

For the Attention of

Mr Banasiak and

The Members of the Portfolio Committee No 4 – Regional NSW conducting the Inquiry into Impact of Renewable Energy Zones.

Thank you for the opportunity to give evidence in relation to various aspects of the build out of the CWO REZ. You indicated at Dubbo that you would accept further written evidence following oral evidence as well as answers to any Supplementary Questions arising.

I am attaching for your consideration, evidence which I would like to provide further to my oral evidence and I would be grateful if you would read and consider it. It relates particularly to **Terms of Reference (d)(ii) The adequacy of shared benefits being offered to neighbours of large scale renewable projects; and (i) the adequacy of consultation and engagement.**

The Supplementary Questions appear to relate to landholders who are hosts. The evidence which I attach relates to what are euphemistically called *shared benefits* for *neighbours*. There are no shared benefits. There is haphazard and voluntary compensation for a small portion of landholders whilst the bulk of neighbours adjacent to developments are left with their lives and livelihoods in tatters. I accordingly do not seek to provide any evidence in relation to the Supplementary Questions.

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1. Neighbour Agreements

A. Our Experience. Piambong Wind Farm. Proponent - Vestas

A lengthy, stressful process marked by dishonesty and duplicitous behaviour designed to benefit the wind farm. Led up the garden path for 4 years and then dumped with Vestas having obtained the benefit of our silence for the duration.

Engagement commenced in about **2021**. We were concerned about all impacts – noise, visual impact, flicker, blade throw, fire danger We raised all these matters with Vestas by email and later in person, we pressed for responses and details. The contact was initiated by us, seeking information and expressing our concerns.

We had **two years** of generalized information - there were emails during 2022 and occasional meetings continuing into 2023 with the Project Development Manager, Mr Van der Merwe.

In **August 2023**, the Project Development Manager raised the specifics of a NA. Actually, he said out of the blue *“how much do you want?”* – the first acknowledgement that there would be significant impacts on us from the adjacent wind farm. This led to further discussions and in a meeting on **27 November 2023**, **we agreed on a specific amount and specific financial terms. He promised that a contract would follow.**

We were told that the amount agreed to was larger than usual and we should not under any circumstances, discuss it with our neighbours. It was commercial in confidence and any settlement would be jeopardized by discussion.

It was also conveyed that there should be no criticism of the proponent or the project in the interim.

Three months later, the Project Development Manager apologized for the delay in forwarding the contract. We received a *Benefit Sharing Agreement* on 1 March 2024.

The draft contract **could not have been signed by any landholder. There were *patent contractual deficiencies*** including:

- The company could opt out of the agreement at any time but there was no right for the landholder to opt out;
- There was no penalty if the co failed to make annual payments and there was no interest accruing on the outstanding balance owing to the landholder at any given time;
- There was a cpi clause for the payments but it was not operational until the first payment was made (after construction commenced) so the landholder could lose years of value until the cpi increases became operative;
- The landholder’s rights to deal with the property in any way required the company’s consent but the landholder had to consent to any sale of the wind farm by the company and there was no requirement that the purchaser be a solvent entity.
- The landholder submitted to **all impacts of any kind**, notwithstanding that the initial agreement related to noise and visual impacts. The company repeatedly failed to provide information about night lighting, interference with communications and shadow flicker.

- There was no separate amount to reimburse the landholder for legal fees. There was an agreed fee on signing the document (may have been \$2,000 which we pushed to \$5,000) and the proponent stated that this could be used towards legal fees. The proponent refused to accept that the fee was partial payment towards the fact that the landholder's obligations commenced immediately (no objection to the project) while the company's obligations did not commence until construction commenced.

In April 2024, we requested amendments dealing with these issues. The financial agreement was not in dispute. It was another **5 months for a response**.

Following a meeting in September 2024 and by November 2024, it appeared that issues had been resolved.

In January 2025 (18 months after an agreement had been reached), we received an email of waffle which basically said that it was all off. No reason was given although it was stated that all NA's were under review and not proceeding.

