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Mr Andrew Durran
Executive Director
Epuron Pty Ltd
Level 11, 75 Miller Street
NORTH SYDNEY NSW 2060

Our ref: 10/23653
Your ref:

Dear Mr Durran

Proposed Liverpool Range Wind Farm (MP 10_0225) – Supplement to the Director-General's Requirements

I refer to the Director-General's requirements (DGRs) issued for the above project on 31 March 2011 and the supplementary requirements issued on 16 August 2011 in relation to community consultation.

As you are aware, the project has been transitioned to the Government's new State Significant Development (SSD) assessment system, as formally advised on 19 March 2014. The issuing of DGRs have been accredited under the SSD process and are taken to have been completed.

Additionally, the project was declared a Controlled Action under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) on 17 March 2014, for likely impacts on listed threatened species and communities. Therefore, in accordance with section 75F(3) of the NSW *Environmental Planning & Assessment Act 1979*, I have enclosed the Commonwealth's requirements for the assessment.

I also confirm that the administrative procedures in relation to the bilateral assessment process will apply to the assessment of this project under the EPBC Act, so that the Agency can undertake an environmental impact assessment of the project to satisfy the requirements of both NSW and Commonwealth legislation.

You must ensure that the Environmental Assessment / Environmental Impact Statement adequately addresses the DGRs issued on 31 March and 16 August 2011, and the supplementary requirements attached to this letter.

If you have any enquiries about these requirements, please do not hesitate to contact Neville Osborne on the above contact details.

Yours sincerely

Karen Jones
**Director
Infrastructure Projects
as delegate for the Director-General**



Neville Osborne
Senior Planner, Infrastructure Projects
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Sydney NSW 2001

**Environmental assessment requirements (Matters of National Environmental Significance Terms of Reference) for bilateral assessment process
Liverpool Range Wind Farm, NSW (EPBC 2014/7136)**

Dear Mr Osborne

I refer to your email of 20 March 2014 requesting the Department of the Environment's input into the Director-General's requirements (under the NSW *Environmental Planning and Assessment Act 1979*) for environmental assessment for the above proposal, deemed a controlled action under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) on 17 March 2014.

The proposed action involves the construction of up to 288 wind turbine generators, a 330kV overhead powerline, electrical reticulation, connection substations, maintenance facilities and access tracks on the Liverpool Range between Coolah and Cassilis, 370km northwest of Sydney, NSW.

The action is likely to have a significant impact on the following matters of National Environmental Significance (MNES):

- Listed threatened species and communities (s18 & 18A).

In particular, the proposed action is likely to cause impacts to the critically endangered *White Box Yellow Box Blakely's Red Gum Grassy Woodland and Derived Native Grassland* ecological community (WBGW) and habitat for threatened species including (but not limited to) the Swift Parrot (*Lathamus discolor*) and the Regent Honeyeater (*Anthochaera phrygia*).

The area of WBGW that will be removed ranges from 3.9ha (preferred option) to 14ha (first alternative option) or 23ha (second alternative option).

Information provided to the Department indicates that up to 436ha of woodland and forest vegetation communities, that may be used as foraging habitat by EPBC listed bird species, will be cleared. In addition to the direct loss of habitat, the proposed action is likely to ecologically devalue remaining habitat areas through fragmentation, edge effects and the potential for weed invasion.

The main ongoing risk that the wind farm poses to the Swift Parrot and Regent Honeyeater is collision with turbine blades, including direct mortality and injury. Blade strike is not well studied or understood in Australia, particularly in relation to woodland birds, however, the Department notes that the Swift Parrot and Regent Honeyeater are known to fly at rotor height and may occasionally encounter turbines during migration or while moving between patches of habitat.

In accordance with the bilateral assessment process for this project, I have attached the Environment Assessment requirements (Matters of National Environmental Significance Terms of Reference) under the EPBC Act for input into the Director-General Requirements. The Director-General is required to notify the proponent of these requirements. I also note that the administrative procedures in relation to the bilateral assessment processes are being prepared and will apply to this assessment process once finalised.

The assessment must include enough information about the action and its relevant impacts to allow the Minister for the Environment to make an informed decision on whether or not to approve the action under the EPBC Act.

