

LIVERPOOL RANGE WIND FARM DRAFT VPA

RESPONSE TO SUBMISSIONS

ISSUE	COMMENT DETAILS	RESPONSE
Administration Allowance	<ul style="list-style-type: none"> <li>Does not support \$20,000 per annum administration allowance as the amount is too high. It is recommended that the administration allowance be amended to \$10,000 per annum indexed to CPI.</li> </ul>	<ul style="list-style-type: none"> <li>The \$20,000 per annum administration allowance is considered to be a conservative estimate of the costs involved in administering the S355 Committee and includes the costs of advertising, secretariat support, reporting to Council, auditing, financial reporting, travel expenses etc. The allowance means that project related costs are carried by the proponent rather than the Council ratepayers.</li> </ul>
	<ul style="list-style-type: none"> <li>The \$20,000 per annum administration allowance is too high. Other Councils administer funds for no charge.</li> </ul>	<ul style="list-style-type: none"> <li>As above.</li> </ul>
	<ul style="list-style-type: none"> <li>Clause 5.4 (b) - the \$20,000 per annum administration allowance is a direct scalping of community enhancement funds. The \$20,000 per annum administration allowance should be separate to the contributions made towards the CEF.</li> </ul>	<ul style="list-style-type: none"> <li>As above.</li> </ul>
	<ul style="list-style-type: none"> <li>The administrative allowance should, as far as practicable, be spent in a way that is directly connected with the areas and people most directly affected by the wind farm.</li> <li>The explanation for the administrative allowance allocation is limited.</li> <li>A fixed fee operates on the assumption that administrative costs will be the same every year or will, on average, be this amount. What is the</li> </ul>	<ul style="list-style-type: none"> <li>As above.</li> <li>The explanation for the administrative allowance is considered to be adequate.</li> <li>As above. The administration allowance will be</li> </ul>

	<p>basis for this?</p> <ul style="list-style-type: none"> <li>Both Host Councils are funded from other sources for auditing and other administrative services for the management of expenditure.</li> <li>The draft VPA does not explain how the 'Administrative Allowance' is to be dispersed with a focus in 'the area surrounding the project site'. Could, for example this administrative work be performed more locally so that it builds capacity and opportunity in the local community and the full benefit flows to the local community?</li> </ul>	<p>increased by CPI.</p> <ul style="list-style-type: none"> <li>The Host Councils do not have funds available to administer the VPA or Section 355 Committee. As such, it is appropriate that the wind farm operator pay the reasonable costs incurred by the Host Councils in administering the VPA and Section 355 Committee and auditing the disbursement of contributions.</li> <li>The administration allowance is considered to be a conservative estimate of the costs likely to be incurred by Council in administering the S355 Committee and includes the costs of advertising, secretariat support, reporting to Council, auditing, financial reporting, travel expenses etc. It is not intended to fund capacity building in the community.</li> </ul>
Road Maintenance Fund	<ul style="list-style-type: none"> <li>Concern with the 30% allocation of contribution to road maintenance fund. Council has responsibility to maintain local road network using its budget. Concern that the road maintenance fund will replace Council's current funding obligation.</li> </ul>	<ul style="list-style-type: none"> <li>The road maintenance fund is to be used for the maintenance of local roads impacted by the wind farm. Local rate payers should not be subsidising the cost of additional road maintenance works resulting from a commercial wind farm development. An estimate of potential road maintenance costs has been calculated by each Council which suggests that the allocation to road maintenance could be reduced to 23% of the net development contribution. Accordingly, it is recommended that Clause 5.4(b) be amended such that 23% of the net development contribution is allocated to the road maintenance fund and 77% is allocated to the community enhancement fund. This ratio shall be reviewed every three (3) years with</li> </ul>

	<ul style="list-style-type: none"> <li>• Recommendation: Greater transparency and assurance that regular allocated budget for local roads will not decrease.</li> <li>• Recommendation: VPA should include requirement that an annual budget of road works to be presented to Committee as well as reporting to Committee on completed works and cost of works to ensure greater transparency.</li> </ul>	<p>consideration given to the Council's operational plans. At the end of each three (3) year period, unspent funds shall be returned to the community enhancement fund. Any change to the ratio shall be subject to the amended provisions of Clause 10(b).</p> <ul style="list-style-type: none"> <li>• The purpose of the road maintenance fund is to cover the cost of additional road maintenance works incurred by the host Councils as a result of additional traffic generated by the wind farm. It is not intended to replace Council's normal allocated budget for road maintenance in the local area but in fact supplement it in recognition of the extra impacts solely related to the project. Council's expenditure on road maintenance is detailed in its annual operational plan and reported in the annual report, both of which are publicly available.</li> <li>• The purpose of the S355 Committee is to administer the Community Enhancement Fund not the Road Maintenance Fund. The annual budget for road works will be publicly available through Council's operational plan while expenditure will be reported to Council on a regular basis to ensure adequate transparency.</li> </ul>
	<ul style="list-style-type: none"> <li>• The allocation of 30% to road maintenance is too high, given the separate and independent obligations on the developer, the existence of other sources of funds for road maintenance and the importance of broader community enhancement.</li> </ul>	<ul style="list-style-type: none"> <li>• An estimate of potential road maintenance costs has been calculated by each Council which suggests that the allocation to road maintenance could be reduced to 23% of the net development contribution. Accordingly, it is recommended that Clause 5.4(b) be amended such that 23% of the net development contribution is allocated to the road maintenance fund and 77% is allocated to the community enhancement fund. This ratio shall be reviewed every three (3) years with</li> </ul>

