

27 November 2023

The Secretary
NSW Department of Planning and Environment
4 Parramatta Square, 12 Darcy Street
PARRAMATTA NSW 2150

VIA EMAIL

Dear Secretary

Attention: Clay Preshaw, Nicole Brewer and Natasha Homsey

**STATE SIGNIFICANT DEVELOPMENT APPLICATION SSD – 8950984
BURRENDONG WIND FARM – PROPOSED WIND FARM WITH UP TO 70
WIND TURBINES AND ASSOCIATED INFRASTRUCTURE**

We are consultant town planners and represent landowners predominantly located to the north - east of the Burrendong Wind Farm Proposal and the Worlds End Ridgeline, who are also members of 'Burrendong Save our Surroundings' (SOS) (our clients).

Our clients are the owners of a variety of land holdings (jointly and severally, our clients properties), many of which are improved with dwellings, in the areas of Worlds End, Yarrabin and Hargraves, NSW.

We are instructed that there are 28 parcels of land owned by SOS members located in relatively close proximity to the north-east of the subject site that will have significantly changed and adversely impacted views to the currently natural Worlds End Ridgeline due to proposed 250m high industrial turbine Nos 49, 50, 53, 54, 55, 56, 57, 58, 59 60 and 61 - the focus of our objection.

Burrendong SOS consists of over 60 members (and growing), with membership comprising of local landowners and residents of the Yarrabin, Worlds End and Hargraves areas. Although not covered in detail by this submission, a further 8 parcels of land with associated dwellings (in addition to the 28 parcels mentioned above) owned by Burrendong SOS members will be adversely impacted by additional inappropriately located turbines proposed for the Burrendong Wind Farm.

Submissions aimed at reducing impacts in respect of the above 28 parcels properties will be the subject to individual landowner submissions.

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Nature and Purpose of this Document

This document is a submission by way of objection to SSD 8950984 (the State Significant Development Application) relating to the proposed Burrendong Windfarm (located on the subject site).

We are instructed that The Minister for Planning and Public Spaces or the Independent Planning Commission (IPC) are the alternate Consent Authorities.

The site is located in part in the Dubbo Regional Council area and in part in the Mid-Western Regional Council area. Our clients are located within the Mid-Western Regional Council area.

Background and Introduction

The NSW Department of Planning and Environment (DPE) is currently considering a development application in respect of the subject site.

The development application seeks consent for what is described in the exhibition details and the Environmental Impact Statement (EIS) as development of a wind farm with up to 70 wind turbines and associated infrastructure.

The photomontage under depicts the typical visual impact of the development in relatively close proximity to the Worlds End Ridgeline, Worlds End, in terms of our clients representatives property.



Figure 1: Photomontage from Client Representatives Dwelling U8-1 looking south-west towards Worlds End Ridgeline - Produced by Epuron dated March 2022

The relative spatial locations of the proposed wind turbines (Nos 49, 50, 53-61) in the context of east and north-eastern dwellings in the Yarrabin, Worlds End and Hargraves areas are shown in the sketch below (courtesy of client representative). Yellow highlighting shows the Wind Turbines closest to our clients respective properties that run parallel to the Worlds End Ridgeline. Non-involved dwelling locations, including dwellings missing from impact assessments (not exhaustive) are also indicated as per the map key below.

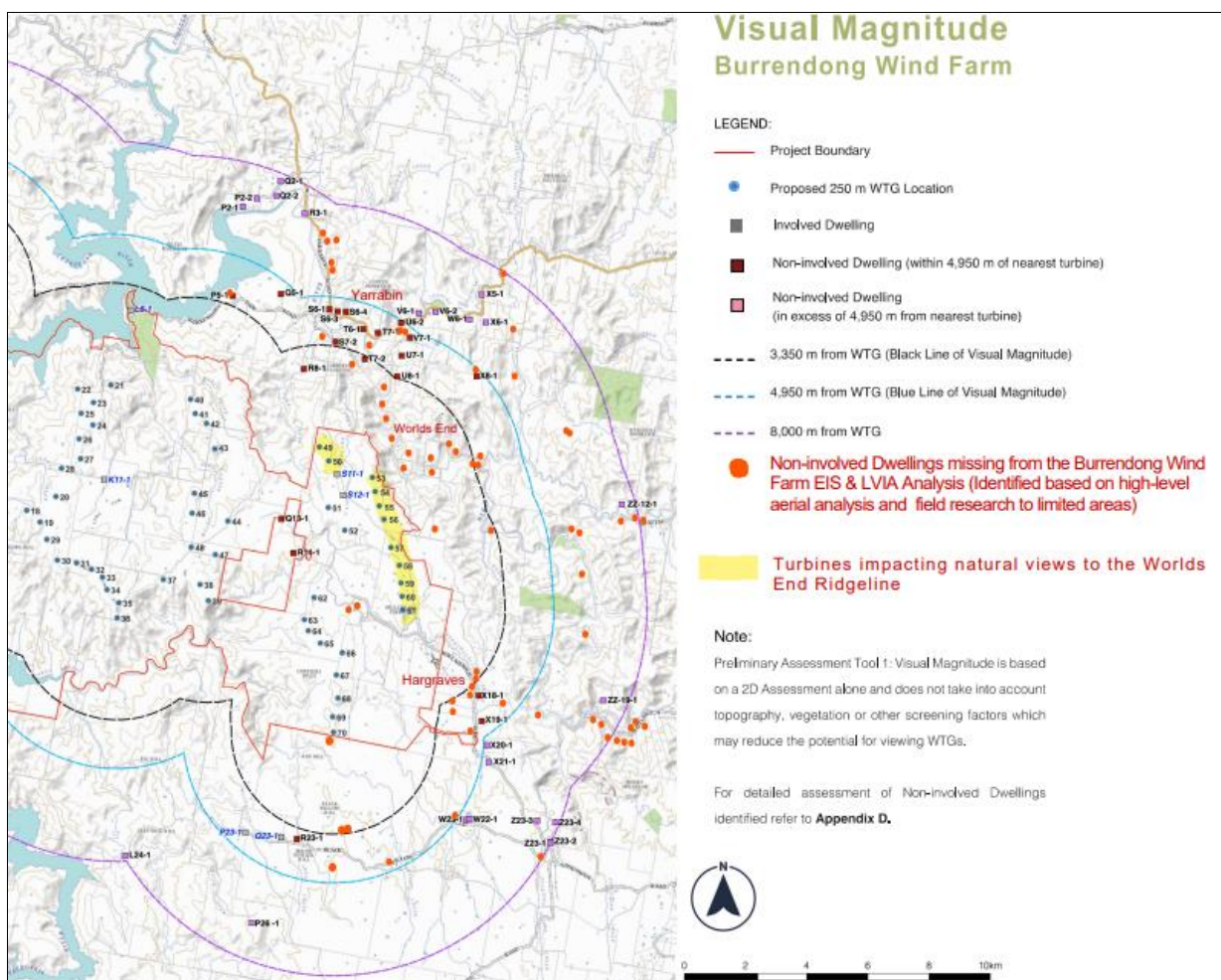


Figure 2: Burrendong Wind Farm LVIA P38 Map. Yellow mark-up identifying Wind Turbine Nos 49, 50 and 53 to 61 along the Worlds End Ridgeline and in close proximity to clients landholdings. Orange 'dots' identify non-associated dwellings not provided in impact assessments.

As mentioned above, this submission constitutes an objection to the development application as lodged.

Site Location and Description

The project is located on the Western Plains in the Dubbo Regional Council and Mid-Western Regional Council Local Government Areas (LGAs). The site itself is approximately 33km west of Mudgee Town Centre in the towns of Yarragal, Yarrabin, Hargraves, Mumbil, and Dripstone.



Figure 3: View to towards the Project Site and the Worlds End Ridgeline (illustrating the High Scenic Quality of LCU-Worlds End Valley), taken from the north-east of the Ridgeline (and project site) looking West from adjacent high country at No 430 Worlds End Road, Worlds End. The Meroo River and non-involved dwellings are situated along the base of this ridgeline with the dwellings designed and orientated to enjoy unobstructed views to this high quality natural landscape feature.

