

SHIRE OF KOJONUP  
**Kojonup**



**AGENDA**

**Special Council Meeting**

**1 November 2022**

**TO: THE SHIRE PRESIDENT AND COUNCILLORS**

NOTICE is hereby given that a meeting of the Council will be held in the Council Chambers, Administration Building, 93 Albany Highway, Kojonup on 1 November 2022 commencing at 3:00pm.

I certify that with respect to all advice, information or recommendation provided to the Council in or with this Agenda:

- i. The advice, information or recommendation is given by a person who has the qualifications or experience necessary to give such advice, information or recommendation; and
- ii. Where any advice is directly given by a person who does not have the required qualifications or experience, that person has obtained and taken into account in that person's general advice the advice from an appropriately qualified or experienced person.

**GRANT THOMPSON**  
**CHIEF EXECUTIVE OFFICER**

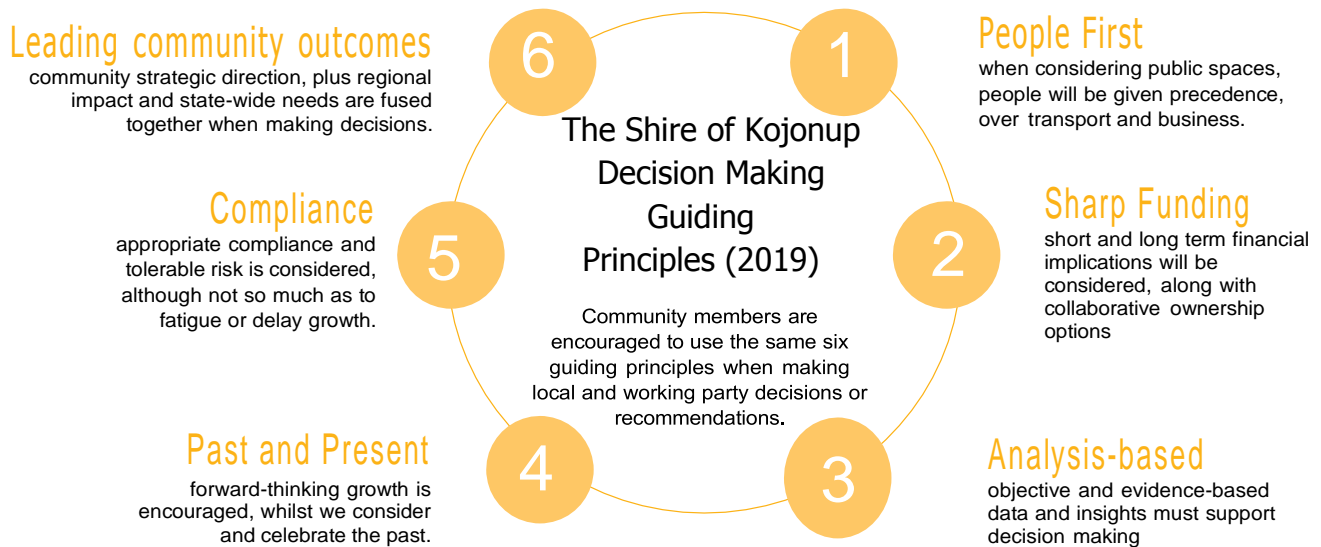
28 October 2022

AGENDA FOR A SPECIAL COUNCIL MEETING TO BE HELD ON 1 NOVEMBER 2022

TABLE OF CONTENTS

1	DECLARATION OF OPENING AND ANNOUNCEMENT OF GUESTS.....	4
2	ANNOUNCEMENTS FROM THE PRESIDING MEMBER.....	5
3	ATTENDANCE.....	5
3.1	APOLOGIES .....	5
3.2	APPROVED LEAVE OF ABSENCE .....	5
4	DECLARATION OF INTEREST.....	5
5	PUBLIC QUESTION TIME .....	5
5.1	RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE.....	5
5.2	PUBLIC QUESTION TIME .....	5
6	CONFIRMATION OF MINUTES.....	5
7	PRESENTATIONS .....	6
7.1	PETITIONS.....	6
7.2	PRESENTATIONS .....	6
7.3	DEPUTATIONS.....	6
7.4	DELEGATES' REPORTS .....	6
8	METHOD OF DEALING WITH AGENDA BUSINESS .....	6
9	REPORTS.....	6
9.1	KEY PILLAR 1 – 'PLACE' REPORTS .....	6
9.2	KEY PILLAR 2 – 'CONNECTED' REPORTS .....	6
9.3	KEY PILLAR 3 – 'PERFORMANCE' REPORTS.....	6
9.4	KEY PILLAR 5 – 'PROSPERITY' REPORTS .....	7
9.4.1	MOONIES HILL ENERGY PTY LTD - REQUEST TO AMEND CONDITIONS OF APPROVAL.....	7
9.5	KEY PILLAR 5 – 'DIGITAL' REPORTS.....	18
10	APPLICATIONS FOR LEAVE OF ABSENCE.....	18
11	MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN .....	18
12	QUESTIONS FROM MEMBERS WITHOUT NOTICE .....	18
13	NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF THE MEETING.....	18
14	MEETING CLOSED TO THE PUBLIC .....	18
14.1	MATTERS FOR WHICH THE MEETING MAY BE CLOSED .....	18
14.2	PUBLIC READING OF RESOLUTIONS THAT MAY BE MADE PUBLIC .....	18
15	CLOSURE.....	18
16	ATTACHMENTS (SEPARATE).....	19

The Shire of Kojonup has a set of six guiding principles it uses when making decisions. These principles are checked and enhanced every two years in line with the Strategic Community Plan review schedule.



## AGENDA

### 1 DECLARATION OF OPENING AND ANNOUNCEMENT OF GUESTS

The Shire President shall declare the meeting open at \_\_\_\_ and draw the meeting's attention to the disclaimer below:

#### *Disclaimer*

*No person should rely on or act on the basis of any advice or information provided by a Member or Officer, or on the content of any discussion occurring, during the course of the meeting.*

*The Shire of Kojonup expressly disclaims liability for any loss or damage suffered by any person as a result of relying on or acting on the basis of any advice or information provided by a member or officer, or the content of any discussion occurring, during the course of the meeting.*

*Where an application for an approval, a license or the like is discussed or determined during the meeting, the Shire warns that neither the applicant, nor any other person or body, should rely upon that discussion or determination until written notice of either an approval and the conditions which relate to it, or the refusal of the application has been issued by the Shire.*

#### **Acknowledgement of Country**

*The Shire of Kojonup acknowledges the first nations people of Australia as the Traditional custodians of this land and in particular the Keneang people of the Noongar nation upon whose land we meet.*

*We pay our respect to their Elders past, present and emerging.*

#### **Prayer – Cr Gale**

*Gracious Father, we acknowledge you as our Maker and Judge. We ask for wisdom for our reigning monarch Queen Elizabeth. Grant to her good health and strength in the executing of her duties.*

*We pray for all Ministers and Cabinet members of the Australian Federal and State Government. Grant to them wisdom in the welfare of Australia, so that truth and justice is established for all Australians.*

*Lastly Gracious Father, we pray for ourselves. We ask that you might grant to us the ability to speak with integrity and to work with uncompromising diligence. Grant to us the wisdom to make good decisions, remembering that we are one community. Grant to us the good humour to keep things in perspective in a community that is a diverse population.*

*We ask that we might always be mindful of the safety and welfare of the people of Kojonup. Grant to all who serve on public committees the ability to listen and work together with mutual respect for one another. Bless us with the personal joy of knowing that we have done our best.*

2 **ANNOUNCEMENTS FROM THE PRESIDING MEMBER**

3 **ATTENDANCE**

**COUNCILLORS**

Cr N Radford

Shire President

Cr P Webb

Deputy Shire President

Cr F Webb

Cr Wieringa

Cr Gale

Cr Singh

Cr R Bilney

Cr A Egerton-Warburton

**STAFF**

Grant Thompson

Chief Executive Officer

Robert Jehu

Manager Regulatory Services

Judy Stewart

Senior Administration Officer

3.1 APOLOGIES

3.2 APPROVED LEAVE OF ABSENCE

4 **DECLARATION OF INTEREST**

5 **PUBLIC QUESTION TIME**

Questions may be submitted using the special email address for Council Meeting Public Question Time being [cmpqt@kojonup.wa.gov.au](mailto:cmpqt@kojonup.wa.gov.au)

The Chief Executive Officer will table all correspondence received.

5.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE  
Not applicable

5.2 PUBLIC QUESTION TIME

6 **CONFIRMATION OF MINUTES**

Nil

7 PRESENTATIONS

- 7.1 PETITIONS
- 7.2 PRESENTATIONS
- 7.3 DEPUTATIONS
- 7.4 DELEGATES' REPORTS

8 METHOD OF DEALING WITH AGENDA BUSINESS

9 REPORTS

- 9.1 KEY PILLAR 1 – 'PLACE' REPORTS  
Nil

- 9.2 KEY PILLAR 2 – 'CONNECTED' REPORTS  
Nil

- 9.3 KEY PILLAR 3 – 'PERFORMANCE' REPORTS  
Nil

9.4 KEY PILLAR 5 – ‘PROSPERITY’ REPORTS

9.4.1 MOONIES HILL ENERGY PTY LTD - REQUEST TO AMEND CONDITIONS OF APPROVAL

<b>AUTHOR</b>	Steve Thompson - Consultant Planner, Edge Planning & Property	
<b>DATE</b>	Friday, 28 October 2022	
<b>FILE NO</b>	BD.BDA.8	
<b>ATTACHMENT(S)</b>	9.4.1.1	Amended conditions of development approval (letter dated 5 October 2021)
	9.4.1.2	221013 - KO DA amendment - FRWF
	9.4.1.3	MHE Correspondence 25102022 DA amendment request
	9.4.1.4	221026 - Letter to Shire of Kojonup with attachment
	9.4.1.5	Detailed analysis of decisional process re sensitive premises
		<b>UNDER SEPARATE COVER - CONFIDENTIAL</b> Confidential Legal Advice

STRATEGIC/CORPORATE IMPLICATIONS		
“Smart Possibilities – Kojonup 2027+”		“Smart Implementation – Kojonup 2018-2022”
<b>Key Pillar</b>	<b>Community Outcomes</b>	<b>Corporate Actions</b>
KP 4 - Prosperity	4.1 – Be providing business assistance for growth in small local industry	4.1.1 – Amend Town Planning Scheme to encourage economic development and private investment

**DECLARATION OF INTEREST**

Edge Planning & Property receive payment for planning advice to the Shire of Kojonup (Shire) and declare a Financial Interest (section 5.70 of the *Local Government Act 1995*).

**SUMMARY**

The applicant has applied to the Shire to amend conditions 4, 21 and 29 and associated advice of their development approval for the Flat Rocks Wind Farm.

**BACKGROUND**

The Council has considered matters relating to the wind farm on various occasions.

Most recently, the Shire, on 5 October 2021, issued amended conditions of development approval (see Attachment 9.4.1.1). The wind farm approval includes 36 conditions covering aspects of the development including substantial commencement, wind turbine location and micro-siting, turbine specifications, temporary/ancillary development, pre-construction, construction, operational matters and decommissioning.

