

3 February 2017

Department of Planning & Environment
GPO Box 39
Sydney
New South Wales 2001

Dear Sir or Madam,

Jupiter Wind Farm – Development Application number SSD 13_6277

I am writing in relation to development application number SSD 13_6277 (“the Development Application”) for the construction of the Jupiter Wind Farm (“the proposed development”) by EPYC Pty Ltd on behalf of Jupiter Wind Farm Pty Ltd (“the proponent”). My property is located approximately five kilometres from the nearest proposed wind turbine.

Pursuant to section 79 of the *Environmental Planning and Assessment Act 1979* (NSW), I oppose the proposed Jupiter Wind Farm development for the reasons set out below.

1 Effect on community

Approximately five and a half years ago, my partner and I decided to purchase a block in Tarago. Our reasons for doing so included that we wanted to live in an area where community was important; where there was strong community spirit and where the community cared about one another. The effect that we have witnessed in the community since the proposal for the Development Application became publicised is that the Development Application is destroying that sense of community, and the community generally. The Environmental Impact Statement (“the EIS”) claims that there will be social and economic benefits from the wind farm (see page E.5 of the EIS). This claim is fanciful, and can in no way be supported based on the majority response of the Tarago and surrounding areas community, and from the effect that wind farms have had on other communities within Australia.

As could be clearly seen at the meeting in Tarago Community Hall on 7 December 2016, which members of the NSW Department of Planning & Environment (“the Department”) attended, the Development Application has created significant hostility in the community. It is creating a situation where on one side of the debate are those that will benefit financially from the Development and on the other side is those who will not benefit even though they will suffer the detriment of having a wind farm near to their properties (if approved). The Applicant claims that it has committed to establishing a voluntary Benefit Sharing Programme for all existing dwellings within 2km of wind turbine generators (see pages 6.3 and 7.23 of the EIS). This will not reduce the negative effect on the community – it will simply create a few more properties that are receiving compensation for the detriment that the Development Application, if approved, will have on the community as a whole, individual members of the community, and the environment. If the Development Application is approved, notwithstanding the alleged commitment to establishing a voluntary Benefit Sharing Programme, there will remain a large proportion of the community who will still suffer the negative consequences from the proposed development without obtaining compensation. If the Applicant is genuine about compensating members of the community for the losses suffered by them as a result of the approval of the Development Application or as a result of the operation of the proposed development, the Applicant should agree to:

- (a) Extend the Voluntary Benefit Sharing Scheme to any resident who suffers as a result of the wind farm; and
- (b) Compensate any member of the community who at any stage suffers any loss or damage for the actual loss or damage suffered, without limitation, as a result of the operation of a wind farm.

These two matters should also form the conditions of any development approval, if the Development Application is approved.

At page 6.28 of the EIS, the Applicant identifies the “Sydney-Canberra Regional Strategy 2006-2031”, with the idea behind this strategy being to minimise the spread of rural residential development. One of the reasons for this is that it is claimed that this breakup of agricultural land can result in social isolation. It is submitted that the installation of a wind farm will cause a break down in the supportive nature of this community, resulting in social isolation for members of the community.

At page 6.10 of the EIS, the Applicant identifies that:

The aims of State Environmental Planning Policy (Rural Lands) 2008 (Rural Lands SEPP) are: d) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations (Underlining supplied)

Having regard to the social considerations, including the destruction of this community which will be completed if the Development Application is approved, the Development Application should not be approved.

Alleged economic benefit

On numerous occasions throughout the EIS, the Applicant claims that one of the major economic benefits that the community will receive is from the creation of employment opportunities, both at the construction stage and from ongoing positions required for the maintenance and ongoing management of the wind farm. For example, at page 15.5 of the EIS, the Applicant claims:

This workforce is likely to be sourced from both inside and outside the region however preference will be given to commercially competitive local tenders. The workforce is predicted to generate up to 336 direct full time equivalent (FTE) construction positions based on modelled estimates outlined in SKM (2012), and up to 32 FTE positions per year during operation, which is likely to be made up of a combination of fulltime onsite staff and offsite contractors.

See also at page 15.5:

the Project will provide increased employment opportunities in the local and regional area, and potentially an increase in the regional skilled workforce if local employment opportunities are realised. There is also potential for an increase in demand for workers with experience on the Project for similar developments or other industries in the region following completion of construction of the Project

However the Applicant cannot guarantee that these positions will be filled by locally based individuals and that the economic benefit will therefore flow through to the community. No guarantee is given, or can be given, due to a number of matters including suitability of candidates, whether local individuals are willing to forego job security in order to obtain a short-term job closer to home. Even if the Applicant employs local individuals during the construction phase of the development, once the development is completed the jobs will disappear and those individuals will be left unemployed. In this regard it is also noted that there are numerous references in the EIS about the ability for the proposed wind farm to be operated remotely (see, for example, page 10.29 of the EIS), therefore providing no economic benefit to the community on a long term basis.

At page 15.5 of the EIS, the Applicant claims that:

it is estimated the Project will generate of the order of \$7 million per annum direct expenditure in the local / regional area, and of the order of \$21 million per annum total economic impact through direct, production and consumption induced impacts across the local / regional area

The Applicant fails to provide evidence to justify how it determined these figures. Also, as with the alleged benefit through job creation, there is no guarantee, and the Applicant cannot possibly

guarantee, that local businesses will benefit as a result of expenditure in relation to the proposed wind farm.

The Applicant also states that economic benefit is provided to the community by the payments to land owners hosting the wind turbines. Where these land owners live in communities other than Tarago and surrounding areas, for example land owners living in Sydney, the economic benefit from these payments will not be enjoyed by the local community.

The Applicant alleges in the EIS at page 2.7 that it is:

in discussions with the relevant local councils, is exploring potential options to support the local community surrounding the PA through the establishment of a Community Enhancement Fund, by which the Applicant will provide direct contributions throughout the operational life of the Project. It is anticipated that funds will be spent to improve community assets such as recreational facilities, public open space and public amenities. Consultation with the relevant councils regarding the details of these agreements is ongoing and will be finalised prior to the commencement of construction of the Project. (Underlining supplied)

The key points from this statement are that there is no guaranteed commitment from the Applicant to establish this fund, or what the extent of the fund will be. It is also important to note that the terms, structure and funding will clearly not be committed to before any development approval is granted, and will entirely remain at the discretion of the Applicant. Accordingly, there is no certainty that a Community Enhancement Fund will be created, or that enough funding will be provided to actually benefit the community.