Annexure 1 provides a locality sketch.

Annexure 2 provides a location plan showing the spatial relationship between the subject project site and our clients' properties.

Annexure 3 provides an extract from Project Layout Plan from Moir Landscape Architects.

The Development Proposal

The development application proposes the following, as described at s1.2 [at P3], of an EIS by Ecological Australia Pty Limited on behalf of Burrendong Wind Farm Pty Limited, (a subsidiary of Ark Energy Corporation Pty Limited which in turn is a subsidiary of Korea Zinc Company Limited), dated 7 November 2023:

The Project consists of the installation, operation, maintenance, and decommissioning of up to seventy (70) Wind Turbine Generators (WTGs), electrical infrastructure, ancillary infrastructure, public road upgrades and access tracks and temporary facilities. The Project is designed to accommodate WTGs up to 250 m in height, with a nameplate capacity (or maximum effect) of approximately 6-7 MW or greater. On these terms, and subject to Development Consent and market changes, the Project is estimated to have an installed generating capacity of approximately 400-500 MW. The Project would connect to the existing TransGrid 330 kV transmission line to the west of the Project Site, on the western side of Lake Burrendong.

Nature of Submission

In preparing this submission we have had regard to the following legislation, regulations and other statutory instruments and documents:

- *Environmental Planning and Assessment Act 1979 (EPAA);*
- *Environmental Planning and Assessment Regulation 2020 (EPAR);*
- *Planning Secretary's Environmental Assessment Requirements (SEARS) for SSD-8950984 dated 30/09/22, pursuant to Section 4.12(8) of EPAA and Part 8 of EPAR;*
- *NSW Local Government Act 1993;*
- *NSW Local Government Act (Manufactured Home Estates, Caravan Parks Camping Grounds, and Moveable Dwellings) Regulation 2021 (LG Regs);*
- *Biodiversity Conservation Act 2016;*
- *Fisheries Management Act 1994;*
- *State Environmental Planning Policy (Planning Systems) 2021;*
- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Code SEPP);*
- *NSW Wind Energy Guidelines 2016 (WEG);*
- *NSW Wind Energy: Visual Assessment Bulletin 2016 (the Bulletin);*
- *Undertaking Engagement Guidelines for State Significant Projects 2022 (UEGSSP);*
- *Cumulative Impact Assessment Guidelines for State Significant Projects 2022 (CIAGSSP);*
- *Social Impact Assessment Guideline for State Significant Projects 2023 (SIAGSSP);*
- *Technical Supplement: Social Impact Assessment Guideline for State Significant Projects 2003 (TS.SIAGSSP);*
- *Central West and Orana Regional Plan 2041 (CWORP);*
- *Mid-Western Local Strategic Planning Statement (MWLSPS);*
- *Mid-Western Regional Local Environmental Plan 2012 (MWRLEP);*
- *Mid-Western Regional Development Control Plan 2013 (MWRDCP);*
- *Dubbo Local Strategic Planning Statement (DLSPS);*
- *Dubbo Regional Local Environmental Plan 2022 (DRLEP);*
- *Dubbo Regional Development Control Plan 2013 (DRDCP).*

We have reviewed the development application and the various reports, plans and other documents accompanying or otherwise associated with the application.

Having considered the subject and its surrounds and the details of the SSD application currently before DPE, we are of the opinion that the proposal, in its present form, does not warrant support. In addition, we are of the view that significant amendments would need to be made to the development proposal before DPE was in a position to determine the development application by way of approval.

This submission details the various ways the proposed development lacks finesse and reasonable consideration for the amenity of surrounding properties and, in particular, our clients' properties. The latter would, in our opinion, be greatly

impacted—and adversely so—by the proposed development if it were to be carried out in its present form.

The objection contained in this submission is based on various grounds detailed in the following sections.

Please note this is not an exhaustive analysis and we reserve our Clients right to add to the overall submission following the 13 December 2023 deadline, as per the direction from DPE to my Client, Burrendong SOS.

The limited 28 day submission timeframe provided to review the high volume of information contained within the EIS and compliance with associated legislation, guidelines and policies, released in the lead up to Christmas and during harvest season is not an equitable nor reasonable exhibition timeframe. An extended 90 day exhibition period should be provided.

DPE Definition of Dwelling Inconsistent with Statutory Definition

In an assessment or evaluation of a development application for SSD, the DPE in a 'whole of Government' assessment report to the Minister or the IPC, consider the following pursuant to s4.15 of the EPAA:

- the provisions of any existing or draft environmental planning instrument, planning agreement, prescribed matters in the EPAR;
- the likely impacts of the development, including the environmental impacts on both the natural and built environments, and the social and economic impacts in the locality;
- the suitability of the site for the development;
- any submissions made in accordance with the EPAA; and
- the public interest, including the objects of the EPAA and the principles of ecologically sustainable development.

In this section of our submission it is relevant to note that the Officers from DPE, for the purposes of assessment of the development application, have strayed outside of the matters for evaluation. In specific terms DPE advocates use of a definition of dwelling that is inconsistent with any statutory definition that we are aware of.

In this regard a definition of 'dwelling' that is inconsistent with relevant statutory provisions has been advocated. This has the effect of excluding from consideration in the assessment of the application, impacts created (visual and otherwise) in relation to dwellings that are purported to be unauthorised or otherwise unlawful. With respect, we are of the view that this assessment methodology is impermissible as a matter of law.

The definition contained in the Standard Instrument provides that:

dwelling means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

The DPE and the Proponent have utilised a different definition of dwelling that is inconsistent with the statutory definition and which provides as follows:

The Department can confirm that the following in relation to dwellings (sic):

1. *Dwelling means:*
 - a. *A dwelling (as defined under the Standard Instrument) is a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.*
 - b. *Noting that it does not include moveable dwellings which are separately defined in the Standard Instrument as:*
 - (a) *any tent, or any caravan or other van or other portable device (whether on wheels or not), used for human habitation, or*
 - (b) *a manufactured home, or*
 - (c) *any conveyance, structure or thing of a class or description prescribed by the regulations (under the Local Government Act 1993) for the purposes of this definition.*
2. *A dwelling where Development consent for a dwelling has been granted, but the dwelling is yet to be constructed*
3. *A dwelling where Development consent for a dwelling has been lodged, but the consent is yet to be granted*
4. *But where the above does not apply, consideration needs to be given to dwelling entitlements for these landholdings (see 3)*

In excluding dwellings that may or may not be unlawful, the DPE would be making a jurisdictional error as, whether such dwellings are unlawful is irrelevant to the assessment tasks of DPE. Any unlawful work is a matter for another day in another jurisdiction. It is beyond power for DPE to unilaterally determine as to whether a particular dwelling is unlawful in any case. This is a matter for a Court in another jurisdiction.

We have been unable to obtain the original source for what appears to be a definition contrived to exclude from consideration dwellings that would be consistent with the statutory definition in the Standard Instrument, but suffice to say the definition was obtained in an email from DPE (dated 14 November 2023) and the Proponent has informed Burrendong SOS that they have produced an EIS in accordance with DPE advice.

In our view, adoption of a definition for dwelling that is at variance with the Standard Instrument definition is impermissible. Authority for this proposition can be found in the judgements referred to in the following paragraphs.

In the matter of *Jonah v Pittwater Council* [2006] NSWLEC 99 at [28], [29], [30], [31], [32] and [33], His Honour Preston CJ held that unlawful activity is not a matter that is to be taken into account when determining the issues on the merits of a development. Refer at [28] below:

- 28 In *District Council of Murrumbidgee v M & B Farmer Nominees Pty Ltd* (2000) 107 LGERA 346, an owner of land applied to the relevant council for development consent to construct a dam and a loading pad. The owner had then almost completed construction of the dam. If the dam was development as defined by the relevant planning statute, the Development Act 1993 (SA), the owner had failed to obtain consent before commencing construction and had therefore acted in breach of the statute. DeBelle J, with whom Doyle CJ and Nyland J of a Full Court of the South Australian Supreme Court agreed, noted at 348 [4]:

"However, the fact of the unlawful activity is not a relevant factor when determining the issues in this appeal: see *Kouflidis and Jenquin Pty Ltd v Corporation of the City of Salisbury* (1982) 29 SASR 321; 49 LGERA17."

