

Terms of Reference

Willatook Wind Farm Inquiry

Version: May 2022

The Willatook Wind Farm Inquiry is appointed to inquire into, and report on, the proposed Willatook Wind Farm Project (the project) and its environmental effects in accordance with these Terms of Reference.

The Inquiry is appointed pursuant to section 9(1) of the *Environment Effects Act 1978* (EE Act).

Name

1. The Inquiry is to be known as the 'Willatook Wind Farm Inquiry'¹.

Skills

2. The Inquiry members should have the following skills and experience:
 - a. biodiversity and ecology (particularly bats and avifauna);
 - b. land use planning and amenity (including in relation to landscape, noise, visual and social impacts); and
 - c. cumulative impacts.
3. The Inquiry may seek additional specialist expert advice, including legal advice or counsel if required to undertake its role.
4. The Inquiry will comprise an appointed Chair, a Deputy Chair and other members.

Purpose of the Inquiry

5. The Inquiry is appointed by the Minister for Planning under section 9(1) of the EE Act to hold an inquiry into and report on the environmental effects of the project. The Inquiry is to:
 - a. review and consider the environment effects statement (EES), submissions received in relation to the project and the predicted environmental effects;
 - b. consider and report on the potential environmental effects of the project, including their significance and acceptability, and in doing so have regard to the draft evaluation objectives in the EES scoping requirements and relevant policy and legislation;
 - c. identify any measures it considers necessary and effective to avoid, mitigate or manage the environmental effects of the project within acceptable limits, including any necessary project modifications; and
 - d. advise on how this relates to relevant conditions, controls and requirements that could form part of the necessary approvals/consent for the project.
6. The Inquiry is to produce a report of its findings and recommendations to the Minister for Planning to inform the Minister's assessment under the EE Act and in turn assist statutory decision making required for the project, including under the *Planning and Environment Act 1987*.

¹ The Inquiry members may also be appointed as a Panel under the *Planning and Environment Act 1987* (P&E Act) to consider submissions to the related planning permit applications for the Willatook Wind Farm Project, in which case a single report needs to be prepared with content meeting both the requirements of the EE Act and the P&E Act.

Background

Project outline

7. Willatook Wind Farm Pty Ltd proposes to construct a wind farm of up to 59 wind turbines with a maximum blade tip height of 250 metres above ground level and an indicative generation capacity of 350 megawatts. The project is located in Moyne Shire, about 22 kilometres north of Port Fairy, to the northeast of Orford township.
8. Proposed permanent ancillary infrastructure includes up to three permanent wind monitoring masts approximately 170 metres high, a substation, a battery energy storage system, operations and maintenance buildings and yard, underground cables, above ground power transmission lines and access tracks.
9. Temporary infrastructure for the construction period includes on-site concrete batching plants, an on-site quarry, cleared construction laydown areas, temporary construction compounds and facilities and site parking.
10. The Tarrone Terminal Station will connect the on-site substation to the 500 kilovolt Heywood-Moorabool transmission line.
11. The project will have an expected operational life of about 25 years.
12. The project's proponent is Willatook Wind Farm Pty Ltd, owned by Wind Prospect Pty Ltd, who is responsible for preparing technical studies, consulting with the public and stakeholders, and for preparing the EES and planning permit applications.

EES assessment process

13. Following referral from the proponent, the Minister for Planning determined on 27 December 2018 that an EES was required for the project under the EE Act and issued his decision with procedures and requirements for the preparation of the EES as specified in **Attachment 1**.
14. The EES was prepared by the proponent in response to the EES scoping requirements issued by the Minister for Planning in August 2019.
15. The EES will be placed on public exhibition for thirty (30) business days. This public comment process is in accordance with the procedures and requirements issued for this EES by the Minister for Planning. The proponent (Willatook Wind Farm Pty Ltd) is responsible for giving notice.
16. The EES will be placed on public exhibition together with the planning permit applications pursuant to the Moyne Planning Scheme and Glenelg Planning Scheme.

