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Date May 10, 2021

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To Fiona Plesman - General Manager Muswellbrook Shire Council

Reference Development Application No: 2021/33

Dear Fiona

I would like to make a submission regarding Development Application 2021/33 (DA 2021/33) regarding the proposal for the continued operation of wind monitoring mast development. Located at LOT: 197 DP: 752444, LOT: 199 DP: 752444 SANDY CREEK ROAD MCCULLY'S GAP. With the applicant being Epuron projects Pty Ltd.

I would like to object to the proposal for the continued operation of wind monitoring mast development.

As required by any person who makes a written submission objecting to or supporting a relevant planning application, or any development proposal made to council is required to disclose the following **reportable political donations and gifts** (if any) made by the person making the submission or any associate of that person within the period commencing two years before the submission is made and ending when the application is determined:

I would like to declare that I have not, and any associate has not within the period commencing two years before the submission is made and ending when the application is determined made any **reportable political donations or gifts to:**

- Any local councillor of Muswellbrook Shire Council, and
- Any local councillor or employee of Muswellbrook Shire Council.

The reasons for my objection to the proposal for the continued operation of wind monitoring mast development are outlined below.

The DA includes the following description: “*continued operation of wind monitoring mast development*”.

The wind monitoring mast has been described by Epuron since the date of its construction in August 2018 as a temporary wind monitoring mast constructed to align with the *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP), Clause 39. Epuron have never described the wind monitoring masts as a development and in the associated EIS the wind monitoring mast is described as a temporary wind monitoring mast.

The DA includes a supporting Document The “**Statement of Environmental Effects**” prepared by James Bailey & Associates Pty Ltd, with an issue date of 26/03/2021.

The Statement of Environmental Effects is misleading and deceptive in the following areas:

Section 1 – Introduction

Section 1 Statement of Environmental Effects introduction includes the following. This Statement of Environmental Effects (SEE) supports an application for retrospective development consent for the Development under Section 4.12 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Section 4.12 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) does not include retrospective development consent.

Retrospective development consent has been tested in the NSW Courts and tribunals to the effect that a retrospective consent or approval cannot be obtained in respect of something that has already taken place. The whole idea of a retrospective approval is misguided and not in the public interest.

Section 3.1 – Construction

Section 3.1 Statement of Environmental Effects Construction includes the following. The site of the monitoring mast is accessible via existing, unsealed access roads off Sandy Creek Road. No new access roads will be developed, although minor maintenance of existing tracks may be undertaken.

The foundation for the mast has a bearing capacity of at least 150 kPa. Loose materials such as topsoil and the upper strata will be excavated. A concrete slab of at least 100 mm thickness has been established as the foundation. The base plate of the mast **will be** fixed to the concrete foundation. The pre-fabricated steel lattice sections **are lifted** into position using a gin-pole and winch and attached by construction personnel. The guy-wires and monitoring instruments **are fitted** during the mast assembling process. Construction of the anchor footings involves the excavation of a small area. The anchoring device **was** installed into bedrock. The area is **then** backfilled and compacted to secure the anchor in place.

Section 3.1 Construction is written with some parts indicating work will need to take place on site and other parts for work that has already taken place on site.

However, it should be noted the following statement in section 3.1 *“the site of the monitoring tower is accessible via existing, unsealed access roads off Sandy Creek Road. No new access roads will be developed, although minor maintenance of existing tracks may be undertaken”* is not correct.

The wind monitoring mast was constructed in August 2018 (please refer to my later notes) and to allow access to site, a new track had to be pushed in. The new track was on my property boundary and during construction large rocks were pushed against my boundary fences and Parthenium weed was introduced into the area. The statement of Environmental effects does not indicate the extent of the minor work that may be undertaken.

Access to the unsealed farm track is via Sandy Creek road, using Sandy Creek Road is contrary to the restrictions Muswellbrook Shire Council have placed on Sandy Creek Road.

