

Coppabella Wind Farm

# Planning Agreement

---

Between

**Hilltops Council**

and

**Coppabella Wind Farm Pty Ltd**

# Contents

## Table of contents

---

<b>1</b>	<b>Definitions and interpretation</b>	<b>2</b>
	1.1 Definitions.....	2
	1.2 Interpretation .....	5
<b>2</b>	<b>Planning Agreement</b>	<b>5</b>
<b>3</b>	<b>Application of this agreement</b>	<b>5</b>
<b>4</b>	<b>Operation of this Agreement</b>	<b>6</b>
<b>5</b>	<b>Payment of the Monetary Contribution</b>	<b>6</b>
	5.1 The Monetary Contribution.....	6
	5.2 General .....	6
<b>6</b>	<b>Community Enhancement Fund</b>	<b>7</b>
	6.1 Establishment of the Community Enhancement Fund .....	7
	6.2 The Committee .....	7
	6.3 Funding Applications.....	7
	6.4 Allocation of Funds.....	8
	6.5 Public Recognition.....	8
	6.6 Auditing.....	9
	6.7 Costs.....	9
<b>7</b>	<b>Application of sections 7.11, 7.12 and 7.24 of the EP&amp;A Act 1979 to the Development</b>	<b>9</b>
<b>8</b>	<b>Registration</b>	<b>9</b>
<b>9</b>	<b>Disposal by the Company of its interest in the Development</b>	<b>10</b>
<b>10</b>	<b>Security</b>	<b>10</b>
<b>11</b>	<b>No fetter</b>	<b>10</b>
<b>12</b>	<b>Dispute Resolution</b>	<b>11</b>
	12.1 Notice of Dispute.....	11
	12.2 Response to Notice.....	11
	12.3 Negotiation .....	11
	12.4 Further Notice if not Settled.....	11
	12.5 Mediation.....	11
	12.6 Litigation.....	12
	12.7 Exchange of information .....	12
	12.8 Continue to Perform obligations .....	12
<b>13</b>	<b>GST</b>	<b>13</b>
	13.1 Interpretation .....	13
	13.2 Reimbursements .....	13
	13.3 Additional amount of GST payable .....	13
	13.4 Variation.....	13

<b>14</b>	<b>General</b>	<b>14</b>
14.1	Costs.....	14
14.2	Notices.....	14
14.3	Use of Explanatory Note.....	14
14.4	Waiver.....	14
14.5	Governing Law.....	14
14.6	Prior Agreements Superseded .....	15
14.7	Modification of Agreement .....	15
14.8	Representations and Warranties .....	15
14.9	Severability.....	15
14.10	Confidentiality, Media Releases and Enquiries .....	15
14.11	Counterparts.....	15
14.12	No Fiduciary Relationship .....	16
14.13	Further Acts.....	16
14.14	Enforcement .....	16
	<b>Schedule 1: Notice Details</b>	<b>19</b>
	<b>Schedule 2: The Coppabella Land</b>	<b>20</b>
	<b>Schedule 3: Map of Development</b>	<b>21</b>
	<b>Schedule 4: Explanatory Note</b>	<b>22</b>

# Planning Agreement

---

## Date

<b>Between the parties</b>	
	<b>Hilltops Council</b> ABN 33 984 256 429 of 189 Boorowa Street, Young NSW 2594 <b>(Council)</b>
	<b>Coppabella Wind Farm Pty Ltd</b> ABN 72 141 003 161 of Suite 2, Level 25, Tower 1, 100 Barangaroo Avenue, Barangaroo NSW 2000 <b>(Company)</b>
<b>Recitals</b>	<ol style="list-style-type: none"><li>1 The Company is developing the Coppabella Wind Farm in accordance with the Coppabella Wind Farm Development Consent No SSD 6698 (as modified from time to time).</li><li>2 The Company has agreed, in accordance with condition 18 of Schedule 2 of the Coppabella Wind Farm Development Consent, to pay Monetary Contributions in relation to the Coppabella Wind Farm to the Council's Community Enhancement Fund on the terms of this Agreement.</li><li>3 The Council agrees to be the custodian of the Monetary Contributions paid by the Company to the Community Enhancement Fund and to distribute and expend the funds in the Community Enhancement Fund in accordance with this Agreement.</li></ol>

# 1 Definitions and interpretation

---

## 1.1 Definitions

The meanings of the terms used in this Agreement are set out below.

