

Liverpool Range Wind Farm Voluntary Planning Agreement

between

EPURON

Epuron Pty Ltd

jointly with



Warrumbungle Shire Council

and



Upper Hunter Shire Council

Date:

PARTIES

1. Warrumbungle Shire Council ABN 63 348 671 239 of 20-22 John Street, Coonabarabran NSW 2357 (**‘Warrumbungle Shire Council’**);

and

2. Upper Hunter Shire Council ABN 17 261 839 740 of 135 Liverpool Street, Scone NSW 2337 (**‘Upper Hunter Shire Council’**); (together referred to as the **“Host Councils”**)

and

3. Epuron Pty Ltd (ACN 104 503 380) of 75 Miller Street North Sydney, NSW 2060 (**‘Company’**).

BACKGROUND

- A. The Land is primarily situated in the Local Government Areas of the Host Councils, in central NSW located between the townships of Coolah to the northwest and Cassilis to the southeast.
- B. As contemplated by section 7.4 of the Act (‘planning agreements’), the Company wishes to make, and the Host Councils wish to receive, Development Contributions for the benefit of the local communities impacted by Liverpool Range Wind Farm, and to do so efficiently and equitably through the management services provided by one of the Host Councils, and in accordance with the recommendations made by the Committee in accordance with this Agreement.

OPERATIVE PROVISIONS OF THIS AGREEMENT

1. Planning Agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

2. Application of this Agreement

This Agreement applies to the Development Consent.

3. Operation of this Agreement

3.1 Commencement

This Agreement commences on the date of its execution by all the parties, provided that such date occurs after compliance with the public notice obligations in section 7.5 of the Act.

3.2 Termination

This Agreement remains in force until:

- (a) terminated by operation of Law,
- (b) the Parties agree in writing to terminate this Agreement, or
- (c) all the Company’s obligations under this Agreement have been performed to the written satisfaction of the Host Councils.

4. Definitions and Interpretation

4.1 Definitions

In this Agreement, the following definitions apply:

Act means the *Environmental Planning and Assessment Act, 1979*.

Administration Allowance means the annual monetary contribution of \$20,000 (increased by CPI) being part of the Development Contributions payable by the Company to the Host Councils in accordance with clause 5 to cover all administrative costs incurred by the Host Councils associated with administering this Agreement, including the establishment and operation of the Committee, the allocation of the Development Contributions and auditing the disbursement of the Development Contributions.

Agreement means this Voluntary Planning Agreement including any schedules and annexures.

Bank Guarantee means an irrevocable and unconditional guarantee that is not limited in time and does not expire, provided by a major Australian trading bank, containing terms and conditions reasonably acceptable to the Host Councils, to pay an amount or amounts of money to the Host Councils on demand in accordance with clause 13.3 of this Agreement.

BBSW means the Bank Bill Swap rate as administered by ASX Limited, or any other short-term rate used in the financial markets as a lending reference rate as the Parties may agree.

Business Day means a day on which banks are open for general business in Sydney excluding Saturdays, Sundays and public holidays in Sydney.

Committee means a committee established by resolution of the Host Councils pursuant to section 355 of the *Local Government Act 1993* in accordance with clause 6(a) of this Agreement.

Community Enhancement Fund means the portion of the Development Contributions stated in clause 5.4(b) to be used for the Public Purpose in accordance with the provisions in Schedule 2.

Commencement of construction means the date notified to the Council under clause 5.1(a) of this Agreement.

CPI means the Consumer Price Index (All Groups, Sydney) published by the Australian Bureau of Statistics from time to time or if that index ceases to be published, such other index as the Host Councils and the Company may agree.

Decommission means for the purposes of clause 5.1(e) of this Agreement, the permanent removal of wind turbines and any associated above ground infrastructure however does not include decommissioning for refurbishment and Decommissioned and Decommissioning are to be interpreted accordingly.

Development means the 'Liverpool Range Wind Farm' as described in the Development Consent.

Development Consent means the consent to the Development granted under the Act by the delegate of the Minister for Planning with respect to development application SSD 6696 on 27 March 2018.

