

IN THE ENVIRONMENT, RESOURCES & DEVELOPMENT COURT OF SOUTH AUSTRALIA

No. 01 of 2016, No. 12 of 2016, No. 13 of 2016 and No. 14 of 2016

BETWEEN

GILLON MCLACHLAN

Appellant

- and -

PETER ROYAL

Appellant

- and -

EASTERN MOUNT LOFTY RANGES LANDSCAPE GUARDIANS INC

Appellant

- and -

STIRLING MCGREGOR

Appellant

- and -

MID MURRAY COUNCIL

First Respondent

- and -

TILT RENEWABLES AUSTRALIA PTY LTD

Second Respondent

ORDER

Bench:	Her Honour Senior Judge Cole, Commissioner Nolan, Commissioner Rumsby
Date of Hearing:	6 to 10 March 2017, 14 to 17 March 2017, 20 to 24 March 2017, 3 to 5 April 2017 and 22 February 2018
Date of Order:	7 March 2018
Appearances:	Mr G Manos, counsel for Mr P Royal Mr G Finlayson, counsel for Eastern Mt Lofty Ranges Landscape Guardians Inc Mr P Quinn, counsel for Mr S McGregor Mr G Leydon, counsel for Mid Murray Council Mr S Henry SC, with Mr D Billington, counsel for Tilt Renewables Australia Pty Ltd



THE COURT ORDERS that:

- A. Action 1 of 2016 is dismissed.
- B. Actions 12, 13 & 14 of 2016 are allowed only for the purpose of making the following orders.
- C. The decision of the First Respondent, Mid Murray Council, to extend various time periods in respect of Development Application No.711/072/14, is confirmed, so that pursuant to s 40(3) of the *Development Act* 1993 and regulation 48(2) of the Development Regulations 2008, the periods prescribed by reg 48(1) are extended so that the consent will lapse if the development has not been substantially commenced within five (5) years of the granting of Development Plan Consent and substantially completed within eight (8) years of the granting of Development Plan Consent.
- D. The decision of the First Respondent, Mid Murray Council, to reserve a particular matter in respect of Development Application No.711/072/14 for further consideration, is reversed.
- E. The conditions imposed upon the Development Plan Consent granted by the First Respondent, Mid Murray Council, in respect of Development Application No.711/072/14, are varied by the deletion of all conditions and, in lieu thereof, the substitution of the following conditions:
 1. Except where minor amendments may be required by other relevant Acts, or by conditions imposed by this Development Plan Consent, the development shall be established in strict accordance with the Amended Consolidated Particulars of Development (Exhibit 2R1) ('aCPoD').
 2. The final layout plan, or layout plans for each stage, and associated details including the final colour selection of the wind turbines and ancillary infrastructure (including the overhead powerlines), shall be submitted to the Council. The Council shall confirm its satisfaction with this additional information prior to the granting of Development Approval or prior to Development Approval for each stage.
 3. A driver safety assessment report that identifies appropriate mitigation measures (if any) shall be submitted to the Council. The Council shall confirm its satisfaction with this additional information prior to the granting of Development Approval or, in the case of a staged approval, prior to Development Approval for the first stage.
 4. Within two years of the wind farm becoming non-functional all above ground infrastructure will be decommissioned and removed from the site by the applicant.
 5. In respect of the site of the dwelling and associated buildings (namely, those buildings – excluding tanks, poles and the like – shown on the site plan dated 29/07/15 rev C as 'existing historic stone building retained', 'existing structure', 'existing structures', 'proposed carport' and 'prop new dwelling') described in Development Approval 711/013/14 (Exhibit 2A4) and located on section 654, Hundred of Jutland (with access via section 79, Hundred of Finnis) certificate of title volume 5604 folio 632 ('the Royal building site'):



- a) noise levels at the Royal building site must meet the requirements of the Environment Protection Authority's Wind Farms Environmental Noise Guidelines (2009) for a relevant receiver;
- b) no turbine may be constructed within 1 kilometre of the area of the Royal building site shown as the precise site of the new dwelling approved in Development Approval 711/013/14 (the dwelling envelope); and
- c) theoretical shadow flicker duration at the dwelling envelope and within 50 metres of the dwelling envelope must be less than 30 hours per year and actual shadow flicker at the dwelling envelope and within 50 metres of the dwelling envelope must not exceed 10 hours per year.