Despite the statements made in the EIS, the Applicant cannot guarantee that the local community will receive significant economic benefit from the proposed wind farm. Many of the statements made are empty promises with no guarantee that the Applicant will actually pursue and implement the proposals that have been put forward in the EIS. Accordingly, it is submitted that the Development Application should be refused.

2 Physical effects of wind farm

At pages 16.19 to 16.21 of the EIS, the Applicant claims:

the NHMRC Information Paper: Evidence on Wind Farms and Human Health (NHMRC 2015b). The Statement concludes as follows (NHMRC 2015a): 'There is no direct evidence that exposure to wind farm noise affects physical or mental health. While exposure to environmental noise is associated with health effects, these effects occur at much higher levels of noise than are likely to be perceived by people living in close proximity to wind farms in Australia. The parallel evidence assessed suggests that there are unlikely to be any significant effects on physical or mental health at distances greater than 1,500 m from wind farms... There is less consistent, poor quality direct evidence of an association between sleep disturbance and wind farm noise. However, sleep disturbance was not objectively measured in the studies and a range of other factors are possible explanations for the association observed. While chronic sleep disturbance is known to affect health, the parallel evidence suggests that wind farm noise is unlikely to disturb sleep at distances of more than 1,500 m from wind farms... Although individuals may perceive aspects of wind farm noise at greater distances, it is unlikely that it will be disturbing at distances of more than 1,500 m. Noise from wind farms, including its content of low-frequency noise and infrasound, is similar to noise from many other natural and human-made sources...

...In light of the above, and based on the assessment requirements adopted to determine compliance, the Project is not expected to generate audible noise levels that would impact on a person's sleep or cause annoyance to involved or non-involved landholders in the vicinity of the Project. (Underlining supplied)

At page 16.23 of the EIS, the Applicant states that:

In relation to ground vibration emitted from the operation of WTGs, a study undertaken by Keele University (no date) concluded that: "Whilst it is technically correct that 'vibrations can be picked up as far away as 10 km', to give the impression that they can be felt at this distance is highly misleading. The levels of vibration from wind turbines are so small that only the most sophisticated instrumentation and data processing can reveal their presence, and they are almost impossible to detect."

In speaking with community members who live within 11 kilometres of the Woodlawn Wind Farm and the Capital Wind Farm, I have been advised that those residents are able to physically feel the vibrations, and that the vibrations from the wind farms are strong enough to "make their beds vibrate".

It is further noted that the noise and vibration reports referred to on page E.11 of the EIS make no mention of the Applicant having undertaken an assessment, or arranging for an assessment to be undertaken, in relation to vibrations that can be felt from the operation of the turbines, other than as that vibration applies to the transmission lines only. Similarly, chapter ten of the EIS, "Noise and Vibration", makes no reference whatsoever to physical vibrations resulting from the operation from the wind turbines.

In regards to noise, the Applicant claims at page 10.16 of the EIS that:

WTG noise levels were predicted using a Sound Power Level (LW, that varies with wind speed) that ranged between approximately 89 dB(A) at 3 m/s and 106 dB(A) at 20 m/s.

This equates to a wind speed range of 10.8 kilometres per hour to 72 kilometres per hour. Tarago and the surrounding communities regularly experience winds speeds of 30 to 40 kilometres per hour, and frequently experience winds of more than 50 kilometres per hour. In order to understand what these noise levels actually mean, it is worthwhile to note that the noise level of a lawn mower is 90 dB(A), the noise level of a belt sander is 95 dB(A), the noise level of a motorcycle while it is being ridden is 100 dB(A), and the noise level for a sporting event is 105 dB(A) (<http://www.noisehelp.com/noiselevelchart.html>). One of the reasons I enjoy living on my property is the relative peace and quiet. However, if the Development Application is approved, this peace and quiet will be negatively affected and possibly destroyed. On days of high wind, it is impossible to conceive that I will not be able to hear noise that is equivalent to a sporting event from my property.

The Applicant, like all managers and owners of wind farms, has significantly down played the expected effects on the community in order to obtain development approval. These effects are well known and have repeatedly been reported by individuals who live near wind farms, both in Australia and overseas (see, for example, submissions made to the Senate Select Committee on Wind Turbines by individuals including Robyn Brew from Waubra in Victoria (a copy can be provided on request) and Dr Malcolm Alexander Swinbanks; the collection of articles [On the Adverse Health Effects of Wind Turbine Noise](#); Dr Sandy Reider, *Wind Turbine Noise & Adverse Health Effects*, Testimony before the Vermont Public Service Board, 29 July 014; Cadlillac News, *Why didn't the tell us about the health problems before we signed leases?*, Dianne M Ziegler, 19 June 2014). The examples provided a merely a handful of the reports made by individuals on the effects they have suffered, or their patients have suffered, as a result of wind farms being constructed within their communities. Many of the effects raised in these reports by individuals are incredibly concerning. However these reports are dismissed on the basis that there are scientific studies undertaken which claim that there are no negative effects on health and well-being. If there can be so many individual reports about the physical effects that are being suffered, then this must suggest that the so-called scientific reports are incorrect and cannot be relied upon.

It is also relevant that in a case that is currently before the High Court of Ireland, a wind farm company has admitted to the Court that it is liable to the plaintiffs for nuisance caused to them as a result of excessive noise (Irish Farmers Journal, *'Wind company admits nuisance damage to neighbours'*, Paul Mooney, 5 January 2017). The case has now been set down for a ten day hearing to determine the quantum of damages payable to the plaintiffs by the wind farm company.

Further, my partner and I chose to move our family, including two young children, to a rural community for the significant benefits that clean country living can offer to families. These significant benefits will be outweighed by the negative physical effects suffered by those within ten kilometres of the proposed wind turbines.

The effects that are expected to be suffered by the community should not be suffered and can be avoided. Giving approval to the Development Application will significantly affect the lives of the members within the community with no benefit to the community. It is submitted that it should not be expected that this community can, and should, suffer from the physical effects of the proposed wind farm. Accordingly it is submitted that the Development Application should be rejected.

