



# SHIRE OF KOJONUP

# Kojonup

## AGENDA

### Special Council Meeting

9 November 2022

TO: THE SHIRE PRESIDENT AND COUNCILLORS

NOTICE is hereby given that a Special Meeting of the Council will be held in the Council Chambers, Administration Building, 93 Albany Highway, Kojonup on Wednesday, 9 November 2022 commencing at 4:00pm.

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  
5 November 2022



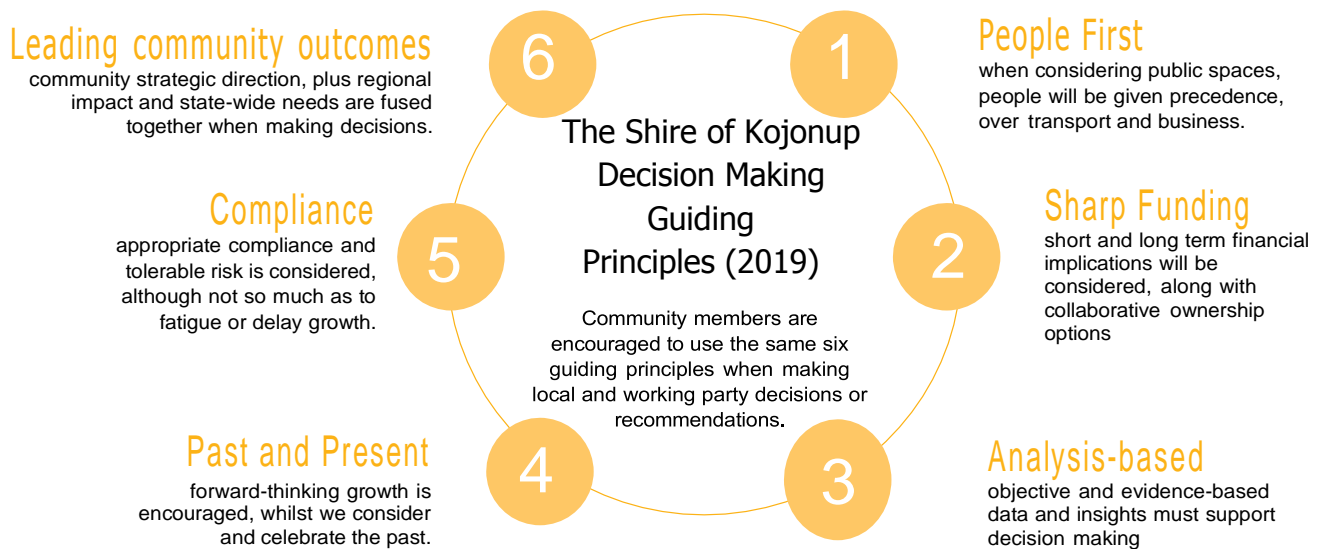
AGENDA FOR A SPECIAL COUNCIL MEETING TO BE HELD ON 9 NOVEMBER 2022

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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.





## 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**

*Almighty God, we pray for wisdom for our reigning monarch King Charles.*

*We ask for guidance in our decision making and pray for the welfare of all the people of Kojonup.*

*Grant us grace to listen and work together as a Council to nurture the bonds of one community.*

*Amen*



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**

- 6.1      SPECIAL COUNCIL MEETING 1 NOVEMBER 2022  
Minutes of a Special Council Meeting held on 1 November 2022 are at **Attachment 6.1.1.**

**OFFICER RECOMMENDATION**

That the Minutes of a Special Council Meeting held on 1 November 2022 be confirmed as a true record.

**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 – MOTION 120/22 GOVERNANCE CLARIFICATION

<b>AUTHOR</b>	Grant Thompson – Chief Executive Officer	
<b>DATE</b>	Friday, 4 November 2022	
<b>FILE NO</b>	BD.BDA.8	
<b>ATTACHMENT(S)</b>	9.4.1.1	221101 - Letter to Shire of Kojonup  <b>UNDER SEPARATE COVER</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 3 - Performance	Coordination of Council processes and provision of governance support.	

**DECLARATION OF INTEREST**

Nil

**SUMMARY**

This Officer’s report is for Council to note the legal position of the motion 120/22 moved at the Special Council Meeting held 1 November 2022. There is no action required from Council on this position as it stands.

**BACKGROUND**

At a Special Council Meeting held 1 November 2022 the vote on motion 120/22, to approve amendments of certain conditions of the said development application, was 4/3:

*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.*

*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.*

LOST 4/3  
(LACK OF ABSOLUTE MAJORITY)

Councillors are referred to a letter received (Attachment 9.4.1.1) 2 November 2022, from Moharich & More, lawyers (Moharich) dated 1 November 2022. Moharich are the lawyers for the proponent of the above matter.

Moharich's letter asserts that an absolute majority was not required and that a simple majority only was required.

#### COMMENT

The author sought legal clarification from McLeods Lawyers regarding Moharich's correspondence. The legal advice is attached Under Separate Cover (Confidential).

This report outlines the following for the Council to note:

The vote on the motion to approve amendments of certain conditions of development approval was 4/3, at the Special Council Meeting on Tuesday, 1 November 2022.

Council was in receipt of an officer report which advised that an absolute majority was required in order for the motion to pass.

A 4/3 vote does not, in the case of the Shire of Kojonup, constitute an absolute majority.

The motion was accordingly declared Lost.

The proper legal position, as subsequently advised, is that an absolute majority was not required. Although there have, in the past, been successive resolutions made by absolute majority relating to the approval of the wind farm and the conditions on which the wind farm is approved, the motion to Council on Tuesday, 1 November 2022 should not be regarded as an amendment to an existing resolution of Council.

Rather, there was a substantive new application; that application being to amend the existing conditions of development approval. That is a procedure provided by clause 77 of Schedule 2 to the Planning and Development (Local Planning Schemes) Regulations 2015. No special majority is required in the case of a clause 77 application to amend the conditions of an existing development approval:

- a. the legal effect of achieving a majority 4/3 vote on the motion, is that the motion is properly to be regarded as having been carried;



- b. the fact that a legally-incorrect declaration was made at the 1 November 2022 meeting that the motion was not carried, is not a matter to be corrected through the process of the confirmation of the minutes. Rather, it is to be corrected by means of this present report to Council;
- c. no resolution for endorsement or acceptance of this position is required from Council, because the 4/3 vote on 1 November 2022 was what it was, and its proper legal consequence was what it was.
- d. It should properly be interpreted as a resolution that was carried.

## CONSULTATION

McLeods Lawyers

## STATUTORY REQUIREMENTS

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

## POLICY IMPLICATIONS

Nil

## FINANCIAL IMPLICATIONS

Nil

## 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
8 – Errors, Omissions and Delays	Complex legislation  Incorrect information	Development Approval performance report	Nil
<i>Risk rating: Adequate</i>			
IMPLICATIONS			
Governance issues are complex and fall under several layers of legislation and there is always a risk of misinterpretation and error. Further due diligence is required on more complex items.			



ASSET MANAGEMENT IMPLICATIONS

Nil

SOUTHERN LINK VROC (VOLUNTARY REGIONAL ORGANISATION OF COUNCILS) IMPLICATIONS

Nil

VOTING REQUIREMENTS

Nil

OFFICER STATEMENT

That Council note this report that the legal effect of achieving a majority 4/3 vote on motion 120/22 at the Special Council Meeting held 1 November 2022 is that the motion is properly to be regarded as having been carried and that officers will be issuing formal documentation to the applicant confirming the approval of the amendment of the conditions.



9.4.2 ENEL GREEN POWER AUSTRALIA PTY LTD – ASSESSMENT OF DEVELOPMENT LAYOUT PLAN AND MANAGEMENT PLANS RELATING TO CONDITIONS 4, 17 & 21, AND EASEMENT FOR ACCESS TO PORTIONS OF CERTAIN ROAD RESERVES

<b>AUTHOR</b>	Grant Thompson – Chief Executive Officer Steve Thompson - Consultant Planner, Edge Planning & Property	
<b>DATE</b>	Saturday, 5 November 2022	
<b>FILE NO</b>	BD.BDA.8	
<b>ATTACHMENT(S)</b>	9.4.2.1	Amended conditions of development approval (letter dated 5 October 2021)
	9.4.2.2	Development Layout Plan including micro-siting plans
	9.4.2.3	Noise Impact Mitigation Management Plan
	9.4.2.4	Draft Agreement for the installation of underground cabling

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 and declare a Financial Interest (section 5.70 of the *Local Government Act 1995*).

#### SUMMARY

The applicant has submitted a Development Layout Plan and Management Plans to the Shire of Kojonup (Shire) seeking approval.

#### BACKGROUND

The Council has considered matters relating to the wind farm on various occasions including that Council, on 13 September 2022, approved various management plans.

The Shire, on 5 October 2021, issued amended conditions of development approval (see Attachment 9.4.2.1).

On 1 November 2022, Council deliberated on a request by the proponent for amended wording for Conditions 4, 21 and 29. A separate report to go to the same Council meeting as this present item, is understood to clarify that the Council vote taken on that request on 1 November 2022, had the effect that Council approved the requested amendments to those conditions. This report is prepared on that understanding. The final outstanding plans and management plans to be determined by Council are the Development Layout Plan (DLP) and the Noise Impact Mitigation Management Plan (NIMMP). The plans associated with Conditions 4, 17 and 21 are reproduced in Attachments 9.4.2.2 and 9.4.2.3. 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 requested approval from the Shire of Broomehill-Tambellup to the plans and management plans to reflect the development approval issued by the Great Southern Joint Development Assessment Panel.

#### COMMENT

This item has been prepared on the basis that Council, on 1 November 2022, approved the proponent's request to amend the wording of Conditions 4, 21 and 29 to address some ambiguity. The item now considers plans, information and management plans associated with Conditions 4, 17 and 21.

#### Conditions 4, 17, 21 and 29

The above Conditions of development approval now read as follows:

##### Condition 4

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

- c) 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;
- d) 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 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).

##### 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).

Development Layout Plan and Noise Mitigation Management Plan

The Development Layout Plan is required by Condition 17. Condition 17 interacts with Condition 4 in that Condition 17 requires the DLP to reflect the requirements of Condition 4. Condition 17 also requires DLP to satisfy certain other requirements that are not set out in Condition 4.

The NIMMP is required by Condition 21. Condition 21 interacts with Condition 29 in that Condition 21 requires an outline of a process by which several things under Condition 29 will be addressed. Condition 21 also requires the NIMMP to address things that are not specifically mentioned in Condition 29 – e.g. management of complaints.

Development Layout Plan - Condition 17

The applicant submitted a DLP as per the development approval Condition 17.

The Shire corresponded with the proponent, requesting modifications to its original DLP. In particular, precise locations of each turbine have been required and, accordingly, there is now a plan for each individual turbine on the Shire of Kojonup side contained within the DLP. Various plans which now collectively comprise the DLP, have been reproduced as Attachment 9.4.2.2, and that is the set of documents that Council is being asked to approve.

The inclusion of the detailed location plan, separation from residences/sensitive premises and associated checklist and verification assists to show Council and other interested parties as to how the Applicant has considered and addressed matters. The Applicant outlines that:

- Wind turbines are located a minimum distance of 1 kilometre (km) from any off-site (non-stakeholder) dwelling which currently exists; and
- The wind turbines are located in accordance with the 'Flat Rocks Wind Farm Landscape and Visual Assessment'.

The previously prepared site-specific acoustic studies, which have been produced at all relevant stages, should provide the Council with comfort that the noise maximums referred to in Condition 29 should be achievable at off-site (or non-stakeholders) dwellings. This is considered to satisfy the WAPC (Western Australian Planning Commission) Position Statement. There is a requirement that the wind farm comply with the *Environmental Protection (Noise) Regulations 1997* at all times. That requirement exists by virtue of those Regulations of their own force, separate from the development approval.



Lawyers Steedman Stagg, through a series of letters to the Shire or to the Shire's lawyers, have been asserting on behalf of a number of landowners in proximity to the wind farm, that Condition 4(a) had the effect that each wind turbine must be separated at least 1km from each farm lot boundary. Shire Administration did not consider this to be the proper interpretation of Condition 4(a) as it previously stood. By virtue of Council's 1 November 2022 decision, any ambiguity about the meaning of Condition 4(a) was removed by replacing the words '*1 kilometre from any residential dwelling/sensitive premises existing at the time of the issue of this planning approval*' with the words '*1 kilometre from any dwelling existing at the time of the issue of this planning approval*'. This is considered to have been the underlying intent of:

- (a) the proponent's proposal;
- (b) the JDAP decision which first adopted this wording for the Broomehill/Tambellup side; and
- (c) Kojonup Council when it first adopted standardised conditions on both sides of the municipal boundary.

This was explained in the item to Council on 1 November 2022. The Council's vote on 1 November 2022 is considered to have removed any ambiguity in favour of making it clear that the relevant separation is to dwellings not farm boundaries. The DLP should not be refused on the ground that it does not achieve a 1 km separation to farm boundaries.

Steedman Stagg, in correspondence of 1 November 2022, make reference to the prospect that farm lot owners might choose to construct dwellings in closer proximity to the boundary between their lots and a wind farm lot, and that the proponent might then be unable to meet the noise levels set out in the Noise Regulations. The approval of a DLP is; however, only concerned with dwellings existing as at the date of issue of the wind farm development approval. The matter of how the wind farm complies with the Noise Regulations with regard to potential future receiver points is outside the scope of the DLP.

Steedman Stagg draw attention to the fact that an environmental consultant has, on behalf of several of Steedman Stagg's clients, made a referral of the Flat Rocks Wind Farm proposal to the Western Australian Environmental Protection Authority (WA EPA), seeking environmental assessment of the proposal by the EPA. It is acknowledged that if the WA EPA was to choose to assess a proposal under the *Environmental Protection Act 1986 (EP Act)*, then decision-makers in relation to the proposal must hold off from making decisions pending that environmental assessment. The Shire is not in receipt of advice that the EPA has chosen to assess the proposal under the *EP Act*. It is also somewhat unclear what exact decisional process has been referred to the EPA. Development approvals for the Kojonup and Broomehill-Tambellup sides of the municipal boundary have already been granted. Administration is not aware of any impediments to Council approving the DLP and the NIMMP, due to the *EP Act*.

A further issue taken by Steedman Stagg in relation to the DLP, is a claim which is understood to be that certain underground electricity reticulation to be constructed as part of the wind farm, is 'located outside of the previously approved project area'. They draw attention, in particular, to the electricity reticulation adjacent to Warrenup Road, between the proposed sites of turbines T04 and T18. Steedman Stagg's reference to 'the project area' is understood to be a reference to the freehold lots on which actual turbines are intended to be located. The contention is understood to be that any installations not within those freehold lots, would be outside of the scope of what was approved by the development approval.



Condition 13(a) of the development approval grants development approval to, among other things, cabling and electricity reticulation: Condition 13(b) and (c). It is then further provided that electricity reticulation shall not be placed on or over land outside of the lots the subject of the approval without the written consent of those land owners: Condition 15(c). Then there is the requirement for a Development Layout Plan which requires details including ‘the location of any cabling between wind turbines’: Condition 17.

The effect of the development approval is considered to be that the development approval plans contained enough detail to satisfy the Shire that the proposal was fundamentally acceptable with regard to relevant planning considerations, but some aspects of infrastructure and the exact location of infrastructure would remain to be settled by way of the DLP. The reference to ‘*electricity reticulation shall not be placed on or over land outside of the lots the subject of the approval without the written consent of those land owners*’ must be taken to mean that the scope of the development approval is not literally limited to the freehold lots on which turbines are located, but is capable of including electricity reticulation outside of those lots, subject to agreement of owners.

In the case of a road reserve, the ‘owner’ is the Crown, but the Shire has care, control and management of the road reserve and, accordingly, has the power to decide what installations may go into the road reserve (See *Land Administration Act 1997*, section 55). The Shire is the agent of the Crown where consent of the ‘owner’ of the road is required: see State Administrative Tribunal decision *Adbooth Pty Ltd and City of Perth* [2006] WASAT 343.

In so far as electricity reticulation may require some clearing of native vegetation within road reserves, there is a separate process required with another agency (Department of Water and Environmental Regulation) to determine the acceptability of that clearing. Impact on native vegetation is capable of being a relevant planning consideration. Therefore, in the context of considering the DLP, Council may be justified in applying its own assessment to the acceptability or otherwise of any impact on native vegetation. However, it is also open to Council to take impacts on native vegetation into account to the extent only of noting the separate need for a clearing permit to be determined by DWER. Given DWER’s greater and more specialised expertise on the matter of clearing permits, it is recommended that Council doesn’t form its own independent view on this issue but allows the acceptability of any clearing to be determined by DWER. That doesn’t mean that Council is ignoring a potential environmental impact, but rather Council is satisfied that a sufficient separate process exists to safeguard vegetation clearing concerns. This comment also applies to the extent that any aspect of the wind farm requires clearing on freehold lots as well. If Council intended to apply its own substantive assessment on the acceptability of clearing, then it is suggested that a deferral of this would be required.

Assuming that Council is willing for DWER only to decide on the acceptability of the vegetation clearing, it would nevertheless be appropriate to include within Council’s resolutions, separate from the resolution for Council approval of the DLP, a resolution that the CEO and the Shire President have authority (acting jointly) to sign off on Shire approval, in the Shire’s capacity as road authority, to the specific installations in the road reserve that are approved by the DLP. To explain further: the DLP is part of the planning process – it is required by Condition 17 – and its role is to locate various things to a higher level of precision than the development approval’s approved plan. (This also includes some things that weren’t depicted at all on the development approval’s approved plan but were contemplated by the development approval when read in totality with the development application, e.g. some cabling, and the concrete batching plant). Approval of the DLP involves the Council exercising powers as part of the planning process. In the case of the detailed engineering of cabling



in the road reserve, e.g. the depth of the cables, thickness of cables, whether there are any service ducts etc. – those are engineering matters which the Shire can reasonably require of the proponent so that the Shire has accurate records of what are located in the Shire's own asset. That is not part of approving the DLP, but can be asked for separately in the Shire's capacity as road manager.

The best way of achieving this is via an Agreement for Installation of underground cabling. The Shire's lawyers and the proponent have been working since 2017 on a draft Agreement in the expectation of a DLP being approved in due course. Work on this went dormant for several months when attention focussed on the DLP, the NIMMP and more recently the amendment of Conditions 4, 21 and 29. However, the draft Agreement, which is Attachment 9.4.2.4, is the appropriate mechanism to achieve the matters referred to in the preceding paragraph in the Shire's capacity as road manager. The Agreement also provides for the granting of easements over portions of the road reserves. The CEO should first be satisfied that the easement locations depicted in any plans associated with the Agreement match with the locations for installations in the DLP. The CEO should also be satisfied with the drawings of cabling to be attached to the Agreement.

In summary, approval of the DLP and also authorisation for the sign-off of the Agreement for Installation, is recommended.

There may separately be a need to obtain other approvals for certain aspects of the development works from other agencies including from Western Power and/or Department of Water and Environmental Regulation.

#### NIMMP - Condition 21

The NIMMP sets out the process by which the applicant will:

- 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) to be called the 'SA Guidelines'. The SA Guidelines have broad-based regulatory acceptance across Australia for measuring wind farm noise;
- Make arrangements with adjoining landowners regarding the construction of dwellings on land;
- Modify micro-siting to ensure compliance with Condition 29;
- Modify the operation of the wind turbines to ensure compliance with Condition 29; and
- Manage complaints regarding noise impact during the operational phase of the development.

The applicant initially lodged a NIMMP with the Shire on 18 August 2022. After due consideration and investigation, the Shire issued correspondence to the proponent requesting a number of changes to the NIMMP. The proponent submitted a revised NIMMP on 28 October 2022, taking account of the Shire's feedback. The proponent has not taken on board all of the Shire's requested amendments, and this has been subject to further Shire assessment. A summary of the Shire's amendment requests, the proponent's responses, and further assessment, is set out as follows:

1. Shire's amendment request: The noise emission from the wind turbines is to be represented by the LAeq,adj noise parameter for assessment against the South Australian EPA's Wind farms environmental noise guidelines, dated November 2021 [SAEPAWF].

Revised Shire position: Not needed. Assessment of LA90 noise emission accepted. This subject matter was addressed in the item that went to the Council meeting on 1 November 2022.



2. Shire's amendment request: For acknowledgement in the NIMMP that the wind farm must also comply with the WA Environmental Protection (Noise) Regulations 1997 (Noise Regulations).

Revised Shire position: On further review of this issue by the Shire administration, it is acknowledged that the NIMMP is produced pursuant to, and for the purposes of, the DA conditions, not pursuant to the Noise Regulations.

The need to comply with the WA Noise Regulations applies by force of law separate from the DA conditions. 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.

3. Shire's amendment request: The noise emission from the wind turbines is to be represented by the LA10,adj noise parameter for assessment against the WAEPR

Revised Shire position: The NIMMP is produced pursuant to, and for the purposes of, the DA conditions, not pursuant to the Noise Regulations.

Aspects of noise measurement methodology which are specific to the Noise Regulations need not be set out in the NIMMP. The applicable noise measurement methodology for the purposes of Conditions 21, 29 and the NIMMP, is the SA 'Wind farms environmental noise guidelines'.

That doesn't mean that the LA10,adj noise parameter for assessment against the Noise Regulations can be disregarded.

Rather, it must be complied with as well, but the NIMMP is not directed at that – compliance with the Noise Regulations must still be achieved, but the need to comply with the Noise Regulations applies by force of law separate from the DA conditions and the NIMMP.

4. Shire's amendment request: Discussion should be added acknowledging the process applicable for the intended Stage 2 of the wind farm, and noting that further development approval would be required for Stage 2.

This has been included in the revised NIMMP.

5. Shire's amendment request: For discussion of the process by which background noise level at the site have been or are to be determined.

Revised Shire position: The proponent is saying in its revised NIMMP that they will rely on the 35dB. They won't rely on the ability to alternatively go up to 5dB above background noise.

