

Nuisance vs Compliance

Permitting Nuisance

Noise compliance enables noise nuisance.

A wind farm has a permit to emit noise to a certain level, but it does NOT have a permit to cause nuisance.

Achieving noise compliance with a permit does not mean there is no nuisance.

On the contrary, the criteria for noise compliance enable wind farms to cause noise nuisance.

In Victoria, noise must not exceed a 40dB LA90 regression line derived from data averaged over a minimum of 14 days.

However, operating at this compliant level does not prevent noise nuisance because for 90% of the time noise is above 40dB.

Intermittent short periods of noise that cause sleep disturbance are not identified in an LA90 calculation.

Noise compliance under a permit allows noise nuisance to occur because:

- 90% of the noise above 40dB is not identified,
- the noise data is averaged over many days,
- the compliance regression line is arbitrarily drawn by the wind farm's acoustician.

Wind farms apply for permits knowing they will cause noise nuisance.

Wind farms know the provisions in the permit cause noise nuisance.

It's a business decision to obtain a permit and worry about the noise nuisance later.

Although noise nuisance is not considered under the Planning Act, it is illegal under common law.

Sleep disturbance occurs because a nuisance exists.

It is not the neighbour's fault they can't sleep at night. Common law places the liability on the wind farm business to stop the nuisance.

The criterion for noise compliance in a wind farm permit, an LA90, allows nuisance to occur.

If the wind company wants to operate a business knowing that an LA90 provision causes nuisance, then it's their problem, not the neighbours.

To operate legally under common law, they will need to modify their operations to prevent the nuisance.

The wind farm's defence to nuisance is to talk compliance.

That's because the onus is on:

- the neighbours to prove non-compliance.
- the wind company to prove a nuisance doesn't exist.

Wind farms never use the word "nuisance".

Neighbours complain about noise nuisance and the wind farm talks about compliance.

When residents complain about the noise causing sleep disturbance, they respond with the answer ...

"Our wind farm is compliant with the permit limits."

They never say ...

"Our wind farm does not cause a nuisance".

By turning the nuisance complaint into a compliance complaint, they put the onus back on the neighbours to justify why they can't sleep at night.

Neighbours get tricked into chasing up information to prove the wind farm is non-compliant when all the time the wind farm is liable to prevent the nuisance.

Bald Hills is the Law for wind turbine noise nuisance.

The Bald Hills Judge [\[Uren 2022\]](#) determined:

Nuisance

Has noise from wind turbines on the wind farm operated by Bald Hills caused a substantial interference with the plaintiffs' use and enjoyment of their land?

Yes. Noise from the turbines on the wind farm has caused a substantial interference with both plaintiffs' enjoyment of their land — specifically, their ability to sleep undisturbed at night, in their own beds in their own homes. The interference has been intermittent and, in Mr Zakula's case, is ongoing. While both Mr Uren and Mr Zakula have been annoyed by the sound of the turbines during the day, it has not substantially interfered with their enjoyment of their properties. (13(1))

It is not about compliance; it is about the nuisance.

Noise nuisance occurs because the business causes a substantial interference with the enjoyment of someone's land.

The Bald Hills Judge determined that the plaintiff's diaries and history of complaints demonstrated a substantial interference with the enjoyment of their land.

The onus was on the Bald Hills Wind Farm to disprove the nuisance. They could not.

If so, what is the relevance of compliance with the noise limits in the permit?

Demonstrated compliance with the NZ Standard and condition 19 of the permit would not necessarily have established that the noise that from time to time disturbed Mr Uren's and Mr Zakula's sleep was reasonable. Significantly, the NZ Standard sets a limit on the extent to which wind turbine noise may increase continuous underlying noise levels, assessed over a long period. It is not directed to intermittent loud noise from wind turbines, and does not provide a way of assessing whether a wind farm produces unreasonably annoying noise in certain weather conditions, or on a particular night. (13(50)).

What is the social and public interest value in operating the turbines to generate renewable energy?

The generation of renewable energy by the wind farm is a socially valuable activity, and it is in the public interest for it to continue. However, there is not a binary choice to be made between the generation of clean energy by the wind farm, and a good night's sleep for its neighbours. It should be possible to achieve both. (13(6)).

Buyer Beware

Wind farms will always cause a nuisance.

The Bald Hills Boys successfully proved this reality.

The very nature of mechanical turbines on rural land operating 24/7-52 weeks a year will always cause a noise nuisance.

It's a business decision companies make. They build or buy their wind farm under a 40dB LA90 criteria, knowing this statistically processed calculation causes noise nuisance.

If they want to generate renewable energy, ..fine...
.... Just do it without causing a nuisance.

The Power of One

If the wind farm can't operate its business without causing a nuisance, then the precedent is to abate the operations of the wind farm.

Injunction

..... should an injunction be granted restraining Bald Hills from continuing the nuisance?

Yes. An injunction to abate the nuisance is the primary remedy sought by Mr Zakula, and an injunction will be granted. I do not consider that damages would be an adequate remedy, or that I should exercise my discretion to award damages instead of an injunction for any other reason. (13 (13))

If so, in what terms?

I will grant an injunction restraining Bald Hills from continuing to permit noise from wind turbines on the wind farm to cause a nuisance at Mr Zakula's house at night, and requiring it to take necessary measures to abate the nuisance. The injunction will be stayed for three months. (13(14))