In recently reviewing various management plans and information to address the development conditions, the Shire administration (and the Shire of Broomehill-Tambellup administration) took the position that there is currently ambiguity in the wording of condition 29. Two other conditions, 4 and 21 are not necessarily ambiguous, but could benefit from greater clarity to reflect their original underlying intent. In response, the applicant has requested that the Shire reword conditions 4, 21 and 29 plus adding additional advice notes (see Attachment 9.4.1.2). The applicant’s request also

includes background to the matter and associated justification. It should be noted that the wording of the conditions that are now in place was proposed by the proponent and adopted by the Shire.

The development approvals propose 42 wind turbines (7 in the Shire of Kojonup and 35 in the Shire of Broomehill-Tambellup) plus supporting infrastructure and buildings.

The proponents have separately lodged a parallel application with the Shire of Broomehill-Tambellup to amend the development conditions issued in an identical manner for the part of the wind farm located within that Shire. The development approval and its conditions for the Broomehill-Tambellup side were issued by the Great Southern Joint Development Assessment Panel.

### THE AMENDMENTS SOUGHT

The following table contrasts the existing condition wording and the amendments which the applicant seeks. The final wording sought by the applicant was put forward in attachment 9.4.1.4, and the below table reflects this:

	Existing Wording	Proposed Wording
<b>Conditions</b>		
4	<p><i>The wind turbines are to be micro-sited in accordance with the following restrictions -</i></p> <p><i>(a) All wind turbines shall be located a minimum distance of 1 kilometre from any residential dwelling / sensitive premises existing at the time of the issue of this planning approval unless approval in writing is first granted from the owner of that residential dwelling / sensitive premises to a closer location;</i></p> <p><i>(b) The wind turbines shall be located in accordance with the 'Flat Rocks Wind Farm Landscape and Visual Assessment'. This report requires, in order to satisfy visual amenity considerations, either relocation of specified wind turbines or in the alternative, the implementation of vegetation screening.</i></p>	<p><i>The wind turbines are to be micro-sited in accordance with the following restrictions -</i></p> <p><i>a) All wind turbines shall be located a minimum distance of 1 kilometre from any dwelling existing at the time of the issue of this planning approval unless approval in writing is first granted from the owner of that dwelling to a closer location;</i></p> <p><i>b) The wind turbines shall be located in accordance with the 'Flat Rocks Wind Farm Landscape and Visual Assessment'. This report requires, in order to satisfy visual amenity considerations, either relocation of specified wind turbines or in the alternative, the implementation of vegetation screening.</i></p>



21	<p>Prior to commencing any works, the Applicant is to lodge a Noise Impact Mitigation Management Plan for approval by the local government. The Noise Impact Mitigation Management Plan is to outline the process by which the Applicant will -</p> <ul style="list-style-type: none"> <li>(a) Undertake post-commissioning testing to ensure compliance with condition 29, including testing at existing noise sensitive premises;</li> <li>(b) Make arrangements with adjoining landowners regarding the construction of noise sensitive premises on land;</li> <li>(c) Modify micro-siting to ensure compliance with condition 29;</li> <li>(d) Modify the operation of the wind turbines to ensure compliance with condition 29;</li> <li>(e) Manage complaints regarding noise impact during the operational phase of the development.</li> </ul>	<p>Prior to commencing any works, the Applicant is to lodge a Noise Impact Mitigation Management Plan for approval by the local government. The Noise Impact Mitigation Management Plan is to outline the process by which the Applicant will -</p> <ul style="list-style-type: none"> <li>a) Undertake post-commissioning testing to ensure compliance with condition 29, including testing at existing <i>dwelling</i>s, based upon the testing procedures and analysis contained in the South Australian EPA Wind Farms Environmental Noise Guidelines (2021);</li> <li>b) Make arrangements with adjoining landowners regarding the <b>construction of dwelling</b>s on land;</li> <li>c) Modify micro-siting to ensure compliance with condition 29;</li> <li>d) Modify the operation of the wind turbines to ensure compliance with condition 29;</li> <li>e) Manage complaints regarding noise impact during the operational phase of the development.</li> </ul>
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	Existing Wording	Proposed Wording
29	<p>The Applicant shall ensure at all times that the operation of each wind turbine complies with the following noise levels at noise sensitive premises -</p> <ul style="list-style-type: none"> <li>(a) Will not exceed 35dB(A); or</li> <li>(b) Will not exceed the background noise (LA90, 10 minutes) by more than 5dB(A); whichever is the greater.</li> </ul>	<p>(a) The Applicant shall ensure at all times that the operation of <i>the wind farm</i> complies with the following noise levels <i>within a 30 metre curtilage of a dwelling</i></p> <ul style="list-style-type: none"> <li>a) Will not exceed 35dB(A) (LA90, 10 minutes); or</li> <li>b) Will not exceed the background noise (LA90, 10 minutes) by more than 5dB(A), whichever is the greater.</li> </ul> <p>(b) <i>Assessment of noise impact is to be performed in accordance with SA EPA Wind farms environmental noise guidelines (2021).</i></p>

## COMMENT

### Condition 29

It is convenient to deal first with the requested amendments to Condition 29.

The Shire has recently been in receipt of a proposed Noise Impact Mitigation Management Plan (NIMMP) from the proponent, pursuant to Condition 21. The NIMMP has been prepared on the premise that condition 29 is satisfied if the noise levels *at non-stakeholder dwelling*s are compliant with the noise levels referred to in condition 29. Officers are concerned, however, that condition 29 uses the expression ‘noise sensitive premises’, not the word ‘dwellings’.

‘Noise sensitive premises’ has a meaning under the *Environmental Protection (Noise) Regulations 1997* (WA) (Noise Regulations) that would include the entirety of farms, not just dwellings on farms.

Shire officers have taken the position that condition 29, if read without reference to its background intent and evolution, would require the stipulated noise levels to be complied with at farm boundaries, not just at dwellings. There is another expression under the Noise Regulations, ‘noise sensitive premises (highly sensitive areas)’ that would be used to refer to dwellings on farms.

Officers are satisfied that the background intent of condition 29 was to require the stipulated noise levels not to be exceeded at dwellings. However, officers are concerned that, since the condition deals with technical acoustic matters, and technical acoustical matters are dealt with by specific, technical legislation (Noise Regulations), then the technical legal meaning would be applied rather than the intended meaning. If the definition in the Regulations is applied, then condition 29 might need to be read as requiring compliance with a 35dB limit for all surrounding farming land, rather than only at a dwelling.

The Shire’s CEO has communicated the position to the proponent that Shire Administration are not in favour of recommending that Council approve the NIMMP in circumstances where condition 29 requires compliance with stipulated maximums ‘at noise sensitive premises’ rather than at dwellings or at ‘noise sensitive premises (highly sensitive areas)’. The proponent does not agree with the position that condition 29 needs to be changed, but in the interests of progressing the project, they have made the current application.

The purpose of the applicant’s requested amendments to some conditions and advice, is to remove ambiguous terminology in the current wording, with a goal of seeking to ensure that the approval is certain and final.

The current application with regard to condition 29 would bring the wording of condition 29 into line with the original intent of the condition. The acoustic materials lodged by the applicant when condition 29 was first imposed, and the assessment of the development application so far as it related to what noise levels needed to be complied with at what points, related to dwellings not farm boundaries. In support of this, **attachment 9.4.1.5** to the Agenda papers comprises a detailed review of the relevant applicant materials and the relevant Responsible Authority Report by which this issue was considered.

The applicant notes that when the approval was first issued in 2011, the language used in the Western Australian Planning Commission’s Planning Bulletin 67 was applied in condition 21 and 29, as ‘short hand’ for the requirements contained within the Planning Bulletin 67 which requires assessment using the SA Guidelines.

The applicant acknowledges that the ambiguity arises because the term ‘noise sensitive premises’ also has a separate meaning under the Regulations. The definition is much more expansive, and includes locations such as uninhabited rural land. The applicant outlines that when the development approval is read in the context of its intended purpose, they suggest ‘noise sensitive premises’ was intended to refer to residential premises:

- Condition 21(a) refers to ‘existing’ noise sensitive premises.
- Condition 21(b) refers to the potential for the construction of new noise sensitive premises.

Accordingly, the rationale put forward by the applicant in Attachment 9.4.1.2 is overall supported.

Confidential attachments relating to confidential legal advice are being supplied to elected members under separate cover.

The proposed reference to ‘within a 30 metre curtilage of a dwelling’ has to do with the technical methodology for measuring noise. It is not measured right at a dwelling’s wall in case the sound reflects off the wall back to the instrument and confounds the measurement.

Condition 29 is also proposed to be amended so that it is ‘the wind farm’ which must comply with the stipulated maximums in condition 29, not each wind turbine. This is considered an improvement in the condition because arguably as the condition currently reads, if it was being enforced, the Shire or Department of Water and Environmental Regulation (DWER) might need to prove which turbine it is that is making the noise, when in reality the noise received at a receiver point might be the combined noise from more than one turbine.

There is an additional reference to ‘LA90, 10 minutes’, proposed to be added to the condition’s existing reference to LA90, 10 minutes. This has to do with the exact methodology for measuring noise. Although there was initial thought on the Shire’s part that that amendment was not appropriate, DWER accepts that that additional reference is appropriate. This aspect of the amendment is now also supported.

The condition is proposed to be amended also to reference the relevant South Australian document which has broad-based regulatory acceptance across Australia for measuring wind farm noise.

It is highlighted that matters relating to noise impacts and the associated planning/environmental framework are technical in nature. Part of the issue is the *South Australian Environmental Protection Authority – Wind Farms Environmental Noise Guidelines (SA Guidelines)*, which are considered to be the best practice guidelines for assessing wind farm noise, has different terminology compared to the WA Noise Regulations.

It is important to note that the wind farm must comply with the Noise Regulations as well as with condition 29. Neither of these sets of controls (Noise Regulations and condition 29) overrides the other – both must be complied with. Under certain conditions at certain times of the day or night, one or other of these controls might be the more stringent, whilst under other conditions or at other times, the other control might be more stringent.

The proponent must comply with whichever is the more stringent at any given time. It is not necessary for the development approval conditions to adopt the Noise Regulations, because these apply as a matter of law by their own force.

### **Condition 21**

It is convenient to next deal with the amendments to condition 21, because it interacts heavily with condition 29. The amendment sought reflects the amendments to condition 29, in that the reference to ‘noise sensitive premises’ is changed to ‘dwellings’. The rationale as for the amendment to condition 29 applies to the amendment to condition 21. For greater clarity, the SA methodology is also proposed to be referenced.

#### Condition 4(a)

The original development approval granted by the Shire of Kojonup was by Council resolution of 23 November 2011. That development approval did not contain a condition in the same terms as Condition 4(a). For that matter, it does not appear to have contained a condition that was even in line with the substance of Condition 4(a).

It was the proponent who proposed that Kojonup should impose conditions in uniformity with those applicable on the Broomehill-Tambellup side of the municipal boundary. This was accepted by Council by resolution 158/16 of 1 December 2016.

As such, the intent of the decision-maker when first imposing the equivalent of Condition 4(a) for the Broomehill-Tambellup side of the boundary, is relevant to the interpretation of the same condition for the Kojonup side.

The relevant Responsible Authority Report (RAR) for Broomehill-Tambellup was presented to a Joint Development Assessment Panel (JDAP) meeting of 19 July 2013.