<b>Term</b>	<b>Meaning</b>
<b>Approved Local Projects</b>	each Local Project for whatever purpose (as determined by the Council on recommendation by the Committee) approved for funding from the Community Enhancement Fund in accordance with this Agreement.
<b>Auditor</b>	an appropriately qualified auditor appointed by the Council under clause 6.6 of this Agreement.
<b>CPI</b>	Consumer Price Index (All Groups) for Sydney as published by the Australian Statistician.
<b>Committee</b>	the committee established to administer the Community Enhancement Fund under clause 6.2 of this Agreement, in accordance with section 355 of the <i>Local Government Act 1993</i> (NSW).
<b>Committee Charter</b>	the Council's s.355 Committee Charter, as modified from time to time, published on the Council's website.
<b>Community Enhancement Fund</b>	the fund to be established by the Council and administered in accordance with this Agreement into which the Monetary Contributions will be paid.
<b>Contribution Year</b>	every 12 month period from 1 July each year.
<b>Construction Certificate</b>	has the same meaning as it has in the EP&A Act 1979.
<b>Costs</b>	includes costs, charges and expenses, including those incurred in connection with advisers.

<b>Term</b>	<b>Meaning</b>
<b>Coppabella Wind Farm Development Application</b>	the application no. MP 08 0246 lodged with the Minister for Planning under the EP&A Act 1979 on 02 December 2008).
<b>Coppabella Wind Farm Development Consent</b>	the development consent SSD 6698 granted by the Minister for Planning pursuant to the Coppabella Wind Farm Development Application on 30 March 2016, as modified from time to time.
<b>Coppabella Land</b>	all lands that are located within the Hilltops LGA associated with the Coppabella Wind Farm as specified in Schedule 2.
<b>Coppabella Wind Farm</b>	the construction and operation of a wind energy facility to be known as the Coppabella Wind Farm, on the Coppabella Land consisting of up to 75 wind turbines across two local government areas (Hilltops and Yass Valley) as shown on the map in Schedule 3 and associated infrastructure as authorised by the Coppabella Wind Farm Development Consent. Also referred to in this Agreement as the “ <b>Development</b> ”.
<b>Decommissioning</b>	has the same meaning as it has in the Coppabella Wind Farm Development Consent, being ‘the deconstruction and removal of wind turbines and any associated above ground ancillary infrastructure’.
<b>EP&amp;A Act 1979</b>	the <i>Environmental Planning &amp; Assessment Act 1979</i> (NSW) as amended from time to time.
<b>EP&amp;A Reg 2000</b>	the <i>Environmental Planning &amp; Assessment Regulation 2000</i> (NSW) as amended from time to time.
<b>First Contribution Payment Date</b>	the date the first annual instalment of the Monetary Contribution is paid under clause 5.1 of this Agreement.
<b>Index Number</b>	the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