Condition agreed between the third appellant and second respondent and notified to the Court on Wednesday 5 April 2017

6. The final wind farm layout required by condition 2 of the Development Plan Consent:

- a) shall show all wedge tailed eagle and peregrine falcon nests which have been either:
 - i. recorded by EBS Ecology at the time of preparation of the final layout; or
 - ii. identified by Ian Falkenberg to the proponent and:
 - A. verified by EBS Ecology (or other suitably qualified environmental consultant engaged by the proponent); or
 - B. after consideration by EBS Ecology (or other suitably qualified environmental consultant engaged by the proponent), verified by a suitably qualified environmental consultant nominated by the President of the Law Society of South Australia, at the time of preparation of the final layout; and
- b) shall not show any wind turbine within:
 - i. 500 metres of any wedge tailed eagle nest shown on the layout; or
 - ii. 1000 metres of any peregrine falcon nest shown on the layout.

Conditions as advised by the Environment Protection Authority

7. Noise levels at the noise sensitive receivers in the vicinity of the Wind Farm development shall meet the requirements of the EPA's Wind Farms Environmental Noise Guidelines (2009). The noise level at the relevant receivers* shall not exceed:
- i. 35dB(A) if receivers are situated in a Rural Living zone, or
 - ii. 40dB(A) for noise sensitive receivers in other zones, or
 - iii. the background noise (LA90, 10) by more than 5dB(A),
- whichever is the greater.

* A relevant receiver is defined as an occupied dwelling where the owners do not have an agreement with the wind farm developer. The above measured noise



levels shall be adjusted in accordance with the Wind Farms Environmental Noise Guidelines (2009) by the inclusion of a penalty for the tonal characteristic where necessary.

8. Warranted maximum sound power characteristic for the wind turbine generators installed in accordance with the proposed layout shall not exceed levels in Table 5.1¹ of the Environmental Noise Assessment report prepared by Sonus Pty Ltd and dated August 2014 unless otherwise agreed to by the Council, having consulted with the Environment Protection Authority. The warranted sound power levels shall be measured and reported in accordance with IEC61400-11, Ed.3.0: Wind turbines - Part 11: Acoustic noise measurements techniques.
9. Noise emitted by the selected wind turbine generators shall not include tones audible at the noise receivers ($\Delta L_{a,k} > 0$) when tested in accordance with the tonality test procedure defined in IEC 61400-11, Ed.3.0: Wind turbines - Part 11: Acoustic noise measurement techniques. Alternatively, the absence of tones shall be confirmed by results of post-construction acoustic testing performed at locality R40 as shown in the Environmental Noise Assessment report (Sonus Pty Ltd, August 2014). The results of any such post-construction tonality testing shall be submitted to the Council within 3 months of the proposed development commencing operation. The Council shall confirm its satisfaction with any post-construction tonality testing, having consulted with the Environment Protection Authority.
10. Sound power of each of the two transformers to be installed in the electric substation shall not exceed levels indicated in Table 5.2 of the Environmental Noise Assessment report (Sonus Pty Ltd, August 2014) unless otherwise agreed to by the Council, having consulted with the Environment Protection Authority.
11. An independent acoustical consultancy (other than the company that prepared the predictive acoustical report) shall monitor noise levels at seven localities at least: R13, R22, R28, R39, R45, R55 and R100 (as shown on the map in the Environmental Noise Assessment report prepared by Sonus Pty Ltd and dated August 2014) or such other localities agreed to by the Council, having consulted with the Environment Protection Authority. Monitoring shall be undertaken with reference to the Environment Protection Authority Wind Farms Environmental Noise Guidelines when all of the noise sources associated with the wind farm are in operating mode. The results of this monitoring shall be submitted to the Council within 3 months of the proposed development commencing operation. The Council shall confirm its satisfaction with the results of the post-construction noise monitoring, having consulted with the Environment Protection Authority.
12. If post-construction noise monitoring results reveal non-compliance with the noise criteria specified in the EPA's 2009 Wind Farms Environmental Noise Guidelines, the proponent shall implement measures to ensure compliance with such noise criteria.



¹ Exhibit 1R3 at p 1303.