Development Contributions means the monetary development contributions for the Public Purpose payable by the Company to the Host Councils in accordance with clause 5.

Dispute is defined in clause 11.

Explanatory Note means the note exhibited with a copy of this Agreement, when this Agreement is made available for inspection by the public in accordance with the Act, as contemplated by clause 25E of the Regulation.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Host Council(s) mean Warrumbungle Shire Council and Upper Hunter Shire Council, either individually or jointly.

Installed Turbine means a wind turbine installed on the Land in accordance with the Development Consent which is capable of producing electricity.

Interest Rate means the BBSW rate plus a margin of 2% per annum.

Land means the land the subject of the Development Consent, including (but not limited to) the land approved for wind turbines as indicated in Schedule 1 in this Agreement (subject to clause 4.2(n) (Development Consent prevails in the event of conflict).

Local Government Area means "area" as defined in the *Local Government Act 1993*.

Managing Council has the meaning given in clause (c)(ii) of Schedule 2.

Public Purpose has the meaning given section 7.4(2) of the Act.

Note: Section 7.4(2) of the Environmental Planning and Assessment Act 1979 states:

'A public purpose includes (without limitation) any of the following:

- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services,
- (b) the provision of (or the recoupment of the cost of providing) affordable housing,
- (c) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,
- (d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,
- (e) the monitoring of the planning impacts of development,
- (f) the conservation or enhancement of the natural environment.'

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Road Maintenance Fund means the portion of the Development Contributions stated in clause 5.4(b) to be used for, or applied towards the maintenance of roads in the Local Government Areas of the Host Councils, with preference given to the roads in the vicinity of the Development. For the avoidance of doubt, the Road Maintenance Fund is not to be used for the road upgrades and road maintenance referred to in clauses 28 and 29 of Schedule 3 of the Development Consent.

Strategic Reserve means any part of the Community Enhancement Fund created pursuant to Schedule 2 (b)(iv).

4.2 Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) If the day in which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day.
- (c) A reference in this Agreement to 'dollars' or '\$' means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (e) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (f) A reference to a clause, part or schedule is a reference to a clause, a part or a schedule of this Agreement.
- (g) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (h) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (i) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (j) References to the word 'include' or 'including' are to be construed without limitation.
- (k) A reference to this Agreement includes the agreement recorded in this Agreement.
- (l) A reference to a party to this Agreement includes a reference to the servants, agents, and contractors of the party, and the party's successors and assigns.
- (m) Any schedules or tables form part of this Agreement.
- (n) Development Consent prevails in the event of conflict. In the event of any conflict between this Agreement and the Development Consent (for example, in the compilation of Schedule 1 (Land) to this Agreement from various parts of the Development Consent), the Development Consent prevails.

5. Development Contributions to be made under this Agreement

5.1 Provision of Development Contributions

- (a) The Company must notify Host Councils of the commencement of construction in accordance with clause 11 of Schedule 2 of the Development Consent.

Note: Clause 11 (notification) of the Development Consent provides:

Prior to the commencement of the construction, operation and/or decommissioning of the development or the cessation of operations, the Applicant must notify both the Department and the Councils in writing of the date of commencement or cessation.

If the construction, operation and/or decommissioning of the development is to be staged, then the Applicant must: (a) notify both the Department and the Councils in writing prior to the commencement of the relevant stage, and clearly identify the development that would be carried out during the relevant stage; and (b) inform the local community and the Community Consultative Committee about the proposed staging plans.

Note: the Development Consent defines '**construction**' as follows:

'All physical works to enable the operation, including but not limited to the construction of wind turbines, ancillary infrastructure and road upgrades carried out before the commencement of operation, excluding pre-construction minor works.'

Note: the Development Consent defines '**pre-construction minor works**' as follows:

'Includes the following activities:

- building/road dilapidation surveys;
- investigative drilling, excavation or salvage;
- minor clearing or translocation of native vegetation;
- establishing temporary site office (in locations meeting the criteria identified in the conditions of this approval)
- installation of environmental impact mitigation measures, fencing, enabling works; and
- minor access roads and minor adjustments to services/utilities, etc.'

