

APPENDIX C:

STATUTORY CONSIDERATIONS

Section 4.15 of the EP&A Act outlines the matters that a consent authority must take into consideration when determining development applications. These matters could be summarised as:

- the provisions of environmental planning instruments (including draft instruments), development control plans, planning agreements, and the EP&A Regulations;
- the impacts of the project;
- the suitability of the site;
- any submissions; and
- the public interest.

Section 1.3 of the EP&A Act also outlines a range of objects that must be considered when making decisions under the EP&A Act, and the former Sections 5A to 5D of the EP&A Act (now contained within the *Biodiversity Conservation Act 2016*) further outline provisions to be considered with regard to threatened species (including species, populations and ecological communities) and their habitats.

As the changes to the EP&A Act were made following the preparation of this project's EIS, Amended DA and RTS, and as such, Epuron's ecological assessments were prepared in accordance with Sections 5A to 5D of the EP&A Act, the Department has given consideration to the requirements of the provisions of Sections 5A to 5D. In particular, these matters include the:

- factors in Section 5A(2), known as the '7 part test of significance';
- threatened species assessment guidelines¹⁰ identified in Section 5A(1); and
- register of critical habitat as identified in Section 5B.

The Department considered the 7 part tests presented in the EIS and also the threatened species assessment guidelines, in deciding whether there is likely to be a significant effect on threatened species, populations, ecological communities, or their habitats.

The Department's consideration has been prepared having regard to Epuron's ecological assessment and the 7 part tests of significance in the EIS for the project, along with the threatened species assessment guidelines which assist in the interpretation and application of the 7 factors (or tests) of significance.

The Department's assessment (see Section 5.4) has considered the direct and indirect impacts of the project on threatened species, populations or ecological communities, or their habitats – both on the subject site and the broader study area, as defined under the threatened species assessment guidelines.

The Department has considered all of these matters in its assessment of the project and in summary believes that:

- the project can be undertaken in a manner that is consistent with the aims, objectives and provisions of the applicable environmental planning instruments, other applicable planning documents and the EP&A Regulations;
- the project could be undertaken in a manner that is generally consistent with the objects of the EP&A Act;
- the potential impacts of the project on the site and surrounds has been carefully considered in the assessment of the project, and the Department is satisfied that the impacts of the project on the environment and the local community could be adequately minimised, managed, or at least compensated for, to an acceptable standard;
- the site is suitable for the project, as it is within a region recognised as having some of the best wind resources in NSW, and has access to existing electricity distribution networks. The operation of the project would also not compromise the long-term use of the land for agricultural purposes; and
- whilst there is some opposition to the project from local landowners and special interest groups, the project is in the wider public interest, particularly as it would:

¹⁰ *Threatened Species Assessment Guidelines – The Assessment of Significance*, prepared by the then Department of Environment and Climate Change, dated August 2007.

- be consistent with the NSW Government's vision for a secure, reliable, affordable and clean energy future for the State;
- assist in meeting Australia's renewable energy target as well as future electricity demands without the production of additional greenhouse gases; and
- facilitate employment for up to 250 personnel during construction and 12 personnel during operations.

Objects of the EP&A Act

The Minister must consider the objects of the EP&A Act when making decisions under the Act. The objects of most relevance to the Minister's decision on whether or not to approve the project are found in Section 1.3(a)(b),(c),(e) and (f). They are:

- (a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources;*
- (b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment;*
- (c) *to promote the orderly and economic use and development of land;*
- (e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats; and*
- (f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage).*

The Department is satisfied that the project encourages the proper development of natural resources (Object 1.3(a)) and the promotion of orderly and economic use of land (Object 5(c)), particularly as the project is:

- a permissible land use on the subject land;
- located in a logical location for efficient wind energy development;
- able to be managed such that the impacts of the project could be adequately minimised, managed, or at least compensated for, to an acceptable standard; and
- consistent with the goals of the *Renewable Energy Action Plan*, and would assist in meeting Australia's renewable energy targets whilst reducing greenhouse gas emissions.

