



Bango Wind Farm

# Planning Agreement

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Between

**Hilltops Council**

and

**Bango Wind Farm Pty Ltd**

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## Planning Agreement

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### Date

Between the parties	
	<b>The Hilltops Council</b> ABN 92 613 026 544 of 189 Boorowa Street, Young NSW 2594 (Council)
	<b>Bango Wind Farm Pty Ltd</b> ABN 38 143 401 067 of Level 2, 139 Frome Street, Adelaide South 5000 (Company)
Recitals	<ol style="list-style-type: none"><li>1 The Company has agreed to pay Monetary Contributions in relation to the Bango Wind Farm to the Council's Community Enhancement Fund on the terms of this agreement.</li><li>2 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><li>3 The Company has lodged the Bango Wind Farm Development Application.</li></ol>
This deed witnesses as follows:	

## 1 Definitions and interpretation

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### 1.1 Definitions

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

Term	Meaning
<b>Approved Local Projects</b>	each Local Project for whatever purpose (as determined by Council after 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.
<b>Committee</b>	<p>the committee established to administer the Community Enhancement Fund in accordance with section 355 of the <i>Local Government Act 1993</i> and, comprising:</p> <ul style="list-style-type: none"><li>• the Mayor or Councillor Delegate;</li><li>• the General Manager or delegate of the Council;</li><li>• up to 2 community representatives who do not own any of the Bango Wind Farm Land; and</li><li>• a representative appointed by the Company</li></ul>
<b>Committee Charter</b>	the charter governing aspects of the governance of the Committee, as modified from time to time, contained in Schedule 2 of this agreement.
<b>Contribution Year</b>	Means every 12 month period from 1 July each year.
<b>Construction Certificate</b>	has the meaning contained in the <i>Environmental Planning &amp; Assessment Act 1979</i> .
<b>Community Enhancement Fund</b>	the fund to be established by the Council and administered in accordance with this agreement.

Term	Meaning
<b>Costs</b>	includes costs, charges and expenses, including those incurred in connection with advisers. The cost of administering the Community Enhancement Fund shall be paid to Council out of the Monetary Contribution on an as needed basis and shall be no more than \$5,000 per annum, indexed to CPI over the life of the project
<b>Bango Wind Farm Development Application</b>	The application no. SSD 6686 lodged with the Minister for Planning under the <i>Environmental Planning &amp; Assessment Act 1979</i> on 1 March 2011, as modified from time to time.
<b>Bango Wind Farm Development Consent</b>	The development consent granted by the Minister pursuant to the Bango Wind Farm Development Application as modified from time to time.
<b>Bango Land</b>	<ul style="list-style-type: none"> <li>all land on which it is proposed that associated and ancillary infrastructure for the Bango Wind Farm that is within the Hilltops Local Government Area as specified in the Bango Development Consent; and</li> <li>the land that is the subject of and is described in the Bango Wind Development Application.</li> </ul>
<b>Bango Wind Farm</b>	the construction and operation of a wind energy facility to be known as the Bango Wind Farm, on the Bango Land consisting of up to 75 wind turbines and associated infrastructure as authorised by the Bango Wind Farm Development Consent. Also referred to in this agreement as the Development.
<b>EP&amp;A Act 1979</b>	the <i>Environmental Planning &amp; Assessment Act 1979 (NSW)</i> as amended from time to time.
<b>Index Number</b>	the Consumer Price Index for Canberra number or equivalent index published from time to time by the Australian Bureau of Statistics.
<b>Local Projects</b>	any projects proposed to be carried out within the Hilltops

Term	Meaning
	<p>Council local government area and located within 20kms of the Bango Wind Farm which are aimed at:</p> <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 Bango Wind Farm; or</li> <li>2 providing any community service or facility or benefit or educational assistance</li> </ol> <p>which may include the building of a Strategic Fund to develop a single or expensive Local Project that will require significant upfront or multi-year investment.</p> <p>Members of the community through incorporated or registered not for profit organisations will be able to apply for funds under the CEF for community benefit projects within 20km of the project. Should no suitable local projects be identified during any funding round within this boundary as the first priority, applications will be considered within the current Hilltops Council boundaries as of &lt;Date of Agreement&gt;.</p>
<b>Mediator</b>	a person appointed as mediator under clause 11.5 of this agreement.
<b>Monetary Contribution</b>	the amount of \$2,825 per annum per turbine constructed within Hilltops Council Local Government Area as adjusted in accordance with clause 5.1(b) of this deed.
<b>Operating Turbine</b>	each wind turbine constructed and commissioned as part of the Bango Wind Farm which generates electricity into the transmission network during any part of the relevant Contribution Year within Hilltops Council Local Government Area.
<b>Regulation</b>	the <i>Environmental Planning &amp; Assessment Regulation 2000</i>
<b>Strategic Fund</b>	<p>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.</p> <p>authorisation is provided to Council to progressively or</p>

Term	Meaning
	otherwise pool funds to fund prioritised projects as recommended by the Committee.

## 1.2 Interpretation

- (a) Clause headings are for convenience only and will be ignored in the interpretation of this agreement.
- (b) References to a party include the 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.

## 2 Planning Agreement

The parties agree that this agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the EP&A Act 1979.



### 3 Application of this agreement

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This agreement applies to the Bango Wind Farm Development Consent and evidences the Company and the Company's compliance with the relevant condition(s) of the Bango Development Consent.

### 4 Operation of this agreement

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The parties agree that this agreement will not operate or bind the parties unless and until the Company obtains a Construction Certificate.

### 5 Payment of the Monetary Contribution

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#### 5.1 The Monetary Contribution

- (a) The Company must pay to the Council the Monetary Contribution in arrears within 14 days of 1 July of each year for each turbine which was an Operating Turbine during the preceding Contribution Year.
- (b) The parties agree that the Monetary Contribution will be reviewed on 1 July of each year in accordance with the following formula:

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

Where:

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

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

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

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

- (c) The monetary contribution is a taxable supply for GST in accordance with Clause 12.

