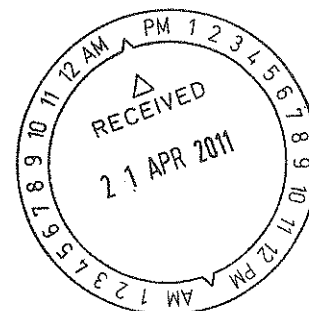


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18 April 2011

Dr Timothy Kendall
Acting Committee Secretary
Community Affairs References Committee
Australian Senate Parliament House
CANBERRA ACT 2600



Dear Dr Kendall

Inquiry into the social and economic impacts of rural wind farms
Follow up from Industry Panel Tuesday 29 March 2011

I refer to our appearance before the committee on the 29 March 2011. The Committee Chair, Senator Siewert asked the panel to take a number of points on notice and provide a response. Our response is as follows:

Any research carried out in Germany with regard to infrasound and wind turbines?

In 1982 the Federal German Health Department commissioned a comprehensive study into health impacts from infrasound in the environment generally. This study was in response to the possible impacts of infrasound on humans from various mechanical sources such as factories and roads. The report found that infrasound at the levels present in most cases from these sources was not a risk to human health. The thresholds for infrasound to have an effect on human health in that report are apparently consistent with other publications on that issue. Infrasound from wind turbines is well below those levels. The reference for the report is:

- Ising, Makrert, Schenoda, Schwarze; *Infraschallwirkungen auf den Menschen*, Düsseldorf, VDI-Verlag 1982.

Our colleagues in Germany have been unable to track down a copy of this report which is no longer published.

We reiterate our submission that infrasound produced by modern commercial wind turbine is not at a level that can be heard or impact on human health. Wind turbines are radiating sound at extremely low levels in the infrasound range (below 20 Hz)¹. This sound is far below the detection threshold and far below levels which can cause any diseases. Measurements on a turbine in the megawatt class at the DEWI Test Site showed levels of 58 dB at a distance of 100 m to the turbine in the one-third octave band level at 10 Hz, which means more than 30 dB below the hearing threshold at this frequency.²

¹ Klug, H *DEWI Infrasound from wind turbines: A 'German' Problem?* DEWI Magazine Nr. 20, February 2002 (See attached)

² Ibid

Copy of complaints procedure from our approved project.

WestWind does not currently operate any wind turbines within Australia. However, the planning permits for WestWind's Lal Lal and Moorabool Wind Farms require complaints management procedures to include:

- *Readily accessible information on how complaints can be made free of cost to complainants;*
- *Immediate acknowledgement of complaints and regular and comprehensive feedback to complainants on actions proposed, their implementation and success or otherwise;*
- *Closure of complaints by agreement with complainants;*
- *Establishment and maintenance of a complaint register for the recording of receipt and acknowledgement of complaints, actions taken, success or otherwise of actions and complaint closure. The register must be available to the public during normal working hours;*
- *Reporting of the contents of the complaint register to the responsible authority as required; and*
- *Regular, at least annual, auditing of the implementation of the complaints management plan with audit results being reported to the responsible authority.*

Additionally, WestWind has prepared complaints management procedures based on the Australian Standard *Customer satisfaction – Guidelines for complaints handling in organisations (ISO 10002:2004)*. Copies of these procedures are attached for the committee.

Are you aware of any legal firms that are beginning to specialise in this area, in that you are beginning to get the same solicitors?

Nevett Ford Lawyers in Ballarat act on behalf of a number of WestWind's project landholders. I have attached their marketing brochure. Many of the points raised in the attached brochure are reasonable. However, in our experience their advice to farmers is grossly lacking in commercial reality and often gives landholders unrealistic expectations with regard to wind energy projects. This can lead to an unnecessary adversarial approach to negotiating the details of land leases.

People talk about the length of their projects—planning for how long the projects are going to be?

I have attached a table from the Victorian Parliament's Environment and Natural Resource Committee's *Inquiry into the Approvals Process for Renewable Energy Projects in Victoria* which summarises the project approval timeframes. WestWind's Moorabool Wind Farm, which does not appear on the table was approved in 11 months.

What happens to dead wind farms? We have had a number of people say that they continue to be a blight, even when their period is over. Is there a process for dismantling and whatever?

WestWind Energy has a contractual obligation to the host landholder to return the property to its original state to allow for the agricultural use of the land as it existed prior to the wind farm.

In addition to the contractual obligation, planning permits in Victoria should ordinarily contain the following standard condition:

- *The wind energy facility operator must, no later than one month after all wind turbines have permanently ceased to generate electricity, notify the Minister for Planning in writing of the cessation of the use. Within a further six months of this date, the wind energy facility operator, or in the absence of the operator, the owner of the land on which the relevant turbines(s) is/are located, must prepare a decommissioning plan to the satisfaction of the Minister for Planning. When approved, the decommissioning plan will become part of this permit. The decommissioning plan must provide for the following:*
 - *The removal of all above ground operational equipment;*
 - *The removal and clean up of any residual spills or contamination;*

- *The rehabilitation of all storage, construction, access tracks and other areas affected by the project closure or decommissioning, if not otherwise useful to the on-going management of the subject land;*
 - *A decommissioning traffic management plan; and*
 - *A post decommissioning revegetation management plan.*
- *The decommissioning plan must be implemented to the satisfaction of the Minister for Planning within 24 months of approval of the plan or within such other timeframe as may be specified by the Minister.*

Both the planning permit condition and the contractual arrangements are enforceable by law.

Mr Mitchell provided the committee with a book which categorically proves that wind farms and wind farming are dead and are a failed energy source.

According to the Hansard Record, Dr Laurie states that "Peter Mitchell was chairman of the technical advisory committee on the Landscape Guardians. He has, I understand, as of yesterday resigned from that position and he is now concentrating full time on the efforts of the Waubra Foundation" which claims to be "absolutely independent of any group that is pro or anti wind."

