

Notice of Modification

Section 75W of the *Environmental Planning and Assessment Act 1979*

As delegate of the Minister for Planning, the Independent Planning Commission of NSW modifies the project approval referred to in Schedule 1, as set out in Schedule 2.

Member of the Commission	Member of the Commission	Member of the Commission
Sydney	2019	

SCHEDULE A

The project approval (10_0160) for the White Rock Wind Farm, granted by the Minister for Planning and Infrastructure's delegate on 10 July 2012.

SCHEDULE B

1. In Schedule A, in the definitions, delete the definitions for 'Department, the', 'Heritage Item', 'OEH' and 'Reasonable and Feasible', and insert the following in alphabetical order:

Ancillary infrastructure	All wind farm infrastructure with the exception of wind turbines, including but not limited to collector substations, switching stations, permanent offices and site compounds, underground and overhead electricity transmission lines and internal roads
BCD	Biodiversity Conservation Division
Department, the	The Department of Planning, Industry and Environment
Evening	The period from 6pm to 10pm
Feasible	Feasible relates to engineering considerations and what is practical to build or implement
Heavy vehicle	As defined under the <i>Heavy Vehicle National Law (NSW)</i> , but excluding light and medium rigid trucks and buses no more than 8 tonnes and with not more than 2 axles
Heritage Act	<i>Heritage Act 1977</i>
Heritage Item	An item as defined under the Heritage Act and/or an Aboriginal Object or Aboriginal Place as defined under the <i>National Parks & Wildlife Act 1974</i> .
Incident	A set of circumstances that: <ul style="list-style-type: none">• causes or threatens to cause material harm to the environment; and/or• breaches or exceeds the limits or performance measures/criteria in this approval
Material harm to the environment	Is harm that: <ul style="list-style-type: none">• involves actual or potential harm to the health or safety of human beings or to ecosystems that is not trivial; or• results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$10,000 (such loss includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent, mitigate or make good harm to the environment)
Minimise	Implement all reasonable and feasible measures to reduce the impacts of the project
BCD	Biodiversity Conservation Division

Proponent	White Rock Wind Farm Pty Ltd, or any person who seeks to carry out the project approved under this approval.
Reasonable	Means applying judgement in arriving at a decision, taking into account: mitigation benefits, cost of mitigation versus benefits provided, community views and the nature and extent of potential improvements
Rehabilitation	The restoration of land disturbed by the development to a good condition, to ensure it is safe, stable and non-polluting
Residence	Any dwelling in existence at the date of this approval, or a dwelling that is either the subject of a development consent or a development application that was lodged but not yet determined at the date of this approval once a final occupation certificate has been issued for the dwelling

2. In the definition of 'EEC' of Schedule A, after 'Endangered ecological community listed under the' insert '*Biodiversity Conservation Act 2016*'
3. In the definition of 'Minister, the' of Schedule A, after 'Minister for Planning' insert 'and Public Spaces, or delegate'
4. In the definition of 'EA' of Schedule A, delete the following text:
 - ‘; and
 - 1. The Modification Application for the subdivision of two lots, dated September 2017 (MOD 5).’
 - and insert:
 - ‘;
 - 2. the Modification Application for the subdivision of two lots, dated September 2017 (MOD 5);
 - and
 - 3. the Modification Application for the changes to turbines proposed as part of Stage 2 of the project dated January 2018, including associated response to submissions dated September 2018 and letters from White Rock Wind Pty Ltd dated 23 January 2019, 18 February 2019, 26 July 2019 and 24 September 2019 and revised Biodiversity Assessment Report dated 22 October 2019 (MOD 6).’
5. Delete any references of 'OEH' or 'the OEH' throughout Schedules B to G and replace with 'BCD'.
6. Delete all footers throughout the document and insert:
NSW Government
Department of Planning, Industry and Environment
7. In condition B6 of Schedule B, delete '119' and insert '118'.
8. After condition B8 of Schedule B, insert the following:
 - B8A. Prior to the commencement of construction of Stage 2, the Proponent must submit detailed plans of the final layout for Stage 2 of the Project to the Secretary, including:
 - (a) details on the micro-siting of any wind turbines and/or ancillary infrastructure (including the selected 330 kV substation site layout option); and
 - (b) the GPS coordinates of the final wind turbine locations.
9. In condition B18 of Schedule B:
 - after 'Lot 1 DP624913, delete 'and' and insert ';;
 - after Lot 153 DP753260, insert 'and Lot 1 DP584081';
 - after the words 'to create', delete 'two' and insert 'three';
 - after 'in accordance with MOD', delete '5' and insert '6'; and
 - under 'Notes', delete "4A" and insert "6"
10. In condition C1 of Schedule C:
 - Delete the heading '**Clearing**' and insert '**Restrictions on Clearing and Habitat Impacts**'
 - in point (a) delete the word 'and' after 'vegetation on site;';
 - in point (b), delete '28' and insert '90'; and
 - at the end of point (b), delete '.' and insert the following:
 - ‘; and
 - (c) not clear more than 10.4 hectares of Box Gum Woodland EEC on the site.’
11. In condition C2 of Schedule C, after 'to enhance habitat (coarse woody debris) in rehabilitated area', insert '(other than pasture areas where landowners seek to maximise vegetation cover)'.