The RAR at p. 29 quoted WAPC Planning Bulletin 67's recommendation for 'sufficient buffers or setbacks to noise sensitive premises', and quoted more specifically from that publication:

'As a guide, the distance between the nearest turbine and a noise sensitive *building* not associated with the wind farm, is likely to be 1 kilometre' (italics indicates added emphasis).

The revised RAR drew from the WAPC publication, the expression 'noise sensitive building', rather than 'noise sensitive premises', and relied on a one kilometre separation distance. This aspect of the RAR is inconsistent with the idea that Condition 4(a)'s references to 'sensitive premises' includes the entirety of tracts of farmland.

At p. 24 the revised RAR commenced dealing with the matter of infrasound. It overviewed a Victorian State government publication on the topic, including the following proposition:

'(viii) Lot [sic: low] frequency sound from wind farms may be audible at neighbouring residences, and may be more prominent at night under stable conditions. While it may be audible the actual impact of low frequency sound on residents near wind farms is low, because of the low levels produced overall.'

Therefore, having regard to the above quote, the revised RAR's consideration of the Victorian publication is consistent with considering only residences, not the entirety of broadacre farms.

Further detail included in attachment **9.4.1.5** supporting that noise assessment, and separation distance for turbines, was only ever by reference to dwellings as receiver points, not farm lot boundaries.

For completeness, it should be noted that the WAPC *Position Statement: Renewable energy facility*, March 2020, now recommends a maximum distance between noise-sensitive land uses and a wind turbine, of 1,500 metres. The minimum distance may be reduced with the approval of the local government, based upon advice from DWER. 1,500m is a longer distance the 1,000 metres recommended is the now superseded Planning Bulletin 67 of May 2004.

However, the present application for amendment to conditions is considered by Shire officers to be intended to merely reflect in more accurate and certain wording, the intention behind the existing wording, and to resolve ambiguities or possible ambiguities. The applicant currently has a right to act on the existing development approval, and if the underlying intent of condition 4(a) is to achieve a one-kilometre separation for dwellings, then an application which merely seeks to resolve wording ambiguities to better reflect that intent, is not the occasion to revisit the substantive issue of what the separation distance should be.

Moreover, site-specific acoustic study material was produced to the Shire at all relevant stages to provide to the Shire with comfort that the noise maximums referred to in condition 29 should be achievable at dwellings. This is considered to satisfy the WAPC Position Statement especially clause 5.3.4.

Under the current wording of condition 4(a), the one kilometre separation distance of a wind turbine is by reference to ‘any residential dwelling/sensitive premises’. It is not stated that the separation distance is from a ‘noise sensitive premises’. Officers do not consider that the same ambiguity arises under condition 4(a) as it does under condition 29. However, it is sensible to put the issue beyond doubt, if in fact the origin and intent of the condition was to achieve a one-kilometre separation to dwellings. That is what the applicant seeks.

Shire Officers recommend these amendments to the Council.

#### **Alternate options and their implications**

The Council has a number of options available to it, which are summarised below:

- 1 *Not approve the request*  
The Council can choose to not approve the request and advise the applicant giving reasons.
- 2 *Approve the request*  
The Council can choose to approve the request in part or in whole.
- 3 *Amend the request*  
The Council can choose to amend parts of the request.
- 4 *Defer the matter*  
The Council can choose to defer the matter and seek additional information from the applicant or undertake consultation, if deemed necessary, before proceeding to make a decision.

This is a discretionary decision, and the applicant has a right to request a review of any decision and/or condition made by the local government to the State Administrative Tribunal if aggrieved by the decision and/or any condition.

#### **CONSULTATION**

The Shire has previously consulted on the Development Application.

The Shire has endeavoured to advise interested stakeholders of the upcoming Council meeting considering the amendment.

#### **STATUTORY REQUIREMENTS**

*Planning and Development Act 2005 and Planning and Development (Local Planning Schemes) Regulations 2015.*

**POLICY IMPLICATIONS**

The proposal satisfies the Western Australian Planning Commission *Position Statement: Renewable Energy Facilities* (March 2020) which replaced the former *Planning Bulletin 67 Guidelines for Wind Farm Development* (2004).

**FINANCIAL IMPLICATIONS**

The applicant has paid the Development Application fee.

**RISK MANAGEMENT IMPLICATIONS**

RISK MANAGEMENT FRAMEWORK			
Risk Profile	Risk Description/Cause	Key Control	Current Action
3 – Compliance	Impulsive decision making  Ineffective monitoring of changes to legislation	Professional accreditation/certification maintained	Nil
6 – Engagement	Inadequate documentation or procedures	Public notices/local papers/website communication	Nil
7 – Environment	Inadequate local laws/planning schemes	Environmental management compliance	Nil
8 – Errors, Omissions and Delays	Complex legislation  Incorrect information	Development Approval performance report	Nil
<i>Risk rating: Adequate</i>			
IMPLICATIONS			
Applicants need to ensure that Development Applications accord with the intent of the Shire of Kojonup Town Planning Scheme. Council, in assessing applications, needs to adopt a similar approach that reflects present and future requirements without compromising amenity or establishing precedents.			

**ASSET MANAGEMENT IMPLICATIONS**

Nil

**SOUTHERN LINK VROC (VOLUNTARY REGIONAL ORGANISATION OF COUNCILS) IMPLICATIONS**

Although the Moonies Hill wind turbine project is located in two Shires, this request only relates to turbines located in the Shire of Kojonup. The Shire of Broomehill-Tambellup and the JDAP will separately consider the requested amended conditions.

## VOTING REQUIREMENTS

Absolute Majority

### OFFICER RECOMMENDATION

That Council:

- 1) In accordance with Regulation 77 of the *Planning and Development (Local Planning Schemes) Regulations 2015* approve the amendment of the development approval issued to Moonies Hill Energy Pty Ltd for the Flat Rocks Wind Farm and issue a revised development approval through the following changes to conditions 4, 21 and 29 and adding advice notes.

In particular, to reword as follows:

#### Condition 4

The wind turbines are to be micro-sited in accordance with the following restrictions –

- a) All wind turbines shall be located a minimum distance of 1 kilometre from any dwelling existing at the time of the issue of this planning approval unless approval in writing is first granted from the owner of that dwelling to a closer location;
- b) The wind turbines shall be located in accordance with the 'Flat Rocks Wind Farm Landscape and Visual Assessment'. This report requires, in order to satisfy visual amenity considerations, either relocation of specified wind turbines or in the alternative, the implementation of vegetation screening.

Condition 21

Prior to commencing any works, the Applicant is to lodge a Noise Impact Mitigation Management Plan for approval by the local government. The Noise Impact Mitigation Management Plan is to outline the process by which the Applicant will –

- a) Undertake post-commissioning testing to ensure compliance with condition 29, including testing at existing dwellings, based upon the testing procedures and analysis contained in the South Australian EPA Wind Farms Environmental Noise Guidelines (2021);
- b) Make arrangements with adjoining landowners regarding the construction of dwellings on land;
- c) Modify micro-siting to ensure compliance with condition 29;
- d) Modify the operation of the wind turbines to ensure compliance with condition 29;
- e) Manage complaints regarding noise impact during the operational phase of the development.

Condition 29

- (a) The Applicant shall ensure at all times that the operation of the wind farm complies with the following noise levels within a 30 metre curtilage of a dwelling:
  - a) Will not exceed 35dB(A) (LA90, 10 minutes); or
  - b) Will not exceed the background noise (LA90, 10 Minutes) by more than 5dB(A), whichever is the greater.
- (b) Assessment of noise impact is to be performed in accordance with SA EPA Wind Farms Environmental Noise Guidelines (2021).

Adding advice

Insert new advice notes as follows:

- A) The term 'dwelling' in this approval has the same meaning as the Residential Design Codes Volume 1.
- B) The applicant is advised that:
  - i) There is potential for vacant lots adjacent to the proposed wind farm to be further developed with dwellings.



- ii) Legislation in Western Australia requires that the wind farm comply with the Environmental Protection (Noise) Regulations 1997. The controls on noise contained in this approval do not override those contained in the Regulations, nor vice versa, but the wind farm must comply with whichever control is more stringent at any given location at any given time under then-prevailing meteorological etc conditions.
  - iii) The applicant takes the commercial risk that future wind farm operations may need to be altered or modified to continue to comply with noise limitations.
  - iv) It is recommended that the applicant prepare and submit acoustic compliance reports by a suitably qualified and independent acoustic engineer to demonstrate compliance with Condition 29 at key stages of development. This would provide compliance assurances to both the local government and surrounding landowners.
- 2) Advise the Shire of Broomehill-Tambellup of the decision to approve the amendments to the Moonies Hill Energy Pty Ltd wind farm development.

9.5 KEY PILLAR 5 – ‘DIGITAL’ REPORTS

Nil

10 APPLICATIONS FOR LEAVE OF ABSENCE

Nil

11 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

12 QUESTIONS FROM MEMBERS WITHOUT NOTICE

Nil

13 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF THE MEETING

Nil

14 MEETING CLOSED TO THE PUBLIC

14.1 MATTERS FOR WHICH THE MEETING MAY BE CLOSED

Nil

14.2 PUBLIC READING OF RESOLUTIONS THAT MAY BE MADE PUBLIC

Nil

15 CLOSURE

There being no further business to discuss, the President thanked the members for their attendance and declared the meeting closed at \_\_\_\_\_ pm.

16 ATTACHMENTS (SEPARATE)

- |       |         |  |
|-------|---------|--|
| 9.4.1 | 9.4.1.1 | Amended conditions of development approval (letter dated 5 October 2021) |
|       | 9.4.1.2 | 221013 - KO DA amendment - FRWF  |
|       | 9.4.1.3 | MHE Correspondence 25102022 DA amendment request                         |
|       | 9.4.1.4 | 221026 - Letter to Shire of Kojonup with attachment                      |
|       | 9.4.1.5 | Detailed analysis of decisional process re sensitive Premises            |

UNDER SEPARATE COVER

Confidential Legal Advice



# Kojonup



One community, many choices

Our Ref: DB.BDA.8

Dr Sarah Rankin – Managing Director  
Moonies Hill Energy Pty Ltd  
5 Barnfield Road  
CLAREMONT WA 6010

Dear Sarah,

**MOONIES HILL ENERGY PTY LTD REQUEST TO AMEND CONDITIONS OF DEVELOPMENT APPROVAL FOR THE FLAT ROCKS WIND FARM.**

The Shire of Kojonup considered your above request and resolved at its 28 September 2021 meeting to approve the request and amend the conditions.

Please find enclosed the Notice of determination on application for development approval form. The proposal may now proceed in accordance with the conditions set out in the attached approval form and plans.

This is a discretionary decision by the Shire, and you have a right to request a review of any decision and/or condition made by the Local Government to the State Administrative Tribunal if you are aggrieved by the decision and/or any condition. Appeals must be lodged within 28-days of receiving this advice.

If you have any questions or queries regarding this matter, please do not hesitate to contact Grant Thompson (Chief Executive Officer) or Phil Shephard (Town Planner) through the Shire Office on (08) 9831 2400.

Yours sincerely,

**Phil Shephard**  
Town Planner

5/10/2021

Enc.