	<ul style="list-style-type: none"> <li>• ‘Road maintenance’ should be clearly defined, in particular to ensure that it excludes matters that go beyond maintenance such as upgrades and new projects.</li> <li>• The ongoing requirement to maintain roads for the development seems negligible as only a very small team of Company employees will be required to maintain and monitor the wind farm when it is operating.</li> </ul>	<p>consideration given to the Council’s operational plans. At the end of each three (3) year period, unspent funds shall be returned to the community enhancement fund. Any change to the ratio shall be subject to the amended provisions of Clause 10(b).</p> <ul style="list-style-type: none"> <li>• It is recommended that the agreement be amended to include a definition of “Road maintenance” and amend the definition of “Road maintenance fund”, as follows:  <b><i>Road Maintenance Fund</i></b> means the portion of the Development Contributions stated in clause 5.4(b) to be used for, or applied towards Road Maintenance.  <b><i>Road Maintenance</i></b> means any road work as defined in the Roads Act 1993 (other than road upgrades and road maintenance referred to in clauses 28 and 29 of Schedule 3 of the Development Consent) carried out to the lengths of roads described in the columns titled “Road/Intersection” and “Start – End” listed in the table at Appendix 6 (Schedule of road upgrades) of Schedule 3 of the Development Consent.</li> <li>• Additional traffic generated by the wind farm will not be limited to Company employees. Other traffic associated with tourists and visitors, maintenance vehicles and other plant (small to heavy) is likely to be generated during the operational phase of the development. All of these vehicles will cause wear and tear to Council’s roads.</li> <li>• As noted above, it is recommended that the definition of road maintenance fund be amended and a new definition of road maintenance be</li> </ul>
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	<ul style="list-style-type: none"> <li>• The draft VPA does not explain how the Road Maintenance Fund will relate to the footprint of the development (ie what is the meaning of ‘in the vicinity of the development’?)</li> <li>• Where are the costings that justify the road maintenance fund portion of 30%?</li> <li>• Is the 30% just ‘revenue raising’? The desire of Councils to raise revenue for roads through the VPA – separate from the legitimate planning needs of the development – would be an irrelevant consideration and thus unlawful.</li> <li>• Concern that Host Councils will exploit the uncertainty in the language of the VPA, regarding the meaning of road maintenance, to generate a broad discretion that allows Councils to pull funds for road maintenance towards other parts of the LGA.</li> <li>• The road maintenance provided by Epuron could be publicly acknowledged through signage or a publicly available list of works and dates as a form of positive promotion in the community accepting the wind farm.</li> <li>• Whatever percentage of total funds is allocated</li> </ul>	<p>included which clearly defines the roads that are subject to funding under the road maintenance fund.</p> <ul style="list-style-type: none"> <li>• As noted above, an estimate of potential road maintenance costs has been calculated by each Council which suggests that the allocation to road maintenance could be reduced to 23% of the net development contribution. Accordingly, it is recommended that Clause 5.4(b) be amended such that 23% of the net development contribution is allocated to the road maintenance fund and 77% is allocated to the community enhancement fund.</li> <li>• As above. The revised road maintenance allocation has been based on estimates of potential road maintenance costs.</li> <li>• As noted above, it is recommended that the definition of road maintenance fund be amended and a new definition of road maintenance be included which clearly defines the roads that are subject to funding under the road maintenance fund.</li> <li>• This could be acknowledged in the Council’s operational plans.</li> <li>• As above.</li> </ul>
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	to road maintenance, the allocation should be expressed as a maximum allocation with unspent money being returned to the Community Enhancement Fund.	
	<ul style="list-style-type: none"> <li>The 30% road maintenance contribution is another scalping of funds away from the CEF. The wind farm will be upgrading all roads and repairing damage in any case. Council already receives funding for road maintenance.</li> </ul>	<ul style="list-style-type: none"> <li>Under the conditions of consent, the proponent is responsible for upgrading all local roads impacted by the development as well as maintaining roads during the construction phase of the wind farm. However, the ongoing maintenance of these roads and associated infrastructure will be the responsibility of the Host Councils. The road maintenance fund will be used to cover the additional road maintenance costs incurred by the Host Councils as a result of the development. Local rate payers should not be subsidising the cost of additional road maintenance works resulting from the wind farm development.</li> </ul>
	<ul style="list-style-type: none"> <li>Council already receives funding for road maintenance and should not receive 30% of the contributions for road maintenance. The wind farm will be upgrading all roads and repairing damage in any case. Land owners hosting the turbines will also benefit from road maintenance fund which seems extravagant.</li> </ul>	<ul style="list-style-type: none"> <li>As above. The fact that some land owners hosting turbines may have access to better maintained roads is an indirect benefit from the road maintenance fund. This benefit will help to offset the impacts of the development on these properties.</li> </ul>
	<ul style="list-style-type: none"> <li>Provision in road maintenance fund which precludes the use of funding for road upgrades and maintenance referred to in Clauses 28 and 29 of Schedule 3 of the development consent. Council should be aware that changes may have to be made to road curvatures to allow for transportation of turbines to site.</li> </ul>	<ul style="list-style-type: none"> <li>The road upgrades and maintenance referred to in Conditions 28 and 29 of Schedule 3 of the development consent are the responsibility of the proponent during the construction phase of the development. The road maintenance fund will be used for ongoing maintenance of the roads during the operational phase of the wind farm. A detailed assessment of the existing road</li> </ul>