The reader is invited to consider also, the following decisions in support of the above contentions: *Ku-ring-gai Council v Bunnings Properties Pty Ltd* [2019] NSWCA 28; *Chami v Lane Cove Council* [2015] NSWLEC 1003.

We note that the provisions of a policy or subordinate part of the statute, such as a Development Control Plan (DCP) may not derogate from the statute itself. In this regard refer to the weight to be given to a DCP in the matter of *Zhang v Canterbury City Council* [2001] NSWCA 167.

As is clear from the *Environmental Planning and Assessment Act* (EPAA) itself, and the decided cases, a DCP does not have the same status or weight as an Environmental Planning Instrument (EPI). What I'll refer to as a 'Policy' adopted by the Department, **has even less weight** than a DCP in the hierarchy of plan making provided in the EPAA. This is because policies are not even recognised in s4.15 EPAA. It is not for the DPE to 'make up' definitions in what appears on the face of it, to suit the proponent avoiding its own responsibilities in providing the consent authority un-biased, fairly based reporting.

DPE's definition of a dwelling (which is inconsistent with the statutory definition) has resulted in Ark Energy's exclusion of approximately 38 (or more) non-involved dwellings located within 4,950m of proposed turbine/s (with approximately 21 of these located within 3,350m of proposed turbine/s) from the Burrendong Wind Farm EIS impact assessments. Dwellings not referred to include for example 100+ year old operational farmhouses. Please refer to Figure 2 map that indicates the general location of these non-involved dwellings (orange dots), determined by our Client Representative based on high-level aerial analysis, limited field research and community consultation.

In our view the definition of dwelling adopted by DPE doesn't properly respond to the provisions of the relevant legislation (the EPAA), as this proposal is obviously unsympathetic to its surroundings, and causes consequent impacts to visual amenity (and other impacts) for neighbours and in all likelihood from the public domain. The DPE appears to have adopted a definition of dwelling that is impermissible as a matter of law.

The proposed built form of the wind turbines will detract from the high scenic quality natural landscape values of the Worlds End Ridgeline (when viewed from the east and north-east) and will overpower and dominate the surrounding non-urban environment that predominantly comprises of lifestyle properties, creating structures that will not integrate into the local landform. The height, spinning movement and aviation lighting of the turbines located by design on ridge features, will unreasonably impact on views and vistas of not just our clients but likely other surrounding and nearby occupiers. The industrial structures would 'protrude' up to 250m above the landform and would be inimical to the desirable character of this bucolic locale. The proposal by its industrial nature cannot be integrated into the surrounding environment in a meaningful way. This is unacceptable and inconsistent with the manner in which this matter must be assessed. To consider the application otherwise would have the effect of undermining the regime of planning controls in NSW.

Energy Yields and Co2 Savings

We contend that the estimated installed generating capacity for the Burrendong Wind Farm proposal is in fact misleading and a gross over estimation.

This project is likely to have an installed running capacity of only 30% or less than that stated in the EIS, based on the less than optimal wind resources available in the area (which is not mapped with the proposed turbine overlay as required) and considering the fact that for example, the Mt Emerald Wind Farm (West of Cairns , QLD) has post construction operating data indicating that it only runs at 18.1% generating capacity, that is only when the wind blows (information provided by Rainforest Reserves Australia <https://www.rainforestreserves.org.au/>).

The EIS should be amended, along with properly documented Co2 savings. These are also likely to be 30% or less than that which is stated (information provided by Rainforest Reserves Australia: <https://www.rainforestreserves.org.au/>).

DPE Definition of a Dwelling Contradicts the Assessment Requirements of the SEARS and WEG

The SEARS for the subject SSD-8950984 dated 30/09/22 'General Requirements' states that the EIS must meet the minimum form and content requirements as prescribed by Part 8, Division 5 of the EPAR and must have regard to the State Significant Development Guidelines and the NSW Wind Energy Framework and:

Notwithstanding the key issues specified below, the EIS must include an environmental risk assessment to identify the potential environmental impacts associated with the development.

In particular, the EIS must include:

- *high-quality site plans and maps at an adequate scale with dimensions showing:*
.....
 - *existing infrastructure, land use, and environmental features in the vicinity of the development, including nearby residences and approved residential developments or subdivisions within 5 km of a proposed turbine, and any other existing, approved or proposed wind farms in the region; and*
- *a detailed evaluation of the merits of the project as a whole having regard to:*
.....
 - *the suitability of the site with respect to potential land use conflicts with existing and future surrounding land uses, including rural villages, rural dwellings, subdivisions, land of high scenic value, conservation areas (including National Parks, State Parks and Reserves), strategic agricultural land,*

DPE's definition of a dwelling does not align with SEARS requirements. The EIS fails to identify and assess impacts on all nearby residences as required by the SEARS. Non-involved dwellings missing from relevant EIS maps have been mapped at Figure 2 of this submission and require detailed impact assessments. Additionally, Piambong Wind Farm's proposed turbine layout was available to the Proponent yet cumulative impacts have not been assessed as required by the SEARS.

The NSW Wind Energy Guidelines at P14 states:

As often occurs for other SSD projects, the Department and the consent authority will consider the following in the assessment and determination of wind energy projects:

- existing development in the vicinity of the wind energy project, including dwellings;*
- approved development within the vicinity of the wind energy project, including dwellings, that are approved but yet to be constructed or are under construction;*
- development within the vicinity of a wind energy project for which a development application has been lodged, including with councils, but a determination is yet to be made; and*
- existing dwelling entitlements on land within the vicinity of the wind energy project.*

Point 1 above is inconsistent with the DPE definition of a dwelling.

We note that the EIS fails to identify and assess impacts on all existing development in the vicinity of the Burrendong Wind Farm proposal, including dwellings as required to be assessed by WEG.

Non-involved dwellings missing from the EIS have been mapped at Figure 2 of this submission and require impact assessments.

DPE Definition of a Dwelling not Supported by LEC Judgement on that which Constitutes a Dwelling

In our view a 'Moveable Dwelling' can contain 'the essential components of a domicile for the exclusive use of the occupant, being: sleeping, bathroom and cooking facilities' and as such require dwelling impact assessments via the EIS. In this regard, the EIS currently fails to identify and assess impacts on all dwellings as required by the EPAA, SEARS and WEG.

This position is supported in *Platform Architects Pty Ltd V Northern Beaches Council* (2020) NSWLEC 185.

Notably:

40. *The definitions of these terms in the WLEP provide:*

.....

Dwelling means a room or a suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

41. *.....*

42. *..... The concept of a dwelling has been the subject of considerable debate over many years. As a general proposition a dwelling must contain the essential components of a domicile for the exclusive use of the occupant, being: sleeping; bathroom and cooking facilities. Each development will be required to be considered on its own facts to determine whether it meets such requirements.....*

Non-compliance with Zone Objectives under Local EPI's

250m high industrial turbines (that spin with lights and potential nuisance noise) are proposed to tower above and significantly alter natural views to the Worlds End Ridgeline. Turbine Nos 49, 50 and 53 to 61 are proposed on *RU4 Primary Production Small Lots* zoned land, yet are surrounded immediately to the east and west by *C3 Environmental Management* zoned Land under MWRLEP.