**Shire of Kojonup**

93-95 Albany Highway, Kojonup WA 6395

Postal address: PO Box 163, Kojonup WA 6395

Telephone: (08) 9831 2400 | Facsimile: (08) 9831 1566 | Email: [council@kojonup.wa.gov.au](mailto:council@kojonup.wa.gov.au)



Planning and Development Act 2005

Shire of Kojonup

Notice of determination on application for development approval

Location: *Various including 4787, 1, 2, 1000, 1001, 4224, 3936, 96, 4747, 781, 1158, 1748, 1017, 1016, 4429, 6315, 7362, 5187, 1790, 1641, 1085, 6932, 1028, 1111, 7725, 6474, 1107, 4386, 725, 1110, 6085, 1697, 5979, 6855 & 6854*

Lot: *Various* Plan/Diagram: *Various*

Vol. No: *Various* Folio No: *Various*

Application date: *10 August 2021* Received on: *10 August 2021*

Description of proposed development:

*Wind farm*

The application for development approval is:

*Substantial commencement*

- 1) *This wind farm shall substantially commence by 30 November 2023.*

*Wind turbine location and micro-siting*

- 2) *This approval is for a maximum of 9 wind turbines.*
- 3) *The location of the wind turbines shall be generally in accordance with the attached plan, and the application as submitted which includes the 'Flat Rocks Wind Farm Environmental Report' and Appendices.*
- 4) *The wind turbines are to be micro-sited in accordance with the following restrictions –*
  - (a) *All wind turbines shall be located a minimum distance of 1 kilometre from any residential dwelling / sensitive premises existing at the time of the issue of this planning approval, unless approval in writing is first granted from the owner of that residential dwelling / sensitive premises to a closer location;*
  - (b) *The wind turbines shall be located in accordance with the 'Flat Rocks Wind Farm Landscape and Visual Assessment'. This report requires, in order to satisfy visual amenity considerations, either relocation of specified wind turbines or in the alternative, the implementation of vegetation screening.*

*Turbine specifications*

- 5) *This approval is for Vestas V150 4.2MW wind turbine. Where the use of an alternative wind turbine is proposed, the Applicant must prepare and lodge with the local government a revised Noise Impact Assessment based upon the proposed alternative turbine, which demonstrates that the alternative turbine can comply with condition 29 below.*

- 6) *The transformer associated with each wind turbine shall be located beside each tower or enclosed within the tower.*
- 7) *The wind turbines and rotors are to be constructed utilising a light grey colour.*
- 8) *All wind turbine towers are to be fully enclosed (to prevent birds perching or nesting).*
- 9) *All wind turbine towers to be unlit, unless required to comply with CASA regulations or the recommendations of the Applicant's risk management strategy.*
- 10) *The maximum height of each wind turbine shall be 200 metres, measured from the base of the tower to the rotor tip at its maximum elevation.*

Temporary development

- 11) *The development approval also grants temporary development approval for the following –*
  - (a) *temporary service roads and car parks;*
  - (b) *crane hardstand areas;*
  - (c) *concrete batching plants;*
  - (d) *construction compounds;*
  - (e) *water tanks; and*
  - (f) *materials storage / laydown areas; and*
  - (g) *any other construction related infrastructure,*  
*shown on the Construction Management Plan required by condition 18.*
- 12) *Any concrete batching plant shall be set back a minimum distance of 500 metres from any boundary shared with lots not the subject of this approval.*

Ancillary development

- 13) *The development approval also grants development approval for the following –*
  - (a) *service roads;*
  - (b) *cabling, whether above or below ground;*
  - (c) *electricity reticulation / transmission powerlines, whether above or below ground;*
  - (d) *fencing;*
  - (e) *ancillary buildings;*
  - (f) *an electricity substation;*  
*shown on the Development Layout Plan required by condition 17.*
- 14) *All service roads are to be located, designed, constructed and drained to minimise the impact on local drainage systems, landscape and farming activities.*
- 15) *Electricity reticulation / transmission powerlines –*
  - (a) *Between groups of wind turbine towers (called 'gangs') shall be placed underground, unless it is demonstrated to the satisfaction of the local government that it is impracticable to do so;*
  - (b) *Between the gangs, preferably underground, but over-head in circumstances where it is impracticable or uneconomical to install underground;*
  - (c) *Shall not be placed on or over land outside the lots the subject of this approval without the written approval of those land owners.*
- 16) *The electricity substation to be shown on the Development Layout Plan required by condition 17, must comply with the following development standards –*
  - (a) *Minimum setback of 100 metres from the perimeter of the substation to the boundary of the location within the nominated development area;*

- (b) *Maximum height of the substation building and infrastructure within the substation area to be less than 60 metres, excluding masts, poles, or infrastructure required by a separate regulatory authority;*
- (c) *The area of the substation does not exceed 2 hectares, with the area to include the substation, perimeter fencing, and excluding fire breaks or vegetation buffer planting;*
- (d) *The substation will not exceed 150MW power transfer to the grid.*

Pre-construction conditions

- 17) *Prior to commencing any works, the Applicant is to lodge a Development Layout Plan for approval by the local government. The Development Layout Plan must include the following detail –*
  - (a) *The location of access / egress points and service roads;*
  - (b) *The location of any cabling between wind turbines;*
  - (c) *The location of any fencing;*
  - (d) *Permanent buildings;*
  - (e) *Permanent car parking areas;*
  - (f) *Locations of the wind turbines, having regard to the restrictions in conditions 3 and 4 above;*
  - (g) *The location of any landscaping if required by condition 4(b).*
- 18) *Prior to commencing any works, the Applicant is to lodge a Construction Management Plan for approval by the local government. The Construction Management Plan must include the following detail –*
  - (a) *The location of temporary access / egress points and temporary service roads;*
  - (b) *The location of crane hardstand areas;*
  - (c) *Temporary buildings;*
  - (d) *Temporary car parking areas;*
  - (e) *The location of the concrete batching plant, water tanks and any construction compounds and materials storage / laydown areas;*
  - (f) *The location and extent of excavation required for the purpose of laying cabling;*
  - (g) *A timetable for the removal of temporary development after completion of the construction phase;*
  - (h) *The management of dust and other construction impacts;*
  - (i) *The management of weed infestations.*
- 19) *Prior to commencing any works, the Applicant is to lodge a Fire Management Plan for approval by the local government. The Fire Management Plan shall be prepared by a suitably qualified consultant and in the context of the construction and operational phases of the development address the following matters –*
  - (a) *Identification and clear mapping of firebreaks, emergency ingress and egress points, water points, turnaround areas for fire trucks, water sources, on site fire-fighting equipment;*
  - (b) *Identification of on-site tracks for access by emergency fire vehicles, and the requirement for these tracks to be maintained to a trafficable standard at all times;*
  - (c) *Emergency procedures and personnel contacts;*
  - (d) *Consideration of activities on fire ban days;*
  - (e) *Notification for other agencies.*



- 20) Prior to commencing any works, the Applicant is to lodge a Traffic Management Plan for approval by the local government. The Traffic Management Plan is to be prepared by a suitably qualified traffic consultant and in the context of the construction phase of the development is to include –
- (a) Haulage routes;
  - (b) Heavy vehicle movements scheduling;
  - (c) Use of escort vehicles;
  - (d) Interaction with other road uses, for example, school bus routes;
  - (e) A Pre-Construction Road Condition Report along the proposed haulage routes, and the obligation to prepare a Post-Construction Road Condition Report once construction is complete.
- 21) Prior to commencing any works, the Applicant is to lodge a Noise Impact Mitigation Management Plan for approval by the local government. The Noise Impact Mitigation Management Plan is to outline the process by which the Applicant will –
- (a) Undertake post-commissioning testing to ensure compliance with condition 29, including testing at existing noise sensitive premises;
  - (b) Make arrangements with adjoining landowners regarding the construction of noise sensitive premises on land;
  - (c) Modify micro-siting to ensure compliance with condition 29;
  - (d) Modify the operation of the wind turbines to ensure compliance with condition 29;
  - (e) Manage complaints regarding noise impact during the operational phase of the development.
- 22) Prior to commencing any works, the Applicant is to lodge a Landscaping Plan for approval by the local government, in relation to the permanent buildings and car parking areas, and where vegetation screening is required by condition 4(b). The Landscaping Plan is to be prepared by a suitably qualified landscape architect, and address the following matters –
- (a) Identify, by numerical code, the species, quantity and anticipated mature dimensions of all plant types;
  - (b) Identify a schedule of maintenance required to ensure that the landscaping grows to its mature dimensions and can be maintained at that level.
- 23) Where the Applicant intends undertaking the development in stages, a Staging Plan must be lodged with the local government at the same time as the Management Plans referred to in conditions, 17, 18, 19, 20, 21, and 22. The purpose of the Staging Plan is to determine the scope of information required in order to satisfy the conditions of approval as it relates to that stage.
- 24) Prior to commencing any works, the Applicant is to advise the following entities regarding the construction of the wind turbines, including estimated dates of installation, details of exact locations and heights –
- 24.1 Civil Aviation Safety Authority (CASA);
  - 24.2 Airservices Australia;
  - 24.3 Royal Flying Doctor Service;
  - 24.4 Royal Australian Air Force;
  - 24.5 All known private airstrip owners within 20km of any wind turbine;
  - 24.6 All known aerial agriculture operators, including the Aerial Agriculture Association of Australia.

- 25) *Prior to commencing any works the Applicant is to acknowledge in writing to the satisfaction of the Shire that they are responsible for the remedying of any electromagnetic interference to pre-construction quality of signals directly attributable to the operation of the wind farm.*

Construction conditions

- 26) *The Applicant is to implement the following approved plans, as they relate to the construction phase of the development, during construction –*
- (a) the Construction Management Plan, required by condition 18*
  - (b) the Fire Management Plan, required by condition 19; and*
  - (c) the Traffic Management Plan, required by condition 20;*
- 27) *All fill placed on the land must be free of disease and weeds.*
- 28) *Any damage caused to the roads attributable to the construction phase of the development is to be rectified by the Applicant to the standard identified in the Pre-Construction Road Condition Report.*

Operational conditions

- 29) *The Applicant shall ensure at all times that the operation of each wind turbine complies with the following noise levels at noise sensitive premises –*
- (a) Will not exceed 35dB(A); or*
  - (b) Will not exceed the background noise (LA90, 10 minutes) by more than 5dB(A); whichever is the greater.*
- 30) *The Applicant is to implement the following approved plans, as they relate to the operational phase of the development, during the life of this development approval –*
- (a) the Fire Management Plan, required by condition 19;*
  - (b) the Traffic Management Plan, required by condition 20;*
  - (c) the Noise Impact Mitigation Plan, required by condition 21; and*
  - (d) the Landscape Management Plan, required by condition 22.*

Decommissioning conditions

- 31) *The wind turbines are to be decommissioned when they are disconnected from the power grid or when they no longer generate energy into the power grid. This condition does not apply where the wind farm or individual wind turbines is disconnected temporarily from the power grid, or is not generating energy, for maintenance.*
- 32) *Prior to decommissioning the wind farm, or any wind turbines in the wind farm, the Applicant is to lodge a Decommissioning and Rehabilitation Management Plan for approval by the local government. The Decommissioning and Rehabilitation Management Plan is to include –*
- (a) a detailed decommissioning schedule or works with timeframes for each stage;*
  - (b) a Traffic Management Plan;*
  - (c) a Fire Management Plan;*
  - (d) sufficient information that clearly outlines any below ground infrastructure to be retained on site and its treatment to allow for continued agricultural use;*
  - (e) implementation of suitable mechanisms to alert prospective purchasers of retention of any below ground infrastructure which may affect future building locations or development*

- 33) *The Applicant is to implement the Decommissioning and Rehabilitation Management Plan during the decommissioning and rehabilitation process.*
- 34) *All lots the subject of this development approval shall be returned to pre-development state following decommissioning, with the exception that underground infrastructure (such as footings and cables) may be retained below normal ploughing levels where retention allows for continued agricultural use.*
- 35) *If any below ground infrastructure is retained on site following decommissioning, notifications are to be placed on the affected Certificates of Title to alert prospective purchasers that there are underground cables and or infrastructure on the land which may impact on future development or building locations, within 3 months of the wind farm being decommissioned. The Notifications are to be prepared and lodged at the cost of the Applicant.*

Additional development


- 36) *The Applicant may construct a viewing area / platform and information / interpretative signage suitable for resident and visitor / tourist use at a wind turbine location to be agreed with the Shire of Kojonup.*

Date of determination: **28 September 2021**

Note 1: If the development the subject of this approval is not substantially commenced within a period of 2 years, or another period specified in the approval after the date of the determination, the approval will lapse and be of no further effect.