3 Bush fire risk to the community

On 17 to 19 January 2017, the community of Tarago and surrounds experienced a significant bushfire, predominantly around the area of Mount Fairy. On the first day of the fire, 12 aircraft were involved in fighting the fire (The Canberra Times, *Currandooley fire burning at Tarago*, Georgina Connery, Kimberley Le Lievre and James Hall, 17 January 2017). The fire ultimately burned an area of 3,387 hectares, destroyed one house as well as many outbuildings and vehicles, and significant numbers of livestock were killed. The fire was brought under control due to the significant combined effort of the fire fighters on the ground as well as the large number of aircraft. Without the assistance of the aircraft, it is likely that the fire would have taken longer to bring under control and would have, at the very least, caused further damage to properties and loss of income to, and livelihood of, land owners.

The Applicant has stated at page 15.9 of the EIS that:

fixed wing aerial agricultural operations within the PA may be affected, however safe aerial application operations are expected to be possible on properties neighbouring the PA, subject to final WTG locations, and on a case-by case assessment. Given the higher manoeuvrability of rotary winged aircraft, aerial application operations using these aircraft can be undertaken in closer proximity to WTGs than would otherwise be possible for fixed wing aircraft. (Underlining supplied)

The aircraft used in fire fighting efforts for the recent Tarago fire included DC10 and C130 Hercules aircraft (see The Canberra Times, *Currandooley fire burning at Tarago*, Georgina Connery, Kimberley Le Lievre and James Hall, 17 January 2017). Both of these types of aircraft are fixed wing aircraft.

The Applicant also states at page 15.11 of the EIS that:

The aviation assessment contained in Chapter 16, indicated that aerial firefighting operations may be restricted in the vicinity of the PA, however there are valid ground-based means to support firefighting due to the construction of the access road network throughout the PA.

and at page 16.4:

While installation of WTGs may inhibit aerial firefighting operations over the wind farm itself, there are alternative management practices, including valid ground-based means to support firefighting, which will take advantage of some of the wind farm infrastructure features, which may improve the overall fire control capabilities within and in the vicinity of the Project.

This position is confirmed by the South Australian Country Fire Service who state in their brochure on "Aerial Firefighting Limitations" that:

Vertical obstructions such as... wind turbines close to a fire area may limit aerial firefighting operations. Where obstructions do exist, a dynamic risk assessment is undertaken by the pilot in command prior to aircraft being committed. In some circumstances aircraft will not be utilised because risks caused by vertical obstructions exceed safe operating conditions.

The Applicant has conceded that the ability to use aircraft in fighting fires may, and therefore could, be prevented within the project area. It should be noted that the "Yass Valley Wind Farm project

manager Andrew Wilson said planes wouldn't be able to fly too close so fire fighting would be different." (Underlining supplied) (Yass Tribune, *Concern over wind farms and fires*, Tiffany Grange, 13 March 2013). As stated by the Applicant, the proposed project area is an area that is largely grasslands. It is well known that grass fires can move very quickly: "Grassfires can travel up to 25 km per hour and pulse even faster over short distances" (CFA, "Grassfires - Rural", <http://www.cfa.vic.gov.au/plan-prepare/grassfires-rural/>). This was also clearly demonstrated by the speed at which the recent fire in the Tarago community burned. In order to ensure the minimum loss to individuals within the community, and the community itself, fire fighters need to be able to utilise the maximum and best resources that are available to them. The NSW Rural Fire Service has said:

"Aircraft are one of most essential firefighting tools of the Rural Fire Service. About 100 aircraft are used each fire season. These include fixed wing agricultural aircraft, light and medium helicopters, AirCranes, medical aircraft and transport aircraft." (<http://www.phos-chek.com.au/node/31>)

The approval of the Development Application will reduce the maximum and best resources that are available to the fire fighters.

The Applicant claims that fire fighters will be able to take advantage of some of the wind farm infrastructure such as the access road network. The fire fighters ability to "take advantage" of the infrastructure is *not* guaranteed, and will greatly depend on the behaviour of the fire and its location.

Further, what the Applicant does not address is that if a fire builds momentum and grows in size and strength while it is in the proposed project area where it is more difficult to control, then this will result in the fire being significantly harder, and take significantly longer, to control. This creates a greater risk to all members of the community – both those within the proposed project area and those outside of the proposed project area. It further creates a greater risk for those fire fighters trying to put out the fire.

The effect of failing to control and put out these fires is extremely significant – loss of property and destruction of a family's livelihood, as the recent Tarago fire illustrates, or even loss of life. Many property owners within the community rely on farming businesses as their livelihood. Frequently in rural areas farms have been in families for generations and these families' life work has been to breed particular types of livestock with particular characteristics. This cannot be replaced after a fire, regardless of the level of insurance coverage, and farming businesses are left to start from scratch. Accordingly, in a rural community and environment it is important for the full extent of resources to be available when fighting fires to ensure that loss of life and destruction of property and livelihoods is kept to an absolute minimum.

4 Value of property

Throughout the EIS, the Applicant has made numerous statements on the basis that investigations undertaken into the value of properties finds that there is no correlation between a decline in property value and the location of wind farms. For example, at page E.16 of the EIS, the Applicant states:

A review of available literature, including the recent Urbis (2016) investigation undertaken in support of release of the new draft Wind Energy Planning Framework by DP&E, did not find a correlation between declining property values in properties in proximity to wind farm developments, which has been supported by a statement made by the DP&E in the Secretary's Environmental Assessment Report for the proposed Yass Valley Wind Farm, which states that:

"The Department acknowledges that, in relation to impacts on land values, the NSW Valuer-General commissioned a report on the impacts of wind farms on land values in Australia. The report states as its principal finding, based on analysis of previous studies and its own investigations, that the majority of wind farms erected in Australia appear to have had no quantifiable effect on land values."

Further, in the NSW Planning Assessment Commission Determination Report for the Collector Wind Farm Project (December 2013), the Commission also acknowledged the results of the study “which suggested that a property’s underlying land use may affect the property’s sensitivity to price impacts rather than impacts from development of adjoining land or intrusions on the landscape” and that “the study found that properties in rural / agricultural areas appeared to be the least likely to be affected by wind farm with no reductions in value for rural properties evident at of the wind farms investigated. The study also reported that residential properties in townships with distant views of a wind farm (more than 2-3 km away), also appeared to not have been negatively affected by a wind farm.”

