



Australian Government

National Wind Farm Commissioner

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Neighbour Consultation and Agreements

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2.1. Observations

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background

Most large-scale renewable energy projects will have neighbours. Neighbours are residents or owners of the neighbouring properties next to the host landowner's properties, either in adjoining properties or properties within proximity to the project. There may also be neighbours that are not in direct proximity to the project that could be affected by other related project infrastructure, such as high voltage power lines and roads used for transport to and from the project.

Neighbours may also include functional facilities, such as an airfield, where a proposed wind farm could have significant impact on the ongoing operation and safety integrity of the facility.

Neighbours can be materially impacted by the development, construction and operation phases of the project. Impacts can include dust, disruptions, road damage, blocked roads, visual amenity, noise, shadow flicker and economic loss – both the fear in anticipation of these impacts as well as actual impacts once the project commences construction or is operating.

Consultation

While developers have generally engaged and consulted well with potential host landowners, developers have not always understood the importance of consulting and working with neighbours in proximity to a project. Typical complaints that the Commissioner has received from project neighbours is that they were not consulted by the developer and only heard about the project from third parties. Often there is limited evidence to verify the degree and level of consultation and interactions between the developer and neighbours to the project.

Consultation may include a wide range of topics, such as:

- consulting with neighbours on the project's design and layout, especially during the early scoping and design stages, so to enable a fact-based discussion about landscape/amenity impacts
- consulting with neighbours to explain the planning process and opportunities for neighbours to engage in that process
- consulting with neighbours on the process and oversight of specific activities, such as predictive noise assessments, post construction noise testing, environment, aviation, transport management plan, shadow flicker and visual amenity assessments
- advising and consulting on subsequent proposed changes to the project's design, layout and equipment selection
- ensuring background and operating noise testing (for wind farms) is properly undertaken and results are provided in a timely fashion and appropriate format to neighbours
- providing factual information to address questions and concerns raised by neighbours, and
- facilitating site visits for neighbours to existing operating projects to allow the neighbour to experience a completed project farm first-hand.
- alternately, devices such as wind farm noise simulators are available to enable neighbours and other stakeholders the opportunity to experience noise outputs of a wind farm in a wide range of scenarios.

Lack of effective consultation with neighbours can lead to a range of material issues for a project, including conspicuous opposition to the project (and any modifications to the proposed project), formal objections that may lead to planning/approval delays and appeals, legal actions against the project or planning authority, the project (or elements of the project) not being approved as well as widespread negative media coverage about the project and the industry more broadly.

Neighbour Agreements

In addition to more effective consultation with neighbours throughout the life-cycle of a project's development, some developers have introduced the concept of 'neighbour agreements'. These agreements can provide a commercial arrangement between the project and neighbour that recognises the possible impacts of the project on the neighbour and to gain the neighbour's support.

Agreements may also be mandatory to gain a permit approval in the event the neighbour is at a risk of experiencing impacts from the project that exceed permit/standards limits or if they reside within a default setback distance zone.

The content of a neighbour agreement is typically confidential to the parties, but may include one or more of the following:

- annual payments to the neighbour for the life of the project (including payments during the development, construction and operating phases of the project)
- a one-time payment at the commencement of the agreement
- reimbursement of reasonable legal fees incurred by the neighbour for the review of the agreement
- reimbursement for, or provision of, items such as visual screening, insulation, double-glazing, air-conditioning, energy efficiency programs, solar panels, electricity consumption, increased insurance premiums
- reimbursement for any increased insurance premiums levied to the neighbour as a result of any increases to the sums insured for public liability due to the presence of the wind or solar farm
- an option for the neighbour to request that the developer acquire the neighbour's property, and
- ability for a neighbour to terminate an agreement without penalty.

Most neighbour agreements are voluntary and it is up to the developer to propose and negotiate such an agreement with the neighbour. Some developers have designed neighbour agreement payments based on a formula of distance from a residence to the turbine(s) and the number of turbines located within that distance.