Note 2: Where an approval has so lapsed, no development must be carried out without the further approval of the local government having first been sought and obtained.

Note 3: If an applicant or owner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with the *Planning and Development Act 2005* Part 14. An application must be made within 28 days of the determination.

Signed:  Dated: 5/10/2021  
for and on behalf of the Shire of Kojonup

Your ref: DB.BDA.8  
Our ref: 12574907

14 October 2022

Shire of Kojonup  
PO Box 163  
KOJONUP WA 6395

### Shire of Kojonup – DB.BDA.8 Flat Rocks Wind Farm – Application for Amended Planning Approval

Dear Sir / Madam

GHD Pty Ltd (GHD) acts on behalf of Flat Rocks One Wind Farm Pty Ltd (an entity owned by Enel Green Power Australia Pty Ltd) and Moonies Hill Energy Pty Ltd. This application specifically seeks the Shire's amendment to conditions 4, 21 and 29 of the abovementioned approval.

The purpose of the requested amendments is to correct ambiguous terminology in the current wording, to ensure that the approval is certain and final.

## Approvals Background

By way of background, the Flat Rocks Wind Farm is a project which spans approximately 10.0km within the Shires of Broomehill Tambellup and Kojonup.

To this end, the project is the subject of two development approvals –

- In relation to the Shire of Broomehill Tambellup, originally granted by the then Great Southern Regional Joint Development Assessment Panel in 2013 (referred to in greater detail below); and
- In relation to the Shire of Kojonup, originally granted by the Shire of Kojonup in 2011, as the application was lodged prior to the commencement of the Development Assessment Panel regime.

The current approvals for each of the local government areas include identical conditions. A parallel application has been made to the Shire of Broomehill Tambellup in respect of its approval. It is our firm desire to ensure that the conditions of each approval remain consistent to provide operational certainty into the future.

**Table 1** below provides a summary of the approval history associated with the project of which there are a total of five (5) approvals.

Table 1 Approvals History

No.	Date	Purpose of approval	Application Triggers	Approval Summary
1	21 December 2011	Original Approval	Nil	Approved subject to 28 conditions and 4 advice notes.
2	15 September 2015	Amendment	Extension to approval date.	Approved subject to 28 conditions and 4 advice notes (no change to original conditions).  Extension granted to 21 December 2019.
3	19 July 2016	Amendment	Inclusion of additional lots which were omitted from approval (administrative error).	Approved subject to 28 conditions and 4 advice notes (no change to original conditions).  Omitted lots added to determination.
4	1 December 2016	Amendment	Approval of different wind turbine model and harmonisation of conditions with Shire of Broomehill-Tambellup determination.	Approved subject to 36 conditions and 3 advice notes.
5	28 September 2021	Amendment	Change to 'substantial commencement' date to reflect WA Government State of Emergency planning exemptions.  Include new 7 turbine site layout.  Include new wind turbine model (Vestas V150 4.2MW).	Approved subject to 36 conditions and 3 advice notes.

## Need for amendment

The need for the amendment arises because of a potential ambiguity in the language used in conditions 4, 21 and 29.

### Conditions 21 and 29

Conditions 21 and 29 of the approval refer to 'noise sensitive premises'. That language is a reference to the term as it was used in the former *Planning Bulletin 67: Guidelines for Wind Farm Development (PB67)*, which stated –

*Until such time as a formal policy is adopted in Western Australia, the Department of Environment (DoE) endorses the criteria and approach of assessing wind farms based on background noise levels, as described in the South Australian guidelines Environmental Protection Authority – Wind Farms Environmental Noise Guidelines. These guidelines provide that wind farm developments should be constructed and designed to ensure that noise generated will not exceed 5dB(A) above the background sound level or 35dB(A) using a 10-minute LA eq, whichever is the greater, at **surrounding noise-sensitive premises**. (emphasis added)*

PB67 has since been superseded by *Position Statement: Renewable energy facilities*. That document refers to both 'noise sensitive land uses' and 'noise sensitive premises'. 'Sensitive land use' is defined in the Position Statement as meaning -

**Sensitive land uses** comprise land uses that are residential or institutional in nature, where people live or regularly spend extended periods of time. These include dwellings, short-stay accommodation, schools, hospitals and child care centres and generally exclude commercial or industrial premises.

The ambiguity arises because the term 'noise sensitive premises' also has a separate meaning under the *Environmental Protection (Noise) Regulations 1997 (Noise Regulations)*. The definition is much more expansive, and includes locations such as uninhabited rural land.

A concern has been raised by both Shires that if the definition in the Noise Regulations applied, then condition 29 might need to be read as requiring compliance with a 35dB limit for all surrounding farming land, rather than only at a dwelling.

It is clear that when the approval was first issued, the language used in PB67 was applied in condition 21 and 29, as short hand for the requirements contained within the PB67 which requires assessment using the *South Australian Environmental Protection Authority – Wind Farms Environmental Noise Guidelines (SA Guidelines)*.

The SA Guidelines do not use the term 'noise sensitive premises', instead imposing a requirement to model, and ultimately measure, sound at 'relevant receivers'.

To paraphrase the term as it is used in the SA Guidelines, a 'relevant receiver' is a premises in which someone resides, or has a valid development approval to build a residential building at which the noise level could potentially exceed the base levels for the area (that is, either 35 or 40dB(A)).

It should be noted that PB67 was superseded by *Position Statement: Renewable Energy Facilities* in March 2020. Relevantly, that document continues to reference the SA Guidelines for the purpose of assessment.

When the development approval is read in the context of its intended purpose, it is evident that the term 'noise sensitive premises' was intended to refer to residential premises. For example –

- Condition 21(a) refers to 'existing' noise sensitive premises.
- Condition 21(b) refers to the potential for the construction of new noise sensitive premises.
- Advice note g(i) refers to the '...potential for vacant lots adjacent to the proposed wind farm to be further developed with **sensitive buildings** and **residential dwellings**'.

Condition 21 would be rendered futile if 'noise sensitive premises' was to be afforded the expansive definition in the Noise Regulations which includes rural zoned land rather than referring to a dwelling.

#### **Condition 4 and amendment to Advice Notes**

The amendment to condition 4, and the Advice Notes is to provide consistency of language throughout the document.

## **Requested amendments**

For the reasons set out above, the Applicant seeks amendment of the conditions as set out in the following **Table 2** below.

Table 2

## Proposed Amendments

	Existing Wording	Proposed Wording
<b>Conditions</b>		
4	<p>The wind turbines are to be micro-sited in accordance with the following restrictions -</p> <p>(a) All wind turbines shall be located a minimum distance of 1 kilometre from any residential dwelling / sensitive premises existing at the time of the issue of this planning approval unless approval in writing is first granted from the owner of that residential dwelling / sensitive premises to a closer location;</p> <p>(b) The wind turbines shall be located in accordance with the 'Flat Rocks Wind Farm Landscape and Visual Assessment'. This report requires, in order to satisfy visual amenity considerations, either relocation of specified wind turbines or in the alternative, the implementation of vegetation screening.</p>	<p>The wind turbines are to be micro-sited in accordance with the following restrictions -</p> <p>a) All wind turbines shall be located a minimum distance of 1 kilometre from any <b>dwelling</b> existing at the time of the issue of this planning approval unless approval in writing is first granted from the owner of that dwelling to a closer location;</p> <p>b) The wind turbines shall be located in accordance with the 'Flat Rocks Wind Farm Landscape and Visual Assessment'. This report requires, in order to satisfy visual amenity considerations, either relocation of specified wind turbines or in the alternative, the implementation of vegetation screening.</p>
21	<p>Prior to commencing any works, the Applicant is to lodge a Noise Impact Mitigation Management Plan for approval by the local government. The Noise Impact Mitigation Management Plan is to outline the process by which the Applicant will -</p> <p>(a) Undertake post-commissioning testing to ensure compliance with condition 29, including testing at existing noise sensitive premises;</p> <p>(b) Make arrangements with adjoining landowners regarding the construction of noise sensitive premises on land;</p> <p>(c) Modify micro-siting to ensure compliance with condition 29;</p> <p>(d) Modify the operation of the wind turbines to ensure compliance with condition 29;</p> <p>(e) Manage complaints regarding noise impact during the operational phase of the development.</p>	<p>Prior to commencing any works, the Applicant is to lodge a Noise Impact Mitigation Management Plan for approval by the local government. The Noise Impact Mitigation Management Plan is to outline the process by which the Applicant will -</p> <p>a) Undertake post-commissioning testing to ensure compliance with condition 29, including testing at existing <b>dwelling</b>s, based upon the testing procedures and analysis contained in the South Australian EPA Wind Farms Environmental Noise Guidelines (2021);</p> <p>b) Make arrangements with adjoining landowners regarding the <b>construction of dwelling</b>s on land;</p> <p>c) Modify micro-siting to ensure compliance with condition 29;</p> <p>d) Modify the operation of the wind turbines to ensure compliance with condition 29;</p> <p>e) Manage complaints regarding noise impact during the operational phase of the development.</p>

	Existing Wording	Proposed Wording
29	<p>The Applicant shall ensure at all times that the operation of each wind turbine complies with the following noise levels at noise sensitive premises -</p> <p>(a) Will not exceed 35dB(A); or</p> <p>(b) Will not exceed the background noise (LA90, 10 minutes) by more than 5dB(A);</p> <p>whichever is the greater.</p>	<p>(a) The Applicant shall ensure at all times that the operation of <i>the wind farm</i> complies with the following noise levels at <i>dwellings</i></p> <p>a) Will not exceed 35dB(A) (LA90, 10 minutes); or</p> <p>b) Will not exceed the background noise (LA90, 10 minutes) by more than 5dB(A),</p> <p>whichever is the greater.</p> <p>(b) <i>Assessment of noise impact is to be performed in accordance with SA EPA Wind farms environmental noise guidelines (2021).</i></p>
<b>Advice Note</b>		
-	n/a	<p>Insert new advice note to reflect changes to condition 4, 21 and 29, in the following terms -</p> <p><i>The term 'dwelling' in this approval has the same meaning as the Residential Design Codes Volume 1.</i></p>
g	<p>The applicant is advised that:</p> <p>i) There is potential for vacant lots adjacent to the proposed wind farm to be further developed with sensitive buildings and residential dwellings.</p> <p>ii) Legislation in Western Australia requires that the wind farm comply with the Environmental Protection (Noise) Regulations 1997.</p> <p>iii) The applicant takes the commercial risk that future wind farm operations may need to be altered or modified to continue to comply with noise limitations.</p> <p>iv) It is recommended that the applicant prepare and submit acoustic compliance reports by a suitably qualified and independent acoustic engineer to demonstrate compliance with Condition 29 at key stages of development. This would provide compliance assurances to both the local government and surrounding landowners.</p>	<p>The applicant is advised that:</p> <p>i) There is potential for vacant lots adjacent to the proposed wind farm to be further developed with <i>dwellings</i>.</p> <p>ii) Legislation in Western Australia requires that the wind farm comply with the Environmental Protection (Noise) Regulations 1997.</p> <p>iii) The applicant takes the commercial risk that future wind farm operations may need to be altered or modified to continue to comply with noise limitations.</p> <p>iv) It is recommended that the applicant prepare and submit acoustic compliance reports by a suitably qualified and independent acoustic engineer to demonstrate compliance with Condition 29 at key stages of development. This would provide compliance assurances to both the local government and surrounding landowners.</p>



## Conclusion

We trust that this information is sufficient for the application to be progressed. Please do not hesitate to contact the undersigned should you require any further documentation or explanation.