The proponent says that if ever they wish to rely on going to 5dB above background, they will get new background levels assessed, and will submit this to the Shire, incorporated into a revised NIMMP.



The above is considered satisfactory, but it is recommended that any resolution for approval of the NIMMP be expressed as follows:

1. The CEO has authority to confirm the Shire's approval of the Noise Impact Mitigation Management Plan, provided the proponent causes the version Rp 001 R01 20220108 dated 28.10.22, to be amended in the second-last sub-paragraph of 3.0 so as to state:

‘In the event that background noise monitoring is carried out in the future, the results of this monitoring would be used for determining wind speed dependant noise limits in accordance with Condition 29, subject to their inclusion in an updated version of this NIMMP requiring approval by the Shire's Chief Executive Officer.’

2. Council notes that it is Council's understanding that any future noise monitoring for the purpose of establishing background noise should be undertaken without the turbines in operation.
6. Shire amendment request: Detail should be provided of measures to achieve noise-curtailed modes of operation in certain circumstances.

Revised Shire position: It is noted that the requirement of Condition 21 is to ‘outline the process by which the Applicant will’ (among other things):

- (c) modify micro-siting to ensure compliance with Condition 29;
- (d) modify the operation of the wind turbines to ensure compliance with Condition 29.

On further review, the section of the NIMMP which the Shire was saying should provide more detail of measures to achieve noise-curtailed modes of operation, was the section dealing with (c) above rather than the section dealing with (d). The section dealing with (d) above is considered under point (d) below, and has been assessed as having been revised satisfactorily. It is acknowledged in addition that ‘the process’ which Condition 21 requires focuses on a management or administrative process, rather than details of a potential turbine operation noise curtailment techniques. It must be emphasised that Condition 29 stands as a condition in its own right; the operator must not exceed certain noise levels. How they achieve that is largely a matter for the operator. Condition 21 is partly in aid of Condition 29, and tries to promote a proactive approach to the requirements of Condition 29 but, in the end, it is considered that specific turbine operation noise curtailment techniques are not mandatory within the NIMMP, and it might be undesirable to require listing of such techniques as if they were an exclusive list. Ultimately, this aspect of the NIMMP is considered satisfactory.

7. Shire amendment request: The complaints handling procedures need to be updated.

Whilst the Shire administration initially sought a hotline which corresponded with Western Australian business hours, rather than eastern states, on review, this may be somewhat excess to requirements. Noise complaints are not in the same nature, as say, fire or chemical spills which require immediate reporting and response. Ultimately, this aspect of the NIMMP is considered satisfactory.



8. Shire amendment request: Various amendments were sought to the section of the NIMMP which dealt with the scenario in the event that post-commissioning noise monitoring or a noise investigation report indicated noise exceedances.

The NIMMP has been revised to state that a noise remediation plan shall identify the aspects of the operation of the turbines that will be modified to achieve compliance with Condition 29 of the development approvals.

The original report was insufficiently clear about the need to ensure that immediate steps are taken to ensure compliance pending formulation of a long-term solution. The NIMMP now states:

‘If a non-compliance is detected, an interim operating pattern is to be implemented immediately to prevent continued non-compliance, pending the formulation and implementation of a long-term solution. Details of measures being immediately implemented are to be advised to the Shires.

Revised Shire position: amendments address Shire’s requirements.

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

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

*1 Not approve the management plans*

The Council can choose to not approve the management plans and advise the proponent giving reasons. If this option were chosen, the Applicant would need to produce revisions of the management plan(s) which are not approved which better accord with the requirement of the technical subject matter that the plans and management plan relates to, and Council’s decision to not approve would need to be based on a lack of satisfaction that those technical requirements have been met.

*2 Approve the management plans*

The Council can choose to approve the management plans, in part or whole and/or with or without modifications. Approval of the management plans, the subject of this report, would be a step forward towards the wind farm proceeding.

*3 Defer the proposal*

The Council can choose to defer the matter and seek additional information from the proponent or undertake consultation, if deemed necessary, before proceeding to make a decision.

There is not a right of merits review of Council’s decision to approve or not to approve the Management Plan where it is lodged pursuant to a condition of development approval. However, the rationale for this is that the merits of the acceptability of the development have fundamentally been determined by the grant of the development approval, and what remains by way of DLP and Management Plans is an assessment of detail within the confines of specific narrow technical fields. Therefore, a DLP or a Management Plan should not be refused approval if it appropriately addresses the technical subject matter that it is supposed to address.

#### **CONSULTATION**

McLeods Lawyers

The Shire has previously consulted on the Development Application.



## STATUTORY REQUIREMENTS

*Planning and Development Act 2005, Planning and Development (Local Planning Schemes) Regulations 2015, and Environmental Protection (Noise) Regulations 1997.*

## POLICY IMPLICATIONS

The proposal satisfies the WA 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 for approving the management plans only relates to turbines located in the Shire of Kojonup. The Shire of Broomehill-Tambellup will separately consider the management plans.



## VOTING REQUIREMENTS

Simple Majority

### OFFICER RECOMMENDATION

That:

- 1) Council approves the Development Layout Plan (Condition 17) for the Flat Rocks Wind Farm as reproduced in Attachment 9.4.2.2.
- 2) The Chief Executive Officer (CEO) and Shire President are granted authority to execute, to apply the Shire of Kojonup's (Shire) common seal to the Agreement for Installation (Attachment 9.4.2.4) to enable the proponent to have access to portions of road reserves for infrastructure approved by the Development Layout Plan, and to enable the Shire (in the Shire's capacity as manager of the road reserve) to approve and have a record of the engineering details of the infrastructure approved of or contemplated by the DLP in the affected road reserves. This authority is subject to the CEO being satisfied that the intended easement locations provided for in the Agreement match with the DLP locations, and being satisfied with the technical details of the drawings for the cabling.
- 3) The CEO is granted authority to confirm the Shire's approval of the Noise Impact Mitigation Management Plan, provided the proponent first causes the version Rp 001 R01 20220108 dated 28.10.22 (Attachment 9.4.2.3), to be amended in the second-last sub-paragraph of 3.0 so as to state:

'In the event that background noise monitoring is carried out in the future, the results of this monitoring would be used for determining wind speed dependent noise limits in accordance with Condition 29, subject to their inclusion in an updated version of this NIMMP requiring approval by the Shire's Chief Executive Officer.'
- 4) Council notes that it is Council's understanding that any future noise monitoring for the purpose of establishing background noise should be undertaken without the turbines in operation.
- 5) Council further notes that approval of the Development Layout Plan and management plans does not override the need to obtain any relevant approvals that may be separately required from other agencies.
- 6) The CEO advises the Shire of Broomehill-Tambellup of this decision.



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)

6.1	6.1.1	Minutes of a Special Council Meeting held 1 November 2022
9.4.1 UNDER SEPARATE COVER	9.4.1.1	221101 - Letter to Shire of Kojonup Confidential Legal Advice
9.4.2	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





# 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.

### Leading community outcomes

community strategic direction, plus regional impact and state-wide needs are fused together when making decisions.

### Compliance

appropriate compliance and tolerable risk is considered, although not so much as to fatigue or delay growth.

### Past and Present

forward-thinking growth is encouraged, whilst we consider and celebrate the past.

6

## The Shire of Kojonup Decision Making Guiding Principles (2019)

5

4

1

### People First

when considering public spaces, people will be given precedence, over transport and business.

### Sharp Funding

short and long term financial implications will be considered, along with collaborative ownership options

### Analysis-based

objective and evidence-based data and insights must support decision making

3

2

Community members are encouraged to use the same six guiding principles when making local and working party decisions or recommendations.



## 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**

Nil

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**

The following attachments were tabled:

5.2.1 Steedman Stagg Lawyers letter - Email from Ms Annie Atkins

5.2.2 Email from Mr Adrian Bilney

5.2.3 Flat Rocks Wind Farm - Map - Second email from Mr Adrian Bilney

5.2.4 Email 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

<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</b> <i>dwelling</i>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/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.

In particular, to reword as follows:

Condition 4

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

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- 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.

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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)

- |                      |         |  |
|----------------------|---------|--|
| 5.2                  | 5.2.1   | Steedman Stagg Lawyers letter - Email from Ms Annie Atkins               |
|                      | 5.2.2   | Email from Mr Adrian Bilney  |
|                      | 5.2.3   | Flat Rocks Wind Farm - Map - Second email from Mr Adrian Bilney          |
|                      | 5.2.4   | Email correspondence from Ms Erika Eto EPA to Mr Grant Thompson          |
| 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  |



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

1 November 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 refer to the Special Council Meeting, held this afternoon at the Shire offices.

### **Background**

2 At that meeting a motion was moved by Deputy President Paul Webb, and seconded by Cr Felicity Webb to resolve to approve the officer's recommendation to amend conditions 4, 21 and 29 of the current development approval.

3 The voting for that motion was 4:3, recorded as follows –

<b>For</b>	<b>Against</b>
Shire President Radford	Cr Gale
Deputy Shire President P Webb	Cr Singh
Cr F Webb	Cr Egerton-Warburton
Cr Cynthia Wieringa	

4 After the vote, you advised the Council that because an absolute majority was required, the vote was lost.



- 
- 5 Under the *Local Government Act 1995 (LG Act)*, the term ‘absolute majority’ is defined in clause 1.4, and for the purposes of a Council meeting, is in the following terms –

1.4. Terms used

In this Act, unless the contrary intention appears —

*absolute majority* —

- (a) in relation to a council, means a majority comprising enough of the members for the time being of the council for their number to be more than 50% of the number of offices (whether vacant or not) of member of the council;

- 6 The effect of requiring an absolute majority was to require 5 votes for the motion to be successful, notwithstanding only 7 members of the Shire Council were in attendance.

- 7 For the following reasons, I respectfully submit that this position is incorrect.

**The correct position is that a simple majority was required**

- 8 Section 5.20(1) of the LG Act is in the following terms –

**5.20 Decisions of councils and committees**

- (1) A decision of a council does not have effect unless it has been made by a simple majority or, if another kind of majority is required under any provision of this Act or has been prescribed by regulations or a local law for the particular kind of decision, by that kind of majority.

- 9 The power to amend an existing development approval is set out in clause 77 of the Deemed Provisions<sup>1</sup>.

- 10 In accordance with section 257B(3) of the *Planning and Development Act 2005 (PD Act)* –

If a deemed provision that has effect as part of a local planning scheme is inconsistent with another provision of the scheme, the deemed provision prevails and the other provision is to the extent of the inconsistency of no effect.

- 11 Therefore, while the *Shire of Kojonup Local Planning Scheme No.3 (LPS3)* includes a power to amend or revoke an existing ‘planning consent’, this provision is of no effect in light of clause 77.

- 12 Clause 77 of the Deemed Provisions does not mandate the kind of majority required for a decision.

- 13 For the sake of completeness, I also note that there is no other regulation made under either the LG Act or the PD Act which requires an absolute majority in this case.

---

<sup>1</sup> Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.



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Further, the Shire's own *Local Government (Council Meetings) Local Law 2020* provides in clause 13.3 –

**13.3 Majorities required for decisions**

The majorities required for decisions of the Council and committees are dealt with in the *Act*.

- 14 In the absence of either a regulation or local law mandating an absolute majority, in accordance with section 5.20 of the LG Act, the decision was required to be made with a simple majority.

**Addressing the Shire's existing advice**

- 15 When we spoke briefly after the meeting, you noted that you had been provided with advice that an absolute majority was required. I have considered how that advice might have arisen. There appears to be two possibilities –
- 16 The first is that under clause 3.3.5 of LPS3, where a use is not specifically mentioned in the Zoning Table, the Council must consider whether the land use may be consistent with the objectives and purpose of the relevant zone. Such a decision must be made by absolute majority. Thereafter, the development application follows the usual route by being advertised before determination by the Council on its merits on a simple majority.
- 17 A wind farm is a land use which is not specifically mentioned in LPS3. Back in 2010, the Shire did make this decision by absolute majority in accordance with clause 3.3.5(b).
- 18 It went on to **approve** the development application **by simple majority** at its Council meeting on 23 November 2011. Perhaps your advisor misunderstood this process, and conflated that initial consideration regarding consistency with the relevant zone objectives, with the merits assessment, and therefore thought that any amendment to the approval required an absolute majority as well.
- 19 The second is that in accordance with regulation 10(2) of the *Local Government (Administration) Regulations 1996*, a revocation or change to a council decision must be made by absolute majority. Perhaps your advisor had assumed that this is what was proposed in this case.
- 20 To be clear, an application pursuant to regulation 77 of the Deemed Provisions is not an application to either revoke or amend a previous decision of the council. It is an new application to amend a development approval, which is a right *in rem*, meaning it runs with the land. Regulation 10(2) is not applicable in this case.

**Conclusion**

- 21 Finally, for your reference, I have attached a useful list prepared by WALGA, which sets out the decisions which must be made by absolute majority under both the LG

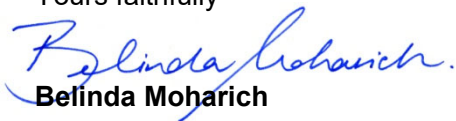


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Act, and other enactments. It confirms the position I have outlined above – that is, that there is no requirement for an absolute majority in this case.

- 22 As the decision was required to be made by simple majority, a count of the votes confirms that the motion was passed.
- 23 We would therefore expect that the minutes of the Special Council Meeting will reflect the proper legal position, and that an approval of my client's application issues promptly.
- 24 In the meantime, I remain available to answer your, or your advisor's queries in respect to this matter.

Yours faithfully



**Belinda Moharich**

Director





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)



# Kojonup



One community, many choices

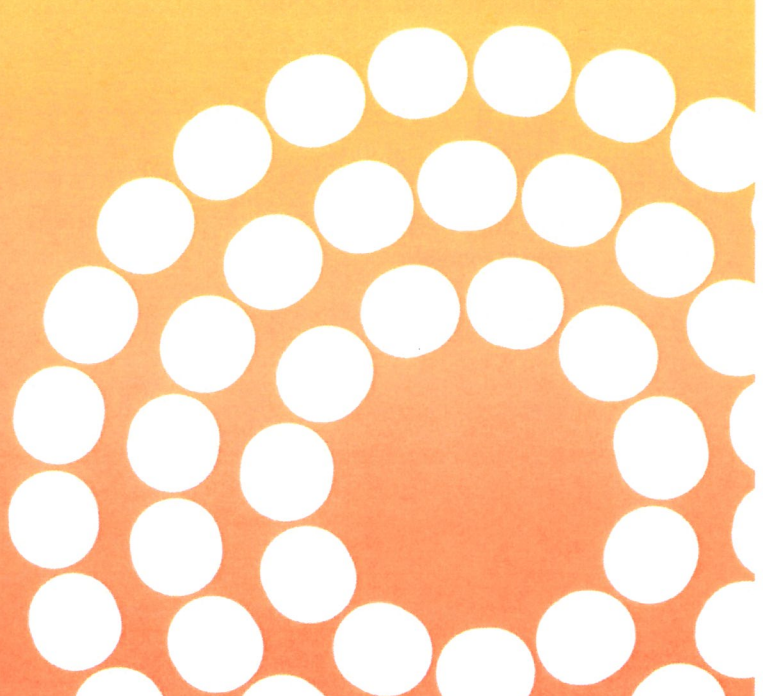
Information to inform your choice of service is available at the Kojonup Community Centre, 100-110 Main Street, Kojonup, WA 6205. Tel: 08 9428 1111. Fax: 08 9428 1112. Email: [info@kojonup.com.au](mailto:info@kojonup.com.au)

The Kojonup Community Centre is a not-for-profit organisation that provides a range of services to the Kojonup community. The Centre is a member of the Kojonup Community Development Association (KCDA).

Levelling up the community is a key objective of the Kojonup Community Centre. The Centre provides a range of services to the Kojonup community, including: 

- Community development
- Social services
- Health services
- Education services
- Training services
- Employment services
- Housing services
- Financial services
- Legal services
- Counselling services
- Support services
- Advocacy services
- Information services
- Referral services
- Case management services
- Crisis services
- Emergency services
- Disaster services
- Fire services
- Police services
- Health services
- Education services
- Training services
- Employment services
- Housing services
- Financial services
- Legal services
- Counselling services
- Support services
- Advocacy services
- Information services
- Referral services
- Case management services
- Crisis services
- Emergency services
- Disaster services
- Fire services
- Police services

For more information, please contact the Kojonup Community Centre. The Centre is a member of the Kojonup Community Development Association (KCDA).





*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



Condition 17 – additional requirement: at least one page devoted to each individual turbine location, containing, as a minimum, the information set out on this template page.

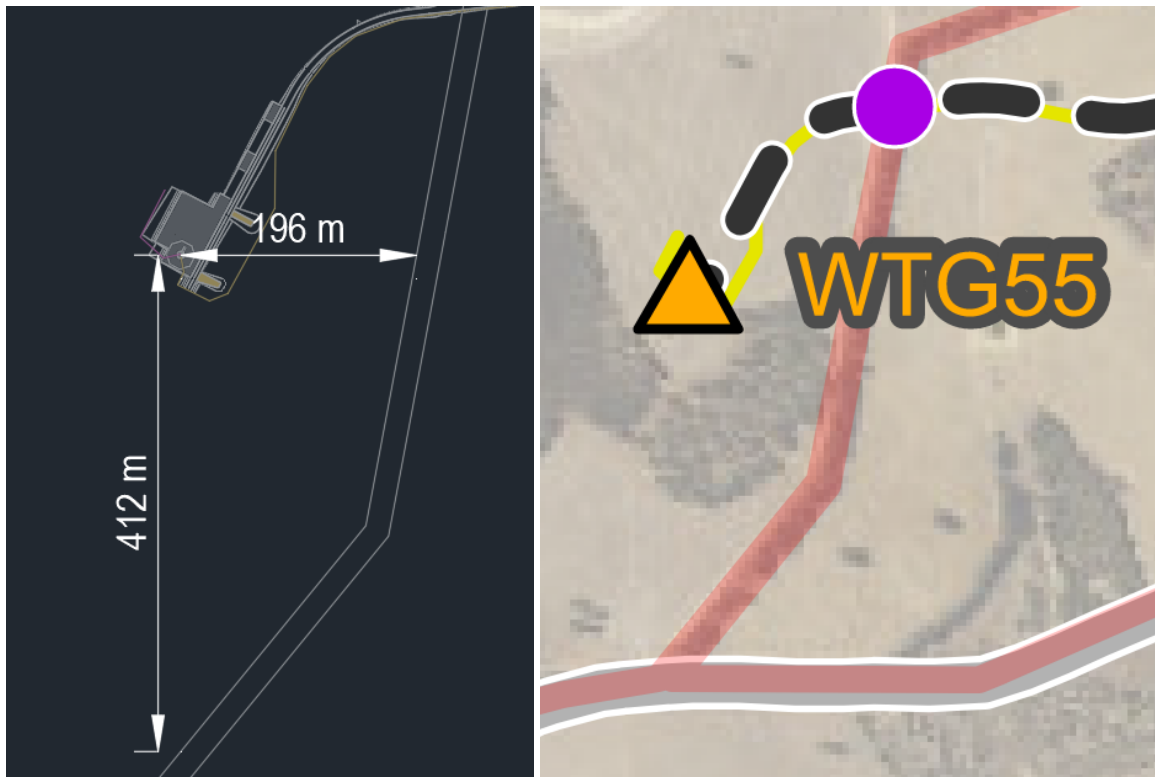
### **Turbine No. 55: Detailed location plan and separation from residences/sensitive premises.**

#### **Checklist and verification**

This turbine is:	Yes/No	Explanation
In accordance with the plan attached to the 05.10.21 SoK Notice of Determination	Yes	
In accordance with the application as submitted which includes the ' <i>Flat Rocks Wind Farm Environmental Report</i> ' and Appendices.	Yes	Noise assessment has been updated to reflect the new type of turbine.
At least one kilometre from any residential dwelling.	Yes	Refer to Clearance calculations
At least one kilometre from any 'sensitive premises'.	Yes	Refer to Clearance calculations
Located in accordance with the ' <i>Flat Rocks Wind Farm Landscape and Visual Assessment</i> '.	Yes	

#### **Requested graphics**

- Show exact location of turbine and all above-ground and below-ground infrastructure associated with turbine.
- Identify separation distance from at least two of the lot's boundaries.