The Department has considered the encouragement of ESD (Object 1.3(b)) in its assessment of the project. This assessment integrates all significant socio-economic and environmental considerations and seeks to avoid any potential serious or irreversible environmental damage, based on an assessment of risk-weighted consequences. Epuron has also considered the project against the principles of ESD. Following its consideration, the Department considers that the project can be carried out in a manner that is consistent with the principles of ESD.

Consideration of environmental protection (Object 1.3(e)) is provided in Section 5.4 of this report. Following its consideration, the Department considers that the project is able to be undertaken in a manner that would improve or at least maintain the biodiversity values of the locality over the medium to long term, and would not significantly impact threatened species and ecological communities of the locality. The Department is also satisfied that any residual biodiversity impacts can be managed and/or mitigated by imposing appropriate conditions and retiring the required biodiversity offset credits.

Consideration of the sustainable management of built and cultural heritage (Object 1.3(f)) is provided in Section 5.5 of this report. Following its consideration, the Department considers the project would not significantly impact the built or cultural heritage of the locality. The Department is satisfied that any residual impacts on heritage can be managed and/or mitigated by imposing appropriate conditions.

Environmental Planning Instruments

Under Section 4.15 of the EP&A Act, the consent authority is required to consider, amongst other things, the provisions of relevant environmental planning instruments (EPIs), including any exhibited draft EPI's and development controls.

The Department has considered the project against relevant provisions of several EPI's, as well as Epuron's consideration of these instruments. The key instruments include:

- *Warrumbungle LEP 2013*
- *Upper Hunter LEP 2013*
- *Mid-Western Regional LEP 2012*
- *SEPP (Infrastructure) 2007;*
- *SEPP (State and Regional Development) 2011;*
- *SEPP (Rural Lands) 2008; and*
- *SEPP No. 55 – Remediation of Land.*

Warrumbungle LEP 2013

The zoning and permissibility of the development under the *Warrumbungle LEP 2013* is addressed in Section 3.2 of this report.

There are no other provisions of the LEP that substantially govern the development, and the Department is satisfied that the project can be managed in a manner that is generally consistent with the aims, objectives and provisions of the LEP.

Upper Hunter LEP 2013

The zoning and permissibility of the development under the *Upper Hunter LEP 2013* is addressed in Section 3.2 of this report.

There are no other provisions of the LEP that substantially govern the development, and the Department is satisfied that the project can be managed in a manner that is generally consistent with the aims, objectives and provisions of the LEP.

Mid-Western Regional LEP 2012

The zoning and permissibility of the development under the *Mid-Western Regional LEP 2013* is addressed in Section 3.2 of this report.

There are no other provisions of the LEP that substantially govern the development, and the Department is satisfied that the project can be managed in a manner that is generally consistent with the aims, objectives and provisions of the LEP.

SEPP (Infrastructure) 2007

In accordance with clause 104 of *SEPP (Infrastructure) 2007*, the application was referred to RMS. The matters raised in RMS's submission on the project were considered by the Department, and the Department has recommended conditions of approval in relation to the classified road network.

SEPP (State and Regional Development) 2011

As outlined in Section 3.1, the project meets the criteria for State Significant Development under the *State Environmental Planning Policy (State and Regional Development) 2011*.

SEPP (Rural Lands) 2008

SEPP (Rural Lands) 2008 aims to facilitate the orderly and economic use and development of rural lands for rural and related purposes whilst ensuring the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State.

The Department is satisfied that the proposed development is consistent with *SEPP (Rural Lands) 2008* as the operation of the project would not compromise the long-term use of the land for agricultural purposes and would provide an additional source of income for the landowners of the associated properties, whose land would be directly affected by the project.

SEPP No.55 – Remediation of Land

The Department is satisfied that the project site is not located on land identified as contaminated land, nor is it adjacent to land identified as contaminated land.