#### 5.2 General

- (a) The obligation of the Company to pay any Monetary Contribution under this agreement will cease on the date on which the last of the Operating Turbines is decommissioned.
- (b) The parties agree that the Monetary Contribution paid in accordance with this agreement will have the public purpose of facilitating Approved Local Projects.

- (c) The Company agrees to 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**

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### **6.1 Establishment of the Community Enhancement Fund**

- (a) The Council must hold and apply all Monetary Contributions paid by the Company under this agreement in accordance with clause 5.2(b).
- (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 pursuant to the provisions of section 625 of the Local Government Act 1993.
- (c) The Committee may disburse Monetary Contributions paid by the Company under this agreement to Approved Local Projects that propose to invest the disbursed money for the purposes of the Approved Local Project.

### **6.2 The Committee**

- (a) The Council must establish the Committee on or before the date on which the first instalment of the Monetary Contribution is paid under this agreement.
- (b) The Company must be represented by a company-nominated representative on the Committee.
- (c) The Council must procure that the role of the Committee includes:
  - (1) to determine the form in which applications for funding for Local Projects from the Community Enhancement Fund are to be made;
  - (2) to recommend to the Council which applications for funding for Local Projects should be funded from the Community Enhancement Fund as required by clause 6.5(a);
  - (3) adherence to a Committee Charter; and
  - (4) to appoint the Auditor as required by clause 6.7(a).

### **6.3 Call for Funding Applications**

During:

- (a) November to January in each year in which there are funds in the Community Enhancement Fund; or
- (b) any further period determined by the Committee,

the Council must publicly advertise in the Council's Valley Views newsletter (or any periodic Council publication which replaces the Valley Views newsletter) and in the local newspapers 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 the public, community groups and individuals for funding for Local Projects (**Funding Applications**).

#### **6.4 Notification to Company**

The Council must procure that the Committee:

- (a) notifies the Company of each application made for funding for Local Projects from the Community Enhancement Fund;
- (b) if requested by the Company, consult the Company in relation to applications made for funding for Local Projects from the Community Enhancement Fund; and
- (c) notifies the Company of each Local Project which is to be funded from the Community Enhancement Fund, including the amounts of any funding.

#### **6.5 Allocation of Funds**

- (a) The Council must procure that the Committee makes recommendations to the Council as to which of the Funding Applications the Committee recommends be funded from the Community Enhancement Fund.
- (b) The agreement expressly authorises Council to progressively or otherwise pool funds to fund prioritised Local Projects as recommended by the Committee.
- (c) The Council must:
  - (1) consider the funding recommendations of the Committee;
  - (2) consider any Committee consultation with the Company pursuant to clause 6.4(b); and
  - (3) procure that Council confirms which Local Projects will be funded from the Community Enhancement Fund in accordance with the recommendations of the Committee.
- (d) The Council must pay funds from the Community Enhancement Fund to each Approved Local Project, and may require each Approved Local Project to enter into a Funding Agreement where appropriate.

#### **6.6 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 6.6(a) is to be agreed by the Council and the Company (acting reasonably) but must 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; and
  - (2) where appropriate for particular approved Local Projects, a permanent sign recognising that the Approved Local Project was funded by the Company via the Community Enhancement Fund.

## 6.7 Auditing

- (a) During each year in which there are funds in the Community Enhancement 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 6.5;
  - (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 and the Council 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.

## 7 Application of sections 94 and 94A of the EP&A Act 1979 to the Development

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The parties agree that as the Bango Wind Farm is excluded from the application of these sections, the terms of this agreement and the Community Enhancement Fund are, in effect, offered by the Company in substitution for the contributions that would otherwise be made under those sections.

## 8 No Registration

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The parties agree that this agreement will not be registered on the Bango Land pursuant to section 93H of the EP&A Act 1979.

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

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- (a) Prior to the Company disposing of any part of its interest in the Bango Wind Farm to any third party, the Company must procure entry by that third party into an agreement with the Council and the Minister (as appropriate) on substantially the same terms and conditions as this agreement.
- (b) Subject to the Company complying with its obligations under clause 9(a), the Council will release the Company from any further obligation under this agreement on and from the date on which it ceases to have any interest in the Bango Wind Farm.

## 10 No fetter

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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.

## 11 Dispute Resolution

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### 11.1 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**).

### 11.2 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.

### 11.3 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.

#### **11.4 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**).

#### **11.5 Mediation**

The parties agree that 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 shall 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 11.5 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 function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- (d) the Mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his 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.

#### **11.6 Litigation**

If the dispute is not finally resolved in accordance with clause 11.5, either party is at liberty to litigate the dispute.



## 11.7 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 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 11 for any purpose other than an attempt to settle a dispute between the parties.

## 11.8 Continue to Perform obligations

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

# 12 GST

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## 12.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 7 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.

## 12.2 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.

## 12.3 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;

- (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.

## 12.4 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 12.3), varies from the additional amount paid by the Recipient under clause 12.3, 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.

## 13 General

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### 13.1 Costs

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

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

### 13.2 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 13.2(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 confirmation of the correct transmission of the email; and



- (4) any notice received after 5.00 pm or on a day not a business day shall be deemed to have been received at 9.00 am on the next business day.

### **13.3 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.

### **13.4 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.

### **13.5 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.

### **13.6 Modification of Agreement**

- (a) The parties note that pursuant to clause 25C of the Regulation, 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, Council is to ensure that public notice of the proposed amendment or revocation is given in accordance with clause 25D of the Regulation.

### **13.7 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.

### **13.8 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 13.8(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.

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

- (a) The parties agree that 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).

### **13.10 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.

### **13.11 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.

### **13.12 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.

### **13.13 Enforcement**

Subject to compliance with clause 11, this agreement may be enforced by any party in any court of competent jurisdiction.

