

Department of Planning and Environment
GPO BOX 39
SYDNEY NSW 2001

Attention: Anthony Ko
Your Reference SSD-9679

<https://www.planningportal.nsw.gov.au/major-projects/project/9701>

Dear Sir/Madam,

**TAMWORTH REGIONAL COUNCIL REPLY TO PROPONENT'S RESPONSE TO SUBMISSIONS
– STATE SIGNIFICANT DEVELOPMENT – HILLS OF GOLD WIND FARM – APPROXIMATELY
FIVE (5) KM SOUTH OF HANGING ROCK AND EIGHT (8) KM SOUTH-EAST OF NUNDLE**

Ref: Ir/SL/GV Document Set 1208082

Thank you for the opportunity to respond to the Hills of Gold Wind Farm *Submissions Report* and *Amendment Report* dated 20 December 2021 and subsequent documentation.

Introduction

At the outset and before commenting on this specific renewable energy proposal Council would reinforce that it is generally supportive of renewable energy initiatives. This is evidenced by a number of state and regionally significant solar farm approvals in the Local Government Area (LGA) and its active engagement with other current renewable energy projects at varying locations such as a Battery Storage Facility (Tamworth outskirts); Bendemeer Solar Farm and Thunderbolt Wind and Solar Farms (Stages 1 and 2) near Kentucky. Council's guiding strategic document on the future of the Tamworth Region also confirms its position on positive renewable energy projects.

The Hills of Gold Windfarm project

In seriously considering this project and its potential impacts on the communities of Nundle and Hanging Rock, as well as the broader public interest outcomes, Council has invested significant resources during the assessment phase of this proposal with staff undertaking multiple assessments and being involved in a number of meetings with the proponent. With only limited staff resources available this process has been challenging particularly as each change to the project required close scrutiny. The elected Council also received formal representations from community, both supporters and opponents as well as from the proponent. It was clearly of some significance to the community that Council properly considers its position.

For those reasons previously stated in Council's letter of objection dated 10 February 2022 and for the further reasons identified in this letter, Tamworth Regional Council cannot support this proposal and maintains its objection to the Hills of Gold Wind Farm Development.

Relevant Issues/ Issues of Concern

1. Devil's Elbow Bypass Road

The proponent's preferred haulage route is via a new private bypass road through Lot 440 DP 822503. This lot is under the management of Tamworth Regional Council. For a number of significant reasons Council will not give its approval for the proponent to utilise this land for that purpose.

It is noted that the proponent makes the following statement in its Submissions Report:

"The Devils Elbow bypass road will be safe, practical, constructible and represents the lowest environmental impact of all route options considered". (Page 45. Submissions Report prepared by ERM)

Council questions the validity of this statement and argues that the proposed bypass road is anything but safe, practical, constructible or representative of the lowest environmental impact of all route options. In order to highlight its concerns Council has broken this statement down into sections, as follows:

"The Devils Elbow bypass road will be safe..."

The nominated bypass involves constructing a track straight up from the first hairpin, which ties back into Barry Road some 460m further uphill. The existing road alignment is already a short series of very steep hairpins which road users are required to carefully navigate frequently in unfavourable conditions, including occurrences of "black ice".

The interaction between the existing road reserve and the proposed bypass road still remains unclear.

Council has been of the understanding that the bypass road was to be used as a private road only, however the report *Recreational Opportunities Analysis for Devils Elbow* prepared for the proponent by *Tourism Recreation Conservation*, dated March 2022, which identifies potential tourism strategies for the subject reserve, suggests it would be open to the public in some capacity.

The proponent's tourism strategy suggests that the new road could also be accessible to recreational traffic such as pedestrian, bicycles and horses. This suggestion is totally implausible, noting the gradients mentioned in the proponent's own documentation (in excess of 25% in parts). Should the bypass road be publicly available Council holds significant safety concerns for users due to the steep nature of the site, particularly tourists who may base their decision to visit the area on the statements made in the proponent's tourism strategy.

There is also a serious safety risk in the event of an accident, for any user of the reserve or road. The existing road condition, and steep terrain has potential to compromise existing as well as new users.

"The Devils Elbow bypass road will be ... practical"

The practicality of the proposed route remains highly questionable. The engineering associated with stabilising and draining such an extreme formation would be challenging.