	<ul style="list-style-type: none"> <li>Should the VPA recognise the needs for major new roads and maintenance referred to in clauses 28 and 29 of Schedule 3 of the Development Consent? The precise roads should be included in the agreement.</li> </ul>	<p>network and required road upgrades has been undertaken by the proponent to ensure that turbines can be transported to the site.</p> <ul style="list-style-type: none"> <li>The road maintenance fund will be used for the maintenance of local roads impacted by the wind farm during the operational phase of the wind farm. As noted above, it is recommended that the definition of road maintenance fund be amended and a new definition of road maintenance be included which clearly defines the roads that are subject to funding under the road maintenance fund.</li> </ul>
Eligible projects under Community Enhancement Fund (CEF)	<ul style="list-style-type: none"> <li>Recommendation: In relation to list of projects that can be funded (public purpose), remove improvements to drainage structures and waste management services, recurrent expenditure funding of public facilities such as libraries, community halls, aquatic centres and childcare facilities, masterplans for LGA development. These public purposes should be funded by local government not by the CEF.</li> <li>Recommendation: Any project involving a council owned facility such as a pool, Council should co-fund. The CEF should not be used to fully fund local/state/federal government responsibilities.</li> </ul>	<ul style="list-style-type: none"> <li>It is considered that public projects such as drainage structures and waste management services are suitable community projects that could be funded by the CEF. It is considered however, that recurrent expenditure funding of public facilities should be limited to those projects funded by the CEF. It is recommended that 'masterplans for LGA development' be deleted from the list of public purpose projects.</li> <li>Council owned facilities such as pools are public facilities that provide a community benefit. Therefore, these facilities should be eligible for funding through the CEF.</li> </ul>
	<ul style="list-style-type: none"> <li>Consideration should be given to including existing community plans and the arts in the list of community projects eligible for funding under the CEF.</li> </ul>	<ul style="list-style-type: none"> <li>In accordance with Clause 7 of Schedule 2 of the VPA, consideration may be given to existing community plans and the arts as eligible community projects if they are for a public purpose.</li> </ul>
	<ul style="list-style-type: none"> <li>The definition of public purpose favours larger scale projects which could only be delivered by</li> </ul>	<ul style="list-style-type: none"> <li>The list of community projects eligible for funding under the CEF in Schedule 2 is not</li> </ul>

	Councils and other large organisations.	exhaustive and does not exclude smaller scale projects. To ensure compliance with the requirements of the Environmental Planning and Assessment Act 1979, all projects must be for a public purpose which is defined in Section 7.4(2) of the Act.
Section 355 Committee governance/structure /operating principles	<ul style="list-style-type: none"> <li>Concerns regarding potential conflicts of interest as S355 Committee will have a Councillor voting member, Councils can apply for funds and are final approver of recommendations. It could be perceived that Councils are in total control.</li> <li>Recommendation: A criteria of decision making be developed for grant applications to rank</li> </ul>	<ul style="list-style-type: none"> <li>The membership of the S355 committee is such that there are a greater number of community representatives than Councillors on the Committee, therefore giving the community representatives greater voting power. Committee members will need to abide by the Model Code of Conduct, the provisions of the Local Government Act 1993 and the Warrumbungle Shire Council Code of Meeting Practice. Accordingly, members will be required to declare any conflicts of interest and not take part in discussions or voting on any projects in which they have an interest. In addition, it is recommended that the functions of the CEF Committee, as set out in Schedule 2, be amended so that the Committee is delegated authority by the Host Councils to evaluate and determine grant applications rather than simply make recommendations to the Host Councils. This would provide a degree of separation and impartiality, particularly in relation to the determination of grant applications made by the Councils. Further, this change would assist in avoiding disputes between the Host Councils; make the Committee more efficient; place less administrative burden on the Councils and make grant allocations more transparent.</li> <li>The process of evaluating and prioritising grant applications should be determined by the</li> </ul>