<b>Term</b>	<b>Meaning</b>
<b>Local Education Assistance</b>	assistance to local education programs and organisations within the Hilltops LGA as approved by the Council.
<b>LGA</b>	the Hilltops Local Government Area.
<b>Local Projects</b>	any projects proposed to be carried out within the LGA which are aimed at: <ol style="list-style-type: none"> <li>1 enhancing any aspect of the local environment including, but not limited to, ameliorating any impacts from the Coppabella Wind Farm; or</li> <li>2 providing any community service or facility or benefit; or</li> <li>3 Local Education Assistance.</li> </ol>
<b>Mediator</b>	a person appointed as mediator under clause 12.5 of this Agreement.
<b>Monetary Contribution</b>	the amount of \$2,500 per annum per Operating Turbine (inclusive of GST, if GST applies) at the Coppabella Wind Farm within the Hilltops Council LGA as adjusted in accordance with clause 5.1(e) of this Agreement.
<b>Operation</b>	has the same meaning as it has in the Coppabella Wind Farm Development Consent, being 'the carrying out of the approved purpose of the development upon completion of construction, but does not include commissioning, trials of equipment or use of temporary facilities.' For the sake of clarity, the approved purpose of the development upon completion of construction is to generate electricity across the Coppabella Wind Farm.
<b>Operating Turbine</b>	any wind turbine installed on the Coppabella Land over the operational life of the Coppabella Wind Farm within the Hilltops Council LGA, commencing on the date of Operation and ceasing upon the Decommissioning of the Coppabella Wind Farm.
<b>Strategic Fund</b>	an allocation of the Monetary Contribution to an Approved Local Project where money is held by Council and dedicated to a large or multi-year funding commitment in accordance with clause 6.4(f) of this Agreement.

## 1.2 Interpretation

- (a) Headings and tables of contents are for convenience only and will be ignored in the interpretation of this Agreement.
- (b) References to a party include the party's executors, successors and permitted assigns of that party.
- (c) Words importing the singular include the plural and words importing the plural include the singular.
- (d) Words importing a person include a corporation, firm or body corporate.
- (e) Nothing contained in this Agreement will be deemed or construed as creating the relationship of partnership.
- (f) References to a month mean a calendar month and a reference to a year means a calendar year.
- (g) References to any document include any permitted amendment, supplement to or replacement or novation of the document.
- (h) References to any legislation or to any section or provision of any legislation includes any:
  - (1) statutory modification or re-enactment of or any statutory provision substituted for that legislation, section or provision; or
  - (2) ordinances, by-laws, regulations and other statutory provision substituted for that legislation, section or provision.
- (i) Other grammatical forms of defined words or expressions have corresponding meanings.
- (j) 'Including' and similar expressions are not words of limitation.
- (k) No provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Deed or that provision.
- (a) a reference to "currency", "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency.

## 2 Planning Agreement

---

This Agreement is a planning agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the EP&A Act 1979.

## 3 Application of this agreement

---

This Agreement applies to the Coppabella Wind Farm Development Consent and evidences the Company's compliance with Schedule 2 Condition 18 of the Coppabella Wind Farm Development Consent.



## 4 Operation of this Agreement

---

This Agreement will not operate or bind the parties unless and until the Company obtains a Construction Certificate.

## 5 Payment of the Monetary Contribution

---

### 5.1 The Monetary Contribution

- (a) The Company must pay to the Council the Monetary Contribution for each wind turbine which was an Operating Turbine at any time during the Contribution Year.
- (b) The Monetary Contribution is payable in arrears within 14 days from the last day of the preceding Contribution Year (i.e. the annual payment must be made by 15 July).
- (c) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (d) The Monetary Contribution will be taken to have been made when the Council receives the full, cleared amount of the contribution by bank cheque or by electronic funds transfer to the Council's bank account.
- (e) The amount of the Monetary Contribution will be reviewed and adjusted on each anniversary of the First Contribution Payment Date in accordance with the following formula:

$$MC = \frac{A \times B}{C}$$

Where:

MC = the Monetary Contribution payable for the next Contribution Year;

A = the Monetary Contribution payable during the Contribution Year just ended;

B = the CPI last published before the end of the Contribution Year just ended; and

C = the CPI last published before the commencement of the Contribution Year just ended.

- (f) The monetary contribution is a taxable supply for GST in accordance with Clause 13 of this Agreement.