A handwritten signature in blue ink, appearing to read 'ML Lavery'.

**Marlene Lavery**  
Business Group Leader – Planning, Consultation  
and Urban Design

08 9721 0749  
marlene.lavery@ghd.com

Enc.

# **Attachment 1**

**Planning Bulletin 67: Guidelines for  
Wind Farm Development (May 2004)**

# **Attachment 2**

**Position Statement: Renewable Energy  
Facilities (March 2020)**





Our Ref: DB.BDA.8 – OUT22/6C922B11

Dr Sarah Rankin  
Managing Director  
Moonies Hill Energy Pty Ltd  
5 Barnfield Road  
CLAREMONT WA 6010

Dear Sarah

**Moonies Hill Energy Pty Ltd: requested amendments to Development Approval conditions: Flat Rocks Wind Farm**

Reference is made to GHD's letter to the Shire of Kojonup (Shire) dated 14 October 2022 and its various enclosures, whereby the proponent of the wind farm seeks amendments to certain conditions of development approval.

It is intended to place the request for amendment of conditions before Council at the earliest practical opportunity.

The purpose of the present letter is not to respond to the merits of the request, but to identify areas where, at Shire officer level, it is considered that the wording of the amendments could be improved for greater clarity or to meet appropriate acoustic terminology.

Shire officers' concerns from a condition drafting point of view are limited to the request to amend as it relates to Condition 29.

I set out officers' view as to the appropriate form of drafting of condition 29:

29. *The Applicant shall ensure at all times that the operation of the wind farm complies with the following LAeq, 10 minutes, (adjusted for tonality), outdoor noise levels at within a 30-metre curtilage of dwellings*

a) *Will not exceed 35dB(A) (~~LA90, 10 minutes~~); or*

b) *Will not exceed the background noise (LA90, 10 minutes) by more than 5dB(A),*

*whichever is the greater.*

*(b) Assessment of noise impact is to be performed in accordance with SA EPA Wind farms environmental noise guidelines (2021).*

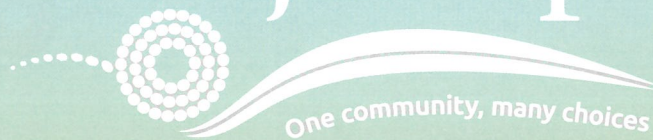
**Shire of Kojonup**

93-95 Albany Highway, Kojonup WA 6395

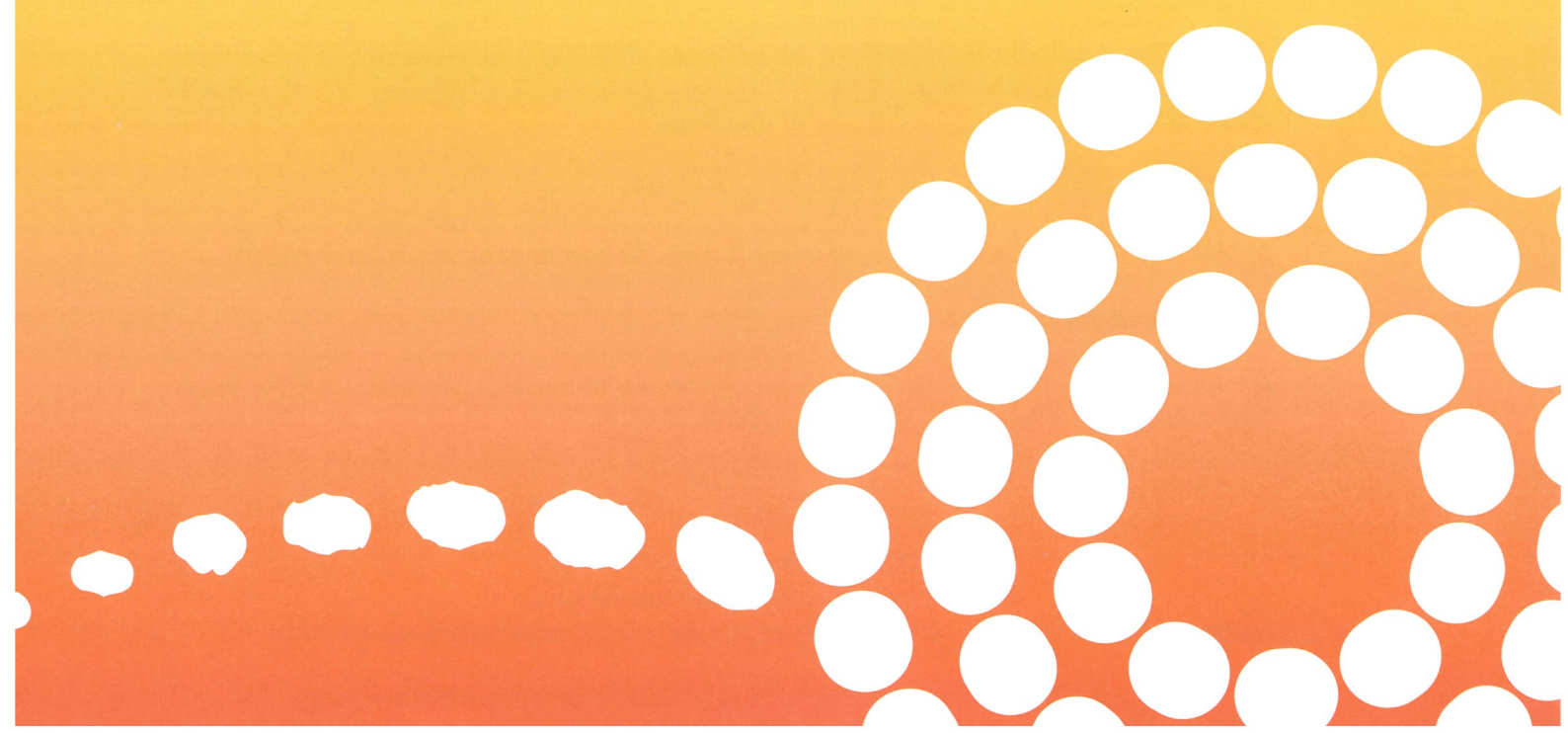
Postal address: PO Box 163, Kojonup WA 6395

241\_49635\_037.docx Telephone: (08) 9831 2400 | Facsimile: (08) 9831 1566 | Email: council@kojonup.wa.gov.au

# Kojonup



*One community, many choices*



As you can see, one difference is that officers consider that greater certainty is desirable in relation to exactly where the measurement should be taken. The SAEPAWF refers to a 30-metre curtilage. You might say that that is inherent in the SAEPAWF measurement methodology, however, conditions are part of a legal instrument (development approval) and the word that your proposal uses is 'dwellings', not dwelling curtilages.

The other difference is that just because paragraph (b) of condition 29 refers to LA90, 10 minutes doesn't mean that LA90, 10 minutes should be referred to in any other parts of the condition. The SAEPAWF references the noise emission from wind farms as LAeq, adjusted for tonality.

Could you please consult urgently with your acoustic consultants to establish whether the proponent is willing to make this 'amendment to its amendment'. A letter confirming the proponent's agreement to this will suffice.

I look forward to the proponent's revisions in light of consideration of the above. If the proponent does not agree to 'amend its amendment' then Council reserves the right to prefer the wording outlined above in preference to your requested wording.

Regards



Grant Thompson  
**Chief Executive Officer**

25 October 2022

Our ref: 23-003  
Your ref: DB.BDA.8-OUT22/6C922B11

26 October 2022

Mr Grant Thompson  
Chief Executive Officer  
Shire of Kojonup  
93-95 Albany Highway  
KOJONUP WA 6395

**By email:**

council@kojonup.wa.gov.au

Dear Grant

**Flat Rocks Windfarm - amendments to conditions of development approval**

1 I act for Enel Green Power Australia Pty Ltd (**EGP**) in respect of the Flat Rocks Wind Farm project, Stage 1.

**Background**

2 I refer to your letter dated 25 October 2022, addressed to Moonies Hill Energy Pty Ltd (**MHE**) regarding the proposed amendment to condition 29. As you would be aware, while EGP is now the owner and proposed operator of Stage 1 of the Flat Rocks Windfarm, MHE has been engaged on a consultancy basis to assist EGP with obtaining requisite approvals.

3 You would also be aware that some of Stage 1 and the whole of Stage 2 of the Flat Rocks Windfarm sits on land within the Shire of Broomehill Tambellup. A parallel application for the amendment of conditions has been lodged with the Shire of Broomehill Tambellup for determination by the Regional Joint Development Assessment Panel.

**Response to your letter**

4 Thank you for your letter proposing modifications to the proposed amendment of condition 29 – on behalf of EGP we thank you for dealing with the application in a timely manner.



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5 Since receiving your letter, I have had a chance to speak with EGP's acoustic expert as well as receive feedback from the Department of Water and Environmental Regulation (**DWER**) in relation to the application for amendment in Broomehill Tambellup (a copy of which is **enclosed**).

6 Below, I have set out our response to your proposed modifications.

### Measurement location

7 Your proposed modification suggests identifying the location from which measurements are to be taken by referring to 'outdoor noise within a 30 metre curtilage' of dwellings.

8 I am advised that specifying this number is unnecessary in circumstances where the South Australian Environmental Protection Authority Guidelines (**SA Guidelines**) are referenced, as this is embedded in the 'Measurement location selection' criteria, contained within that document.

9 That said, my instructions are to agree to this proposed modification if it provides greater comfort to the Shire.

### Measurement of sound power levels

10 The second proposed modification relates to changing the noise standard in condition 29 from 35dB(A)  $L_{A90, 10 \text{ minutes}}$ , to 35 dB(A)  $L_{Aeq, 10 \text{ minutes}}$ .