We offer the following points in response to *The wind farm scam: an ecologist's evaluation* tabled by the now 'absolutely independent' Peter Mitchell:

- If the industry was a failure WestWind would not be earning money in Germany or spending millions of dollars of private investment in Australia employing staff and developing projects.

Please note the following points from the World Wind Energy Report 2010³:

- 37 642 Megawatts of wind energy was added in 2010 worldwide. World capacity of wind energy is 196 630 Megawatts;
- All wind turbines installed by the end of 2010 worldwide can generate 430 Terawatthours per annum, more than the total electricity demand of the United Kingdom, the sixth largest economy of the world, and equalling 2.5 % of the global electricity consumption;
- The wind sector in 2010 had a turnover of 40 billion Euro and employed 670,000 persons worldwide.
- China became number one in total installed capacity and the centre of the international wind industry, and added 18 928 Megawatt within one year, accounting for more than 50 % of the world market for new wind turbines.

Enough has been said by the various industry submissions in response to the viability of generating electricity through wind energy.

Other important matters to clarify from the Hansard Record

Dr McKay submission CA 60

Dr McKay claims that WestWind Energy was told about his private airstrip when project planning commenced and that WestWind ignored this advice. At the time the project was announced and consultation commenced there did not appear to be a private airstrip in existence. Furthermore a historical search of aerial photography failed to identify any such air strip. WestWind maintains that the airstrip was constructed after the project planning was well in advance.

Dr McKay also claims that the planning panel ignored his concerns about the use of this private air strip. I have attached an extract of the planning panels report for the committee's information.

³ http://www.wwindea.org/home/images/stories/pdfs/worldwindenergyreport2010_s.pdf

Victorian Planning and Environmental Law Association. Pages CA110 and CA11 of the Hansard Record

In response to a question from Senator Boyce, representatives from the Victorian Planning and Environmental Law Association (VEPLA) made the comment that the consultation process "is funded by the Council. It is not funded by the developer" and that "planning panel process and a VCAT process are public processes and obviously are funded by the state government."

These statements are incorrect as cost incurred by Planning Panels Victoria and local government are often passed to proponents. For all of WestWind's approved projects both the pre-application consultation process (outlined in our letter to the committee dated 4 March) and the statutory consultation process governed by the *Planning and Environment Act 1987* were funded entirely by WestWind. The statutory consultation process and the independent planning panel cost over \$140,000.

The local shire did not pay for the pre-application or statutory consultation process. We do note, that the shire would have some costs incurred in writing submissions, attending hearings and dealing with inquiries. We also note that there may be some minor administrative cost from Planning Panels Victoria that were not passed on to us.

Recent changes to planning processes in Victoria will result in more of the cost being passed onto local government.

Local government rates CA111

There is also some further discussion between the Chair, Senator Stewart and Senator Boyce about local government rate revenue from wind farms in Victoria. Rates for wind farms have been set by The Governor in Council, acting under section 94(6A) of the *Electricity Industry Act 2000* a copy of the government gazette is attached to assist the committee. Local government in Victoria will be well funded when more wind farms become operational.

I hope the above information is of some assistance.

Yours sincerely

Tobias Geiger
MANAGING DIRECTOR

Infrasound from Wind Turbines: A German Problem?

Infraschall von Windenergieanlagen: Realität oder Mythos? Infrasound from wind turbines: A 'German' Problem?

Helmut Klug, DEWI

Abstract:

Wind turbines are radiating sound at extremely low levels in the infrasound range (below 20 Hz). This sound is far below the detection threshold and thus far below levels which can cause any diseases. Measurements on a turbine in the megawatt class at the DEWI Test Site showed levels of 58 dB at a distance of 100 m to the turbine in the one-third octave band level at 10 Hz [2], which means more than 30 dB below the hearing threshold at this frequency.

Eine unbestrittene Tatsache ist, dass dort wo Infraschall-Ängste vor der Errichtung eines Windparks systematisch geschürt werden, die Anwohner aus Angst vor den vielen in Aussicht gestellten Krankheiten nicht mehr ruhig schlafen können [1]. Unbestritten ist auch, dass Windenergieanlagen, ebenso wie eine Vielzahl anderer Schallquellen, Infraschall abstrahlen. Neuere Messungen an einer Megawattanlage [2] haben jetzt, wie schon aufgrund von Messungen an einer 500kW-Anlage [3] vermutet, bestätigt, dass die von Windenergieanlagen abgestrahlten Schallpegel im Infraschallbereich weit unter der Wahrnehmbarkeitsschwelle liegen und damit keine Gefahren von diesen Anlagen ausgehen. Unter Infraschall wird Schall im Frequenzbereich unterhalb von 20 Hz bezeichnet und dieser ist, entgegen früherer Annahmen, durchaus mit dem Ohr wahrnehmbar. Auch für Infraschall gelten die physikalischen Gesetze der Akustik und diese besagen, dass auch Infraschallpegel, wenn auch weniger stark als höherfrequenter Schall, mit der Entfernung zur Schallquelle abnehmen. Neben den natürlichen Infraschallquellen, wie Windströmungen, Erdbeben, Wasserfällen oder Meeresbrandung gibt es eine Vielzahl technischer Infraschallquellen, wie z.B. Heizungs- und Klimaanlage, Gasturbinen, Kompressoren, Bauwerke (Hochhäuser, Tunnel, Brücken) und Verkehrsmittel. Bei der vom Betreiber Projekt GmbH beauftragten, auf dem Testfeld des DEWI vom itap durchgeführten Infraschallmessung [2] an einer 1,65 MW Anlage des Typs Vestas V66 ergab sich z.B. bei einem Terzpegel von 10 Hz ein Schalldruckpegel in Höhe von 58 dB in einer Entfernung von 100 m zur Anlage. Die Wahrnehmbarkeitsschwelle liegt bei dieser Terz nach DIN 45680 etwa bei 95 dB. Der Infraschallpegel liegt also schon im Nahbereich der Anlage um mehr als 30 dB unterhalb der Wahrnehmbarkeitsschwelle. Langjährige Untersuchungen [4] haben gezeigt, dass unhörbarer Infraschall als völlig harmlos einzustufen ist.