### 5.2 General

- (a) The Monetary Contribution paid in accordance with this Agreement will have the public purpose of facilitating Approved Local Projects.
- (b) The Company must pay interest on any overdue part or whole of the Monetary Contribution payable:
  - (1) from the date on which the overdue part or whole of the Monetary Contribution is due for payment under this Agreement;
  - (2) until the date on which the overdue part or whole Monetary Contribution is paid,

at the bank bill swap interest rate within Australia that is published by the Australian Financial Markets Association, during the relevant period when the relevant Monetary Contribution is overdue.

## 6 Community Enhancement Fund

---

### 6.1 Establishment of the Community Enhancement Fund

- (a) The Council must hold in trust and apply all Monetary Contributions paid by the Company under this Agreement in accordance with clause 5.2(a) and s 7 and maintain proper accounting registers and records which are compliant with applicable auditing standards imposed by the Auditor appointed under clause 6.7.
- (b) The Council must invest all Monetary Contributions paid by the Company under this Agreement in an interest-bearing account held in the name of the Council for the purpose of the Community Enhancement Fund in accordance with section 625 of the *Local Government Act 1993* (NSW).

### 6.2 The Committee

- (a) The Council must establish a committee for the Community Enhancement Fund (**Committee**) on or before the First Contribution Payment Date.
- (b) The Committee will comprise:
  - (1) the Mayor or Councillor Delegate;
  - (2) the General Manager or delegate of the Council;
  - (3) up to 2 community representatives selected by the Council from community nominations who do not own any of the Coppabella Land or have any financial interest in the Company; and
  - (4) a representative nominated by the Company.
- (c) The functions of the Committee established by the Council are to include:
  - (1) determining the form in which applications for funding for Local Projects from the Community Enhancement Fund are to be made;
  - (2) making recommendations to the Council as to which applications for funding should be funded from the Community Enhancement Fund, as required by clause 6.4(a).
- (d) The Committee must exercise its functions in accordance with the Committee Charter.

### 6.3 Funding Applications

- (a) During:
  - (1) November to January in each year in which there are funds in the Community Enhancement Fund; or
  - (2) in any other period determined by the Committee,the Council must publicly advertise the availability of funds in the Community Enhancement Fund and call for applications to be made to the Committee, in the form required by the Committee, from members of the community for funding for Local Projects (**Funding Applications**).

- (b) Where appropriate, such as when funds are being pooled for a Strategic Fund, the Committee may determine not to call for funding applications in a particular year.
- (c) A call for applications under this clause 6.3 may be advertised by the Council in any of the following ways:
  - (1) on a website maintained by the Council;
  - (2) in the Council's Valley Views newsletter (or any periodic Council publication which replaces the Valley Views newsletter);
  - (3) in a local newspaper; or
  - (4) by any other appropriate communication mechanisms determined by the Council.
- (d) Any person may make a Funding Application to the Committee for a Local Project.

## 6.4 Allocation of Funds

- (a) The Committee must make recommendations to the Council as to which of the Funding Applications should be funded from the Community Enhancement Fund.
- (b) When making recommendations, the Committee must give preference to applications for Local Projects that are located within 20 km of the Coppabella Land.
- (c) Should no suitable Local Projects within 20 km of the Coppabella Land be identified during any funding round, applications for other Local Projects may be recommended for funding by the Committee.
- (d) The Council must:
  - (1) consider the funding recommendations of the Committee; and
  - (2) decide which Local Projects will be funded from the Community Enhancement Fund taking into account the recommendations of the Committee.
- (e) The Council must disburse funds held in the Community Enhancement Fund established under this Agreement only for the purpose of funding Local Projects approved for funding (**Approved Local Projects**).
- (f) The Council may, progressively or otherwise, pool funds into a Strategic Fund in order to fund Approved Local Projects.