12. Delete condition C6 of Schedule C and insert the following:

- C6. Prior to the commencement of construction, the Proponent shall prepare and submit for the approval of the Secretary a **Bird and Bat Adaptive Management Program** for the project in consultation with BCD, and to the satisfaction of the Secretary. For each stage of the project, the Program must include:
- (a) baseline data on threatened and 'at risk' bird and bat species and populations in the locality that could be affected by the project;
 - (b) a detailed description of the measures that would be implemented on site for minimising bird and bat strike during operation of the project, including:
 - minimising the availability of raptor perches on wind turbines;
 - prompt carcass removal;
 - controlling pests; and
 - using best practice methods for bat deterrence, including managing potential lighting impacts;
 - (c) trigger levels for further investigation of the potential impacts of the project on particular bird or bat species or populations;
 - (d) an adaptive management program that would be implemented if the project is having an adverse impact on a particular threatened or 'at risk' bird and/or bat species or populations; including the implementation of measures to:
 - reduce the mortality of those species or populations; or
 - enhance and propagate those species or populations in the locality; and
 - (e) a detailed program to monitor and report on:
 - the effectiveness of these measures; and
 - any bird and bat strikes on site;
 - (f) provisions for a copy of all raw data collected as part of the monitoring program to be submitted to the BCD and the Secretary.

Following the Secretary's approval, the Applicant must implement the Bird and Bat Adaptive Management Program.

13. In condition C7 of Schedule C:

- in the heading, after the text 'Biodiversity Offset' delete 'Package';
- following the text 'Following final design and prior to commencement of, insert 'each stage of';
- in point (c)(i), after the text 'an offset proposal which is supported by a suitable metric method', delete '(such as the Biobanking Assessment Methodology)'; and
- following point (e), delete the following:

Land offsets shall be consistent with the *Principles for the use of Biodiversity Offsets in NSW* (NSW Office of Environment and Heritage, June 2011). Any land offset shall be enduring and be secured by a conservation mechanism which protects and manages the land in perpetuity. Where land offsets cannot solely achieve compensation for the loss of habitat, additional measures shall be provided to collectively deliver an improved or maintained biodiversity outcome for the region.

Where monitoring referred to in condition (d) indicates that biodiversity outcomes are not being achieved, remedial actions shall be undertaken to ensure that the objectives of the Biodiversity Offset Package are achieved.