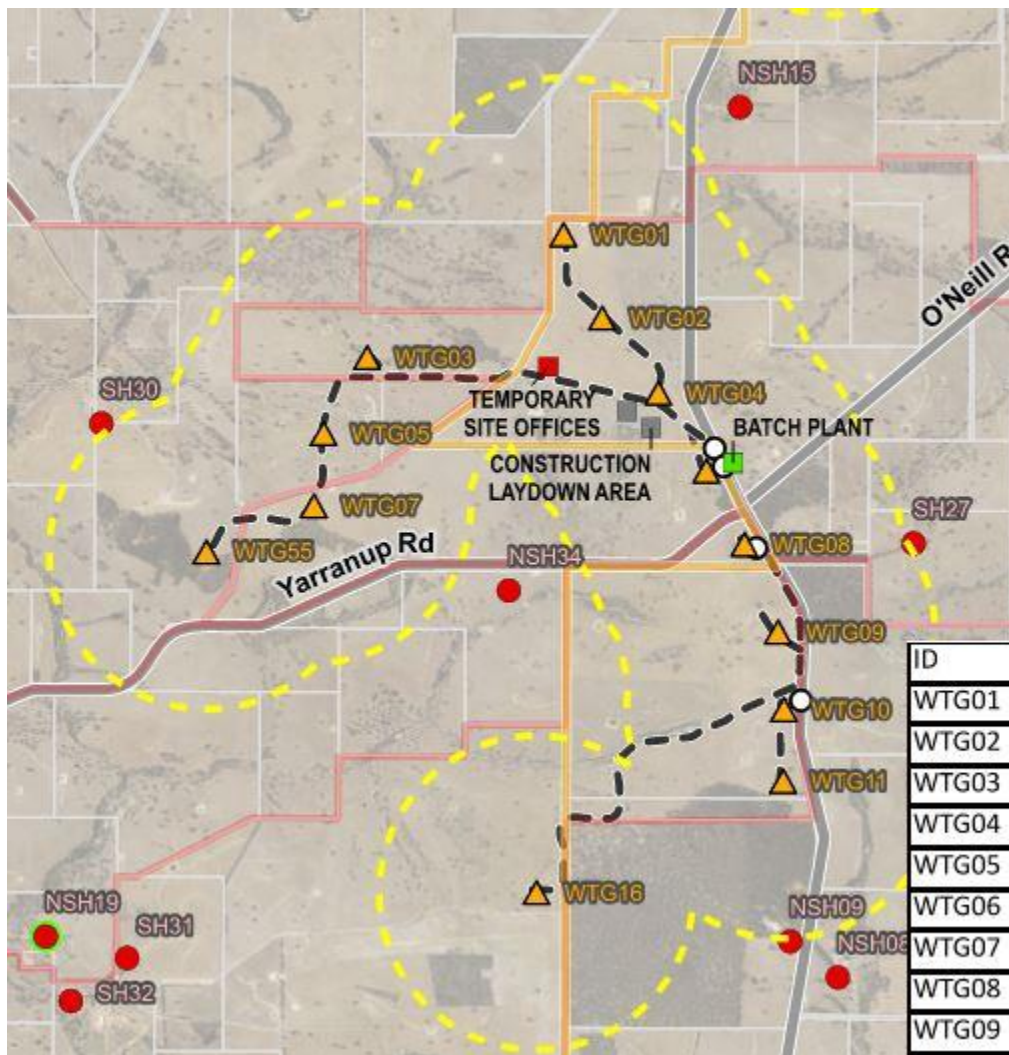




Condition 17 – additional requirement: at least one page devoted to each individual turbine location, containing, as a minimum, the information set out on this template page.

- Demonstrate that no residence or other sensitive premises lies within 1 km of wind turbine.

The below image depicts the 1 km yellow dotted radius of all WTGs.





Condition 17 – additional requirement: at least one page devoted to each individual turbine location, containing, as a minimum, the information set out on this template page.

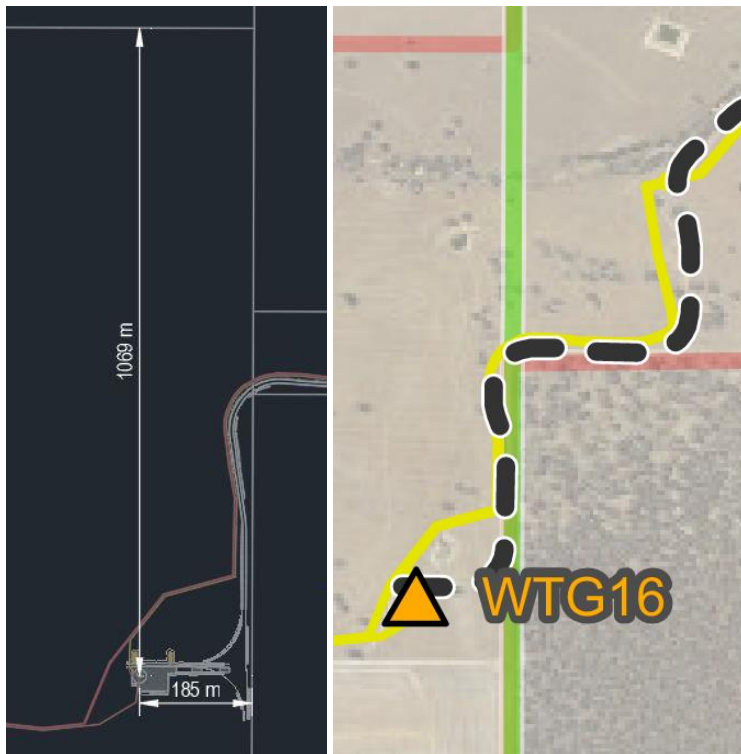
### **Turbine No. 16: Detailed location plan and separation from residences/sensitive premises.**

#### **Checklist and verification**

This turbine is:	Yes/No	Explanation
In accordance with the plan attached to the 05.10.21 SoK Notice of Determination	Yes	
In accordance with the application as submitted which includes the ' <i>Flat Rocks Wind Farm Environmental Report</i> ' and Appendices.	Yes	Noise assessment has been updated to reflect the new type of turbine.
At least one kilometre from any residential dwelling.	Yes	Refer to Clearance calculations
At least one kilometre from any 'sensitive premises'.	Yes	Refer to Clearance calculations
Located in accordance with the ' <i>Flat Rocks Wind Farm Landscape and Visual Assessment</i> '.	Yes	

#### **Requested graphics**

- Show exact location of turbine and all above-ground and below-ground infrastructure associated with turbine.
- Identify separation distance from at least two of the lot's boundaries.

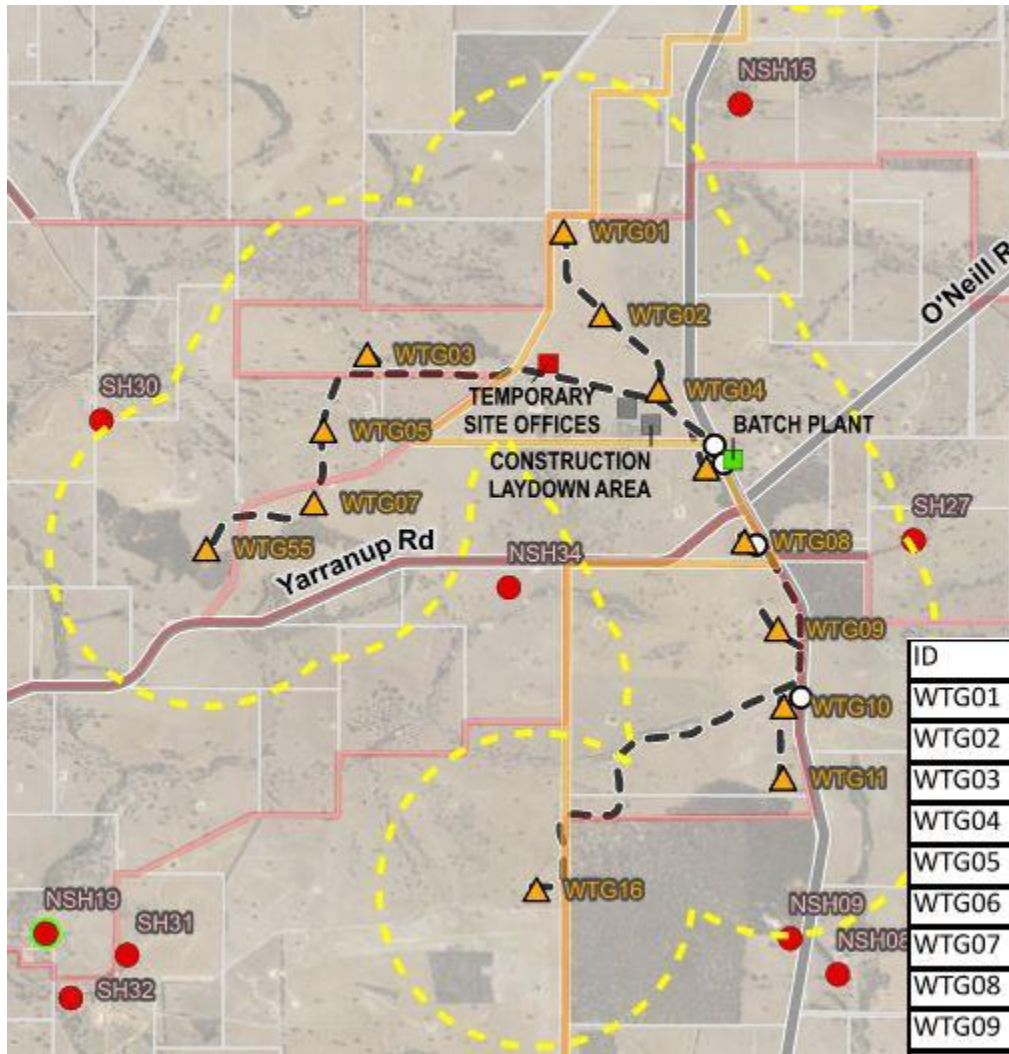


- Demonstrate that no residence or other sensitive premises lies within 1 km of wind turbine.



Condition 17 – additional requirement: at least one page devoted to each individual turbine location, containing, as a minimum, the information set out on this template page.

The below image depicts the 1 km yellow dotted radius of all WTGs.





Condition 17 – additional requirement: at least one page devoted to each individual turbine location, containing, as a minimum, the information set out on this template page.

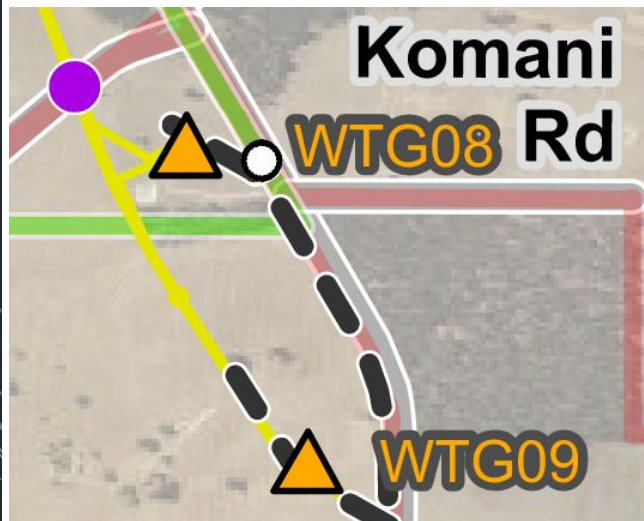
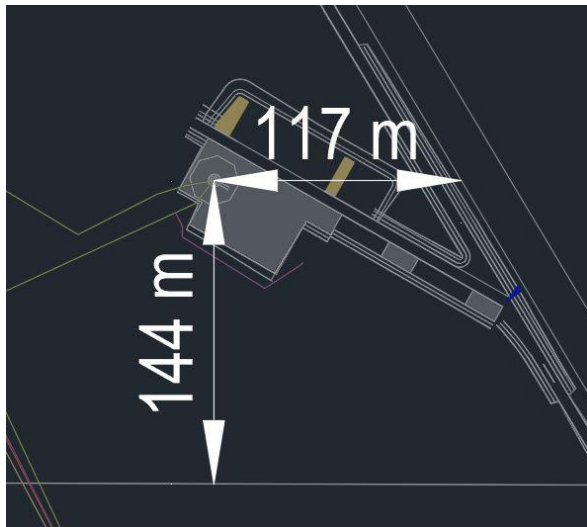
### Turbine No. 8: Detailed location plan and separation from residences/sensitive premises.

#### Checklist and verification

This turbine is:	Yes/No	Explanation
In accordance with the plan attached to the 05.10.21 SoK Notice of Determination	Yes	
In accordance with the application as submitted which includes the ' <i>Flat Rocks Wind Farm Environmental Report</i> ' and Appendices.	Yes	Noise assessment has been updated to reflect the new type of turbine.
At least one kilometre from any residential dwelling.	Yes	Refer to Clearance calculations
At least one kilometre from any 'sensitive premises'.	Yes	Refer to Clearance calculations
Located in accordance with the ' <i>Flat Rocks Wind Farm Landscape and Visual Assessment</i> '.	Yes	

#### Requested graphics

- Show exact location of turbine and all above-ground and below-ground infrastructure associated with turbine.
- Identify separation distance from at least two of the lot's boundaries.

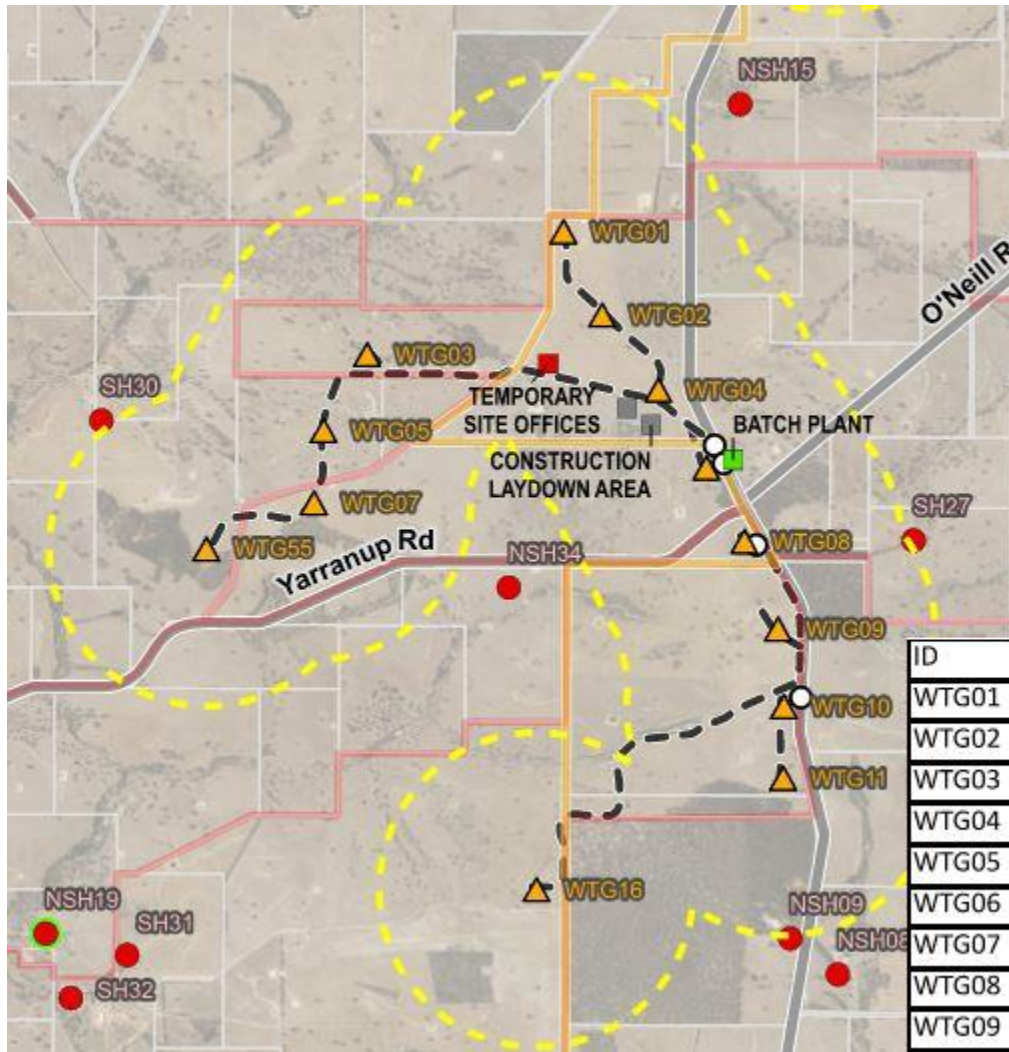




Condition 17 – additional requirement: at least one page devoted to each individual turbine location, containing, as a minimum, the information set out on this template page.

- Demonstrate that no residence or other sensitive premises lies within 1 km of wind turbine.

The below image depicts the 1 km yellow dotted radius of all WTGs.





Condition 17 – additional requirement: at least one page devoted to each individual turbine location, containing, as a minimum, the information set out on this template page.

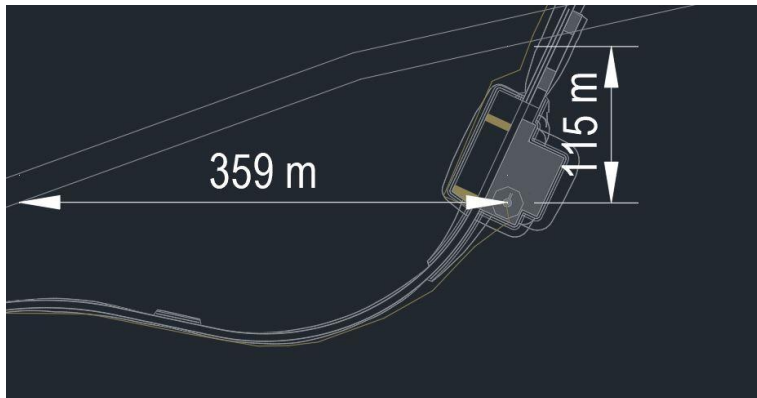
### Turbine No. 7: Detailed location plan and separation from residences/sensitive premises.

#### Checklist and verification

This turbine is:	Yes/No	Explanation
In accordance with the plan attached to the 05.10.21 SoK Notice of Determination	Yes	
In accordance with the application as submitted which includes the ' <i>Flat Rocks Wind Farm Environmental Report</i> ' and Appendices.	Yes	Noise assessment has been updated to reflect the new type of turbine.
At least one kilometre from any residential dwelling.	Yes	Refer to Clearance calculations
At least one kilometre from any 'sensitive premises'.	Yes	Refer to Clearance calculations
Located in accordance with the ' <i>Flat Rocks Wind Farm Landscape and Visual Assessment</i> '.	Yes	

#### Requested graphics

- Show exact location of turbine and all above-ground and below-ground infrastructure associated with turbine.
- Identify separation distance from at least two of the lot's boundaries.

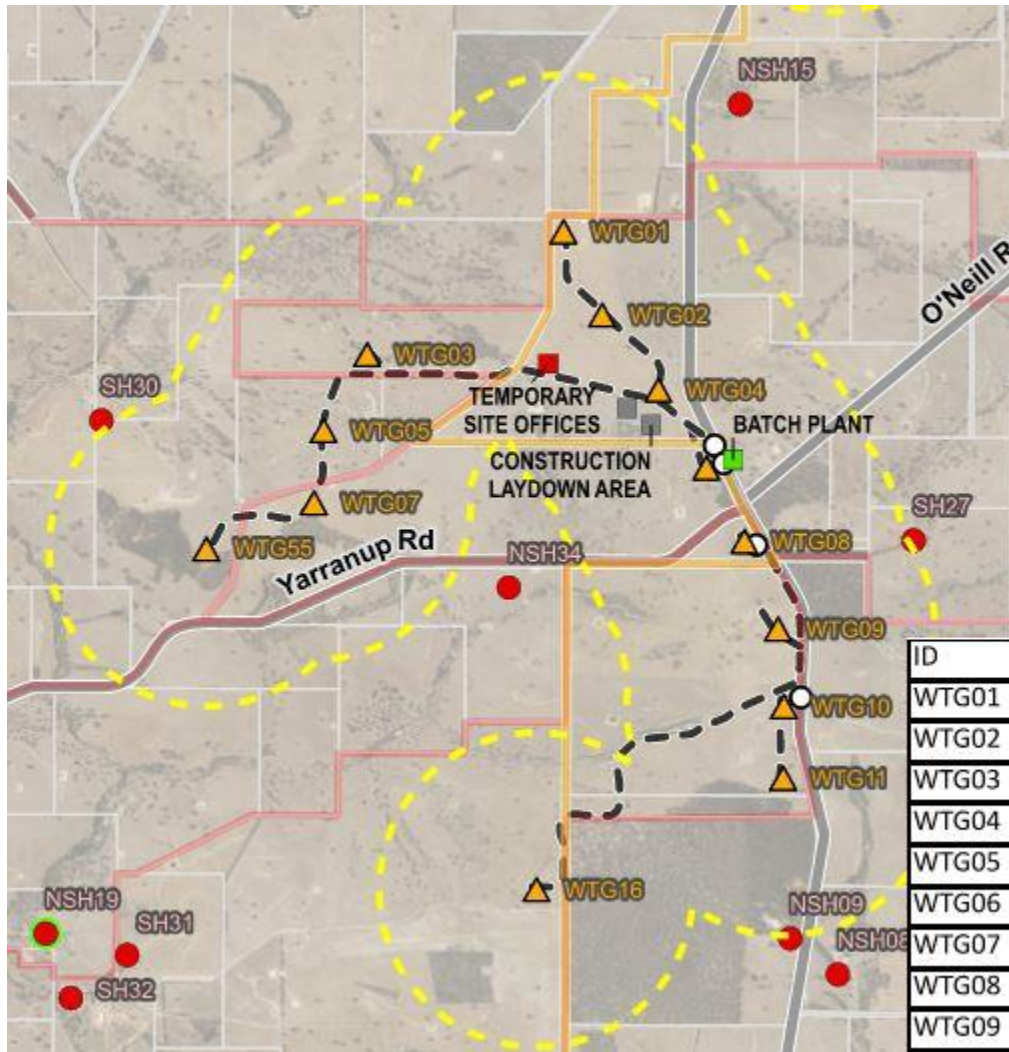




Condition 17 – additional requirement: at least one page devoted to each individual turbine location, containing, as a minimum, the information set out on this template page.

- Demonstrate that no residence or other sensitive premises lies within 1 km of wind turbine.

The below image depicts the 1 km yellow dotted radius of all WTGs.





Condition 17 – additional requirement: at least one page devoted to each individual turbine location, containing, as a minimum, the information set out on this template page.

### **Turbine No. 6: Detailed location plan and separation from residences/sensitive premises.**

#### **Checklist and verification**

This turbine is:	Yes/No	Explanation
In accordance with the plan attached to the 05.10.21 SoK Notice of Determination	Yes	
In accordance with the application as submitted which includes the ' <i>Flat Rocks Wind Farm Environmental Report</i> ' and Appendices.	Yes	Noise assessment has been updated to reflect the new type of turbine.
At least one kilometre from any residential dwelling.	Yes	Refer to Clearance calculations
At least one kilometre from any 'sensitive premises'.	Yes	Refer to Clearance calculations
Located in accordance with the ' <i>Flat Rocks Wind Farm Landscape and Visual Assessment</i> '.	Yes	

#### **Requested graphics**

- Show exact location of turbine and all above-ground and below-ground infrastructure associated with turbine.
- Identify separation distance from at least two of the lot's boundaries.