Based on the findings of the available literature, it is not anticipated that the Project would have a significant negative impact on property values in the vicinity of the Project.

At page 15.6 of the EIS it is stated:

Urbis (2016) states that there is insufficient sales data to provide a definitive answer to the question of whether wind farm developments in NSW impact on surrounding land values utilising statistically robust quantitative analysis techniques...

... Based on the outcome of these research techniques, it was Urbis’ expert opinion that:

- wind farms may not significantly impact rural property values used for agricultural purposes; and*
- there is limited available sales data to make a conclusive finding relating to value impacts on residential or lifestyle properties located close to wind farm turbines, noting that wind farms in NSW have been constructed in predominantly rural areas. (Underlining supplied)*

Importantly, the research that has been undertaken cannot definitively state that property values have not been significantly affected. These studies also make no mention of two other factors. The first is that there is no mention of the ease or difficulty of selling properties located near wind farms. The second is that generally property values increase over time and the studies referred to by the Applicant have not found that the values of properties near wind farms are increasing.

Even if it is accepted that wind farms do not decrease property value (for the avoidance of doubt, this is not accepted), this is not the end of the question as to whether wind farms negatively affect property values. Given that none of the reports have reported an increase in property value for properties near wind farms, it is safe to assume that there has not been any increase in the value of these properties. The only properties where it was reported in one study that there was an increase in property value were properties which hosted wind turbines and therefore had an ongoing income stream from the wind turbines to ensure that the value increased. In times where property values generally increase over time (see Australian Bureau of Statistics), the fact that property values are stagnant does not mean that wind farms do not have a negative effect on property value. Particularly in rural communities such as this one, a person’s property will be the most significant asset that they have. A failure to increase in value, particularly where property value in all other areas continues to increase, will have a negative effect and leave property owners in a worse financial position.

At the time that my partner and I purchased our block of land, plans of the proposal to install a wind farm at Tarago and the surrounding community was not public knowledge. Had the proposed wind farm been public knowledge, or had we become aware of the proposal through some other means, we would not have purchased our block, or any block within a community which hosts a wind farm.

On the basis of the above, it is submitted that if approved the Development Application will have a negative impact on property value whether that is by property values decreasing, property values remaining stagnant or properties being more difficult to sell. It is therefore submitted that the Development Application should not be approved.

5 Visual impact

The EIS states at page 10.18 that the height of the proposed wind turbines will be up to 173 metres – some 40 metre higher than the Sydney Harbour Bridge, almost 40 metres higher than the London Eye and 80 metres taller than the Statue of Liberty. It is also noted that the Applicant states a number of times throughout the EIS that the final design (and therefore height) of the wind turbines will depend on the turbine type selected immediately prior to construction of the proposed wind farm. Accordingly, the wind turbines installed could be significantly higher than 173 metres, noting that there are reports that the Department is now approving wind turbines that are 200 metres high. The Applicant acknowledges at page 11.8 of the EIS that:

There is a general absence of development throughout this landscape zone. Extensive views to ridgelines and distant hills are available from open areas. The structure of the landform is simple and contains few distinct features. Any new tall development will potentially stand out prominently within the landscape... The JWF turbines will be clearly visible within this landscape and may appear prominent when positioned on elevated topography and ridgelines. The WTGs may create a strong contrast in the Undulating Grassland as a result of their large scale, vertical lines and lack of visual integration. The magnitude of the Project within this zone is rated as High.
(Underlining supplied)

On page 11.9 of the EIS, the Applicant states:

Sensitivity: Rural development is widely dispersed and mostly of a very low density. The isolation, large plot sizes and lack of surrounding development are important features of this zone and these characteristics are often reasons for residents locating here. Any new development may alter the character of the area. The zone is described as having a High sensitivity to change. Magnitude: The JWF turbines may be clearly visible from some parts of this zone. They are significantly taller than any other features within the landscape. (Underlining supplied)

and:

Residential properties are scattered throughout the Study Area with a number falling within areas of theoretically high visibility of WTGs, including the settlements of Tarago and locality of Boro.
(Underlining supplied)

In relation to Cullulla Road, the Applicant states at page 11.15 of the EIS:

Viewpoint 2 Cullulla Road - Current View: This viewpoint looks south from Cullulla Road. The foreground is dominated by open grassland with a band of windbreak trees in the middle distance. Distant hills are visible on the horizon. Very little built form is visible within the view. Expected Visual Impact: A cluster of WTGs will be visible in the middle of the view frame behind the treeline at a distance of approximately 5km. These will be noticeable to users of Cullulla Road

Notwithstanding the above statements, the Applicant claims that there will only be a visual impact for those residences living within one to three kilometres of the proposed wind turbines (see page E.13 of the EIS). Such a statement is inconceivable given the proposed turbine height of 173 metres. Furthermore, in the above statement made in relation to Cullulla Road, the Applicant acknowledges that the proposed wind turbines will be visible from Cullulla Road. The Applicant states that the wind turbines will be noticeable to users of Cullulla Road. On that basis, it is clear that there will be a significant visual impact on residents of Cullulla Road. As a resident of the western end of Cullulla Road, my property will have views of the proposed wind turbines which will decrease the visual amenity of my property and detract from the views that I am currently able to enjoy. Also, one of the points of consideration for the Department is the issue of the cumulative effect that wind farms have on communities. In this regard, our property already has views of the wind turbines at the Woodlawn Wind Farm and, if approved, will also have views of the Jupiter Wind Farm wind turbines.

On the issue of the visual impact, the Applicant seeks to address the objective stated in the Goulburn Mulwaree Local Environment Plan for the RU1 Primary Production Zone of minimising “*the visual impact of development on the rural landscape*” by stating, at page 6.17 of the EIS, that:

The Project will not have a major impact on the character of Tarago village, where views toward the WTGs from a number of residential view locations will be screened by adjoining dwellings/structures, tree cover and landform. Landscape mitigation measures have been identified, and if necessary will be offered to reduce visual impacts to existing residential dwellings surrounding the Project.