14. After condition C7 of Schedule C, insert the following:

- C7A. Prior to the commencement of construction of Stage 2, the Proponent must:
- (a) determine whether the Small Snake Orchid (*Diuris pedunculata*) occurs within the proposed disturbance areas, during appropriate survey periods;
 - (b) determine whether the Koala occurs within the proposed Stage 2 33 kV underground cabling areas within the Stage 1 footprint; and
 - (c) calculate the final biodiversity offset credit liabilities for the proposed Stage 2 disturbance areas in accordance with the *Framework for Biodiversity Assessment* under the *NSW Biodiversity Offsets Policy for Major Projects*, in consultation with BCD, and to the satisfaction of the Secretary.
- C7B. Following final design and prior to the commencement of construction of Stage 2, or as otherwise agreed to by the Secretary, the Proponent shall either:
- (a) demonstrate to the satisfaction of the Secretary that the Tangari biobanking site (agreement #453) provides sufficient credits for the Stage 2 disturbance areas; or
 - (b) prepare an updated Biodiversity Offset Package in consultation with BCD and submit the package for the approval of the Secretary.

If required to prepare an updated Biodiversity Offset Package, the package must detail how the final biodiversity offset credit liabilities for the proposed Stage 2 disturbance areas would be discharged.

Following the Secretary's approval, the Proponent must implement the updated Biodiversity Offset Package.

- C7C. Within 2 years of the commencement of construction of Stage 2, unless the Secretary agrees otherwise, the Proponent must discharge the required biodiversity credit obligations for the proposed Stage 2 disturbance areas.

The retirement of any residual biodiversity credits required to offset the Stage 2 impacts must then be carried out in accordance with the *NSW Biodiversity Offsets Scheme*, and can be achieved by:

- (a) acquiring or retiring 'biodiversity credits' within the meaning of the *Biodiversity Conservation Act 2016*;
- (b) making payments to the Biodiversity Conservation Fund; or
- (c) funding a biodiversity conservation action that benefits the entity impacted and is listed in the ancillary rules of the biodiversity offset scheme.

15. In condition C8 of Schedule C, insert the heading '**Water Pollution**' immediately before the condition.
16. Delete condition C9 of Schedule C and the sub-heading '**Waterways**' and insert the following:

Operating Conditions

- C9. The Proponent shall:
 - (a) ensure the wind turbines and ancillary infrastructure, particularly any access roads on steep slopes, are designed, constructed and maintained to minimise any soil erosion;
 - (b) minimise any soil erosion associated with the construction and decommissioning of the project by implementing the relevant mitigation measures in *Managing Urban Stormwater: Soils and Construction* (Landcom, 2004), or its latest version;
 - (c) ensure all waterway crossings are constructed in accordance with:
 - (i) *Water Guidelines for Controlled Activities on Waterfront Land* (2012), or its latest version; and
 - (ii) *Why Do Fish Need to Cross the Road? Fish Passage Requirements for Waterway Crossings* (2004), or its latest version;
 - (d) store and handle all dangerous goods or hazardous materials on site in accordance with *AS1940-2004: The storage and handling of flammable and combustible liquids*, or its latest version;
 - (e) ensure the concrete batching plants and substation are suitably bunded or contained; and
 - (f) minimise any spills of hazardous materials or hydrocarbons, and clean up any spills as soon as possible after they occur.
17. Delete condition C10 of schedule C and insert the text 'Deleted.'
18. In condition C19 of Schedule C, after the text 'The Proponent shall', insert 'minimise the waste generated by the project, and'.
19. In condition C20 of Schedule C:
 - delete 'liquid and/or non liquid'; and
 - delete '*Waste Classification Guidelines (DECC, 2008)* or any future guideline that may supersede that document and', and insert '*EPA's Waste Classification Guidelines 2014* (or its latest version).
20. In condition C22 of Schedule C, after the text 'Utilities, services and other infrastructure potentially affected by construction and operation shall be identified prior to', delete 'construction' and insert 'the commencement of relevant construction works'.
21. In condition C23 of Schedule C, after the text 'The outcomes of this consultation process shall be used to inform the', delete 'Design and Landscape Plan' and insert 'Design and Landscaping Plan'.
22. At the end of condition C29 of Schedule C, insert the text 'The Proponent shall ensure any aviation hazard lighting installed utilises an aircraft detection lighting system unless otherwise agreed by the Civil Aviation Safety Authority.'