	<p>applications individually to aid grant prioritisation.</p> <ul style="list-style-type: none"> <li>• Recommendation: One of the two Council representatives from each LGA on the S355 Committee may have a financial agreement with the wind farm. Many of the hosting land owners have suitable skill sets for the committee and will not be directly financially benefiting from the CEF. Land host would have less conflict than Councillors on S355 Committee.</li> </ul>	<p>members of the S355 Committee.</p> <ul style="list-style-type: none"> <li>• It is not appropriate that hosting land owners or other people with pecuniary interests in the project be permitted to sit on the S355 Committee.</li> </ul>
	<ul style="list-style-type: none"> <li>• The Draft VPA is an agreement designed by Council to be run by Council. Council will have all of the decision making power.</li> <li>• Concern that the VPA sets up conflict of interest between Council and the community. The fact that Councils must agree to the recommendations made by the Committee points to a very Council dominated process and outcomes.</li> </ul>	<ul style="list-style-type: none"> <li>• Other governance models for administering the CEF were considered by Epuron and the Host Councils. It was determined that a S355 Committee of Council was the most efficient, transparent and accountable model for administering the CEF. The benefit of a S355 Committee is that there is an established governance framework for this type of Committee that is regulated by the Local Government Act 1993. As noted above, changes to Schedule 2 are recommended to give the Committee decision making power in relation to the CEF.</li> <li>• As noted above, Councils represent the communities they serve and are administered by Councillors who are elected by the community. The VPA is intended to maximise benefits for the community whilst ensuring that the CEF is administered in an open, transparent and equitable manner. There is not considered to be any conflict of interest between Council and the community given that Council represents the</li> </ul>

		community. As noted above, changes to Schedule 2 are recommended to give the Committee decision making power in relation to the CEF. Under this change, the Committee, rather than the Councils, will be determining grant applications.
	<ul style="list-style-type: none"> <li>• Lack of consideration of equity for community, poor governance model for the S355 Committee, lack of voting entitlement by committee and scalping of community funds for administration and roads.</li> <li>• Schedule 2 - under the VPA Council does not share decision making power with the communities most impacted by the development.</li> <li>• Schedule 2 (a) (iii) - community representatives that have a financial agreement with the wind farm should not be excluded from becoming a committee member.</li> <li>• Schedule 2 (c) (vii) - the community committee members should be staggered to allow continuity of project knowledge.</li> <li>• Schedule 2 (f) (iv) - non-members entitlement to speak at Committee meetings to be considered by Committee as a whole not be chairperson.</li> <li>• Proper processes need to be put in place to minimise conflicts of interest.</li> </ul>	<ul style="list-style-type: none"> <li>• Other governance models for administering the CEF were considered by Epuron and the Host Councils. It was determined that a S355 Committee of Council was the most efficient, transparent and accountable model for administering the CEF. The benefit of a S355 Committee is that there is an established governance framework for this type of Committee that is regulated by the Local Government Act 1993.</li> <li>• The membership of the S355 committee is such that there is a greater number of community representatives than Councillors on the Committee, therefore giving the community representatives greater voting power.</li> <li>• It is not appropriate that hosting land owners or other people with pecuniary interests in the project be permitted to sit on the S355 Committee.</li> <li>• It is considered that staggering of community members would have minimal benefit.</li> <li>• Noted. It is recommended that Schedule 2 be amended so that speaking rights to non-member attendees will be at the discretion of the Committee rather than the Chair.</li> <li>• Committee members will need to abide by the Model Code of Conduct, the provisions of the Local Government Act 1993 and the</li> </ul>

		Warrumbungle Shire Council Code of Meeting Practice. Accordingly, members will be required to declare any conflicts of interest and not take part in discussions or voting on any projects in which they have an interest.
	<ul style="list-style-type: none"> <li>On page 23 under Schedule 2 – Section 355 Committee – Operating Principles in clause (b) (i) reference is made to ‘Crown Reserve Trust’. Under the new Crown land legislation reserve trusts are now referred to as Crown Reserve Manager.</li> <li>On page 25 clause (f)(i) where it states ‘Members of the Committee not able to attend in person will have the option to attend via teleconference’, this clause is in breach of Council’s Code of Meeting Practice. The adopted Code of Meeting Practice applies to all Council advisory committees similarly as it does to Council meetings. On this basis persons on the proposed S355 Committee cannot participate in the meeting unless personally present at the meeting.</li> </ul>	<ul style="list-style-type: none"> <li>Noted. It is recommended that the VPA be amended to reference Crown Reserve Manager.</li> <li>Noted. It is recommended that the VPA be amended to require all committee members to attend in person and remove the option to attend via teleconference.</li> </ul>
	<ul style="list-style-type: none"> <li>Clause (a)(iii) of Schedule 2 - Membership of S355 Committee - should be amended by inserting ‘with a majority’ before the words ‘who have entered into a financial agreement...’. This would allow some people who have entered into a financial agreement with the wind farm (including host landholders and others who have received compensation from the wind farm) to be members of the committee.</li> <li>Schedule 2 does not specify how the inaugural committee is convened.</li> </ul>	<ul style="list-style-type: none"> <li>It is not appropriate that hosting land owners or other people with pecuniary interests in the project be permitted to sit on the S355 Committee.</li> <li>It is recommended that Schedule 2 be amended to include details on how the inaugural committee is established.</li> </ul>

