



Clare Sykes	Duncan Marshall AM	Juliet Grant	15 February 2024
Commissioner (Panel Chair)	Commissioner	Commissioner	
Independent Planning Commission of NSW	Independent Planning Commission of NSW	Independent Planning Commission of NSW	

Dear Commissioners

Letter to IPC – Supplementary written submission

The purpose of this submission is to supplement the submission dated 12 February 2024 (**Submission**) of Hills of Gold Windfarm Pty Ltd (**Proponent** or **we**) in support of an application for development consent for the proposed Hills of Gold Windfarm (SSD 9679) (**Project**). The application is currently before the Independent Planning Commission (**IPC**) for final determination.

The Proponent wishes to clarify the following points raised by Tamworth Regional Council (**Council**) in its submission to the IPC dated 12 February 2024 (**Council Submission**). Specifically:

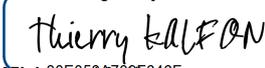
- (a) Council raised concerns regarding the legality of the recommended conditions B32 and B33, by reference to an email from Maddocks to the Panel Chair dated 25 January 2024 (**Maddocks' Legal Opinion**, see Council Submission, page 43). Maddocks' Legal Opinion asserts that recommended conditions B32 and B33 are *ultra vires* because they lack finality and certainty.
- (b) By way of response, please find attached letter from the Proponent's legal advisors, Herbert Smith Freehills, dated 15 February 2024 (**HSF's Legal Opinion**). HSF's Legal Opinion explains that:
 - (1) the correct test as to validity of conditions is set out in *Kindimindi*; that is, 'a consent will only fail for uncertainty where it leaves open the possibility of a **significantly different development**' (at [28]);
 - (2) contrary to Maddocks' view, no reasonable person in the shoes of the decision-maker could consider that imposing recommended conditions B32 and/or B33 would result in a significantly different development; and
 - (3) incorporating a provision for the Planning Secretary to agree 'otherwise' to road upgrades is common, especially in the context of SSD projects.
- (c) Council also alleged that significant elements of the "last mile" transport route remain unresolved. The Proponent would like to clarify that:
 - (1) The transport route has been comprehensively assessed, as set out in the Traffic and Transport Assessment Addendum Two, included as Appendix H to the Amendment Report 2, and other supporting documents.
 - (2) Further questions of the IPC that were raised during the public meeting have been addressed in Annexure 1 of our Submission.
 - (3) The Department of Planning, Housing and Industry (**DPHI or the Department**) (formerly the Department of Planning and Environment) noted in its Assessment Report that the proposed upgrades within the Council's area are detailed in both the EIS and supporting documentation (at para [169]):

[T]he Applicant proposes a number of road upgrades in Tamworth LGA to facilitate the movement of heavy vehicles to site. These road upgrades are outlined in detail in the EIS and supporting documentation. Road upgrades would be required to be undertaken to the satisfaction of the relevant road authority.

- (4) The table of proposed road upgrades (now incorporated as Table 7.2 of the Department's *Recommended Conditions of Consent*) was provided by the Proponent to Council a number of times seeking Council's input, including via email on 27 March 2023 and 14 April 2023. Meetings have also been held with Council to discuss the proposed road upgrades for the Project. To date, Council has not responded to the Proponent on these matters. If the Council considers that specific elements are missing from Table 7.2 then the Proponent would be happy to consider these.
- (5) Details of all elements to the "last mile" transport route have been provided to Council for consultation on numerous occasions during the course of development of this Project. A detailed register of consultation between Council and the Proponent can be made available to the IPC upon request.

Please contact us if you would like any further information.

Yours sincerely


Thierry Kallon

Managing Director Australia & South East Asia

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Letter from Herbert Smith Freehills dated 15 February 2024

Please find attached.