MAYORAL COLUMN: June 2024

DA versus VPA

In simple terms a Voluntary Planning Agreement (VPA) is an agreement that becomes a condition of a DA. The Development Application (DA) for Winterbourne Wind, if given consent, will contain conditions that will not allow it to proceed if not adhered to. The VPA as a condition will be "policed" by the Department of Planning through the life of any project. This is a 19 page agreement, most of which is legal definitions and jargon, with only a few key points for consideration – the amount of money to be paid, what it can be spent on, and how it will be administered.

The path to the VPA being put out for public comment (submission) has taken close in 18 months of negotiation, legal advice and compliance with legislation. For a submission to be considered by Council it must comply with the Planning Agreement's Practice Note, a 26 page document that sets out "*the statutory frame work for planning agreements*".

At this point it is pertinent to point out that signing this VPA does not imply support to the project. There are many examples of Councils not supporting projects yet signing a VPA for the community benefit. Many of the 80 submissions Walcha Council has received confuse the role of the VPA versus DA. The reason for writing this is to clarify why some submissions, while their context may be valid, do not have a part to play in the VPA.

To recap, this project has been identified as a State Significant Development (SSD). This means that the Planning Department of the State Government determine the suitability of this project to be granted its DA. The legislation and reasoning behind this is well entrenched and covers projects that have an impact that goes outside the boundaries of councils. The VPA sits as a negotiated section of the DA, it does not replace or override any part of it. It basically informs the Community Benefit Fund (CBF) section. Any submission reference that relates to requirements of a DA to be negotiated as part of the VPA is not relevant to the process.

There are many "players" in this field that have landed us where we are. Obviously the rules around SSD and VPAs, the Australian Energy Market Operator (AEMO) ISP, our political support of any world accord, Renewable Energy Zones (REZ) etc all culminated in the position that is held for the renewable transition. When the AEMO Integrated System Plan (ISP) was released it was widely accepted that the whole renewable energy transition "was coming like a freight train". The REZ was legislated in 2021 by the then Coalition Government, led strongly by the Nationals. The whole transition garnered bi-partisan support both at State and Federal level and now sits as the foundation that dozens of rural Councils struggle with. In all negotiations with Government Departments I see a desire for consultation, but an understanding that the pathway for the renewables transition has been set and is unlikely to change.

So many of the submissions Council received confused the role of the VPA with that of the DA. The key part of the VPA that Council has negotiated is the CBF, or the cash payment to

a council to "provide a public benefit". Its purpose is not to cover road or other infrastructure damage, it does not compensate for extra traffic impacts, its sole purpose is to provide what is termed as "public benefit". How this is divvied up is the subject of the Draft Renewable Energy Community Benefit Policy, which was out on display concurrently with the VPA. Despite very little feedback, this Draft Policy's aim is to be far more adaptable to community input and governs how the CBF is distributed through the community. It must be remembered that under the current funding option for Winterbourne Wind and a projected operating time of 25-30 years this represents the term of about 7 Councils. This gives the community many opportunities to shape the way these funds are allocated.

The request that Council obtain half or all of this CBF upfront is nothing new. We have attempted to negotiate that with no "give" on behalf of the proponent. Currently I have not been able to find a successful negotiation like this except in small scale solar, generally where the total value is less than $1M.

Another issue that was raised in submissions was ownership of the project and how payment can be enforced. Firstly, ownership. It is nothing new that these projects go through many owners. I guess that's business and certainly not something that the VPA can address. I'm not sure under a free economy who can address that. Coupled with this are the statements around how do we confirm that the payment will be forthcoming for the life of the project. As a condition of the DA this is enforced by the Planning Department.

There seems to be a feeling from the submissions that some people believe that not signing or delaying the signing of the VPA will put pressure on the project pathway. Nothing could be further from the truth. This project will continue its path through the Department and onto the Independent Planning Commission (IPC) and then to determination with the VPA being little more than a speed bump. The opportunity to stop this project lies in the submissions to the Environment Impact Statement or taking an opportunity to present your case to the IPC. This opportunity will be well advertised when this project hits that point.

Whether we agree with global warming, CO2 levels or the most sustainable way to generate energy is not the question here. The decision of the best way forward is by legislation, out of your Council's control. What is not out of Council's responsibility is to leverage opportunities when they present themselves. We require the VPA to produce the best possible negotiated outcome for the community. Will it be perfect, will it foresee all future outcomes, will it please everyone? The answer to these questions and maybe others is probably no. We have endeavoured to make it the best it can be for the long term and whatever Councillors resolve as the outcome I can guarantee you it will be the best outcome for all the community.

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