	<ul style="list-style-type: none"> <li>• Schedule 2 (e) – public notice for nominations should include display at Cassilis Post Office and Cassilis Library.</li> <li>• Concerned that local Councils can apply for funds, veto applications and determine applications. This could cause some conflict.</li> </ul>	<ul style="list-style-type: none"> <li>• It is recommended that the public notice requirements set out in Schedule 2 be amended to include display at the Cassilis Post Office and Cassilis Library.</li> <li>• It is considered appropriate that Councils can apply for grants through the CEF for projects that will benefit local communities. Amending Schedule 2 of the VPA to give the Committee decision making power in relation to the CEF will address any potential conflicts of interest that may arise where Council is a grant applicant.</li> </ul>
	<ul style="list-style-type: none"> <li>• Schedule 2 of the VPA should include examples of projects which will not be eligible for funding under the CEF.</li> <li>• Schedule 2 of the VPA should specify reporting and acquittal requirements for grants provided under the CEF.</li> <li>• Schedule 2 of the VPA should clarify the types of individuals and organisations that cannot receive grant funding under the CEF (eg. Hosting landowners and other entities receiving monetary benefits from the wind farm).</li> <li>• Schedule 2 should stipulate that grant recipients must be a legal entity (ie incorporated, registered, trust or Council) and must hold public liability insurance.</li> <li>• The CEF grant application form should include a question about whether development consent or other relevant approvals have been obtained for the project.</li> </ul>	<ul style="list-style-type: none"> <li>• It is not considered necessary to list examples of projects that are not eligible for funding.</li> <li>• The reporting and acquittal requirements for grants will be provided in a separate document.</li> <li>• Schedule 2 of the VPA clearly specifies the types of individuals and organisations that are eligible for funding.</li> <li>• It is recommended that Schedule 2 be amended to include a requirement that an eligible grant recipient must hold public liability insurance.</li> <li>• Noted. This information can be included on the grant application form.</li> </ul>
	<ul style="list-style-type: none"> <li>• The affected local communities should have a more direct say in the allocation of funds, including the final say in relation to some matters, for reasons of fairness, equity and capacity building.</li> </ul>	<ul style="list-style-type: none"> <li>• The affected local communities will be represented by members of the Section 355 Committee who will have a direct say in how funds should be spent. As noted above, changes to Schedule 2 are recommended to give the</li> </ul>

	<ul style="list-style-type: none"> <li>• Because of a clear conflict of interest, a Council must not be able to be both applicant and decision-maker in relation to grants.</li> <li>• The proposed Committee membership and voting processes sets up a potential conflict between the two host Council members if each decide to act in self-interest.</li> <li>• The merits of independent observers and independent Chairs should also be considered very carefully.</li> <li>• Do Host Councils need the final say on every grant application? Thresholds for some smaller grants should be created.</li> <li>• Provision should be made for local capacity building.</li> <li>• There are no mechanisms in the draft VPA for resolution of disputes between the Host Councils or the Host Councils and the S355 Committee.</li> </ul>	<p>Committee decision making power in relation to the CEF. Under this change, the Committee, rather than the Councils, will be determining all grant applications.</p> <ul style="list-style-type: none"> <li>• As above.</li> <li>• Schedule 2 currently provides for 8 voting members with the chair (with a casting vote) to be a Councillor of one of the host councils.</li> <li>• Noted. Meetings will be open to the public for transparency.</li> <li>• As noted above, changes to Schedule 2 are recommended to give the Committee decision making power in relation to the CEF. Under this change, the Committee, rather than the Councils, will be determining all grant applications.</li> <li>• If the Section 355 Committee identifies the need for capacity building projects then these could be considered for funding.</li> <li>• Clause 11 of the VPA contains provisions relating to dispute resolution. Amending Schedule 2 of the VPA to give the Committee decision making power in relation to the CEF would assist in avoiding disputes between the Host Councils. Furthermore, it is recommended that the Operating Principles in Schedule 2 be updated to a Committee Constitution and Instrument of Delegation to tighten up the roles and responsibilities of the Committee and further minimise the potential for disputes between relevant parties.</li> </ul>
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	<ul style="list-style-type: none"> <li>Consideration should be given to splitting the Community Enhancement Fund into two discrete pools, one for the Coolah area and one for the Cassilis area, though with capacity for cross-subsidy in appropriate circumstance.</li> </ul>	<ul style="list-style-type: none"> <li>Splitting the Community Enhancement Fund is not supported as it is likely to result in inequity and greater potential for disputes.</li> </ul>
Allocation of Development Contributions	<ul style="list-style-type: none"> <li>Concern with ability to change 70/30 (CEF/road maintenance fund) ratio in VPA. A change could be made with no community consultation and insufficient transparency.</li> <li>Recommendation: The 70/30 ratio be locked or the CEF portion can only increase.</li> </ul>	<ul style="list-style-type: none"> <li>To address this issue, it is recommended that Clause 5.4(b) of the VPA be amended by deleting the words 'or as otherwise agreed in writing between the Company and the Host Councils'. Furthermore, it is recommended that a provision be included in the VPA allowing the ratio to be reviewed every three (3) years with consideration given to the Council's operational plans. At the end of each three (3) year period, unspent funds shall be returned to the community enhancement fund. Any change to the ratio shall be subject to the amended provisions of Clause 10(b).</li> <li>As above.</li> </ul>
	<ul style="list-style-type: none"> <li>Clause 5.4(b) allows Council and the developer to alter the funding ratio of 30/70 (road maintenance fund/CEF) without any community consultation.</li> </ul>	<ul style="list-style-type: none"> <li>As above.</li> </ul>
	<ul style="list-style-type: none"> <li>The lack of governance by the community to manage the funding ratio is a clear conflict of interest. In this regard, Clause 5.4(b) allows Council and the developer to alter the funding ratio of 30/70 (road maintenance fund/CEF) without any community consultation.</li> </ul>	<ul style="list-style-type: none"> <li>As above.</li> </ul>
	<ul style="list-style-type: none"> <li>Any future change to the proportion of funds to</li> </ul>	<ul style="list-style-type: none"> <li>As above.</li> </ul>