# Schedule 1

## Schedule 1: Notice Details

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### **The Hilltops Council**

Address 189 Boorowa Street  
Young NSW 2594

Attention General Manager

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

### **Bango Wind Farm Pty Ltd C/O CWP Renewables**

Address Level 6, Suite A  
41-45 Hunter Street  
Newcastle NSW 2300


Attention Kristin Old

Email [Kristin.old@cwprenewables.com.au](mailto:Kristin.old@cwprenewables.com.au)

Executed as an agreement

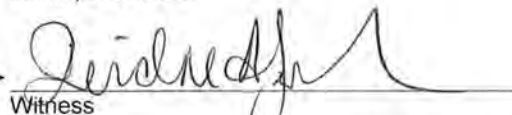
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Signed and delivered for  
**The Hilltops Council**

sign here ▶   
Authorised Officer

print name DAVID ABER

in the presence of

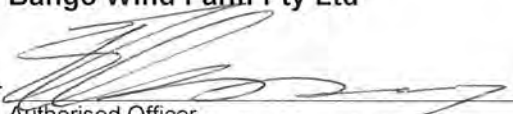
sign here ▶   
Witness

print name Deidre Anne Johnson

4 September 2018 (Date)

Signed and delivered for  
**Bango Wind Farm Pty Ltd**

sign here ▶

  
Authorised Officer  
Edward Charles Mounsey

print name

in the presence of

sign here ▶

  
Witness

print name

KRISTIN OLD

12/9/18

(Date)

Executed by Bango Wind Farm Pty Ltd

ABN 38 143 401 067

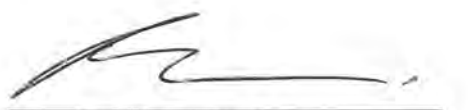
Company

in accordance with section 127(1) of the  
Corporations Act 2001 (Cth):

  
Signature of director

Edward Charles Mounsey

Name (please print)

  
Signature of director / COMPANY SECRETARY

PHAEDRA REYNOLDS

Name (please print)

## Schedule 2

### Schedule 2: Committee Charter

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**Section 355 Committee  
Standard Constitution  
and  
Instrument of Delegation**



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#### Document Control

<b>Policy</b>	Section 355 Committee Standard Constitution and Instrument of Delegation	<b>Policy Number</b>	TBA
<b>Author/Reviewer</b>	General Manager	<b>Review Period and Date</b>	Reviewed within 12 months of election/4 yearly - September

- This Standard Constitution and Instrument of Delegation shall be reviewed within 12 months of an election, and thereafter at intervals of no greater than four years. Any review will ensure this Standard Constitution and Instrument of Delegation continues to meet all statutory requirements and the operational needs of Hilltops Council. The Standard Constitution and Instrument of Delegation may also be reviewed at other times as determined by Hilltops Council.
- This Standard Constitution and Instrument of Delegation commences on and from the date of adoption by Hilltops Council as listed in the document history and replaces all previous versions.

#### Document History

<b>Date</b>	<b>Status</b>	<b>Version</b>	<b>Resolution</b>	<b>Description</b>
June 2016	Draft	0.1		Presented to Hilltops Council for adoption
June 2016	Adopted	1.0	16/41	Endorsed by Council and adopted
28 September 2016	Draft	1.1		Presented to Council with amendment to Clause 9.4
28 September 2016	Adopted	2.0	16/127	Council endorsed amendment to Clause 9.4 and adopted
28 February 2018	Draft	2.1		Presented to Council for adoption
23 May 2018	Adopted	3.0	18/118	That the Section 355 Committee Standard Constitution and Instrument of Delegation be endorsed


## 1. OBJECTIVE

The objectives of this Section 355 Committee Standard Constitution are:

- to ensure that all meetings of Council and its Committees are conducted in an orderly and proper manner;
- to ensure that all meetings of Council and its Committees are conducted according to the principles of procedural fairness and due process;
- to assist with the conduct of discussion and debate during Council and Committee meetings;
- to increase Council's professionalism, transparency and accountability to the community;
- to ensure that all Committee Members understand their rights and obligations during Council and Committee meetings;
- to ensure that all Committee Members have an equal opportunity to participate fully in the meeting;
- to ensure that Committee Members participate in meetings that engender a positive meeting environment that is without malice and avoids insulting, improper or defamatory statements; and
- to be an effective aid to good governance.

## 2. DEFINITIONS

Constitution	means and includes this document along with all schedules and attachments referred to in this document, including but not limited to any policy adopted by Council and set out in Item 5 of the Schedule
Chairperson	means: <ul style="list-style-type: none"><li>a) for a meeting of the Council – the Mayor;</li><li>b) for a meeting of a Committee of the Council – a member of the committee whose appointment has been approved by Council</li></ul>
Committee	in relation to the Council, means a Committee appointed or elected by the Council
Council	means Hilltops Council
Committee Member	means a Committee Member of the Hilltops Council
Deputy Chair	means the Deputy Chair of the Committee
Executive	means those members elected from time to time in accordance with Clause 7 of the Constitution
EPA Act	means the Environmental Planning and Assessment Act, 1979 (as amended)
Financial Year	means the period from 1 July year X to 30 June Year X + 1
General Manager	means the person appointed or acting in the position of General Manager of Hilltops Council
Intellectual Property	means and includes the copyrights, trademarks, registered designs, patents and databases. In particular, it refers to a range of Council resources including written material, design drawings, maps and plans, computer programs and databases
Law	means any statute along with any regulation, rule, planning instrument, policy or plan having effect under any such statute
LGA	means the <i>Local Government Act, 1993</i> (as amended)



WHS Policy	means any Work Health and Safety Policy or Procedure/s adopted by Council and includes any Manual or other document forming part of, or associated with any such Policy
Personal Information	means "information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or the opinion." Privacy and Personal Information Act (PIPPA) 1998, Section 4
Record	means recorded information, in any form, including data in computer systems, created or received and maintained by an organisation or person in the transaction of business or the conduct of affairs and kept as evidence of such activity
Responsible Officer	means the person nominated by the General Manager
Schedule	means the Schedule to Constitution of s.355 (b) Committee attached to this Constitution
Secretary	means the Secretary of the Committee
Treasurer	means the Treasurer of the Committee
Volunteer	means a person who assists the committee (either on a regular or casual basis) in a voluntary capacity but is not a member of the committee

