

12 September 2024

The Hon. Sonya Kilkenny MP
Minister for Planning
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Dear Minister

Mt Mercer Wind Farm: Application to amend Planning Permit PL-SP/05/0321

This letter supports an application by Mt Mercer Windfarm Pty Ltd (**MMWF**) to amend Planning Permit PL-SP/05/0321 (the **Planning Permit**). A copy of the current Planning Permit is at Attachment 1. This application is made under section 97I of the *Planning and Environment Act 1987* (Vic) (**P&E Act**).

1 Executive Summary

MMWF is seeking amendments to its Planning Permit conditions relating to operational noise, to align the Wind Farm's compliance requirements with the new wind turbine noise regime in the *Environment Protection Regulations 2021* (Vic) (the **Regulations**). A mark up to the Planning Permit is in Attachment 2, with explanatory notes. The amendments include:

- (a) Updating Conditions 3, 16, 17 and 18 relating to operational noise requirements to align with the Regulations, clarify compliance requirements, and confirm that assessment of compliance will be governed by modern assessment methodologies documented in the Wind Farm's Noise Management Plan (**NMP**); and
- (b) Updating Conditions 19 and 22 to confine the scope of the Planning Permit's complaint process to matters other than wind turbine noise.

The purpose of these amendments is to ensure the Planning Permit is in a suitable format for the new Regulations, and to make administration of the Permit for matters other than wind turbine noise simpler for MMWF, Golden Plains Shire Council and the Minister for Planning (the **Minister**). The changes do not represent a material shift in MMWF's compliance obligations and will afford amenity protections to local residents that are consistent with the new Regulations and contemporary assessment practices.

While regulation of wind turbine noise now rests with the EPA, the Regulations themselves recognise that wind farm planning permits contain important, project-specific detail about management of wind turbine noise at individual wind farms that should be retained. MMWF's amendments aim to preserve that detail while removing unnecessary procedural requirements that are now dealt with in the Regulations and the NMP. The existing MMWF Planning Permit adopts, and modifies, the New Zealand Standard 'Acoustics – The Assessment and Measurement of Sound from Wind Turbine Generators' (NZS 6808:1998) (**1998 NZ Standard**). The post-construction noise program for the wind farm was completed under this regime. MMWF intends to retain the 1998 NZ Standard as the relevant technical standard for the wind farm, as

contemplated by the Regulations. However, in preparing the NMP, MMWF has identified a series of modernisations and improvements to methodology that reflect more modern approaches to wind turbine noise assessment. Those improvements have been documented in and will be implemented via the NMP, subject to review by the independent auditor.

The NMP is a living document that will be subject to regular reviews and updates under the Regulations, overseen by the EPA. This will enable improvements in assessment and management of wind turbine noise to be incorporated into the plan over time, with no ongoing administration obligation for the Minister or Council.

We consider that the amendments are consistent with relevant planning policy (including the 'Planning Guidelines for the Development of Wind Energy Facilities (September 2023)'), the Regulations and the EPA's 'Wind Energy Facility Turbine Noise: Technical Guideline', which remains in draft.

We submit that the amendments warrant Ministerial approval.

2 Background

The Planning Permit was issued by the Minister on 10 November 2008. It has been subject to a minor correction under section 71 of the P&E Act in respect of references to properties, but otherwise has not been amended. The Wind Farm commenced operating in November 2013.

Conditions 16 to 19 of the Planning Permit relate to operational noise. Condition 19 required MMWF to complete a post-construction noise monitoring program. The final technical report for that program was provided to the Department of Environment Land Water and Planning on 19 March 2021.

References to Permit conditions below are to current Permit numbering, unless otherwise indicated.

3 Condition 3

3.1 Background

Condition 3(m) provides that the Wind Farm must meet the relevant standards for potential noise impacts identified in the *Policy and Planning Guidelines for Development of Wind Energy Facilities in Victoria* (May 2003).

3.2 Requested amendment

As the reference to the May 2003 guidelines is now significantly outdated, MMWF proposes to remove Condition 3(m) in order to bring the Planning Permit in line with the current approach to noise regulation and remove the need to amend the Planning Permit with each new iteration of the planning guidelines for wind energy facilities. The proposed amendment also removes unnecessary duplication and accords with MMWF's proposed approach that methods to assess compliance with the NZ Standard will be dealt with in accordance with the NMP prepared for the Wind Farm under the Regulations.

