

Although this neighbour agreement does not directly state the wind farm will place a covenant on the neighbour's land title, the neighbour won't know that a caveat has been lodged until the planning permit is applied for. Each permit application lists the land titles the wind farm has rights to under a lease or covenant agreement. If the neighbour disputes the caveat, they will need to take their dispute to VCAT or the Supreme Court. The wind farm won't give up the caveat without a fight, they have too much to lose, and they will throw millions at the legal challenge if they have to.

In return, the neighbour has to weigh-up whether the measely few thousand dollars they receive each year under their neighbour agreement is worth the fight.

as trustee for the Trust

[Date]

[Name]

[Address]

Dear [name]

- Neighbour Agreement

Land: [insert]

Pty Ltd as the trustee of Trust (**Developer**) is the proponent of the a proposed wind energy facility comprising an estimated wind turbines and associated infrastructure to be located Victoria (**Project**).

The Developer is developing the Project in accordance with environmental and planning controls but acknowledges that the Project may nevertheless impact on amenity in particular where dwellings are located in close proximity to constructed turbines.

You are the owner and occupier (**Owner**) of a habitable dwelling within the area that the Developer has identified as potentially affected in this way, and approximately [#] km from the current indicative location of a Project turbine. The dwelling is located on land with title reference [volume and folio reference] (**Land**) as shown on the plan at **Attachment 1**.

The Developer would like to reach agreement on the terms attached to this letter (**Terms**) with you so that, if the Project is approved and proceeds to operation, you will receive a financial benefit from the Developer. In return, the Developer would require you to liaise directly with the Developer about any concerns you may have with the Project before discussing those concerns with any third parties.

The Developer offers you the sum of \$[insert], to be paid annually for the operational life of the Project, in consideration for your agreement to the Terms (and subject to the Project being approved and developed). The amount may be varied, in accordance with the Terms, depending on the final design of the Project.

When signed, the Terms do not prevent you from making a submission or objecting to any approval that the Developer must seek for the Project, nor from making any complaints or claims if you are impacted by the Project during operation. You are not required to release the Developer from claims. The Developer only asks that it be your first point of contact for any concerns you may have in relation to the Project.

If you agree to the Terms, please sign where indicated in the Terms and return to us for final execution.

If you have any questions regarding the Terms or the Project, please contact [name] on [number] or at [email].

Yours sincerely

This entity is a Trust. The reason why a company uses a Trust is to protect its assets against law suits.

The company/trust structure is that the company has no money or assets to lose, the company merely manages operations of the the Trust.

This letter forms part of the agreement.

The neighbour agrees that they will be "an affected" neighbour and therefore will suffer all and any adverse impacts from the operation of the business.

Terms

1 Annual payment

In this clause, terms used are defined as follows:

Term	Meaning
CPI	the all groups consumer price index published from time to time by the Australian Bureau of Statistics for Melbourne. If that index no longer exists or if the basis of calculating it changes, it means an index that the President of the Australian Property Institute (the State division) decides reflects changes in the cost of living in Victoria.
CPI Review Date	each 1 January, from the 1 January immediately after the date of the first Annual Payment until the Terms are terminated in accordance with clause 7.
(a)	Subject to clause 1(b) and 1(c), in consideration of the Owner's agreement to the Terms, the Developer must pay the amount calculated in accordance with clause 1(d) (Annual Payment) to the Owner: (1) within 20 business days of the commencement of construction of the Project; and (2) thereafter within 20 business days of each anniversary of the payment under (1) and until these Terms are terminated in accordance with clause 7.
(b)	The parties agree and acknowledge that the payment of the Annual Payment does not represent an admission of non-compliance, fault or liability by the Developer in respect of any amenity impacts to the Owner or the Land that may be alleged to have occurred as a result of, or in connection with, the Project.
(c)	The Developer has no obligation to pay the Annual Payment if the Project is not approved, does not proceed, after it permanently ceases to generate electricity, or if the Owner no longer owns and occupies the Land.
(d)	The Annual Payment is: (1) \$3,000 if an inhabited dwelling on the Land is within 6 km of a wind turbine; (2) \$6,000 if an inhabited dwelling on the Land is within 3 km of a wind turbine; (3) \$9,000 if an inhabited dwelling on the Land is within 1.5 km of a wind turbine.
(e)	The Annual Payment will be determined when the final design of the Project is completed by the Developer. The amount referred to in the attached letter is based on the preliminary design of the Project.
	The Annual Payment will be adjusted effective from each CPI Review Date by the CPI change between the period from the previous CPI Review Date until the current CPI Review Date.