So the proponent Vestas enjoyed specifically, **18 months** of our silence during which they walked back ever so slowly from the Agreement. More generally, they had the benefit of **over 4 years** by originally asserting that the project was in its formative stages and that they would be in touch when details were finalized.

B. Are Neighbour Agreements working to ensure that the benefits of the renewables build out are shared?

The answer is a resounding NO. The present approach is unfair, piecemeal and lacking in any consistency or uniformity.

The difficulties stem from **the power imbalance factors**. These have first to be recognized to deal with and rectify the situation.

i) Power imbalance

- The developers of projects are commercial operators. Their sole object is to get the project approved for as little cost as possible and as quickly as is feasible. They are not idealists. They are paid well to do a full time job of getting the development through planning.
- The *policy framework is entirely with the developer*. The public service has been charged with getting the projects approved and it has neither the manpower nor the time to be investigating the veracity of developer's assertions in relation to matters such as engagement.
- The *planning framework is with the developer*. The landholder is faced with an EIS of thousands of pages which has taken months if not years to prepare and is given 4 weeks to submit a meaningful response. It takes more than 4 weeks of nights and weekends (landholders can't quit work to prepare and file a response) to even read an EIS, let alone begin to respond to one.
- The *project framework is with the developer*. The developer of a wind farm starts with a maximum possible number of wind turbines. He knows that any number of these are going to have to be moved and probably moved away from boundaries. But the neighbouring landowner doesn't know that. He/she thinks that they've won a prize when 3 turbines disappear (only 77 remaining) when those three turbines were never going to stay. We received a circular letter from Vestas last week which asserted that the proposed turbine number of 85 represented a drop from its original position, but that number is actually an increase from where they were at a year ago.

- Because there are *confidentiality clauses* in NA, there is no way for a landholder to know if what he/she is being offered is consistent with benefits being negotiated with other neighbours and there is no way of knowing if there is any consistency across wind farm projects.
- *Many of the impacts complained of by neighbours have been denied by public authorities in their determination to develop the REZ's* – loss of amenity; loss of neighbours' attention to farming matters; potential low frequency noise impacts; loss of farm value; impact on local temperatures and possibly also on livestock – so these don't come into the discussion for compensation.
- *Neighbour Agreements aren't compulsory*. If, on paper, it can be made to appear that you won't be impacted as a neighbour, the developer can ignore you. There is no compulsion.
- Most landowners have *little experience of commercial negotiations* outside their farming expertise.
- Farmers are occupied full time with their farms and making a living. Most have neither the time nor the resources to deal properly with proposed developments. If/when they make time, it is at the expense of their own businesses.

At the moment, **the govt is creating the above situation** with its policy settings and financial support. The govt financially is driving this and making it possible. But its financial backing extends only to the proponents to get the projects up and running. It is absolving itself financially from any consequences. We can see this with decommissioning where developers could easily be locked into bonds but the govt won't do this because it might deter developers. Suddenly, this becomes a matter between landholder and developer! It is easier to leave the mess with the landholder and the land than to deter the developer. Similarly with compensation to neighbours who are "*sharing the impact*" of the buildout. **This euphemistic term is used to describe the destruction of livelihoods and lives in a manner that should not be possible in a country such as Australia which espouses principles that its people matter.** The govt should accept responsibility for designing and enforcing the solution to the problem just as it has cast its weight behind the cause of the problem..

