Environmental Law E-newsletter

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Incorporating domestic wind turbines into residential development

The domestic solar panel industry has proven to be one of the fastest growing domestic industries in recent years for many reasons including:

- the trend towards ecologically sustainable living and development;
- increasing electricity costs; and
- the ability of households to access government rebates.

However, one key factor contributing to the growth of the industry has been the absence of regulatory planning controls applicable to solar panel installation. Indeed, domestic solar panels are generally exempt from the requirement for planning and building permits in most areas.

In suitably windy locations, wind turbines are an attractive alternative to solar panel systems, with similar output and a lower capital cost. However, whilst the domestic wind turbine industry is also gaining momentum, the meaning of 'development' in local planning schemes and the potential amenity impacts associated with domestic wind turbines, means that this industry will not escape planning regulation in the same way that the solar panel industry has.

The question is therefore, is Western Australia's local and state planning framework equipped to respond to this growth industry? In other words, is local and state planning law and policy ready to embrace the benefits to be gained by installation of domestic wind turbines, as well as protect residential areas from unacceptable amenity (noise and aesthetic amenity) impact?

Ecologically sustainable development is now recognised as an important objective of orderly and proper town planning in Western Australia. This was confirmed in the State Administrative Tribunal matter *APP Corporation Pty Ltd v City of Perth* [2008] WASAT 291 which concerned a proposal by Stockland Development Ltd to install and operate three wind turbines on the roof of a commercial building in the City of Perth, the first wind turbines in an urban location in Western Australia. Whilst the turbines were commercial and not domestic, the greatest impacts of the turbines were to be experienced by residential apartments nearby to the proposed development. Following a review of the merits of the proposal, the Tribunal concluded that the amenity impacts of the proposal were acceptable. However, the Tribunal noted that the beneficial environmental considerations would not override other objectives and matters for consideration in the planning framework, including impacts on amenity.

Because the domestic wind turbine industry has only recently gained momentum, local authorities in WA and indeed the State government are yet to establish any planning guidelines for them. Domestic wind turbines are not defined in or indicated as a use in the use class tables of local planning schemes. Whereas commonsense would suggest that wind turbines would be classified as development that is incidental to residential development, or a structure ancillary to residential use, in cases where electricity is sold back to the grid, the classification of that domestic wind turbine may fall into the grey area of domestic *and* commercial development. This is an area that is likely to require guidance from local authorities and the State.

Currently, domestic wind turbines are assessed by local authorities on a case by case basis, applying non-specific local and state regulation and policy to decision-making such as the *Environmental Protection (Noise) Regulations 1997*, local planning scheme height regulation and local planning policy maximum height provisions. Despite huge advances in the industry in terms of minimising noise outputs and improving the appearance of domestic wind turbines, applicants are required to lodge detailed acoustic reports and visual assessments with development applications to alleviate affected owners' concerns, making the option to install domestic wind turbines less attractive.

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Conclusion

As households in urban areas around Western Australia are looking for ways to reduce electricity costs and carbon footprints, interest in installation of domestic wind turbines is rapidly increasing.

Residential developers should consider incorporating provisions and guidelines specific to domestic wind turbines into planning instrument text, to ensure that an appropriate balance is struck between the benefits to be gained by households by installing domestic wind turbines and the potential noise and other aesthetic impacts that domestic wind turbines can potentially have on a locality.

If you have any queries in relation to incorporating domestic wind turbines into the residential development planning framework for a locality, or any other aspect of this advice, please contact partner Paul McQueen or solicitor Clare Gleeson.

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