	be allocated between road maintenance and community enhancement must go through the community consultation process.	
Review or Modification of VPA	<ul style="list-style-type: none"> <li>Concern that the VPA does not allow for any expansion of the wind farm or changes to the operation such as battery storage to respond to energy market demand spikes.</li> </ul>	<ul style="list-style-type: none"> <li>Clause 10 of the VPA allows the agreement to be reviewed or modified in response to changes to the wind farm operation.</li> </ul>
Community consultation/ transparency, equity & fairness	<ul style="list-style-type: none"> <li>Councils have undermined the CCC deliberations and presented the CCC with this VPA with no consultation or regard for the wishes of the CCC.</li> <li>Does Council have such a poor view of its community citizens that it treats them with such contempt.</li> <li>Concern with lack of community consultation by Council in the formulation of the VPA. Council actively undermined work of the Liverpool Range Wind Farm CCC.</li> </ul>	<ul style="list-style-type: none"> <li>The Host Councils have not undermined the CCC in any way. Pursuant to Section 7.4 of the Environmental Planning and Assessment Act 1979, a planning agreement is a voluntary agreement or other arrangement between a planning authority (or 2 or more planning authorities) and a person (the <b>developer</b>). The legislation does not allow for other community groups to be a party to the agreement. The draft VPA was presented to a CCC meeting and has been placed on public exhibition in accordance with legislative requirements. It is considered that adequate consultation has been undertaken.</li> <li>It is unclear what the point of this statement is. Councils represent the communities they serve and are administered by Councillors who are elected by the community. The VPA is intended to maximise benefits for the community whilst ensuring that the CEF is administered in an open, transparent and equitable manner.</li> <li>The draft VPA was presented to a CCC meeting and has been placed on public exhibition in accordance with legislative requirements. It is considered that adequate consultation has been undertaken. The legislation does not permit a CCC to enter into a VPA with a proponent. Numerous amendments have been made to the</li> </ul>

		draft VPA to address various community concerns raised during the consultation process.
	<ul style="list-style-type: none"> <li>• Inequity is evident as Councils can both apply for funding and have the final say about who gets the funds.</li> <li>• Disappointed by the lack of community consultation by Council in the formulation of the VPA. Council had the opportunity to do this through the CCC. This suggests a lack of transparency.</li> </ul>	<ul style="list-style-type: none"> <li>• Amending Schedule 2 of the VPA to give the Committee decision making power in relation to the CEF will address any potential conflicts of interest that may arise where Council is a grant applicant.</li> <li>• The draft VPA was presented to a CCC meeting and has been placed on public exhibition in accordance with legislative requirements. It is considered that adequate consultation has been undertaken.</li> </ul>
	<ul style="list-style-type: none"> <li>• Disappointed that Council made no real attempt to engage the Cassilis community in the consultation process.</li> </ul>	<ul style="list-style-type: none"> <li>• As above.</li> </ul>
	<ul style="list-style-type: none"> <li>• The VPA should be amended to expressly require the parties to act in the interests and for</li> </ul>	<ul style="list-style-type: none"> <li>• The local councils are parties to the agreement <u>on behalf of</u> the community. The interests of the</li> </ul>