It remains unclear how the bypass road will be managed for the duration of the construction, as well as the operational and decommissioning stages of the project. The proponent has failed to provide certainty as to whether the road will be closed or remain open and how either of these options will be appropriately managed. If the road is to remain open, there is no detail explaining how the road

will be practically managed both during construction, and after the initial construction activities are completed.

The ongoing operational management of Barry Road during haulage operations and risks associated with it are considered to be significant and not acceptable to Council. Barry Road accommodates a high number of road users with the logging industry, tourists and locals using this road daily to meet their own needs. Council fears the functionality of this road will be seriously compromised for a sustained period of time, particularly during the construction phase.

If the proposed bypass road is to be closed to the public, there are inherent risks in constructing the road and requiring each end to be completely closed off to public access each time the road is opened for haulage purposes.

Council is not satisfied that the risks have been or can be adequately managed at any point in the process. What mechanisms will be in place to ensure other road users do not “accidentally” go up or down this road? Who will be liable should an accident occur as a result of poorly visible signage or barricades resulting in road users ending up on the bypass track?

Council understands the bypass road will likely have a gradient up to **30%** for part of its length, which is significantly steep. The proponent’s own tourism strategy also indicates that the site will be challenging for any users.

The report states *“the haul road will have a maximum gradient in short sections of 25%. Trails for walking or mountain bike are preferably limited to 10%... trails for horses should also be generally limited to 10% with a maximum of 15%. Beyond this most riders would need to dismount”* (Recreational Opportunities Analysis for Devils Elbow prepared by Tourism Recreation Conservation, dated March 2022 - page 15). This is clearly an admission that the potential for any tourism benefits will be limited.

“The Devils Elbow bypass road will beconstructible”.

Council understands that road formations on wind farm sites throughout Australia and the world often navigate difficult terrain and do so successfully through expert engineering design. Council would also agree that an engineering design could also be formulated to negotiate the steep terrain at the Devils Elbow site. However, whilst this may be the case, at what cost would this be to the existing character, amenity, and natural environment in the vicinity. Details of the constructable elements remain unclear and the full extent of the road and extent of the physical impacts of the road are still not fully evident despite the considerable period of time the project has been in the development phase.

The fact that the project has morphed so many times with on-going changes to engineering solutions suggests that the project is seriously challenged by the poor site selection, which will create a legacy of issues for Council and the communities of Nundle and Hanging Rock.

“The Devil’s Elbow bypass road represents the lowest environmental impact of all route options considered”.

Heritage impacts

The proponent’s Amendment Report states *“that the road works will have no impacts on the listed heritage values of the former Black Snake Gold Mine”* (page 19). Council does not hold this view and considers the proposed bypass road will cause irreversible damage to the heritage listed mine site and the surrounding natural environment.

The Black Snake Gold Mine on Lot 440 DP 822503 is a local heritage listed site (Item No. 1134 in the Tamworth Regional Local Environmental Plan 2010). This parcel of Crown Land is scattered with mine shafts and tunnels and contributes to the historical character of Nundle and Hanging Rock as a mining heritage locality. The Statement of Significance recorded in the NSW Heritage Register states:

“The place has both historical and geological significance to Nundle, the Tamworth district and to local and national mining development beginning in this instance from the mid-1800s.”

Council maintains that there is simply not enough evidence to suggest that the construction of the proposed road will not impact in any way upon the mine site. Council remains unaware of the location of all the tunnels and shafts. The proponent has failed to provide this information; therefore, Council is at a loss to understand how the company can claim that the road will not impact the mine. Where is the evidence to support this conclusion?

Council is also of the view that the proponent’s suggestion that the development will enable enhanced tourism opportunities in respect of the mine is a furphy for the reason that the bypass road, if constructed, will in fact destroy the very heritage value that it purports to enhance. Therefore, any proposed tourism enhancement will be achieved at the expense of the subject of the heritage listing, thereby negating any possible enhanced value.

Non-compliance with Tamworth Local Environmental Plan 2010

Council maintains that the proposed Devil’s Elbow bypass road does not meet the objectives of Clause 5.10 of the Tamworth Regional Local Environmental Plan which are to conserve the environmental heritage of the Tamworth LGA and to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views. The potential for partial demolition of archaeological evidence associated with the heritage listed mine site for the purpose of a private bypass road, creating a visible scar on the landscape is inconsistent with the Tamworth Local Environmental Plan and is not acceptable to Council.