Note: the Development Consent defines '**decommissioning**' as follows:

The deconstruction and removal of wind turbines and above ground ancillary infrastructure.

- (b) Subject to clause 14 ('Assignment'), from the date of commencement of construction notified to the Council under clause 5.1(a) of this Agreement, the Company must pay the Development Contributions, calculated in accordance with clause 5.2 to the Host Councils in arrears on 1 July each year.
- (c) The Development Contributions calculated for the portion of the year between commencement of construction and 1 July will be calculated pro-rata.
- (d) The Company must notify the Host Councils of the commencement of decommissioning in accordance with clause 11 of the Development Consent.

Note: the notes to clause 5.1(a) (above) reproduce the relevant parts of clause 11 of the Development Consent.

- (e) The Company's liability for the Development Contributions ceases upon completion of Decommissioning as defined in this Agreement.
- (f) The Development Contributions are paid for the purposes of this Agreement when cleared funds are deposited by means of electronic funds transfer by the Company into a bank account nominated by the Managing Council.

5.2 Calculation of the Development Contributions

The annual Development Contributions payable by the Company to the Host Councils is the greater of:

- (a) \$3,000 (increased by CPI) x the number of Installed Turbines on the Land as at the due date for payment; or
- (b) \$100,000 (increased by CPI).

5.3 Reporting on Installed Turbines

The Company must provide to the Host Councils on or before the due date for payment of the Development Contributions under clause 5.1(b):

- (a) Written certification by a registered professional engineer reporting on the total number of Installed Turbines on the Land as at each due date for payment; and
- (b) The calculation (showing workings) of the Development Contributions payable.

5.4 Allocation of the Development Contributions

The Managing Council shall allocate Development Contributions as follows:

- (a) It shall first allocate the Administration Allowance;
- (b) After subtracting the Administration Allowance from the relevant Development Contribution, it shall allocate 70% of the net balance to the Community Enhancement Fund and 30% to the Road Maintenance Fund or as otherwise agreed in writing between the Company and the Host Councils.
- (c) The Managing Council will disburse funds from the Community Enhancement Fund promptly, in accordance with Schedule 2, and only upon both the recommendation of the Committee and the resolutions of both Councils.

5.5 Allocation of the Development Contributions between the Host Councils

The Host Councils agree to allocate:

- (a) the Road Maintenance Fund for the purpose stated in the definition of Road Maintenance Fund, as agreed by the Host Councils; and
- (b) the Administration Allowance between the two Host Councils as agreed by the Host Councils.

5.6 Indexation of monetary Development Contributions

Where this Agreement provides that an amount is to be increased by CPI, then the amount will be increased in accordance the following formula:

$$A = B \times C/D$$

Where:

- A = the indexed amount at the time the payment is to be made.
- B = the contribution amount or rate stated in clause 5.2 of this Agreement.
- C = the CPI most recently published before the date of payment.
- D = the CPI most recently published before 28 March 2020 (being the day two years after the date upon which the Development Consent was granted).

For the avoidance of doubt, if C is less than D (that is, if there has been deflation over the relevant period), then A will not change.

6. **The Host Councils**

- (a) The Host Councils agree to establish a committee under section 355 of the *Local Government Act 1993* to assist with the administration of the Community Enhancement Fund in accordance with Schedule 2.
- (b) The Host Councils agree for Warrumbungle Shire Council to:
 - i. Collect the Development Contributions on behalf of the Host Councils;
 - ii. Hold the portion of the Development Contributions allocated for expenditure within the Upper Hunter Shire Council Local Government Area on trust for the Upper Hunter Shire Council or as otherwise agreed between the Host Councils; and
 - iii. Upon request, transfer the portion of the Development Contributions held for the Upper Hunter Shire Council to a bank account nominated by the Upper Hunter Shire Council.
- (c) The Host Councils agree that any decision or action by the Host Councils in relation to their joint relations under this Agreement can only be made or taken with the prior written agreement between the Host Councils.