23. In condition C32 of Schedule C, delete 'Department of Lands' and insert 'CL&W'.
24. In condition C34 of Schedule C, after the text 'Department of Planning', insert ', Industry'.
25. Directly following condition C34 of Schedule C, insert the following text:
- C35. For a period of 3 years from the commencement of construction of Stage 2 under this approval, the owner(s) of the land listed in Table 1 may request the Proponent to acquire their land. Upon receiving a written request from these owner(s), the Proponent shall acquire the land in accordance with the procedures in conditions G3 and G4 of this approval.

However, this condition does not apply if the Proponent has an agreement with the owner(s) of the relevant land in regard to visual impacts associated with the project, and the Proponent has advised the Department in writing of the terms of this agreement.

Table 1: Land subject to acquisition upon request

Acquisition Basis	Residence ID	Lot/DP to be Acquired
Visual Impact	N180, N190	2/DP1130567

Note: To identify the land and residences referred to in Table 1, see the figure in Appendix 1.

- C36. Within 1 month of the commencement of construction of Stage 2 under this approval, the Proponent shall notify in writing the owners of the land listed in Table 1 that they have the right to require the Proponent to acquire their land in accordance with the procedures in conditions G3 and G4 of this approval at any time within 3 years after the commencement of construction of Stage 2 under this approval.
26. In condition D1 of Schedule D, after the text 'Community Consultative Committee Guidelines for State Significant Projects', delete '(2016)' and insert '(2019)'.
27. In condition D3 of Schedule D, after 'AS 4269: Complaints Handling', insert 'or its latest version'
28. Delete condition D6 of Schedule D and the sub-heading '**Incident Reporting**' and insert the following:
- Incident Notification**
- D6. The Department must be notified in writing to compliance@planning.nsw.gov.au immediately after the Proponent becomes aware of the incident. The notification must identify the project (including the project application number and the name of the project if it has one) and set out the location and nature of the incident.
29. Delete condition D7 of Schedule D and insert the following:
- Non-Compliance Notification**
- D7. The Department must be notified in writing to compliance@planning.nsw.gov.au within 7 days after the Proponent becomes aware of any non-compliance with the conditions of this approval. The notification must identify the project and the application number for it, set out the condition of approval that the project is non-compliant with, the way in which it does not comply and the reasons for the non-compliance (if known) and what actions have been done, or will be, undertaken to address the non-compliance.
30. In condition E10 of Schedule E, delete all references to 'Table 1' and insert 'Table 2'.
31. In condition E17 of Schedule E, after condition E17A, insert the following:
- E17B. Unless otherwise agreed by the Secretary, prior to the commencement of any over-mass or over-dimensional vehicles accessing the site specifically for the delivery of wind turbine components for Stage 2 of the project, in consultation with the relevant roads authority, submit a report to the Department detailing any public road works that must be completed prior to the delivery of the selected wind turbine components.

Where improvements are required, the Proponent must implement these to the satisfaction of the relevant roads authority, prior to the delivery of the wind turbine components to site and at the full expense of the Proponent.

If there is a dispute about the road upgrades to be implemented, or the implementation of these upgrades, then either the Proponent or the relevant roads authority, may refer the matter to the Secretary for resolution.