We submit that the proposal is inconsistent with the following objective of the RU4 Primary Production Small Lots zone MWRLEP:

- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

We submit that the proposal is inconsistent the adjoining MWRLEP C3 Environmental Management Zone MWRLEP, notably the special natural aesthetic values of the Worlds End Ridgeline and the following objectives:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To manage development within the water supply catchment lands of Windamere and Burrendong Dams, to conserve and enhance the district's water resources.*

A large proportion of turbines and associated infrastructure are also proposed on natural bushland, Koala and Greater Glider habitat etc that is zoned C3 Environmental Management under MWRLEP and DRLEP. We submit that this proposal is also inconsistent with the following objectives of the DRLEP C3 Zone:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To recognise the environmental significance of certain areas.*
- *To minimise the adverse effect of development on the salinity levels of certain land.*

The Burrendong Wind Farm Landscape Visual Impact Assessment (LVIA) Fails to meet Assessment Requirements

This section outlines a myriad of assessment failures identified via a high-level review of the LVIA. Our Client requests that DPE commission an independent Burrendong Wind Farm LVIA, considering the multiple (but not exhaustive) irreconcilable failures of the current LVIA as highlighted in the following subheadings.

Dwelling Entitlement Identification - Failure

The SEARs issued for the project requires the EIS and associated LVIA to include detailed consideration of potential visual impacts on local residences, including properties with dwelling entitlements.

We submit that the LVIA fails to identify a significant number of properties with dwelling entitlements within 5km of the subject site. This failure has precluded a fair detailed assessment of impacts and identification of mitigation measures to reduce or eliminate visual impacts (e.g. via appropriate siting and design of turbines to mitigate cumulative impacts).

P62 of the LVIA states:

the expression 'dwelling entitlement' has been interpreted as the potential for a landowner to obtain development approval for a dwelling consistent with the applicable environmental planning instrument.

Please be advised that the following legislation permits 'dwelling entitlements' for our Client properties and other properties surrounding the subject site:

- The *Codes SEPP*, Part 2; Division 1; Subdivision 16E – Farm Stay Accommodation, permits up to six (6) dwellings (dwelling entitlements) as exempt development on properties zoned RU1 Primary Production that are 15ha and over. In this regard numerous properties are missing from the LVIA Appendix F dwelling entitlements map and associated assessment.
- The *Local Government Act* (Manufactured Home Estates, Caravan Parks, Camping Grounds, and Moveable Dwellings) Regulation 2021 (LG Regs) provides dwelling entitlements of up to 2 moveable dwellings on a property as exempt development. In this regard numerous properties are missing from the LVIA dwelling entitlements map and associated assessment.
- The MWRLEP permits dwellings on properties 100ha and over on land zoned RU1 Primary Production. In this regard several 100ha and over properties are missing from the LVIA dwelling entitlements map and associated impact assessment (including but not limited to Properties No 237 Worlds End Road, Worlds End; No 445 Merrendee Road, Yarrabin and No 167 Rockford Lane, Yarrabin).

The failure to identify a large number of properties with dwelling entitlements in the LVIA (Attachment F) has resulted in a flawed visual impact assessment, notably for our Client properties that are predominantly located to the east and north-east of the Worlds End Ridgeline within Landscape Character Unit (LCU) 07: Worlds End and LCU 02: Yarrabin / Hargraves Farmlands (LVIA P40 LCU map).

Client properties, with dwelling entitlements and dwellings as close as 1.2km to 2km from proposed 250m high turbines, have been incorrectly excluded from a detailed impact assessment.

Turbines, proposed to be situated on elevated land will significantly impact the skyline, towering above the Worlds End Ridgeline and reaching over 1/2km into the air to their tip above the ground level of Client properties situated in the north-eastern valley below.

Consideration of the LVIA 'Zone of Visual Influence' map (Appendix F, Figure F.2) indicates that a significant number of non-involved property occupants with dwelling entitlements and dwellings within the LCU07 'Worlds End Valley' will be able to view 1-12 turbines. This lower number of visible turbines is reflective of the fact that the Worlds End Ridgeline acts as an effective high scenic quality visual landscape barrier, blocking south-western views from non-involved properties to the majority of turbines proposed on the project site. In this regard, the LVIA assessment fails to consider a key visual impact mitigation option which is to delete turbine Nos 49, 50 and 53 to 61, as a viable tool to eliminate and/or significantly reduce visual impacts from the highest density of residential development concentrated to the north-east of the subject site.

P62 of the LVIA with regard to Dwelling Entitlements states:

The assessment concluded that there are opportunities to position a dwelling on the majority of lots while ensuring minimal visibility of the Project. As the details of the

Project are publicly available, a dwelling can be sited and orientated with well-informed consideration of the potential visual impacts resulting from the Project.

We assert the above conclusion that future dwellings be sited and orientated away from an appreciation of views to the Worlds End Ridgeline is unrealistic. Views to the Worlds End Ridgeline for residents and landowners of Yarrabin and Worlds End are iconic and greatly appreciated by the local residents our clients representative has spoken to.

Existing dwellings in immediate proximity to the north-east of this ridgeline have been designed and orientated to appreciate the high scenic quality of the Worlds End Ridgeline, which is intrinsically linked to the enjoyment and lifestyle values for properties in the area. So is the enjoyment of properties due to their quiet isolation, natural outlooks and the dark night sky for star gazing. Visual impact mitigation measures should involve the removal of turbine Nos 49, 50 and 53 to 61 from the proposal, to eliminate and or significantly reduce visual impacts and lighting from the highest density of surrounding non-involved properties with dwellings and dwelling entitlements located to the east and north-east of the project site.

Based on the above considerations and the fact that there will be significant visual impacts created by this development for existing residents we feel that this ground of objection alone, dictates that the development must fail.

Notification and Community Engagement - Failure

It is evident from a GIPA request my Client submitted to Mid-Western Regional Council that the Proponent initially contacted landowners now associated with the proposal via Council issued letters to their primary postal addresses (paid for by the Proponent). This courtesy was not extended to non-associated landowners immediately surrounding the project site, to notify them at the outset of the project.

Initially, the proponent placed a notice in the local newspaper/s and *may* have undertaken a letter box drop in an effort to notify some non-associated landowners surrounding the proposal. This initial notification effort was significantly inadequate, as many landowners don't receive local newspaper deliveries, lack letterboxes at their property gates, and or may not live on their own properties full time. Many landowners remained unaware of the proposal for years.

January 2021 - Due to inadequate project notification from the outset, the majority of non-associated landowners immediately surrounding the project were not aware of the proposal nor afforded an opportunity to contribute to MoirLA's 'Visual Impact Survey' (January 2021), that the EIS and LVIA state has been used to inform the projects preliminary siting and design.

November 2021 - 10 turbines (Nos 53 to 61) were subsequently incorporated into the map along the Worlds End Ridgeline and closest to the highest density of houses via a proponent's newsletter update (viewable on the Proponents project website), without written articulation in the project update that **these turbines had been added to the project**. Impacted landowners were not directly notified of these additional turbines that were proposed closer to their homes, nor were they afforded an opportunity to make comment into 'Visual Impact Survey' in this regard, to inform the preliminary siting and design of the project as required by the Bulletin. We note the abovementioned Visual Impact Survey had closed 10 months prior.

23 August 2022 - When our Client, Burrendong SOS happened upon the addition of these turbines, the preliminary siting and design mitigation option to delete them from the proposal was raised with Andrew Wilson, Project Manager at Ark Energy by our Client at an openly recorded meeting held on 23 August 2023, to which Andrew Wilson replied:

“we are in the business of building turbines, not deleting turbines”.

This statement is contrary to the spirit of the *Bulletin* and *Undertaking Engagement Guidelines* for State Significant Projects to engage and work with the local community to minimise impacts on them.

Decisions to delete or relocate turbines of greatest impact from the proposal to minimise adverse impacts on the highest density of surrounding residents to the east, north-east have not occurred during the preliminary scoping, siting and design phase and has instead been left to DPE which occurs several years after project initiation and at the very end of the assessment process. This has had adverse impacts for our Clients who have suffered uncertainty, anxiety and stress, as to whether they have a future on their land and multi-generational properties, should the project proceed based on its current design.

