe (*Gallinago hardwickii*), listed migratory species under the EPBC Act, were recorded during the EES investigations and that the White throated Needletail was observed flying at 'rotor swept area' height. Although, a number of White throated Needletail's were observed at the site, I found that any impacts from the proposed wind farm were unlikely to affect the viability of the species at a population level.
39. I found that other listed migratory species are likely to only visit the site occasionally and in small numbers, as their principal habitat is not located near the proposal site.

Social and Economic Aspects

40. I found that the proposal is expected to provide about 50-80 local jobs during the construction and about 8 ongoing direct and indirect jobs. I found that the expected total capital cost of the proposal is \$220 million, of which \$95 million is expected to be spent on local components.
41. I found that 274 public submissions were received on the Victorian EES and over 1100 public submissions were received on the supplement to the Victorian EES. I found that a large number of these public submissions raised concerns about

possible aesthetic and noise impacts of the proposed action. I found that the proposed wind farm has aroused social division within the local community and would have some negative social impacts for that community, particularly in relation to the feelings of well being and a sense of a positive future for those members of the public who were in vigorous opposition to the proposal.

42. I found that there are 21 houses within 2 kilometres of the proposed wind farm. I found that the New Zealand standard for wind farms (NZS6808:1988 Acoustics - The Assessment and Measurement of Sound from Wind Turbine Generators) recommends an upper limit of noise at pre-wind farm background plus 5dBA, or 40dBA, whichever is greater. I found that the South Australian Guidelines recommend an upper limit of noise at pre-wind farm background plus 5dBA, or 35dBA, whichever is greater. I found that the Bald Hills wind farm proposal would comply with the New Zealand standard. I found that the proposal would comply with the South Australian Guidelines at all but one site.

Reasons for decision

43. In making the decision on whether to approve the taking of the proposed action, I took into account (among other matters) the principles of ecologically sustainable development as required under section 136(2)(a) of the EPBC Act, and the precautionary principle as required under section 391 of the EPBC Act.
44. Taking into account my findings referred to above, in particular my findings in paragraph 35, I decided that the potential impacts of the action on the Orange-bellied Parrot are not acceptable, and accordingly, I decided not to approve the taking of the action under the EPBC Act.



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IAN CAMPBELL

5 / 4 /2006