

Wind Farm Living EDUCATING THE LAWYERS Series

Lesson 1: The Bald Hills Precedent

Apart from the obvious precedent set by a couple of Aussie blokes who took on a wind farm in court and won, lawyers now have a clear game plan to follow when representing their clients in a wind farm noise litigation case.

Below is a summary of the precedents established in this case. [The judgement can be found here](#)

1. The New Zealand Standards (NZS 1998 or 2010) are supposed to protect people from sleep disturbance.
2. The standards require technical and legal interpretation – they are not straight forward to use.
3. The standards do not provide means of determining whether a wind farm produces unreasonably annoying noise in certain weather conditions, or on a particular night.
4. The standards are not written to readily identify short periods of noise nuisance that may impact sleep.
5. Demonstration of permit compliance does not necessarily establish that noise from time to time does not cause a nuisance.
6. Ultimately, it is up to a court or tribunal to determine permit compliance, not acousticians, nor the Minister, nor the EPA, nor the Australian Energy Infrastructure Commissioner.
7. A wind farm can be compliant under its approval conditions and still produce noise nuisance.
8. To show compliance using the Standards, background testing is required at each home (sensitive location).
9. The methodology used for wind farm modelling (noise contour maps and turbine layout), cannot identify noise nuisance.
10. Specifically, the methodology used by wind farms to demonstrate post construction compliance cannot be the same as the methodology used by Marshall Day Acoustics at Bald Hills.
11. Averaging data over long periods masks intermittent noise nuisance.
12. Justice Richards preferred the methodology that was simple, readily applied and could investigate a complaint about wind farm noise on a particular night.
13. It is a matter of judgement if a rural area at night is deemed a high amenity area. Sounds associated with stock rearing, grazing and other farming activities are typical of the area during the day, but not at night.
14. Subjective evidence contained in diaries and formal complaints to the wind farm operator, local municipal council, Australian Energy Infrastructure Commissioner, and EPA is accepted as evidence by the court.
15. Sound proofing of residents through modifications is not a guarantee to stop noise nuisance inside the home.
16. There is not a binary choice to be made between the generation of clean energy by wind farms and a good night's sleep. Justice Richards determined that both should be possible.
17. Wind farms can be ordered by a court to reduce the operation of certain turbines.
18. Abating noise nuisance by reducing the operation of certain turbines does not prevent a wind farm from continuing to operate.