Landscape mitigation measures are not the answer. Residents, like myself, have purchased properties in this community because of the spectacular rural views that can be enjoyed, largely untouched by commercial development.

In addition, it is also noted in this regard that the Goulburn Mulwaree Development Control Plan 2009 provides at page 199:

To minimise visual impact, avoid locations where turbines are seen by many people. To this end towers are not to protrude beyond ridgelines within view of land visible from areas of existing and future closer settlement such as residential land, large lot residential land, the range of rural lifestyle blocks and the villages of Bungonia, Lake Bathurst, Tallong and Tarago.

While the local planning laws are superseded to an extent by the State Environmental Planning Policy (Infrastructure) 2007 (“the SEPP”) in that the SEPP allows for certain developments with consent where they would otherwise be prohibited, the SEPP does not prevent the local environment plans or the development control plans from being considered and applied. In this regard, and as discussed further below, it is not the intention of the local environment plans and development control plans applicable to the Development Application to permit the development of a wind farm where matters such as, amongst other matters, the visual character and amenity of the area will be detrimentally affected.

A number of times throughout the EIS, the Applicant states that:

*There is a recognised ‘broad public interest in the establishment of viable renewable energy sources’ which must be balanced against ‘the geographically narrower’ potential impacts of the Project (as was stated by Chief Justice Preston of the NSW Land and Environment Court in *Taralga Landscape Guardians Inc v Minister for Planning and RES Southern Cross Pty Ltd* [2007] NSWLEC 59 (12 February 2007)). In that decision, Chief Justice Preston specifically noted that the public interest in “the adoption of alternative, more environmentally friendly, energy generation sources” outweighed the visual impacts of a wind farm “where there [was] no compelling reason why there should not be some turbines in [that] landscape.” Whilst it is acknowledged that the Project will have an impact on visual amenity, this must be balanced against the public interest benefits which accrue from the development of renewable energy projects such as this Project. (Underlining supplied) (see for example page E.13 of the EIS)*

The key point in the judgement of Chief Justice Preston is that the development of renewal energy projects outweighed visual aspects “where there [was] no compelling reason why there should not be some turbines in [that] landscape.” In respect of the Development Application, the visual impact is but one of a number of significant impacts, all of which are compelling reasons as to why the Development Application should not be approved, and why there should not be any wind turbines in the Tarago and surrounding communities’ landscape. The Applicant’s ongoing reference to this case on the basis that it supports the approval of the Development Application shows that the Applicant completely misses, or overlooks, the key point in His Honour’s judgement.

The approval of the Development Application will result in, as acknowledged by the Applicant, a significant visual impact for the members of the Tarago community and the surrounding communities, including my own property. On the basis of the significant visual impact, and the large number of other

compelling reasons why turbines should not be installed, it is submitted that the Development Application should not be approved.

6 Traffic

The Applicant alleges on page 13.3 of the EIS at section 13.2.2 that “a school bus service operates between Goulburn and Lake Bathurst, which would utilise a portion of Goulburn-Braidwood Road to the north of the PA”. The Applicant fails to mention that there are a number of school bus services which run along Goulburn-Braidwood Road. The school buses are not limited to running between Goulburn and Lake Bathurst. I understand that school buses run along the entirety of Goulburn-Braidwood Road. On most occasions when I travel to work, I have observed that there are at least two to three school buses which deliver school children from numerous directions, including the part of Goulburn-Braidwood south of Tarago Village, to Tarago Village. These school children are then collected by other buses which deliver those children to their final destination. These buses do not include buses which deliver children to Tarago Public School.

I have also witnessed school buses along Goulburn-Braidwood Road on other occasions, and note the signs posted which indicate to drivers that school buses pick up and drop off children along Goulburn-Braidwood Road.

The failure by the Applicant to correctly identify the services that operate along Goulburn-Braidwood Road clearly shows that the Applicant has not properly assessed the transport factors relevant to the proposal or considered the effects that the proposal will have, if approved, on the services within the community. It further shows that the Applicant is prepared to actively mislead and deceive the Department. The fact that the Applicant is prepared to mislead and deceive the Department in regards to such a simple and basic matter should be of concern to the Department, and serious consideration must be given to whether the Applicant’s claim that there is a lack of any significant effects on the community can be accepted. We trust that the Department will take the appropriate action in this regards, including whether to pursue the Applicant for misleading and deceptive conduct.

7 Community Engagement

It is submitted that the level of community engagement by the Applicant has not been sufficient. On the basis of the EIS, it appears that the Applicant considers that sufficient *community* engagement has taken place where it has communicated with properties located within five kilometres of any of the proposed development. This appears to be on the basis that the Applicant believes that those whose properties are outside of this all important five kilometre mark will not be affected by the proposed development. This view is blinkered, on the basis of the other matters raised in this submission.

My property is located approximately five kilometres away from the nearest proposed wind turbine. It appears that as a result of not being “within five kilometres” of a wind turbine:

- (a) I have only received notice of one community information session held by the Applicant, being the one scheduled for Friday 3 February 2017 between 2pm and 6pm, and I am not aware of any other community information sessions that have been held by the Applicant;
- (b) in the past two years I have received two of the alleged six newsletters that have been issued; and
- (c) I received no notice of an opportunity to “register interest”.

The term “community engagement” suggests that the Applicant has engaged with the community as a whole and not selected segments of the community. The concept of undertaking adequate community engagement also suggests that the Applicant should arrange community information sessions at times where community members have the opportunity to attend. Many people from this community work away from their properties, including working in Canberra. Many community members interested in putting forth their views are therefore unable to attend community information sessions which are held during normal business hours. Accordingly, there has not been sufficient community engagement.

8 Threatened species and environmental concerns

One of the biggest issues at the moment is the damage that is being done to the environment, and the impact being had on the environment, by the way that we live. This includes the destruction of habitats. The purpose of renewable energy is to create clean forms of energy to prevent further damage to the Earth. Prevention of further damage to the Earth includes protecting endangered flora and fauna, and ensuring biodiversity and ecosystems are protected, maintained and even enhanced. It is well known that Australia has one of the worst extinction rates in the world (see [Australian Wildlife Conservancy](#)).