The Office has observed some proposed neighbour agreements that contain clauses which may not be fair and reasonable to the neighbour. Such clauses observed include the right for the project not to conform to the permit conditions that would normally apply to the neighbour (including noise levels and shadow flicker), the ability for the developer to terminate the agreement while the project is still operating – either without cause or with questionable cause – as well as clauses that could be construed to restrict the neighbour's right to make a complaint.

Further, some neighbour agreements seek to impose stringent planning restrictions on the neighbour for any new development or construction on the neighbour's property. The Commissioner's view is that these clauses are unnecessary and the neighbour should simply be required to comply with the planning rules and laws of the jurisdiction.

Inclusion of perceived unfair clauses by the developer can significantly impair the ability to negotiate a fair and reasonable agreement, creating distrust and anxiety amongst neighbours towards the proponent.

Similar to host landowner agreements, all parties may benefit from a standard template agreement for 'neighbour agreements' that is established and maintained by an appropriate body and available for use by industry.

Visual Screening

Screening of the visual impact of the wind or solar farm by planting trees is commonly proposed by developers to project neighbours and may also be a mandatory requirement of the permit. A common issue is the length of time for a newly planted tree to grow to provide sufficient screening, bringing into question the effectiveness of such mitigation. It should be noted that Appendix 2 of the New South Wales Government's Wind Energy: Visual Assessment Bulletin (NSW Department of Planning, 2016) outlines a range of potential mitigation measures that may be applied.

Further, the process of conducting visual screening assessments and designing and implementing the program can be a significant task and results of the program may not meet perceived expectations.

An alternative approach is to provide the neighbour with the option of taking a cash payment in lieu of the screening program, thereby empowering the neighbour to decide how best to apply the funds to address the situation. This approach

can also alleviate potential difficulties within a community, for instance if some residents have already, proactively, planted trees of their own accord and may now not be eligible for screening assistance.

2.2. Recommendations

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2.2.1. Developers of projects should, where practical, proactively identify all potential neighbours at the commencement of the development activity and implement an effective, ongoing consultation program with all contactable neighbours throughout the project's development. While it may vary by project and geography, neighbours affected may include residents and landowners in a proximity range of 0 km to 5 km from potential project asset locations, as well as residents in close proximity to other project related infrastructure, such as power transmission or supply infrastructure. This indicative distance range for consultation may need to be greater in situations where, for instance, wind turbines are proposed to be erected on an elevated ridge.

2.2.2. Key stakeholders in the development of a project (for example, project buyers, planning authorities, investors, debt providers, local councils, regulators) should seek and consider evidence of neighbour identification and effective neighbour consultations as part of any due diligence and approval criteria.

2.2.3. Developers should consider the merits and use of appropriate neighbour agreements as a potential component of its overall neighbour and community consultations and project strategy. If utilised, neighbour agreements should be negotiable, fair and reasonable, written in plain English and the neighbour should have access to and obtain appropriate legal and financial advice before entering into any agreement. Standard agreements should not restrict the neighbour from being able to raise issues and concerns about the project, including subsequent proposed changes to the project design. Neighbours should be able to make complaints about the project and not be subjected to conditions that exceed normal planning standards and permit requirements. There may be existing, operating projects where a retrospective neighbour agreement should be considered. Developers may, alternately, opt for a broader community support model that benefits a wider group of community members that may not include specific neighbour agreements.

2.2.4. Screening solutions proposed by developers should be realistic and effective. If trees are proposed, trees should be planted in a timely fashion and well maintained to provide effective visual screening within a reasonable timeframe. Other screening solutions, such as structures or shutter blinds, should also be considered when proposing and negotiating a visual screening agreement. Neighbours may also prefer a cash payment option in lieu of the developer designing and installing the screening solution.

2.2.5. The developer should recognise that some neighbours may have been potential host landowners for the project's initial design and should take the time to understand the neighbour's history of involvement with the project. Developers should document all conversations and interactions with neighbours and maintain such records in an appropriate system for future reference. Equally, neighbours who have been approached by developers to offer an agreement should also ensure that they have documented all offers and agreements presented to them.

2.2.6. Neighbours should be appropriately represented in any project related committees, such as Community Consultative Committees and Community Engagement Fund Committees, to help ensure that neighbours have a voice, as well as the opportunity to be positively engaged with the many and various aspects of the project across the community.

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