

23 September 2014

Mr Stephen Crowe
Manager, Project Delivery and Development
WestWind Energy Pty Ltd

By email

Dear Mr Crowe

Lal Lal Wind Farm PL-SP/05/0461 – High Amenity Noise Level

Thank you for your phone call yesterday requesting advice as to whether the application of a high amenity noise limit is required, should an amendment to the Lal Lal Wind Farm permit be approved.

I note the Department of Transport, Planning and Local Infrastructure (the Department) has written to you requesting:

- An assessment of the noise impacts of the proposed amendment prepared in accordance with the New Zealand Standard 6808:2010, Acoustics-Wind Farm Noise, including an assessment of whether a high amenity noise level is applicable, as assessed under Section 5.3 of the standard.

The Department's request is consistent with Clause 53.32-4 of the Moorabool Planning Scheme which requires applications to be accompanied by an assessment of:

- *the noise impacts of the proposal prepared in accordance with the New Zealand Standard NZS6808:2010, Acoustics - Wind Farm Noise, including an assessment of whether a high amenity noise limit is applicable, as assessed under Section 5.3 of the Standard.*

Section 5.1.2 of the Planning and Policy Guidelines for Wind Energy Facilities (guidelines) also states that:

- *All wind farm applications must be assessed using section 5.3 of the Standard to determine whether a high amenity noise limit is justified for specific locations, following procedures outlined in clause C5.3.1 of the Standard.*

In determining whether a high amenity noise level is applicable, the Department's letter, planning scheme and guidelines require assessment under Section 5.3 of NZS 6808:2010. This section states that:

- *In special circumstances at some noise sensitive locations a more stringent noise limit may be justified to afford a greater degree of protection of amenity during the evening and night-time. A high amenity noise limit should be considered where a plan promotes a high degree of protection of amenity related to the sound environment of a particular area, for example where evening and night-time noise limits in the plan for general sound sources are more stringent than 40db LAeq (15 min) or 40 dBA L10.*

Section 5.3 of NZS 6808:2010 refers to applying a stricter standard where a 'plan' exists over a particular area to promote a higher level of protection from noise. The New Zealand planning system defines such a 'plan' as being a 'regional plan or a district plan' (VCAT 2013).

When translating this requirement into Victoria's planning system the 'plan' referred to in Section 5.3 of NZS 6808:2010 is treated as a planning scheme approved under the *Planning and Environment Act 1987* (VCAT 2013).

The Moorabool Planning Scheme identifies the Lal Lal Wind Farm and its immediate surrounds as being located within the Farming Zone and covered by Environmental Significance (water supply catchment) and Design and Development Overlays (reflective materials). There are no specific planning controls by way of zone, overlay, municipal strategic statement section or local planning policy within the Moorabool Planning Scheme that expressly provide for or imply the need for additional protection from noise at or near the proposed Lal Lal Wind Farm. Additionally the purpose of the Farming Zone is to promote and encourage agricultural uses rather than high standards of residential amenity.

The Victorian Civil and Administrative Tribunal (VCAT) considered the application of high amenity area in *Cherry Tree Wind Farm Pty Ltd v Mitchell Shire Council*. VCAT noted:

- *We were invited by the respondents to treat the subject land and the locality as a high amenity area. This invitation meets with the immediate conundrum that the language of the standard is not translatable to the Victorian planning framework. The "plan" referred to in section 5.3 is a plan as defined by the Resources Management Act of New Zealand. Section 43AA of that Act defines "plan" to mean "a regional plan or a district plan". No such animals exist under the Victorian legislation.*
- *Applying the standard mutatis mutandis to the Victorian experience we treat the plan referred to in the standard as a planning scheme approved under the Planning and Environment Act 1987. The Mitchell Planning Scheme does not anywhere expressly or by implication "promote a higher degree of protection of amenity related to the sound environment of a particular area". Approaching the matter by a process of elimination it can be seen with certainty that the controls contained within the Farming zone, which includes most of the locality, do not answer this description. The purpose of the Farming zone is to encourage agricultural use, which is not an inherently quiet land use. In fact reference to the zone purposes confirms that agricultural use is to be preferred to residential use if there is potential conflict between the two.*
- *Accordingly the Tribunal concludes that the subject land and its locality is not capable of designation as a high amenity area because it does not possess the necessary characteristics of such an area as specified in the NZ standard.*

When considering the requirements of Section 5.3 of NZS 6808:2010 it is not possible for the 'high amenity' noise limit to be considered for the Lal Lal Wind Farm. There is no plan, policy, assessment or otherwise within the Moorabool Planning Scheme to suggest that the proposed Lal Lal Wind Farm area and surrounding environs warrant consideration of a high amenity noise level as described in NZS 6808:2010.

I hope the above analysis is helpful.

Yours sincerely



Phil Burn