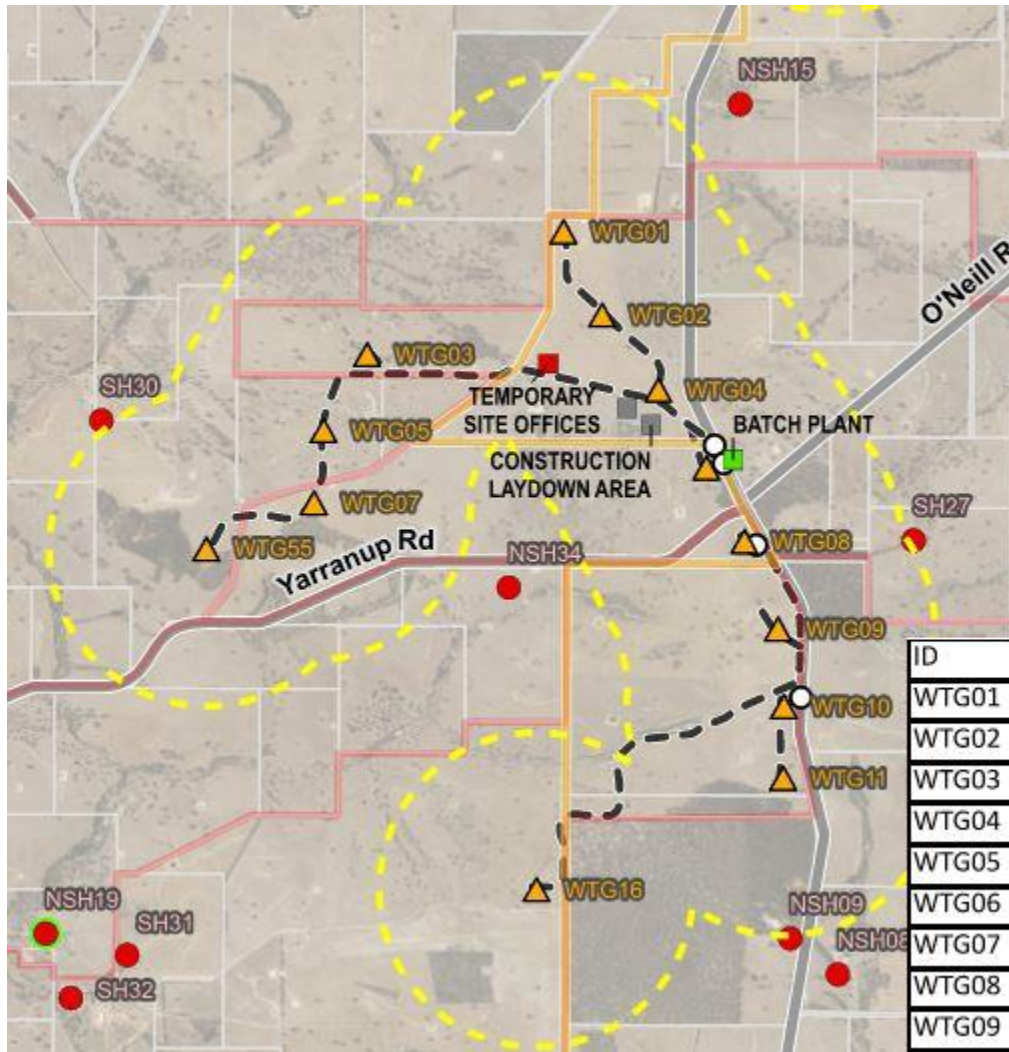




Condition 17 – additional requirement: at least one page devoted to each individual turbine location, containing, as a minimum, the information set out on this template page.

- Demonstrate that no residence or other sensitive premises lies within 1 km of wind turbine.

The below image depicts the 1 km yellow dotted radius of all WTGs.





Condition 17 – additional requirement: at least one page devoted to each individual turbine location, containing, as a minimum, the information set out on this template page.

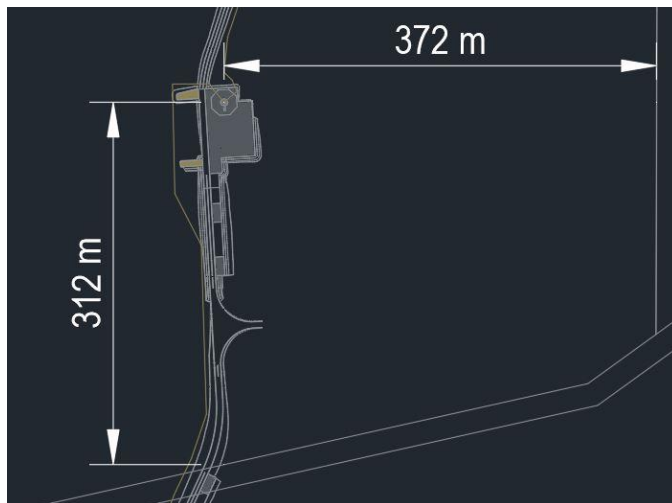
### **Turbine No. 5: Detailed location plan and separation from residences/sensitive premises.**

#### **Checklist and verification**

This turbine is:	Yes/No	Explanation
In accordance with the plan attached to the 05.10.21 SoK Notice of Determination	Yes	
In accordance with the application as submitted which includes the ' <i>Flat Rocks Wind Farm Environmental Report</i> ' and Appendices.	Yes	Noise assessment has been updated to reflect the new type of turbine.
At least one kilometre from any residential dwelling.	Yes	Refer to Clearance calculations
At least one kilometre from any 'sensitive premises'.	Yes	Refer to Clearance calculations
Located in accordance with the ' <i>Flat Rocks Wind Farm Landscape and Visual Assessment</i> '.	Yes	

#### **Requested graphics**

- Show exact location of turbine and all above-ground and below-ground infrastructure associated with turbine.
- Identify separation distance from at least two of the lot's boundaries.

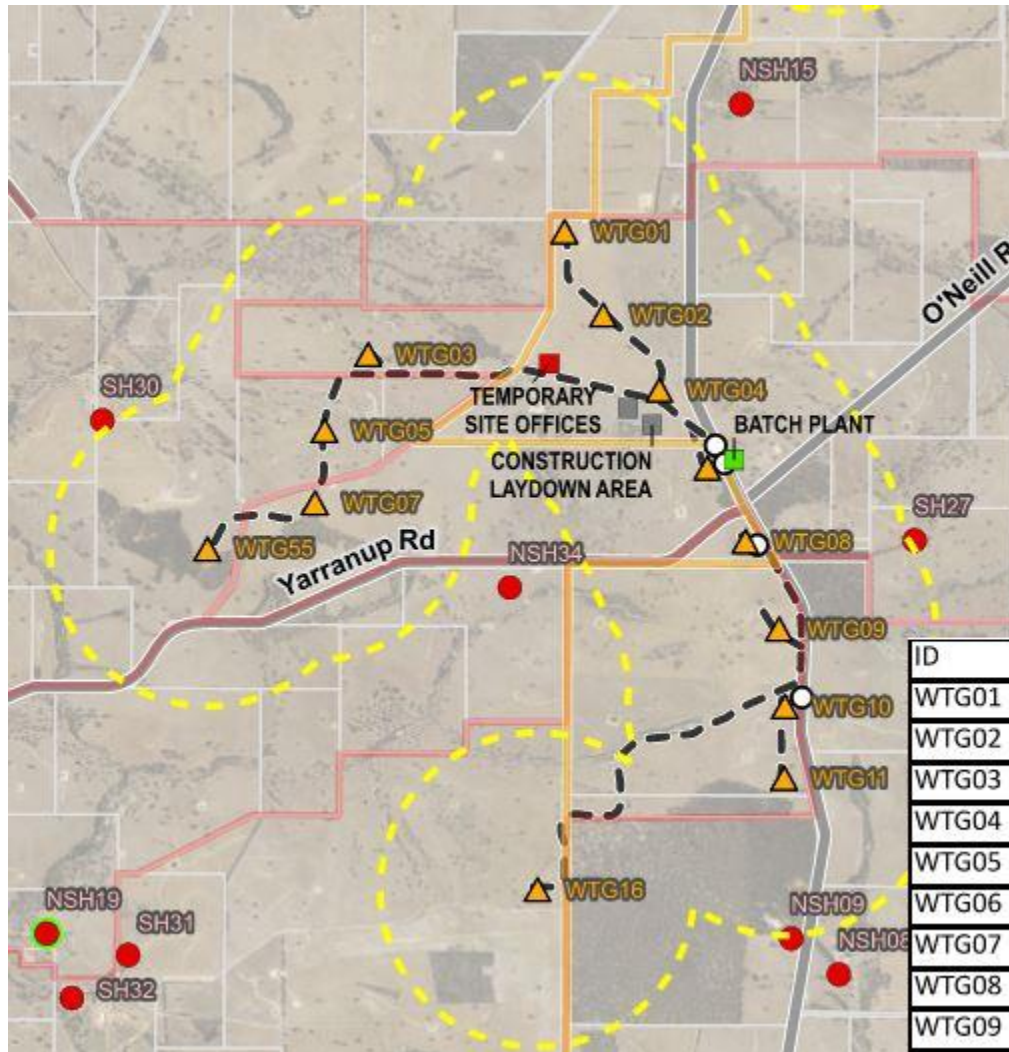




Condition 17 – additional requirement: at least one page devoted to each individual turbine location, containing, as a minimum, the information set out on this template page.

- Demonstrate that no residence or other sensitive premises lies within 1 km of wind turbine.

The below image depicts the 1 km yellow dotted radius of all WTGs.





Condition 17 – additional requirement: at least one page devoted to each individual turbine location, containing, as a minimum, the information set out on this template page.

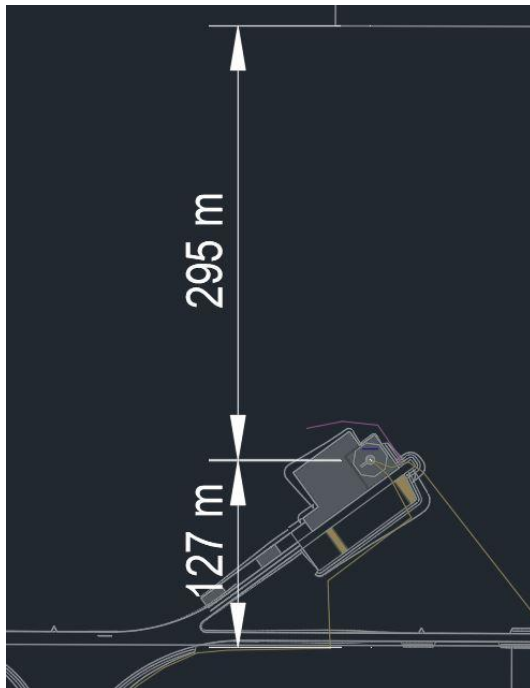
### Turbine No. 3: Detailed location plan and separation from residences/sensitive premises.

#### Checklist and verification

This turbine is:	Yes/No	Explanation
In accordance with the plan attached to the 05.10.21 SoK Notice of Determination	Yes	
In accordance with the application as submitted which includes the ' <i>Flat Rocks Wind Farm Environmental Report</i> ' and Appendices.	Yes	Noise assessment has been updated to reflect the new type of turbine.
At least one kilometre from any residential dwelling.	Yes	Refer to Clearance calculations
At least one kilometre from any 'sensitive premises'.	Yes	Refer to Clearance calculations
Located in accordance with the ' <i>Flat Rocks Wind Farm Landscape and Visual Assessment</i> '.	Yes	

#### Requested graphics

- Show exact location of turbine and all above-ground and below-ground infrastructure associated with turbine.
- Identify separation distance from at least two of the lot's boundaries.

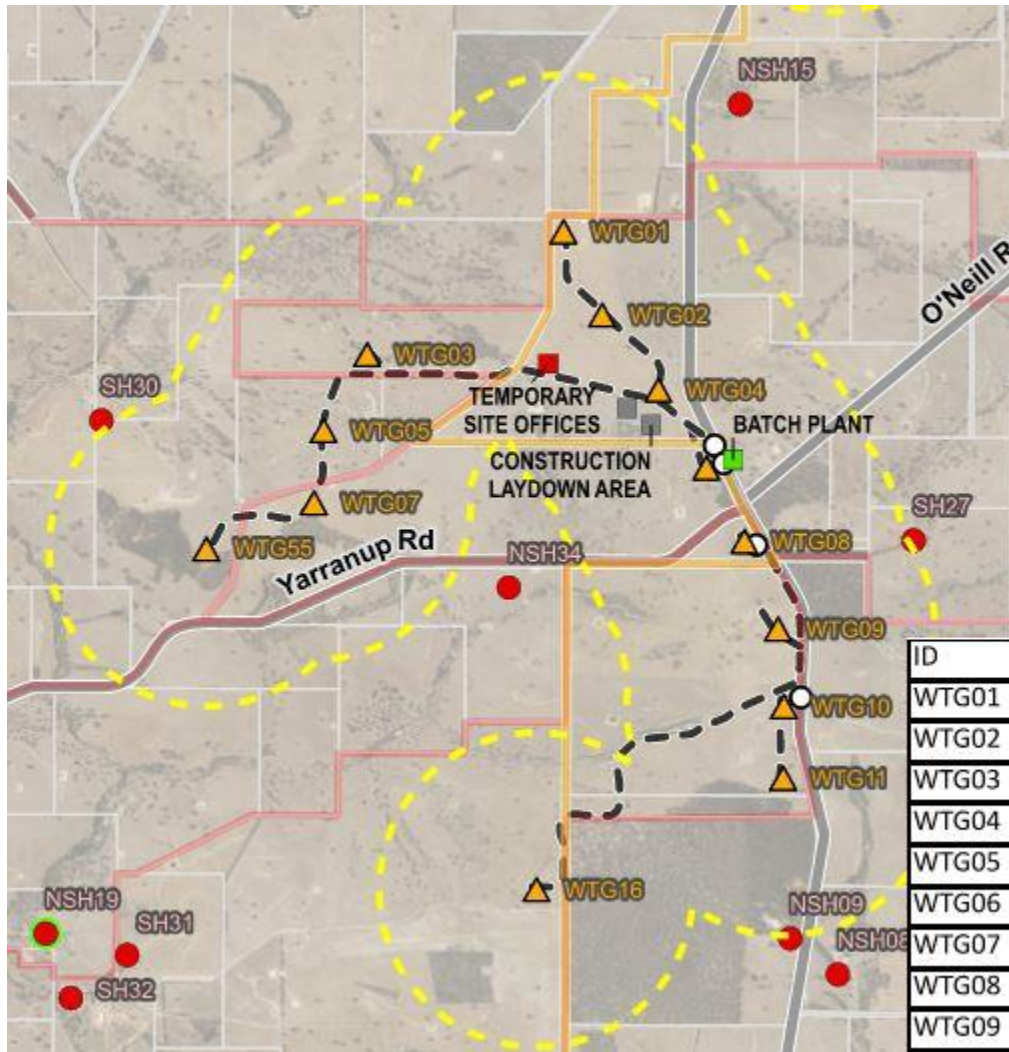




Condition 17 – additional requirement: at least one page devoted to each individual turbine location, containing, as a minimum, the information set out on this template page.

- Demonstrate that no residence or other sensitive premises lies within 1 km of wind turbine.

The below image depicts the 1 km yellow dotted radius of all WTGs.





Notes  
1. Refer to Landscaping Plan  
GRE.EEC.B.71.AU.W.08691.00.373.00  
for full details of Project landscaping  
details.  
Landscaping of NSH19 pending approval  
of landowner

Legend

Dwelling

Wind Turbine Generator

Permanent Met Mast

Temporary Met Mast

Wind Turbine Generator V1

Permanent Operations and Maintenance Building

Substation

Temporary Site Offices

Construction Laydown area

Batch Plant

Project access gate

Existing 132kV Transmission Line

Unsealed internal access road

Wind Turbine Generator - 1000m Radius

Landscaping Required

Local Government Area Boundary

Property Boundaries

Boundary of approved project area

Major Road

Minor Road

Residential Dwelling/  
Sensitive Premises

ID	Easting	Northing
NSH01	529,798	6,252,398
NSH02	534,034	6,254,130
NSH03	534,715	6,252,104
NSH04	533,706	6,248,509
NSH05	538,397	6,245,086
NSH06	536,092	6,244,487
NSH07	536,187	6,243,019
NSH08	533,602	6,237,033
NSH09	533,299	6,237,262
NSH10	527,067	6,249,862
NSH11	527,858	6,248,864
NSH12	529,822	6,247,171
NSH13	530,084	6,245,361
NSH14	531,650	6,243,477
NSH15	532,980	6,242,569
NSH16	527,583	6,245,239
NSH17	525,526	6,244,591
NSH18	525,548	6,238,704
NSH19	528,558	6,237,293
NSH20	531,581	6,233,170
NSH21	526,817	6,247,723
NSH22	529,707	6,247,138
NSH23	527,880	6,245,017
NSH24	529,664	6,247,150
NSH25	539,639	6,249,790
SH26	537,647	6,239,337
SH27	534,084	6,239,794
SH28	531,662	6,251,703
SH29	533,630	6,245,183
SH30	528,913	6,240,557
SH31	529,077	6,237,156
SH32	528,718	6,236,883
SH33	537,743	6,239,372
NSH34	531,507	6,239,494

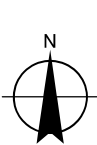
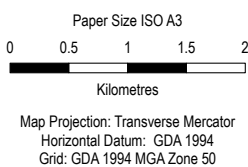
Turbine Locations

ID	Easting	Northing
WTG01	531,854	6,241,757
WTG02	532,100	6,241,227
WTG03	530,604	6,240,976
WTG04	532,458	6,240,750
WTG05	530,327	6,240,492
WTG06	532,764	6,240,255
WTG07	530,265	6,240,031
WTG08	533,006	6,239,787
WTG09	533,220	6,239,230
WTG10	533,258	6,238,736
WTG11	533,253	6,238,281
WTG13	531,248	6,246,180
WTG14	531,662	6,245,363
WTG15	531,924	6,244,916
WTG16	531,682	6,237,572
WTG17	531,934	6,244,464
WTG18	533,574	6,244,160
WTG55	529,580	6,239,739

ID	Easting	Northing
NSH01	529,798	6,252,398
NSH02	534,034	6,254,130
NSH03	534,715	6,252,104
NSH04	533,706	6,248,509
NSH05	538,397	6,245,086
NSH06	536,092	6,244,487
NSH07	536,187	6,243,019
NSH08	533,602	6,237,033
NSH09	533,299	6,237,262
NSH10	527,067	6,249,862
NSH11	527,858	6,248,864
NSH12	529,822	6,247,171
NSH13	530,084	6,245,361
NSH14	531,650	6,243,477
NSH15	532,980	6,242,569
NSH16	527,583	6,245,239
NSH17	525,526	6,244,591
NSH18	525,548	6,238,704
NSH19	528,558	6,237,293
NSH20	531,581	6,233,170
NSH21	526,817	6,247,723
NSH22	529,707	6,247,138
NSH23	527,880	6,245,017
NSH24	529,664	6,247,150
NSH25	539,639	6,249,790
SH26	537,647	6,239,337
SH27	534,084	6,239,794
SH28	531,662	6,251,703
SH29	533,630	6,245,183
SH30	528,913	6,240,557
SH31	529,077	6,237,156
SH32	528,718	6,236,883
SH33	537,743	6,239,372
NSH34	531,507	6,239,494

Turbine Locations		
ID	Easting	Northing
WTG01	531,854	6,241,757
WTG02	532,100	6,241,227
WTG03	530,604	6,240,976
WTG04	532,458	6,240,750
WTG05	530,327	6,240,492
WTG06	532,764	6,240,255
WTG07	530,265	6,240,031
WTG08	533,006	6,239,787
WTG09	533,220	6,239,230
WTG10	533,258	6,238,736
WTG11	533,253	6,238,281
WTG13	531,248	6,246,180
WTG14	531,662	6,245,363
WTG15	531,924	6,244,916
WTG16	531,682	6,237,572
WTG17	531,934	6,244,464
WTG18	533,574	6,244,160
WTG55	529,580	6,239,739

REV/ISS	A	AK	07.07.2022	ISSUED FOR USE	MM	RS
	B	AK	13.07.2022	REISSUED FOR USE	MM	RS
	C	BM	13.09.2022	REISSUED FOR USE	MM	RS
	D	BM	04.11.2022	REISSUED FOR USE	MM	RS
REV	BY	DATE	DESCRIPTION	CKD	APP	