Commonwealth assessment process

17. Because of its potential impacts on matters of national environmental significance, the project was determined to be a controlled action for the purposes of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) in June 2019. The relevant controlling provisions under the EPBC Act relate to listed threatened species and communities (sections 18 and 18A).
18. Under the bilateral agreement between the Australian and Victorian Governments, the EES process is serving as the accredited assessment process for this project under the EPBC Act. The assessment of environmental effects to be made by the Minister for Planning at the conclusion of the EES process will be provided to the Commonwealth Minister for the Environment to inform the approval decision under the EPBC Act. To assist the Minister for Planning in making his assessment, the Inquiry should clearly identify its advice relevant to specific matters of national environmental significance that may be impacted by the project.

Planning approval process

19. Willatook Wind Farm Pty Ltd has prepared planning permit applications for the use and development of the wind energy facility (permit application PA2201620) and for the removal of some native vegetation associated with the oversized haulage route (P22065).

Other approvals

20. Under Victorian law, the project requires several other approvals and consents, as outlined in the EES, including but not limited to:
- a. an approved cultural heritage management plan for the wind farm under the *Aboriginal Heritage Act 2006* to manage works in areas of cultural heritage sensitivity;
 - b. a work plan and work authority for extractive industry under the *Mineral Resources (Sustainable Development) Act 1990*; and
 - c. approvals under the *Water Act 1989* for works on relevant waterways.

Process

Stage 1 – Submissions

21. Submissions on the EES are to be provided in writing on or before the close of submissions. Submissions will be collected by the office of Planning Panels Victoria (PPV) through the Engage Victoria platform. All submissions must state the name and address of the person making the submission. Submissions will be collected and managed in accordance with the *'Guide to Privacy at PPV'*.
22. Petition responses will be treated as a single submission and only the first names from a petition submission will be registered and contacted.
23. Pro-forma submitters will be registered and contacted individually if they provide their contact details. However, pro-forma submitters who want to be heard at the Hearing may be encouraged to present as a group, given their submissions raise the same issues.
24. All written submissions and other supporting documentation or evidence received through the course of the Inquiry process may be published online, unless the Inquiry specifically directs that the submission or other material, or part of it, is to remain confidential.
25. Electronic copies of each submission on the EES are to be provided to the proponent, Department of Environment, Land, Water and Planning (DELWP) (Impact Assessment), DELWP Renewables, Moyne Shire Council, Glenelg Shire Council, Eastern Maar Aboriginal Corporation and the Gunditj Mirring Traditional Owners Aboriginal Corporation.
26. PPV will retain any written submissions and other documentation provided to the Inquiry for a period of five years after the time of its appointment.

Stage 2 – Public Hearing

27. Prior to the commencement of the public hearing, the Inquiry must hold a Directions Hearing to make directions it considers necessary or appropriate as to the conduct, scope or scheduling of the public hearing.
28. The Inquiry must hold a public hearing and may make other such enquiries as are relevant to undertaking its role. The Inquiry may, at its discretion conduct the hearings using video conferencing or similar technology as necessary.
29. The Inquiry may inform itself in any way it sees fit, but must review and consider:
- a. the exhibited EES and planning permit applications;

- b. the views of the Eastern Maar Aboriginal Corporation and the Gunditj Mirring Traditional Owners Aboriginal Corporation (if known);
 - c. all registered submissions and evidence;
 - d. any information provided by the proponent and parties that responds to submissions or directions of the Inquiry; and
 - e. any other relevant information that is provided to, or obtained by, the Inquiry.
30. The Inquiry must conduct its process in accordance with the following principles:
- a. The public hearing will be conducted in an open, orderly and equitable manner, in accordance with the principles of natural justice.
 - b. The public hearing will be conducted with a minimum of formality and without legal representation being necessary for parties to be effective participants.
 - c. The Inquiry process is to be exploratory and constructive, with adversarial behaviour discouraged and with cross-examination / questioning regulated by the Inquiry.
31. The Inquiry may limit the time of parties appearing before it.
32. The Inquiry may direct that a submission or evidence is confidential in nature and the hearing be closed to the public for the purposes of receiving that submission or evidence.
33. The Inquiry may conduct a public hearing when there is a quorum of at least two of its members present or participating through electronic means, one of whom must be the Inquiry Chair or Deputy Chair.
34. If directed by the Inquiry, recording of the hearing must be undertaken by the proponent. If recorded, the audio recording will be provided to PPV as a weblink and would be made publicly available as soon as practicable after the conclusion of each day of the hearing, or otherwise as directed by the Inquiry.
35. Any other audio or video recording of the hearing by any other person or organisation may only occur with the prior consent of, and strictly in accordance with, the directions of the Inquiry.