Es lassen sich also folgende Schlußfolgerungen ziehen: Die Infraschallpegel in der Umgebung von Windenergieanlagen liegen weit unter der Wahrnehmbarkeitsschwelle. Es ergeben sich keine Hinweise auf eine mögliche Gefährdung oder Beeinträchtigung von Personen durch den von Windenergieanlagen ausgehenden Infraschall.

- [1] Klug; Infraschall bei Windenergieanlagen. Neue Energie, 1996,1, S. 22
- [2] Messbericht: Messung der Infraschall-Abstrahlung einer WEA des Typs Vestas – 1,65 MW; ITAP-Institut für technische und angewandte Physik GmbH, Oldenburg, 26. Juni 2000
- [3] Betke, Schultz-von-Glahn, Goos: Messung der Infraschallabstrahlung von Windenergieanlagen; Tagungsband der Deutschen Windenergiekonferenz 1996 DEWEK 96, S.207-210.
- [4] Ising, Makrert, Schenoda, Schwarze; Infraschallwirkungen auf den Menschen, Düsseldorf, VDI-Verlag 1982.

Complaints procedures

8 MANAGEMENT OF COMPLAINTS & COMMENTS, NON-CONFORMANCES, CORRECTIVE ACTIONS & PREVENTATIVE ACTIONS

All Accidents (events resulting in injury or illness) and Incidents (events that could have resulted in injury or illness) must be reported, recorded and investigated (via this EMP or other regulatory investigative procedures).

The Project Manager shall be notified of ALL environmental accidents, incidents, issues, concerns and complaints. The Project Manager shall be responsible for the investigation of all occurrences and implementing the appropriate corrective or preventative actions.

This section of the EMP provides the procedures to be followed in the case of minor incidents and near misses. For all emergency situations and major incidents the Emergency Response Plan should be followed.

An incident is deemed to be minor in the following circumstances;

- ^ if the actual or potential harm to the health or safety of human beings or ecosystems is minor; or
- ^ if actual or potential loss or property damage (including clean-up costs) associated with a pollution incident is less than \$10,000-.

8.1 COMPLAINT AND COMMENT MANAGEMENT

Complaints represent an opportunity to enhance project environmental performance. Compliments and anecdotal comments provide feedback on those measures and procedures that are effective and also serve to re-enforce our commitment to the objectives and measures of this EMP.

All project complaints, including those from members of the public, stakeholder groups, government and regulatory authorities, will be managed by the Project Manager (or his delegate) using the Complaints and Comments Management Procedure (refer to section 8.1.1 below).

8.1.1 COMPLAINTS AND COMMENTS MANAGEMENT PROCEDURE

Complaints about the Project and the conduct of works on and around the *Site* shall be managed by a Complaints Management Procedure that is based on "the five Rs", namely;

- ^ Record
- ^ Refer
- ^ React
- ^ Respond
- ^ Report

8.1.1.1 RECORD

All complaints, from any source, shall be documented using the Complaints and Comments Form (refer to Appendix 1) so that they can be subsequently registered in the documentation management system.

It is acknowledged that complaints will be presented by a variety of means (via complaint telephone service, in writing or verbally), in a variety of contexts (both formal consultation meetings or informally on the side of the road) and to a variety of personnel (almost any one of the construction or operations staff). This can pose significant problems for record keeping, specifically where verbal complaints are conveyed in an informal setting to field personnel.

All personnel are required to record any and all complaints about the *Project*. It is not reasonable to expect all personnel to carry copies of the Complaints and Comments Form at all times however it is expected that any person receiving a complaint or comment will note down the salient points at the time and then complete the Complaints and Comments Form as soon as is practicable.

8.1.1.2 REFER

Field personnel are not expected to deal with complaints but are expected to convey any substantive complaints to their Team Leader as soon as is practicable so that the Team Leader can communicate directly with the complainant.

The complaint will be referred immediately to the relevant Team Leader who, in consultation with the Project Manager (and/or his delegate), will ensure that appropriate action is taken to enable satisfactory closure of the complaint.

8.1.1.3 REACT

Upon receiving a complaint via field personnel the Team Leader will in the first instance ensure that she has a proper understanding of the nature of the complaint. If this is not the case they will refer back directly to the complainant for clarification.

If the Team Leader feels that the complaint is of a minor nature and can be corrected quickly and at little or no expense then she shall implement the corrective action as soon as is practical.

For example;

A neighbour makes a complaint to field personnel about dust from traffic travelling along an unmade road within the Site. The Team Leader initially clarifies that the complaint refers to dust being created now (i.e. not one day last week) and decides this is a minor issue and can be immediately corrected by an alteration in the dust suppression regime. The Team Leader calls for an immediate track watering run to suppress that dust and increases the rate of track watering for the rest of that day to ensure the problem does not reoccur.

Later that day the Team Leader completes the complaint procedure and passes the Complaint and Comment Form to the Project Manager. The Project Manager reviews the actions of the Team Leader and arranges for an alteration to the WMS for the relevant tasks on Site

It should be noted that the minor nature of the complaint does not remove the need for the complaint procedure to be followed in full; it merely alters our reaction to the complaint. For a bone fide complaint to have been made there is a failure in the controls and procedures of the EMP or a WMS for a task and it needs to be corrected so the event that triggered the complaint does not reoccur.