To be clear, non-associated landowners were prevented from contributing to the projects preliminary siting and design, in non-compliance with the requirements of the *Bulletin* and the *Undertaking Engagement Guidelines* for State Significant Projects.

Landscape Character Unit Scenic Quality Ratings - Failure

An example of this is the LVIA Landscape Character Unit Scenic Quality Rating of “moderate” provided for LCU07- Worlds End, which should rather be rated “high” (P88):

Overview of Potential Visual Impact:

The Worlds End LCU is a small area characterised by the valley floor associated with the Meroo River to the east of the Project Site. The LCU has a number of isolated weekenders and dwellings accessed via a locked gate on Worlds End Road. The Project is likely to be visible to varying degrees to the west of the LCU.”

Landscape Scenic Integrity:

Land within the LCU is generally accessible to landowners with access via a locked gate on Worlds End Road. The LCU is characterised by the valley floor with steep, vegetated hills to the west generally containing views. Dwellings are generally located along the valley floor associated with the Meroo River, with dense riparian vegetation limiting views.

Key Landscape Feature:

The key landscape features of this LCU are the steep vegetated hills to the west of the Meroo River (associated with Canning Sugarloaf). Views to the Project will be limited by the steep topography and vegetation typical of the LCU.

LCU07 is characterised by the high scenic quality natural landscape feature - the Worlds End Ridgeline, not “the valley floor” as suggested by MoirLA.

The Worlds End Ridgeline is zoned C3 Environmental Management under MWRLEP. The proposal does not meet the following objectives of this zone:

- *To protect, manage and restore areas with special aesthetic values.*

- To provide for a limited range of development that does not have an adverse effect on those values.

250m high industrial turbine Nos 49, 50 and 53 to 61 proposed to sit along and parallel to the Worlds End Ridgeline, will tower above the ridgeline and over 1/2km into the air (to their 'tips') above the relative level of the majority of dwellings located in the eastern valley below.

Dwellings in proximity to the Meroo River have been designed and orientated to enjoy significantly unobstructed views to the majestic Worlds End Ridgeline. A recommendation to screen views to this ridgeline and the sky is neither reasonable nor a viable visual impact mitigation measure for the majority of dwellings located within LCU07.

There are permanent residents occupying dwellings within LCU07. Whether a dwelling is utilised permanently or otherwise and the existence of a gate on rural land, is not in our opinion a matter for consideration in determining potential visual impacts.

Landowners have informed MoirLA that the key landscape feature of LCU07 is known locally as the "Worlds End Ridgeline". Moir LA appears to refuse to acknowledge community feedback in this regard.

The Worlds End Ridgeline provides an opportunity to protect and screen (eliminating or significantly reducing) visual impacts from the project for the majority of non-associated dwellings located to the north-east of the project site - If turbine Nos 49, 50 and 53 to 61 were deleted from the project plan. These turbines probably should have been deleted from the project at the preliminary siting and design stage of the project. However, non-associated landowners were prevented from providing input at the preliminary siting and design stage and via the Visual Landscape Survey due to ineffective project notification of surrounding landowners and the fact that turbine Nos 53-61 were incorporated onto the project map later in the process precluding preliminary community engagement as required by the *Bulletin and Engagement Guidelines* for SSD.

Public Viewpoint Analysis - Failure

The EIS does not meet the Bulletin requirements because it fails to identify and analyse the worst-case public viewpoint scenario location for LCU07 – Worlds End. In the opinion of my Clients, the worst-case location for analysis, is marked with a pink dot on the below map - to the east of Worlds End Ridgeline and the Meroo River, and affords a High Visual Influence Zone (VIZ) rating of 1 for LCU07.

Even though the proponent consultant visited the pink dot location in March 2023, it selected an alternate public viewpoint (BWF15) with a lower visual impact and assigned a low VIZ rating of 3 for LCU07- Worlds End. The description of BWF15 fails to identify the Worlds End Ridgeline that is highly valued by surrounding landowners and residents. This deviates from the worst case scenario analysis required by the Bulletin.

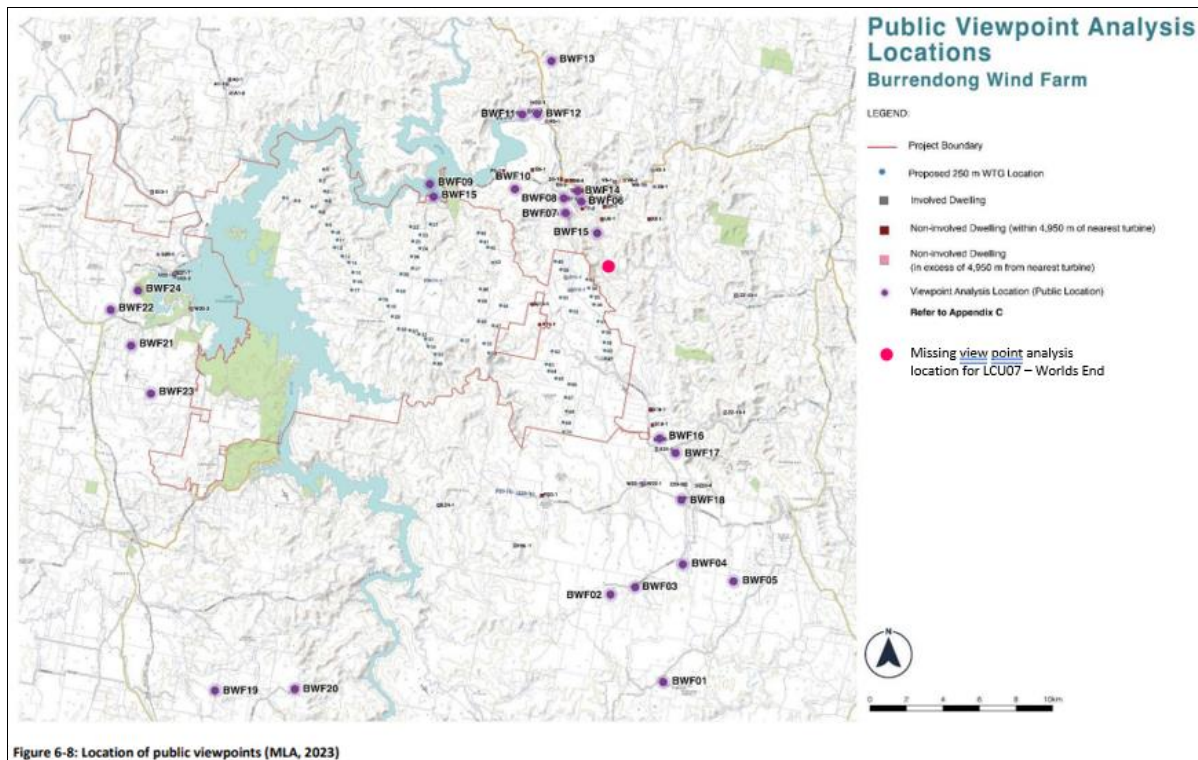


Figure 4: Burrendong Wind Farm EIS – Public Viewpoint Analysis Locations, Burrendong Wind Farm (P118). Marked Up by identifying missing public viewpoint locations.

Non-associated Dwelling Identification and Assessment - Failure

As discussed earlier in this submission, 38 or more dwellings have been identified as missing from the LVIA maps and visual assessments (See Figure 2 of this submission). This is a clear failure of the LVIA.

Of the few non-associated dwellings that have been identified and assessed in the LVIA, a review has identified many instances where such dwelling assessments appear incorrect.

For example, but not limited to – Dwelling U8-1:

- is 3.35km from closest turbine No 53, **not** 3.41km as stated in the LVIA. 100m micro siting opportunity could reduce this distance further.
 - Dwellings located a distance of 3.35km or less from a turbine, pushes them below the “black line”, with the *Bulletin* identifying them as has having higher visual impact and requiring greater focus on siting and design and mitigation measures.
 - 100m micro siting could in fact result in 4 turbines being located within 3.35km of Dwelling U8-1, not “Nil” as stated by the EIS.
- will see turbines in 3 x 60° sectors (including 1 x 60° sector from the Piambong Wind Farm proposal). Not 1 x 60° sector as stated.
 - Dwellings with turbines in 3 x 60° sectors or more require greater assessment of impacts and consideration of mitigation measures in accordance with the *Bulletin*.
- has been designed, orientated and elevated to enjoy unobstructed views to the Worlds End Ridgeline (considered a high scenic quality natural landscape feature with its aesthetic values protected by MWLEP - C3 Environmental Management Zone objectives).