7. **Auditing**

- (a) Each year in which Development Contributions are made the Managing Council must appoint an appropriately qualified auditor to reconcile the calculation, payment and allocation of the Development Contributions in accordance with clause 5 (including any allocations to or payments from any Strategic Reserve) and to identify any corrective payments required.
- (b) The Company and the Host Councils must:
 - (i) provide access to documents and information reasonably requested by the auditor;
 - (ii) make corrective payments as recommended by the auditor.
- (c) The costs of the auditor will be paid out of the Administration Allowance.
- (d) The Councils will make each auditor's report publicly available.

8. **Application of the Development Contributions**

The Development Contributions are to be applied by the Host Councils for the Public Purpose in accordance with this Agreement and consistent with the Host Councils' Integrated Planning and Reporting Framework under the *Local Government Act 1993*.

9. **Application of sections 7.11, 7.12 and 7.23 of the Act to the Development**

This Agreement does not exclude sections 7.11, 7.12 and 7.23 of the Act to the Development.

Benefits under this Agreement are to be taken into consideration in determining a development contribution under section 7.11.

10. Review of this Agreement

- (a) The Parties agree that this Agreement may be reviewed or modified and that any review or modification will be conducted in the circumstances and in the manner determined by the Parties.
- (b) 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.

11. Dispute Resolution

In the event a dispute between the Parties arises in relation to any activity, payment or item as covered in this Agreement (a '**Dispute**'), a Party must not commence any court proceedings relating to a Dispute unless it complies with this clause.

The Dispute is to be resolved through the following process (as required):

- (a) A Party claiming that a Dispute has arisen must give written notice to the other Parties specifying the nature of the Dispute;
- (b) Within ten (10) Business Days of receipt of notice of a claim of a Dispute, the affected Parties must endeavour, in good faith, to resolve the Dispute expeditiously using informal dispute resolution methods such as discussion, mediation or expert evaluation as agreed by the affected Parties;
- (c) If the affected Parties fail to resolve the Dispute within 21 Business Days of receipt of notice (or any further period agreed in writing by them) as to:
 - (i) the dispute resolution method and procedures to be adopted;
 - (ii) the timetable for all steps in those procedures; or
 - (iii) if applicable, the selection and compensation of the independent person required for any agreed expert evaluation,the affected Parties must mediate the Dispute in accordance with the Alternative Dispute Resolution process of the Law Society of NSW. The affected Parties must request the President of the Law Society of NSW or the President's nominee to select the mediator and determine the mediator's remuneration;
- (d) The costs associated with the mediation must be shared equally between the affected Parties, unless the mediator determines otherwise; and
- (e) If the Dispute is not resolved within 60 Business Days after the initial notice of the Dispute is given under clause 8 (a), then the affected Party, having exhausted efforts to resolve the Dispute in accordance with this section, may, in writing, terminate the dispute resolution process and commence court proceedings in relation to the Dispute.

12. Registration of the Agreement

Pursuant to section 7.6 of the Act, the parties agree that the existence of this Agreement will not be registered on titles to the Land.

13. Enforcement and security

13.1 Enforcement by any party

- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any court of competent jurisdiction.

- (b) Nothing in this Agreement prevents:
- i. a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
 - ii. the Host Councils from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

13.2 Interest on unpaid Contributions

The Company agrees to pay interest to the Host Councils on any amount of the Development Contributions from 28 days after it becomes due for payment, during the period that it remains unpaid, on demand, or at times determined by the Council, calculated on daily balances. The rate to be applied to each daily balance is the Interest Rate.