It should be further noted that if a complaint originates from an authorised officer of a regulatory authority (e.g. EPA Victoria or Work Safe Victoria) then the Project Manager should be contacted immediately and all personnel shall comply with all reasonable and lawful instructions from the authorised office (including an instruction to cease works) until the Project Manager arrives at the scene.

If the Team Leader feels that the complaint is of a more significant nature, or she is not able to correct the problem on her own authority, then the complaint shall be immediately referred to the relevant member of the Environmental Management Team.

Upon receiving a complaint in a formal setting or via referral from a Team Leader the Project Manager (or her delegate) will initially investigate the complaint to ensure it is bone fide, properly understood and to determine the true nature of the non-conformance that has occurred (refer to section 8.2). The Project Manager should then determine and implement appropriate corrective action to resolve the problem (refer to section 8.3) and then determine and implement preventative action to ensure it does not reoccur (refer to section 8.4).

8.1.1.4 RESPOND

A formal written response should be made to every bone fide complaint by the Project Manager or his delegate. The response should be made in a timely fashion (within 14 days of the complaint being received).

The response should include;

- ▲ acknowledgment of the date of the complaint and who it was recorded by;
- ▲ a précis of the complaint itself;
- ▲ a précis of the actions undertaken to investigate and then correct or prevent further occurrences;
- ▲ an outline of the proper procedure to register complaints (if applicable); and
- ▲ an outline of the procedure to follow if the complainant is not satisfied with our response.

In circumstances where the investigation of the complaint or the development of corrective or preventative actions are taking a long time then progressive responses should be sent to the complainant on a regular basis until the issue is resolved.

8.1.1.5 REPORT

A brief report of all complaints will be made at the weekly Environmental Management Team meetings. Feedback to relevant personnel will be managed by the Project Manager. As required, complaint details (including type and preventative/corrective actions) will be advised to field staff via Pre-Start Meetings (refer to section 6.4).

Summaries of complaints (including type and preventative/corrective actions) will be included in internal reports. Where appropriate, summaries of complaints will be included in Project Updates (refer to section 10.2.1) and detailed information included in Targeted Regulatory Reports (refer to section 10.2.2)

8.2 NON-CONFORMANCES

A non-conformance arises where an inspection, audit or investigation indicates a control, procedure, WMS or the actions of personnel do not conform to the requirements of this EMP. Non-conformances will be resolved according to the procedure outline below.

In the event of a non-conformance:

- ✦ the nature of the event will be investigated by the Project Manager and relevant Team Leader;
- ✦ the issue rectified immediately if appropriate;
- ✦ advice may be sought from a specialist(s);
- ✦ monitoring may be undertaken;
- ✦ the effectiveness or need for new/additional controls will be reviewed;
- ✦ an appropriate preventative and corrective action will be implemented;
- ✦ strategies will be identified to prevent reoccurrence;
- ✦ environmental documentation will be reviewed and revised; and
- ✦ if the environmental non-conformance is significant it will be documented.

The Project Manager will issue a Non Conformance Report (NCR) - allocating its severity as either minor or major - in response to poor or inappropriate work methods, equipment selection, maintenance of controls, or other identified concern.

A NCR minor will be issued for any deficiencies that are minor in nature and are not a non-conformance with conditions of regulatory approvals, but still require rectification.

A NCR major will be issued for more serious issues that present an immediate need for action, a non-conformance with conditions of regulatory approvals or for repeat non-conformances where a formal warning is required to be issued for poor performance.

A Non-Conformance Report shall include:

- ✦ the date of issue;
- ✦ the severity of the NCR (minor / major);
- ✦ the authority under which the NCR is issued;
- ✦ the person / work team / activities affected by the NCR; and
- ✦ a précis of the deficiency being reported including:
 - how it was detected;
 - the ensuing investigation into the deficiency;
 - the results of monitoring (if applicable);
 - the objectives of the EMP or conditions of regulatory approvals/requirements that have been contravened; and
 - the consequences of the non-conformance if not corrected and prevented.

It should be noted that, in many cases a Non Conformance Report, Corrective Action Report and Preventative Action Report will be issued concurrently but that this will not always be the case.

8.3 CORRECTIVE ACTIONS

The identification, reporting and rectification of environmental deficiencies are promoted at the Site Induction (refer section 6.2), Activity Based Work Package Induction (refer section 6.3) and at Pre-start Meetings (refer section 6.4) and Health, Safety and Environment Committee meetings (refer section 7.6).

Deficiencies identified during audits and inspections of the *Site* will be raised as either;

- ✧ inspection reports/checklist which will guide Team Leader action lists,
- ✧ written warnings, and/or
- ✧ NCR (Minor/Major).

Generally, deficiencies identified on the *Project* will, if possible, be rectified immediately by the person identifying the deficiency, and reported to a higher authority (e.g. Team Leader or member of Environmental Management Team). The Project Manager may issue an NCR in response to poor or inappropriate work methods, equipment selection, maintenance of controls, lack of documentation or other identified concern. Repeat offenders will be given a written warning and, where deemed necessary by the Project Manager, may be dismissed from the *Project* and removed from the *Site*.

A Corrective Action Report (CAR) will be prepared for all identified deficiencies and shall include:

- ✧ the date of issue;
- ✧ the authority under which the CAR is issued;
- ✧ the work teams / activities affected by the CAR;
- ✧ a précis of the deficiency being corrected;
- ✧ a précis of the corrective action to be undertaken and by whom; and
- ✧ a list of the controls, procedures and WMS that have been changed as a result of this CAR.

The Project Manager shall be responsible for ensuring that CARs are relayed as soon as practicable to the relevant Team Leaders for communication to field personnel.