- 250m high industrial scale turbines are proposed along the Worlds End Ridgeline and will tower over 1/2km into the air above the existing ground level of dwelling U8-1 located in the valley below. These turbines will convert a 100% natural outlook with no man-made structures into an 'industrial' landscape, with lighting and an 'urban' appearance, that will detract significantly from the natural still serenity of the ridgeline during the day, and enjoyment of the dark sky for star gazing at night.
- The LVIA suggests the turbines will not alter the scenic integrity of the landscape. In our opinion this is obviously simply incorrect.
- The elevated position of dwelling U8-1 and associated entertainment veranda, precludes screen planting as a viable visual impact mitigation option. It appears the "low visual impact rating" for dwelling U8-1 is an attempt to obfuscate mitigation responsibilities of the proponent. This dwelling has a "high visual impact rating".
- In support of the above point, dwelling U7-1 to the north of dwelling U8-1 has a greater setback to turbines than dwelling U8-1, yet was assessed as having a "moderate visual impact rating" (logic says it should be high) with an unreasonable recommendation to mitigate visual impacts by screening views from the dwelling to the ridgeline with tree planting. It is questionable why dwelling U7-1 was given a "moderate visual impact rating", yet dwelling U8-1 that is closer and has unobstructed views to the turbines was given a "low visual impact rating". Is it only because there was an opportunity to recommend vegetation screening as a suggested visual mitigation measure for U7-1?
- The photomontage provided presents an unrecognisable view from dwelling U8-1's entertaining veranda off the main living area. Turbines are also depicted as white against a white sky making them almost invisible in the image. This is at the very least a mischievous representation.

Shadow Flicker Assessment – Failure

An assessment of shadow flicker has not been undertaken for all non-associated dwellings and properties with dwelling entitlements. Existing dwellings and properties with dwelling entitlements located immediately to the north-east of the Worlds End Ridgeline, appear likely to experience shadow flicker above the acceptable standard based on the EIS P129 Shadow Flicker Diagram.

Worlds End Road, to the eastern side of the Meroo River also was not assessed for Shadow Flicker. This is a dirt access road and is already challenging to navigate without the addition of shadow flicker which will be a safety hazard for the Worlds End community.

Cumulative Visual Impact Assessment – Failure

P450 of the EIS provides what we consider to be a false and misleading statement with regards to the Piambong Wind Farm Proposal:

The LVIA (MLA, 2023; Appendix F) notes that the Aquila Wind Farm and Piambong Wind Farm have both been proposed in proximity to the Project and are in the early planning stages and have not provided a project layout to assess potential visual impacts. As such, a detailed assessment of cumulative visual impacts from the two projects will be required as part of the Aquila and Piambong Wind Farm submissions, not this EIS.

The Piambong Wind Farm was proposed by Vestas in 2020 and is available on NSW DPE's major projects portal, including the turbine layout map and 60° sector visual analysis's for surrounding non-associated dwellings.

The LVIA only includes an assessment of views from some non-associated dwellings towards the Burrendong Wind Farm turbines, but it fails to take into account 60° sector views from dwellings towards the Piambong Wind Farm proposal via the 60° sector visual analysis at Appendix D of the LVIA Report.

A number of dwellings located in Yarrabin and Worlds End will be visually surrounded in 3 or more 60° sectors by turbines due to cumulative visual impacts of these two wind farms and the Uungula Wind Farm. This further supports an argument to mitigate cumulative visual impacts on the highest density of dwellings located to the north-east of the project site via the removal of turbine Nos 49, 50 and 53 to 61 from the Worlds End Ridgeline.

The Burrendong Wind Farm EIS and associated LVIA must be updated as it does not meet the cumulative impact assessment requirements of the SEARS, the Bulletin, nor the Cumulative Impact Assessment Guidelines for State Significant Projects, 2022 requirements.

Photomontage – Failure

Photomontages included in the LVIA do not meet DPE's basic quality standards and are of extremely poor quality. The majority of photomontages provided in the LVIA cannot be relied on as representative views to help inform proposed visual impacts.

At the most basic level, turbines should not be depicted as white against a white sky rendering them almost invisible in a number of the photomontages (refer to Dwelling U8-1 example).

Photomontages must be improved and re-submitted.

Bush Asset Protection Zone - Failure

Non-associated dwellings surrounding the project site are located on 'Bush Fire Prone Land' with limited and difficult evacuation routes. Asset protection zones are required around dwellings so that residents have an opportunity to shelter in place in the event of a bushfire.

Any recommendation for landscaping around dwellings as a visual impact mitigation measure, must be accompanied by a Bushfire Assessment Report, to ensure maximum protection of human life and assets in the event of a bushfire, in accordance with the NSW Rural Fires Act.

The EIS currently recommends planting of vegetation in close proximity to non-associated dwellings to screen views to turbines from dwellings. Bushfire Assessment Reports have not been provided to accompany these associated development recommendations and this aspect of the proposed development has not been referred to the NSW RFS for assessment purposes.

Nuisance Noise, Echo Effect and Failures of the Noise and Vibration Impact Assessment (NVIA)

Our Clients reserve the right to pursue a class action if DPE approves construction of the Burrendong Wind Farm and the resultant turbines create nuisance noise that interferes with the use and enjoyment of their land in a way that is both substantial and unreasonable, including interfering with their basic right to a 'good night's sleep'. Refer to the recent judgment in *Uren v Bald Hills Wind Farm Pty Ltd* (2022) VSC 145 (*Uren*).

The NVIA fails to identify and assess impacts on **all** non-associated receivers, with some unidentified receivers (dwellings) likely located in areas that will exceed the 35dBA noise level threshold (refer to Figure 2 that maps unidentified non-associated dwellings).

The NVIA fails to take into account the significant echo effect synonymous with Worlds End Valley. This local phenomena is reflected in the name "Cooees Mountain" which is located immediately to the north of the Worlds End Ridgeline. The rocky granite landscape enhances this echo effect, bouncing sound and vibrations off the ridgeline and adjacent hills. This echo effect is likely to enhance and amplify nuisance noise impacts for non-associated dwellings located within Worlds End Valley to the north-east of the Worlds End Ridgeline.

Our Clients do not consent to adverse nuisance noise emanating from wind turbines located too close to their dwellings and Worlds End Valley. Landowners currently enjoy a quite isolated natural environment with minimal man-made noise, traffic or otherwise. The proposal represents a significant departure from the current noise levels enjoyed by non-associated receivers located immediately to the north-east of the subject site.

Given MDA's involvement in *Uren* in which the Court found that MDA's noise assessment reports were non-complaint and plainly flawed, Burrendong SOS members have little confidence that appropriate acoustic reporting will be provided by MDA.

Our Clients requests that DPE undertakes pre-construction independent baseline background on-site sound level measurements from non-associated receivers and conduct and independent review of *Marshal Day Acoustics Report* (MDA).

If the DA is approved, the following conditions of consent are requested:

- All baseline noise monitoring and modelling data must be made publicly available in usable detailed analysis format;
- An independent consultant must monitor and assess post construction noise compliance. (This aligns with independent consultant recommendations of the Australian Energy Infrastructure Commissioner).

Bisphenol A (BPA)

Despite the issue raised as a concern by community, the EIS fails to address the fact that BPA is a highly toxic synthetic organic compound used in the epoxy resins of turbine blades. Epoxy resins contain 30-40% BPA and turbine blades are the largest global consumer of epoxy resins.