13.3 Bank Guarantee

- (a) Within 12 months of the commencement of construction the Company must provide to the Host Councils a Bank Guarantee in the amount of \$100,000.00.
- (b) The Company must not cancel the Bank Guarantee provided under clause 13.3(a) or do anything to cause the Bank Guarantee to be ineffective unless the Host Councils have given written notice to the Company that the Bank Guarantee can be cancelled. The Host Councils must not unreasonably withhold its consent to the cancellation of the Bank Guarantee and if it does agree it may require the Company to provide a replacement Bank Guarantee before the Bank Guarantee is cancelled.
- (c) The Council must release the Bank Guarantee or any unused part of it to the Company within 25 Business Days of the termination of this Agreement in accordance with clause 3.2.
- (d) If the Host Councils reasonably considers that the Company is in breach of its obligation to pay the Development Contributions and/or the Administration Contribution under this Agreement, it may give a written notice to the Company (a breach notice):
- i. specifying the nature and extent of the breach,
 - ii. requiring the Company to pay the outstanding monetary Development Contributions, and
 - iii. specifying the period within which the outstanding monetary Development Contributions are to be paid, being a period that is reasonable in the circumstances and not being less than 21 Business Days from the date of the written notice.
- (e) If the Company fails to fully comply with a breach notice, the Host Councils may call-up and apply the proceeds of a Bank Guarantee provided under this Agreement in satisfaction of:
- i. any obligation of the Company under this Agreement to pay the Development Contributions, and
 - ii. any associated liability, loss, cost, charge or expense directly incurred by the Host Councils because of the failure by the Company to comply with this Agreement.
- (f) Subject to this clause, the Host Councils will release the Bank Guarantee if the Company's rights and obligations under this Agreement are assigned in accordance with clause 14 and a replacement Bank Guarantee is provided to the satisfaction of the Host Councils.

- (g) If the Host Councils call on a Bank Guarantee in accordance with this Agreement, the Host Councils may, by notice in writing to the Company, require the Company to provide a further Bank Guarantee in an amount that, when added to any unused portion of the existing Bank Guarantee, does not exceed \$100,000.00.
- (h) Nothing in this clause prevents or restricts the Host Councils from taking any enforcement action in relation to:
 - i. any obligation of the Company under this Agreement; or
 - ii. any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Host Councils because of the failure by the Company to comply with this Agreement.

14. Assignment

- (a) The Company must not sell, transfer, assign or similarly deal with (“Dealing”) its interest in the Development except in accordance with the provisions of clause 14(b). Any purported Dealing in breach of this clause is of no effect.
- (b) The Company may assign its interest in the Development to another person (Assignee) if, before it assigns:
 - i. any default by the Company under any provisions of this Agreement has been remedied by the Company or waived by the Host Councils on such conditions as the Host Councils may determine, acting reasonably;
 - ii. the Company delivers to the Host Councils a deed of assignment executed by the Company and the Assignee containing provisions under which:
 - a. the Company’s rights and obligations under this Agreement are assigned to the Assignee on and from the date of the deed of assignment or any other date specified in the deed (being the ‘date of assignment’);
 - b. the Assignee undertakes to pay all obligations of the Company under this Agreement arising on and from the date of assignment; and
 - c. the Assignee undertakes to pay the Host Councils’ reasonable costs in relation to the assignment.
 - iii. the Company has paid its liability for the Development Contributions calculated pro-rata at the date of assignment (as if the date for payment under clause 5.1(b) were the date of assignment, not 1 July); and
 - iv. a replacement Bank Guarantee is provided by the Assignee in accordance with clause 13.3(f).
- (c) If the Company complies with clause 14(b), the Host Councils will be deemed to have released the Company from any further obligation under this Agreement on and from the date of assignment.
- (d) If the Company assigns in accordance with clause 14(b), the Assignee’s liability for Development Contributions for the period from the date of assignment to the next 1 July to occur thereafter is to be calculated pro-rata.

- (e) Subject to the provisions of clause 14(b) the Company must not sell, transfer, assign or similarly deal with its rights or obligations under this Agreement without the prior written consent of the Host Councils which consent may be given or withheld in absolute and unfettered discretion of the Host Councils.

15. Notices

Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) delivered or posted to that Party at its address set out below; or
(b) emailed to that Party at its email address set out below.

Warrumbungle Shire Council

Attention: The General Manager
Address: Warrumbungle Shire Council
20-22 John Street, Coonabarabran, NSW 2357
Email: info@warrumbungle.nsw.gov.au and

Upper Hunter Shire Council

Attention: The General Manager
Address: Upper Hunter Shire Council
135 Liverpool Street, Scone NSW 2337
PO Box 208, Scone NSW 2337
Email: council@upperhunter.nsw.gov.au and

EPURON Pty Ltd

Attention: The Directors
Address: 75 Miller Street North Sydney, NSW 2060
Fax Number: (02) 9922 6645
Email: info@epuron.com.au
j.kasby@epuron.com.au

15.2 If a Party gives the other Parties three Business Days' notice of a change of its address, or email address:

- (a) any notice, consent, or invoice is only given or made by that Party if it is served or posted by way of registered post to the latest address;

(b) any information, application or request is only given or made by that other Party if it is emailed to the latest email address.