Stage 3 – Report

36. The Inquiry must produce a written report for the Minister for Planning containing its:
- a. analysis and conclusions with respect to the environmental effects of the project and their significance and acceptability;
 - b. findings on whether acceptable environmental outcomes can be achieved, having regard to legislation, policy, best practice, and the principles and objectives of ecologically sustainable development;
 - c. recommendations and/or specific measures that it considers necessary and appropriate to prevent, mitigate or offset adverse environmental effects having regard to legislation, policy, best practice, and the principles and objectives of ecologically sustainable development;
 - d. recommendations on any feasible modifications to the design or management of the project that would offer beneficial outcomes, including any considered appropriate to prevent or mitigate significant adverse environmental effects;
 - e. recommendations for any appropriate conditions that may be lawfully imposed on any approval for the project, or changes that should be made to the planning permit in order to ensure that the environmental effects of the project are acceptable having regard to legislation, policy, best practice, and the principles and objectives of ecologically sustainable development;
 - f. recommendations as to the structure and content of the proposed environmental management framework, including with respect to monitoring of environmental effects, contingency plans and site rehabilitation;
 - g. recommendations with respect to the structure and content of the planning permit; and

- h. specific findings and recommendations about the predicted impacts on matters of national environmental significance and their acceptability, including appropriate controls and environmental management.

37. The report should include:

- a. information and analysis in support of the Inquiry's findings and recommendations;
- b. a list of all recommendations, including cross-references to relevant discussions in the report;
- c. a description of the public hearing conducted by the Inquiry, and a list of those persons consulted with or heard;
- d. a list of all submitters in response to the exhibited EES; and
- e. a list of the documents tabled during the proceedings.

Timing

- 38. The Inquiry should hold a directions hearing no later than 20 business days from the final date of the exhibition period.
- 39. The Inquiry should commence the hearing no later than 50 business days from the final date of exhibition period.
- 40. The Inquiry must submit its report in writing to the Minister for Planning within 40 business days from its last day of its proceedings.
- 41. The DELWP's Impact Assessment Unit must liaise with PPV to agree on the Directions Hearing and Hearing dates, which are to be included on all public notices.

Minister's assessment


- 42. The Minister for Planning will make their assessment of the environmental effects of the project after considering the Inquiry's report as well as the EES, submissions and any other relevant matters.
- 43. PPV will notify submitters of the release of the Minister for Planning's assessment and Inquiry report.

Fee

- 44. The fees for the members of the Inquiry will be set at the current rate for a panel appointed under part 8 of the P&E Act.
- 45. All costs of the Inquiry, including the costs of obtaining any expert advice, technical administration and legal support, venue hire, online hearing platform, accommodation, recording proceedings and other costs must be met by the proponent.

Miscellaneous

46. The Inquiry may apply to the Minister for Planning to vary these terms of reference in writing, at any time prior to submission of its report.
47. PPV is to provide any necessary administrative support to the Inquiry. In addition, the Proponent is to provide any necessary administrative or technical support to the Inquiry in relation to the conduct of the Hearing (if required).



**Richard Wynne MP
Minister for Planning**

Date:

24/6/22

The following information does not form part the Terms of Reference.

