



MINUTES

SPECIAL COUNCIL MEETING

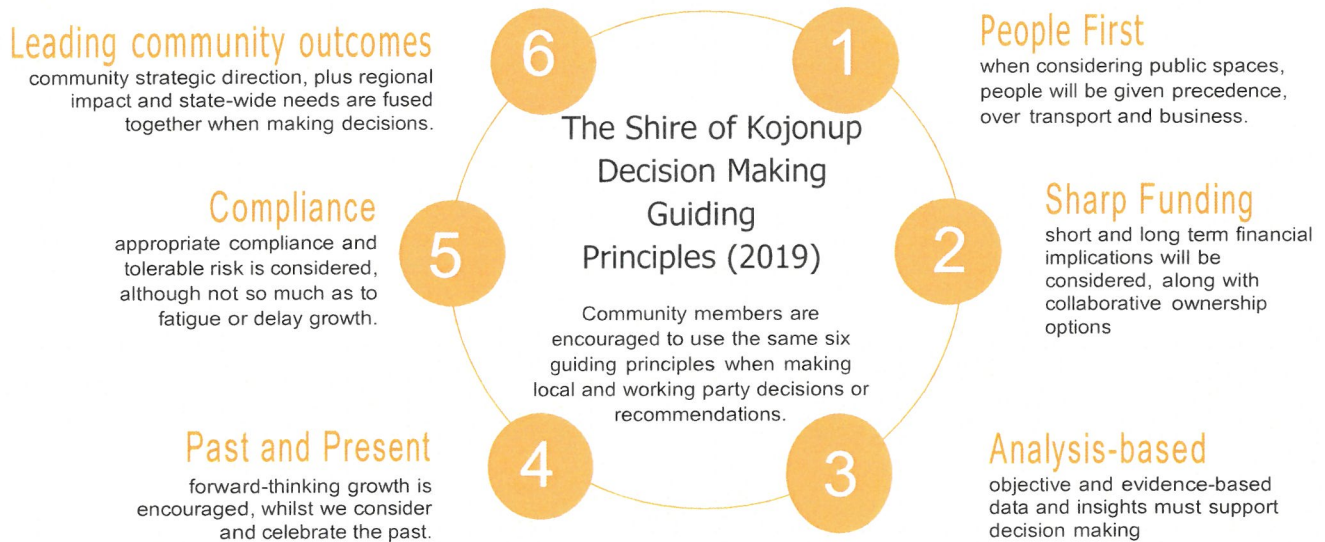
1 NOVEMBER 2022

MINUTES OF A SPECIAL COUNCIL MEETING HELD ON 1 NOVEMBER 2022

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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.



MINUTES

1 DECLARATION OF OPENING AND ANNOUNCEMENT OF GUESTS

The Shire President declared the meeting open at 4.00pm and drew 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 King Charles. Grant to him 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**

Nil

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
Emily Sleight	Sport and Recreation Officer
Estelle Lottering	Regulatory Services Administration Officer

MEMBERS OF THE PUBLIC

Darryl Byatt
Dr Sarah Rankin
Belinda Moharich
Ian Palmer
Narelle Goodall
Alan Goodall
John Price
Adrian Bilney
Bradley Bilney
Ben Wilson
Olivia Thorn
Geoff Thorn
Simon Klopper
Helen Bignell
Carolyn Tonkin
Ian Tonkin
Bec Barton

3.1 APOLOGIES

3.2 APPROVED LEAVE OF ABSENCE

Nil

4 DECLARATION OF INTEREST

Cr Bilney declared a significant Financial Interest in item 9.4.1 and left the meeting at 4.02pm.

5 PUBLIC QUESTION TIME

5.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Not applicable

5.2 PUBLIC QUESTION TIME

5.2.1 Email and attachments from Ms Annie Atkins

5.2.2 Email and attachment from Mr Adrian Bilney

5.2.3 Second email and attachment from Mr Adrian Bilney

5.2.4 Correspondence from Ms Erika Eto EPA to Mr Grant Thompson

6 CONFIRMATION OF MINUTES

Nil

7 PRESENTATIONS

7.1 PETITIONS

Nil

7.2 PRESENTATIONS

Nil

7.3 DEPUTATIONS

7.3.1 Moonie's Hill Energy – Belinda Moharich of Moharich & More Lawyers – spoke to the amendments. The applicant's presentation is summarised as follows:

Through the JDAP (Joint Development Assessment Panel) and harmonisation process in 2013 and 2016 the original intention was to measure noise at dwellings not at the farm boundary.

Many things have changed in the interim including Shire Officers and, although the applicant believes it has the right language in the original DA (Development Application), these amendments are proposed to remove any ambiguity that may be perceived.

Question from Cr Singh to Ms Moharich – If the decibel requirement is under 45dB or under 35dB, what is the wind level at which the turbines are calibrated?

Response from Ms Moharich to Cr Singh – Noise measurements are completed over a long period of time to determine levels at all times in all circumstances. Constructed turbine noise levels are then compared to the data. The maximum is 35dB or not more than 5dB over background noise.

Question from Cr Singh to Ms Moharich – How far is each turbine from the boundary of each property?

Response from Ms Moharich to Cr Singh – Turbines are not less than 1km from a dwelling, but distance from property boundary differs between each tower. There is no encroachment on property boundaries from turbines.

Ms Moharich confirmed that this meeting is not discussing amendments in location of turbines, only decibel levels.

7.4 DELEGATES' REPORTS
Nil

8 METHOD OF DEALING WITH AGENDA BUSINESS
Nil change to original order of 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

AUTHOR	Steve Thompson - Consultant Planner, Edge Planning & Property	
DATE	Friday, 28 October 2022	
FILE NO	BD.BDA.8	
ATTACHMENT(S)	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 Confidential Legal Advice

STRATEGIC/CORPORATE IMPLICATIONS		
“Smart Possibilities – Kojonup 2027+”		“Smart Implementation – Kojonup 2018-2022”
Key Pillar	Community Outcomes	Corporate Actions
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
Conditions		
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"> (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. 	<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"> 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); 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.
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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"> (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. 	<ul style="list-style-type: none"> (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> <ul style="list-style-type: none"> 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) <i>Assessment of noise impact is to be performed in accordance with SA EPA Wind farms environmental noise guidelines (2021).</i>

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/COUNCIL DECISION

Moved Cr P Webb

Seconded Cr F Webb

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.

AMENDMENT TO THE MOTION

119/22 Moved Cr Singh

Seconded Cr Gale

That Council defer any decision for a future meeting while it seeks more information.

LOST 3/4

THE ORIGINAL MOTION WAS PUT

120/22 Moved Cr P Webb

Seconded Cr F Webb

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.

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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.

LOST 4/3
(LACK OF ABSOLUTE MAJORITY)

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

Cr Bilney returned to the meeting at 4.39pm.

15 CLOSURE

There being no further business to discuss, the President thanked the members for their attendance and declared the meeting closed at 4.39pm.

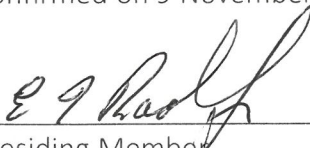
16 ATTACHMENTS (SEPARATE)

- | | | |
|-------|---------|--|
| 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 |

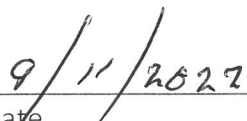
UNDER SEPARATE COVER

Confidential Legal Advice

Confirmed on 9 November 2022 as a true record –



Presiding Member



Date