## 6.5 Public Recognition

- (a) The Council must publicly and positively acknowledge:
  - (1) the payment of the Monetary Contribution by the Company; and
  - (2) the Company's role in funding any Approved Local Projects via the Community Enhancement Fund.
- (b) The form of public acknowledgment required by clause 6.5(a) is to be agreed by the Council and the Company (acting reasonably) but may include:
  - (1) the prominent inclusion of the Company's logo in any advertisement for Funding Applications or an announcement made in relation to the Approved Local Projects and funding determinations. All such material must be approved by the Company prior to distribution; and

- (2) where appropriate for particular Approved Local Projects, the Company may erect a permanent sign recognising that the Approved Local Project was funded by the Company via the Community Enhancement Fund.

## **6.6 Auditing**

- (a) During each year in which there are funds in the Community Enhancement Fund (and if appropriate the Strategic Fund), the Council must appoint an Auditor to reconcile:
  - (1) the Monetary Contribution paid by the Company under clause 5;
  - (2) any payments made by the Council in accordance with clause 6.4;
  - (3) any money that is withheld from annual disbursement for the purpose of building a Strategic Fund to apply towards a specific Approved Local Project;and identify any corrective payments required.
- (b) The Company must make any corrective payments identified by the Auditor as being necessary to reconcile the Community Enhancement Fund.
- (c) The costs of the Auditor will be paid out of the Community Enhancement Fund.

## **6.7 Costs**

The Costs reasonably and properly incurred by the Council in administering the Community Enhancement Fund shall be paid to the Council out of the Community Enhancement Fund on an as-needed basis up to \$5,000 per annum (inclusive of GST, if GST applies), indexed by CPI annually on 1 July until the last Operating Turbine is Decommissioned.

## **7 Application of sections 7.11, 7.12 and 7.24 of the EP&A Act 1979 to the Development**

---

- (a) This Agreement does not exclude the Coppabella Wind Farm from the application of sections 7.11 and 7.12 of the EP&A Act 1979. [
- (b) This Agreement does not exclude the Coppabella Wind Farm from the application of section 7.24 of the EP&A Act 1979.

## **8 No Registration**

---

The parties agree that this Agreement will not be registered on the Coppabella Land pursuant to section 7.6 of the EP&A Act 1979.

## 9 Disposal by the Company of its interest in the Development

---

- (a) The Company must not sell, transfer, assign, novate or otherwise dispose of its interest in the Coppabella Land to any person or transfer, assign or novate its rights or obligations under this Agreement unless:
  - (1) the person to whom the Company's interest in the Coppabella Land or rights under this Agreement are transferred agrees to be bound by this Agreement at no cost to the Council;
  - (2) the Council is satisfied that the person to whom the Company's interest in the Coppabella Land or rights are to be transferred is able to perform the obligations under this Agreement, based on such reasonable evidence as the Council requires to be provided;
  - (3) the Company is not in breach of this Agreement; and
  - (4) the Council otherwise consents to the transfer.
- (b) Any purported dealing in breach of this clause is of no effect.

## 10 Security

---

- (a) No later than 90 business days after this Agreement comes into operation, the Company must provide a cash bond (which must be held in trust on behalf of both parties) to the Council to the value of \$178,750.00, as adjusted to reflect the change in the CPI between September 2019 and the date the cash bond is provided.
- (b) If the Company does not comply with any of its obligations under this Agreement, the Council may, after giving 14 days' notice;
  - (1) remedy any default at the expense of the Company; and
  - (2) draw down on the security amount without notice to the Company to reimburse the Council for the costs incurred in remedying the Company's default, including to meet the costs of any associated liability, loss, costs, charges or expenses directly or indirectly incurred by the Council because of the failure of the Company to fulfil its obligations under this Agreement.
- (c) The Council will return the unused part of the cash bond to the Company 30 days after the last Monetary Contribution payable under this Agreement is received.
- (d) If the Council calls on the cash bond in accordance with this Agreement, the Council may, by notice in writing to the Company, require the Company to provide a further cash bond in an amount that, when added to any unused portion of any existing cash bond does not exceed the amount of the cash bond the Council is entitled to hold under this clause 10.