Crown Land Reserves

The subject lot is Crown Land under the management of Council for the purpose of public recreation. There is a further reserve purpose of soil conservation over the same area, which is managed directly by the Crown. Major earthworks are required for the construction of the proposed bypass road within the reserve which has the potential to disrupt natural land formations and geological conditions. It may also cause unacceptable soil erosion and modification to the natural water courses throughout the site. The management of the additional run off caused by the bypass road formation has also not been adequately addressed by the proponents. The construction of a bypass road for private purposes is not consistent with either reserve purpose and is therefore not acceptable to Council. Consequently, it is Council’s understanding that consent from the Minister would be required for these works, upon provision of advice from both Council and the Crown.

The works are also inconsistent with the provisions of consent to works under the Native Title Act, so the proponent would need to obtain advice as to whether there is a mechanism to allow the works to be done in accordance with that Act. It would seem that the only way for the works to be authorised under the Act would be for the proponent to negotiate an ILUA with the relevant Native Title claimants.

Council does not believe that the proponent has adequately addressed the previous questions raised by the Department of Planning and Environment regarding issues surrounding the private bypass road through Crown Reserve for Public Recreation.

Furthermore, Council is aware that there remain unresolved issues associated with landownership agreements via potential alternative routes. This situation whereby the proponent has been unable to negotiate agreement is not sufficient reason for the Devil's Elbow option to be considered by the proponent to be the *preferred* route. The fact of that inability to secure those land agreements does not translate to the Devil's Elbow being the most suitable route.

2. Road Infrastructure

Council remains of the opinion that manoeuvring the lengthy blade elements along the existing roadways can only be achieved with significant modification to intersections, other geometric constraints and of course, further vegetation removal along the way (which has not been appropriately addressed in the biodiversity assessment). These physical impacts will then create potential environmental, cultural and visual related impacts specifically along Barry Road and Morrisons's Gap Road. The result will be that the character of these roads will be completely and irreversibly altered from an idyllic tourist mountain drive to an industrial (tunnel-like, in parts) concrete road. Council considers this to be unacceptable.

The proposed infrastructure works along Morrisons Gap Road in particular will likely result in ongoing maintenance and liability risks to Council. There is the potential for disruptive and dangerous "catastrophic" pavement failures and Council is not willing to take ownership and management of assets such as the proposed five (5) metre high (in parts) retaining walls on Morrisons Gap Road. Council therefore, is not willing to give consent for any suggested infrastructure works to Morrisons Gap Road or Barry Road by way of a Section 138 Permit under the Roads Act 1993.

3. Biodiversity Impacts

Council is seriously concerned with the proximity of the development to the high biodiversity values of the adjoining Ben Hall's Gap Nature Reserve and Crawney Pass National Park. The significance of this means that the ability of the proponent to mitigate blade strike which is already a significant challenge, is exacerbated given the high levels of species diversity and densities; and the physical difficulty to apply appropriately sized buffers to turbines as a consequence of existing landform constraints.

The proponent's inability to mitigate this issue goes to the crux of the failure of this development – the unsuitability of the site for the type of development proposed.

Council is of the view that the proponent's Biodiversity Assessment Report (BDAR) focuses predominately on biodiversity impacts **within** the development site but fails to adequately assess the impact of wildlife movements between the development site and the adjoining Ben Hall's Gap Nature Reserve which is physically separated by only a farm fence.

Many of the issues raised by the NSW Biodiversity Conservation Division and Council appear to have been addressed in an updated Biodiversity Development Assessment Report by the proponent, however Council remains of the view that aspects of the proposal will continue to have a significant impact on Biodiversity, as follows:

Buffer distances

The proponent has indicated that it will reduce the impact on the National Park by stating that "An appropriate buffer will be maintained to National Park estate where practicable" (Page 53, Amendment Report).

Provision of an *appropriate* buffer **only** where *practicable* provides no confidence that biodiversity will be protected or respected and is unacceptable taking into account the broad range of species in

the vicinity. Such a buffer will not provide any protection for fauna and in some cases, the turbines or associated site works are proposed to be located only metres from the adjoining National Park.