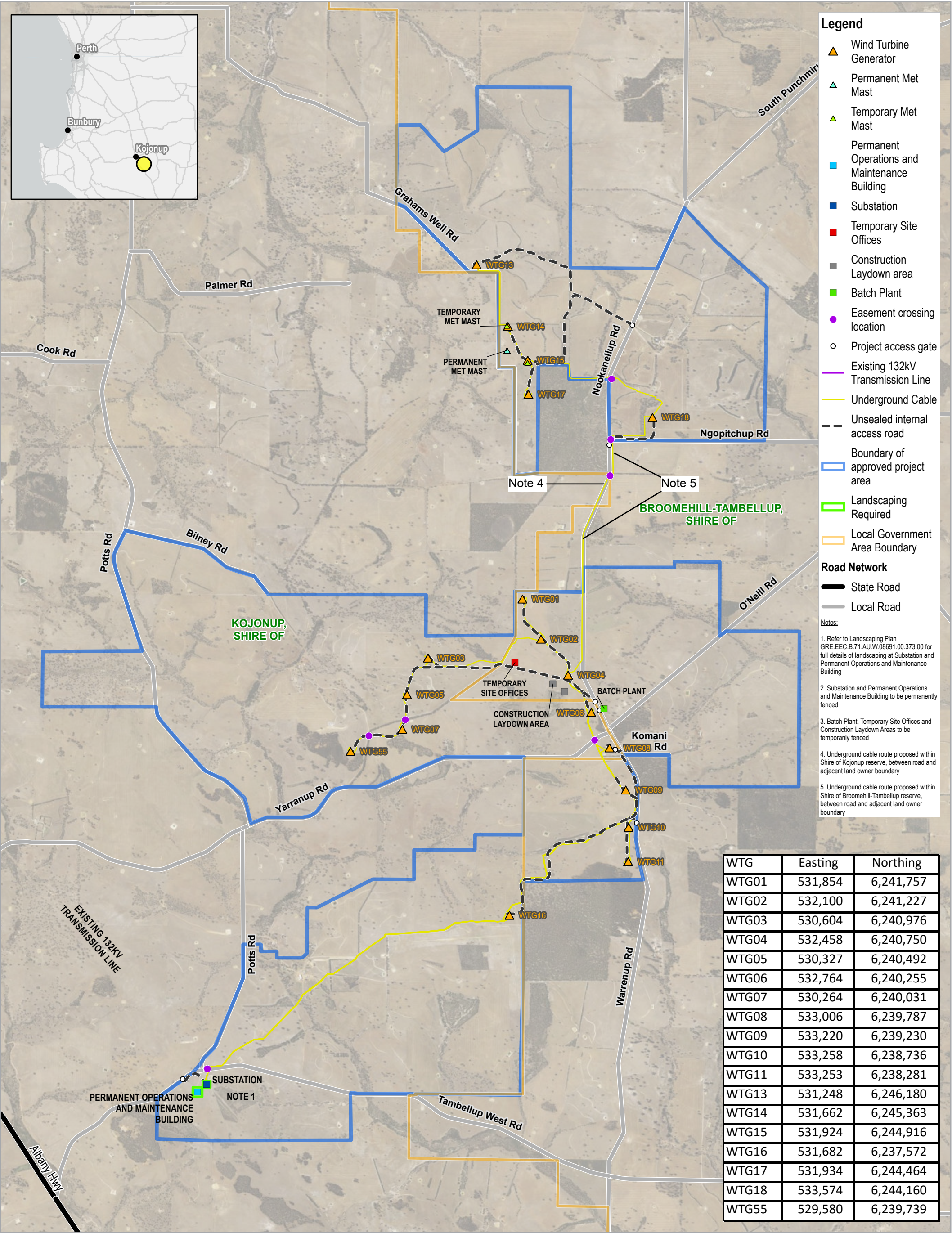


**ENEL**  
**Flat Rocks Wind Farm Stage One**

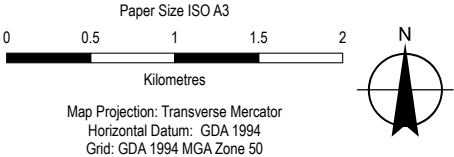
**12574907-00000-MD-LAD-002**  
**Development Layout Plan –**  
**Dwelling Locations**

Project No. **12574907**  
Revision No. **D**  
Date **4/11/2022**





REVISIONS	0	AK	27.06.2022	ISSUED FOR USE	MM	RS
	1	AK	07.07.2022	REISSUED FOR USE	MM	RS
	2	AK	14.07.2022	REISSUED FOR USE	MM	RS
	3	AK	01.09.2022	REISSUED FOR USE	MM	RS
	4	BM	13.09.2022	REISSUED FOR USE	MM	RS
	5	BM	04.11.2022	REISSUED FOR USE	MM	RS
REV	BY	DATE	DESCRIPTION		CKD	APP



ENEL  
Flat Rocks Wind Farm Stage One

12574907-00000-MD-LAD-001  
Development Layout Plan

Project No. 12574907  
Revision No. 5  
Date 4/11/2022







Project: **FLAT ROCKS WIND FARM – STAGE 1**

Prepared for: **Enel Green Power Australia Pty Ltd  
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Attention: **Tomas Gibbs**

Report No.: **Rp 001 R01 20220108**

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#### Document Control

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Issued	-	-	18 Aug. 2022	E. Griffen	J. Adcock C. Delaire
Issued	R01	Amended to reflect Council's comments	28 Oct. 2022	C. Guzik	C. Delaire



## SUMMARY

This document was prepared on behalf of Enel Green Power Australia Pty Ltd to address Condition 21 of the development approvals for the Flat Rocks Wind Farm which require the preparation of a Noise Impact Mitigation Management Plan (NIMMP) for the wind farm.

The following table identifies the location of relevant NIMMP content with respect to the requirements of Condition 21.

Development approval NIMMP requirement	Relevant section in this NIMMP
<i>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 -</i>	
<i>(a) Undertake post-commissioning testing to ensure compliance with condition 29, including testing at existing noise sensitive premises;</i>	Section 5.0
<i>(b) Make arrangements with adjoining landowners regarding the construction of noise sensitive premises on land;</i>	Section 8.0
<i>(c) Modify micro-siting to ensure compliance with condition 29;</i>	Section 4.0
<i>(d) Modify the operation of the wind turbines to ensure compliance with condition 29;</i>	Section 7.0
<i>(e) Manage complaints regarding noise impact during the operational phase of the development.</i>	Section 6.0



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## 1.0 INTRODUCTION

This report presents the operational noise compliance monitoring procedures for the Flat Rocks Wind Farm.

The Flat Rocks Wind Farm is a consented project located in the Shire of Broomehill-Tambellup and Shire of Kojonup local government areas, approximately 20 km southeast of Kojonup, Western Australia. The development approvals<sup>1</sup> for the Flat Rocks Wind Farm allow the development of up to forty-four (44) turbines and associated infrastructure including conditions which specify requirements for the control of environmental noise associated with the project. The project is proposed to be constructed over two (2) stages.

This report was commissioned by Enel Green Power Australia Pty Ltd (Enel Green Power) for Stage 1 of the wind farm (up to 18 turbines) to address Condition 21 of the development approvals which requires the preparation of a Noise Impact Mitigation Management Plan (NIMMP). The NIMMP will need to be updated before construction of Stage 2 of the Flat Rocks Wind Farm.

The purpose of the NIMMP is to clarify the procedures that will be used to measure and assess whether the wind farm is operating in accordance with the operational noise requirements of the development approvals.

This report specifies:

- Procedures for modifying the micro-siting of the turbines to enable operational noise levels to comply with the limits specified by the development approvals;
- Operational wind farm noise monitoring and assessment procedures;
- Operational wind farm noise compliance reporting procedures;
- Procedures to investigate complaints relating to operational wind farm noise; and
- Procedures for modifying the operating configuration of the wind farm to achieve compliance with the noise limits specified by the development approvals.

The basic quantities used within this document to describe noise adopt the conventions outlined in ISO 1996-1:2016<sup>2</sup>. Accordingly, all frequency weighted sound pressure levels are expressed as decibels (dB) in this report. For example, sound pressure levels measured using an “A” frequency weighting are expressed as dB L<sub>A</sub>. Alternative ways of expressing A-weighted decibels such as dBA or dB(A) are therefore not used within this report.

Acoustic terminology used in this report is presented in Appendix A.

The NIMMP has been prepared on the basis of the wind farm layout and existing dwellings detailed in Appendix B and Appendix C respectively. Any changes to the type, hub height or layout of the wind turbines to be used at site will necessitate a review and possible amendment of the procedures detailed herein.

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<sup>1</sup> Shire of Broomehill-Tambellup development approval was issued in December 2021 (DAP No. IPA12112235) and the Shire of Kojonup development approval was issued in October 2021 (DAP No. DB.BDA.8)

<sup>2</sup> ISO 1996-1:2016 *Acoustics - Description measurement and assessment of environmental noise – Part 1: Basic quantities and assessment procedures*



## 2.0 DEVELOPMENT APPROVAL CONDITIONS

The development approvals for the Flat Rocks Wind Farm include conditions which specify requirements for the control of environmental noise associated with the project.

Conditions 5, 21, 29 and 30 of the development approvals establish requirements for the control of noise during operation of the Flat Rocks Wind Farm. The conditions are reproduced in full in Appendix D. The key requirements are summarised in Table 1.

**Table 1: Development approval – summary of operational noise related requirements**

Condition	Summary of key requirements
5	Requires a revised noise impact assessment if the proposed turbine for the wind farm differs from the turbine included in the development approvals.
21	Specifies that a Noise Impact Mitigation Management Plan (NIMMP) must be prepared prior to commencement of development of the wind farm. The NIMMP is to outline the process for: <ul style="list-style-type: none"> <li>• Undertaking post commissioning testing to ensure compliance with noise limits</li> <li>• Arrangements with adjoining landowners regarding future noise sensitive premises</li> <li>• Modifying micro-siting and operation of the wind turbines to ensure compliance with the noise limits</li> <li>• Manage complaints regarding noise impacts of the operational noise of the turbines.</li> </ul>
29	Defines noise limits which apply to operational noise associated with the wind farm.
30	Requires that the Noise Impact Mitigation Management Plan is implemented during the operational phase of the development.



### 3.0 OPERATIONAL WIND FARM NOISE LIMITS

Operational noise limits apply at dwellings (generally referred to as receivers herein) in the vicinity of the Flat Rocks Wind Farm, as specified in Condition 29 of the development approvals.

Condition 29 requires the operational noise of each wind turbine to not exceed the greater of “35 dB(A) or background noise ( $L_{A90}$ , 10 minutes), by more than 5 dB(A)” at all receivers.

The development approvals do not specify the guidelines, standards, procedures, or metrics to assess compliance with the operational wind farm noise limits. In the absence of a specified method within the development approvals, the South Australian Environment Protection Authority publication *Wind Farms – Environmental Noise Guidelines 2009*<sup>3</sup> (the SA guidelines) is referenced for assessment purposes; this is common practice for the assessment of wind farms operating in Western Australia, and is the same procedure which was referenced for the assessment of operational turbine noise in the noise impact assessment report<sup>4</sup> submitted with the development application for the wind farm.

Accordingly, the operational wind turbine noise levels of the wind farm, when measured and assessed in accordance with the SA guidelines, must achieve the criteria detailed in Condition 29 of the development approvals. Specifically, the applicable operational wind farm limits are the greater of:

- 35 dB  $L_{A90}$ ; and
- Background noise ( $L_{A90}$ ) + 5 dB  $L_{A90}$ .

At the time of preparing this NIMMP, background noise measurements have been conducted and additional information is provided in the noise impact assessment report. However, the available background noise data is not considered suitable for deriving background noise dependent limits. In the absence of suitable background noise data, and as a conservative approach, compliance may be assessed using the minimum noise limit of 35 dB  $L_{A90}$ . In the event that background noise monitoring is carried out in the future, the results of this monitoring would be used for determining wind speed dependant noise limits in accordance with Condition 29, subject to their inclusion in an updated version of this NIMMP.

The coordinates of the receivers (provided by Enel Green Power) considered in this NIMMP are tabulated in Appendix C.

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<sup>3</sup> The SA guidelines were updated in November 2021. The November 2021 issue of the SA guidelines has been used to form the basis of the assessment procedures.

<sup>4</sup> Herring Storer Acoustics document 27351-4-10226-04 *Noise Impact Assessment* dated 23 November 2021



#### 4.0 MICRO-SITING REQUIREMENTS

Condition 21(c) of the development approvals specifies a requirement for a procedure for turbine micro-siting prior to construction of each wind turbine, which will enable compliance with the noise limits specified in Condition 29 to be achieved.

Accordingly, if the turbine locations are proposed to be modified as part of the micro-siting, a revised noise model of the site must be prepared based on the revised turbine layout. The objective of this revised noise modelling would be to assess whether the predicted noise levels with the revised turbine layout achieve the noise limits specified in Condition 29 of the development approvals.

Further details and project-specific requirements are detailed Appendix E.

#### 5.0 OPERATIONAL WIND FARM NOISE TESTING PROCEDURES

Condition 21(a) of the development approvals specifies a requirement for a procedure to undertake post commissioning noise measurements of the operational wind turbines.

The unattended noise monitoring shall be conducted in accordance with the SA guidelines (as referenced in Section 3.0), subject to the project-specific procedural clarifications and requirements contained in Appendix F.

##### 5.1 Noise measurement locations

Operational noise measurements should be carried out at the seven (7) preferred receiver locations detailed in Table 2 subject to permission being granted by the landowners.

**Table 2: Preferred noise compliance monitoring locations**

Receiver	Direction from wind farm	Distance from nearest turbine, m
NSH09	S	1,005
NSH13	SW	1,423
NSH14	SSW	1,002
NSH15	NE	1,388
SH27	ENE	1,027
SH29	N	1,020
SH30	NW	1,055

These locations have been selected to represent the nearest receivers around the Flat Rocks Wind Farm where predicted noise levels identified in the noise impact assessment report are comparable to the 35 dB  $L_{A90}$  minimum operational noise limit.

In the event that permission is not able to be obtained for conducting compliance measurements at the preferred receivers, alternative locations shall be considered.

The measurement systems shall be positioned in the vicinity of the dwelling at each of the preferred receivers for compliance monitoring. The following confirms the key aspects of SA guidelines with respect to measurement locations:

- The measurements shall not occur within 5 m of a vertical reflecting surface;
- The measurements shall occur within 30 m of the dwelling; and
- The monitoring locations shall be located as far as practically possible from streams, watercourse and vegetation which may result in localised increases in background noise levels.



If practical constraints or landowner/resident preferences preclude placement of the noise monitor in accordance with the above procedures, alternative equivalent locations shall be identified and selected. The reasons for the deviation, and the justification for the selected equivalent location, must be documented in the post-commissioning report.

Evaluating compliance based on measurements solely undertaken at the preferred testing locations can be problematic as a result of the influence of ambient noise sources. Accordingly, supplementary measurements may be undertaken at intermediate locations positioned nearer to the wind farm to:

- Assist the evaluation of noise levels solely attributable to the operation of the wind farm; and
- Provide data for reference locations where testing can be repeated, if required, for the purposes of re-assessing compliance in future.

Noise monitoring at intermediate locations shall occur simultaneously while monitoring is carried out at the corresponding receiver location.

Subject to access constraints, the intermediate locations are to be located:

- Between the wind turbines and the preferred receivers for compliance monitoring, at a location where the predicted wind turbine noise levels are approximately 45 dB  $L_{A90}$ ; and
- As far as practically possible from any tall vegetation or structures that are likely to increase background noise levels during periods of increased wind.

Indicative intermediate locations are identified in Figure 1.

## 5.2 Operational wind farm noise analysis

The operational wind farm noise analysis shall be conducted in accordance the assessment procedures and requirements documented in the SA guidelines.

Further details and project-specific requirements are detailed in Appendix G.

## 5.3 Operational wind farm noise reporting

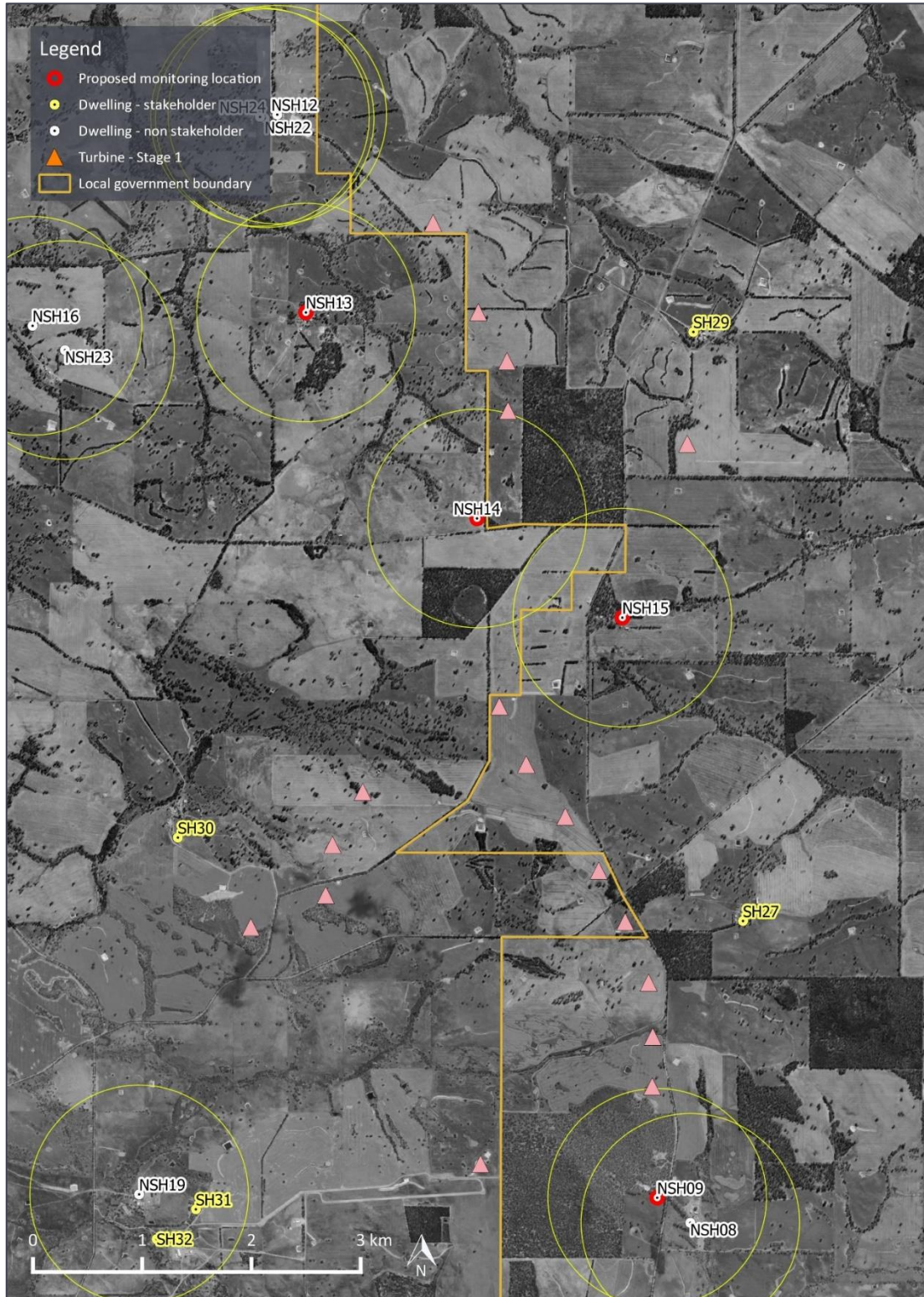
The reporting shall adhere to the documentation requirements detailed in Section 5 of the SA guidelines, and shall include the following additional information:

- Supporting documentation for the site wind speed data referenced in the compliance assessment
- Charts illustrating the noise measurement results shall clearly identify all samples that have been filtered from the analysis due to rainfall or the identification of extraneous noise influences. The analysis shall be supplemented by a summary table for each noise monitoring location detailing the total number of measurements points, the number of points that have been removed (i.e., as a result of data filtering, and the final number of data points that the analysis has been based on, including the number of downwind data points in the dataset);
- Full details of all attended observations conducted for the purpose of identifying where annoying characteristics including tonality are potentially present in the sound of the wind farm; and
- Full details of any supplementary procedures that have been adopted as part of conducting the compliance assessment.



It is acknowledged that the turbines approved under the Stage 1 development for the Shire of Kojonup and Shire of Broomehill-Tambellup of the municipal boundary are intended for Stage 1 only. It is intended that the wind farm is to expand by constructing additional turbines at Stage 2 which will require further development approval. Although the NIMMP has been prepared in response to the development approval for Stage 1, it is noted that similar noise restrictions are likely to apply to the cumulative noise impact from Stage 1 and Stage 2, if and when Stage 2 is approved.

**Figure 1: Preferred noise monitoring locations and Stage 1 turbine layout**





## 6.0 NOISE COMPLAINT HANDLING AND INVESTIGATION REPORTS

Noise investigation reports are to be prepared when additional noise testing (i.e. additional to post-commissioning noise testing to verify compliance with Condition 29) is instigated in the following situations:

- Complaints have been received regarding noise impacts from operational wind farm noise, and management of the complaint in accordance with the operator's complaint handling procedure<sup>5</sup> indicates that measurements are required in order to verify the compliance status of the wind farm; or
- A potential for non-compliance has been established by some other means, defined as follows:
  - Post-commissioning noise testing was not able to demonstrate compliance, and alternative targeted investigations (i.e. other than simply extending the duration of the noise compliance testing to obtain additional data) are required in order to determine whether the wind farm is compliant with the requirements of the development approvals.
  - The operating configuration of the wind farm has been altered, or major components of the wind turbines (e.g., blades or power conversion plant) have been replaced with alternative equipment, and the noise emission characteristics of the wind farm may have changed. This is primarily relevant to situations where there is uncertainty around the effect of the change on noise levels (i.e. uncertainty around whether the change could decrease or increase either noise levels or tonality). It is however also relevant to situations where changes have been implemented in accordance with a noise remediation plan and the effectiveness of the mitigation measures require verification.

The type of additional testing to be carried out must be selected according to the circumstances which instigated the requirement for a noise investigation report.

In some instances, the required additional testing may comprise a repeat of the testing undertaken following completion of the wind farm (subject to permission to access residential properties where relevant). In other instances, the requirement for additional testing may be satisfactorily addressed by conducting repeat measurements at the intermediate locations (i.e. utilising intermediate locations as controlled reference points for the noise emission of the wind farm).

In instances where the need for the noise investigation report relates to a complaint or annoying noise characteristics, the additional investigations will generally need to be conducted at or in the vicinity of the relevant receiver under similar conditions (e.g., wind speed, wind direction, time of day) to the event under investigation. Exceptions may apply if the characteristic in question relates to tonality, and it can be demonstrated by testing in proximity of the turbines that tonality is not a characteristic of the wind farm's noise emissions.

Targeted investigations may comprise on/off testing of the wind farm for specific wind conditions, or investigation of potential characteristics for specific wind conditions.