	<p>the benefit of the communities impacted by the wind farm.</p> <ul style="list-style-type: none"> <li>Recommend that the following wording be included in the 'BACKGROUND' to the VPA:  <i>"The parties undertake in all their negotiations and subsequent actions to act in good faith in the interests and for the benefit of the communities in the area surrounding the project site. The parties acknowledge that, in so acting in good faith and in the public interest, the interests of those communities take priority over the interests of the parties."</i></li> <li>Any future change to the VPA, should go through a community consultation process similar or superior to the process required for the original drafting of the VPA.</li> </ul>	<p>councils are the same as (and therefore cannot "take priority over") the interests of the communities. The Councils are required to act in accordance with the agreement, and are also bound by the "principles for local government" in the LG Act.</p> <ul style="list-style-type: none"> <li>The "background" part of the VPA is a "recital", which is preliminary or providing an explanation, rather than being enforceable provisions. Given the nature of the background provisions, it is not appropriate to include an "undertaking" and "acknowledgment" such as proposed. The recital B already refers to the agreement being "for the benefit of the local communities impacted..."  There are implied terms in common law contract law for the parties to a contract to cooperate, to act reasonably and for a proper purpose and to consider the interests of the other party. The terms "good faith" and "public interest" are not defined in the Agreement or in legislation and though there is substantial case law about what they mean in different contexts, both are still ambiguous so it is not clear how the proposed wording would apply in practice.</li> <li>It is recommended that Clause 10(b) be amended as follows: <i>"No modification or review of this agreement will be of any force or effect unless it is in writing and signed by all the Parties to this Agreement <u>and publicly notified in accordance with the Act and Regulation.</u>"</i>  The Regulation provides that any amendment of a planning agreement has to be publicly notified so while it is not necessary for the VPA to require this, it could be included. Rather than specify the details of what the notice is to be, this drafting</li> </ul>
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	<ul style="list-style-type: none"> <li>• Clauses 5.4(b) and 10 should be reviewed to ensure that they are consistent with the principle that the interests of third parties need to be protected.</li> <li>• The community was not given the opportunity to be involved in the drafting process of the draft VPA.</li> </ul>	<p>would avoid any potential inconsistency with the legislation.</p> <ul style="list-style-type: none"> <li>• As above.</li> <li>• The draft VPA was presented to a CCC meeting and has been placed on public exhibition in accordance with legislative requirements. It is considered that adequate consultation has been undertaken.</li> </ul>
Calculation of Development Contributions	<ul style="list-style-type: none"> <li>• Clause 5.2 Calculation of the Development Contributions should be based on the size of the turbines installed rather than the number of turbines as the generating capacity of the turbines is likely to increase with improved technologies, resulting in the need for less turbines and hence reduced contributions.</li> </ul>	<ul style="list-style-type: none"> <li>• The calculation of the development contributions has been predetermined by Condition No. 17 of the development consent for the Liverpool Range Wind Farm. The Host Councils did attempt to negotiate a contribution based on turbine capacity, however this method was not accepted by the proponent or the Department of Planning and Environment.</li> </ul>
	<ul style="list-style-type: none"> <li>• Clause 5.2 (a) - calculation of the Developer Contributions – The developer contribution should be based on megawatts generated rather than per turbine to reflect a more equitable means to ensure a greater return for the community.</li> </ul>	<ul style="list-style-type: none"> <li>• As above.</li> </ul>
Council use of funds	<ul style="list-style-type: none"> <li>• Council should not tax community funds to do Council business.</li> </ul>	<ul style="list-style-type: none"> <li>• It is clear from the VPA that the contributions collected will be used to fund projects and road maintenance works that directly benefit the local community impacted by the wind farm. Councils will not be spending the funds on other areas or reducing existing levels of expenditure on the</li> </ul>

	<ul style="list-style-type: none"> <li>Concern that Council will use the funding opportunities provided by the CEF to reduce its budget expenditure in the Coolah area.</li> </ul>	<p>local area.</p> <ul style="list-style-type: none"> <li>As noted above, Councils will not be spending funds collected through contributions on other areas or reducing existing levels of expenditure on the local area.</li> </ul>
Establishment of future fund by S355 Committee	<ul style="list-style-type: none"> <li>The Committee should consider placing a portion of the funds into a future fund.</li> </ul>	<ul style="list-style-type: none"> <li>Schedule 2 of the VPA includes a provision for the Committee to recommend that part of the CEF be held and dedicated to a future, large or multi-year funding commitment 'the Strategic Reserve'.</li> </ul>
	<ul style="list-style-type: none"> <li>Schedule 2 (b) (iv) - the Committee must set up a strategic reserve for the CEF.</li> </ul>	<ul style="list-style-type: none"> <li>As above.</li> </ul>
VPA formatting/content	<ul style="list-style-type: none"> <li>All draft documents should have a reference number and date.</li> </ul>	<ul style="list-style-type: none"> <li>Noted. Draft documents will be dated and given a revision number.</li> </ul>
	<ul style="list-style-type: none"> <li>Should the timetable of major project milestone dates released by Epuron be included in the VPA?</li> </ul>	<ul style="list-style-type: none"> <li>It is considered that the inclusion of major project milestone dates would not add any significant value to the VPA and could result in administrative issues with the VPA if dates change.</li> </ul>
	<ul style="list-style-type: none"> <li>Schedule 1 on Page 16 – Turbine numbers stated as 287 whereas development consent states 267.</li> </ul>	<ul style="list-style-type: none"> <li>Noted. It is recommended that the VPA be amended to reflect the correct number of turbines.</li> </ul>
Payment of Councils costs	<ul style="list-style-type: none"> <li>Clause 16 Costs - the \$50,000 payment by the proponent to the Host Council's towards the costs of preparing, negotiating and executing the VPA should be assigned to the CEF.</li> </ul>	<ul style="list-style-type: none"> <li>The Host Councils have spent a considerable amount of time and money negotiating and preparing the VPA. It is reasonable and common practice for proponents to reimburse Councils for the costs they incur in dealing with these matters.</li> </ul>
	<ul style="list-style-type: none"> <li>Costs on Page 13 – Depending on the</li> </ul>	<ul style="list-style-type: none"> <li>The VPA requires the proponent to pay the Host</li> </ul>

