

Item ** Liverpool Range Wind Farm – Voluntary Planning Agreement

Division:	Development Services
Management Area:	Property and Risk
Author:	Director Environment and Development Services – Leeanne Ryan
CSP Key Focus Area:	Local Economy
Priority:	LE5.1 Identify and develop opportunities to realise the shire's potential as a location for the production of renewable energies.

Reason for Report

To consider the outcome of public consultation undertaken in respect of the draft Voluntary Planning Agreement for the Liverpool Range Wind Farm and to seek Council's approval to enter into the agreement with Upper Hunter Shire Council and Epuron Pty Ltd.

Background

On 27 March 2018, the Department of Planning and Environment under the delegation of the Minister for Planning, approved Development Application No. SSD 6696 for the Liverpool Range Wind Farm.

The approved development involves the installation, operation, maintenance and decommissioning of a wind farm comprising up to 267 turbines, with a maximum tip height of 165 metres (m) and hub height of 100 m.

Should all 267 proposed turbines be built, the project would have a generating capacity of approximately 960 megawatts (MW) depending on the turbine models chosen. The wind farm would be the largest wind farm in NSW, generating up to 2,760,000 megawatt hours (MWh) of electricity annually, which is equivalent to the energy consumption of about 460,000 homes.

Two hundred and eighteen (218) of the 267 turbines will be located within the Warrumbungle Local Government Area.

Condition No. 17 of the development consent requires the Applicant (Epuron Pty Ltd) to enter into a Voluntary Planning Agreement (VPA) with Warrumbungle Shire Council and Upper Hunter Shire Council.

Council, at its meeting held on 25 June 2018, resolved the following:

461/1718 RESOLVED

1. That:

- i. Council endorse the draft Voluntary Planning Agreement (VPA) between Epuron Pty Ltd, Upper Hunter Shire Council and Warrumbungle Shire Council for the recently approved Liverpool Range Wind Farm.*
- ii. Once endorsed by each Council listed above, public notice of the proposed VPA shall be given with a copy of the document made available*

for inspection by the public for a period of not less than 28 days to allow for feedback.

- iii. After the completion of the public notice period, if there are no substantive matters raised, the proposed VPA shall be put to a meeting of each Council and after resolutions are made the agreement shall be executed by all the parties.*
 - iv. Warrumbungle Shire Council delegates authority to the General Manager to sign and execute the VPA.*
 - v. Upon all parties executing the VPA, a copy of the agreement shall be provided to the Minister, via the Department of Planning & Environment, within 14 days after the agreement has been entered into.*
 - vi. Council, having entered into the VPA, shall, for the duration of the agreement place the VPA on a planning agreement register and record in the register a short description of the agreement (including any amendment) that applies to the area of Council, including the date the agreement was entered into, the names of the parties and the land to which it applies.*
- 2. That Council, having entered into the VPA shall, for the duration of the agreement include in its annual report particulars of compliance with and the effect of the planning agreement during the year to which the report relates.*

Issues

A total of eight (8) submissions have been received by Warrumbungle and Upper Hunter Shire Councils in response to the public exhibition of the draft VPA.

The submissions have raised various issues with the draft agreement which are summarised in a response to submissions table in Attachment 1 to this report.

After considering the issues raised in the submissions, numerous amendments have been made to the draft VPA and the Section 355 Committee Operating Principles (Schedule 2). The key amendments are summarised as follows:

1. Include a definition of “road maintenance” and make consequential amendments to the definition of “road maintenance fund”.
2. Amend clause 5.4(b) to change the ratio between the Community Enhancement Fund (CEF) and Road Maintenance Fund to reflect further costings carried out by Councils. In this regard, 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.
3. Add clauses 5.4(d) and (e) to provide for the ratio between the two funds 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).

4. Amend clause 10(b) to make it clear that an amendment of the Agreement must be publicly notified as required by the *Environmental Planning and Assessment Act 1979* and Regulation.
5. Consequential amendments to clause 5.4(c), the definitions of “Managing Council” and “Strategic Reserve” and clause 18(b) as a result of amendments to Schedule 2 (see below).

Schedule 2 Community Enhancement Fund

A large portion of the submissions received raised concerns in relation to the operation of the CEF Committee. As a result, Schedule 2 has been amended as summarised below.

1. Change the name from “operating principles” to “Constitution” and include a template “Instrument of Delegation”.
2. Include headings and new formatting and re-order the content.
3. Use defined terms consistently throughout.
4. Add a ‘recitals’ and ‘purpose’ sections.
5. The role of the CEF Committee now includes the power to determine applications for grant funding from the CEF. Previously, the Committee was to make a recommendation and the decision was made by resolution of both councils. It is considered that this change will assist in avoiding disputes between the Host Councils; will make the Committee more efficient; place less administrative burden on the Councils; and make grant allocations more transparent. Further, this change will provide a degree of separation and impartiality, particularly in relation to the determination of grant applications made by the Councils.
6. Remove the role of the CEF previously at clause (d)(i) in relation to annual review of the draft operational plans. There were several problems with this clause in that a council’s operational plan does not include “land use planning standards”, the committee does not have the power to amend the operational plan and it is questionable whether the committee would be qualified to carry out this kind of exercise. As noted above, Clause 5.4(d) has been inserted into the VPA to provide for the ratio between the CEF and road maintenance fund 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.
7. Amendments and additions have been made to the eligibility criteria.
8. More detail is provided in relation to the operation of the committee, including the establishment of the inaugural committee, who is the chair of the committee and providing for application of a Code of Meeting Practice and Code of Conduct.

The above amendments have been accepted by Epuron.

As all of the proposed amendments are intended to address the community concerns raised, it is not necessary to re-exhibit the draft agreement.

A copy of the amended VPA is provided in Attachment 2.

A copy of the submissions received will be provided to Councillors under separate cover.

Options

1. a) pursuant to Section 7.4 of the *Environmental Planning and Assessment Act 1979*, enter into a Voluntary Planning Agreement with Warrumbungle Shire Council and Epuron Pty Ltd in respect of the Liverpool Range Wind Farm;

b) delegate authority to the General Manager to execute the Voluntary Planning Agreement.
2. Not enter into a Voluntary Planning Agreement with Warrumbungle Shire Council and Epuron Pty Ltd in respect of the Liverpool Range Wind Farm.

Financial Considerations

On the basis that all 267 turbines are constructed, the total annual contributions payable by the wind farm owner under the VPA would equate to approximately \$801,000 (in today's dollars). Of this, \$654,000 per annum would be attributable to the 218 turbines located within the Warrumbungle LGA.

Taking into account the administration allowance of \$20,000 per annum and an allocation of 23% of the net balance to the Road Maintenance Fund, approximately \$179,630 per annum would be available for road maintenance across both LGA's. Of this, it is estimated that approximately \$137,417 (76.5%) would be available each year for the maintenance of roads impacted by the wind farm within the Warrumbungle LGA.

Attachments

1. Summary of submissions received.
2. Final draft Liverpool Plains Wind Farm Voluntary Planning Agreement.

RECOMMENDATION

That Council:

1. Pursuant to section 7.4 of the *Environmental Planning and Assessment Act 1979*, enter into a Voluntary Planning Agreement with Upper Hunter Shire Council and Epuron Pty Ltd in respect of the Liverpool Range Wind Farm.
2. Delegate authority to the General Manager to execute the Voluntary Planning Agreement.