Habitat displacement

The potential remains for displacement of home ranges and the sterilisation of suitable habitat through fauna avoiding the turbines and thereby disrupting movement patterns. This means that the breeding patterns and ability to breed of some species will be adversely affected. The proponent's BDAR does not appear to sufficiently mitigate or offset these impacts.

Bird and Bat Adaptive Management Plan

It has been suggested by the proponent that a comprehensive Bird and Bat Adaptive Management Plan (BBAMP) will not be required prior to final determination of the project. Council considers it to be essential that full details of trigger points and mitigation measures must be addressed in a BBAMP **prior** to final determination of the project and not post consent.

Understanding the full implications of the development on these species and the ability or otherwise of the proponent to address these impacts to support conservation of these species is too late if left to after the issue of consent.

Land Clearing

Council maintains that there is an inconsistent approach to the level of assessment and approval processes for land clearing within the development footprint. The clearing approvals and permits issued to date for agricultural activities have not been subject to the same level of rigorous assessment required for the current wind farm application. The proposed development has therefore benefitted from the recent clearing in terms of site layout and selection of turbine locations. The impact on habitat for threatened species or woodland listed as an endangered ecological community has already occurred as a result of the previous activities. Council is therefore sympathetic to community opponents calling for those areas already cleared to be subject to mitigation and environmental offsets.

4. Community Enhancement Fund

Council is aware of how significant and divisive this project has been and the damage it has caused to the social cohesion of the Nundle and Hanging Rock communities. For this reason, it will be vitally important to Council that regardless of the decision made by the Independent Planning Commission, significant measures are enacted to help restore community pride to the Nundle and Hanging Rock communities.

The proponent has proposed that a Community Enhancement Fund (CEF) be established to benefit the local residents of Hanging Rock, Nundle and communities close to the project. The fund charter now proposes a contribution from the operator of \$3,000 per wind turbine per year installed and operating. A \$10,000 administration allocation to Council (first year) and \$5,000 in following years is proposed and the proponent has also offered a \$100,000.00 pre-operation fund for local projects.

The contribution would be subject to CPI and continue over the 25- year life of the project. Upon full operation of 55 turbines in the Tamworth LGA this could make available a maximum total of \$165,000.00 per year to eligible projects and activities in the Nundle and Hanging Rock region.

Council maintains that there appears to an inherent complexity to the operation and administration of the CEF, which means that at the least, the administration allocation will be seriously inadequate. However, should the project be approved, Council requests the determination require the proponent

to enter into a voluntary planning agreement with Council to ensure the most appropriate funding arrangement is available to benefit the community.

5. Visual Impact

Council has received representation from a number of community members expressing concern regarding the visual impact the development will have on the local community. Council maintains that as a minimum, the proponent be required to consider clustering/reduction of turbines to achieve a reduction in the visual dominance of the towers on the ridgeline.

6. Bushfire Prone Land

Council continues to hold considerable concerns regarding bushfire risk. In summary, Council is not satisfied that:

- The steep terrain which will result in fast moving bushfires will be able to be controlled;
- There will be certainty that safe access for firefighting crews (ground and aerial) will be available and can be maintained.

These concerns are supported by Rural Fire Service (RFS) advice that the turbines would be treated like any other potential hazard and therefore would by necessity be avoided, resulting in greater risk to the sensitive natural environment below.

The proponent's own documentation also indicates that due to the proximity of the turbines to Ben Halls Gap Nature Reserve (BHGNR) boundary "*Aircraft may not be able to manoeuvre with the same freedom available now*" (*Aviation Projects - Page 5*).

Currently there is relatively unrestricted air space available for aerial water bombers. The presence of turbines will impact on operational aerial movements during a bushfire and thereby potentially lead to irreversible damage to highly significant, already vulnerable, flora and fauna which will become inaccessible as a result of the turbines.

The proponent's proposed solution to develop procedures with the National Parks and Wildlife Service and RFS will not remove the risk and is therefore not an acceptable solution.