### 3. PURPOSE OF THE CONSTITUTION

- 3.1 Under the *Local Government Act, 1993* Council is able to delegate some of its functions to a Committee of Council. A Committee is appointed and reappointed in accordance with the provisions of Section 355 and Section 377 of the *Local Government Act 1993*.
- 3.2 A Committee of Council is in fact acting on Council's behalf; the Committee is 'Council' and any action which the Committee undertakes is Council's responsibility
- 3.3 The Constitution provides a mandatory set of rules that defines the functions that Council has delegated to the Committee, the manner in which those delegated functions are to be undertaken by the Committee, and an administrative structure and procedures to ensure that the Council is able to monitor the conduct and performance of the Committee, particularly with regard to managing potential liabilities that might arise as a result of the activities of the Committee, in a similar manner to that which Council monitors others performing Council's functions under delegation
- 3.4 The S355 Constitution takes precedence over other constitutions the group may have in regard to Council business.

### 4. TERM

- 4.1 This Constitution operates for a term commencing from the date on which Council, by resolution, adopts this Constitution and concluding on the date set out in Item 6 of the Schedule or three months after the date of the Council election immediately following the date of commencement of this Constitution (whichever occurs first), unless terminated earlier in accordance with this Constitution.
- 4.2 Committee membership is on a quadrennial basis for the term of Council. Committees are formally appointed by the Mayor in office. Following a General Election of Councillors, the existing committee membership continues until such time as the new council appoints new committee members.

## 5. FUNCTIONS OF THE COMMITTEE

- 5.1 The Committee may, subject to sub-clauses 5.2 - 5.5 (inclusive), exercise any function of Council set out in Item 3 of the Schedule subject to any restrictions set out in Item 4 of the Schedule;
- 5.2 The Committee must comply with any law, including but not limited to the LGA, in exercising any function delegated by sub-clause 5.1;
- 5.3 When exercising any function delegated by sub-clause 5.1 the Committee must comply strictly with the terms of the Constitution and any Council Policy or Legislation including but not limited to:
- Work Health and Safety Act, 2011
  - Work Health and Safety Regulations, 2011
  - Privacy and Personal Information Protection Act 1998
  - Government Information (Public Access) Act 2009
  - Hilltops Council Code of Conduct
  - Hilltops Council Code of Meeting Practice

Additional policies applicable to individual committees are set out in Item 5 of the Schedule

Notwithstanding anything contained in Item 3 of the Schedule, the Committee must not permit or cause any contractor or person to undertake any work on behalf of or at the direction of the Committee unless they are registered on Council's list of service contractors who:

- a) Have contracted with Council to provide services at quoted prices
  - b) Carry all appropriate insurances
  - c) Have provided Council with an ABN
  - d) Supply Tax Invoices.
  - e) Agree to abide by WorkCover and Council policies
- 5.4 Notwithstanding sub-clause 5.1, the Committee must not, give or purport to give any consent or approval (under the EPA A, the LGA or any other law) to any development or building works on any land but may, if requested to do so by Council, make recommendations in respect of any such development or building works for consideration by Council; and

Must not, by virtue of s.355 of the LGA, undertake or perform any of the following functions of Council

- the appointment of a General Manager
- the making of a rate under the LGA
- a determination under s.549 of the LGA as to the levying of a rate
- the making of a charge or the fixing of a fee
- the borrowing of money
- the voting of money for expenditure on works, services or operations of Council
- the compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (not including the sale of items of plant or equipment)
- the acceptance of any tender that Council is required to invite under the LGA
- the adoption of a Management Plan under the LGA
- the adoption of a Financial Statement included in an Annual Financial Report under the LGA
- a decision to classify or re-classify public land under Division 1 of Part 2 of Chapter 6 of the LGA
- the fixing of an amount or rate for the carrying out by Council of work on private land
- the decision to carry out work on private land for an amount that is less than the amount or rate fixed by Council for the carrying out of such work
- the review of a determination made by Council, and not by a delegate of Council, or an application for approval
- the power of Council to authorise the use of reasonable force for the purpose of gaining entry to premises under s.194 of the LGA
- the decision under s.356 of the LGA to contribute money or otherwise



- grant financial assistance to persons
- the power of Council under s.455 of the LGA in relation to attendance at meetings of Council
- the making of an application, or giving of notice, to the Governor of New South Wales or the power of delegation under s.355 of the LGA
- any function that is expressly required to be exercised by resolution of Council

Must not, unless the Committee has obtained prior written approval from the General Manager, engage or contract with any person or corporation to provide any good or service for payment of any consideration or fee.

5.5 To act as a representative body of the Community and as a conduit between the Council and the Community. This does not prevent individual residents from contacting Councillors or Council staff directly.

#### Limitations of Powers

5.6 The Committee must not do anything or allow any person acting under its direction to do anything contrary to the interests of Council. For the purposes of this sub-clause this includes but is not limited to prohibiting the following:

- a) Acting contrary to any direction from Council, which includes a direction from the General Manager or the Mayor;
- b) Acting contrary to Council's policies, whether as contained in Item 5 of the Schedule or otherwise;
- c) Advising any person that they may have a legal right or action against Council or any Committee Member, Council employee or Council contractor exercising a function of Council;
- d) Making any admission of liability or accepting liability on behalf of Council or the Committee.
- e) Acting contrary to Council's Code of Conduct.
- f) Acting outside the limits of the Committee's delegation.
- g) Acting or presenting the Committee as independent of Council.

5.7 Correspondence

- a) Committees are not permitted to forward official correspondence to government officials or government departments (e.g. Governor-General, Government Ministers).
- b) All official correspondence must be signed by the General Manager.

