

A wind farm on or adjoining your property?

– A guide to what you need to know

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Climate change

wind

turbine

power generation

The Western Australian Government is committed to achieving net zero emissions by 2050. In doing so, energy companies are under increasing pressure to reduce emissions and adopt low or no carbon technologies. The South West Interconnected System has recently doubled in size and includes the 51 turbine Yandin Wind Farm opened in May 2021. Currently, there are plans underway for installation of a further 42 turbine wind farm in the Shires of Kojonup and Broomehill-Tambellup.

Rural landowners are coming under increasing pressure to facilitate the placement of wind turbines on their or adjoining properties. During construction, wind farms create jobs for local communities and in the long term, provide a cleaner, greener energy system. However, it is the terms of wind farm arrangements that are likely to have long term implications. In this alert we provide an overview of some of the issues which can affect landowners when entering into wind farm agreements.

The real purpose of a wind farm agreement

While a contract typically outlines the rights, duties and obligations of the parties, a wind farm agreement will typically focus on the noise and loss of amenity generated by a wind farm and require a surrender of all landholder rights in relation to noise abatement in exchange for the payment of money, which may or may not be indexed to inflation.

The landowner is not paid for use of its land but rather payment is made in recognition of the adverse effects noise may have on the landowner and its farming operations.

How long will the wind farm be in place?

A wind farm agreement is unlikely to specify the duration of the wind farm but is likely to provide that the agreement will end when the turbines are decommissioned or cease to operate. Alternatively, it may provide that it will end once noise ceases to be above a certain level. It means that should the wind farm operator employ new technology which reduces noise to below a specified level, a landowner may no longer be entitled to receive payments even though the wind farm remains in operation and the landowner's land or operations remain affected.

Restrictions in the use of the land

A wind farm agreement is also likely to control how a landowner uses the affected land by prohibiting the use or development of land within a certain radius of a turbine, requiring caveats to be placed on the title or preventing a landowner from entering into dealings over all or part of the land without the operator's consent. At the same time the operator will likely be unrestricted in its right to assign its interests with little or no consultation with a landowner.

Landowners prohibited from objecting to future operations

A wind farm agreement usually prohibits a landowner from objecting to any future operations, even where a landowner would have a statutory right to object with respect to applications submitted to regulatory authorities. A landowner could be prohibited from objecting to the upgrading of facilities, including the installation of larger or taller turbines for example.

Comment

Given the significant uncertainty with respect to the duration of a wind farm agreement and the long term effects on objecting, landowners should carefully consider the possible impacts on future land uses before entering into a wind farm agreement.

The money to be gained can be an unexpected windfall for landowners however wind farm agreements need to be carefully crafted to ensure adequate compensation to landowners whose land and farming operations are affected by the placement of turbines on, or adjoining, their properties.

If you would like more information or to discuss a wind farm agreement, contact the Planning & Development team.

3 February 2022 | By HopgoodGanim Lawyers

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