It should be noted that, in many cases a Non Conformance Report, Corrective Action Report and Preventative Action Report will be issued concurrently but that this will not always be the case.

8.4 PREVENTATIVE ACTIONS

The Project Manager will review the following to determine trends and recommend action to be taken to avoid recurrences of environmental incidents:

- ✧ project activity, or area-specific environmental risks;
- ✧ environmental complaints;
- ✧ monitored environmental values exceeding acceptable limits;
- ✧ environmental non-conformance reports; and
- ✧ changes to legislation or other regulatory changes.

A Preventative Action Report (PAR) will be prepared for all identified deficiencies and shall include;

- ✧ the date of issue;
- ✧ the authority under which the PAR is issued;
- ✧ the work teams / activities affected by the PAR;
- ✧ a précis of the deficiency being correct;
- ✧ a précis of the corrective action to be undertaken and by whom (if applicable);
- ✧ a précis of the preventative actions to be undertaken and by whom; and
- ✧ a list of the controls, procedures and WMS that have been changed as a result of this PAR.

The Project Manager shall be responsible for ensuring that CARs are relayed as soon as practicable to the relevant Team Leaders for communication to field personnel.

It should be noted that, in many cases a Non Conformance Report, Corrective Action Report and Preventative Action Report will be issued concurrently but that this will not always be the case.

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- ▲ an outline of the proper procedure to register complaints (if applicable); and
- ▲ an outline of the procedure to follow if the complainant is not satisfied with our response.

In circumstances where the investigation of the complaint or the development of corrective or preventative actions are taking a long time then progressive responses should be sent to the complainant on a regular basis until the issue is resolved.

8.1.1.5 REPORT

A brief report of all complaints will be made at the weekly Environmental Management Team meetings. Feedback to relevant personnel will be managed by the Project Manager. As required, complaint details (including type and preventative/corrective actions) will be advised to field staff via Pre-Start Meetings (refer to section 6.4).

Summaries of complaints (including type and preventative/corrective actions) will be included in internal reports. Where appropriate, summaries of complaints will be included in Project Updates (refer to section 10.2.1) and detailed information included in Targeted Regulatory Reports (refer to section 10.2.2)

8.2 NON-CONFORMANCES

A non-conformance arises where an inspection, audit or investigation indicates a control, procedure, WMS or the actions of personnel do not conform to the requirements of this EMP. Non-conformances will be resolved according to the procedure outline below.

In the event of a non-conformance:

- ✦ the nature of the event will be investigated by the Project Manager and relevant Team Leader;
- ✦ the issue rectified immediately if appropriate;
- ✦ advice may be sought from a specialist(s);
- ✦ monitoring may be undertaken;
- ✦ the effectiveness or need for new/additional controls will be reviewed;
- ✦ an appropriate preventative and corrective action will be implemented;
- ✦ strategies will be identified to prevent reoccurrence;
- ✦ environmental documentation will be reviewed and revised; and
- ✦ if the environmental non-conformance is significant it will be documented.

The Project Manager will issue a Non Conformance Report (NCR) - allocating its severity as either minor or major - in response to poor or inappropriate work methods, equipment selection, maintenance of controls, or other identified concern.

A NCR minor will be issued for any deficiencies that are minor in nature and are not a non-conformance with conditions of regulatory approvals, but still require rectification.

A NCR major will be issued for more serious issues that present an immediate need for action, a non-conformance with conditions of regulatory approvals or for repeat non-conformances where a formal warning is required to be issued for poor performance.

A Non-Conformance Report shall include:

- ✦ the date of issue;
- ✦ the severity of the NCR (minor / major);
- ✦ the authority under which the NCR is issued;
- ✦ the person / work team / activities affected by the NCR; and
- ✦ a précis of the deficiency being reported including:
 - how it was detected;
 - the ensuing investigation into the deficiency;
 - the results of monitoring (if applicable);
 - the objectives of the EMP or conditions of regulatory approvals/requirements that have been contravened; and
 - the consequences of the non-conformance if not corrected and prevented.

It should be noted that, in many cases a Non Conformance Report, Corrective Action Report and Preventative Action Report will be issued concurrently but that this will not always be the case.

8.3 CORRECTIVE ACTIONS

The identification, reporting and rectification of environmental deficiencies are promoted at the Site Induction (refer section 6.2), Activity Based Work Package Induction (refer section 6.3) and at Pre-start Meetings (refer section 6.4) and Health, Safety and Environment Committee meetings (refer section 7.6).

Deficiencies identified during audits and inspections of the *Site* will be raised as either;

- ^ inspection reports/checklist which will guide Team Leader action lists,
- ^ written warnings, and/or
- ^ NCR (Minor/Major).

Generally, deficiencies identified on the *Project* will, if possible, be rectified immediately by the person identifying the deficiency, and reported to a higher authority (e.g. Team Leader or member of Environmental Management Team). The Project Manager may issue an NCR in response to poor or inappropriate work methods, equipment selection, maintenance of controls, lack of documentation or other identified concern. Repeat offenders will be given a written warning and, where deemed necessary by the Project Manager, may be dismissed from the *Project* and removed from the *Site*.

A Corrective Action Report (CAR) will be prepared for all identified deficiencies and shall include:

- ^ the date of issue;
- ^ the authority under which the CAR is issued;
- ^ the work teams / activities affected by the CAR;
- ^ a précis of the deficiency being corrected;
- ^ a précis of the corrective action to be undertaken and by whom; and
- ^ a list of the controls, procedures and WMS that have been changed as a result of this CAR.

The Project Manager shall be responsible for ensuring that CARs are relayed as soon as practicable to the relevant Team Leaders for communication to field personnel.

It should be noted that, in many cases a Non Conformance Report, Corrective Action Report and Preventative Action Report will be issued concurrently but that this will not always be the case.