Amenity impacts include:

- Loss of sleep
- Noise nuisance
- Low-frequency noise
- Vibration
- Blade flicker
- Air pressure impulses
- Loss of view
- OHS no-go zone placed over your land.
- Loss of healthy living.
- Loss of land free from contamination.
- Loss of wildlife habitats.
- Loss of property value due to loss of amenity.

The company has completed its modelling and predicts that neighbours out to 6km will be impacted. The closer the neighbour is to the turbines, the greater the impact. Low-frequency noise travels great distances and penetrates walls of homes. The company is well aware that some neighbours may be forced to sleep elsewhere. The company has put a price on the harm to human health from sleep disturbance.

- (f) The Developer will calculate the adjusted Annual Payment as soon as possible after the CPI is published by the Australian Bureau of Statistics for the Relevant Quarter. The first CPI calculation will be calculated using the change in CPI from the last published CPI as at the date of the first Annual Payment until the next CPI Review Date. For example, if the first Annual Payment is made on 1 July 2024, then the first adjustment will be based on the CPI change from the March Quarter in 2024 until 1 January 2025.
- (g) The Developer must pay the adjusted Annual Payment following each CPI Review Date.

By way of example for the calculation of the annual CPI change:

The annual CPI change from January 2024 to January 2025 is as follows:

- 2024 March quarter – 0.0%
- 2024 June quarter – 0.6%
- 2024 September quarter – 0.5%
- 2024 December quarter – 0.5%

Annual CPI Change for January 2024 to January 2025 period	=	0.0% + 0.6% + 0.5% + 0.5%
	=	1.6%
Annual Payment adjustment based on Annual CPI Change	=	(Previous Year's Annual Payment x 101.6) / 100

2 Owner's acknowledgement

- (a) The Owner acknowledges that, if approved, the construction, use and development of the Project may impact on the Owner and the Land due to the location and separation distance between the Project and the Land and any dwelling on the Land.
- (b) The Owner acknowledges that the information regarding the Project as at the date of the attached letter is preliminary and indicative, and that the Project is likely to change during detailed impact assessment, approval, and satisfaction of any approval conditions.

The owner agrees to anything the company wishes to build down the track, i.e. increased size and number of turbines, location of turbines, and any other infrastructure that may impact the neighbour's enjoyment of their land.

3 Resolution of concerns

In the clause, terms used are defined as follows:

Term	Meaning
Approval	any consent, permit, licence, certificate, authorisation, notice or approval under a law, and any amendment of such consent, permit, licence, certificate, authorisation, notice or approval.
Claim	all actions, claims, demands, suits, proceedings, liabilities, sums of money, damages, entitlements and costs arising from, or in connection with impacts at the Land from construction and operation of the Project, howsoever arising.
Complaint	means any complaint, objection, grievance or adverse comment about the Project, the Developer or any persons associated with the Project, including arising under these Terms.

3.1 Submissions during Approval process

- (a) For avoidance of doubt, the Owner may make a submission or objection in respect of any Approval necessary for the Project.

3.2 Process for raising concerns

- (a) If the Owner has any Complaint or Claim, the Owner must, as soon as possible and before raising it with any other person, bring the matter to the attention of the appropriate representative of the Developer to receive complaints.
- (b) The Owner must provide the Developer with sufficient information for the Developer to understand the nature of the Complaint or Claim.

3.3 Informal resolution

- (a) The Developer will endeavour to respond to any Complaint or Claim raised by the Owner under these Terms in a timely manner, and the parties will act reasonably and in good faith towards each other in order to attempt to resolve any issue that is the subject of the Complaint or Claim.
- (b) Either party may request a meeting, following which the parties must meet as soon as reasonably practicable in order to attempt to resolve the issue.
- (c) If it becomes apparent to the Developer one or more further meetings may be required to resolve the issue then the Developer may, in a timely manner, request such meetings, following which the parties must have a further meeting in each case as soon as reasonably practicable.
- (d) The Owner will not raise a Complaint or Claim with any other person before having followed the steps under this clause.

This clause gives the neighbour a false sense of security.

As the agreement is a private contract between two parties, government authorities cannot interfere. The AEIC, the Minister for Planning, or the local council have no legal right to interfere with commercial agreements.

These so called regulators will send the neighbour back to the wind farm to resolve the problems. .