Project Management

1. For matters regarding the inquiry process, please contact Georgia Thomas of Planning Panels Victoria, by phone (03) 8624 5717 or email Planning.Panels@delwp.vic.gov.au.
2. For matters regarding the EES process please contact the Impact Assessment Unit in DELWP by phone (03) 8508 2276 or email environment.assessment@delwp.vic.gov.au.

Terms of Reference

Attachment 1

Procedures and requirements under section 8B(5) of the *Environment Effects Act 1978*

The procedures and requirements applying to the EES process, in accordance with both section 8B(5) and the *Ministerial guidelines for assessment of environmental effects under the Environment Effects Act 1978* (Ministerial Guidelines), are as follows:

- (i) The EES is to document the investigation and avoidance of potential environmental effects of the Willatook Wind Farm (the proposal), including for any relevant alternatives, as well as associated avoidance, mitigation and management measures. In particular the EES should address:
 - a. Effects on biodiversity and ecological values within and near the site including native vegetation, listed communities and species (flora and fauna) under the *Flora and Fauna Guarantee Act 1988* and *Environment Protection and Biodiversity Conservation Act 1999*;
 - b. Effects on water environments and related beneficial uses, including as a result of changes to stream flows, discharge of sediment and acid formation from disturbance of wetlands;
 - c. Effects on the geoheritage values within the proposal area, including for the potential on-site quarry;
 - d. Effects on the local visual amenity values, including for non-neighbouring landholders;
 - e. Effects on the socio-economic environment, at local and regional scales, including increased traffic movement and indirect effects of construction on the capacity of local community infrastructure;
 - f. Effects from a cumulative perspective, including on threatened flora and fauna, social and amenity values, with particular consideration of the currently operating and already approved wind farm projects in the region.
- (ii) The matters to be investigated and documented in the EES will be set out in detail in scoping requirements prepared by the Department of Environment, Land, Water and Planning (the department). Draft scoping requirements will be exhibited for 15 business days for public comment, before being finalised and then issued by the Minister for Planning.
- (iii) The level of detail of investigation for the EES studies should be consistent with the scoping requirements issued for this proposal and be adequate to inform an assessment of the potential environmental effects (and their acceptability) of the proposal and any relevant alternatives, in the context of the Ministerial Guidelines.
- (iv) The proponent is to prepare and submit to the department a draft EES study program to inform the preparation of scoping requirements.
- (v) The department is to convene an inter-agency technical reference group (TRG) to advise the proponent and the department, as appropriate, on scoping and adequacy of the EES studies during the preparation of the EES, as well as coordination with statutory approval processes.
- (vi) The proponent is to prepare and submit to the department its proposed EES consultation plan for engaging with the public and stakeholders during the preparation of the EES. Once completed to the satisfaction of the department, the EES consultation plan is to be implemented by the proponent, having regard to advice from the department and the TRG.
- (vii) The proponent is also to prepare and submit to the department its proposed schedule for the studies, and preparation and exhibition of the EES, following confirmation of the draft scoping requirements. This is to enable effective management of the EES process on the basis of an

agreed alignment of the proponent's and department's schedules, including for TRG review of technical investigations and the EES documentation.

- (viii) The proponent is to apply appropriate peer review and quality management procedures to enable the completion of EES studies and documentation to an acceptable standard.
- (ix) The EES is to be exhibited for a period of 30 business days for public comment, unless the exhibition period spans the Christmas-New Year period, in which case 40 business days will apply.
- (x) An inquiry will be appointed under the *Environment Effects Act 1978* to consider and report on the environmental effects of the proposal through a public hearing.

Notification

The following parties (proponent and relevant decision-makers) are to be notified of this decision in accordance with sections 8A and 8B(4)(a)(i) of the *Environment Effects Act 1978*, as appropriate:

- Willatook Wind Farm Pty Ltd (proponent)
- Secretary of the Department of Environment, Land, Water and Planning
- Moyne Shire Council
- CEO of the Glenelg Hopkins Catchment Management Authority
- CEO of the Environment Protection Authority
- Executive Director of Aboriginal Victoria
- Executive Director of Heritage Victoria
- Commonwealth Minister for the Environment and Energy