The scope and form of additional noise testing to be undertaken for the purpose of a noise investigation report shall be determined by a suitably qualified and experienced acoustic engineer. Measurement, attended observation and analysis procedures for the additional compliance testing shall be consistent with the specifications detailed in Section 5.0 of this NIMMP where relevant.

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<sup>5</sup> ENEL Green Power document *Flat Rocks Wind Farm Stage One - Complaints Handling Procedure* current as of 8 June 2022. This procedure is reproduced in Appendix H.



Prior to conducting the additional testing associated with the noise investigation report, a brief additional testing statement describing the purpose, selected method and scheduling of the investigation shall be submitted to the local government. Any potential delays to the commencement of the additional testing, such as requirements for specific weather conditions or access constraints, shall be documented in the additional testing statement.

The additional testing statement shall specify the timeframe for submission of the noise investigation report to the local government.

The local government shall be notified as soon as practically possible following formal identification of a non-compliance. A non-compliance is deemed to have been formally identified once it is documented in a completed noise investigation report that is available for submission to the Local government.

The noise investigation reports shall document:

- An assessment of the wind farm's compliance with the operational noise performance requirements of the development approvals;
- Any requirements for further investigations if the results of the noise compliance testing are not sufficient to conclude that the noise associated with the wind farm is compliant with the development approvals; and
- A requirement to prepare a noise remediation plan if the results of the additional noise testing demonstrate that the noise associated with the wind farm is not compliant with the development approvals.

The noise investigation reports shall also adhere to the documentation requirements detailed in Section 5 of the SA guidelines, and shall include the following:

- A concise summary of the reason why the additional noise testing was instigated;
- Identify the weather and operational conditions associated with the complaint or potential non-compliance;
- A complete description of the measurement and analysis procedures adopted for the additional noise testing including, where necessary, details of any variations from the procedural specifications detailed in Section 5.0 of this NIMMP;
- Supporting documentation for the site wind speed and direction data referenced in the noise investigation;
- Charts illustrating the noise measurement results identifying all samples that have been filtered from the analysis due to rainfall or the identification of extraneous noise influences. In instances where subsets of data require analysis as detailed in Appendix G, the charts shall illustrate the different identified trends. The analysis shall be supplemented by a summary table for each noise monitoring location detailing the total number of measurements points, the number of points that have been removed, and the final number of data points that the analysis has been based on (including the number of downwind data points in the dataset); and
- If relevant, full details of all attended observations conducted for the purpose of identifying if annoying noise characteristics are potentially present in the sound of the wind farm. If objective analysis is undertaken to investigate potential characteristics, full details of the analysis and results shall be documented. This shall include a description and justification for any procedures that have been used to screen results that are unlikely to be related to the operation of the wind farm; and
- Reports are to be submitted annually to the relevant authority.



## 7.0 NOISE REMEDIATION PLANS

Noise remediation plans shall be produced when the results of post-commissioning noise monitoring or a noise investigation report demonstrates that the noise of the Flat Rocks Wind Farm is not compliant with the performance requirements of the development approvals. A noise remediation plan shall identify the aspects of the operation of the turbines to achieve compliance with Condition 29 of the development approvals.

More specifically, the noise remediation plans shall document the following:

- A concise summary of the testing that has been undertaken to determine that the wind farm is not compliant with the development approval;
- The receivers where non-compliance has been directly or indirectly established;
- The wind conditions in which non-compliance has been established;
- A performance specification for the noise reduction that must be achieved in order for the wind farm to be compliant at all receivers. The performance specification shall be expressed in terms of the magnitude of the noise level reduction that must be achieved, and the wind speeds and wind directions that the performance specifications apply to;
- Details of the noise mitigation measures to be implemented in order to achieve the performance specification and, where appropriate, supporting evidence to demonstrate that the measures are expected to enable compliance to be achieved (e.g. sound power level information for reduced noise modes);
- If a non-compliance is detected, an interim operating pattern is to be implemented immediately to prevent continued non-compliance, pending the formulation and the implementation of a long-term solution. Details of measures being immediately implemented are to be advised to the shires;
- A brief statement describing the selected method of additional noise testing that will be undertaken in order to assess the effectiveness of the mitigation measure(s) and reassess compliance with the requirements of the development approvals; and
- A time frame for conducting additional noise testing and producing a noise investigation report.

Noise mitigation measures to demonstrate compliance may comprise the following:

- Changes to the operating configuration of the wind farm (i.e., reduced noise operating modes or shutdowns during selected wind conditions); or
- Engineering measures which involve replacement or modification of major turbine components, or a combination of the two.

In situations where rectification of the source of an identified non-compliance is expected to involve longer term design, development and implementation, the remediation plan shall identify intermediate mitigation strategies to be used until the final mitigation strategy is implemented. Intermediate mitigation strategies shall also be defined in situations where a non-compliance has been identified, but the precise magnitude of the non-compliance remains to be quantified through additional noise testing.

If intermediate mitigation strategies are to be utilised, the noise remediation plan shall document both the intermediate and longer-term noise mitigation strategies, including details of the implementation timing and the additional testing that will be undertaken to assess compliance after each measure is implemented.



## 8.0 ADJOINING LANDOWNER ARRANGEMENTS

Condition 29 of the development approvals specifies wind turbine noise limits which apply at dwellings. The condition does not differentiate between existing premises and premises developed after the approval of the Flat Rocks Wind Farm. It is therefore necessary for the operator of Stage 1 of the Flat Rocks Wind Farm to assess wind turbine noise levels at proposed residential development sites in the vicinity of the wind farm and, where required, determine suitable arrangements with adjoining landowners to address wind turbine noise levels at new residential dwellings.

The operator of Stage 1 of the wind farm shall review all proposals for dwellings on lots partly or wholly located within 1,500 m of the micro-sited location of the stage 1 turbines. The review shall comprise a predictive noise assessment to determine if wind turbine noise levels are expected to achieve the noise limits specified in Condition 29 at the proposed dwelling location or any part of the adjoining land.

If the development of a new dwelling is proposed after Stage 1 of the wind farm has commenced operating, and noise compliance monitoring has been completed, the review shall also account for any relevant findings from the noise compliance monitoring completed at other receivers.

If operational wind farm noise levels are predicted above the Condition 29 noise limits at the proposed dwelling location, but below the Condition 29 noise limits within the adjoining land, possible alternative dwelling locations should be discussed with the landowner.



## APPENDIX A GLOSSARY OF TERMINOLOGY

<b>Amplitude Modulation</b>	Sound that is characterised by a rhythmic and higher than normal rise and fall in sound level at regular intervals.
<b>A-weighting</b>	The process by which noise levels are corrected to account for the non-linear frequency response of the human ear.
<b>dB</b>	Decibel. The unit of sound level.
<b>Frequency</b>	The number of pressure fluctuation cycles per second of a sound wave. Measured in units of Hertz (Hz).
<b>Hertz (Hz)</b>	Hertz is the unit of frequency. One hertz is one cycle per second. One thousand hertz is a kilohertz (kHz).
<b>L<sub>A90</sub> (t)</b>	<p>The A-weighted noise level equalled or exceeded for 90% of the measurement period. This is commonly referred to as the background noise level.</p> <p>The suffix "t" represents the time period to which the noise level relates, e.g. (8 h) would represent a period of 8 hours, (15 min) would represent a period of 15 minutes and (2200-0700) would represent a measurement time between 10 pm and 7 am.</p>
<b>L<sub>Aeq</sub> (t)</b>	<p>The equivalent continuous (time-averaged) A-weighted sound level. This is commonly referred to as the average noise level.</p> <p>The suffix "t" represents the time period to which the noise level relates, e.g. (8 h) would represent a period of 8 hours, (15 min) would represent a period of 15 minutes and (2200-0700) would represent a measurement time between 10 pm and 7 am.</p>
<b>L<sub>w</sub></b>	The sound power level. The level of total sound power radiated by a sound source.
<b>L<sub>WA</sub></b>	The "A" weighted sound power level.
<b>Noise sensitive premises (receiver)</b>	The location of a noise sensitive activity associated with a habitable space or education space in a building not on the wind farm site, as per the definitions outlined in SA guidelines, and as per any project-specific clarifications or definitions detailed in the development approval.
<b>Annoying Characteristics</b>	Features of a sound which, when present, increase the likelihood of adverse reaction the sound. These characteristics include tonality, impulsiveness and amplitude modulation.
<b>Tonality</b>	Sound characterized by a single frequency component or narrow-band components that emerge audibly from the total sound (e.g. whines or hissing sounds)



## APPENDIX B TURBINE COORDINATES

The following table sets out the approved coordinates of the eighteen (18) turbines which form Stage 1 of the Flat Rocks Wind Farm.

**Table 3: Flat Rocks Wind Farm turbine coordinates – WGS 84 zone 50H**

Turbine	Easting, m	Northing, m
WTG01	531,854	6,241,757
WTG02	532,100	6,241,227
WTG03	530,604	6,240,976
WTG04	532,458	6,240,750
WTG05	530,327	6,240,492
WTG06	532,764	6,240,255
WTG07	530,264	6,240,031
WTG08	533,006	6,239,787
WTG09	533,224	6,239,233
WTG10	533,258	6,238,736
WTG11	533,253	6,238,266
WTG13	531,248	6,246,180
WTG14	531,662	6,245,363
WTG15	531,924	6,244,916
WTG16	531,682	6,237,572
WTG17	531,927	6,244,440
WTG18	533,574	6,244,165
WTG55	529,580	6,239,739



## APPENDIX C RECEIVER COORDINATES

The following table sets out the coordinates of the receivers considered in the preparation of the Flat Rocks Wind Farm NIMMP.

**Table 4: Flat Rocks Wind Farm – receivers – WGS 84 zone 50H**

Receiver	Easting, m	Northing, m	Receiver	Easting, m	Northing, m
NSH01	529,798	6,252,398	SH26	537,647	6,239,337
NSH02	534,034	6,254,130	SH27	534,084	6,239,794
NSH03	534,715	6,252,104	SH28	531,662	6,251,703
NSH04	533,706	6,248,509	SH29	533,630	6,245,183
NSH05	538,397	6,245,086	SH30	528,913	6,240,557
NSH06	536,092	6,244,487	SH31	529,077	6,237,156
NSH07	536,187	6,243,019	SH32	528,718	6,236,883
NSH08	533,602	6,237,033	SH33	537,743	6,239,372
NSH09	533,299	6,237,262			
NSH10	527,067	6,249,862			
NSH11	527,858	6,248,864			
NSH12	529,822	6,247,171			
NSH13	530,084	6,245,361			
NSH14	531,650	6,243,477			
NSH15	532,980	6,242,569			
NSH16	527,583	6,245,239			
NSH17	525,526	6,244,591			
NSH18	525,548	6,238,704			
NSH19	528,558	6,237,293			
NSH20	531,581	6,233,170			
NSH21	526,817	6,247,723			
NSH22	529,707	6,247,138			
NSH23	527,880	6,245,017			
NSH24	529,664	6,247,150			
NSH25	539,639	6,249,790			



## APPENDIX D DEVELOPMENT APPROVAL

The following conditions are relevant to the content of this NIIMP and are identically defined in the Shire of Broomehill-Tambellup Development Approval issued in December 2021 (DAP No. IPA12112235) and the Shire of Kojonup Development Approval issued in October 2021 (DAP No. DB.BDA.8).

### Wind turbine location and micro-siting

*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.*

### Pre-construction conditions

*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.*

### 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.*



## **APPENDIX E MICRO-SITING REQUIREMENTS**

The noise limits specified in the development approvals apply to the total noise level of the completed Flat Rocks Wind Farm development. Accordingly, the revised noise modelling shall account for the combined noise of turbines associated with stages 1 and 2 of the wind farm. For the purposes of this NIMMP for Stage 1 of the wind farm, the revised noise modelling shall be based on a wind farm layout comprising:

- the micro-sited Stage 1 turbine layout and the final selected turbine and operating configuration for Stage 1; and
- the approved development application layout for the Stage 2 turbines and the Vestas V150 4.2MW turbine specified in the development approvals.

The micro-siting of the Stage 1 turbines shall be modified to enable compliance with the noise limits if the noise modelling indicates:

- the total predicted wind turbine noise levels (i.e., the combined noise level of Stage 1 and Stage 2) are above the noise limits defined by Condition 29 at any existing receivers as of the date of the development approvals; and
- the Stage 1 turbines materially contribute to the predicted exceedance (i.e., the predicted total noise contribution of the Stage 1 turbines is equal to, or greater than, a level 3 dB below the Condition 29 noise limits).

If modifications to the Stage 1 micro-siting are found to be required from the modelling described above, the modifications may include:

- further changes to the Stage 1 turbine locations to reduce the noise levels; and/or
- specification of noise curtailed modes of operation as part of the micro-siting process for certain wind speeds and wind directions.

Once the micro-siting of Stage 1 has been finalised (accounting for all other specialist and design assessments), a micro-siting noise assessment report shall be prepared and shall document the following:

- the noise prediction method and the selected input parameters;
- the sound power level data used for the noise modelling;
- the predicted noise levels at each receiver as of the date of the development approvals;
- an assessment of compliance with the noise limits specified in the Condition 29 of the development approvals; and
- full details of any modifications to the Stage 1 micro-siting, as described above, that are required to achieve compliance with the noise limits defined in Condition 29 of the development approvals.

The micro-siting noise assessment report shall be made available to the local government on request.



## APPENDIX F OPERATIONAL WIND FARM NOISE TESTING PROCEDURES

### F1 Noise measurement procedures

The unattended noise monitoring shall be conducted in accordance with the SA guidelines (as referenced in Section 3.0), subject to the following project-specific procedural clarifications and requirements:

- The measurements shall occur for the measurement durations defined in Section F2;
- The  $L_{A90}$  noise level shall be determined in consecutive 10-minute intervals synchronised with the interval commencing on the hour and each 10-minute increment following the start of each hour;
- All noise measurements shall be conducted using low noise floor ( $\leq 20$  dB) instrumentation that is certified to Class 1 standards (highest standard of instrumentation for field measurements) in accordance with AS/IEC 61672.1-2019 *Electroacoustics - Sound level meters – Specifications*;
- The independent (laboratory) calibration date of the sound level measurement instrumentation must be within 2 years of the measurement period, as specified in Section 5.5 of Australian Standard 1055:2018 *Acoustics – Description and measurement of environmental noise*;
- Microphones shall be fitted with enhanced wind shield systems (enlarged primary wind shields or secondary wind shields) designed on the basis of the guidance contained in the UK Institute of Acoustics publication *A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise* dated May 2013 (the IOA GPG);
- Subject to the consent of the residents, 2-minute audio recordings shall be obtained for every 10-minute interval of the survey. The sampling rate for audio recordings shall be sufficient to allow assessment of tonality, if required, across the frequency range 10-5,000 Hz; and
- Instantaneous one-third octave band sound pressure levels (fast response) shall be recorded in 100 ms intervals to enable an analysis of amplitude modulation if required (this requirement is only applicable to unattended measurements conducted at, or in the vicinity of, receivers).

Further information and guidance about data to be obtained during attended observations is provided in Section F3.

### F2 Noise measurement timing and duration

The unattended measurements are proposed to comprise a minimum of six (6) weeks continuous monitoring, extended by up to six (6) weeks if required to obtain sufficient data, accounting for the recommendations detailed in clause 4.1 of the SA guidelines.

The data must have at least 2,000 10-minute intervals where at least 500 pairs of data correspond to the worst-case wind direction at the measurement location.

Extended surveys may be required to:

- Obtain data for wind speeds and conditions that are representative of the normal operating range of the turbines  
The target minimum wind speed range is 3 m/s to 12 m/s at hub height, based on the notional wind speeds when the turbines commence operating and reach their maximum rated power.
- Address non-uniform distributions or a sparsity of noise measurement data in certain wind speeds or directions that may be consequential to the assessment outcome
- Address significant variations in measurement data which may be the result of seasonal factors or contaminating sounds, and which cannot be addressed with selective data filtering.

A preliminary analysis of the data may be required to assess the suitability of the data prior to completion of the measurements (refer to Appendix G of this NIMMP for details of analysis procedures).



If significant data limitations remain evident after the surveys have been extended by six (6) weeks, the merits of an additional survey extension shall be reviewed by the acoustic consultant responsible for conducting the testing. If further extensions are not considered to be warranted, the compliance assessment strategy for the location(s) in question shall be reviewed and the local government consulted.

The monitoring shall be commenced within three (3) months of Stage 1 of the Flat Rocks Wind Farm becoming fully operational. For the purposes of this schedule, the wind farm is considered fully operational once all Stage 1 turbines have been commissioned and the Australian Energy Market Operator has released Stage 1 of the project to operate at full power output.

Adhering to the planned schedule of monitoring will be dependent on the consent of the landowners of the preferred receivers for conducting the monitoring.

Details of the timing and scheduling of the attended observations that are to occur as part of the testing are provided in Section F3.

### **F3 Tonicity and other noise characteristics**

#### **F3.1 General assessment procedures**

The presence of tonality and other annoying characteristics (characteristics) in the noise associated with the wind farm shall be reviewed on the basis of the following:

- Attended observations
- Site records during the monitoring period (comprising observations by site personnel and data from the site's complaint handling and management system – see description in Section F6).

In instances where characteristics comprising amplitude modulation, impulsiveness or tonality are identified as potential feature(s) of the noise associated with the wind farm, an objective assessment of the sound's character shall be undertaken to assist in determining if penalties should be applied to the measured noise levels or to inform the need for any rectification works.

#### **F3.2 Attended observations**

To investigate whether characteristics are a potential feature of the noise associated with the wind farm, attended observations shall be undertaken by a qualified acoustic engineer with experience in the assessment of wind farm sound.

Three (3) sets of attended observations shall be undertaken during the monitoring as follows:

- During deployment of the monitoring instrumentation;
- During an interim visit to the site; and
- During retrieval of the monitoring installation.

Scheduling of the deployment and retrieval of the monitoring equipment is dependent on practical considerations including timing of access to residential properties. However, the wind farm must be operating at the time of all attended observations, and attempts shall be made to arrange the periods of attendance to coincide with suitable weather conditions for conducting wind farm observations.

Suitable conditions are generally considered to be:

- Wind speeds between approximately 5 m/s and 10 m/s at the turbine hub-height;
- Little or no rainfall; and
- Times when background noise levels are expected to be lower.

At least one (1) set of attended observations shall be conducted during the night-time period (avoiding shoulder periods near sunrise or sunset when ambient noise levels may increase).



The attended observations should ideally include downwind conditions<sup>6</sup> between the wind farm and the receivers. However, this will be dependent on the available wind conditions and will not always be practical. If wind conditions preclude observations under downwind conditions in the vicinity of the receivers, observations should be made at alternative orientations to the wind farm which are downwind of the wind farm at comparable separation distances (subject to practical access constraints) to obtain an indication of characteristics under downwind conditions.

If the available weather conditions and operating conditions at the time of attendance do not permit representative observations to be made, additional attended observations may need to be carried out. In addition, the acoustic engineer shall review the site records (see description in Section F6) to determine if additional attended observations may be warranted.

Each set of attended observations in the vicinity of the receivers shall comprise observations for at least 10-minutes. The minimum duration of the observations shall be increased to 30-minutes per observation location when the sound of the wind farm is clearly audible.

During each attended observation, and at all locations, audio samples shall be obtained to provide a record of the sound environment at the time of the inspection and provide a basis for further objective assessment if required.

### **F3.3 Objective assessment method - tonality**

The findings of the attended observations shall be used to determine whether an objective assessment of tonality is warranted. Specifically, if tonality is identified during the attended observations, an objective assessment of tonality is to be undertaken. The results shall be used to assist the decision to apply penalties, and if so, when to apply penalties.

The applicable objective assessment method defined in Section 4.6 of the SA guidelines is IEC 61400-11.

Objective assessment methods can produce false positives and false negatives, particularly when applied to large volumes of unattended measurement results which are affected by a combination of ambient and wind farm related sounds. The results of objective assessments must therefore always be considered in conjunction with the findings of the subjective assessments.

If the objective assessment does not indicate the presence of tonality at a level which warrants the application of a penalty, the objective assessment may still need to be carried out for the unattended audio records (where available), to determine the potential for a penalty to be warranted at other times.

In such instances, the acoustic engineer responsible for conducting the objective assessment shall determine the need for further investigation of the unattended audio records and shall document the determination in the reporting for the compliance assessment (see reporting requirements subsequently in Section 5.3).

Caution must be exercised when conducting objective assessments of unattended audio recordings. Applying the objective assessment method to the total sound of the wind farm and ambient environment will inevitably produce false-positives caused by sound sources that are unrelated to the operation of the wind farm (e.g. bird or insect noise in an audio sample may result in a tone being determined in the sound recording). Penalties shall only be applied when the wind farm is confirmed as the source of tonality. Penalties are also strictly only applicable to the component of the sound that is solely attributable to the operation of the wind farm. The results of automated analysis of unattended audio recordings will therefore likely require the application of data filtering measures to remove false positives for periods with attributes that are most likely related to ambient sounds (e.g. tonality as a result of birds or insects). Further guidance is provided in Section F6.

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<sup>6</sup> Downwind conditions are generally defined as wind speeds and directions which equate to a positive vector wind speed of at least 2 to 3 m/s in the direction from the nearest turbines and the observation location



In instances where there is uncertainty about whether penalties are warranted at the compliance monitoring locations, data or observations at intermediate locations (between the wind farm and the compliance monitoring locations) may be referenced where available.

### F3.4 Objective assessment methods – annoying characteristics

If the attended observations indicate the presence of annoying characteristics that may warrant rectification, an objective assessment may be required to verify and assess the presence of the characteristics. These characteristics may include amplitude modulation and impulsiveness (noting that the SA guidelines indicated the likelihood of these characteristics occurring is low). At the date of this NIMMP, relevant assessment methods which are suitable for informing such an investigation are listed in Table 5.