## 11 No fetter

---

Nothing in this Agreement shall be construed as requiring the Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing

shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

## 12 Dispute Resolution

---

### 12.1 Notice of Dispute

If a party claims that a dispute has arisen under this Agreement (**Claimant**), it must give written notice to the other party (**Respondent**) stating the matters in dispute and designating as its representative a person to negotiate the dispute (**Claim Notice**).

### 12.2 Response to Notice

Within 20 business days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

### 12.3 Negotiation

The nominated representatives must:

- (a) meet to discuss the matter in good faith within 10 business days after service by the Respondent of notice of its representative; and
- (b) use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

### 12.4 Further Notice if not Settled

If the dispute is not resolved within 15 business days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Dispute Notice**).

### 12.5 Mediation

A dispute shall be mediated if it is the subject of a Dispute Notice, in which case:

- (a) the parties must agree the terms of reference of the mediation within 5 business days of the receipt of the Dispute Notice. The terms must include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;
- (b) the appointment of a Mediator will be agreed between the parties, or failing agreement within 5 business days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply to appoint a mediator;
- (c) the Mediator appointed pursuant to this clause 12.5 must:
  - (1) have reasonable qualifications and practical experience in the area of the dispute; and
  - (2) have no interest or duty which conflicts or may conflict with his or her function as mediator and disclose any such interest or duty before his or her appointment;

- (d) the Mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of duties;
- (e) the parties must within 5 business days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (f) the parties agree to be bound by any mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
- (g) in relation to costs and expenses:
  - (1) each party will bear their own professional and expert costs incurred in connection with the mediation;
  - (2) the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

## **12.6 Litigation**

- (a) If the dispute is not finally resolved in accordance with clause 12.65, either party is at liberty to litigate the dispute.
- (b) Nothing in this clause 12.6 prevents:
  - (1) either party from seeking urgent interlocutory relief;
  - (2) the Council from bringing proceedings in a Court of competent jurisdiction to enforce any aspect of this Agreement or any matter to which this Agreement relates; or
  - (3) the Council from exercising any function under any Legislation, including the EP&A Act 1979, or any other Law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

## **12.7 Exchange of information**

The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 12 is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process established by this clause 12 for any purpose other than an attempt to settle a dispute between the parties.

## **12.8 Continue to Perform obligations**

Each party must continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute.

## 13 GST

---

### 13.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 13 have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time).
- (b) In this clause 7:
  - (1) "**monetary consideration**" means any consideration expressed as an amount of money; and
  - (2) "**non-taxable supply**" means a supply that is not a taxable supply.
- (c) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause.
- (d) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

### 13.2 Reimbursements

Any payment or reimbursement required to be made under this Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

### 13.3 Additional amount of GST payable

If GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Agreement:

- (a) any amount payable or consideration to be provided under any provision of this Agreement (other than this clause), for that supply is exclusive of GST (unless otherwise specified in this agreement);
- (b) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**) at the same time as any other consideration is to be first provided for that supply; and
- (c) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with this clause.

### 13.4 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 13.3), varies from the additional amount paid by the Recipient under clause 13.3, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Agreement as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.



## 14 General

---

### 14.1 Costs

The parties agree to bear their own Costs in connection with:

- (a) the negotiation, preparation and execution of this Agreement;
- (b) performing its obligations under this Agreement; and
- (c) advertising and exhibiting of this planning agreement in accordance with the EP&A Act 1979.

### 14.2 Notices

- (a) A party notifying or giving notice under this Agreement must do so in writing addressed to that party in accordance with the details nominated in Schedule 1 (or any alternative details nominated to the sending party by notice).
- (b) A notice given in accordance with clause 14.2(a) will be deemed to have been given and received:
  - (1) if delivered, on receipt;
  - (2) if posted via registered post, three business days after posting;
  - (3) if sent by email on the day it was sent; and
  - (4) any notice received after 5.00 pm or on a day not a business day in Young, NSW, shall be deemed to have been received at 9.00 am on the next business day.