It comes back to money. The Committee heard this in the matters addressed by Dr Richard Parsons. Dr Parsons, when asked what can be done to deal with social impacts responded that maximizing the benefits for those who are impacted is really the only available avenue if the developments are to proceed. Refer to Dr Richard Parsons. He used the analogy that it **disrespects people's rights to refer to compensation as means to an end. The people are an end in themselves and benefits should be maximized for those who are impacted.**

C. What can be done to rectify the present disastrously unfair and piecemeal approach to Neighbour Agreements?

To deal with the above matters, the following needs to occur:

- NA's need to be made **compulsory** on guidelines to be determined. One possibility is a requirement that all neighbours on boundaries must have NAs or the proponent must demonstrate that he has made offers in compliance with a legislated financial formula and the landholder has refused.
- **Amount of compensation** is the vexed factor. There would need to be a distinction between the types of developments – wind, solar, batteries etc. It should probably be related to site specific matters such as the extent of the boundary with the development, the proximity of any residence to the development, the extent of the

development e.g. the no and size of the turbines visible from not just the house but within the property.

- The requirement needs to be enforced. **The development should not be approved until same has been satisfied. Better still, a developer shouldn't be allowed to file an EIS without in principle NA's in place. Worst case scenario, within six months of approval.**
- NA should provide that proponents are required to pay all neighbours a set amount for the purpose of **legal fees.**
- **The existing Pro Forma needs to be improved.** Basic things like cpi clauses commencing on signing the Deed; Interest on default and default clauses for the benefit of the landholder; rights to terminate elucidated; schedule of payments on signing, and thereafter until construction commences. Most regional solicitors aren't experts in this area and where they are doing this sort of work, they are generally acting for both parties.
- **And the pro forma should be made enforceable.** Guidelines aren't being adhered to. The Vestas development manager and Vestas lawyer were highly critical of the existing pro forma (they snickered as well) and had no intention of entering into any agreement that looked like the pro forma of the Guideline. Method of enforcement: valid NA's require the signed consent of both parties to opt out of the pro forma guideline and a signed acknowledgement of the landowner that that may adversely affect his entitlements.

2. Engagement Practices

A. Our Experience. (personal detail)

- *Piambong Wind Farm – See above re Neighbour Agreements*
- *Burrendong Wind Farm*

Burrendong Wind Farm – Ark Energy, formerly Epuron.

The farm on which we live is approx.6 km from the Burrendong Wind Farm site. In addition, **the heavy vehicle transport route for the Burrendong Wind Farm** is a Council managed road which runs through the property for about 5 km. The traffic flow is very light (possibly 5 or 6 vehicles a day) on this scenic, narrow, tree lined dirt road which most would describe as a track and which runs past our house and yards. The Scoping Report for the Wind Farm outlines an minimum increase in traffic movements to **800 per day** during a two year construction period, following which the construction of the Phoenix Hydro Project is likely to commence.

There are **two problems** for the **developer** arising from its transport route.

- Firstly, substantial works are likely to required which in all likelihood will require access to, and will encroach on, private property.
- Secondly, as with many local roads, the road has not been constructed within its cadastre. For practical reasons, many local roads have taken relatively minor but sometimes major variations, from the road boundaries which have been drawn on maps. The Yarrabin Road, as it runs through our farm, veers outside its technical boundaries in many places and in one section in particular where substantial work will be required. With some of our numbers, the existing cadastre goes through their houses. The legal position is that Council, as the road authority, will require a bitumen road upgraded to Australian standards. It also requires that, when completed, the road will be within a formal, legal cadastre. **Most importantly, Council has informed the developer that any private consents which are required for this work must be obtained by the developer. This is Council's fixed position. It will not be carrying out compulsory acquisitions. The road issue is the proponent's responsibility.**

The problems for ourselves and our neighbours are numerous and extensive. The individual impact on our farm has been detailed in the written response of Terry Conn and I will not repeat these impacts here. Everyone's issues are different. One neighbour will be cut off from direct access to the Cudgegong River on which his stock depend. Another has olive orchards planted directly adjacent to the road for some kilometres and these plants cannot afford to be covered in dust by road works. Two neighbours have houses right on the road.