BPA is an endocrine disrupter that has been linked to about 80 diseases including cancers and reproductive disorders. It can be lethal for young children. In 2012, the World Health Organization warned about the potentially carcinogenic properties of endocrine disrupters and concluded that they pose a global threat to public health. The European Food Safety Authority has massively reduced by 1,000 times the dietary intake of BPA to one hundred millionth of a gram per kilogram of body weight per day. All this is public record information.

The leading edges of turbine blades shed fine BPA dust as blade edges erode over time. According to Senator Gerard Rennick – Federal QLD, each blade sheds a minimum of 0.2 to 2.5 grams of BPA in dust per year. This dust is spread wide and far by wind. If one gram of BPA gets into dam waters (such as Burrendong Dam), 10 million litres of water are rendered unusable. Over the life of a turbine, this equates to pollution of half a trillion litres of water per turbine. BPA dust from turbines will leach into soils, waterways and blow into the drinking water tanks of surrounding landowners. This is a toxic timebomb. Our clients do not consent BPA toxicity resulting from approval of the Burrendong Wind Farm.

If this project is approved, a condition of consent **must require** that turbine blades incorporating epoxy resins are BPA free. Ongoing toxicity monitoring of neighbouring landowners water tanks for BPA and river systems and the Burrendong Dam must also be required.

Use of BPA in the epoxy resins of turbine blades would not comply with the objectives of the C3 Environmental Management Zone under MWRLEP, upon which zone many turbines are proposed, that is:

- To manage development within the water supply catchment lands of Windamere and Burrendong Dams, to conserve and enhance the district's water resources."

Without putting too fine point on it, there are significant impacts that the DPE appears to have failed to recognise as regards this scheme.

Conclusion

In assessing the impact of a development proposal upon a neighbouring property or properties, what was said by Roseth SC in *Pafburn v North Sydney Council* [2005] NSWLEC 444 (16 August 2005), at [19]-[24], is, in our respectful submission, helpful in this case:

- 19 Several judgments of this Court have dealt with the principles to be applied to the assessment of impacts on neighbouring properties. *Tenacity Consulting v Warringah* [2004] NSWLEC 140 dealt with the assessment of views loss; *Parsonage v Ku-ring-gai Council* [2004] NSWLEC 347 dealt with the assessment of overshadowing; while *Meriton v Sydney City Council* [2004] NSWLEC 313 and *Super Studio v Waverley Council* [2004] NSWLEC 91 dealt with the assessment of overlooking.
- 20 Five common themes run through the above principles. **The first theme** is that change in impact may be as important as the magnitude of impact. ...
- 21 **The second theme** is that in assessing an impact, one should balance the magnitude of the impact with the necessity and reasonableness of the proposal that creates it. ...
- 22 **The third theme** is that in assessing an impact one should take into consideration the vulnerability of the property receiving the impact. ...

- 23 **The fourth theme** is that the skill with which a proposal has been designed is relevant to the assessments of its impacts. Even a small impact should be avoided if a more skilful design can reduce or eliminate it.
- 24 **The fifth theme** is that an impact that arises from a proposal that fails to comply with planning controls is much harder to justify than one that arises from a complying proposal. People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime. *[Original emphasis]*

In the case of the present development proposal we observe:

- the magnitude of impact upon the amenity, use and enjoyment by our clients of their current properties and dwellings (predominantly located to the north-east of the subject site) is certainly not insignificant, in that:
 - the view impacts that are in issue for our clients comprise in many cases proximate south western view cones;
 - the views are whole views with the natural landscape currently being largely untouched and considered high scenic quality;
 - the views and quite peaceful serenity currently enjoyed by our clients, are an integral part of their lifestyle in a largely undisturbed natural environment;
 - dwellings have been designed and orientated to enjoy the high scenic quality and aesthetic values of the eastern escarpment of the World End Ridgeline, which is predominantly zoned C3 Environmental Management under MWRLEP, with objectives:
 - To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values
 - To provide for a limited range of development that does not have an adverse effect on those values.....;
- viewlines predominantly stop at the Worlds End Ridgeline from dwellings located in Worlds End Valley, in proximity to the Meroo River and located immediately to the east and north-east of the Worlds End Ridgeline.
- the proponent could provide an amended scheme, which involves better design to ensure that the majority of dwellings (that is, the highest density of dwellings concentrated to the east and north-east of the subject site) have visual impacts eliminated, or in some instances significantly reduced.
- the lack of attention in the design of the development proposal as regards the impacts of the proposed development on our clients' current dwellings is relevant to the assessments of those impacts, such that even a small impact should be avoided if a more skilful design can reduce or eliminate it;
- the fact that the proposal is completely inconsistent with zone objectives is a matter for assessment by DPE.

In short, our clients have, as Roseth SC pointed out in *Pafbarn*, a legitimate expectation that the development to take place on the subject site 'will comply with the planning regime' based on proper and not misdirected criteria.

In our opinion, the proposal the subject of the development application, requires modification so as to render it acceptable and consistent with the current broader planning controls including the local controls and objectives.

Given the extent of the planning issues generated by the current proposal, our view is the application should be refused.

In the event that DPE is not minded to refuse consent to the development application, but on the contrary approves the application in its present form, being a course of action which, in our respectful submission, would be inappropriate both as a matter of planning principle and law, then we respectfully submit that turbine Nos 49, 50, 53, 54, 55, 56, 57, 58, 59, 60 and 61 be deleted from the proposal and that appropriately worded conditions are imposed on any consent that issues, in order to reduce the adverse impacts that would otherwise arise for our clients from the carrying out of the proposed development.

Our clients may well choose to make their own submissions to DPE as well and otherwise reserve all of their rights and entitlements.

Yours faithfully,

TURNBULL PLANNING INTERNATIONAL PTY LIMITED



Pierre Le Bas

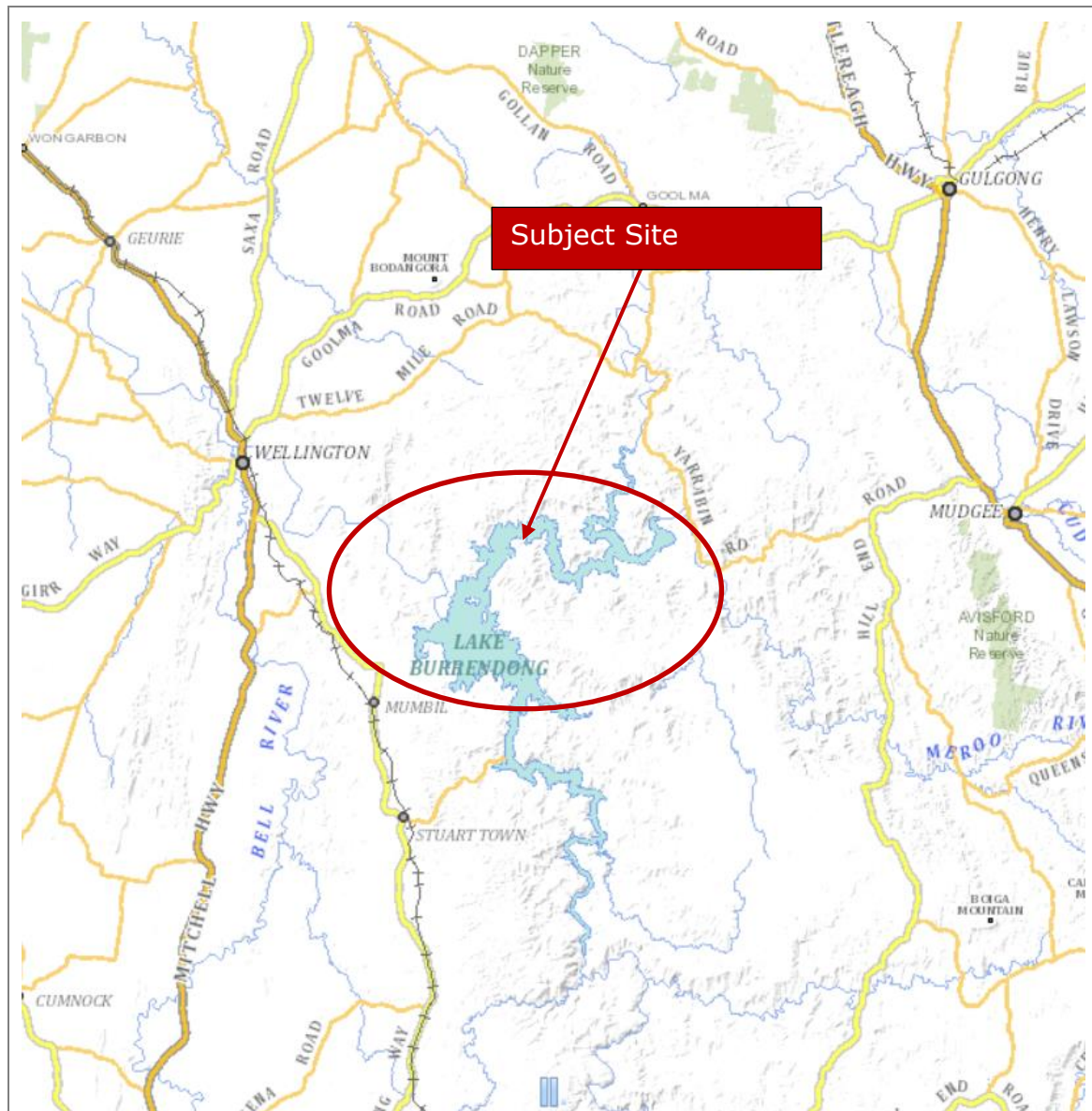
BA (Geog) (UNE) LLB (Hons1) Grad Cert Leg P (UTS) MTCP (Syd)