3.3 Analysis

MMWF considers that the removal of Condition 3(m) is appropriate for the following reasons:

- (a) the proposed amendment removes an outdated reference to policy and planning guidelines which are now over two decades old;
- (b) the proposed amendment will not result in any changes to how wind turbine noise is managed; and
- (c) there will be no greater or lesser outcome in terms of the protection of amenity for neighbours of the Wind Farm as a result of the change.

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4 Condition 16 – Noise standard

4.1 Background

Condition 16 sets out operational noise requirements for the Wind Farm, including that it must comply with the 1998 NZ Standard. Condition 16(a) imposes industry standard operational noise limits of the greater of 40dBA (L95) or background noise level plus 5dBA. In accordance with the NZ Standard, compliance must be assessed during the 'all time' and 'night time' periods (defined as 10:00 pm to 07:00 am). Condition 16 is extracted below:

Except as provided below in this condition, the operation of the wind energy facility must comply with New Zealand Standard 6808:1998 The Assessment and Measurement of Sound from Wind Turbine Generators in relation to any dwelling existing on land in the vicinity of the wind energy facility as at the date of the Panel hearing in relation to this application, to the satisfaction of the Minister of Planning. In determining compliance with the standard, the following requirements apply:

- (a) *The sound level from the wind energy facility, when measured outdoors within 10 metres of a dwelling at any relevant nominated wind speed, must not exceed the background level (L95) by more than 5dBA or a level of 40dBA L95, whichever is the greater.*
- (b) *Compliance at night must be separately assessed with regard to night time data. For these purposes the night is defined as 10.00pm to 7.00am.*

This condition does not apply if an agreement has been reached with a landowner through which the landowner accepts predicted noise levels or otherwise agrees to implement appropriate acoustic attenuation measures to ensure a reasonable level of acoustic amenity in relation to the indoor habitable areas of their dwelling(s), and acknowledges that the operation of the wind energy facility may still generate noise in outdoor areas at the dwelling(s) which may from time to time exceed the standard.

In such circumstances, the permit holder must, as soon as practicable, enter into an agreement with the Minister for Planning as responsible authority and the registered proprietor of the affected land pursuant to Section 173 of the Planning and Environment Act 1987 (Section 173 Agreement) to provide that, except with the written consent of the Minister for Planning, any dwelling on the land should not be occupied by persons other than:

- (i) *those with an interest in ownership and management of land on which the wind energy facility is located and their families, or*
- (ii) *persons who otherwise receive a financial benefit as a result of the location of the wind energy facility on the land;*

and application must be made to the Registrar of Titles to register the Section 173 Agreement on the title to the land under Section 181 of the Act.

Condition 16 specifies that its requirements do not apply to locations where a suitable agreement (being an agreement made pursuant to Section 173 of the P&E Act (**Section 173 Agreement**)) has been reached with a specific landowner through which the landowner accepts predicted noise levels or otherwise agrees to implement appropriate acoustic attenuation measures to ensure a reasonable level of acoustic amenity in relation to the indoor habitable areas of their dwelling(s), and acknowledges that the operation of the wind energy facility may still generate noise in outdoor areas at the dwelling(s) which may from time to time exceed the New Zealand Standard (to be newly defined as 'stakeholder dwellings').

4.2 Requested amendment

MMWF proposes the following amendments:

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- (a) change to the outdoor sound level measuring distance from 10 metres to 20 metres, consistent with the updated assessment requirements (including as documented in the 2010 New Zealand Standard, 'Acoustics – Wind farm noise' (NZS6808:2010));
- (b) clarification that Condition 16 does not apply to wind farm properties or where a suitable noise agreement has been reached with the landowner. Specifically, MMWF proposes that Condition 16 be amended to remove requirements that any suitable agreement must be made with the Minister as a party pursuant to section 173 of the P&E Act. Notably, this amendment will not impact existing Section 173 Agreements, which will remain in place in accordance with their terms. Rather, this change will allow for the recognition of other forms of 'noise agreements' as defined under the Regulations. To achieve this, references to Section 173 Agreements will be removed, a new definition of 'stakeholder dwelling' will be inserted to describe (1) dwellings that are located on properties listed in the Permit land on page 1 of the Planning Permit (i.e., wind farm 'host' properties), plus (2) any dwellings that are the subject of a noise agreement between the landowner and MMWF, together with a new definition of 'non-stakeholder dwelling' to refer to any dwelling that is not a stakeholder dwelling;
- (c) removal of the reference to the Minister to reflect the shift in responsibility for regulation of wind turbine noise to the EPA; and
- (d) clarification that methodologies to assess wind turbine noise compliance, including night-time noise, will be documented in the NMP.