11 My instructions are to resist this proposed modification. To do so would put the measurement methodology in condition 29 at odds with the assessment methodology in the SA Guidelines, which are acknowledged by DWER as being an appropriate assessment tool.

12 We acknowledge that when a windfarm is *modelled* (i.e. prior to construction), the methodology requires an assessment based upon equivalent (i.e. average) noise levels ( $L_{Aeq,10}$ ). This is set out in the SA Guidelines as follows –

#### 2.2 Noise criteria – new wind farm development

The predicted equivalent noise level ( $L_{Aeq,10}$ ), adjusted for tonality in accordance with these guidelines, should not exceed:

- 35dB(A) at relevant receivers in localities<sup>2</sup> which are primarily intended for rural living\*

OR

- 40dB(A) at relevant receivers in localities in other zones

OR

- the background noise ( $L_{A90,10}$ ) by more than 5dB(A).

whichever is the greater, at all relevant receivers for wind speeds from cut-in to rated power of the WTG and each integer wind speed in between. These criteria apply for both day and night time hours, but have been based on conservative night time levels.

The background noise should be as determined by the data collection and wind speed bin analysis procedure recommended under these guidelines (section 3). It should be read from the resultant graph at the relevant integer wind speed. Compliance with the noise criteria should also be demonstrated for approved developments in the zones adjacent to the wind farm.

- 
- 13 This work was undertaken by Herring Storer in each of the reports that they have prepared for the various turbines over the years. The most recent report, prepared in July 2021 confirms this methodology –

3. CRITERIA

According to the Western Australian Planning bulletin number 67 “Guidelines for Wind Farm Development” – May 2004, the noise impact of proposed wind farms in Western Australia should be assessed in accordance with the criteria and approach of assessing wind farms described in the EPA of South Australia “Wind Farms – Environmental noise guidelines (interim) – December 2007” (Guidelines).

The Guidelines recommend the following criteria for the assessment of noise levels associated with proposed wind farms.

The predicted equivalent noise level ( $L_{Aeq,10\text{ minutes}}$ ), adjusted for tonality in accordance with the Guidelines, should not exceed :

- 35 dB(A), or
- 40 dB(A) in a primary production / rural industry zone, or
- the “Alternative Minimum Criteria” (Varying with Wind Speed); or
- the background noise ( $L_{A90,10\text{ minutes}}$ ) by more than 5 dB(A).

The criteria for background noise levels will vary with wind speed, as will wind turbine generated noise.

- 14 However, from the perspective of compliance (i.e. the ability to measure compliance post construction), it is necessary to *measure* the actual noise generated using slightly different criteria. This is because it is difficult to separate out the background noise from the turbine noise in the field.

- 15 Part 4 of the SA Guidelines notes –

The measurement of wind farm noise is expected to be difficult due to the masking effect of the ambient noise and its influence on the base noise level descriptor ( $L_{Aeq}$ ). The background noise descriptor ( $L_{A90}$ ) is used to mitigate this effect.

- 16 At Part 4.3, the SA Guidelines set out the appropriate criteria –

### 4.3 Criteria

The combined wind farm and background noise level  $L_R$  are to be determined from ( $L_{A90,10}$ ) data measured in accordance with the compliance checking procedure by the analysis as described in sections 3.3 and 4.2.

The wind farm noise level  $L_{WF}$  is to be determined in accordance with one of the procedures described below (if needed). Generally, the data should demonstrate an incremental trend compatible with the sound power characteristic of the WTG in the environment controlled by the wind farm.

In accordance with these guidelines the wind farm noise level (adjusted for tonality if needed) should not exceed:

- 35dB(A) at relevant receivers in localities which are primarily intended for rural living

OR

- 40dB(A) at relevant receivers in localities in other zones

OR

- the background noise ( $L_{A90,10}$ ) by more than 5 dB(A).

whichever is the greater, at all relevant receivers, for wind speeds from cut-in to rated power of the WTG and each integer wind speed in between.

15

- 17 The  $L_{A90,10}$  is used to describe the existing noise levels. If the existing noise levels (i.e. the combined background noise and windfarm noise) is less than 35dB(A), then there's no need to investigate further, and sub-limb one of condition 29(a) is satisfied.
- 18 Where the existing noise levels exceed 35dB, then there is a method to separate out the wind farm noise from the background noise, which is where the second part of condition 29 comes in, allowing the windfarm to be no more than 5dB(A) above the background noise.
- 19 I can confirm that what is proposed –
- 19.1 is not changing or elevating the potential noise levels, but adding clarity to the way the testing is to occur; and
- 19.2 these compliance criteria are considered industry standard across Australia and New Zealand.

### Conclusion


- 20 Based on the foregoing reasoning, the Applicant suggests a condition in the following terms –
- 29.
- (a) The Applicant shall ensure at all times that the operation of each wind turbine complies with the following outdoor noise levels ~~at noise sensitive premises~~ within a 30 metre curtilage of a dwelling -
- (i) Will not exceed 35dB(A) ( $L_{A90, 10 \text{ minutes}}$ ); or
- (ii) Will not exceed the background noise ( $L_{A90, 10 \text{ minutes}}$ ) by more than 5dB(A);
- whichever is the greater.

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(b) Assessment of noise impact is to be performed in accordance with the SA EPA Wind farms environmental noise guidelines (2021).

21 Please do not hesitate to contact me should you have any further queries.

Yours faithfully



**Belinda Moharich**

Director

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**From:** Sarah Rankin MHE <sarah@mhenergy.com.au>  
**Sent:** Tuesday, 25 October 2022 10:29 AM  
**To:** Belinda Moharich  
**Subject:** FW: Seek advice on DAP Application to change noise conditions - Moonies Hill Wind Farm - Shire of Broomehill Tambellup

Just in from Liz.

Kind regards

Sarah

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**Dr Sarah Rankin**  
Managing Director  
Moonies Hill Energy Pty Ltd  
T: 0419 864 493  
M: 5 Barnfield Road CLAREMONT WA 6010  
[www.mhenergy.com.au](http://www.mhenergy.com.au)



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**From:** liz <liz@tخطيط.com.au>  
**Sent:** Tuesday, 25 October 2022 10:15 AM  
**To:** Sarah Rankin MHE <sarah@mhenergy.com.au>  
**Cc:** Anthony Middleton <ceo@shirebt.wa.gov.au>  
**Subject:** FW: Seek advice on DAP Application to change noise conditions - Moonies Hill Wind Farm - Shire of Broomehill Tambellup

Good Morning Sarah,

As you are aware I expedited a referral to DWER to seek their input into the noise conditions, and they have responded very quickly.

Before I do a final check of your application and lodge it formally to the DAP, do you want to review any of the proposed wording?

I just wanted to check.

Regards,

Liz Bushby  
Town Planning Innovations Pty Ltd  
**Consultant Planner for the Shire of Broomehill Tambellup**  
M: 0488910869

All emails are sent to the Shire for record keeping purposes. Please be advised that I work Tuesdays to Friday.

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**From:** Emma Bridgeman <[emma.bridgeman@dwer.wa.gov.au](mailto:emma.bridgeman@dwer.wa.gov.au)>

**Sent:** Monday, 24 October 2022 11:10 AM

**To:** liz <[liz@tخطيط.com.au](mailto:liz@tخطيط.com.au)>

**Cc:** [ceo@shirebt.wa.gov.au](mailto:ceo@shirebt.wa.gov.au); [finance@shirebt.wa.gov.au](mailto:finance@shirebt.wa.gov.au); Jingnan Guo <[jingnan.guo@dwer.wa.gov.au](mailto:jingnan.guo@dwer.wa.gov.au)>

**Subject:** RE: Seek advice on DAP Application to change noise conditions - Moonies Hill Wind Farm - Shire of Broomehill Tambellup

Hi Liz

Thanks for the email.

The requested amendments in wording relate to how we assess and regulate wind farm noise in WA.

I advise that wind farm noise needs to comply with the *WA Environmental Protection (Noise) Regulations 1997* (Noise Regulations), although the South Australian guidelines can apply to its assessment. In other words, we accept that wind farm noise can be generally masked by wind generated noise, and the assigned noise levels can be then calibrated by the wind generated noise, if it does mask the wind turbine noise received at the noise sensitive locations.

Based on this understanding;

1. The proposed change of wording in Condition 4 seems reasonable, as the assigned noise level for the 'Highly Sensitive Area' applies here, which refers to dwelling;
2. For the same reason, the proposed wording changes in Condition 21 also seems reasonable;
3. The proposed change of wording from 'each wind turbine' to 'the wind farm' in Condition 29 is correct. As is the proposed change of 'noise sensitive premises' to 'dwellings' in the same condition.
4. The other proposed changes in Condition 29 may not be necessary. For instance, it does not need to state that the assessment of noise impact needs to follow the SA guidelines. The inclusion of (LA90, 10 minutes) for 35 dB(A) criteria may also not be necessary. Legally, it needs to meet the LA10 assigned noise level of 35 dB(A) as per the Noise Regulations. However, in the actual compliance assessment, the measurement of LA90, 10minutes may be acceptable, due to the fact that wind farm noise is relatively stable (i.e. no difference between LA90 and LA10 for wind farm noise).
5. The change from 'sensitive buildings and residential dwellings' to 'dwellings' in Advice Note 'g' may not be necessary, as a sensitive building can also be treated as a 'Highly Sensitive Area', as per the Noise Regulations.

For your information, 'noise sensitive premises' under the Noise Regulations do include farm/lot boundaries. However, the assigned noise levels that apply to those lands other than the Highly Sensitive Area (i.e. dwelling) are much higher, and the proposed wind farm can comply with those levels.

Should you have any further queries please contact Jingnan Guo on 6364 6921 or [Jingnan.guo@dwer.wa.gov.au](mailto:Jingnan.guo@dwer.wa.gov.au).

Regards

Emma

[Emma Bridgeman](#)

Manager Environmental Noise

Science and Planning

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Twitter: @DWER\_WA

Monday, Thursday and alternate Friday (Prime House);  
Tuesday, Wednesday and alternate Friday (working from home).

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**From:** liz <[liz@tpiplanning.com.au](mailto:liz@tpiplanning.com.au)>

**Sent:** Wednesday, 19 October 2022 3:08 PM

**To:** Prime House Reception <[Primehouse.reception@dwer.wa.gov.au](mailto:Primehouse.reception@dwer.wa.gov.au)>

**Cc:** Anthony Middleton <[ceo@shirebt.wa.gov.au](mailto:ceo@shirebt.wa.gov.au)>; Kay O'Neill <[finance@shirebt.wa.gov.au](mailto:finance@shirebt.wa.gov.au)>

**Subject:** Seek advice on DAP Application to change noise conditions - Moonies Hill Wind Farm - Shire of Broomehill Tambellup

Attention : Principal Environmental Noise Officer

Please refer to the attached letter seeking advice on noise conditions for an approved wind farm. Your comments are sought as this application (for modified conditions) is to be determined by a Development Assessment Panel.

If you have any queries please do not hesitate to contact me.