Conditions as advised by Department of Planning, Transport and Infrastructure

13. A Traffic Management Plan for the proposal shall be submitted to the Council. The Council shall confirm its satisfaction with this additional information, having consulted with the Department of Planning, Transport and Infrastructure, prior to the granting of Development Approval or, in the case of a staged approval, prior to Development Approval for the first stage. This plan shall incorporate the following points:
- The final access route for areas A, B and C;
 - Details of all road upgrades required to facilitate the development;
 - Details of delivery times;
 - Details of proposed road closures and their management;
 - Details of permits required;
 - Details of all required road signs and advisory signs;
 - A route risk assessment for roads intended for transportation of over-dimensional/over mass wind farm components.
14. The transmission line shall be designed to minimise its impact on the arterial road network. Evidence of how this impact has been minimised via the consideration of alternative options shall be provided to the satisfaction of Council, having consulted with the Department of Planning, Transport and Infrastructure. All power poles adjacent arterial roads shall be constructed in accordance with Austroads Guide to Road Design Part 6: Roadside Design, Safety and Barriers.
15. All power lines over arterial roads shall provide a minimum vertical clearance of 7.5 metres.
16. All underground cabling (including boring) on or adjacent arterial roads shall be designed to minimise its impact on the arterial road network. All reinstatement works shall be undertaken to Department of Planning, Transport and Infrastructure standards and requirements at the applicant's cost.
17. All access points serving the temporary construction facilities (including but not limited to, workers compounds and batching facilities) located on, or requiring access to, arterial roads shall be located to the satisfaction of the Council, having consulted with Department of Planning, Transport and Infrastructure, to ensure road safety is maximised during the construction phase of the project. All temporary access points shall be decommissioned to Department of Planning, Transport and Infrastructure requirements at the applicant's cost.
18. All road works deemed to facilitate safe access shall be designed and constructed to comply with Austroads Guides and Australian Standards and to the satisfaction of the Council, having consulted with the Department of Planning, Transport and Infrastructure, with all costs (including, but no limited to, design, construction, project management and any changes to road drainage) to be borne by the applicant. Prior to the applicant undertaking any detailed design, the applicant shall contact Department of Planning, Transport and Infrastructure Traffic Operations, A/Project Liaison Engineer, Mrs Christina Canatselis on telephone (08) 8226 8262 or mobile



0401 120 490 (christina.canatselis@sa.gov.au) to discuss any technical issues regarding the required works.

19. Any modification to road side drainage as a result of a temporary access, or modifying an existing access on an arterial road shall be suitably designed to Department of Planning, Transport and Infrastructure standards in order to maximise road safety on the adjacent arterial road network.
20. The applicant shall notify the Commissioner of Highways by submitting a "Notification of Works Impacting Department of Planning, Transport and Infrastructure Roads" form at least five (5) working days before construction works begin. This form is available from the following internet address: <http://www.sa.gov.au/topics/transport-travel-and-motoring/transport-industry-services/road-construction-and-maintenance/getting-permission-to-carry-out-roadworks>
21. All vehicles shall enter and exit to/from arterial roads in a forward direction.
22. All car parking facilities shall be designed and constructed in accordance with AS/NZS 2890.1:2004 and 2890.6.2009.
23. All heavy vehicle manoeuvring areas shall be consistent with AS 2890.2.2002.

Conditions as required by the Minister for Water and the River Murray

24. During construction activities the subject land shall be managed in a manner as to prevent erosion and pollution of the subject site and the environment, including keeping the area in a tidy state and ensuring any waste materials are appropriately contained to ensure no pollutants (including excavation or fill material) enter the River Murray system.
25. Any fill material brought to development sites shall be clean and not contaminated by construction or demolition debris, industrial or chemical matter, or pest plant or pathogenic material.
26. Any excavation or fill material surplus to the requirements of the development shall be disposed of such that it will not:
 - a. be located within the floodplain of any watercourses;
 - b. adversely impact native vegetation;
 - c. impede the natural flow of any surface waters;
 - d. allow sediment to re-enter any water body;
 - e. facilitate the spread of pest plant and pathogenic material.
27. Wind turbines shall be positioned such that no portion of the structure, including blades, overhang into adjacent parcels of Crown Land.



[Signature]
DEPUTY REGISTRAR