Please note that that the table at Attachment 1 to the MNES Terms of Reference should only be completed if the EIS does not contain a separate chapter addressing MNES.

If you have any questions about the enclosed requirements, please contact, Mark Jenkins, by email to mark.jenkins@environment.gov.au, or telephone 02 6274 1558 and quote the EPBC reference number shown at the beginning of this letter.

Yours sincerely

Mahani Taylor

Director

NSW Section

South-Eastern Australia Environment Assessments Branch

March 2014

Matters of National Environmental Significance Terms of Reference

References:

- *Environment Protect and Biodiversity Conservation Act 1999* - section 51-55, section 96A(3)(a)(b), 101A(3)(a)(b), section 136, section 527E;
- *Environment Protect and Biodiversity Conservation Regulations 2000* - Division 3.2, 3.02(a)(b)(ii)(iii), Division 5.2, Schedule 4;
- *Bilateral Agreements* - Item 18.1, Item 18.5, Schedule 1; and
- *Policy - Environment Protect and Biodiversity Conservation Act 1999 Environmental Offsets Policy* October 2012

1 THE ACTION

The Environmental Impact Statement (EIS) must describe in detail all construction, operational and (if relevant) decommissioning components of the action. This must include the precise location of all works to be undertaken (including associated offsite works and infrastructure), structures to be built or elements of the action that may have impacts on matters of national environmental significance (MNES).

The description of the action must also include details on how the works are to be undertaken (including stages of development and their timing) and design parameters for those aspects of the structures or elements of the action that may have relevant impacts.

The EIS must also include how the action relates to any other actions (of which the proponent should reasonably be aware) that have been, or are being, taken or that have been approved in the region affected by the action.

2 THE ENVIRONMENT INCLUDING MNES

The EIS must include a description of the environment and management practices of the proposal site and the surrounding areas and other areas that may be affected by the action. Include the relevant MNES protected by controlling provisions of Part 3 of the EPBC Act:

- (a) Listed threatened species and communities (including suitable habitat) that are or are likely to be present in the vicinity of the site, including the following details:
 - i. Details of the scope, timing/effort (survey season/s) and methodology for studies or surveys used to provide information on the listed species/community/habitat at the site (and in areas that may be impacted by the project). Include details of:
 - o best practice survey guidelines are applied; and

- o how they are consistent with (or a justification for divergence from) published Australian Government guidelines and policy statements.

3 IMPACTS

- (a) The EIS must include a description of all of the relevant impacts of the action on MNES (identified in Section 2). Impacts during the construction, operational and (if relevant) the decommissioning phases of the project must be addressed, and the following information provided:
 - i. a description of the relevant impacts of the action;
 - ii. a detailed analysis of the nature and extent of the likely direct, indirect and consequential impacts relevant to MNES, including likely short-term and long-term impacts;
 - iii. a statement whether any relevant impacts are likely to be unknown, unpredictable or irreversible;
 - iv. any technical data and other information used or needed to make a detailed assessment of the relevant impacts;
- (b) The EIS should identify and address cumulative impacts, where potential project impacts are in addition to existing impacts of other activities (including known potential future expansions or developments by the proponent and other proponents in the region and vicinity).
- (c) The EIS should also provide a detailed assessment of any likely impact that this proposed action may facilitate on the relevant MNES at the local, regional, state, national and international scale.

4 AVOIDANCE AND MITIGATION MEASURES / ALTERNATIVES

Avoidance and Mitigation Measures

The EIS must provide information on proposed avoidance and mitigation measures to manage the relevant impacts of the action on MNES.

The EIS also must take into account relevant agreements and plans that cover impacts on MNES including but not limited to:

- any recovery plan, conservation advice for the species or community;
- any threat abatement plan for a process that threatens the species;
- any wildlife conservation plan for the species; and
- any Strategic Assessment.

