

WHAT PHOTON ENERGY OUGHT TO BE REQUIRED TO DO

This is a “State significant project” and should be treated as such from the start. The State (and Commonwealth) for their own reasons, have assigned their normal obligations to provide us with power to private enterprise. That’s privatising

This project is regarded as so significant and important to the State that it ought to be afforded special treatment. It can therefore bypass Regional Council and go direct to the Department of Planning & Environment for approval.

The governments (State and Federal) have offered inducements in the form of subsidies or warrants. It is not hard to imagine that such inducements may be seen by many as a pot of gold, and so attract opportunists.

We suggest this is what has happened here.

The course adopted by Photon Energy is, we suggest, inconsistent with State legislative intention, but is nevertheless open to it.

We advocate a censoring and vetting of proponents for a project such as this. A proponent’s corporate history, its financial resources, and its knowledge of the appropriate investigative protocol ought to be assessed.

We further advocate that the investigative aim should be clear.

The aim is not to find a location that best suits Photon. The aim is (or should be) to find a location that best suits this ‘State Significant’ industrial project having regard to the proponent’s interests and the needs, rights and expectations of Council, residents/community, and the environment etc.

The investigative procedure should, for a proponent contemplating a particular region, require the proponent to approach the Regional Council and inform Council of the proponent’s requirements, and Council’s input/assistance sought. Of course if assistance is not

forthcoming, then the State legislation allows the proponent to move on, but Council should not be relevantly ignored.

A proponent should be required to approach and relevantly instruct regional estate agents as to the proponent's requirements, and at the same time advise such agents that the contemplated project is a State significant project, and so not just the proponent's requirements are to be satisfied, but rather careful and sensible regard must be had to Council's plans for the area, rural residents/community, and their environment value of the land etc. The agent should be advised that the location selecting process is very much a process whereby, within reason, extra costs to a proponent to get the right location may be appropriate to ensure a satisfied Council and residents etc., and the agent should be advised that the poorer the quality of the land, the more preferable the site having regard to its proposed use.

Thereafter, and so instructed, these persons, those agents with good knowledge of the region, including its power lines and regional plan, its population density distribution, its varying land qualities, may assist the proponent ideally by advising of several available alternative sites for a proper evaluation and assessment.

For this State significant project, agents may even suggest 'expressions of interest' be called for. At an appropriate and early stage, the affected residents/community ought to be advised and their concerns considered. If these concerns truly suggest one of the alternative sites ought to be pursued, then that option should be realistically left open to pursue.

By the above mechanism, there can indeed be a bona fide assessment of alternative sites, and there can be a genuine comparative assessment of the impacts outlined above.

The approach is therefore like most things that are "above board" simple, courteous and straightforward.

None of the above is novel or difficult. It is responsible and appropriate. Remember, public authorities and responsible corporations do this all the time, and of course some better than others.

If a protocol was introduced whereby the above procedure was mandatory, I have no doubt that there would be far, far less dispute and controversy than there is at present.

I also have no doubt that green groups, renewable groups, Aboriginal groups, climate change groups, historical and heritage groups etc would work together, and would go away either satisfied or at least understanding the fair, open and compromise procedure.

THE APPROACH PHOTON ENERGY HAS TAKEN.

As is abundantly clear the site for this proposed solar plant is the issue and the method Photon adopted to choose it is the root of the problem.

If Photon is to be believed it simply chose the site off a map and then approached the owner.

Consider this: two bankers from the Netherlands residing in Bondi get an aerial map and find their ideal location for this 'State Significant' project. No need for Council consultation, community consultation, Town Planners and meetings with local agents. These bankers know it all. They can do it all from a map.

How lucky because the bankers don't have the funds to retain a local authority or anyone else to properly investigate sites or even transport the power through cables to the grid a few hundred metres away. How absurd!

All that remains is to convince to hoodwink the locals and the Department of Planning and Environment that the bankers from the Netherlands got it right in Bathurst.

Whether Photon simply chose it off a map as they say or whether it was guided by some person to this block of land by some other way, one thing is certain, the process adopted by Photon was not transparent and relevant people including Bathurst Regional Council and us residents were informed after the die was cast and after Photon/the owner committed themselves to a deal.

The residents take issue with this process. This ad hoc process of selection is fundamentally flawed.