Regards,

Liz Bushby  
Town Planning Innovations Pty Ltd  
**Consultant Planner for the Shire of Broomehill Tambellup**  
M: 0488910869

*All emails are sent to the Shire for record keeping purposes. Please be advised that I work Tuesdays to Friday.*

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**Detailed assessment of what were the reference points for separation distance and what were the receivers intended in condition imposed to date**

1. The acoustic report relied on by the proponent when first applying to both Shires was a Herring Storer report entitled '*Moonies Hill Energy: Flat Rocks Wind Farm Kojonup: Noise Impact Assessment*', dated July 2011, their reference 13231-4-10226-02, revision 3 of 12.07.11. The same report was lodged with both Shires. Appendix A to that report was a map showing all of the then-intended turbines, and it is clear that it covers the proposal on both sides of the municipal boundary.
2. The word 'sensitive' appears once in the report, in Part 1, which states '*See Appendix A for locations or turbines and noise sensitive premises*'. Accordingly, assessment of noise impact was undertaken by reference to the dwellings on nearby properties, rather than by reference to the boundaries of entire farm lots. See for example, Part 5 'RESULTS', stating the predicted noise level at each identified residential premises.
3. The Herring Storer acoustic report does not provide support for any proposition that the origin of what subsequently became Kojonup's Condition 4(a), in its reference to 'sensitive premises', was based on the entirety of any tract of nearby farmland.
4. Furthermore, in seeking to demonstrate the acceptability of noise impacts, Herring Storer were treating the receivers in questions as residences, not farm boundaries.
5. At p. 14 the Broomehill-Tambellup Responsible Authority Report (RAR) which went to the 13 July 2012 JDAP meeting stated:

'The application provides a minimum buffer of *1 kilometre between any proposed wind turbine and existing noise sensitive premises (dwellings)*. A one kilometre likely buffer is nominated in [WAPC Planning Bulletin] 67, with recognition that the ultimate buffer will be determined by acoustical studies.' (Underlining in original; italics indicates my emphasis).

It is apparent that the formulation of the application by the applicants was consistent with an understanding that noise sensitive premises were, so far as relevant to the subject proposal, dwellings, not entire farm lots. The quoted passage above also supports that the authors of the RAR did not take issue with the idea that the dwellings were relevantly the noise sensitive premises.

6. The RAR at p. 29 quoted WAPC Planning Bulletin 67's recommendation for 'sufficient buffers or setbacks to noise sensitive premises', and quoted more specifically from that publication:

'As a guide, the distance between the nearest turbine and a noise sensitive *building* not associated with the wind farm, is likely to be 1 kilometre'. (Italics added for present emphasis).



The RAR drew from the WAPC publication, the expression 'noise sensitive building', rather than 'noise sensitive premises', and relied on a one kilometre separation distance. This aspect of the RAR is inconsistent with the idea that Condition 4(a)'s references to 'sensitive premises' includes the entirety of tracts of farmland.

7. The RAR then noted the following:

'The application proposes a minimum of 1 kilometre between any wind turbine and any existing dwelling, which complies with the likely buffer nominated in Planning Bulletin 64 (sic: 67).'

This further underscores that the RAR authors were advising the GSJDAP that the relevant separation that needed to be achieved, was a separation to existing dwellings.

8. Pages 29-30 contain discussion of the potential that new dwellings might be constructed in the future as of right anywhere within the neighbouring farm lots. As such, the potential existed for dwellings to be constructed as of right closer than one kilometre to any turbine.

9. In that regard, the RAR stated in relation to an EPA Guidelines document:

(ii) The ... EPA Guidelines define 'separation distance' as:

'the shortest distance between the boundary of the area that may potentially be used by an industrial land use, and the boundary of the area that may be used by a sensitive landuse' .

(i) In the strictest sense, the EPA Guidelines measure buffers from the boundary of any lot with the potential for a sensitive landuse.

....

The only option that would fully mitigate this issue is applying a condition that requires all turbines to be setback a minimum of 1 kilometre from any development boundary, so all buffers are fully contained within the

development site. Unless a minimum setback of 1 kilometre to any lot boundary is applied to any turbine, the applicant takes the risk that noise may be a potential future issue in the event that any new dwellings are constructed on vacant lots surrounding the development site. This issue is highlighted for DAP consideration.

Gray & Lewis recommends support of the application as lodged as:

- (i) The 1 kilometre buffer as proposed by the applicant complies with likely buffer nominated in Planning Bulletin 64 (*sic*: 67) which refers to a distance to 'sensitive premises'.
- (ii) .... The wind farm operator is obligated to comply with separate legislation such as the 'Environmental Protection (Noise) Regulations 1997'.

....

Gray & Lewis, on behalf of the local government, has discussed this issue with the applicant who is willing to take the commercial risk that any future dwellings constructed in the surrounding area may impact on the wind farm operation, and that they may have to take action to ensure continued compliance with noise requirements.'

10. The RAR authors were evidently aware of, and grappled with, an argument that the relevant separation should be to '*the boundary of the area that may be used by a sensitive landuse*'. It is evident that they understood this to be the boundary of a farm lot, because it was the future potential for a dwelling to be built anywhere on any farm lot that arguably made the whole of farm lots areas '*areas that may be used by a sensitive landuse*'.
11. The RAR authors then identified a hypothetical planning condition that *would* achieve such a separation – namely, one kilometre from any development boundary. Significantly, the planning condition which they identified that would hypothetically achieve such a separation was *not* the condition that the RAR ended up recommending. The condition 4(a) that the RAR ended up recommending, was a one-kilometre separation from any 'residential dwelling/sensitive premises'. It is clear from quoted paragraph (i) above that the authors understood that their recommended 'residential dwelling/sensitive premises' separation equated in substance with the applicant's own proposed one-kilometre buffer from dwellings only. The only difference between what the RAR authors proposed, and what the applicant proposed,

was that the RAR authors used the expression 'residential dwelling/sensitive premises' rather than just 'residential dwelling'.

12. The RAR at p. 22 noted the Herring Storer acoustic report already overviewed at 28 – 30 above. At p. 23-4 the RAR stated:

'The [Herring Storer acoustic report] bases the assessment on the noise criteria for background noise and concludes that noise emissions at 'non stakeholders' residential premises have been calculated to comply with the background noise criteria of the South Australian Guidelines under all wind conditions.

Noise levels at two 'stakeholders' residential premises marginally exceed the background noise criteria for 8m/s at hub height (80 m). The 'Environmental Impact Report' states that "both the landowners have been contacted and as the noise levels are still below 40dB, neither is concerned by the results". (Underlining as shown in RAR).

13. As already analysed, the Herring Storer acoustic assessment is consistent with assessing impact only from residential premises.

14. At p. 24 the RAR commenced dealing with the matter of infrasound. It overviewed a Victorian State government publication on the topic, including the following proposition:

(viii) Lot [*sic*: low] frequency sound from wind farms may be audible *at neighbouring residences*, and may be more prominent at night under stable conditions. While it may be audible the actual impact of low frequency sound on residents near wind farms is low, because of the low levels produced overall.' (Italics indicates added emphasis).

Having regard to what is italicised in the above quote, the RAR's consideration of the Victorian publication is consistent with considering only residences, not the entirety of broadacre farms.

15. The RAR then overviewed at pp. 24-5, a South Australian government publication, including the comment:

'Indoor and outdoor measurements were undertaken [by the SA publication writers] over a period of approximately one week at eleven locations including two *residences approximately 1.5 kilometres from turbines*. The report found that:

(i) Infrasound levels *at houses* adjacent to wind farms are no higher than those at houses located a considerable distance from wind farms.

- (ii) The level of infrasound *at houses* near the wind turbines assessed is no greater than that experienced in other urban and rural environments, and that the contribution of wind turbines to the measured infrasound levels is insignificant in comparison with the background level of infrasound in the environment.’ (Italics indicates added emphasis).

Having regard to what is italicised in the above quote, the RAR’s consideration of the South Australian publication is consistent with considering only residences, not the entirety of broadacre farms.

16. The RAR then referred at p. 25 to:

‘a ‘Low Frequency and Infrasound Noise Impact Assessment’ report on the Moonies Hill Energy wind farm by Herring Storer Acoustics – Attachment 15. This new report predictions (sic) the low frequency noise and infrasound from wind farms. The ‘Low Frequency and Infrasound Noise Impact Assessment’ report states:

....

- (iii) The low frequency / infrasound noise levels are generally *below the hearing threshold for that frequency within the boundary of the participating properties*, and well below the hearing threshold *at the identified receiver point.*’ (Italics indicates my emphasis).

17. In the RAR at p. 26, reference is made to some feedback from WA’s Department of Environmental Regulation, which had considered the aforementioned ‘Low Frequency and Infrasound Noise Impact Assessment’. The feedback included:

- (i) The predicted 2Hz noise contours in the report indicate noise levels at about 120-125dB at the nearest receivers to the Flat Rocks Wind Farms. These levels, although very conservative, are still some 15-20dB below the threshold hearing at this frequency.

- (ii) ....

For frequencies below 31.5Hz the threshold of hearing contour is confined to the area near the turbine. At 31.5Hz the contour extends to the boundary of the windfarm; and at 40Hz the threshold of hearing contour extends outside of the wind farm, to meet some of the receivers who are not stakeholders....

the HS report does not reveal any receivers with predicted noise levels at 40Hz that are significantly above the hearing threshold.

- (iii) In conclusion, the more detailed information on low frequency noise and infrasound in the HS (Herring Storer) report of June 2013 confirms the simpler assessment in the DEC comments on 17 October 2011. On this basis I would reaffirm the conclusion in those comments, that “low frequency noise and infrasound are highly unlikely to represent a problem for residences in the vicinity of the Flat Rocks Wind Farm”. (Underlining as written in the RAR).

18. What the RAR was drawing from the ‘Low Frequency and Infrasound Noise Impact Assessment’ and the DER’s assessment of it, was as follows. There were some parts of adjacent farms where *low frequency* sounds generated by the wind farm, would be *detectable* to the human ear – but there were no *specific receiver points* where low frequency sounds would be any more than just somewhat above detectable to the human ear. Para (iii) makes clear that the DER’s concern was with impacts on residences. Thus, for low-frequency or infrasound impacts, whole-of-farm assessment was only considered relevant from a human-ear sound-detection perspective; noise-impact assessment was solely concerned with impact on residences.

#### **GSJDAP original approval of wind farm: 19 July 2013**

19. The GSJDAP resolved to approve the wind farm, by resolution of 19 July 2013. The GSJDAP had due regard to the RAR. The resolution was in accordance with the RAR’s recommendation. It included a condition 4(a) in relevantly the same terms as what later became Kojonup’s Condition 4(a). There is nothing in the minutes of the GSJDAP’s meeting that suggests that the GSJDAP took any view which is at odds with what is summarised above in respect of the RAR.

#### **Kojonup adoption of uniform conditions**

20. Council effectively agreed to adopt the GSJDAP set of conditions in order to achieve uniformity across both Shires: see Council resolution 158/16 of 1 December 2016. Kojonup should be taken to have adopted the underlying intent of that set of conditions.

#### **Conclusion**

21. Condition 4(a) does not have the effect that wind turbines must be located at least one kilometre from any farm boundary. Although the exact meaning of ‘sensitive premises’ is not spelt out, it would appear to be a reference to residential dwellings or homesteads and possibly buildings closely associated with the same.

22. The assessments that led up to the equivalent of what is now condition 29 being imposed by the GSJDAP for the first time, were assessments that sought to demonstrate the acceptability of noise impacts at residences, not at farm boundaries.