8.4 PREVENTATIVE ACTIONS

The Project Manager will review the following to determine trends and recommend action to be taken to avoid recurrences of environmental incidents:

- ^ project activity, or area-specific environmental risks;
- ^ environmental complaints;
- ^ monitored environmental values exceeding acceptable limits;
- ^ environmental non-conformance reports; and
- ^ changes to legislation or other regulatory changes.

A Preventative Action Report (PAR) will be prepared for all identified deficiencies and shall include;

- ^ the date of issue;
- ^ the authority under which the PAR is issued;
- ^ the work teams / activities affected by the PAR;
- ^ a précis of the deficiency being correct;
- ^ a précis of the corrective action to be undertaken and by whom (if applicable);
- ^ a précis of the preventative actions to be undertaken and by whom; and
- ^ a list of the controls, procedures and WMS that have been changed as a result of this PAR.

The Project Manager shall be responsible for ensuring that CARs are relayed as soon as practicable to the relevant Team Leaders for communication to field personnel.

It should be noted that, in many cases a Non Conformance Report, Corrective Action Report and Preventative Action Report will be issued concurrently but that this will not always be the case.

2.8 COMPLAINTS MANAGEMENT.

Should the planning permit application be approved it is suggested that a complaints management procedure be prepared. The procedure will be relevant to all elements of the construction and operation of the wind energy facility. The complaints management procedure will be prepared in accordance with the Australian Standard *Customer satisfaction – Guidelines for complaints handling in organisations (ISO 10002:2004)*. The procedure will employ the following guiding principles:

- Visibility and accessibility – it will be made clear how complaints can be lodged in clear language and via flexible methods;
- Responsiveness – immediately acknowledge the receipt of a complaint. Deal with complaints promptly and relative to the urgency of the complaint. Keep the complainant informed;
- Objectivity – equal, objective and unbiased response to complaints;
- Free of charge – no charge to lodge complaints;
- Confidentiality – personal information is not to be disclosed publically;
- Open to feedback on complaints processes;
- Accountability for complaints handling should be clearly established;
- Continual improvement to processes.

Wind Farm Leases

Farmers in the Ballarat and Western Districts are being approached by wind farm companies seeking to place turbines on their land.

Unfortunately, in the excitement of additional income and a chance to "drought proof" their land, many farmers simply sign on the dotted line. The documents are generally option deeds or agreements for lease which commit the landowner, but not the wind farm company.

One signature can tie up the land exclusively to a single wind farm company for 25 years, cutting across generations to impact on the landowner's children and even grandchildren.

There are risks and traps involved, but also many opportunities to negotiate a better deal. With only one chance, it is critical to get it right, and we strongly recommend landowners obtain legal advice. An investment in some legal advice before signing should be seen as a vital insurance policy, and can create huge benefits later.

Here are some of the many issues to be taken into account:

- Although rent currently offered is typically around \$7,000.00 or \$7,500.00 per turbine per annum, in fact, it might be three or five years after signing before an operator starts paying rent at that rate. When you allow for inflation, this means that in today's dollars rent might be 10% or 20% less. Bear in mind that even small differences in payment terms can have a dramatic effect when compounded over the full term of the lease.
- Whilst the documents are binding on the landowner, wind farm companies can often withdraw right up until construction commences. Farmers might be in the position of having spent many hours on the deal, incurred expenses and created angst with their neighbours, for no return whatsoever. One solution to this is to ask the company to make an upfront payment so that even if the lease does not ultimately proceed, the farmer still gets some compensation for their trouble. In our experience companies have been prepared to pay quite substantial amounts.
- Whilst the towers themselves do not take up much land (usually only about a 10 or 15 metre diameter per turbine), the loss of productive land caused by new roads that the company will build for access to the turbines, initially for construction and later for ongoing maintenance, needs to be taken into account.

- Farmers also need to consider their "opportunity loss". By locking in with one company now, they are cutting off the possibility of dealing with another operator in future who might have been prepared to pay greater rent. Wind farms are a new and uncertain industry - who knows how high rent levels may rise in future, as suitable sites with good wind and which are close to the power grid become increasingly scarce. As well as this, the right to plant new trees near the turbines is often restricted in wind farm leases, limiting future forestry potential of the land.
- One thing that concerns many landowners is what will happen to the massive tower and turbine structure at the end of the lease, whether in 25 years time or earlier if the lease is terminated prematurely. Leases usually require the wind farm company to remove everything (except the concrete pad base, which is itself huge) and reinstate the land. But what if the company refuses to comply? Suing the operator won't help if, as is usually the case, they are a limited liability company set up as a special purpose vehicle for the project. One answer is to require guarantees from the directors of the company, or from the parent company. In my experience, these will be sometimes given, but more commonly they are refused. This is because it is often the case that the original developer of a wind farm intends to on sell it to an operator, and does not wish to have any ongoing liability.
- Wind farm companies will often reserve the right to shift the final position of towers from the original plan, once they have finished their wind testing. Landowners should try to keep as much control as possible over this process, to avoid turbines being placed in unexpected or inconvenient positions - for example near where the farmer was planning to plant trees or build a new shed, or in the line of the best view from the house. At an extended height of over 130 metres and base diameter of over 10 metres, a tower can somewhat dominate the vista from the kitchen window!
- Landowners should also require a description of the size and characteristics of the towers to be included in the lease itself. Who knows how the technology may change in future - the pattern in the past is that turbines have been increasing in size, and this may well continue. Colours may also change.
- There are many other conditions we recommend, to minimise disruption to the lives of the occupants of the land - such as requiring the operator to leave gates opened or closed as they found them; preventing pests or weeds being brought onto the farm; taking measures to control erosion; and many more.

