

Explanatory Note

Hilltops Council (ACN 984 256 429)

and

Rye Park Renewable Energy Pty Ltd (ACN 601 541 931)

Background

The parties to the Community Enhancement Fund Agreement dated 4 May 2018 (**Planning Agreement**) propose to enter into the Deed of Variation of Community Engagement Fund Agreement (**Variation Agreement**) to vary the Planning Agreement.

The parties to the Planning Agreement and the Variation Agreement are Hilltops Council (**Planning Authority**) and Rye Park Renewable Energy Pty Ltd (**Developer**).

Purpose of this explanatory note

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft Variation Agreement in accordance with Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**) and Division 1A of Part 4 of the *Environmental Planning and Assessment Regulation 2000* (NSW).

This explanatory note has been prepared jointly by the parties.

Description of the Planning Agreement

Development consent number SSD 6693 was granted under the Act by the delegate of the Minister for Planning for the Rye Park Wind Farm on 22 May 2017 (**Development Consent**). As originally granted the Development Consent authorised the development of the Rye Park Wind Farm subject to conditions and authorised the construction of up to 92 turbines.

Condition 17 of Schedule 2 of the Development Consent as granted requires the Developer to enter into a planning agreement with the Planning Authority in accordance with the terms of the offer made by the Developer as specified in Appendix 3 of the Development Consent.

The Planning Agreement was subsequently entered into by the parties pursuant to Condition 17 of the Development Consent.

In summary, the Planning Agreement requires the Developer to pay monetary contributions in relation to Rye Park Wind Farm to the Planning Authority who must hold and apply these into the Rye Park Community Enhancement Fund (**Fund**) which will be used to fund approved local projects for the community. The amount of the monetary contributions under the Planning Agreement is set at \$2,500 per annum (subject to CPI adjustments in accordance with the Planning Agreement) per turbine constructed within the Hilltops Council Local Government Area (**LGA**) in accordance with the terms of the offer made by the Developer as specified in Appendix 3 of the Development Consent.

The Planning Agreement further provides that the monetary contributions paid by the Developer must be applied by the Planning Authority towards approved community purpose projects within the LGA.

Reason for the variation of the Planning Agreement

On 23 April 2020, the Developer made an application (application number SSD-6693-Mod-1 which is referred to as the **Modification Application**) to modify the Development Consent under the Act so as to authorise a number of changes to the Rye Park Wind Farm including:

- a reduction in the maximum number of wind turbines from 92 to 77; and
- an increase the size of the wind turbines.

As part of the Modification Application, the Developer offered to vary the Planning Agreement so as to ensure that the Planning Authority continues to receive an amount equivalent to the maximum annual monetary contributions payable under the Planning Agreement despite the fact that the Modification Application reduced the maximum number of wind turbines from 92 to 77 (**Updated Offer**).

The Modification Application was approved by the NSW Department of Planning, Industry and Environment and a modification of the Development Consent was granted on [insert date] (**Modification**). The Modification operates to vary the Development Consent including, relevantly, by amending Appendix 3 to reflect the Updated Offer. The key change to Appendix 3 is that the monetary contributions are no longer determined on the basis of an annual payment of \$2,500 (adjusted annually to increases in the CPI) per wind turbine built within the LGA and are now determined on a flat rate of \$162,500 per annum (adjusted annually to increases in the CPI and clarified that these increases apply from the June 2011 quarter).

Accordingly, the Variation Agreement proposes to amend the Planning Agreement to reflect the Updated Offer as required by the modified Development Consent.

The Planning Authority notes that as planning agreements are voluntary under the Act, the Planning Authority cannot require the Developer to offer to provide increased monetary contributions for the Rye Park Wind Farm over and above that contained in the Updated Offer as incorporated into the modified Development Consent.

Summary of Objectives, Nature and Effect of the Variation Agreement

The overall objective of the Variation Agreement is to give effect to the Updated Offer and the requirements of the modified Development Consent and thereby assist in funding community purpose projects within the LGA.

The objective of amending the calculation of the monetary contribution to be paid by the Developer is to ensure that the Planning Authority continues to receive an amount equivalent to the maximum annual monetary contributions into the Fund currently payable under the Planning Agreement, despite the fact that the Modification reduced the maximum number of wind turbines from 92 to 77.

The nature of the Variation Agreement is that the Developer will pay a monetary contribution of \$162,500 per annum (subject to CPI increases) to the Fund in arrears on 1 July each year if there were any "Operating Turbines" within the LGA during the preceding 12 months. This amount is equivalent to the full monetary contribution which the Developer would have been required to pay into the Fund if all 92 turbines originally approved under the Development Consent were constructed.

The effect of varying the monetary contribution from a dollar per annum per "Operating Turbine" to a fixed dollar amount per annum for any "Operating Turbines" in accordance with clause 2.1 of the Variation Agreement is that the annual monetary contribution received by

the Planning Authority will be certain, rather than reduced by the number of turbines deleted as part of the Modification or otherwise varying depending on the number of turbines actually constructed and operational during the preceding 12 months.

The Variation Agreement also makes other minor and consequential amendments to update and refine the Planning Agreement, including to correct minor drafting issues.

The overall effect of the Variation Agreement is that:

- the Planning Agreement will be varied as outlined in the preceding paragraphs; and
- all other provisions of the Planning Agreement remain unchanged and will continue in full force.

Assessment of the Merits of Variation Agreement

The Planning Authority and the Developer have assessed the merits of the amendments contained in the Variation Agreement and hold the view that:

- certainty as to the amount of the monetary contribution; and
- payment of an amount equivalent to the maximum annual monetary contribution under the Planning Agreement in respect of any operating turbines within the LGA (irrespective of the actual number of turbines constructed and operational within the LGA),

will better assist the Planning Authority to provide community purpose projects within the LGA and accordingly to benefit the public and local community.

In this regard, the Planning Authority and the Developer note that the amendments demonstrate a commitment by the Developer to maintain the overall maximum value of the monetary contribution based on the number of turbines originally approved under the Development Consent, despite the fact that the Modification reduced the maximum number of wind turbines from 92 to 77. This will have a positive effect on the funding of community purpose projects.

The Variation Agreement does not impact on the Planning Authority's capital works program and so is considered to be in conformity with it.

The Impact of the Variation Agreement on the Public or any Section of the Public

The Variation Agreement will have a positive impact on the public and local community by ensuring that the annual monetary contributions paid to the Fund to fund approved local projects will remain equivalent to the maximum annual monetary contributions payable under the current Planning Agreement, despite the fact that the Modification reduced the maximum number of wind turbines from 92 to 77 and regardless of how many wind turbines are constructed within the LGA.

How the Variation Agreement Promotes the Public Interest

The Variation Agreement will promote the public interest by ensuring that the level of funding for approved local projects within the LGA remains unchanged despite the fact that the Modification reduced the maximum number of wind turbines from 92 to 77. This will benefit residents and the broader community.

Requirements relating to Construction, Occupation and Subdivision Certificates

The Planning Agreement does not operate or bind the parties until the Developer obtains a construction certificate and no change is proposed to this as part of the Variation Agreement.

Interpretation of Variation Agreement

This Explanatory Note is not intended to be used to assist in construing the Variation Agreement or the Planning Agreement.