The EIS concedes on numerous occasions that, if the Development Application is approved:

the Glossy Black-cockatoo was considered as likely to be significantly impacted, as a result of the potential for exclusion from areas of high quality foraging habitat, if the species was to avoid areas habitats immediately surrounding WTGs (see page E.10)

and:

removal of 1.63 ha of the EPBC Act-listed community White Box-Yellow Box-Blakeley's Red Gum Grassy Woodland, which may be considered a significant impact (see page E.11)

The response by the Applicant in relation to the Glossy Black-cockatoo is that “427 ha of glossy black cockatoo habitat has been mapped in the study area. Development footprint impact in this area is 8.1 ha, being 1.9% of the total mapped glossy black cockatoo habitat within the study area” (see page 4.23 of the EIS). There is a significant issue with the Applicant's position. By reason of the statement, it is clear that the Applicant deems it satisfactory to destroy the habitat of a threatened species. However, where species are threatened, should we not be doing everything possible to sustain the population that remains, rather than reducing the populations little by little for every project that comes along for the sake of development and a company's profit?

The precautionary principle under section 6 of the *Protection of the Environment Administration Act 1991* (NSW) (“the PEA Act”) provides that “if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation”. Section 6 further provides that the objectives of the Environment Protection Authority include “to protect, restore and enhance the quality of the environment in New South Wales, having regard to the need to maintain ecologically sustainable development” (underlining supplied). The principle of inter-generational equity also suggests that the Development Application should not be approved on the basis that the “health, diversity and productivity of the environment” will not be “maintained or enhanced for the benefit of future generations”. The reverse will happen. Section 6 of the PEA Act also states that the “conservation of biological diversity and ecological integrity should be a fundamental consideration” for developments. Despite the Applicant's claims at page 6.30 of the EIS, the impacts to ecological values are entirely avoidable in that the Development Application does not need to be approved and can be rejected. Pursuant to the principles set out in section 6 of the PEA Act, the Development Application should not be approved.

Section 111 of the *Environmental Planning and Assessment Act 1979* (NSW) provides:

(1) For the purpose of attaining the objects of this Act relating to the protection and enhancement of the environment, a determining authority in its consideration of an activity shall, notwithstanding any other provisions of this Act or the provisions of any other Act or of any instrument made under this or any other Act, examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity...

...(4) Without limiting subsection (1), a determining authority must consider the effect of an activity on:

(a) critical habitat, and

(b) in the case of threatened species, populations and ecological communities, and their habitats, whether there is likely to be a significant effect on those species, populations or ecological communities, or those habitats... (Underlining and emphasis supplied)

Section 118A of the *National Parks and Wildlife Act 1974* (NSW) provides:

(1) A person must not:

(a) harm any animal that is of, or is part of, a threatened species, an endangered population or an endangered ecological community...

... (3) It is a defence to a prosecution for an offence against this section if the accused proves that the act constituting the alleged offence:

(a) was authorised to be done, and was done in accordance with, a general licence under section 120, a licence under section 131, 132 or 132A, a scientific licence under section 132C or a licence granted under Part 6 of the Threatened Species Conservation Act 1995, or

(a1) was the subject of a certificate issued under section 95 (2) of the Threatened Species Conservation Act 1995, or...

... (b) was essential for the carrying out of:

(i) development in accordance with a development consent within the meaning of the Environmental Planning and Assessment Act 1979, or...

... (iv) a project approved under Part 3A of the Environmental Planning and Assessment Act 1979, or

(v) State significant infrastructure approved under Part 5.1 of the Environmental Planning and Assessment Act 1979 ... (Underlining supplied)

Section 118D of the *National Parks and Wildlife Act 1974* (NSW) provides:

(1) A person must not damage any habitat of a threatened species, an endangered population or an endangered ecological community if the person knows that the habitat concerned is habitat of that kind...

(2) It is a defence to a prosecution for an offence against this section if the accused proves that the damage resulted from an act that:

(a) was authorised to be done, and was done in accordance with, a licence granted under this Act or under Part 6 of the Threatened Species Conservation Act 1995, or

(a1) was the subject of a certificate issued under section 95 (2) of the Threatened Species Conservation Act 1995, or...

...(b) was essential for the carrying out of:

(i) development in accordance with a development consent within the meaning of the Environmental Planning and Assessment Act 1979, or...

... (iv) a project approved under Part 3A of the Environmental Planning and Assessment Act 1979, or

(v) State significant infrastructure approved under Part 5.1 of the Environmental Planning and Assessment Act 1979 ... (Underlining supplied)

The definition of "threatened species" under the *National Parks and Wildlife Act 1974* (NSW) is that "threatened species" *"has the same meaning as in the Threatened Species Conservation Act 1995"*. Under the *Threatened Species Conservation Act 1995* (NSW), "threatened species" means a species

specified in Part 1 or 4 of Schedule 1, Part 1 of Schedule 1A or Part 1 of Schedule 2. The Glossy Black-Cockatoo is listed in Part 1 of Schedule 2 and is therefore a threatened species.

Section 18(4) of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ("the EPBC Act") provides:

Vulnerable species

(4) A person must not take an action that:

(a) has or will have a significant impact on a listed threatened species included in the vulnerable category; or

(b) is likely to have a significant impact on a listed threatened species included in the vulnerable category.

Civil penalty:

(a) for an individual--5,000 penalty units;

(b) for a body corporate--50,000 penalty units. (Underlining supplied)

Pursuant to section 178 of the EPBC Act, the Minister for the Environment must establish a list of threatened species to which the EPBC Act applies and, pursuant to section 186 of the EPBC Act, this list can be amended to add additional species to the list. The Glossy-Black Cockatoo is included in the vulnerable category of the [EPBC Act List of Threatened Fauna](#).

On the basis of both the NSW and Commonwealth legislation, the Development Application should not be approved. In relation to the NSW legislation, the harming of threatened species or their habitats is not essential. In relation to the Commonwealth legislation, the law is very simple – the Development Application cannot be approved as it either has, will have or is likely to have a significant impact on a listed threatened species included in the vulnerable category.

Furthermore, if we truly intend to focus on a green future, then we must act to preserve our threatened species and their habitats rather than allowing their destruction for development. Wind energy cannot truly be categorised as green energy if the consequences of creating facilities to produce wind energy is that we are bit by bit destroying and further endangering our threatened species.