### 14.3 Use of Explanatory Note

The explanatory note contained in Schedule 5 of this Agreement must not be used to assist in construing this Agreement.

### 14.4 Waiver

- (a) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or a breach of obligation by, another party;
- (b) A waiver by a party is only effective if it is in writing and signed by the party against whom the waiver is claimed;
- (c) A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

### 14.5 Governing Law

This Agreement is governed by New South Wales law and each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement.

## **14.6 Prior Agreements Superseded**

This Agreement:

- (a) wholly replaces and excludes all prior agreements, correspondence, negotiations, representations, explanations and statements between the parties covering or in connection with the matters covered by this Agreement; and
- (b) is the entire agreement between the parties in respect of the matters covered by this Agreement.

## **14.7 Modification of Agreement**

- (a) The parties note that pursuant to clause 25C of the EP&A Reg 2000, this Agreement may be amended or revoked by further agreement in writing signed by the parties to the Agreement (including by means of a subsequent planning agreement).
- (b) The parties note that in the event that this Agreement is amended or revoked, the Council is to ensure that public notice of the proposed amendment or revocation is given in accordance with clause 25D of the EP&A Reg 2000.

## **14.8 Representations and Warranties**

The parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

## **14.9 Severability**

- (a) If any provision of this Agreement is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 14.9(a) does not apply where the provision to be severed would materially adversely affect the nature or extent of a party's obligations under this Agreement.

## **14.10 Confidentiality, Media Releases and Enquiries**

- (a) The terms of this executed Agreement are not confidential and this Agreement may be treated as a public document and exhibited or reported without restriction by any party.
- (b) If requested by a party, the other party must not issue, publish or authorise any media release or advertisement concerning this Agreement, without obtaining the other party's prior written approval (which approval may not be unreasonably withheld).

## **14.11 Counterparts**

This Agreement may be executed in any number of counterparts that together will constitute one instrument. A party may execute this Agreement by signing any counterpart.

#### **14.12 No Fiduciary Relationship**

Nothing in this Agreement will be construed or interpreted as constituting the relationship between the parties as that of a partnership, joint venture or any form of fiduciary relationship.

#### **14.13 Further Acts**

Each party must promptly execute all documents and do all things reasonably required to effect, perfect or complete this Agreement and all transactions incidental to it.

#### **14.14 Enforcement**

Subject to compliance with clause 12, this Agreement may be enforced by any party in any court of competent jurisdiction.

## Executed as an agreement

---

Signed and delivered for  
**Hilltops Council**

*sign here* ▶ \_\_\_\_\_  
Authorised Officer

*print name* \_\_\_\_\_

in the presence of

*sign here* ▶ \_\_\_\_\_  
Witness

*print name* \_\_\_\_\_

\_\_\_\_\_ (Date)

---

**Executed by Coppabella Wind Farm Pty Ltd** )  
**ABN 72 141 003 161** )  
**Company** )  
in accordance with section 127(1) of the  
*Corporations Act 2001 (Cth)*:

\_\_\_\_\_  
Signature of director/ and sole company secretary

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Signature of director/ company secretary

\_\_\_\_\_  
Name (please print)

# Schedule 1

## Schedule 1: Notice Details

---

### **Hilltops Council**

Address 189 Boorowa Street  
Young NSW 2594

Attention General Manager

Email [mail@hilltops.nsw.gov.au](mailto:mail@hilltops.nsw.gov.au)

### **Coppabella Wind Farm Pty Ltd**

Address Level 25, Tower 1,  
100 Barangaroo Avenue,  
Barangaroo Sydney 2000

Attention Sunny Rutherford

Email [goldwind.legal@goldwindaustralia.com](mailto:goldwind.legal@goldwindaustralia.com)