5.8 Media

- a) Committee Members are not permitted to speak to the media on any Council matters in their capacity as a Committee Member unless otherwise approved. All such requests received must be referred to the General Manager whose decision is final.

5.9 No powers or functions may be delegated by the Committee to any other person or committee unless provided in this Constitution.

5.10 The Committee shall not vary the delegations or conditions of use of the Facility without prior consent of Council.

5.11 The Committee shall not:

- a) do anything that is not within the powers, duties and functions delegated in this instrument;
- b) exercise any of the functions included in 5.5 above which all require Council approval;
- c) employ any staff without the authority of the General Manager and/or Council.
- d) enter into any contracts or accept tenders.

5.12 The determination of fees and charges is always subject to the approval of the Council in accordance with Section 377 of the *Local Government Act 1993*. Accordingly, the Committee is not authorised to waive or discount fees without the prior consent of Council.

**Accordingly, the Committee cannot do any of the above.**

#### 5.13 Delegated Authority

The Committee is authorised to elect a person(s) to exercise the function of booking officer for the use of the facility (where applicable for committees managing Council facilities) in accordance with the terms of Council's Conditions of Hire.

In all other instances, applications should be referred to the Committee.

#### 5.14 The Committee is authorised to carry out routine inspections of the Facility (where applicable for committees managing Council facilities).

#### 5.15 The Committee is appointed and authorised to operate strictly in accordance with the conditions and delegations outlined in this Constitution and Instrument of Delegation.

#### 5.16 The Committee will advise the appropriate council officer of any major /external items of repair or maintenance required to the Facility (where applicable for committees managing Council facilities).

### 6. COMMITTEE MEMBERSHIP

#### 6.1 Committees are formed either by voting by members of the organisation or community at a publicly advertised meeting or by the Council publicly calling for nominations or by other means approved by Council. The Committee will comprise not less than four (4) who have been duly appointed by Council. Council may increase the maximum number of members if circumstances warrant.

#### 6.2 Where the committee manages a council facility, user groups of the facility may nominate for membership of the committee and when considering member appointments, Council will endeavour to limit membership of the committee to an equal number of members from each user group.

#### 6.3 Persons under the age of eighteen years

- a) must have parent/guardian consent to become members of a committee
- b) must be in the care of a responsible adult (committee member) whilst participating in committee activities

#### 6.4 The Committee may, subject to clause 6.12, appoint members to identified roles and/or form sub-committees to undertake the work of the Committee.

#### 6.5 The Committee must contain at least the number of Councillors and/or the number of Council employees set out in Items 8 & 9 of the Schedule.


#### 6.6 Transportation to and from committee activities is the responsibility of each committee member

#### 6.7 Each committee member must complete and sign the Prohibited Persons Declaration where the volunteer work primarily involves direct contact with children and that contact is not directly supervised.

#### 6.8 The names and addresses of any nominees are to be forwarded to Council for consideration of appointment in accordance with Section 355 of the *Local Government Act 1993*.

#### 6.9 In the event of a vacancy occurring on the Committee for any reason, the Committee will seek nominations from the relevant group in a manner determined by Council.

#### 6.10 Each member of the Committee exercises that capacity, and provides any labour, on an honorary and voluntary basis. No member of the Committee shall be entitled to any remuneration or wage from Council as a result of that person's membership of the Committee, and there is no employer - employee relationship between Council and any member as a result of that membership.

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- 6.11 The General Manager may, by notice in writing, terminate any person's membership of the Committee. Such written notice must be provided to each member of the Committee and to the person whose membership has been terminated pursuant to this sub-clause. Such termination takes effect on the date specified in the notice regardless of any request under this sub-clause for a review. The General Manager may, at his or her absolute discretion, withdraw any notice issued pursuant to this sub-clause without prejudice to the General Manager's ability to issue further notices under this sub-clause. Any member of the Committee may seek a review of the General Manager's termination of any membership pursuant to this sub-clause by submitting notice in writing to the General Manager, who will then refer the matter to the next available meeting of Council for determination of that review by Council.

#### **Sub Committees**

- 6.12 The formation of any sub-committees or appointment of members to identified roles does not operate as a delegation to such members or sub-committees of any function of Council for the purposes of the LGA and all such sub-committees or members remain subject to the terms of this Constitution.
- 6.13 The Committee, in the case of a Sports Council, may form a Management Committee (sub-committee). This sub-committee will be specified in Item 7 of the Schedule.

#### **Voting**

- 6.14 Each member of the Committee is entitled to one (1) vote on any issue put to the vote of members at any meeting of the Committee.
- 6.15 The Chair at any meeting shall, in the case of an equal number of votes in any resolution put to the meeting, have a second or casting vote.
- 6.16 No member is permitted to participate in any debate before the Committee or vote put to the Committee where that member has, either directly or indirectly, a pecuniary interest in the issue(s) debated or subject of that vote.
- 6.17 Each member is required to notify the Committee in writing of the nature of any pecuniary interest referred to in sub-clause 6.16

#### **The Executive**

- 6.18 The Executive of the Committee will comprise a Chairperson, Deputy Chairperson, Secretary, Treasurer and Booking Officer (if applicable).
- 6.19 The executive positions of the Committee are elected by participants or members at the annual general meeting or by the Committee at its annual first meeting. The Executive must have not less than three members. The annual general meeting will decide which form of voting will be carried out for the appointment of the Executive.
- a) The Committee, at a minimum, must appoint a Chair, Secretary and a Treasurer.
  - b) The Committee may appoint members to other positions, such as, Bookings Officer, Work Coordinator as determined by the membership.
  - c) The Committee may appoint a combined Secretary/Treasurer position if the minimum requirement of three Executive positions is met.
  - d) The Committee, in the case of Sports Councils, may vary the positions of the Executive to include President, Vice Presidents, and Booking Officers. These positions will be specified in Item 7 of the Schedule.
- 6.20 Voting is by a simple majority of either those present at the AGM or the Committee.