The perspective is that a few Photon people totally foreign to the area and unfamiliar with it arrived on the doorstep of an aging landowner. A landowner who is prepared to try once again to go outside the permissible regional zoning and ignore the environment qualities of the area to accommodate an industrial project.

Before any consultation with anyone Photon and the landowner had already reached agreement, presumably subject to the Group, “going through the hoops” with the Department of Planning and Environment and with us residents.

There is something fundamentally wrong with the proponent, Photon pursuing the course it did. It is doing it the wrong way around.

The task of the decision maker, the Department of Planning and Environment is made impossible by the course adopted by this Group using one of its locally based subsidiaries that has a paid up capital of a mere \$1,000 or less.

The task imposed upon the residents by this cash poor company to protect themselves and defend their zone is onerous, invasive of their time and space and caused by the wrong course adopted by this Netherland based Group.

The relevant ignoring of the Regional Council and the Regional Zoning is to be deplored. The course adopted by Photon is, we suggest, inconsistent with the legislative intent.

We suggest that as soon as practicable our Parliamentary representatives have the legislator demand a vetting procedure and the implementation of protocols to which I have referred earlier in this discussion.

Having prematurely committed itself to this location, Photon then needs to orchestrate the facts to suit legislative requirements.

It is abundantly clear that the regional/community requirements for the installation to be on “the poorer the ground the better” and for there to be “less residents/visual impact the better” received scant regard and poor treatment indeed.

It is to be noted that the proponent’s requirements are:

1. Proximity to the grid;
2. Reasonably flat and cleared ground;
3. Reasonable road access.

The regional/community requirements include;

1. The poorer the ground the better;
2. The less residents/visual impact the better.

These last two were irrelevant to Photon, but having done a deal on the location, it then tries to prove it got the location right anyway. What a farce. What a way to treat our land.

You may ask “how does our group know this was Photon’s approach?”

The answer is essentially through Photon’s answers and through our research.

In summary we rely upon the glaringly obvious wrong location, the owner’s history of accommodating industry on this land, the language used in Photon’s preliminary assessment document submitted to the planning authority, the proponent’s clear lack of knowledge about the land on the information night, the proponent’s comments to the advocate as to why this site was decided upon, were an expression of Photon’s requirements to the exclusion of community requirements and Nick Guzowski’s answers to us at the first meeting to “address our concerns” held on Tuesday, 14 November 2017.

There is no doubt the proponent found the location ideal for its requirements but ignored the community’s requirements.

They are now trying to stitch it up.

WHY PHOTON ENERGY ADOPTED THE WRONG APPROACH

We are all entitled to wonder why Photon adopted the wrong approach.

Well we are all assuming it is at least being upfront when telling us how it came to this block and to this owner.

But we do not dismiss the possibility that rumours may be true.

Insufficient funding seems to be a relevant factor.

A lack of funds is clearly relevant. We have looked at Photon's books and think it is indeed in a sorry state but in the short time we have tonight there were two important matters both clearly raised on the "information night" held 6 September and relevant to funds and I will mention them now:

1. The audience commented that trees may not grow on the subject site and in those circumstances, would Photon consider some sort of contour bank?

Photon's reply was clear and unambiguous. The representative advised that any increase in the cost of the project would not be acceptable to Photon.

2. The audience asked the owner of the site words to the effect "Why not put it on the land behind your house rather than in the front of so many other people's homes?"

The owner responded to the effect that he thought of that, but Photon could not afford the cabling.

Can I tell you that we have been provided with advice that the cost of cabling is less than half a million dollars in this one hundred and forty million dollar project. This is only approximately 0.3% of the cost of the project.

Can I further tell you that if it went behind the owner's house then probably every resident would cease to object on visual grounds.

So we have a situation where for less than half a million dollars Sam and Polly Bonanno, Jo and Andrew Petch, Evan and Louisa Dowd, Liam and Peta O'Hara, the owner's relatives, that is to say the Warren and Paula Tobin and Viv and Maureen Press etc would all be satisfied if it were placed behind the owner's house and the one remaining issue would then be the waste of quality land. However, Anthony Daintith, Town Planner has highlighted in his report that the land behind John Bestwick's home is inferior in quality to the land of the proposed site. The report states that the proposed alternate solar plant location is mapped as predominately Class 5 land. Class 5 Land is not considered to be "prime agricultural land". The site proposed by Photon Energy is predominantly Class 3 land, which is considered to be "prime agricultural land".