The EIS must include, and substantiate, specific and detailed descriptions of the proposed avoidance and mitigation measures, based on best available practices and must include the following elements:

- (a) A consolidated list of avoidance and mitigation measures proposed to be undertaken to prevent, minimise or compensate for the relevant impacts of the action on MNES, including:
 - i. a description of proposed avoidance and mitigation measures to deal with relevant impacts of the action, including mitigation measures proposed to be taken by State/Territory governments, local governments or the proponent;
 - ii. assessment of the expected or predicted effectiveness of the mitigation measures, including the scale and intensity of impacts of the proposed action and the on-ground benefits to be gained through each of these measures;
 - iii. a description of the outcomes that the avoidance and mitigation measures will achieve;
 - iv. any statutory or policy basis for the mitigation measures; and
 - v. the cost of the mitigation measures.
- (b) A detailed outline of a plan for the continuing management, mitigation and monitoring of relevant MNES impacts of the action, including a description of the outcomes that will be achieved and any provisions for independent environmental auditing.

Where appropriate, each project phase (construction, operation, decommission) must be addressed separately. It must state the environmental outcomes, performance criteria, monitoring, reporting, corrective action, contingencies, responsibility and timing for each environmental issue.

- (c) the name of the agency responsible for endorsing or approving each mitigation measure or monitoring program.

Alternatives

The EIS must include any feasible alternatives to the action to the extent reasonably practicable, including:

- (a) if relevant, the alternative of taking no action;

- (b) a comparative description of the impacts of each alternative on the NES matters protected by controlling provisions of Part 3 of the EPBC Act for the action; and
- (c) sufficient detail to make clear why any alternative is preferred to another.

Short, medium and long-term advantages and disadvantages of the options must be discussed.

5 RESIDUAL IMPACTS / OFFSETS

The EIS must provide details of:

- (a) the likely residual impacts on MNES that are likely to occur after the proposed activities to avoid and mitigate all impacts are taken into account.
 - i. Include the reasons why avoidance or mitigation of impacts is not reasonably achieved; and
 - ii. Identify the significant residual impacts on MNES.

Offset Package (if relevant)

The EIS must include details of an offset package to be implemented to compensate for the residual significant impact of the project, as well as an analysis about how the offset meets the requirements in the Department's *Environment Protect and Biodiversity Conservation Act 1999* Environmental Offsets Policy October 2012 (EPBC Act Offset Policy).

The offset package can comprise a combination of direct offsets and other compensatory measures, so long as it meets the requirements of the EPBC Act Offset Policy. Offsets should align with conservation priorities for the impacted protected matter and be tailored specifically to the attribute of the protected matter that is impacted in order to deliver a conservation gain.

Offsets should compensate for an impact for the full duration of the impact.

Offsets must directly contribute to the ongoing viability of the MNES impacted by the project and deliver an overall conservation outcome that improves or maintains the viability of the MNES as compared to what is likely to have occurred under the status quo, that is if neither the action nor the offset had taken place.

Note offsets do not make an unacceptable impact acceptable and do not reduce the likely impacts of a proposed action. Instead, offsets compensate for any residual significant impact.

Offsets required by the State/Territory can be applied if the offsets meet the Department's EPBC Act Offset Policy.

The EIS must provide:

- (a) Details of the offset package to compensate for significant residual impacts on MNES; and
- (b) An analysis of how the offset package meets the requirements of the EPBC Act Offsets Policy.

Further details of information requirements for EPBC Act offset proposals are provided at Attachment 2.

6 ENVIRONMENTAL RECORD OF PERSON(S) PROPOSING TO TAKE THE ACTION

The information provided must include details of any proceedings under a Commonwealth, State or Territory law for the protection of the environment or the conservation and sustainable use of natural resources against:

- (a) the person proposing to take the action; and
- (b) for an action for which a person has applied for a permit, the person making the application.

If the person proposing to take the action is a corporation, details of the corporation's environmental policy and planning framework must also be included.

7 ECONOMIC AND SOCIAL MATTERS

The economic and social impacts of the action, both positive and negative, must be analysed. Matters of interest may include:

- (a) details of any public consultation activities undertaken, and their outcomes;
- (b) details of any consultation with Indigenous stakeholders.
- (c) projected economic costs and benefits of the project, including the basis for their estimation through cost/benefit analysis or similar studies;
- (d) employment opportunities expected to be generated by the project (including construction and operational phases).