MMWF requests the following amendments to Condition 16 to implement these changes:

Except as provided below in this condition, the operation of the wind energy facility must comply with New Zealand Standard 'Acoustics – The Assessment and Measurement of Sound from Wind Turbine Generators' (NZS 6808:1998) (the 'New Zealand Standard') 6808:1998. The Assessment and Measurement of Sound from Wind Turbine Generators in relation to any non-stakeholder dwelling existing on land in the vicinity of the wind energy facility as at the date of the Panel hearing in relation to this application to the satisfaction of the Minister of Planning. In determining compliance with the standard, the following requirements apply:

- (a) *The sound level from the wind energy facility, when measured outdoors within 40 20 metres of a non-stakeholder dwelling at any relevant nominated wind speed, must not exceed the background level (L95) by more than 5dBA or a level of 40dBA L95, whichever is the greater.*
- (b) *Compliance at night must be separately assessed with regard to night time data. For these purposes the night is defined as 10.00pm to 7.00am.*
- (c) *Compliance will be assessed in accordance with the methodology specified in the Noise Management Plan prepared for the wind energy facility under the Environment Protection Regulations 2021 (Vic) as amended from time to time. The Environment Protection Authority is responsible for compliance and enforcement of wind turbine noise under the Regulations.*

For the purpose of this condition, a 'stakeholder dwelling' means a dwelling on land listed in the Address of the Land in this permit, or where the landowner has a written agreement relating to a dwelling on their land which addresses noise from the permitted turbines. A 'non-stakeholder dwelling' means any dwelling that is not a stakeholder dwelling. Among other things, the agreement may specify that the landowner accepts predicted noise levels or otherwise agrees to implement appropriate acoustic attenuation measures to ensure a reasonable level of acoustic amenity in relation to the indoor habitable areas of their dwelling(s), and acknowledges that the

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~~operation of the wind energy facility may still generate noise in outdoor areas at the dwelling(s) may from time to time exceed the New Zealand Standard.~~

~~This condition does not apply if an agreement has been reached with a landowner through which the landowner accepts predicted noise levels or otherwise agrees to implement appropriate acoustic attenuation measures to ensure a reasonable level of acoustic amenity in relation to the indoor habitable areas of their dwelling(s), and acknowledges that the operation of the wind energy facility may still generate noise in outdoor areas at the dwelling(s) which may from time to time exceed the standard.~~

~~In such circumstances, the permit holder must, as soon as practicable, enter into an agreement with the Minister for Planning as responsible authority and the registered proprietor of the affected land pursuant to Section 173 of the Planning and Environment Act 1987 (Section 173 Agreement) to provide that, except with the written consent of the Minister for Planning, any dwelling on the land should not be occupied by persons other than:~~

- ~~(i) — those with an interest in ownership and management of land on which the wind energy facility is located and their families, or~~
- ~~(ii) — persons who otherwise receive a financial benefit as a result of the location of the wind energy facility on the land;~~

~~and application must be made to the Registrar of Titles to register the Section 173 Agreement on the title to the land under Section 181 of the Act.~~

4.3 Analysis

MMWF considers these amendments are appropriate for the following reasons:

- (a) they remove the Minister's responsibility to administer the noise regime to reflect the Regulations and the EPA's new role;
- (b) noise compliance requirements and night-time noise assessment will be appropriately housed in the NMP, a document that will be reviewed and updated regularly under the Regulations;
- (c) the amendments will not result in any changes to how wind turbine noise is managed. MMWF will not need to repeat its post-construction noise monitoring as a result of the amendments, but will continue meeting its compliance obligations under the Regulations;
- (d) there will be improved outcomes in terms of compliance management as a result of the proposed changes, by ensuring that the processes required currently under the Planning Permit reflect current legislation and industry requirements, to be updated from time to time via NMP reviews; and
- (e) the changes will not affect existing Section 173 Agreements in place with landowners.