**Table 5: Annoying characteristics – example methods of objective assessment**

Annoying characteristic	Objective assessment method
Amplitude modulation	<p>UK Institute of Acoustics publication <i>Amplitude Modulation Working Group publication Final Report - A Method for Rating Amplitude Modulation in Wind Turbine Noise Version 1</i> dated 9 August 2016 (UK IOA AM procedure).</p> <p>The UK IOA AM procedure is endorsed by the South Australia EPA at section 4.7 of the SA guidelines. Reference should be made to the SA guidelines' advice on the use of this procedure to determine if rectification is warranted.</p>
Impulsiveness	<p>Australian Standard 1055:2018 <i>Description and measurement of environmental noise</i> (AS 1055:2018)</p> <p>The method defined in Appendix E (informative) <i>Objective method for application of an impulse adjustment to receiver noise</i>.</p> <p>The SA guidelines do not provide advice on suitable measures for investigating annoying characteristics related to impulsiveness, but notes that the SA EPA is not aware of any wind farms characterised by continuous impulsive sounds. The AS 1055:2018 method is noted in lieu of specific guidance, primarily for the purpose of informing an assessment of whether rectification of impulsiveness is warranted (i.e. AS 1055:2018 should not be referenced for the application of penalties to the wind turbine noise).</p>

## F4 Site wind speeds

Site wind speeds shall be collected in 10-minute samples throughout the noise measurement period. The timing of each 10-minute sample shall be synchronised with the interval commencing on the hour and each 10-minute sample following the start of each hour.

This data shall be used to determine the wind speed at 125 m AGL (hub height) corresponding to free-field conditions (i.e. free from turbine wake effects) at the reference mast location(s). In particular, if background noise monitoring is conducted prior to commencement of operation of the wind farm, the post-commissioning noise levels are to be correlated with wind speeds measured at the same mast location(s) used for the background noise survey.

Wind speeds at 125 m AGL which are determined from wind speed measurements at heights below 125 m shall be determined using the procedures outlined in the IOA GPG *Supplementary Guidance Note 4: Wind Shear*, or an alternative method deemed appropriate by the wind engineer responsible for the supply of the data.



Wind speeds may need to be measured at different locations for different wind directions in order to obtain data that is not influenced by the wake effects of upwind turbines (e.g. collection of wind data at upwind locations around the perimeter of the wind farm). Wind speeds measured at different locations will need to be translated to the wind speed at the reference mast locations (i.e. to determine the wind speed which would have been measured at the reference masts in the absence of the wind farm).

All procedures used to determine 125 m AGL wind speeds at the reference mast locations shall be validated and documented by the wind engineer for the project (see reporting requirements in Section 5.3).

## **F5 Local weather data**

The following local weather data shall be recorded during the noise survey:

- Local wind speeds: wind speeds at 1.5 m AGL shall be measured in 10-minute samples at a minimum of one (1) noise compliance monitoring location. The use of enhanced wind shield systems (detailed in Section F1) shall be the primary method of addressing the potential for wind-induced extraneous noise across the measurement microphones. However, local wind speeds in the vicinity of the noise measurement systems shall be obtained to provide a secondary reference when reviewing the trends of the measured noise data
- Rainfall: rainfall shall be measured in 10-minute intervals at a minimum of one (1) noise compliance monitoring location during the survey.

The timing of each 10-minute sample for the local weather data shall be synchronised with the interval commencing on the hour and each 10-minute increment following the start of each hour.

## **F6 Wind farm site data and records**

The following data shall be obtained from the wind farm operators:

- Site operational data: the operational status of each turbine shall be recorded in 10-minute samples and shall contain sufficient detail to differentiate whether a turbine was operating (including its mode of operation), available to operate, configured in an atypical mode of operation or shutdown. Each 10-minute sample of data shall be synchronised with the interval commencing on the hour and each 10-minute increment following the start of each hour.
- Site records: site personnel shall be advised of the noise monitoring and shall be requested to record any observations with respect to atypical operations or noise levels (related to both the wind farm and ambient environment) which may influence the measurements. These observations, as well as any noise complaints independently recorded via the site's complaint handling and management system (where appropriate), shall be provided to the acoustic consultant. As a minimum, each record shall include details of the time, duration and location of the observation.



## APPENDIX G OPERATIONAL WIND FARM NOISE ANALYSIS

### G1 Rainfall

Any 10-minute sample in which rainfall occurred shall be filtered and therefore removed from the analysis. The measurement data shall also be reviewed to identify and filter periods following rainfall in which the trend of the measurements indicates the noise levels are likely to have been elevated as a result of wet roads or flow noise associated with drainage systems and local watercourses.

### G2 Extraneous noise screening

The measured noise data shall be reviewed to identify and filter periods in which extraneous noise sources are likely to have affected the measurements. Extraneous noise sources include, but are not limited to, domestic machinery, agricultural operations, construction noise or elevated bird/frog/insect noise.

Individual 10-minute measurement samples that are likely to have been affected by high frequency extraneous noise shall be identified and filtered from the analysis when the following conditions<sup>7</sup> are satisfied:

- The highest A-weighted one-third octave band noise level is greater than 1 kHz; and
- The identified one-third octave band A-weighted noise level is greater than a level of 20 dB  $L_{A90}$  and is within 5 dB of the broadband A-weighted noise level for the 10-minute sample in question.

The sound of a wind farm is unlikely to result in tones above 1 kHz at receivers (due to high levels of atmospheric sound absorption at frequencies above 1 kHz) and, in the unlikely event of such a tone occurring, it is unlikely to dominate the sound pressure level of a one-third octave band. However, the procedure outlined above shall not be used to remove any measurement sample where the identified one-third octave band corresponds to a frequency in which the attended observations have indicated the potential for tones related to the operation of the wind farm. Further discussion of extraneous noise screening related to seasonal variations is provided in Section G4.

### G3 Atypical wind farm operation screening

The objective of the analysis is to assess whether the noise levels of the wind farm comply with the requirements of the development approvals when all of the Stage 1 wind turbines are operating normally. It is therefore necessary to address periods when noise levels may have been lower as a result of turbines being curtailed (i.e. reduced power and noise emissions, whether as a result of maintenance related issues or external energy market restrictions) or shutdown.

The operational records for each Stage 1 turbine shall therefore be reviewed for each 10-minute period to identify any periods of curtailment or shutdown. These periods shall then be addressed using either the simplified or detailed analysis options described below. It is important to note that the simplified analysis is a very conservative procedure which limits the compliance assessment to noise levels measured during periods that are not affected by curtailment. The simplified analysis option will therefore commonly result in the removal of large quantities of data for sites where turbine curtailment occurs more frequently. If the simplified analysis yields insufficient data, the detailed analysis option will need to be used.

Further, both the simplified and detailed analysis options are intended for assessing compliance when the wind farm has reached a steady state of operations. Experience at multiple wind farm sites in Australia has indicated that the initial period of operation is often not steady and may include unexpected periods of turbine curtailment and shutdown. Some practical concessions may therefore be required for the initial round of monitoring.

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<sup>7</sup> Griffin, D., Delaire, C., & Pischedda, P. (2013). Methods of identifying extraneous noise during unattended noise measurements. *20th International Congress of Sound & Vibration*.



### G3.1 Simplified option

This analysis option is based on removing any 10-minute intervals in which the total noise level of the wind farm at a receiver may have been reduced. This approach provides a relatively simple and robust assessment for situations when turbine outages are relatively infrequent. This approach should therefore be used as the basis for operational filtering wherever practical to do so. However, depending on the operating configuration of the wind farm, this approach can result in the exclusion of large quantities of data from the assessment. In these situations, the detailed analysis option would need to be used.

For the purposes of the simplified analysis option, any 10-minute period in which relevant turbines are curtailed or shutdown shall be identified and removed from the analysis (for the relevant monitoring location being considered). The turbines that are considered not relevant for each receiver are those turbines with the lowest predicted noise levels which collectively result in a predicted noise level 15 dB<sup>8</sup> lower than the total predicted noise level of the wind farm at the receiver. This means that if any or all of the non-relevant turbines were to not operate during a given measurement period, the reduction in total noise level would be 0.1 dB or less. The net effect of any curtailed or shutdown turbines would therefore be negligible, and the retained data is representative of full power operation of the wind farm.

### G3.2 Detailed option

This approach is based on selective filtering of 10-minute intervals according to the operating configuration of the wind farm.

If an individual turbine, or select group of turbines, is regularly curtailed or shutdown during the compliance monitoring, this option may involve modification of the simplified approach. Specifically, the data may be filtered as per the simplified analysis option, but independently of the operating state of these turbines, provided that the net effect of their curtailment does not materially affect the compliance outcomes.

However, if the operating configuration involves regular curtailment or shutdown of different turbines across the wind farm, the analysis would involve calculating the net effect of curtailment and shutdowns in each 10-minute interval. Compliance may then be assessed based on the data for periods when the net calculated effect does not alter the compliance assessment outcome.

For both detailed analysis options, to verify that turbine curtailment or shutdowns do not alter the compliance outcome, the calculated margin of compliance must be greater than the net calculated effect of curtailment and shutdowns. For example, if the analysis indicates that the noise level of the wind farm complies with the noise limit by 1 dB, the net calculated effect of curtailment and shutdowns must be less than 1 dB to demonstrate a compliance outcome that is valid for full power operations.

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<sup>8</sup> A level that is 10 dB below the noise source under investigation is generally used for environmental noise assessment work. However, a source of noise that is 10 dB lower in level will contribute 0.4 dB to the total noise level. A 0.4 dB level variation may alter a wind farm compliance assessment outcome. Hence the selection of a lower threshold based on being 15 dB lower than the total predicted noise level of the wind farm.



## **G4 Review of seasonal considerations**

Seasonal variations can affect both the level of background sound and operational wind farm noise.

### **G4.1 Background sound**

The main potential sources of seasonal variations in background sound are:

- Rainfall (see data filtering procedures in Section G1)
- Insect, bird and other fauna noise (see data filtering procedures in Section G2)
- Local domestic plant such as air-conditioning or heating
- Changes in domestic or agricultural activity in the vicinity of the monitoring location.

Other sources of background sound variation may relate to changes in vegetation, wind direction and wind shear.

The data shall be reviewed to identify any anomalous trends that are indicative of significant seasonal variations. These types of effects may be evident as elevated noise levels at low wind speeds (less than 3 m/s at hub height), or striations in the data characterised by relatively constant levels across a range of wind speeds (e.g. as would occur if domestic or agricultural machinery significantly influences the measurements).

Any identified variations in the measured levels that are likely to be attributable to seasonal changes in background sound levels shall be filtered from the analysis where possible. If the effect cannot be reliably filtered, and the effect is sufficient to preclude an assessment of the wind farm's compliance, supplementary procedures (see Section G6) or repeat measurements will be required.

### **G4.2 Wind farm noise**

The main potential source of seasonal variation in wind farm noise levels is wind direction and wind speed.

The wind directions and wind speeds that occurred during the survey shall be reviewed to determine whether the conditions were representative of the range generally expected at the wind farm site. In particular, if upwind or crosswind conditions are found to have occurred more regularly than is generally expected at the site, repeat measurements will generally be required.

In some cases, a sensitivity analysis or supplementary assessment (see Section G6 for procedures) may be sufficient to enable an assessment of compliance without further measurement extensions.

For example, while the SA guidelines is based on evaluating compliance for the aggregated measurement data for the range of conditions normally expected at the site, an analysis limited to data obtained under downwind conditions may be sufficient to demonstrate compliance. Additionally, the availability of limited data for high wind speeds may be addressed by using other information relating to the change in the wind farm's sound emission with increasing wind speed (e.g. sound power level test data obtained in accordance with IEC 61400-11:2012 or measurement data obtained at intermediate locations or other compliance monitoring locations around the wind farm – see supplementary procedures in Section G6).

The assessment is referenced to hub height wind speeds and therefore seasonal wind shear variations are primarily relevant to potential variations in background noise levels rather than wind farm noise levels. However, wind shear may be relevant to the assessment of annoying characteristics. This is because increased wind shear may result in lower background sound levels for a given wind speed (i.e. increasing the likelihood of the wind farm being audible) and may also affect the sound characteristics of the wind farm. Attended observations must therefore include time periods when increased wind shear could be expected (note the requirement in Section G3 for at least one set of attended observations to occur during the night period for each stage of the surveys).



#### G4.3 Downwind directions

In accordance with the SA guidelines, the analysis is to account for wind directions when the receivers are downwind of the wind farm.

Downwind conditions for each monitoring location are equal to  $\pm 45$  degrees around a central downwind direction, as detailed in Table 4.

**Table 6: Downwind directions**

Location	Central downwind direction (°)	Downwind direction range (°)
NSH09	177	132 – 222
NSH13	235	190 – 280
NSH14	196	151 – 241
NSH15	54	9 – 99
SH17	57	12 – 102
SH29	3	318 – 48
SH20	321	276 - 366

#### G5 Adjustment for background noise levels

If suitable background noise data are obtained, the data shall be used to adjust compliance monitoring results for the influence of background noise levels. To enable the background noise levels to be used for this purpose, the data filtering procedures used to determine a valid data point must be identical for both the analysis of background and operational noise levels.

The adjustment shall be applied to the integer wind speed bin analysis of the compliance monitoring data, using the method described in clause 4.4 of the SA guidelines.

#### G6 Supplementary procedures

The data filtering and background noise adjustment procedures detailed in Section G1 to Section G4.3 shall be used to reduce the influence of background noise levels.

If the residual influence of background sound precludes a definitive assessment of compliance, supplementary procedures shall be used to reduce the uncertainty.

A supplementary analysis shall be undertaken by comparing data measured at the compliance monitoring locations during upwind and downwind conditions. Higher noise levels during downwind conditions are indicative of the results being influenced by the operation of the wind farm. Conversely, comparable noise levels during upwind and downwind conditions are indicative of an environment dominated by the influence of sources that are not related to the operation of the wind farm (primarily for sites where background sound levels are not expected to vary significantly with wind direction).

Noise measurement data obtained at intermediate locations shall be used as follows:

- Noise level versus wind speed profile: data obtained at an intermediate location shall be used to define the profile of the change in measured wind turbine noise levels with increasing wind speeds. This profile shall then be compared to the profile measured at the compliance monitoring location to determine if increasing noise levels at the receivers are attributable to the wind farm (i.e. the profiles at the intermediate and the receivers are equivalent) or the influence of wind related background sound levels (i.e. the profiles at the intermediate locations and the receivers are not equivalent)
- Data filtering: any 10-minute period in which the measured noise level at the receiver is higher than the simultaneously measured level at the intermediate location shall be considered background sound affected and may be removed from the analysis



- Extrapolation: data obtained at an intermediate location shall be extrapolated to the receiver in accordance with the procedure documented in Section 11.2 of ISO 1996-2 *Acoustics — Description, measurement and assessment of environmental noise — Part 2: Determination of environmental noise levels* 2017 (ISO 1996-2:2017). The extrapolation shall be undertaken on the basis of the prediction method guidance in the SA guidelines, subject to a  $\pm 1$  dB uncertainty margin to the predictions to account for variations in the tolerance of the calculations at intermediate and receptor distances. The procedure may also be used to assess noise levels at other receivers where compliance monitoring has not been undertaken.

If the results of an assessment based on measurement data obtained at an intermediate location are inconclusive, or if noise measurement data at an intermediate location is not available, an alternative method of enabling an assessment of the wind farm at the receivers will need to be defined. This may involve:

- Targeted assessment of specific conditions (i.e. wind speeds, wind directions and times of day);
- Additional measurements at a representative location where background sound levels are lower; or
- Attended measurements in accordance with the procedures defined in Section 4.5 of the SA guidelines.

#### **G7 Application of penalties for tonality**

If penalties for tonality are found to be warranted, the penalties shall be applied to the noise of the wind farm in accordance with the SA guidelines.

The penalties shall be applied only if the tone is audible at a receiver. The tonal penalty should be applied to the calculated noise level in the wind speed bin where tonal characteristics are detected for at least 10 % of the data in that associated wind speed bin.

If penalties are to be applied to the results of unattended noise measurement data, based on the results of analysis of the audio recordings during the survey, caution must be applied to avoid the application of penalties as a result of false-positive results from objective assessment methods. For example, penalties should not be applied to individual measurement samples in which an objective assessment has identified potential tonality which has not been observed (e.g. tones identified in the unattended data at frequencies other than those that have been observed from the operation of the wind farm). Some level of data filtering is therefore expected to be implemented when applying a tonality penalty to the results of unattended noise measurement data.

#### **G8 Rectification of annoying characteristics**

The SA guidelines have been developed with the fundamental characteristics of noise from a wind farm taken into account. These include the aerodynamic noise from the passing blades (commonly termed as amplitude modulation or ‘swishing’), and the infrequent and short-term braking noise. These noise characteristics are inherent to the operation of a wind farm and some level of these characteristics are expected to be observed.

Effects associated with high degrees of either amplitude modulation or low frequency noise are rare and are not expected to impact on receivers. However, such noise characteristics may potentially be exacerbated by different weather conditions or during different seasons. Annoying characteristics that are not fundamental to a typical well-maintained wind farm must be rectified.



## APPENDIX H FLAT ROCKS WIND FARM STAGE ONE – COMPLAINTS HANDLING PROCEDURE

**Flat Rocks Wind Farm Stage One – Complaints Handling Procedure****Enel Green Power Background:**

Enel Green Power, within the Enel Group, develops and operates renewable energy plants worldwide and is present in Europe, the Americas, Africa, Asia and Oceania. A world leader in clean energy, with a total capacity of more than 54 GW and a generation mix that includes wind, solar, geothermal, and hydroelectric power, as well as energy storage facilities, Enel Green Power is at the forefront of integrating innovative technologies into renewable energy plants.

Enel Green Power acquired the Flat Rocks Wind Farm Stage One Project from the West Australian renewable energy developer, Moonies Hill Energy in April 2022.

**Project Background:**

The Flat Rocks Wind Farm Stage One will consist of 18 Vestas wind turbines (approximately 75 megawatts) and related civil and electrical infrastructure.

The project is in the Great Southern region of WA, approximately 35 km southeast of Kojonup. The project spans the Kojonup Shire Local Government Area and the Broome-hill Tambellup Shire Local Government Area.

The relevant Development Approvals for the Flat Rocks Wind Farm have been obtained from the Kojonup and Broomehill-Tambellup Shire Councils. The Approvals set out conditions that must be complied with in undertaking the development. The conditions cover construction, operation, decommissioning, and administrative matters.

**Introduction**

Flat Rocks Wind Farm Stage One takes all complaints seriously and aims to acknowledge and resolve complaints in a timely manner.

**What is a complaint and who can make a complaint.**

A complaint as an expression of dissatisfaction made to or about Flat Rocks Wind Farm Stage One, related to its services or staff, where a response or resolution is explicitly or implicitly expected or legally required.

We acknowledge that anyone has a right to lodge a complaint and we will ensure that all the complaints we receive will be managed respectfully, objectively, and efficiently. At times, clarification may be required regarding whether a stakeholder is lodging a complaint rather than an enquiry.

**How to lodge a complaint.**

- Call: 02 9164 9400





- Email: [flatrockswindfarm@enel.com](mailto:flatrockswindfarm@enel.com)
- Writing to Enel Green Power Australia Sydney Office: Level 23, Tower 1, 100 Barangaroo Avenue Barangaroo Sydney, NSW 2000.

#### **What happens after a complaint is lodged**

Where complaints are received in person, via telephone or email, we aim to provide an acknowledgement and initial response immediately if possible, or the next working day. Where complaints are received by post, we aim to provide acknowledgement and initial response within five working days.

Following this, the project team will assess the complaint and coordinate an investigation (if required) and propose resolution measures. We aim to communicate the results of investigations and proposed resolution measures within five working days.

Communication of the resolution should include:

- actions taken in response to the complaint
- outcome(s) of the complaint
- rationale for any decisions made
- proposed resolution offered
- request for feedback from the complainant as whether the information provided has resolved their complaint, and
- information on escalation options available to the complainant if required.

A complaint will be considered closed when a complainant advises that they consider the complaint resolved. Alternatively, if no response is received from the complainant within ten working days, the complaint will be considered closed.

#### **Further investigation of complaints.**

Where a complainant believes a complaint has not been resolved satisfactorily, the following escalation pathways may be explored:

##### **Kojonup Shire Council**

- Website: [www.kojonup.wa.gov.au](http://www.kojonup.wa.gov.au)
- Email: [council@kojonup.wa.gov.au](mailto:council@kojonup.wa.gov.au)
- Phone: 08 9831 2400
- Post: PO Box 163, Kojonup WA 6395

##### **Broomehill Tambellup Shire Council**

- Website: [www.shirebt.wa.gov.au](http://www.shirebt.wa.gov.au)
- Email: [mail@shirebt.wa.gov.au](mailto:mail@shirebt.wa.gov.au)
- Phone: 08 9825 355
- Post: 46 - 48 Norrish St, Tambellup 6320





Office of the Australian Energy Infrastructure Commissioner

- Website: [www.nwfc.gov.au/](http://www.nwfc.gov.au/)
- Email: [nwfc@environment.gov.au](mailto:nwfc@environment.gov.au)
- Telephone: 1800 656 395
- Post: PO Box 24434 Melbourne VIC 3001

Environmental Protection Authority Western Australia

- Website: [www.epa.wa.gov.au](http://www.epa.wa.gov.au)
- Email: [info.epa@dwer.wa.gov.au](mailto:info.epa@dwer.wa.gov.au)
- Telephone: +61 8 6364 7000
- Post: Locked Bag 10 Joondalup DC WA 6919

#### **Complaints Register**

All complaints will be recorded within an internal Project Complaints Register. This register may be made publicly available and may be provided to regulatory bodies as appropriate. Personal information will be stored and shared in accordance with relevant privacy legislation.

The Complaints Register will include the following details:

- the complainant's name and address (if provided)
- the time and date of the incident
- a unique receipt number for each complaint
- a description of the complainant's concerns
- the process for investigating the complaint, and the outcome of the investigation, and
- the actions taken to resolve the complaint.