Section 4.1.2 – Infrastructure SEPP

Section 4.1.2 Statement of Environmental Effects Infrastructure SEPP includes the following. The monitoring tower is related to the potential establishment of a wind farm, which is classified as an “electricity generating work”. The development controls relevant to electricity generating works are outlined in *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP). Clause 39 of the Infrastructure SEPP provides that a wind monitoring tower for assessing the feasibility of a wind farm is exempt development if it satisfies the following criteria:

- (i) is erected in accordance with the manufacturer’s specifications, and*
- (ii) has a height of not more than 110m, and*
- (iii) is removed within 30 months after its erection is completed.*

“The Development complies with the first two criteria. However, it has an operational lifespan of longer than 30 months and continues to provide valuable information for the Project. As such, the Development is not deemed to be exempt development. As it was installed more than 30 months ago it is now no longer exempt development. Given that Clause 39 no longer applies, the relevant provision of the Infrastructure SEPP is Clause 34 which states that development for the purposes of electricity generating works is permissible with consent on any land in any prescribed rural, industrial or special use zone. The Development is on land within zone RU1 and is therefore permissible with development consent”.

Section 4.1.2 Infrastructure is also misleading Epuron and James Bailey and Associates are trying to re write history.

The wind monitoring mast was constructed in August 2018 to a height of 120m and without a development approval. In November 2018 Julian Kasby Project Manager, Epuron advised that the Wind Monitoring mast was not an exempt development and Epuron were in discussions with Muswellbrook Shire Council.

It was not until April 2019 when Epuron applied for a DA for the installation of a 120m tall wind monitoring mast, reference *DA 36/2019 the installation of a 120m tall wind monitoring mast*. The DA was also supported by a Statement of Environmental Effects prepared by Hansen Bailey.

It should be noted James Bailey of James Bailey and Associates is the Bailey of Hansen Bailey.

The DA and the Statement of Environmental Effects was written and advertised as if the wind monitoring masts was to be built. The DA did not indicate that it was also seeking a retrospective approval.

For reasons not advised Epuron withdrew *DA 36/2019 the installation of a 120m tall wind monitoring mast*. Epuron advised the DA for the mast was withdrawn on January 17, 2020 and the mast height reduction work was undertake in the last week of January 2020. The mast was lowered to 108m, Epuron did advise that would ensure the temporary wind monitoring mast would comply with *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP) Clause 39.

After construction, and until the height reduction took place the wind monitoring mast was not compliant with NSW legislation for a period of 17 months.

Epuron have known by withdrawing *DA 36/2019* on January 17, 2020 the wind monitoring mast would be classified as a temporary wind monitoring mast structure under Clause 39 of the Infrastructure SEPP and would require removal 30 months after the tower construction was completed.

The 30-month period concluded at the end of February 2021. Despite knowing the 30-month period concluded at the end of February 2021 Epuron did not try to obtain approval until after the end of February.

The wind monitoring mast has been in place for 33 months. The wind monitoring mast has not been compliant with NSW legislation for 20 out of the 33 months, it has not been compliant for 60% of the time.

Section 5.5 - Visual

Section 5.5 Statement of Environmental Effects Visual includes the following. The visual impact of a development is determined by considering the sensitivity of potential viewing locations and the visual effect created by the development. Due to the height of the mast, the monitoring tower will be visible to receptors in the vicinity of the Development Site. The closest residence is approximately 3.4 km from the mast. These residences are located in a rural setting and are therefore considered to be sensitive viewing locations. The visual effect of a development is dependent on various factors including the level of contrast with the surrounding environment and the proportion of the view that it occupies. The mast is a very slender structure, with a width of approximately 0.55 m. The visual effect of the monitoring tower is negligible because it occupies only a very small proportion of the panoramic view. The monitoring tower is less prominent than other similar structures such as telecommunications structures and electricity transmission towers, which are prevalent in the region.

Section 5.5 Visual is also misleading structures such as telecommunications structures and electricity transmission towers, which are prevalent in the region may be correct for the region, however, it is not correct for the area where the wind monitoring tower has been erected. There are no telecommunications structures or electricity transmission towers, within kilometres of the wind monitoring tower. The wind monitoring mast by its very design and function has been constructed on a prominent ridge and is clearly visible along large sections of Sandy Creek Road.