5 Conditions 17 and 18 – Noise compliance assessment

5.1 Background

Conditions 17 and 18 contain a series of procedural requirements:

- (a) Condition 17 requires an independent post-construction noise monitoring program; and
- (b) Condition 18 requires a report summarising the post-construction noise monitoring results, data and details of compliance and non-compliance with the NZ Standard, to be forwarded to the Minister.

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The post-construction monitoring program for the Wind Farm was completed in March 2021. The compliance reports were provided to the Minister, which confirmed that compliance was demonstrated with the Planning Permit noise limits. Future compliance assessments will be undertaken under the Regulations with reports submitted to the EPA.

5.2 Requested amendment

MMWF requests that Conditions 17-18 be deleted from the Planning Permit because:

- (a) the post-construction monitoring is complete, and Conditions 17-18 have been fulfilled;
- (b) wind turbine noise will be managed under the Regulations and the NMP.

5.3 Analysis

MMWF considers this amendment should be approved because:

- (a) management of noise will be improved by ensuring that the processes currently under the Planning Permit are housed in the NMP, reflect current legislation and technical standards, and are more easily updated via regular NMP reviews; and
- (b) the amendments will not result in material changes to how wind turbine noise is managed. Rather, the change would ensure that noise compliance requirements reflect current legislation and are housed in the appropriate document (the NMP).

6 Conditions 19 and 22 – Noise complaint evaluation and response process

6.1 Background

Condition 19 requires a noise complaint, evaluation and response plan to be prepared and approved by the Minister. The Wind Farm's Noise Complaint Evaluation and Response Plan was endorsed by the Minister on 1 November 2013, which stipulates the steps that must be taken in response to noise complaints.

Condition 22 further requires details of a complaint evaluation and response process to be submitted to and approved by the Minister to assess any alleged breach of Condition 21 (in relation to shadow flicker from the wind energy facility). A Shadow Flicker Complaint Evaluation and Response Plan was also endorsed by the Minister on 1 November 2013.

6.2 Requested amendment

MMWF proposes that Condition 19 be replaced with a new condition requiring implementation of a complaint process that responds to all aspects of wind farm operations except turbine noise. (For example, it will deal with complaints concerning construction noise, traffic, shadow flicker etc).

Relatedly, MMWF requests that Condition 22 be deleted from the Planning Permit as shadow flicker is to be incorporated into this new condition.

Complaints relating to wind turbine noise will be managed under the complaints procedure in the NMP.

The proposed drafting also inserts new language requiring MMWF to maintain the complaint evaluation and response plan 'for the duration of the operation of the wind energy facility', which accords with MMWF's commitment to the continuous improvement of its complaint evaluation and response procedures.

MMWF requests Condition 19 and Condition 22 be deleted and the following drafting inserted :

19) The permit holder must prepare a Complaint Evaluation and Response Plan to the satisfaction of the responsible authority. When approved, the plan will be endorsed by the responsible authority and will then form part of this permit. The complaint evaluation and response plan will be designed to respond to all aspects of the wind farm, except noise

associated with the operation of the wind turbines, including (but not limited to): noise and other impacts from construction and maintenance works, traffic, shadow flicker.

20) The endorsed complaints evaluation and response plan must be publicly available on the wind farm operator's website.

21) The plan shall include:

- (a) a process of investigation to resolve a complaint;*
- (b) a requirement that all complaints will be recorded in an incident register;*
- (c) how contact details will be communicated to the public;*
- (d) a toll-free telephone number and email contact for complaints and queries;*
- (e) details of the appropriate council contact telephone number and email address (where available); and*
- (f) a table outlining complaint information for each complaint received, including:
 - (i) the complainant's name;*
 - (ii) any applicable property reference number if connected to a noise background testing location;*
 - (iii) the complainant's address;*
 - (iv) a receipt number for each complaint which is to be communicated to the complainant; and*
 - (v) the processes of investigation to resolve the complaint.**

22) The register and complaints response process shall continue for the duration of the operation of the wind energy facility and must be made available to the responsible authority on request.

23) The owner of the wind energy facility must implement and comply with the approved Complaint Evaluation and Response Plan for the duration of the operation of the wind energy facility.

6.3 Analysis

MMWF considers that the amendments to Condition 19 and Condition 22 are appropriate for the following reasons:

- (a) the amendments will not result in any changes in how MMWF respond to complaints;
- (b) the new conditions reflect more modern wind farm permits; and
- (c) the changes remove outdated references to the Minister .