6.21 Notwithstanding the provisions of clauses 6.18, 6.19, 6.20 Council may, either by resolution of Council or by written notice signed by the General Manager, terminate the appointment of any member of the Executive.

6.22 Subject to clause 6.21 each member of the Executive shall hold the position on the Executive for a period of twelve (12) months from the date of such appointment or on the expiration of the Constitution, whichever occurs first.

6.23 A maximum of two (2) relatives of any one family can be office bearers on the same Committee at the same time.

- a) Only one (1) of those bearers mentioned above in 6.23 is to sign cheques on behalf of the same committee at the same time
- b) This means that relatives of the same family can be appointed to the same Committee simultaneously but only two can be office bearers and only one can sign cheques during the time that they are members.

6.24 The duties of the Executive shall be:

- |                    |   |
|--------------------|---|
| Chairperson        | a) To call and preside at meetings and to act as spokesperson for the Committee;  |
| Deputy Chairperson | b) To assist the Chairperson and, during her/his absence, assume the role of Chairperson  |
| Secretary          | c) To deal with all incoming and outgoing correspondence and table all correspondence at Committee Meetings for appropriate action<br>d) To provide notice and agenda of meetings to Committee Members<br>e) To accurately record minutes of each meeting and to promptly forward all minutes to the General Manager (Hilltops Council) and to all members of the Committee   |
| Treasurer          | In accordance with any Council document developed to assist the committee the Treasurer is responsible for the following:<br><br>f) To receipt of all moneys payable to the Committee and issuing receipts for same;<br>g) To keep correct accounts and books showing the financial affairs of the Committee;<br>h) To bank to the credit of the Committee all moneys received;<br>i) To submit financial statements at each Committee meeting;<br>j) To prepare and have audited: a Balance Sheet and Profit & Loss Statement of the Committee for presentation to the Annual General Meeting to Council;<br>k) To submit accounts for approval of payment by the Committee at each meeting<br>l) To prepare and submit monthly GST returns to Council |
| Booking Officer    | m) To take enquiries, enter bookings into the bookings diary, send out application forms and conditions of use, issue receipts for hiring fees and insurance cover, issue keys, inspect the facility after use for cleaning and/or damage and informing the Treasurer before reimbursement. Council would prefer that the booking officer and the treasurer not be the same person.   |

6.25 Any member of the Committee shall cease to hold office:

- a) if the Committee is dissolved by Council;
- b) by resignation in writing lodged with the Secretary and forwarded to Council;



- c) if absent without leave for three (3) consecutive meetings;
- d) if the member holds any office of profit under or in the gift of the Committee;
- e) twelve months after the General Election of Council, if so determined in accordance with Council's review of organisation structure pursuant to Section 333 of the *Local Government Act 1993*.

### Disclosure of Interest

6.26 The Committee is a Committee of Council and, as such, Chapter Fourteen (Honesty and Disclosure of Interests) of the *Local Government Act 1993* applies to all its members.

6.27 The Committee's attention is hereby drawn to the following sections of Chapter Fourteen of the *Local Government Act 1993* (reproduced hereunder) 451, 453, 454, 455 and 456:

451 (1) A member of a Council committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or committee at which the matter is being considered must disclose the interest to the meeting as soon as practicable.

(2) A member must not take part in the consideration or discussion of the matter.

(3) A member must not vote on any question relating to the matter.

453 A disclosure made at a meeting of a council or council committee must be recorded in the minutes of the meeting.

454 A general notice given to the General Manager in writing by a Member of a council committee to the effect that the Member, or the Member's spouse, de facto, partner or relative, is:

(a) a member, or in the employment, of a specified company or other body; or

(b) a partner, or in the employment, of a specified person, unless and until the notice is withdrawn, sufficient disclosure of the Member's interest in a matter relating to the specified company, body or person that may be the subject of consideration by the council or council committee after the date of the notice.

455 A Member of a council committee must not, if the council so resolves, attend a meeting of the council or committee while it has under consideration a matter in which the Councillor or member has an interest required to be disclosed under this Chapter.

456 (1) A person who, at the request or with the consent of the council or a council committee, gives advice on any matter at any meeting of the council or committee must disclose any pecuniary interest the person has in the matter to the meeting at the time the advice is given.

(2) The person is not required to disclose the person's interest as an adviser."

6.28 All members of the Committee and those present at a meeting are expected to behave in a courteous and respectful manner towards each other. In the opinion of the Chairman, if behavior at the meeting is disrespectful, discourteous, or unruly, the Chairman can ask for the behavior to cease and if this does not happen, adjourn the meeting. The meeting will be reconvened at a time agreed upon by the Committee.

6.29 All Section 355 committees are governed by Council's Code of Conduct.


## 7. WORK HEALTH & SAFETY

In undertaking all of its activities Council will seek to ensure that the obligations of the *Work Health and Safety Act, 2011* are observed. As an employer Council will endeavour to set a high standard of compliance.