3.4 Appropriate regulator

If the Complaint or Claim is not resolved under clause 3.3 within a reasonable period of time, the Owner will, before raising the Complaint or Claim with any other person, endeavour to resolve the issue by approaching:

- (a) the Australian Energy Infrastructure Commissioner (if such a role exists at the time); or
- (b) if the matter relates to an Approval over which an authority has jurisdiction, the relevant authority (such as the Minister for Planning or Yarriambiack Shire Council, as appropriate);
- (c) if the matter relates to the *Environment Protection Act 2017* (Vic) or *Environment Protection Regulations 2021* (Vic), the Environment Protection Authority.

3.5 Next steps

If, after following the processes outlined above, the Owner is not satisfied that the Complaint or Claim has been resolved, the Owner may raise the Complaint or Claim with any other third party at its discretion.

4 Dealings with the Land

The company may not release the covenant to anyone new purchaser they don't approve of.

- (a) If the Owner sells, transfers, dedicates, leases or otherwise disposes of, the Land the Owner must:
 - (1) advise the incoming party to whom it intends to sell, transfer, dedicate, lease or dispose of the Land of the existence of these Terms and opportunity to enter into a similar agreement with the Developer; and
 - (2) promptly advise the Developer of the sale, transfer, dedication, lease or disposal and the name and contact details of the incoming party.

5 Owner's warranties

- (a) The Owner warrants to the Developer that the Owner:
 - (1) is the registered proprietor of the Land; and
 - (2) has full power and authority to enter these Terms.
- (b) The Owner warrants to the Developer that, if the Owner is not the occupier of the Land, it has advised the Developer of this.

6 Assignment and novation

The neighbour won't know who they are dealing with in the future.

- (a) The Developer may:
 - (1) Assign its rights and obligations under these Terms to any entity; or
 - (2) novate these Terms so that an entity replaces the Developer in these Terms and assumes all of the Developer's rights and obligations under these Terms,

The agreement is a legal document written in the format of a covenant. If the Developer sells or transfers the business; the neighbour is required to hand over all titles; bank loans; debts etc. against the land to the new business owner whoever that new developer may be and wherever that they may come from.

“unreasonably withheld”. The developer may reasonably withhold the sale of the land³ if the new purchaser is hostile to the wind farm. The neighbour has surrendered any legal right to object to this conduct.

without the consent of the Owner.

- (b) The Owner must promptly execute any document reasonably required by the Developer to effect an assignment or novation under clause 6(a).
- (c) The Owner may only assign its rights and obligations under these Terms with the consent of the Developer (which will not be unreasonably withheld).

7 Termination

These Terms terminate:

- (a) if the Project is not approved or does not proceed;
- (b) when the Project permanently ceases to generate electricity;
- (c) if the Owner ceases to be the Owner of the Land and the occupier of the dwelling on the Land; or
- (d) by agreement between the parties.

The company has to first agree to release the neighbour from the contract.

8 General

8.1 Definitions

Any terms defined in the attached letter have the same meaning when used in these Terms.

8.2 Governing law and jurisdiction

This letter is governed by the law in force in Victoria.

This may include a covenant over the title.
A covenant is a lease - deed
- or other legal contract.

8.3 Invalidity and enforceability

If any provision of these Terms is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.

The neighbour agreement is written in the form of a legal covenant agreement.

This neighbour agreement is extremely valuable to the wind farm, the wind farm will never give it up or release the owner from the agreement.

Firstly it eliminates the neighbour as a potential problem or business risk.

The agreement is compensated for any harm to their health, loss of enjoyment of their land, loss of property value, increase in insurance premiums, and loss of business value, for example, loss of business finance for farming expansion and development.

And secondly, as the business is accountable to its share holders, the wind farm would never agree to release this valuable asset which gives them the right to the neighbour's title.

And so the agreement will follow the title and be applied to any future owner of the land until the project ceases.

For a few thousand dollars a year, the neighbour has locked their land up and any occupants to the adverse impacts of the wind farm for decades.

Executed as an agreement

Executed as a covenant agreement under Victorian law.

Date: [insert]

Developer

Signed by

██████████ (ACN ██████████)

██████████ as trustee for the ██████████

██████████ Trust

by

sign here



Company Secretary/Director

sign here



Director

print
name

print
name

[Individual]

Signed by

sign here



print
name

[Company]

Signed by
(ACN)

by

sign here



Company Secretary/Director

sign here



Director

print
name

print
name

[Company with sole director]

Signed by
(ACN)
by

sign here



Sole Director and sole Company Secretary

print
name

Template