Our history of dealing with Mr Wilson, the project manager, is, briefly:

- Dealings commenced early in **2021** when we received advice that our property would be impacted by road upgrades. The proponent at that time was Epuron which later was taken over by Ark Energy but *we have been dealing with the same staff at all times.*
- We received the usual "too early to be precise about things" for about 12 months until in late **January 2022** we were confronted with drones flying over our farm – two **drones**, one of them very large. We followed them, observing one flying about 100

metres off the Yarrabin road and over our private property. We were later informed that they were mapping the road for Epuron. We had no warning and had given no permission. One of our neighbours was seriously agitated reporting that she was in the garden in her house and the drone flew so close that she “eyeballed it.”

- Despite having been told by Council that it will **not** be compulsorily resuming any property in relation to the road, **the proponent’s development manager has persisted in telling landowners, and public meetings where there is no formal record, that Ark is pursuing compulsory acquisition of the road.**
- The proponent made the mistake of repeating this assertion to the CCC (Community Consultative Committee) such that it appeared in CCC Minutes. When Council objected, the head of the CCC **amended the Minutes at the request of the proponent so that this assertion has ceased to exist on the record.**
- Despite having been advised by Council to negotiate with landowners, **the proponent does not negotiate.** He has asked landowners about dams, fence lines and gates but has offered no compensation. The proponent asserts to Council and to the Dept that it is negotiating with the landholders and this is simply not true. When we have pointed this out to the proponent’s development manager, he has stated that we want too much for the impacts on our farm. We have requested a counter offer (any offer!) on numerous occasions but the only response is “We are pursuing compulsory acquisition.”
- When the proponent filed its EIS, **it based its traffic volumes on figures which were false and which the proponent knew were false.** It also failed to disclose the significant issue of the failure to have obtained landowner consent to the works required on the heavy vehicle transport route.

B. Engagement Practices – General

The following engagement practices typify both Ark Energy and Vestas in relation to the development of the Piambong and Burrendong Wind Farms.

- Always hedging to specific enquiries.
The proponent states repeatedly that the project is in its infancy and it cannot say where final turbine sites will be, whether you will be impacted by shadow flicker, whether your communications will be interfered with – prevarication with lies and half truths - *“we don’t know what Council will require”*; *“we don’t know what the attitude of Planning will be,”* *“it’s complicated. We are trying to clarify things.”* (Burrendong – has facilitated 2 years worth of development of the road, telling you as little as possible but ticking the box of having engaged.
- Meeting practices – if at all possible, don’t meet in situations where neighbours have any chance to get together and discuss or protest to you; make sure you control all attendees by having staff on hand to engage them and prevent, as far as possible, interaction with other neighbours.
- Have drop in sessions in localities where those attending will not be those impacted. **Vestas** always has a stand at the Mudgee Small Farm Field Days being public days where people attend from out of town in numbers. It has drop in sessions in ostensibly *very public venues during business hours (outside a newsagent or supermarket)* where it’s inappropriate for people to get individual information even if they were able to attend.

- Fudge the numbers in reporting community attendances. I recall the first public meeting for the Burrendong Wind Farm because we'd been trying to get information about the road upgrade for months. The public meeting required that you register and that you had to take proof of double vaccination to be allowed in. Flooding rains were in progress. Most low lying bridges to get to town were impassable. We booked and attended. Not surprisingly there were more staff than locals present. I think I counted 8 of us in all. **All official records however, report that the meeting was well attended.**
- Always invite people to respond to the website – something farmers never do.
- Never provide any specific notice or advice or information to anyone who is not clearly legally entitled to it. In the case of **Burrendong**, many people who requested *visual assessments/mock ups* and were told they would receive them, have not received them because the proponent alleges their dwellings are not permanent or not approved. Another example is the extensive *lease holders at the Cudgegong River Park*, a recreation area on the edge of the Burrendong Dam over which the wind farm is going to dominate. No notice was ever given to the site holders, almost all of whom are local residents who have been enjoying this facility for many years.
- Never give anyone other than a host a phone number on which you can be contacted with a specific question about the wind farm.
- Ignore any little issues of trespass. The primary example is the **drones** - January 2022 – see Burrendong.
- **Protract the conversation so that the impacted landholder thinks he will get information or an offer or something, soon. Make a promise you cannot keep and have no intention of keeping in the interests of the development proceeding.** At the lowest level, this is generally a promise to shift a few turbines away from a boundary or a home. In return, the landholder promises silence in relation to the development. The developers make oral agreements which are specific, intended to be acted upon and are acted upon by neighbours. They are hand shake agreements - rural communities have relied on hand shake agreements following serious discussions for many years. What happens next is that the developer, having silenced the landowner, proceeds full steam ahead.