The only infrastructure effected would be the owner's airstrip. He would have to house and use his planes at the airport.

If Photon Energy cannot afford to spend less than half a million dollars to invest in cabling, it highlights why we say that insufficient funds is a factor in why Photon has adopted the wrong approach.

We also suggest that timing is important. There is no doubt that there is in this case and possibly in many others an indecent rush to the "pot of gold" the subsidies, the warrants, our money.

THE APPARENT QUALITIES OF THE PROPONENT AND WHY WE DON'T WANT TO DEAL WITH THEM ANYMORE.

Questions in writing have been put by us to Photon and those questions deal with several financial issues and you are welcome to view our questions. Photon recently replied and declined to answer our questions and therefore failed to address our concerns raised with the company at this fifth stage of an ongoing process.

Our group has no accountant but our reading of Photon's December 2016 financial report caused us concerns that we want addressed.

In summary the Photon Group consists of a holding company Photon NV based in The Netherlands, a location commonly regarded as a tax haven. Photon as at December 2016 pursued its activities through some 41 subsidiaries based in several countries. Eight of those subsidiaries were in Australia. The number in Australia is now 14.

As at December 2016 the group had disposed of at least 19 subsidiaries. Some disposals were by sale and many such sales were at losses and some disposals were by liquidation.

We have a good knowledge of Photon's corporate structures and losses sustained to creditors but at this point in time we have submitted a series of questions to Photon that it has undertaken to answer. Further comment in relation to matters such as its financial strength and creditors' losses will be left for another time.

But let us look at a few obvious matters:

1. At the so called "information" meeting on 6 September, a Photon representative told the audience that Photon is a "Photon Group" based in The Netherlands and is a large corporation and financially sound. It was a public company listed on the stock exchange in Europe and indeed any of us could purchase shares in the company if he wished. It was presented as a successful enterprise. We suggest however that that size and success of Photon NV has in reality no relevance whatsoever to any liabilities or debts incurred in New South Wales. We suggest that the New South Wales creditors would only have access to some small locally based subsidiary with little paid up capital. If a person is owed money, we are concerned he will not be able to look beyond the local subsidiary for payment.

Given that concern, we asked Photon questions as follows:

- (a) Will the holding company (based in The Netherlands) agree to be responsible for the actions of its Australian subsidiaries and submit itself and its assets to the New South Wales jurisdiction and to the jurisdiction of our Courts

and ensure New South Wales creditors have legal access to its assets?

- (b) Will it undertake not to raise in any civil litigation the defence of “no presence in the jurisdiction” or similar defence (and so attempt to avoid being accountable for its subsidiaries and debts (including satisfying a judgment creditor)?

Photon Energy was sued in the United States in 2014 for a breach of confidentiality and theft of intellectual property. It was sued in the Court of Chancery of the State of Delaware on 14 January and 13 May 2014. Photon Energy’s defence was that it could not be sued in the United States as they were based in the Netherlands. Fortunately for the aggrieved litigant Photon’s defence failed.

Further questions were also asked of Photon along these lines. Photon has since replied and declined to answer any of them. Our concern now is Photon’s integrity. We want our community concerns addressed and so prepare to write to the Department of Planning.

2. At that same meeting Photon upon being asked about compensation to neighbours advised the community that it would “look at” compensation after the development.

On 9 November we therefore asked Photon questions as follows:

- (a) Has compensation been paid to neighbours in the past?
- (b) Has Photon set aside a contingency fund for Brewongle (and Gunning)?
- (c) If so, is that fund guaranteed?
- (d) What are the principles that guide Photon when “looking at” compensation?
- (e) Would Photon contemplate or agree to the appointment of an independent arbitrator to determine compensation?

Mr Guzowski anticipated being able to answer those questions on 14 November but at that time he asked for a further 14 days and we agreed to his request. Photon Energy has now declined to answer our questions and therefore address our concerns.

The Group has offered investors 6% and even more but has failed to raise expected funds on the Prague Stock Exchange for “proceeds of the issue will be invested with focus on Australia. Remaining proceeds may be used for repayment of outstanding bond ...”.

We suggest that the need to offer 6% and the failure to raise funds is a far cry from the Photon we were informed about on the night of 6 September.