## Schedule 2

### Schedule 2: The Coppabella Land

---

Lot / DP	Lot / DP	Lot / DP
101/881434	201/753626	92/753602
293/721898	211/753602	
284/753602	212/753602	
1/659797	213/753602	
1/717646	230/753602	
Y/382611	234/753602	
2/717646	235/753602	
285/753602	31/753602	
260/753602	41/753602	
268/753602	42/753602	
1/593527	43/753602	
135/753602	61/753595	
137/753602	86/753602	
138/753602	87/753602	
194/753626	88/753602	
197/753602	89/753602	
2/593527	90/753602	
200/753602	91/753602	





# Schedule 4

## Schedule 4: Explanatory Note

---

### **Planning agreement for the payment of monetary contributions**

#### **Introduction**

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the proposed Planning Agreement (the "**Planning Agreement**") prepared under Section 7.4 of the *Environmental Planning & Assessment Act 1979* (the "**the Act**").

This Explanatory Note has been prepared jointly by the Parties as required by clause 25E of the *Environmental Planning & Assessment Regulation 2000* ("**the Regulation**").

This explanatory note is not to be used to assist in construing the Planning Agreement.

#### **Parties to the Planning Agreement**

The Parties to the Planning Agreement are the Hilltops Council ("**Council**") and Coppabella Wind Farm Pty Ltd ("**Company**"). The Minister for Planning has granted development consent for a wind farm across the Hilltops and Yass Local Government Areas (Development Application No. SSD-6698). The Company is undertaking this development in accordance with that consent.

The Company has made the offer to pay the following monetary contribution to the Council in connection with the development.

#### **Summary of the objectives, nature and effect of the Planning Agreement**

The objective of the Planning Agreement is to record the terms of the offer made by the Company to the Council and its obligations to provide certain material public benefits.

The effect of the agreement is that the Company will be required to pay a monetary contribution of \$2,500.00 per wind turbine installed within the Council's Local Government Area to the Council, which is to be applied towards funding local projects to benefit the community.

The Company is also required to provide security for the monetary contribution.

#### **Assessment of the Merits of the Planning Agreement**

The benefit of the Planning Agreement is that the Company will pay a monetary contribution, calculated per wind turbine installed within the Hilltops Local Government Area, to be applied towards projects within the local area which benefit the community.

#### **Identification of how the Planning Agreement promotes the public interest and the objects of the Act**

The Planning Agreement promotes the public interest and the objects of the Act by providing of a monetary contribution to be applied towards projects in the local community which will enhance the local environment, provide community services or facilities or benefit local education programs and organisations.

**Identification of how the Planning Agreement promotes elements of the Council's Charter under the *Local Government Act 1993***

The Planning Agreement is consistent with the following guiding principles for Councils in section 8A of the *Local Government Act 1993* (which have replaced the Council Charter):

- In exercising functions generally:
  - Councils should provide strong and effective representation, leadership, planning and decision-making.
  - Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
  - Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
  - Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
  - Councils should work with others to secure appropriate services for local community needs.
- In decision making:
  - Councils should recognise diverse local community needs and interests.
  - Councils should consider the long term and cumulative effects of actions on future generations.
  - Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

The Planning Agreement is consistent with these principles in that it will provide direct monetary contribution to projects within the local community.

**Identification of the planning purpose served by the Planning Agreement and whether the Planning Agreement provides for a reasonable means of achieving that purpose**

The planning purpose served by the Planning Agreement is the monetary contribution to be put towards projects which will benefit the local community impacted by the development. The Planning Agreement provides a reasonable means of achieving these public purposes.

**Identify whether the agreement, amendment or revocation conforms with the planning authority's capital works program (if any),**

The Local Projects on which the contributions will be spent are not yet identified. Council anticipates that Local Projects nominated by or to be carried out by the Council will be included in Council's capital works program.