7 Planning policy context

The Wind Farm has been operational since 2014. Noting the administrative nature of the proposed amendments and that no physical changes are proposed to the Wind Farm, the majority of the decision guidelines and design response considerations in applicable planning controls are not material considerations for this amendment. Relevant decision guidelines for the Minister's assessment of this application have been extracted below.

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Clause 52.32 (Wind Energy Facility)	
Decision Guideline	Response
The Municipal Planning Strategy and the Planning Policy Framework	<p>The majority of planning objectives relevant to the development and use of wind energy facilities in the policy framework were assessed for the original Planning Permit PL-SP/05/0321 application, and are unaffected by the proposed amendments.</p> <p>The proposed amendments are limited to minor changes connected to the ongoing administration of the Planning Permit's noise regime. As noted below, the Wind Farm will continue to comply with the requirements of the NZ Standard as required under the Regulations following the amendments. Accordingly, MMWF considers that the most relevant planning objective, the management of noise effects on sensitive land uses (clause 13.05-1S Noise management), will continue to be met.</p>
The effect of the proposal on the surrounding area in terms of noise, blade glint, shadow flicker and electromagnetic interference	The Wind Farm will continue to be compliant with the NZ Standard. Other proposed amendments to Conditions 16-19 are not expected to impact future compliance with the NZ Standard and the Regulations, which are to be dealt with under the NMP, prepared in accordance with the Regulations.
<p><i>Planning Guidelines for Development of Wind Energy Facilities</i> (Department of Transport and Planning, September 2023)</p> <div style="border: 2px solid red; padding: 10px; margin: 10px 0;"> <p style="text-align: center; color: red; font-weight: bold;">This copied document to be made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any copyright</p> </div> <p style="text-align: center; color: red; font-weight: bold; font-size: 1.5em;">ADVERTISED PLAN</p>	<p>The amendments are consistent with the recommendations of the WEF Guidelines. Relevantly for this application, the amendments comply with the following recommendations in section 5.1.2 – 'Amenity of the surrounding area – Noise':</p> <ul style="list-style-type: none"> • wind energy facilities must comply with the noise limits in the NZ Standard and have compliance assessed in accordance with that standard; and • noise limits specified in the NZ Standard should apply at noise-sensitive locations. (including residential land uses). <p>The proposed amendments are not otherwise expected to impact MMWF's compliance with the general environmental duty and unreasonable noise provisions under the <i>Environment Protection Act 2017</i> (Vic) and with the other conditions of Planning Permit PL-SP/05/0321 (as noted in section 5.1.2).</p> <p>The amendment is also consistent with the intention of the model conditions, noting that the Wind Farm operates under an older style Planning Permit with some differences in the structure of the noise regime.</p>
Zoning and overlay controls	
	Planning Permit PL-SP/05/0321 has already been granted for the use and development of a wind energy facility at the site, following the consideration of the decision guidelines specified in those controls. The proposed amendments will not involve any physical or

	design changes to the existing Wind Farm and accordingly are not material considerations for this amendment.
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8 Notice and advertising

Section 52 of the P&E Act specifies requirements for notice and advertising of planning permit applications. The Minister must give notice of this application to:

- (a) Golden Plains Shire Council, as it affects land within the Council's municipal district;
- (b) Owners and occupiers of adjoining land unless she is satisfied that the amendment would not cause material detriment to those people; and
- (c) any other person, if she considers that the amendment may cause material detriment to that person specifically.

We consider the amendments to be mostly administrative changes. The key purpose of the amendments is to ensure the Planning Permit reflects the new approach to regulation of wind turbine noise in Victoria.

MMWF considers that the changes will improve the management of noise compliance at the Wind Farm, by bringing the regime in line with the Regulations, modern assessment methods and EPA guidance. The changes are not expected to have any impact on owners or occupiers of land adjoining the Wind Farm, nor on the broader community.

We respectfully submit that in this case, the Minister can be satisfied that there will be no material detriment to owners and occupiers of surrounding land or the community as a result of the amendments. However, if the Minister nonetheless determines that advertising of the application is appropriate, we would be pleased to assist with that process.

Please let me know if you require any further information to assess this request.

Yours sincerely



Shaun Coffey

Encl.

Attachments

1. Current Planning Permit PL-SP/05/0321
2. Marked up copies of Planning Permit PL-SP/05/0321

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