9 The Planning Framework

Zoning of the project area

The Environmental Impact Statement submitted by the Applicant states at page 4.18 that:

The portion of the PA located within the former Palerang LGA is zoned 'RU1 – Primary Production' under the Palerang Local Environment Plan 2014; while that portion located within the Goulburn Mulwaree LGA is zoned 'RU1 - Primary Production' and 'E3 – Environmental Management' under the Goulburn Mulwaree Local Environment Plan 2009.

Character of the community

The Applicant claims that the community is not of a "rural residential character" on the basis that:

The Local Government Act 1993 defines rural residential land as land that 'is not less than 2 hectares and not more than 40 hectares in area'. Land within and immediately adjacent to the PA that is located within the former Palerang LGA, is predominantly zoned 'RU1 Primary Production' with minimum lot size of either 40 ha or 80 ha under the Palerang LEP 2014. With the exception of a small parcel of land to the northwest of the PA, land within and surrounding the PA that is located within the Goulburn Mulwaree LGA, is zoned with minimum lot size of

100 ha under the Goulburn Mulwaree LEP 2009, and therefore does not currently facilitate rural residential development. (see page 4.31 of the EIS)

The use of the definition to define the character of the community is simplistic. The adoption of such a position fails to consider the use the blocks are ultimately put to and the reason why they were purchased. It ignores that many within the community, including myself, have relocated to this community for lifestyle reasons and work in areas outside of the community, for example in Canberra or Goulburn. My property falls outside of the rural residential definition on the basis that my property is just over 100 acres. However my motivation for relocating to this community was based on lifestyle and the benefits of country living for my family.

The Applicant refers to the Sydney – Canberra Regional Strategy 2008 at page 4.32 of the EIS and states:

The Strategy identifies as a key action that Councils are to ensure that strategies for the management of rural land uses and subdivision recognise the environmental and economic potential of wind farming activities, whilst balancing the need to protect key rural landscapes and avoid inappropriate conflict with rural residential areas.

It should also be noted, and can clearly be observed, that an increasing amount of land within the community and greater council areas are being subdivided into smaller blocks (some less than 100 acres and some more) encouraging, for example, “affordable rural lifestyle”, investment in a fast growing area, “live the Aussie dream”, and “great for family fun and relaxation”.

Accordingly, this community is and should be considered to have a rural *residential* character.

Legislation and State Environmental Planning Policies

When considering a development application, the general hierarchy in relation to planning laws, regulations and instruments is as follows:

- (a) legislation;
- (b) regulations;
- (c) State environmental planning policies; then
- (d) local government local environment plans.

As discussed below, both the Goulburn-Mulwaree Local Environmental Plan and the Palerang Local Environmental Plan prohibit the construction of a wind farm within the RU1 Primary Production and E3 Environmental Management Zones. In regards to State significant developments, sections 89E(2) and (3) of the *Environmental Planning and Assessment Act 1979 (NSW)* (“the EPA Act”) provide that:

(2) Development consent may not be granted if the development is wholly prohibited by an environmental planning instrument.

(3) Development consent may be granted despite the development being partly prohibited by an environmental planning instrument. (Underlining supplied)

However, section 34 of the State Environmental Planning Policy (Infrastructure) 2007 (“the SEPP”) states that:

Development for the purpose of electricity generating works may be carried out by any person with consent on any land in a prescribed rural, industrial or special use zone. (Underlining supplied)

What is key in these sections is the use of the word “may”. Also of note is that there are no provisions within the EPA Act or the SEPP which prevent the Department from considering, and applying, the zoning under the relevant local environments plans. Further section 79C of the EPA Act provides that matters to be taken into account in determining the Development Application include the provisions of any environmental planning instrument, the likely impacts of the development including environmental

impacts on both the natural and built environments, and social and economic impacts in the locality, and the public interest.

Many of the owners in the community where the proposed development is proposed to be located bought their land having in mind, and knowing, the local planning framework as it applies to their particular block. Many also purchased their blocks before it became public knowledge that the area was being considered for a wind farm. Accordingly, many within the community brought their block on the understanding that “general industry”, which is what a wind farm falls under, was not permitted within the community.

Also, given that the community is largely a rural residential community, in the sense that many of the people who are living in the community are doing so for lifestyle reasons, it is submitted that the Department should still consider and apply the relevant local environmental plans and development control plans. On the basis of the relevant local environmental plans and development control plans, it is submitted that the Development Application should not be approved.

Rural Zones under the Goulburn-Mulwaree Local Environmental Plan

Under the Goulburn-Mulwaree Local Environmental Plan 2009 (“the GM LEP”), the objectives of the RU1 Primary Production Zone include:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To minimise conflict between land uses within this zone and with adjoining zones.*
- *To promote the use of agricultural land for efficient and effective agricultural production.*
- *To avoid or minimise impacts on the natural environment and protect environmentally sensitive land.*
- *To allow the development of non-agricultural land uses which are compatible with the character of the zone.*
- *To minimise the visual impact of development on the rural landscape.*
- *To maintain the rural landscape character of the land.* (Underlining supplied)

The GM LEP prohibits, amongst other things, “industries” in the RU1 Primary Production Zone. However the GM LEP does permit “light industries” in the RU1 Primary Production Zone provided that development consent is obtained. The relevant definitions under the GM LEP include the following:

- Industry means “general industry”, “heavy industry” and “light industry”.
- “General industry means a building or place (other than a heavy industry or light industry) that is used to carry out an industrial activity. industrial activity means the manufacturing, production, assembling, altering, formulating, repairing, renovating, ornamenting, finishing, cleaning, washing, dismantling, transforming, processing, recycling, adapting or servicing of, or the research and development of, any goods, substances, food, products or articles for commercial purposes, and includes any storage or transportation associated with any such activity.”
- “light industry means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following:
 - (a) high technology industry,
 - (b) home industry.” (Underlining supplied)

Accordingly, a wind farm may be permitted within the RU1 Primary Production Zone if development consent is obtained and provided it “does not interfere with the amenity of the neighbourhood” (Underlining supplied). However, on the basis that the proposed wind farm will interfere with the amenity of the neighbourhood, it is submitted that a wind farm does not constitute “light industry” and instead constitutes “general industry”. Pursuant to the GM LEP, general industry is prohibited in the

RU1 Primary Production Zone in the Goulburn-Mulwaree Council area and therefore the proposed wind farm is a prohibited development.