- 7.1 Committee members and volunteers undertaking work or activities on Council land are subject to Work Health & Safety Legislation.
- 7.2 The Committee must ensure that any member of the Committee or volunteer on the work site meets the requirements of the *Work Health and Safety Act, 2011* and Work Health and Safety Regulations, 2011. This includes:
  - a) Cooperate with Council by complying with all health and safety initiatives.
  - b) Ensure all activities undertaken are supported by sound Work Health and Safety practices and follow the risk management approach developed by Council.
  - c) Take reasonable care for the health and safety of others, including those who may be affected by the work site.
  - d) Utilise information instruction, training and supervision from Council to ensure volunteers/committee members understand Work Health and Safety and how it relates to the work undertaken.
  - e) Participate, in consultation within the committee about Work Health and Safety matters, to contribute to decisions affecting health, safety and welfare.
- 7.3 Ensure all committee members or volunteers comply with the following before undertaking activities on any work site:
  - a) The person must be a committee member or a volunteer registered with Council.
  - b) The person is aged not less than 15 years unless the person is part of a group (supervised by an adult/s) which is covered by its own insurance and is prepared to indemnify Council.
  - c) The person is aged no more than 90 years. Council's personal accident insurance does not cover a person beyond 90 years.
  - d) The person must sign on/off each time they participate in activities.
- 7.4 Ensure all committee members or volunteers comply with the following before undertaking activities on any work site:
  - a) The work site and activity/activities are Council approved.
- 7.5 Any incidents or injuries to persons or property, including potential incidents or injuries, must be reported to Council within 24 hours.
  - b) Council's Incident Report Form must be completed according to instructions inside the book.
  - c) Where there are witnesses to the injury or incident, the Committee must attempt to obtain and record the name, address and contact telephone number of each such witness.
- 7.6 The Committee shall ensure that all documents and records of compliance required by Council shall be tendered at the next ordinary meeting of the committee and shall form part of the minutes of that meeting.
- 7.7 Provide the General Manager or their delegated officer with information, documents and records of compliance in accordance with Council's requirements and the State Records Act, 1998.

## 8. MEETINGS


- 8.1 At all meetings of the Committee 50% of the members shall constitute a quorum. A quorum must be present within fifteen minutes of the nominated commencement time.
- 8.2 Proxy votes will not be accepted.
- 8.3 At all meetings of the committee, a quorum must be present. (refer 8.1)

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- 8.4 The Chair shall preside at all meetings of the Committee at which the Chair is present, and in the absence of the Chair, the Deputy Chair shall preside. If both the Chair and the Deputy Chair are absent, the first business of every such meeting shall be to elect an Acting Chair to preside over that meeting and, for the purpose of so presiding, that person shall have all the powers of the Chair.
- 8.5 Meetings are to be conducted in accordance with standard meetings procedure and the minutes of each meeting are to be forwarded to Hilltops Council.
- a) The Committee shall hold ordinary meetings at least once in every quarter, on a day and at a time to be decided upon by the Committee.
  - b) The Committee shall hold an Annual General Meeting, to receive annual reports and elect a Committee Executive once every twelve months.
- 8.6 Where any Member objects to a resolution carried at a meeting of the Committee, such objections must be recorded in the minutes of the Committee and such resolution shall not be valid (and so must not be acted upon or implemented by the Committee) until Council resolves to confirm the resolution of the meeting of the Committee.
- 8.7 The majority of the members of a Committee may resolve that a member of the Committee is to be disqualified. Such resolution shall be recorded in the minutes of any such meeting and those minutes must be submitted to the General Manager by the Secretary within seven (7) days of the meeting at which the Committee made that resolution. Such resolution is of no effect unless confirmed by resolution of Council, whose determination shall be final and absolute.
- 8.8 If any member of the Committee is absent, without leave of the Committee, from three (3) consecutive meetings (other than special meetings) of the Committee, such member shall be disqualified from acting as a member of the Committee but shall be eligible for re-appointment.
- 8.9 Committee members and the general public are entitled to view the Committee's Minute Book or receive a copy of the Minutes of the Committee resolved by the Committee.
- Note: Arrangements may be made to view the Minute Book at the Council Chambers.
- 8.10 At all meetings of the Committee only business included in the Agenda may be dealt with (excepting the Annual General Meeting) unless all the members of the Committee are present and they unanimously consent to such other business being transacted or if the Chairperson rules the matter is of an urgent nature.
- 8.11 Minutes of all meetings shall be recorded by the Honorary Secretary in an approved manner and a copy forwarded with Notice of Next Meeting to the General Manager of Hilltops Council.
- 8.12 All Committee members are entitled to attend all meetings of the Committee.
- 8.13 Committee meetings shall be open for attendance by members of the community and there should not be indiscriminate exclusion of anyone wanting to attend, however, the Committee may resolve to close a meeting or part thereof where matters under discussion would unnecessarily prejudice or embarrass individuals or organisations and/or potentially prejudice any business transactions.
- 8.14 The Committee should endeavor to give public notice of its meetings. Annual General Meetings are to be publicly advertised as per 8.15 and 8.16.

#### **Annual General Meetings**

- 8.15 The Annual General Meeting shall be called by the Chairperson of the Committee or, if not so called, by the General Manager of Hilltops Council.
- 8.16 The Secretary shall give at least six weeks' prior notice of an Annual General Meeting. The notice, giving full details of date, time, place and business of the meeting, is to be displayed in a prominent position at the Facility and sent to all members of the Committee and to the General Manager, Hilltops Council.



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- 8.17 The Annual General Meeting of the Committee shall take place at an agreed time each year for the following purposes: -
- a) To confirm the Minutes of the previous Annual General Meeting and Extraordinary General Meeting, if any.
  - b) To receive the annual reports of officers and audited Statement of Accounts for the preceding twelve (12) months.
  - c) To receive nominations and conduct the election of office bearers for the ensuing year.
  - d) To transact any business of which at least fourteen days' written notice has been given to the Secretary for inclusion in the Agenda.
- 8.18 The Executive office bearers shall be elected at the Committee's Annual General Meeting and hold office for a period of twelve (12) months or until their successors have been appointed as hereinafter provided except where Council exercises its right to dispense with this procedure and determines an alternative method to appoint the executive.
- 8.19 Council will advertise the Annual General Meeting in the local press on behalf of the Committee.
- 8.20 Members of the public are entitled to address meetings of the Committee with the consent of the Chairperson.

#### **Extraordinary Meetings**

- 8.21 The Secretary may, upon receipt of written authority of the Chair or on receipt of a written request signed by no less than three members of the Committee, call a special meeting at a time and at a place determined by the Secretary provided that the time is not less than forty-eight (48) hours prior to the giving of notice of this special meeting by the Secretary. Any such notice must specify the agenda for the special meeting. Failure to receive notice of a special meeting shall not affect the validity of a special meeting.
- 8.22 Unless all members of the Committee unanimously consent to business other than that contained in the agenda for the special meeting being determined at that special meeting, no special meeting shall consider any business other than that for which the special meeting was convened and as contained in the agenda for that special meeting.