15.3 Any notice, consent, information, application or request is to be treated as given, made or received at the following time:

(a) if it is delivered by process server, when it is served at the relevant address;

(b) if it is sent by registered post, two Business Days after it is posted;

or

(c) if it is sent by email, as soon as the sender receives a 'delivery receipt' from the recipient.

15.4 If any notice, consent, information, application or request is physically delivered, or an email delivery receipt in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5 pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

16. **Costs**

The Company agrees to pay the Host Councils' costs of preparing, negotiating and executing this Agreement as follows:

(a) \$25,000 (including GST) within seven days of execution of this Agreement; and

(b) A further \$25,000 (including GST) within six months of execution of this Agreement or prior to any assignment or transfer of the Company's interest in the Land or in the Development, whichever occurs first.

17. **Entire Agreement**

(a) This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed except as permitted by law.

(b) Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Agreement.

18. **Approvals and Consents**

(a) Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party.

(b) A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions. For the avoidance of doubt, this clause 18(b) does not apply to Schedule 2 clause (c)(x) (recommendations for grants or appointments).

19. **Further Acts**

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

20. **Governing Law and Jurisdiction**

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

21. **No Fetter**

Nothing in this Agreement shall be construed as requiring the Host Councils to do anything that would cause them to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

22. **Joint and individual liability and benefits**

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

23. **Representations and Warranties**

23.1 Each of the Parties represents and warrants to the other Parties that it has power to enter this Agreement and comply with its obligations under this Agreement and that entry into this Agreement will not result in the breach by it of any law applicable to it.

23.2 Each Party warrants to each other Party that:

- (a) this Agreement creates a legal, valid and binding obligation, enforceable against the relevant Party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this Agreement in the capacity of trustee of any trust.

24. **Severability**

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of the Agreement is not affected.

25. **Waiver**

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of that obligation or breach in relation to any other occasion.

26. **GST**

If any Party reasonably decides that it is liable to pay GST on a supply made to another Party under this Agreement and the supply was not priced to include GST, then the recipient of the supply must pay an additional amount equal to the GST on that supply.

27. Counterparts

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

DRAFT

SCHEDULE 1: LAND AND WIND TURBINES

Note: In the event of any inconsistency of the Development Consent (including Appendices 1 and 2) with the following compilation of cadastral details of land approved for wind turbines, the Development Consent prevails.

Land Title (Lot / Deposited Plan)	Turbine Number
96/750738	1
1/1096238	2
96/750738	3
24/754969	4
2/1107124	5
1/1107124	6
89/750738	7
51/42212	8
51/42212	9
1/1107124	10
51/42212	11
1/843798	12
23/754969	13
110/750744	14
1/843798	15
89/750738	16
2/750763	17
91/750738	18
1/1107124	19
93/750738	20
25/721763	21
164/750738	22
119/750744	23
68/750738	24
89/750738	25
2/131761	26
1/1121270	27
95/750738	28
25/721763	29
93/750738	30
89/750738	31
89/750738	32
96/750738	33
108/750775	34

91/750738	35
85/750738	36
1/1097739	37
93/750738	38
89/750738	39
153/750738	40
46/750738	41
1/1107124	42
25/721763	43
62/750738	44
19/754968	45
153/750738	46
88/750738	47
108/750775	48
64/750738	49
155/750738	50
63/750738	51
87/750738	52
36/750744	53
66/750738	54
104/750738	55
85/750738	56
25/721763	57
63/750738	58
88/750738	59
87/750738	60
119/750744	61
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SCHEDULE 2

SECTION 355 COMMITTEE – OPERATING PRINCIPLES

Section 355 Committee (Local Government Act) to Administer the Community Enhancement Fund

That portion of Development Contributions destined for the single Community Enhancement Fund will be administered by a Section 355 Committee involving both Host Councils, in accordance with the provisions of this Schedule.