Director & Legal Counsel

pierre@turnbullplanning.com.au

Turnbull Planning International Pty Ltd - Objection Submission3_ped.bur1m_TGPLBAP_121223

ANNEXURE 1



LOCALITY PLAN
EXTRACT FROM SIX MAPS



TOWN PLANNERS
Unit 5 1070 Barrenjoey Road
PALM BEACH NSW 2108
P > 02 9979 4922
F > 02 9979 4811
E > info@turnbullplanning.com.au
W > www.turnbullplanning.com.au
ABN 12 061 186 409

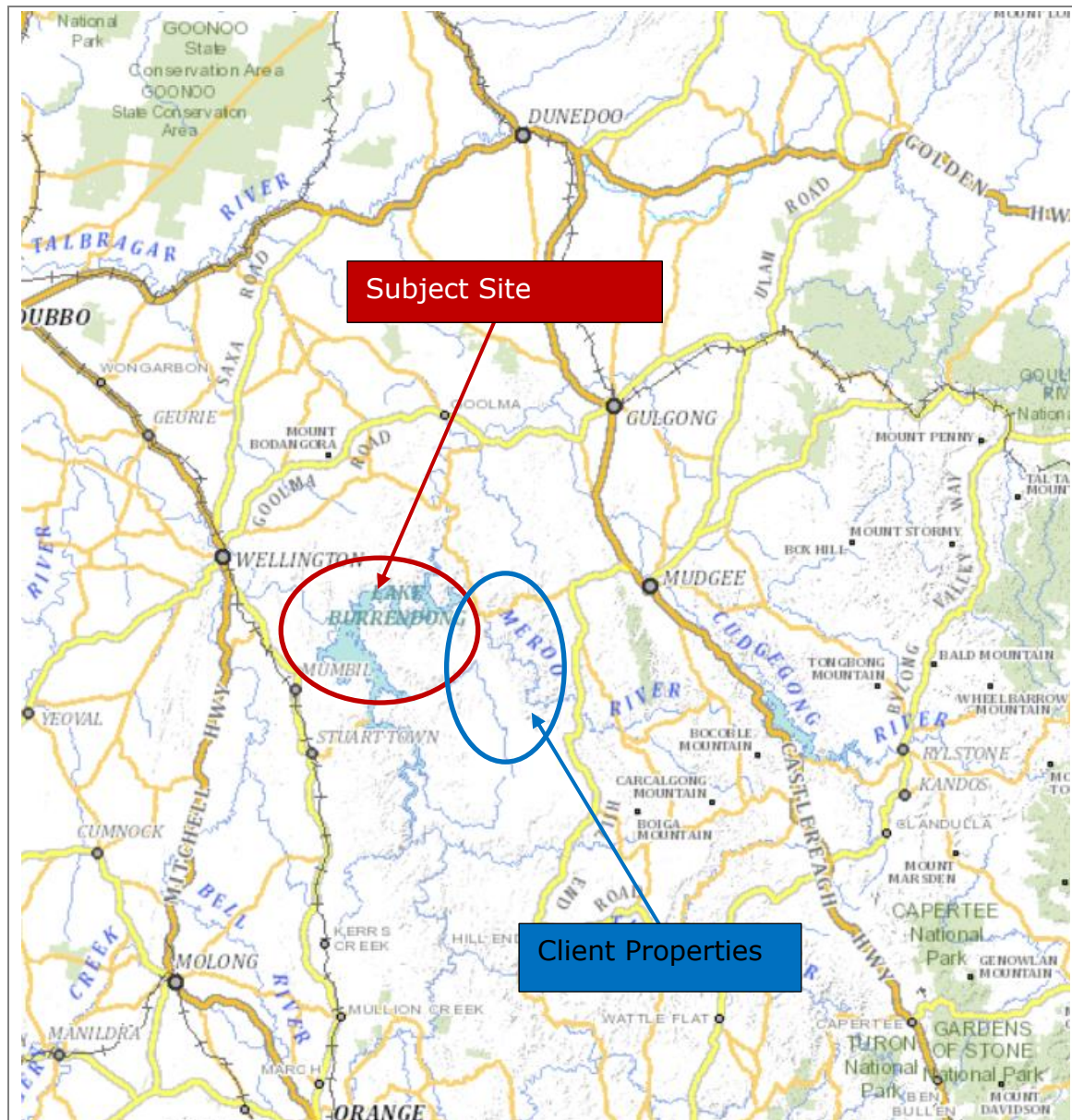
Nov 2023
Ref: ped.bur1m

DRAWN: TG

Annexure 1

Burrendong Wind
Farm Project

ANNEXURE 2



**PLAN SHOWING RELATIONSHIP BETWEEN SUBJECT AND OUR
CLIENTS PROPERTY**
EXTRACT FROM SIX MAPS



TOWN PLANNERS
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ABN 12 061 186 409

Nov 2023
Ref: ped.bur1m

DRAWN: TG

Annexure 2

Burrendong Wind
Farm Project

The Project Burrendong Wind Farm

LEGEND

- Project Boundary
- Proposed 250 m WTG Location
- Involved Dwelling
- Non-involved Dwelling (Within 4,950 m)
- Non-involved Dwelling (In excess of 4,950 m)
- Substation Location
- Main Road
- Minor Road
- National Park / Nature Reserve
- Preferred Overhead Transmission Line (Up to 330kV)
- Preferred Switch Yard Location
- Preferred Substation Location
- Alternative Overhead Transmission Line (Up to 330kV)
- Alternative Switch Yard Location
- Alternative Substation Location

PROJECT LAYOUT PLAN

EXTRACT FROM P16 BURRENDONG WIND FARM LVIA BY MOIR LANDSCAPE ARCHITECTURE, DATED 11.09.2023

<p>Turnbull PLANNING INTERNATIONAL PTY LIMITED</p>	<p>TOWN PLANNERS Unit 5 1070 Barrenjoey Road PALM BEACH NSW 2108</p> <p>P > 02 9979 4922 F > 02 9979 4811 E > info@turnbullplanning.com.au W > www.turnbullplanning.com.au ABN 12 061 186 409</p>	<p>Nov 2023 Ref: ped.bur1m</p>	<p>Annexure 3</p>
	<p>DRAWN: TG</p>	<p>Burrendong Wind Farm Project</p>	