Happily, Nevett Ford is seeing an increase in the number of our farming clients who seek legal advice first prior to signing. For the truth is, wind farm companies are often quite willing to negotiate to ensure that their project can proceed. We have been able to dramatically improve the terms of the deal, both legal and commercial, for many clients and give them a clear understanding of the documentation before they commit to it.

If you have clients who have been approached by a wind farm operator, or are considering signing a wind farm lease, we would be pleased to assist.

Please contact a member of our Commercial and Business Law Work Group if you require further information in relation to this matter.

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Disclaimer

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If you have any queries in relation to this article please contact this office to seek legal advice. Accordingly, we accept no responsibility for the accuracy of the information provided nor any liability for any loss or damage suffered as a result of reliance upon this document.

- The following figures (5.2 and 5.3) set out the time taken from the lodgement of the permit application to the date of approval or permit issued. For projects approved by the Minister for Planning the time taken ranges between 4½ and 31 months. The time taken for projects approved by local Councils and/or VCAT ranges between 8½ and 51 months. This compares unfavourably with NSW where the average time taken for approvals is 7 months and South Australia where the average is 5-6 months. However it is important to note that the NSW estimate includes the period between public exhibition and a decision being made. Planning applications are sometimes advertised several months before a panel or VCAT hearing is held in Victoria. It is interesting to note that over time, the average primary approvals process has not become shorter in Victoria.

Figure 5.2 (a) **Approved wind farms with the Minister for Planning as the Responsible Authority**

Name of wind farm	Date application received	Date of approval or permit issued	Time elapsed
Portland – Cape Bridgewater ^{*A}	3 October 2000	1 May 2003	31 months
Portland – Yambuk ^{*A}	3 October 2000	1 May 2003	31 months
Portland – Cape Nelson ^{*A}	3 October 2000	1 May 2003	31 months
Portland – Nelson/William Grant ^{*A}	3 October 2000	1 May 2003	31 months
Wonthaggi	18 January 2002	2 October 2003	20½ months
Bald Hills [#]	27 May 2003	19 August 2004	15 months [#]
Waubra	12 August 2004	15 June 2005	10 months
Naroghid	December 2004 (Further info received 31 May 2005)	11 August 2006	20 months
Mount Gellibrand	24 April 2005	20 August 2006	16 months
Macarthur	14 July 2005	26 October 2006	15½ months
Mt Mercer	28 October 2005	April 2007	18 months
Hawkesdale	21 June 2006	12 August 2008	26 months
Woolsthorpe	24 October 2006	16 April 2008	18 months
Ryan Corner	31 October 2006	21 August 2008	22 months
Glenthompson	4 June 2007	30 October 2008	17 months
Lexton	1 November 2007 (amended)	12 March 2009	4½ months
Lal Lal	7 March 2008	30 April 2009	14 months

Note: ^{*}Environment Effects Statement required in conjunction with amendments to Glenelg Planning Scheme and Moyne Planning Scheme.

[#]The Minister's decision to approve the Bald Hills wind farm was subsequently overruled by the Federal Environment Minister under the EPBC Act. The Federal Minister finally approved the wind farm on December 2006, 43 months after the original application.

^A Wind farms subject to the EPBC Act

10.2.4 Panel Assessment

The material presented indicates that the Proposal would satisfy CASA, Department of Defence, and CFA aviation safety requirements. The PAR also indicates that Air Services Australia confirmed that the Proposal would not interfere with radio, radar or navigational installations. We are satisfied that Draft Planning permit conditions address these matters.

The aircraft landing areas on the McKay and Preat properties do not require CASA sanction as the pilot is responsible to ensure that the place is suitable for use as an aerodrome, having regard to all the circumstances of the proposed landing or take-off.³⁶ However, CASA recommends minimum physical characteristics for landing areas³⁷.

The planning permit requirements for air strips were discussed at the Hearing. VCAT³⁸ considered this issue in relation to the WEF proposal at Naroghid and ruled that the use of rural land for an airstrip for private or recreational use or in conjunction with the use of the property in ordinary circumstances would be ancillary to the primary use of the land. The weight that should be accorded to these private landing areas in planning decisions was also addressed in that decision as follows:

- 14 *However, just because no permit is required and the airstrip has been constructed and is in use, does not guarantee that it will always remain suitable for use as an aeroplane landing area. The CAPP 92-1(1) Guidelines for Aeroplane Landing Areas are advisory guidelines to be used by pilots in command of aircraft to determine the suitability of a place for the landing and taking off of aeroplanes. They have no regulatory status and offer no ongoing protection in a planning sense for an airstrip. The onus rests on a land owner to construct an airstrip in a location that can retain its suitability for use as a place for the landing and taking off of aeroplanes irrespective of what may occur on adjoining land. A landowner who constructs an airstrip close to adjoining land cannot necessarily expect to constrain the future use of that land in order to protect the useability of the airstrip. The situation is different with respect to public facilities, where protection of their useability is justified in the community interest and which is one reason for the Airport Environs Overlay. But a private airstrip is no different to any other private use of land. The effects on its use by a competing use or development must be weighed up in the same way as in any other planning permit assessment. There will be situations however, where an*

³⁶ CAR 92(1)

³⁷ Civil Aviation Advisory Publication No: 92-1(1) Guidelines For Aeroplane Landing July 1992.

³⁸ *Upson v Corangamite SC (Red Dot)* [2005] VCAT 2267 (3 November 2005)

airstrip may be affected by an as-of-right use or development on adjoining land. Thus the landowner to the south of the subject land could construct a large shed close to his boundary in line with the end of the runway which, provided the shed complied with the planning scheme, would not need a permit irrespective of whether it intruded into air space that should be clear of objects as recommended under CAPP 92-1(1).