The Committee will act as an advisory Committee for the Host Councils and has no executive powers, except those expressly provided by the Host Councils. In carrying out its Community Enhancement Fund allocation of monies responsibilities, the Committee recognises that primary responsibility for management of the Committee rests with the Host Councils and their respective General Managers as defined by the *Local Government Act 1993*, and associated Regulations. The Committee's responsibilities are to assist the Host Councils to discharge their responsibilities with due care and diligence.

The Committee shall operate in accordance with the following principles:

(a) *Membership of the Section 355 Committee*

To be a Committee of nine (9) comprising:

- (i) one councillor from each of the two Host Councils (one of whom chairs the committee and has a casting vote);
- (ii) one council officer from each Host Council (non-voting);
- (iii) two community representatives from each Local Government Area of the Host Councils (to be residents within ideally 20 km of a turbine) who have not entered into a financial agreement with the wind farm company and can demonstrate the skills and experience relevant to the Committee's charter; and
- (iv) one wind farm company representative (non-voting).

(b) *Community projects - grant eligibility criteria*

- (i) Recipients must be an incorporated or registered not-for-profit association, or a local council or a Crown Reserve Trust;
- (ii) A grant application must be able to demonstrate in some detail the particular nature of the Public Purpose likely to accrue to the communities associated in some manner with the wind farm. Ideally the benefits are to flow to the community within approximately 20 km of a turbine so as to truly reflect the impact of the project on the community. Grants for projects outside the 20 km radius may also be considered provided they can show a degree of benefit within the 20 km criterion. Grants within approximately 5 km of the new powerline (Turrill locality) are also eligible; and
- (iii) The Committee has the authority to determine additional grant eligibility criteria, with Host Council approval, provided that the first two criteria listed herein are maintained.
- (iv) The Committee may recommend that part of the Community Enhancement Fund be held and dedicated to a future, large or multi-year funding commitment described in the recommendation in writing with certainty and detail (the 'Strategic Reserve').

(c) *Management principles for administering one Community Enhancement Fund applicable to two Host Councils*

- (i) The Host Councils agree that financial management and meeting secretariat functions will be undertaken by one council (the 'managing council');
- (ii) It is agreed Warrumbungle Shire Council will be the managing council. This decision is open to review at any time, as triggered by one or more councils and will be resolved by both councils;
- (iii) The managing council administers the monetary contributions;
- (iv) Grants for community projects can only be made upon both recommendation of the Committee and the vote of both Host Councils;
- (v) Appointments of the councillors and council officers shall be for the term of that Council;
- (vi) Appointments of the community representatives to the Committee shall similarly be for four years, in alignment with the term of Council.
- (vii) Applications to be a community representative shall be publicly invited at the beginning of each Council term. The said public notices shall state:
 - appointments are for four years, in alignment with Council terms;
 - existing committee members are eligible for re-appointment provided that no community member serves for more than two consecutive four year terms;
- (viii) A meeting of the existing Committee shall consider the applications for new community representatives and recommend such appointments at a meeting held at the beginning of the term of a new Council after nominations have been received;
- (ix) Proposed appointments will be ratified or endorsed by each Council; and
- (x) Recommendations for grants or appointments. Either of the Host Councils can reject a recommendation for a grant or an appointment of a community representative to the Committee, with clearly stated reasons, and request a further recommendation from the Committee.

(d) *Role of the Committee*

The Committee's role is to:

- (i) Annually review the draft operational plan of each Host Council (as publicly exhibited in accordance with section 405 of the Local Government Act 1993) to ensure the said plans apply land use planning standards to the land within 20 km of the wind farm that are consistent with those applied beyond 20 km, subject to any differences in land use type, biophysical characteristics and socio-economic activity;
- (ii) Review the suitability of grant application forms and information for applicants, and the information and briefing to be provided to incoming members of the Committee, and to recommend changes where appropriate;
- (iii) Publicly call for applications for funding for projects to benefit the local community;
- (iv) Evaluate funding applications and make grant recommendations to the Host Councils;