32. In condition E20 of Schedule E, delete all references to 'Director-General' and insert 'Secretary'.
33. In condition E21 of Schedule E:
- delete 'Director-General' and insert 'Secretary';
 - after the text 'The Plan shall outline the environmental management practices and procedures that are to be followed during construction' delete ', and shall be prepared in consultation with the relevant agencies and in accordance with the *Guideline for the Preparation of Environmental Management Plans* (Department of Infrastructure, Planning and Natural Resources, 2004)
 - in point (e)(iv), delete 'soil and water quality' and insert 'erosion and sediment control, water quality';
 - in point (e)(vii), delete the ',' and replace with 'and', and delete 'and waste management';
 - delete points (e)(viii) and (e)(ix), and insert the following:
 - (viii) waste management (to reflect EPA's *Waste Hierarchy* (or its latest version), in accordance *Waste Avoidance and Resource Recovery Act 2001*);
 - (ix) management of ecological impacts; and
 - (x) hazard and risk management, including bushfire risk.
34. In condition E22 of Schedule E, in point (e)(iii), following the text 'erosion and sediment control measures', insert the text ', including measures to mitigate erosion on land modified by access track construction and loss of sediment during high rainfall events'
35. In condition F7 of Schedule F:
- delete point (b) and insert the following:
 - (b) the existing background noise level (LA90 (10-minute)) plus 5 dB(A), at any non-associated residence.
 - Delete 'Unless otherwise replaced by an equivalent NSW wind farm noise guideline, noise generated by the project is to be measured in accordance with the relevant requirements of Sections 3.1 and 3.2 of the South Australian Environment Protection Authority's *Wind Farms Environmental Noise Guidelines 2009*, as modified by the provisions in Appendix 3.' and insert the following:

'Noise generated by the operation of the wind turbines is to be measured in accordance with the relevant requirements of the Department's *Wind Energy: Noise Assessment Bulletin (2016)* (or its latest version) and the provisions in Appendix 3.'
36. In condition F8 of Schedule F:
- after the text 'Noise generated by the', delete 'project' and insert 'operation of ancillary infrastructure';
 - after the text 'is to be measured in accordance with the relevant requirements of the', delete '*NSW Industrial Noise Policy* (as may be updated from time-to-time)', and insert '*NSW Noise Policy for Industry* (or its equivalent)'; and
 - after the text 'as modified by the', delete 'provision' and insert 'provisions'.
37. In condition F9 of Schedule F in point (c), after the text 'undertake noise monitoring within 3 months of the commissioning of the wind farm', insert '(or the commissioning of a cluster of turbines, if the project is to be staged)'.
38. In point (g) of condition F19 of Schedule F, after 'details of how sector management', insert 'or other noise mitigation measures'.
39. In Schedule G, delete conditions G1 to G7, including the sub-heading '**Land Acquisition and Criteria**' and insert the following:

Land Acquisition

- G1. Deleted.
- G2. Deleted.
- G3. Within 3 months of receiving a written request from a landowner with acquisition rights in accordance with conditions C35 and C36 of this approval, the Proponent shall make a binding written offer to the landowner based on:

- (a) the current market value of the landowner's interest in the land at the date of the written request, as if the land was unaffected by the construction of Stage 2 of the project, having regard to the:
 - existing and permissible use of the land, in accordance with the applicable planning instruments at the date of the written request; and
 - presence of improvements on the land and/or any approved building or structure which has been physically commenced at the date of the landowner's written request, and is due to be completed subsequent to that date, but excluding any improvements or reasonable costs that have resulted from the implementation of any visual impact mitigation measures in accordance with condition C24 of Schedule C;
- (b) the reasonable costs associated with:
 - relocating within the Inverell or Glen Innes Severn local government areas, or to any other local government area determined by the Secretary; and
 - obtaining legal advice and expert advice for determining the acquisition price of the land, and the terms upon which it is to be acquired; and
- (c) reasonable compensation for any disturbance caused by the land acquisition process.

However, if at the end of this period, the Proponent and landowner cannot agree on the acquisition price of the land and/or the terms upon which the land is to be acquired, then either party may refer the matter to the Secretary for resolution.

Upon receiving such a request, the Secretary will request the President of the NSW Division of the Australian Property Institute to appoint a qualified independent valuer to:

- consider submissions from both parties;
- determine a fair and reasonable acquisition price for the land and/or the terms upon which the land is to be acquired, having regard to the matters referred to in paragraphs (a)-(c) above;
- prepare a detailed report setting out the reasons for any determination; and
- provide a copy of the report to both parties.

Within 14 days of receiving the independent valuer's report, the Proponent shall make a binding written offer to the landowner to purchase the land at a price not less than the independent valuer's determination.

