

K&L GATES

# Deed of Variation of Community Enhancement Fund Agreement

Hilltops Council  
ACN 984 256 429

and

Rye Park Renewable Energy Pty Ltd  
ACN 601 541 931

DRAFT

**K&L Gates**  
Sydney office  
Ref: Kirstie Richards

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## Deed of Variation

**Date** 2021

### Parties

1. **Hilltops Council** ACN 984 256 429 of 189 Boorowa Street, Young, NSW 2594 (**Council**).
2. **Rye Park Renewable Energy Pty Ltd** ACN 601 541 931 of Level 23 "Rialto Towers" 525 Collins Street Melbourne VIC 3000 (**Company**).

### Background

- A. The parties are parties to the Planning Agreement.
- B. The parties wish to vary the Planning Agreement as set out in this Deed.

### Agreed terms

#### 1. Definitions and interpretation

##### 1.1 Definitions

- (a) In this Deed:

**Deed** means this deed including the background, any schedules and any annexures.

**Effective Date** means the date of this Deed.

**Planning Agreement** means the deed entitled "Community Enhancement Fund Agreement" entered into between the parties and dated 4 May 2018 in respect of the Rye Park Wind Farm.

- (b) Unless otherwise indicated, words or expressions defined in the Planning Agreement have the same meaning in this Deed.

##### 1.2 Interpretation

In this Deed, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) headings are used for convenience only and do not affect the interpretation of this Deed;
- (d) other grammatical forms of a defined word or expression have a corresponding meaning;
- (e) a reference to a document is to that document as amended, novated, supplemented, extended or restated from time to time;

- (f) a reference to a party is to a party to this Deed and includes that party's executors, administrators, successors, permitted assigns and permitted substitutes;
- (g) "person" includes a natural person, partnership, body corporate, association, joint venture, governmental or local authority, and any other body or entity whether incorporated or not;
- (h) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) is to that statute as amended, consolidated, re-enacted or replaced from time to time;
- (i) "include", "for example" and any similar expressions are not used, and must not be interpreted, as words of limitation;
- (j) a reference to any agency or body that ceases to exist, is reconstituted, renamed or replaced, or has its powers or functions removed (**defunct body**) is to the agency or body that performs most closely the powers or functions of the defunct body;
- (k) any provision in this Deed which is in favour of more than one person benefits all of them jointly and each of them severally; and
- (l) any provision in this Deed which binds more than one person binds all of them jointly and each of them severally.

## 2. Variation of Planning Agreement

### 2.1 Variation

With effect on and from the Effective Date, the Planning Agreement is varied as follows:

- (a) **Clause 1.1** is amended by:
  - (i) replacing the meaning given to the definition of "Monetary Contribution" with the following:

"the amount of \$162,500 (adjusted annually to increase in the CPI commencing at June 2011 quarter) per annum within the Hilltops Council local government area over the operational life of the development, commencing on the date on which the development beings 'operation' and ceasing when the development is decommissioned' in accordance with the definitions within this deed and the consent SSDA 6693 Mod 1 Appendix 3
  - (ii) Replace the meaning given to the definition of "Rye Park Wind Farm" with the following:

"the construction and operation of a electricity generation – wind facility to be known as Rye Park Wind Farm as approved Application No SSD 6693-Mod – 1 – determined 15 April 2021
- (b) **Clause 3** replace "Rye Park Development Consent' with "Rye Park Wind Farm SSD 6693 Development Consent"
- (c) **Clause 5.1(a)** is replaced with the following:

- "(a) Subject to clause 5.2(a), the Company must pay to the Council the Monetary Contribution in arrears on 1 July of each year."
- (d) **Clause 6.5(c)(3)** is amended by inserting the words "and clause 6.1(d) of this deed" after the word "Committee".
- (e) **Clause 7** is amended by replacing all the text in clause 7 including the heading with the words "Not Used".
- (f) **Clause 12.1(a)** amended by replacing the words "in this clause 7" with the words "in this clause 12".

## **2.2 Confirmation of Planning Agreement**

All provisions of the Planning Agreement other than those varied by clause 2.1 remain unchanged and continue in full force.

## **2.3 Prior rights and obligations not affected**

This Deed does not affect the rights and obligations of the parties under the Planning Agreement to the extent that they relate to the period prior to the Effective Date.

## **3. Inconsistency**

If there is any inconsistency between the provisions of this Deed and the provisions of the Planning Agreement, then the provisions of this Deed prevail to the extent of that inconsistency.

## **4. General**

### **4.1 Costs**

- (a) The parties agree to meet their own Costs in connection with:
- (i) performing its obligations under this Deed; and
  - (ii) any advertising and exhibiting of this Deed in accordance with the EP&A Act.
- (b) The Company will pay the external legal costs reasonably incurred by Council in connection with the negotiation and execution of this Deed (but not any of Council's internal costs) up to a maximum of \$10,000 (including GST) within 30 business days of receiving a tax invoice from the Council which includes evidence of the relevant costs incurred by Council in connection with this Deed.

### **4.2 Governing law**

This Deed 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 Deed.

#### **4.3 Modification of Deed**

No modification or alteration of any provision of this Deed will be valid unless it is in writing and signed by all parties to this Deed.

#### **4.4 Severability**

Any provision of this Deed which is invalid in any jurisdiction must, in relation to that jurisdiction:

- (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and
- (b) be severed from this Deed in any other case,

without invalidating or affecting the remaining provisions of this Deed or the validity of that provision in any other jurisdiction.

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

- (a) The parties agree that the terms of this executed Deed are not confidential and this Deed 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 Deed, without obtaining the other party's prior written approval (which approval may not be unreasonably withheld).

#### **4.6 Counterparts**

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

#### **4.7 Further Acts**

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

#### **4.8 No adverse construction**

No provision of this Deed is to be construed to the disadvantage of a party solely because that party was responsible for preparing or proposing this Deed or the provision.

**Executed** as a deed

**Signed and delivered** for and on behalf of  
**Hilltops Council** ACN 984 256 429 by its duly  
authorised officer in the presence of:

.....  
Signature of witness

.....  
Signature of authorised officer

.....  
Name of witness  
(please print)

.....  
Name of authorised officer  
(please print)

**Executed by Rye Park Renewable Energy  
Pty Ltd ABN 34 601 541 931** in accordance  
with section 127(1) of the *Corporations Act 2001*  
(Cth):

.....  
Signature of director

.....  
Signature of director/secretary

.....  
Name  
(please print)

.....  
Name  
(please print)