- 15 *The point is that it has been Mr Mulholland's choice to locate the airstrip where he has, but there is no guarantee about its continued compliance with the CAPP 92-1(1) guidelines and suitability for the landing and taking off of aeroplanes any more than the applicant had a guarantee that land would not be used in a manner adverse to its proposal for a wind farm.*
- 16 *So far as the planning panel is concerned which considered the permit application for the wind farm by Naroghid Wind Farm Pty Ltd, it is entirely a matter within its discretion as to the relative weight it places on the benefit of a wind turbine versus the benefit of not interfering with the use of a private airstrip...*

We recognise that aircraft access is an asset to a rural property but agree with the view in *Upson v Corangamite SC* that a property owner may choose to establish a landing area but requirements must be satisfied within that property to guarantee its ongoing suitability for the purpose. We are also conscious that the broader implications of private landing areas are not subject to evaluation through the planning permit process. We are of the firm view that the benefit to the community from the WEF (and specifically turbines ESWT24 and ESWT23) outweighs impacts on plans to use the landing areas in association with accommodation and, perhaps, agriculture.

We make no specific recommendation on Aviation Safety.

10.3 Blade Failure and Ice Throw

10.3.1 Evidence and Submissions

A written submission by Allan and Kristina Kitchingman expressed a concern in regard to the potential for adverse impact on the safety of the area in the vicinity of the proposed WEF due to the possibility of ice throw from the blades.

Further safety concerns were raised at the Hearing by Ms Judith Grieve when she stated that it had been reported that, in Europe, turbine blades had sheared off and had be thrown a distance of 400 metres.

Municipal Land Charge (Rates)

ORDERS IN COUNCIL**Electricity Industry Act 2000****ORDER UNDER SECTION 94****Order in Council**

The Governor in Council, acting under section 94(6A) of the **Electricity Industry Act 2000** (the "Act") makes the following Order:

1. Objective

The objective of this Order is to prescribe a methodology for determining amounts payable under section 94(5) of the Act by a generation company or associated entity of a generation company to a relevant council in respect of land used for generation functions.

2. Commencement

This Order commences on the date on which it is published in the Government Gazette.

3. Prescribed methodology

For the purposes of section 94(6A) of the Act, the prescribed methodology for determining amounts required to be paid under section 94(5) of the Act by a generation company or an associated entity of a generation company to a relevant council in respect of land used for generation functions, is as follows:

- (a) the generation company or associated entity of the generation company shall pay to the relevant council in respect of each financial year:
 - (1) for each power station of the generation company located on the land used for generation functions and within the municipal district of the relevant council, \$40,000, as escalated; and
 - (2) for each MW of the nameplate rating for each generating unit comprising the power station, \$900, as escalated;
- (b) where, in any financial year, the power station operates at an average capacity factor of:
 - (1) less than 10%, the amount otherwise payable under paragraph 3(a), shall be reduced by 50%;
 - (2) between 10% and 20%, the amount otherwise payable under paragraph 3(a), shall be reduced by 25%;
- (c) the amount otherwise payable under paragraphs 3(a) and (b) may be further increased or decreased with the parties' agreement, having regard to other factors presented by the parties and which the arbitrator considers relevant, which may include:
 - (1) the age of the power station, where this may be shown to have a demonstrated effect on the efficiency of the output of the power station; and
 - (2) the impact of the generation company or associated entity on the local area;
- (d) where the land used for generation functions lies within more than one municipal district, the amount determined in accordance with paragraph 3 is payable to more than one relevant council and payments shall be apportioned between each relevant council on a pro rata basis, having regard to the proportion of the nameplate rating of the power station located in each municipal district; and
- (e) the amounts referred to in paragraph 3 may be estimated by the relevant council at the commencement of the financial year, using an estimate of the average capacity factor of the power station for the financial year, and the generation company or associated entity shall pay this estimated amount to the relevant council during the

financial year. If at the end of the financial year the amount estimated by the relevant council is different to the amounts referred to in paragraph 3 calculated using the actual average capacity factor of the power station for the year, then this difference shall be paid by the generation company or associated entity to the relevant council, or by the relevant council to the generation company or associated entity, as appropriate.

2. Definitions and Interpretation

(a) In this Order:

“**nameplate rating**” means the maximum continuous output of a generating unit, expressed in MW; and

“**power station**” means:

- (1) where the fuel source for electricity produced is coal or gas, a generating unit or group of generating units connected to a common connection point;
- (2) where the fuel source for electricity produced is water or wind, a generating unit or group of generating units connected to one or more connection points, but forming part of the same scheme, as determined by the arbitrator, having regard to the scheme ownership structure, relevant planning approvals and environment effects statements.

(b) A reference to ‘as escalated’ in this Order is to be read as if it means “as adjusted in accordance with the following formula:

$$A_2 = A_1 \frac{CPI_2}{CPI_1}$$

Where:

A₂ = the adjusted amount;

A₁ = the amount to be adjusted;

CPI₂ = the Consumer Price Index: All Groups Index for Melbourne as published by the Australian Bureau of Statistics (ABS) for the March quarter immediately preceding the beginning of the relevant financial year;

CPI₁ = the Consumer Price Index: all Groups Index for Melbourne as published by the ABS for the June 2005 quarter.”

(c) A reference to ‘average capacity factor’ in this Order means the percentage figure determined in accordance with the following:

$$ACF = \left(\frac{SOG}{NR * 8760} \right) * 100$$

Where:

ACF = average capacity factor for a financial year;

SOG = unless otherwise agreed between the generation company and relevant council, the sent out generation for a power station being, the total amount of electricity supplied by all generating units to the transmission or distribution network for a financial year, measured at its connection point or points, in MWh;

NR = the total nameplate rating for all generating units comprising the power station.

Dated 24 August 2005

Responsible Minister

THEO THEOPHANOUS

Minister for Energy Industries

RUTH LEACH
Clerk of the Executive Council