Economic and social impacts should be considered at the local, regional and national levels. Details of the relevant cost and benefits of alternative options to the proposed action, as identified in Section 4 above, should also be included.

8 INFORMATION SOURCES PROVIDED IN THE EIS

For information given in the EIS, state:

- (a) the source of the information;
- (b) how recent the information is;
- (c) how the reliability of the information was tested;
- (d) what uncertainties (if any) are in the information; and
- (e) what guidelines, plans and/or policies did you consider.

9 CONCLUSION

An overall conclusion as to the environmental acceptability of the proposal on MNES, including:

- (a) a discussion on the consideration with the requirements of the EPBC Act, including the objects of the EPBC Act, the principles of ESD and the precautionary principle (Attachment 3);
- (b) reasons justifying undertaking the proposal in the manner proposed, including the acceptability of the avoidance and mitigation measures; and
- (c) if relevant, a discussion of residual impacts and any offsets and compensatory measures proposed or required for significant residual impacts on MNES, and the relative degree of compensation and acceptability.

ATTACHMENT 1:

Table: ToR addressed by Assessment Documentation

[illegible]

ATTACHMENT 2

Information requirements for EPBC Act offset proposals

- Details in relation to the proposed offsets package, including:
 - the location and size, in hectares, of any offset site(s);
 - maps clearly showing for each offset site:
 - the relevant ecological features;
 - the landscape context; and
 - the cadastre boundary.
 - the current tenure arrangements (including zoning and ownership) of any proposed offset sites;
 - confirmed records of presence (or otherwise) of relevant protected matter(s) on the offset site(s); and
 - detailed information regarding the presence and quality of habitat for relevant protected matter(s) on the offset site. The quality of habitat should be assessed in a manner consistent with the approach outlined in the document titled *How to use the offset assessment guide* available at:
<http://www.environment.gov.au/epbc/publications/environmental-offsets-policy.html>.
- Provide information and justification regarding how the offsets package will deliver a conservation outcome that will maintain or improve the viability of the protected matter(s) consistent with the *EPBC Act environmental offsets policy* (October 2012) including:
 - management actions that will be undertaken that improve or maintain the quality of the proposed offset site(s) for the relevant protected matter(s). Management actions must be clearly described, planned and resourced as to justify any proposed improvements in quality for the protected matter(s) over time;
 - the time over which management actions will deliver any proposed improvement or maintenance of habitat quality for the relevant protected matter(s);
 - the risk of damage, degradation or destruction to any proposed offset site(s) in the absence of any formal protection and/or management over a foreseeable time period (20 years). Such risk assessments may be based on:
 - presence of pending development applications, mining leases or other activities on or near the proposed offset site(s) that indicate development intent;
 - average risk of loss for similar sites; and
 - presence and strength of formal protection mechanisms currently in place.
 - the legal mechanism(s) that are proposed to protect offset site(s) into the future and avert any risk of damage, degradation or destruction.
- Provide information regarding how the proposed offsets package is additional to what is already required, as determined by law or planning regulations, agreed to under other schemes or programs or required under an existing duty-of-care.
- The overall cost of the proposed offsets package, including costs associated with, but not limited to:
 - acquisition and transfer of lands/property;
 - implementation of all related management actions; and
 - monitoring, reporting and auditing of offset performance.

ATTACHMENT 3

THE OBJECTS OF THE *ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999*, PRINCIPLES OF THE ECOLOGICALLY SUSTAINABLE DEVELOPMENT AND THE PRECAUTIONARY PRINCIPLE

3 Objects of the Act

- (a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and
- (b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and
- (c) to promote the conservation of biodiversity; and
 - (ca) to provide for the protection and conservation of heritage; and
- (d) to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples; and
- (e) to assist in the co-operative implementation of Australia's international environmental responsibilities; and
- (f) to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and
- (g) to promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge.

3A Principles of Ecologically Sustainable Development

The following principles are principles of ecologically sustainable development.

- (a) Decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations.
- (b) If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- (c) The principle of inter-generational equity – that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.
- (d) The conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making.

(e) Improved valuation, pricing and incentive mechanisms should be promoted.

Precautionary principle

The ***precautionary principle*** is that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.