Environmental Zones under the Goulburn-Mulwaree Local Environmental Plan

Under the Goulburn-Mulwaree Local Environmental Plan ("the GM LEP"), the objectives of the E3 Environmental Management Zone include:

- *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.* (Underlining supplied)

Pursuant to the GM LEP, a wind farm is expressly prohibited from the E3 Environmental Management Zone in the Goulburn-Mulwaree Council area.

Rural Zones under the Palerang Local Environmental Plan

Under the Palerang Local Environmental Plan 2014 ("the PLEP"), the objectives of the RU1 Primary Production Zone include:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To minimise the impact of any development on the natural environment.*

The PLEP prohibits any development which is not expressly permitted, whether with or without consent. A wind farm does not constitute any of the uses that are permitted in the PLEP. Accordingly, a wind farm is a prohibited development within the RU1 Primary Production Zone for the former Palerang Council area.

10 Alternatives

At page 2.3 of the EIS, the Applicant states that:

Despite abundant renewable energy resources, only approximately 15% of Australia's electricity was generated from renewable sources in 2013-14, of which approximately 4% was wind generated, indicating that further investment to increase the supply of energy from clean energy sources is warranted (Department of Industry and Science 2015).

It is not disputed that investment in renewable energy sources should be increased and encouraged. However, projects and developments that are proposed must be suitable for the area, and maintain and improve the community rather than detract from and destroy the community.

At page 5.1 of the EIS, the Applicant claims that by not proceeding with the Development Application, there will be a missed opportunity to reduce the dependency on fossil fuels. This position completely ignores the fact that the proposed wind farm could be located within an entirely different location, or that alternative green energy (for example solar energy) could be pursued instead. It is not correct to state that "[t]he alternative to wind energy is the continued use of fossil fuels, including coal (both black and brown coal) and natural gas". This statement completely ignores the existence and success of other forms of renewable energy. No reason has been provided by the Applicant as to why a solar farm project could not be pursued in this area instead of wind power. Such a project would avoid many of the issues that exist, particularly contentious issues within the community, and could be conducted on a much greater scale. This community, and the surrounding areas, are quite dry areas which would be suitable for appropriate solar projects.

11 Tort law

In the event that the Department approves the Development Application, and any of the above mentioned effects are suffered by any of the residents of the community, then it is likely that the

Applicant, and possibly the Department, could be found liable to those residents through either the tort of negligence or nuisance. Where this occurs, and the affected residents are successful in proceedings against either the Applicant or the Department, those residents would be entitled to, amongst other remedies, damages for loss and personal injury.

One example of this is that the loss of a single night's sleep caused by the noise of the wind turbines could amount to substantial interference with the land owner's enjoyment of their land (see for example *Munro v Southern Dairies Ltd* [1955] VLR 332). The result of this is that residents who successfully undertake proceedings against the Applicant, and possibly the Department, would be entitled to damages including for personal injury.

It is also relevant that in a case that is currently before the High Court of Ireland, a wind farm company has admitted to the Court that it is liable to the plaintiffs for nuisance caused to them as a result of excessive noise (Irish Farmers Journal, '*Wind company admits nuisance damage to neighbours*', Paul Mooney, 5 January 2017). The case has now been set down for a ten day hearing to determine the quantum of damages payable to the plaintiffs.

It is also relevant that Jupiter Wind Farm Pty Ltd is a company which was established on 16 December 2014. It is expected that this company has been formed for the sole purpose of managing the Jupiter Wind Farm. It is therefore expected that the company will have very little assets. The effect of which means that if proceedings are successfully undertaken against Jupiter Wind Farm Pty Ltd for any detrimental effects, and therefore loss and damage, suffered as a result of the wind turbines by the residents, there will be little chance of obtaining any compensation for the losses and damages suffered.

12 Other matters

The Development Application states that, if approved and as part of the proposed development, the Applicant will be erecting temporary structures, being a temporary onsite office, amenities and buildings and facilities for equipment (see pages E.6, 3.2 and 3.13 of the EIS). Notwithstanding the requirement to include:

- *documentation that specifies the live and dead loads the temporary structure is designed to meet.*
- *a list of any proposed fire safety measures to be provided in connection with the use of the temporary structure.*
- *documentation describing any accredited building product or system sought to be relied on for the purposes of section 79C(4) of the Environmental Planning and Assessment Act 1979.*
- *copies of any compliance certificates to be relied on*

in relation to the erection of a temporary structure, the Applicant has failed to include any documents relating to the construction of these temporary buildings and facilities. Accordingly, the Applicant has failed to include all relevant documents in the Development Application.

On the basis of the above, it is submitted that approval of the Development Application will:

- (a) have a very detrimental effect on the community and the relationships within the community;
- (b) not provide any reasonable economic benefit to the community, particularly when all of the detrimental effects are considered;
- (c) limit the ability of fire fighters to effectively fight fires within the community, in particular the proposed project area;
- (d) have physical effects which are detrimental to the health of the community;
- (e) have a negative effect on property values within the community;
- (f) detract from the visual amenity and rural character of the area;
- (g) further threaten a number of Australia's threatened species, and this can and should be avoided.

It is also submitted that:

- (a) there are alternative renewable energy sources that would be better suited to this community;
- (b) the GMLEP and PLEP should still be considered and applied by the Department;
- (c) the level of community engagement has been insufficient;
- (d) the Applicant has misled the Department on the issue of school buses on the Goulburn-Braidwood road. This is such as basic and easily evidenced issue that serious consideration should be given to whether the balance of claims within the EIS can be accepted;
- (e) the Applicant has failed to include all required accompanying documents; and
- (f) if the Development Application is approved and the Jupiter Wind Farm constructed, it is likely that a large number of residents will have a cause of action against the Applicant, and possibly the Department, for damages in negligence or nuisance.

For these reasons, the Development Application should not be approved.

Please do not hesitate to contact me if you wish to discuss any part of this submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lisa Eldridge', with a stylized flourish at the end.

Lisa Eldridge

Email: lisa.eldridge11@yahoo.com.au