- (v) Allow a grant applicant the opportunity to address the Committee, providing there has been prior registration to speak and the address is conducted in accordance with standard meeting protocols;
- (vi) Check that allocations are made from the Community Enhancement Fund as recommended, and that any allocations to and payments from the Strategic Reserve are accounted for
- (vii) Check that the planning agreement giving rise to the Committee is permanently accessible on the websites of the Host Councils, that activity pursuant to the planning agreement is included in the annual reports of the Host Councils, and that citizens have access to the history of grants (and outcomes) pursuant to the planning agreement; and
- (viii) Review the effectiveness of completed grants and of the performance of the Committee each year, and recommend changes to the Host Councils where appropriate, so that the Community Enhancement Fund provides as much ongoing public benefit as possible.

(e) Public Notice for nominations for appointment to the Committee, applications for grants and reporting on allocated grants

The Committee will be responsible for advertising when grant applications for funding are being invited, together with the due date. The public notice should be displayed in various locations including (but not limited to):

- (i) on the Host Councils' websites;
- (ii) in the Host Councils' office reception areas – hard copy;
- (iii) in local newspaper(s) (where available);
- (iv) on social media as deemed appropriate by the Committee; and
- (v) on the wind farm company website.

(f) Meeting quorum and procedure

- (i) Members of the Committee not able to attend in person will have the option to attend via teleconference;
- (ii) A quorum is at least four (4) voting members including one Councillor from either Council;
- (iii) The Committee will meet at least six monthly.
- (iv) Meetings will be open to the public and meeting details publicised, however speaking rights to non-member attendees will be at the discretion of the chairperson.
- (v) Minutes of Committee meetings will be placed on the Host Council's websites.

(g) Public Purpose

Community-initiated projects potentially eligible for merit allocation of Development Contributions from the Community Enhancement Fund must be for a Public Purpose and include (but are not limited to) provision of:

- projects for the conservation or enhancement of the natural environment;

- provision of public domain infrastructure and services such as recreational, sporting and community facilities as well as disabled access, car parking, toilets, footpaths, and streetscapes;
- funds for improving rural community mobile phone and internet services;
- support to assist medical practitioners reside in local towns;
- mobile outreach health services;
- support to assist medical specialists fly in from the city to run clinics;
- support for physical health programs, for example obesity/diabetes/drugs;
- support for mental health programs;
- support for the construction and management of aged care units and to assist the financially disadvantaged gain entry into such facilities;
- support for the provision of Council-run aged care/community transport vehicles;
- child care and preschool facilities;
- improvements to drainage structures and waste management services;
- upgrades and recurrent expenditure funding of public facilities such as libraries, community halls, aquatic centres and childcare facilities;
- monitoring of the planning impacts of development and project-related technical resource capacity
- masterplans for LGA development
- tourist displays, including (but not limited to) with regard to indigenous and non-indigenous regional heritage; and
- renewable energy projects.

Note: As at the date of this agreement, section 7.4(2) of the Environmental Planning and Assessment Act 1979 states:

‘A public purpose includes (without limitation) any of the following:

- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services,
- (b) the provision of (or the recoupment of the cost of providing) affordable housing,
- (c) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,
- (d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,
- (e) the monitoring of the planning impacts of development,
- (f) the conservation or enhancement of the natural environment.’

(h) *Further operating principles*

The Committee may from time to time propose additional operating principles, providing that the additional principles are consistent with the above principles, and the additional principles shall apply upon ratification by both Councils.

EXECUTION AS A DEED

Executed by **Epuron Pty Ltd** ACN 104 503 380 in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

Martin Poole, Director

Date: _____

Andrew Durran, Director

Date: _____

Executed by Warrumbungle **Shire Council** by its authorised delegate in accordance with a resolution of the Council dated _____ in the presence of:

Witness (signature)

Name and Position of Witness (print)
Date: _____

Authorised Delegate (signature)

Name and Position of Authorised Delegate (print)
Date: _____

Executed by **Upper Hunter Shire Council** by its authorised delegate in accordance with a resolution of the Council dated _____ in the presence of:

Witness (signature)

Name and Position of Witness (print)

Date: _____

Authorised Delegate (signature)

Name and Position of Authorised Delegate (print)

Date: _____