I have attached a couple of photographs taken from Sandy Creek road approximately 16.6km along Sandy Creek road from the intersection with the New England Highway. The wind monitoring mast is a dominant feature on the skyline.



Wind monitoring mast dominant on the skyline



Wind monitoring mast not an showing it is not an insignificant structure

Appendix B - A Justification Report

The “Statement of Environmental Effects” also includes Appendix “B” A Justification Report

The Justification Report has to be written because the Development exceeds the maximum building height prescribed by Clause 4.3 of the *Muswellbrook Local Environment Plan* (LEP). As required under Clause 4.6 of the LEP, a justification report must be submitted.

The Justification Report is also misleading Section 1 of the justification report indicates that Epuron **is seeking development consent** for the construction and operation of a wind monitoring tower (the Development) near Bowmans Creek. Epuron has engaged James Bailey and Associates (JBA) to prepare the required development application under Section 4.12 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the supporting Statement of Environmental Effects (SEE).

Epuron is not seeking development consent they are seeking a retrospective approval.

DA 2021/33 and reference to the EIS for the proposed Bowmans Creek wind farm.

In reference to DA 2021/33 the DA is linked to an EIS Epuron have submitted for the proposed Bowmans Creek wind farm as a State Significant Development (SSD) Development Consent under Division 4.7 of Part 4 of the *Environmental Planning & Assessment Act 1979* (EP&A Act) for the Project.

The EIS is currently on public display, in regard to the wind monitoring masts as identified in DA 2021/33 the EIS includes the following.

Executive Summary

The Executive summary in the EIS includes Ancillary infrastructure. Included in ancillary infrastructure the executive summary indicates the project intends, the Ongoing use of two temporary wind monitoring masts.

Section 2.2 - Existing Monitoring program

Section 2.2 of the EIS Existing Monitoring program includes the following. In 2017, the Proponent commenced wind monitoring with a portable Sonic Detection and Ranging (SoDAR) device to determine site selection and feasibility. **Additionally, two temporary wind monitoring masts** and a further three SoDAR devices were installed to measure wind speed, wind direction, air pressure and temperature.

The two temporary wind monitoring masts described above includes the wind monitoring mast prescribed in DA 2021/33.

Section 3.6 Ancillary Infrastructure and Equipment

Section 3.6 of the EIS Ancillary Infrastructure and Equipment includes the following. The Project will involve the following ancillary infrastructure which will generally be retained throughout the operational life of the Project:

- O&M Facility;
- Communications;
- Access tracks; and
- Wind monitoring masts and monitoring equipment.

Section 3.6.5 Wind Monitoring Masts and Monitoring Equipment

Section 3.6.5 of the EIS Wind Monitoring Masts and Monitoring Equipment includes the following. There are two existing wind monitoring masts at the site used for wind speed verification, weather and general monitoring purposes. The masts are steel lattice structures (approximately 110 m high) that are mounted on a concrete footing and supported by guy-wires. These may be relocated over the life of the Project. The masts are fitted with instruments for measuring wind speed and direction, pressure and temperature at various levels. The mast is also equipped with a solar panel, lightning rod, data loggers and anti-climb barrier. Security fences have been established around the masts and each of the guy-wire anchor points. **The two existing, temporary masts were constructed pursuant to the *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP).** The Project involves the continuing use of these monitoring masts, which may be relocated from time to time within the Project Boundary.

Section 3.7.1 Public Road Access

Section 3.7.1 of the EIS Public Road Access includes the following. The WTG components, other materials and construction equipment required for the Project will be transported to the site via the public road network.