However, if either party disputes the independent valuer's determination, then within 14 days of receiving the independent valuer's report, they may refer the matter to the Secretary for review. Any request for a review must be accompanied by a detailed report setting out the reasons why the party disputes the independent valuer's determination. Following consultation with the independent valuer and both parties, the Secretary will determine a fair and reasonable acquisition price for the land, having regard to the matters referred to in paragraphs (a)-(c) above, the independent valuer's report, the detailed report of the party that disputes the independent valuer's determination and any other relevant submissions.

Within 14 days of this determination, the Proponent shall make a binding written offer to the landowner to purchase the land at a price not less than the Secretary's determination.

If the landowner refuses to accept the Proponent's binding written offer under this condition within 6 months of the offer being made, then the Proponent's obligations to acquire the land shall cease, unless the Secretary determines otherwise.

- G4. The Proponent shall pay all reasonable costs associated with the land acquisition process described in condition G3 above, including the costs associated with obtaining Council approval for any plan of subdivision (where permissible), and registration of this plan at the Office of the Registrar-General.
- G5. Deleted.
- G6. Deleted.
- G7. Deleted.
- 40. Delete condition G8 in Schedule G, and insert the following text:
 - G8. Within 18 months of the cessation of operations, unless the Secretary agrees otherwise, the Proponent shall rehabilitate the site to the satisfaction of the Secretary. This rehabilitation must comply with the objectives in Table 3.

Table 3: Rehabilitation Objectives

Feature	Objective
Development site (as a whole)	<ul style="list-style-type: none"> • Safe, stable and non-polluting • Minimise the visual impact of any above ground ancillary infrastructure agreed to be retained for an alternative use as far as is reasonable and feasible
Revegetation	<ul style="list-style-type: none"> • Restore native vegetation generally as identified in the EA
Above ground wind turbine infrastructure (excluding wind turbine pads)	<ul style="list-style-type: none"> • To be decommissioned and removed, unless the Secretary agrees otherwise
Wind turbine pads	<ul style="list-style-type: none"> • To be covered with soil and/or rock and revegetated
Above ground ancillary infrastructure	<ul style="list-style-type: none"> • To be decommissioned and removed, unless an agreed alternative use is identified to the satisfaction of the Secretary
Internal access roads	<ul style="list-style-type: none"> • To be decommissioned and removed, unless an agreed alternative use is identified to the satisfaction of the Secretary
Land use	<ul style="list-style-type: none"> • Restore or maintain land capability as described in the EA
Community	<ul style="list-style-type: none"> • Ensure public safety

Progressive Rehabilitation

G8A. The proponent must:

- (a) rehabilitate all areas of the site not proposed for future disturbance progressively, that is, as soon as reasonably practicable following construction or decommissioning;
- (b) minimise the total area exposed at any time; and
- (c) employ interim rehabilitation strategies to minimise dust generation, soil erosion and weed incursion on parts of the site that cannot yet be permanently rehabilitated.

41. Delete condition G10 of Schedule G and insert the following text:

G10. Prior to the cessation of operations, the Proponent shall prepare a detailed Decommissioning Plan for the Project to the satisfaction of the Secretary. This plan must outline the detailed measures that would be implemented to achieve the objectives in Table 3 above.

42. In condition G12 of Schedule G, delete all text following the end of point (d), and insert the following:

- (e) details of how waste will be minimised and managed to reflect EPA's Waste Hierarchy (or its latest version), in accordance *Waste Avoidance and Resource Recovery Act 2001*; and
- (f) details of how environmental performance will be managed and monitored to meet acceptable outcomes, including what actions will be taken to address identified potential adverse environmental impacts (including any impacts arising from the staging of the decommissioning of the Project). The Plan shall be submitted for the approval of the Secretary no later than one month prior to the commencement of decommissioning, or as otherwise agreed by the Secretary.

43. Delete the figures in APPENDIX 1 and insert the following:

44. In APPENDIX 1, under the heading 'SCHEDULE OF LAND', delete the following cells:

1	DP1130567
2	

And insert the following cells:

4	713127
154	753260
91	753292
99	753292

DRAFT