We've had three experiences with three different developers:

1. It was about 2011 when the Uungula Wind Farm first surfaced near us. We still believed in a hand shake and trust in those days. The deal was that the developer would not develop the wind farm on our south-eastern boundary and we would not oppose the project. There would be a minimal setback on our northern boundary. **No payment was involved or offered**, just the agreement that there would be no turbines on our south-eastern boundary if we didn't object to the development as it was then proposed. Two things happened – the developer **changed the project** with a significant increase in the height of the turbines proposed on the north and north-eastern boundary and the developer changed the requirement on us of not opposing the project to a requirement that we **not make any adverse comment about wind energy at any time in any context**. The developer knew from the outset that the project details were going to change and knew from the outset that what it required from us was far more than just not opposing the project. Only recently I was speaking to a local landowner impacted by the Piambong Wind Farm. He assured me he had not signed a Neighbour Agreement but told me that he was not prepared to talk

adversely about the development in any way because he had secured the removal of a number of turbines.

2. Piambong Wind Farm – **18 months to walk back from a specific offer and acceptance of a Neighbour Agreement, a NA in relation to which contracts were issued.** Just when everything was apparently agreed, the developer changed its mind. One neighbour said the same proponent gave him the impression he had an open cheque book for a NA. A year later, he's still waiting.
3. Burrendong Wind Farm. Discussions began in 2021. We spent the first 2 years trying to get information about the road changes. We were told on more than one occasion and falsely, that compulsory acquisition was a possibility. In April 2024 the proponent requested an advice of exactly what it would take to settle with us. He stated that did not know what amount of compensation would be appropriate as *he had never been in the situation before!*. We have had no counter offer or negotiation in response to our attempt to open the conversation – just the threat of compulsory acquisition. You begin to think you may be getting somewhere but we're still waiting for a real response. Meanwhile, the developer has proceeded with the development at the rate of knots.

- **Obtaining benefit by deception** i.e. lies. This is the nasty end of things. Burrendong proponent told us repeatedly that he would be pursuing the option of compulsory acquisition of our land for the transport route when that is not an option legally open to him. The same proponent suggested to landholders near Stanley in Tasmania whose consent was needed for transmission lines that they would be compulsorily acquired in the full knowledge that this was not an option in that case.

C. What can be done to improve Engagement Practices.

- The matters outlined above would be considerably alleviated if **Neighbour Agreements were compulsory** as suggested in the earlier section of this submission. If you're impacted, then technically the resolution of issues is by way of Neighbour Agreement. Compulsory NA's would prevent the shonky practices presently associated with consultation and engagement because, at the end of the day, the neighbour has been empowered.
- At present, commissioners are being appointed for dispute resolution but there is **no clear pathway for complaints about fraudulent practices**. Landholders don't wish to negotiate in relation to a fraudulent practice – **they need an avenue of complaint with a possibility of a penalty imposition**. The Department does not have the staff to investigate allegations made by landholders. Usually the only forum for venting is in response to EISs and these responses are simply referred to the proponent, who then denies or explains away the behaviour. **There needs to be a specific pathway for formal complaint with serious penalties attached**. The government has been quick to provide extensive financial backup to get the renewable energy zones into operation but it has fallen down completely on any responsibility for punishing fraudulent, deceptive and even criminal behaviour associated with the development.
- **There should be time frames on consents where private land acquisition is required. They should be required preferably on filing the EIS but certainly before the consent becomes operational.**