3. Finally, on that same night Photon gave the community to understand it's group was developing PV Projects and the building and commissioning solar power plants. It omitted to tell the community however that because of financial losses it was avoiding Government controlled feed-in tariff schemes and had not built or commissioned any such plant for several years. It failed to tell the gathering that it had disposed of whatever plant it owned except for plant in the Czech Republic, Slovakia and Australia. It failed to tell the audience so many other relevant factors about its European activities, losses sustained, governments turning against such schemes in the Czech Republic, Slovakia, Italy and Germany. All of this we suggest reflects on Photon's integrity, we suggest it misleads.
4. Notwithstanding all of the above, after all that was said and done the audience was entitled to believe that Photon proposed to develop and commission this project. If you in fact think that then you appear to be wrong.

At a stage we came to learn Photon had in fact disposed of a 49% interest in this project.

We suggest that in this supposedly open process we were entitled to know who might be the co-tenants next door. Sandy Bathgate

thought so and so emailed Photon and the following exchange occurred:

See documents. No information provided.

We then saw the Group's October 2017 Report. The Report at 5/12 speaks of the company developing Brewongle with a "local joint venture partner".

The "local" turned out to be Polpo Investments Pty Limited and the Director turned out to be Christopher Guzowski, the brother of Photon's Project Development Manager, Nick Guzowski. The company has a paid-up capital of \$100 and Christopher has, according to this brother spent the last 10 years in Europe. We note Christopher was born in Westmead. How local is that?

In any event we did think that the "local" joint venture partner may actually be local and may have some funds.

We also noted from the report that Photon Energy Aust. SPV9 Pty Limited had been allocated to Brewongle.

We wondered therefore whether the Corporation liable for and answerable under, for example, the Trade Practices Legislation might be Photon Energy Aust. SPV9 Pty Limited or might it be Photon Energy Aust. Pty Limited, or might it be one of the other subsidiary entities. It would be nice to know.

As a concerned community, you may think we are entitled to know.

Most regrettably however page 4/12 tells us that the developer will try to sell the project anyway at "ready to build stage".

Clearly, we were entitled to think that those we have spoken to and had promised us things such as "looking at" compensation might have stuck around – But No.

To this point it appears we have indeed just been talking to the Corporation trying to hoodwink us and the Department of Planning and we are unlikely ever to get to talk to the real tenant next door.

If Photon “addressed our concerns” then our concerns might evaporate but it has declined to do so.

You may think this is a disgraceful way to treat our land, our community and our subsidies/warrants/taxes.

No wonder Mr Ibrahim replied in the terms he did.

All of this with our land and warrants.

Why would we want such a tenant?

CONCLUSION

1. Photon has since replied to our preliminary list of questions and has declined to address any of our concerns.

Our main concern now is Photon’s integrity. We believe:

- a) It has sought to mislead us at the initial community consultation meeting on 6 September 2017 by its reference to the Photon NV in the Netherlands. It encouraged us to believe that the Company assets were available to pay for its subsidiaries debts in Australia if required.
- b) It sought to mislead us at the initial community consultation meeting by its reference that it would look at compensation of neighbours after the project was approved, whereas it had no intention.
- c) In the Preliminary Environmental Assessment document submitted by Photon to the Department of Planning, dated 31 August 2017, Photon referred to the “low environmental values of the land” and “fewer neighbours”. The Brewongle residents, in an email dated 9 November asked “What material, including documentation was relied upon to support these points”. We believe there was no real basis for either statement.

Photon agreed to respond within 14 days after phoning to check the availability of these documents. Photon has now responded, but declined to provide any document.

We believe Photon has sought to mislead on issues that are critical to our interests.

- d) Photon has reported to the media that we are not co-operating with their consultation process. This was so reported in our absence.

Such a report is contrary to the fact and seeks to mislead, to our detriment.

These are the main reasons we don't want to deal with Photon anymore, but want to comply with legislative direction, defend ourselves, our environment and our community and ensure the Department of Planning receives an honest account from us. So we propose to write to the Department of Planning for directions.

- 2. The impact of this proposal upon our community and the need to resist this proposal is emotionally and financially onerous. It needs to be curtailed.
- 3. Please will our politicians intervene now.
- 4. Please the whole of the Bathurst Region together with Aboriginal groups, Green groups, renewable groups, climate change groups, Aboriginal groups, historical and heritage groups join us and unite and oppose this proponent and this location in all of our interests.
- 5. Protect and care for the land, the next generation and our environment. This is the wrong location for solar, for Photon or some alternative corporation of its choosing.