	<p>interpretation of Clause 16, there may be up to \$100,000 involved in legal fees. This is excessive.</p>	<p>Councils a total of \$50,000 to cover the Councils' costs of preparing, negotiating and executing the VPA. The Host Councils have spent a considerable amount of time and money negotiating and preparing the VPA. It is reasonable and common practice for proponents to reimburse Councils for the costs they incur in dealing with these matters.</p>
Consideration of Hardship	<ul style="list-style-type: none"> <li>Farming and rural families who are impacted should be given extra leniency when considering their responses to the VPA in light of the current drought conditions.</li> </ul>	<ul style="list-style-type: none"> <li>Noted. This will be taken into consideration.</li> </ul>
Windfarm Planning and Policy	<ul style="list-style-type: none"> <li>Council should delay execution of the planning agreement until there is a thorough investigation into the implications of 'Priority Energy Zone' proposed in Transgrid's NSW Transmission Annual Planning Report.</li> <li>Consideration should be given to establishing a community owned windfarm with local shareholders in a corporation.</li> <li>Changes to government policy and national energy guarantee requirements such as reliability of supply. Power generated by the windfarm should be supplemented by a gas peaking plant or other sources of power.</li> <li>Connection of windfarm to the grid will require switching stations and transformers.</li> </ul>	<ul style="list-style-type: none"> <li>Development consent for the Liverpool Range Wind Farm has been granted by the NSW Department of Planning and Environment. The implications of the Priority Energy Zone proposed in Transgrid's NSW Transmission Annual Planning Report is not a relevant consideration under the VPA.</li> <li>The establishment of a community owned windfarm is not a relevant consideration under the VPA. Notwithstanding, it is noted that under Schedule 2 of the VPA, a community initiated renewable energy project such as a community owned windfarm could be eligible for funding under the Community Enhancement Fund.</li> <li>Changes to government policy and national energy guarantee requirements such as reliability of supply are not relevant considerations under the VPA.</li> <li>Not relevant considerations under the VPA.</li> </ul>

Assignment or Transfer of VPA	<ul style="list-style-type: none"> <li>• The agreement imposes restrictions on Epuron selling, assigning, transferring or similarly dealing with its interest in the development and its rights and obligations under the agreement.</li> <li>• Assignment – Concern that Clause 14 will cause legal delays, restrict progression of corporate arrangements for the development while Clause 18b gives rise to further concern as parties are not obliged to give reasons for withholding consent.</li> </ul>	<ul style="list-style-type: none"> <li>• These provisions are intended to ensure that the proponent’s rights and obligations under the VPA are transferred to any future owner of the development, thereby protecting the interests of the Host Councils.</li> <li>• As above.</li> </ul>
Parties to VPA	<ul style="list-style-type: none"> <li>• Mid-Western Council and Liverpool Plains Council should be parties to the VPA given that the major issues above will relate to other Council areas.</li> </ul>	<ul style="list-style-type: none"> <li>• It is understood that Mid-Western Council and Liverpool Plains Council have not expressed any interest in entering into a VPA with the proponent.</li> </ul>
	<ul style="list-style-type: none"> <li>• The VPA should identify Epuron as the company or the company that purchases the project.</li> </ul>	<ul style="list-style-type: none"> <li>• The VPA identifies Epuron Pty Ltd as the ‘Company’ under the heading ‘Parties’ on page 2.</li> </ul>
	<ul style="list-style-type: none"> <li>• Schedule 2 on Page 23 – It is not stated which or how the four community representatives are appointed.</li> <li>• Schedule 2 on Page 23 – Host Councils may need to be added due to the widespread effective definition of a wind farm hence the radius area may need to be enlarged.</li> </ul>	<ul style="list-style-type: none"> <li>• The appointment of community representatives to the Committee is detailed in Schedule 2.</li> <li>• No other Councils are a party to the agreement. In any case, the impact of the wind farm will be greatest within a 20km radius of a turbine and therefore the proposed grant eligibility criteria for community projects is considered to be appropriate.</li> </ul>
Explanatory Note	<ul style="list-style-type: none"> <li>• The Explanatory Note is misleading in relation to who can apply for grants.</li> <li>• The Explanatory Note adds to the confusion</li> </ul>	<ul style="list-style-type: none"> <li>• The Explanatory note includes a dot point that “incorporated associations may apply for grants”. This is considered to be inclusive rather than exclusive, ie that incorporated associations are eligible to apply but not that this is the only kind of applicant.</li> <li>• The explanatory note says very little in relation</li> </ul>

	about meaning of road maintenance.	to road maintenance in that it refers to “road maintenance projects in the area surrounding the project site”. Including the definition of road maintenance in the agreement will be an improvement because it would make a clear distinction between the works and the lengths of roads where such works can be carried out.
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