# Agreement for the installation of underground cabling Flat Rocks Wind Farm

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Shire of Kojonup

Flat Rocks One Wind Farm Pty Ltd (ACN 658 780 744) as trustee of the Flat Rocks One Wind Farm Trust



**McLEODS**

Barristers & Solicitors

Stirling Law Chambers | 220-222 Stirling Highway | CLAREMONT WA 6010

Tel: (08) 9383 3133 | Fax: (08) 9383 4935

Email: [mcleods@mcleods.com.au](mailto:mcleods@mcleods.com.au)

Ref: FG:KOJO:40189



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# Details

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## Parties

### **Flat Rocks One Wind Farm Pty Ltd (ACN 658 780 744) as trustee of the Flat Rocks One Wind Farm Trust**

of 23.07 One International Towers, 100 Barangaroo Avenue, Barangaroo, Sydney, NSW, 2000  
(FROWF)

### **Shire of Kojonup**

of PO Box 163, Kojonup, Western Australia  
(Shire)

## Background

- A FROWF applied for and was granted approval by the Council of the Shire on 7 December 2016 for the development of a windfarm comprising a number of wind turbines and infrastructure to be constructed on a number of lots which are currently in fragmented ownership (**Project**).
- B In order to facilitate the Project, FROWF is required to install private infrastructure within the Yarranup Road, Warrenup Road, Tambellup West Road, Ngopitchup Road and Grahams Well Road reserves (**Road Reserve**), being more specifically underground 22Kv high voltage electricity cabling as set out on the sketch annexed hereto as **Annexure A (Cabling)**.
- C The Road Reserve is situated within the district of the Shire and comprises local roads under the care, control and management of the Shire and accordingly the consent of the Shire is required prior to FROWF carrying out of any works in, on or under the Road Reserve.
- D The Shire has agreed to approve FROWF's request for approval to apply to install the Cabling within the Road Reserve subject to the entry of FROWF into this agreement with the Shire to, amongst other things, indemnify the Shire for any loss or damages which might occur by reason of the installation of the Cabling in the Road Reserve.
- E A further condition of the Shire's agreement to permit FROWF to install the Cabling on the Road Reserve provided that FROWF could not commence any works in connection with the installation of the Cabling (which included the clearing of vegetation in addition to the works to install the Cabling) prior to the entry of FROWF into this agreement with the Shire and FROWF taking out a policy of public liability insurance to cover all loss and damages occurring on the Road Reserve.
- F It is further agreed that FROWF shall following the entry into this agreement, procure the grant of an easement under section 144 of the *Land Administration Act 1997* from the Minister for Lands to permit the Cabling to remain within the Road Reserves (**Crown Easement**).
- G The Shire has agreed to grant FROWF a licence to use the Road Reserves until such time as the Crown Easement can be created for the benefit of FROWF.



- H The Shire has agreed to the Cabling being installed within the Road Reserve, subject to FROWF entering into this agreement with the Shire.

## Agreed Terms

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### 1. Defined terms

**Business Day** means a day other than a Saturday, Sunday or public holiday in Western Australia;

**CEO** means the Chief Executive Officer for the time being of the Shire or any person appointed by the Chief Executive Officer to perform any of her or his functions under this Deed;

**Deed** means this deed as supplemented, amended or varied from time to time;

**Notice** means each notice, demand, consent or authority given or made to any person under this Deed;

**Party** means the Shire or FROWF according to the context;

**Written Law** includes all acts and statutes (State or Federal) for the time being enacted and all regulations, schemes, ordinances, local laws, by-laws, requisitions, orders or statutory instruments made under any Act from time to time by any statutory, public or other competent authority.

### 2. Shire's covenants: Licence

The Shire:

- (a) acknowledges and agrees to the installation of the Cabling within the Road Reserve;
- (b) subject to the terms and conditions of this Deed, grants FROWF a licence:
  - (i) for the Cabling to be located within the Road Reserve; and
  - (ii) to have access to, use and occupy that part of the Road Reserve in which the Cabling is located, and any other part of verge reasonably required by FROWF, for the purpose of constructing, maintaining and using the Cabling.

### 3. FROWF's Covenants

#### 3.1 Installation

FROWF covenants and agrees to install and construct the Cabling in strict accordance with any plans approved and agreed by the Main Roads Western Australia and the Shire and more specifically in accordance with the sketch annexed hereto as **Annexure A**.

#### 3.2 Keep Cabling in Good Repair

FROWF agrees to maintain, at its cost, the Cabling in good repair and consistent with good industry practice.



### 3.3 Insurance Requirements

FROWF covenants and agrees with the Shire that:

- (a) it shall take out public liability insurance indemnifying the Shire against any claim for damages which may arise in or out of the construction, installation, maintenance or use of the Road Reserve in connection with the Cabling in an amount of not less than \$20 million dollars (**Policy**);
- (b) for so long as the Cabling is located within the Road Reserve it must maintain the Policy to the satisfaction of the Shire;
- (c) it shall advise the Shire of any material changes to the Policy or any cancellation of the Policy;
- (d) it must provide certificates of currency for the Policy to the Shire within 7 days of being requested to do so; and
- (e) the Shire shall not be liable for any payments whatever (including any excess on claims) in respect of such insurance.

### 3.4 Indemnity

- (1) FROWF indemnifies and agrees to keep indemnified the Shire its servants, agents and contractors from and against all actions, suits, proceedings, costs, claims, demands, liabilities, damage and losses of whatsoever nature caused by or arising out of:

- (a) the installation and construction of the Cabling;
- (b) the use of the Cabling or the use of the Road Reserve in connection with the Cabling; and
- (c) any loss or damage caused to any pipes, drains, structures or other property of the Shire or any other utility or service provider located within the Road Reserve or to any person or property of any person arising out of the installation, operation and/or maintenance of the Cabling in the Road Reserve,

except to the extent such loss or damage is caused or contributed to by a negligent act or omission of the Shire or the Shire's servants, agents and contractors.

- (2) The Shire acknowledges and agrees that the indemnities provided by FROWF in this Deed and any cover provided by the policies of insurance referred to in this Deed are intended to indemnify the Shire in relation to all claims for loss or damage occurring on the Road Reserve:

- (a) as a result of the installation of the Cabling; and/or
- (b) in respect of the use of Shire's verge and Road Reserve in connection with the Cabling;

and such indemnities and policies do not extend to any claims arising out of a use of the Shire's verge and Road Reserve which are not in connection with the Cabling.

### 3.5 Compliance with Written Laws

FROWF covenants and agrees with the Shire to:



- (a) comply with all Written Laws relating to the installation and use of the Cabling; and
- (b) keep in force all licences and permits required for the installation and use of the Cabling.

### **3.6 Additional Obligations**

FROWF covenants and agrees with the Shire that it must:

- (a) not, unless strictly relating to the installation and use of the Cabling and only to the extent necessary to do so:
  - (i) alter, damage or in any way interfere with any part of the Road Reserve including any landscaping or vegetation, without the prior written approval of the Shire;
  - (ii) alter, damage or in any way interfere with any pipes, drains, structures, paths, kerbing, pavement or other property of the Shire located within the Road Reserve and indemnify the Shire against any costs, losses or expenses arising from any alteration, damage or interference caused directly or indirectly by FROWF and its agents;
  - (iii) destroy, pull up, cut back or injure any tree or vegetation within the Shire's verge, without the prior written approval of the Shire;
- (b) unless strictly relating to the installation and use of the Cabling and only to the extent necessary to do so, minimise machinery access within the Road Reserve to reduce the impact of the activities on the Road Reserve; and
- (c) while using and occupying the relevant portions of the Road Reserve in which the Cabling is located, at all times keep the relevant portions of the Road Reserve clean, tidy and free from rubbish, debris and building materials.

### **3.7 No alteration without consent**

Once the Cabling has been installed, FROWF must not make or allow to be made any material alteration, addition or improvements to the Cabling, without prior written consent from the Shire or any other person from whom consent is required under any statute in force from time to time.

### **3.8 Exercise due care**

FROWF agrees to exercise due care and diligence in and about the Road Reserve and to use its best endeavours to cause no greater disturbance than is reasonably necessary having regard to the installation, maintenance and removal of the Cabling.

## **4. Access to and Use of the Road Reserve**

### **4.1 Repair Damage**

FROWF must, at its cost, repair any damage it causes to the Road Reserve and/or any services within the verge:

- (a) while installing the Cabling and exercising any rights under this Deed; and



- (b) arising out of or in any way connected to FROWF's use of the Road Reserve for the Cabling; and
- (c) as result of any breach of its obligations under this Deed,

as soon as possible after the damage occurs.

#### **4.2 Acknowledgement of FROWF**

FROWF acknowledges and agrees that the Road Reserve is Crown land and may be required at some time in the future for road widening or some other public purpose and if such a requirement should eventuate within the period of time that the Cabling is installed, the verge or a part thereof may no longer be available for the Cabling.

#### **4.3 Access to services**

FROWF acknowledges and agrees with the Shire that in the event that the Shire or a utility provider needs to gain access to services within the Road Reserve, the Shire or utility provider may remove the Cabling (if necessary to access such services), on reasonable notice to the FROWF, save for emergencies, for the purpose of gaining access to the services. In the event of such removal:

- (a) on completion of any works by the Shire or the utility provider, FROWF may restore the Cabling and other improvements at its cost; and
- (b) the Shire will use its best endeavours to remove only so much of the Cabling as is necessary in all the circumstances to gain access to the services within the Road Reserve and in removing the Cabling (or part thereof) will cause as little damage, as possible.

#### **4.4 No obstruction of Road Reserve without approval**

In exercising any of its rights pursuant to this Deed or in complying with its obligations pursuant to this Deed, unless strictly relating to the installation, maintenance and use of the Cabling and only to the extent and for such time as is necessary to do so, FROWF covenants and agrees with the Shire not to construct or place or suffer to be constructed or placed, any obstruction on the Road Reserve or its surrounding areas which would prevent or substantially interfere with the use of the Road Reserve and its surrounding areas by members of the public, without the prior written approval of the Shire which will not be unreasonably withheld or delayed.

#### **4.5 Removal of the Cabling**

- (1) The Shire may, by giving written notice to FROWF, require FROWF within 3 months such notice, or such longer period of time as is agreed to by the Shire to:
  - (a) remove the Cabling and any improvements, property and fixtures constructed or located on and within the Road Reserve by FROWF; and
  - (b) following the removal of the Cabling and any improvements and fixtures in accordance with paragraph (a), restore and rehabilitate the area upon which the Cabling is located and any surrounding land, to the Shire's reasonable satisfaction having regard to good industry practice, to the same or substantially the same condition as it was immediately prior to the installation of the Cabling, including the rehabilitation of the relevant portion of the area with native vegetation.



- (2) The written notice referred to in **clause 4.5(1)** must specify the reason for the request and why the removal of the Cabling is necessary (**Notice**). The Shire may only exercise the power given under **clause 4.5** if the requirement for the removal of the Cabling is for one or more of the following reasons:
- (a) the Cabling is no longer required;
  - (b) FROWF are no longer operating; and/or
  - (c) FROWF has been wound up.
- (3) If the Shire does not provide a reason for the removal of the Cabling in the Notice that falls within the reasons outlined in **clause 4.5(2)**, FROWF may refuse to comply with the requirements of the Notice until such time as the Shire provides details as to the reason and need for the removal of the Cabling that falls within the reasons outlined in **clause 4.5(2)**.
- (4) Subject to **clause 4.5(3)**, if FROWF fails to comply with its obligation to remove the Cabling and/or restore and rehabilitate the verge and surrounding area within the timeframes provided for in this clause, then the Shire may:
- (a) remove the Cabling; and
  - (b) rehabilitate and restore the relevant portion of the Road Reserve and surrounding area; and
- recover the cost of doing so from FROWF as a liquidated debt payable on demand.
- (5) If a valid notice is issued by the Shire pursuant to this clause the Shire will not be responsible for any loss or damage occasioned by virtue of the removal of the Cabling save for where caused by a negligent act or omission of the Shire or its contractors.

## 5. Default by FROWF

- (1) In the event of material non-compliance by FROWF with any of its obligations pursuant to this Deed, the Shire may issue a notice to FROWF requiring FROWF to remedy such default within a reasonable period of time being not less than 30 days (**Default Notice**).
- (2) If FROWF fails to remedy the default within the time specified in the Default Notice, then the Shire may terminate this Deed upon written notice and FROWF must within 3 months of the notice or such longer period of time as is agreed to by the Shire:
- (a) remove the Cabling and any improvements, property and fixtures constructed or located on or within the Road Reserve and its surrounding area; and
  - (b) following the removal of the Cabling and any improvements and fixtures in accordance with paragraph (a), restore and rehabilitate the portion of the Road Reserve upon which the Cabling was installed and any surrounding land, to the Shire's reasonable satisfaction having regard to good industry practice, to the same or substantially the same condition as it was immediately prior to the installation of the Cabling, including the rehabilitation of the relevant portion of the Road Reserve with native vegetation.
- (3) If FROWF fails to comply with its obligation to remove the Cabling and/or restore and rehabilitate the verge and its surrounding area within the timeframes provided for in paragraph (2) above, then the Shire may:



- (a) remove the Cabling; and
- (b) rehabilitate and restore the relevant portion of the Road Reserve and its surrounding area; and

recover the direct cost of doing so from FROWF as a liquidated debt payable on demand.

- (4) If a valid notice is issued by the Shire pursuant to this clause the Shire will not be responsible for any loss or damage occasioned by virtue of the removal of the Cabling save for where caused by a negligent act or omission of the Shire or its contractors.

## 6. Cessation of Use of Cabling

- (1) In the event that the Cabling is no longer required for any reason whatsoever and/or no longer required to provide electricity, FROWF must as soon as practicable after the cessation of the use of the Cabling:

- (a) remove the Cabling and any improvements, property and fixtures constructed or located on or within the Road Reserve by FROWF; and
- (b) following the removal of Cabling and any improvements and fixtures in accordance with paragraph (a), restore and rehabilitate the portion of the Road Reserve within which the Cabling was installed and any surrounding land, to the Shire's reasonable satisfaction having regard to good industry practice, to the same or substantially the same condition as it was immediately prior to the installation of the Cabling.

- (2) If FROWF fails to comply with its obligation to remove the Cabling and/or restore and rehabilitate the area within a reasonable timeframe, then the Shire may:

- (a) remove the Cabling; and
- (b) rehabilitate and restore the relevant portion of the Road Reserve; and

recover the cost of doing so from FROWF as a liquidated debt payable on demand.

- (3) If a notice is issued by the Shire pursuant to this clause the Shire will not be responsible for any loss or damage occasioned by virtue of the removal of the Cabling save for where caused by a negligent act or omission of the Shire or its contractors.

## 7. FROWF's acknowledgements

FROWF acknowledges that:

- (a) it accepts the Road Reserve in its present condition relying upon its own enquiries and investigations as to the suitability of the verge and its surrounding area for FROWF's proposed use;
- (b) it has inspected the Road Reserve prior to the execution of this Deed and enters into this Deed with full knowledge of the state of repair of the Road Reserve;
- (c) other than the rights granted under this Deed, this Deed does not create or confer upon FROWF or its agents any tenancy or any other estate or interest in the Road Reserve;
- (d) this Deed does not confer any exclusive rights; and



- (e) the Shire retains possession and control of the Road Reserve and its surrounding area.

## **7.2 FROWF's limitation of liability**

The maximum liability of FROWF, its personnel and subcontractors arising out of or in relation to this Deed will in no event exceed \$20,000,000.00.

## **8. Grant of Section 144 Easement**

Shire and FROWF covenant and agree that:

- (a) the Shire shall at FROWF's cost, lodge a request with the Department of Planning, Lands and Heritage for the grant of an easement pursuant to section 144 of the Land Administration Act 1997 in order to permit the Cabling to remain within the Road Reserve (**Easement**);
- (b) FROWF shall arrange for the preparation of an Interest Only Deposited Plan prepared by a licensed surveyor showing the location of the Easement and shall be responsible for the cost of the preparation of the Interest Only Deposited Plan and the preparation and registration of the Easement at Landgate;
- (c) the Shire shall be joined as a party to the Easement; and
- (d) FROWF shall be responsible for the cost of preparation and registration of the Easement including the payment of any duty assessed in connection with the Easement.

## **9. Dispute Resolution**

### **9.1 Referral of Dispute: Phase 1**

Except as otherwise provided any dispute arising out of this Deed is to be referred in the first instance in writing to the Shire's Representative as nominated in writing by the Shire from time to time (**Shire's Representative**) who shall convene a meeting within 10 days of receipt of such notice from the FROWF or such other period of time as is agreed to by the Parties between the Shire's Representative and an officer of the FROWF for the purpose of resolving the dispute (**Original Meeting**).

### **9.2 Referral of Dispute: Phase 2**

In the event the dispute is not resolved in accordance with **clause 9.1** of this Deed then the dispute shall be referred in writing to the CEO of the Shire who shall convene a meeting within 10 days of the Original Meeting or such other date as is agreed to by the Parties between the CEO and the FROWF for the purpose of resolving the dispute.

### **9.3 Appointment of Arbitrator: Phase 3**

In the event the dispute is not resolved in accordance with **clause 9.2** of this Deed, the dispute shall be determined by a single arbitrator under the provisions of the Commercial Arbitration Act 2012 (as amended from time to time) and the Shire and the FROWF may each be represented by a legal practitioner.



## 10. Costs

- (1) FROWF shall pay the reasonable costs of and incidental to the preparation, engrossment and stamping of this Deed, including the Shire's solicitors' reasonable costs for preparation of this Deed and all duties payable hereon including all costs associated with the preparation of the Easement referred to in **clause 8** of this Deed.
- (2) FROWF is fully responsible for any costs or outgoings incurred or related to the installation, maintenance or use of the Cabling.

## 11. Notice

- (1) Any notice to be given under this Deed by one of the parties to the other must be in writing and is given for all purposes for delivery in person or by prepaid post to the receiving party at the address set out in this Deed.
- (2) Any notice given in accordance with this Deed will be deemed to be duly served in a case of posting at the expiration of three (3) Business Days after the date of posting.

## 12. Variation

Subject to such consents as are required by this Deed or at law, this Deed may be varied by the agreement of the parties in writing.

## 13. Waiver

- (1) Failure to exercise or delay in exercising any right, power or privilege in this Deed by a Party does not operate as a waiver of that right, power or privilege.
- (2) A single or partial exercise of any right, power or privilege does not preclude any other or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.

## 14. Acts by agents

All acts and things which the Shire is required to do under this Deed may be done by the Shire, the CEO, an officer or the agent, solicitor, contractor or employee of the Shire.

## 15. Statutory powers

The powers conferred on the Shire by or under any statutes for the time being in force are, except to the extent that they are inconsistent with the terms and provisions expressed in this Deed, in addition to the powers conferred on the Shire in this Deed.

## 16. Further assurance

The Parties must execute and do all acts and things necessary or desirable to implement and give full effect to the terms of this Deed.



## 17. Severance

If any part of this Deed is or becomes void or unenforceable, that part is or will be severed from this Deed to the intent that all parts that are not or do not become void or unenforceable remain in full force and effect and are unaffected by that severance.

## 18. Moratorium

The provisions of a statute which would but for this clause extend or postpone the date of payment of money, reduce the rate of interest or abrogate, nullify, postpone or otherwise affect the terms of this Deed do not, to the fullest extent permitted by law, apply to limit the terms of this Deed.

## 19. Governing law

This Deed is governed by and is to be interpreted in accordance with the laws of Western Australia and, where applicable, the laws of the Commonwealth of Australia.

## 20. Interpretation

(1) In this Deed:

- (a) words denoting:
  - (i) the singular includes the plural and vice versa; and
  - (ii) a gender or genders include each other gender;
- (b) if a word or phrase is assigned a particular meaning, other grammatical forms of that word or phrase have a corresponding meaning;
- (c) a reference to:
  - (i) a person includes a firm, an unincorporated association, an incorporated association, a corporation and a government or statutory body or authority;
  - (ii) a person includes their legal personal representatives, successors and assigns;
  - (iii) a statute, regulation, local law or any other written law, code or policy includes subsidiary legislation or an instrument made under it, and consolidations, amendments, re-enactments or replacements of any of them;
  - (iv) a right includes a benefit, remedy, discretion, authority or power;
  - (v) an obligation includes a warranty or representation, and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
  - (vi) provisions or terms of this Deed, or another document, agreement, understanding or arrangement, include a reference to both express and implied provisions and terms;
  - (vii) time is to local time in Perth, Western Australia;



- (viii) \$ or dollars is a reference to the lawful currency of Australia;
  - (ix) this Deed or any other document includes this Deed or other document as amended or replaced and despite any change in the identity of the parties;
  - (x) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions or other electronic mail or transmissions;
  - (xi) any thing (including any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
  - (xii) a clause, paragraph, Schedule or Annexure is a reference to a clause or paragraph of or Schedule or Annexure to, this Deed; and
  - (d) the meaning of general words or phrases is not limited by specific examples introduced by 'including', 'for example' or similar expressions.
- (2) Headings do not affect the interpretation of this Deed.



# Signing page

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**EXECUTED as a DEED**

**2022**

THE COMMON SEAL of the SHIRE OF )  
KOJONUP was hereunto affixed in the )  
presence of: )

\_\_\_\_\_  
SHIRE PRESIDENT

\_\_\_\_\_  
(PRINT FULL NAME)

\_\_\_\_\_  
CHIEF EXECUTIVE OFFICER

\_\_\_\_\_  
(PRINT FULL NAME)

EXECUTED by FLAT ROCKS ONE WIND )  
FARM PTY LTD (ACN 658 780 744) as )  
trustee of the Flat Rocks One Wind Farm )  
Trust pursuant to Section 127 of the )  
Corporations Act: )

\_\_\_\_\_  
Full Name of Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Full Name of Director/Secretary\*  
(\*Delete whichever designation is incorrect)

\_\_\_\_\_  
Signature of Director/Secretary



# Annexure A – Drawings of Cabling