7. Site Suitability

As previously noted, the crux of Council's objection to this development can be summarised by Council's contention that the subject site is not suitable for a large industrial scale wind farm operation. The unsuitable nature of the site for the type of development proposed is clearly evidenced by the following:

- Significant access constraints to enable delivery of wind turbine components resulting in irreversible damage to flora as well as a heritage listed site;
- Inappropriate and in places extreme infrastructure upgrades required to Morrisons Gap Road, necessitating further vegetation removal and resulting in ongoing maintenance costs and liability risks for Council;
- The proximity of the wind turbines immediately adjacent to the Ben Hall's Gap Nature Reserve and Crawney Pass National Park potentially resulting in displacement of species' home ranges, disruption to movement patterns and the sterilisation of habitat;
- An unknown/unquantified impact on the Bird and Bat population in the absence of a Bird and Bat Adaptive Management Plan; and
- The potential loss of highly significant vegetation in the event of a bushfire with aerial water bombing opportunities constrained due to the presence of turbines and the steep terrain.
- The negative and unquantified impacts of clearing that will be required for the transmission lines.

The matters raised in this letter have highlighted the significant constraints associated with the proposed location of the Hills of Gold Wind Farm, none more so than the extremely challenging haulage route.

In addressing the overall suitability of the site, Council has also considered whether or not the proposed development has satisfactorily achieved the *Objects* of the NSW Environmental Planning and Assessment Act 1979. The following *Objects* are considered to be particularly relevant to the proposed development:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows—

- (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,*
- (f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*

Due to the inability of the proponent to satisfactorily address the majority of the many issues raised in public submissions, including Council's initial letter of objection. Council is unable to be satisfied that the proposal is consistent with the above Objects of the Act. The above Objects are particularly pertinent to the type of development that the proponent purports to develop, i.e., a renewable energy project that would enhance the natural environment by assisting in the phasing out/replacement of fossil fuels.

Unfortunately, the inappropriate nature of the site selected has instead rendered the objective of a development that enhances "*ecologically sustainable development*", promotes the "*social and economic welfare*" of the Nundle and Hanging Rock communities and promotes "*the sustainable management of built and cultural heritage*" totally unachievable. This would likely not be the result if the development had been proposed on a site suitable for the large industrial-scale windfarm proposed.

8. Public Interest

Council has received representation from both supporters and opponents of this project, many of whom live in the Nundle / Hanging Rock community. Council is of the view that this proposal is of significant public interest, with the outcome likely to impact the broader public interest.

It could be argued that this project will have some level of positive economic benefit to the community by creating jobs, attracting tourists and being supported by an annual community enhancement fund and confidential financial neighbour agreements. However, due to the number of concerns, issues, and risks raised that remain unresolved and are in fact unable to be resolved, it is difficult for Council to hold this view.

The Nundle / Hanging Rock locality is in many ways an idyllic natural environment enhanced by a small, proud community. Council considers that this very existence is under threat due to the potential of a lengthy construction phase, resident “winners” and “losers”, environmental degradation and increased bushfire risk.

Conclusion

Council’s conclusion is that this development will have an overwhelming negative impact on the communities of Nundle and Hanging Rock and that the overall cost to the broader Tamworth Region from an environmental, financial and social perspective outweighs the potential renewable energy benefits. The development is therefore not in the public interest.

Whilst Tamworth Regional Council’s Blueprint 100 vision and the New England North West Regional Plan acknowledge that renewable energy projects will be supported, both documents emphasise that this is subject to the development being situated in *appropriate* locations. The fact that the proponent has made and been required by Agencies to make so many modifications to the proposal is clear evidence that the development will not work on the selected site.

In Council’s opinion the number of changes and effort expended on trying to make this project acceptable on this site has meant wasted time, resources and undue strain on the small communities, with significant associated stress and social division.

Acknowledging the precautionary principle and the inconsistency with the Objects of the Environmental Planning and Assessment Act, the selected site is unsuitable, the development proposed unachievable on the site and the application should be refused on that basis.

Tamworth Regional Council maintains its objection to the proposed development based on the serious environmental, engineering, risk and social concerns identified in this letter and its initial letter objecting to the proposal dated 10 February 2022.

Should you require any clarification in relation to the matters raised above, please contact Manager, Development Sam Lobsey on the number below.

Yours faithfully,



Gina Vereker

Director – Liveable Communities

Tamworth Regional Council

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25 May 2022