WTG components will be delivered to the Project from the Port of Newcastle via the Hunter Expressway. Once at the intersection of Hebden Road (south) / NEH, OSOM vehicles will access the site via the identified Site Access location (see **Figure 3**) utilising Hebden Road (south), Scrumlo Road and Bowmans Creek Road/Albano Road as follows:

- Hebden Road (south) between NEH and the intersection with Pictons Lane;
- Hebden Road (south) and Scrumlo Road from the intersection with Pictons Lane to the Site Access location; and
- Bowmans Creek Road/Albano Road connecting the north-western to the south-eastern areas of the Project Boundary.

Muscle Creek Road, Sandy Creek Road, Goorangoola Road and Rouchel Road will not be used by Project related traffic.

The EIS refers to the wind monitoring tower as a temporary wind monitoring mast that was constructed pursuant to the *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP). It has been demonstrated that they were not.

The EIS refers to the wind monitoring towers as temporary wind monitoring mast that Epuron want to retain for perpetuity reclassifying them as permanent structures. Although they also refer to the temporary now permanent in perpetuity wind monitoring mast indicating **“These may be relocated over the life of the Project”**.

The EIS also includes the fact that Sandy Creek road will not be used by project related traffic, however the DA indicates Sandy Creek Road will be the road used for access to the wind monitoring mast.

By submitting a retrospective DA for the temporary wind monitoring mast Epuron are trying to give credibility to the temporary wind monitoring masts in the EIS. Whilst at the same time trying to circumvent some of the commitments, they made in the EIS allowing for project related traffic to use Sandy Creek Road. This is despite the fact the EIS did not include any assessments be it traffic, noise, biodiversity or anything else envisaging the use of Sandy Creek Road.

Epuron are not only trying to make a mockery of the Councils approval process, the NSW Governments Infrastructure SEPP requirements, but are also making a mockery out of the EIS process under the requirements of a NSW State Significant Development.

Epuron have already submitted a retrospective DA in April 2019 for the wind monitoring mast, withdrew the DA in January 2020 and indicated they were going to manage the wind monitoring mast as a exempt development under the Infrastructure SEPP. At the end of February 2021 made the conscious decision not to dismantle the wind monitoring mast as required. Waited until the end of

March early April to submit second retrospective DA.

If it were not so serious it would be a classical example on how not to do something.

As previously indicated Section 4.12 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) does not include retrospective development consent.

Retrospective development consent has been tested in the NSW Courts and tribunals to the effect that a retrospective consent or approval cannot be obtained in respect of something that has already taken place. The whole idea of a retrospective approval is misguided and not in the public interest.

It should also be noted one of Muswellbrook Shire Councils functions is a regulatory function.

A council's regulatory functions are of two main kinds:

- firstly, various activities may only be carried out with the **prior** approval or consent of the council; and
- secondly, in certain circumstances (including, relevantly, where a person or Company has failed to obtain that prior approval or consent in respect of some activity), the council is empowered to order a person to do, or to stop doing, that activity or even to demolish and remove the building or structure that has been erected or the work that has been carried out.

This is the case referencing the wind monitoring mast referred to in the retrospective DA submitted by Epuron. Epuron know their legislative obligations, their web site includes reference to numerous wind farm projects they have managed. Epuron have been involved in the wind power generation industry over a long period of time.

It is not Muswellbrook Shire Councils or its employees place to decide if the relevant state legislation should be adhered to. Muswellbrook Shire Council and its employees have an obligation to ensure they abide by any regulatory functions as required by planning legislation.

Muswellbrook Shire Council should have ordered Epuron to demolish the wind monitoring towers in April 2019 when the first retrospective DA was submitted and must certainly take that action now. The DA application should not have even been accepted a demolition order should have been made.

If the DA is approved, it should be asked how this could occur. Perhaps Muswellbrook Shire Council and its employees are being influence by Epuron and the offer of an Annual VPA payment of \$3000 per wind turbine located in the Muswellbrook LGA. Whilst Muswellbrook Shire Council and its employees may think this is honourable, obtaining additional funding for the shire. The allure of the money should not be allowed to prevent council from carrying out its regulatory duties.

The wind monitoring mast should be demolished without delay to ensure compliance with legislative requirements.