### **9. DUTIES OF THE COMMITTEE**

Subject to Council's policies and its power to override any decision of the Committee and the right of general control and direction of the Hilltops Council, the Committee is required to do the following:

- 9.1 Adhere to Council's policies pertaining to the use of facilities.
- 9.2 Adhere to Council's Conditions of Hire for public facilities.
- 9.3 Adhere to Terms & Conditions set out in any council document developed to assist the committee.
- 9.4 Collect a charge for all hall bookings.
- 9.5 Make available for any authorised officer of the Council any records of the Committee as requested.
- 9.6 Operate the Facility in a manner so as to ensure a balanced budget with expenditure at least being equal to income (the Committee may raise funds for the care, control and management of the Facility) in accordance with the Charitable Fundraising Act.
- 9.7 Prepare and submit to Council a Management Plan and Budget Request on an annual basis and in accordance with any council document developed to assist the committee.

9.8 Submit to Council for approval prior to any action being undertaken:

- a) any major work to be carried out at the facility
- b) submissions for grants or other forms of assistance (financial or volunteer contribution)
- c) major projects planned for the Facility
- d) fundraising activities of the Facility.

9.9 The Committee is required to make recommendations to Council regarding the following:

- a) Any aspect of the care, control and management of the facility that is outside the scope of this Constitution and Instrument of Delegation, noting that Council's decision thereon shall be final.
- b) Any necessary structural maintenance to the Facility which is beyond the scope of this Constitution and Instrument of Delegation or the Committee's resources.
- c) Hire charges for the use of the Facility (Note: The Committee shall have no power to waive or discount any charge or fee).

9.10 The Committee must co-operate with any authorised officer of the Council in the carrying out of his/her duties.

9.11 The Council shall have the right to veto any decision of the Committee.

## **10. VOLUNTEERS**

10.1 The Committee may arrange for volunteers to carry out work necessary for the care, control, maintenance and development of the Facility.

10.2 The names of any volunteers must be forwarded to Council prior to any work being carried out.

10.3 All volunteers carrying out any work on, or associated activities in relation to, the Facility are required to give due regard to the safety of themselves and others, with respect to all activities/work being carried out and equipment being used, and shall receive cover in accordance with Council's Public Liability and Personal Accident insurance.

10.4 The Committee is required to maintain a register of volunteers detailing the names and addresses of volunteers, duties performed, the date and time particular work was commenced and completed and details of any incident involving injury to a volunteer.

## **11. FINANCIAL RECORDS - MANAGEMENT COMMITTEES**

11.1 Committees appointed under Section 355(b) of the Local Government Act are subject to the same standards of financial accountability as Council, and it is therefore important that Committees manage their finances well. All funds and assets held by the Committee belong to Council. The Committee is responsible for the care and control of these funds.

11.2 Committees who handle funds, on behalf of Council, are required to comply with Council procedures and instructions, which are designed to ensure that records and day-to-day transactions are handled according to required standards.

11.3 With the introduction of the Goods and Services Tax effective from 1 July 2000, all Section 355 Committees are obliged to comply with the new tax system.

- a) All committees are covered under Council's Australian Business Number.
- b) Committees are responsible for administering the requirements of GST Legislation that is, charging GST on taxable supplies and correctly identifying input tax credits claimable from ATO.
- c) Accordingly, each committee must supply Council with details of GST applicable to all financial transactions for inclusion in Council's monthly Business Activity Statements (BAS).
- d) Compliance with this request will ensure Council's obligation is met on time and will avoid any interest or penalty chargeable by Australian Taxation Office.

11.4 The Treasurer in addition to the duties set out in 6.29(f)-(l) shall be responsible for ensuring:

- a) The proper keeping of the books and accounts of the Committee, which shall be kept as directed by the General Manager and made available to the Council when required for that purpose by the General Manager.
- b) Accounts must be accessible by the General Manager who must be able to authorise, in his or her own right, withdrawals from any account held by the Committee.
- c) Forwarding monthly financial and GST reporting to Council's designated Responsible Officer twice a year in a format as directed by the General Manager.
  - This includes a cash book style financial record keeping system (manual or electronic), which is set up to record income, expenditure, GST and reconciliations in a simple format.
  - The cash book is completed each month and the original forwarded to Council with copies of tax invoices, tax input receipts and bank statements.
  - The totals of each month are entered onto the Annual Summary Reporting page which is forwarded to Council annually.
- d) Receiving monies on behalf of the Committee and maintaining accurate records of the receipt of such monies.
- e) Attending to the payment of accounts and other expenses approved by the Committee on behalf of the Committee, and maintaining an accurate record of such payments.
- f) Issuing of tax invoices.

11.5 All monies received by the Committee shall be deposited, within seven (7) days of receipt into an account in the financial institution set out in Item 10 of the Schedule. Any such account must have the names set out in Item 11 of the Schedule.

11.6 The Committee may only operate those accounts set out in Item 11 of the Schedule or as directed in writing by the General Manager.

- a) The committee shall operate a dual signature bank account in the name as listed in Item 1 of the Schedule. Three members of the Committee's executive shall be designated as signatories with cheques to be signed by any two signatories provided that the signatories are not from the same family.
- b) All Committees are required to advise Council of the details of the persons who are authorised signatories of the Committee's bank account.

11.7 The Committee must not, at any time, incur any expenditure in excess of the amount held in the Committee's credit in the account operated by the Committee in compliance with this Constitution. In any event, no expenses of any member of the Committee or the Committee shall be paid unless authorised by resolution of the Committee.

11.8 The Committee may authorise the transfer of an amount not exceeding the sum of \$50.00, to be known as "petty cash", which shall be held by the Treasurer subject to any direction by the Committee.

11.9 The financial year shall be the period from the 1st July to 30th June.

## 12. RECORDS AND RECORD KEEPING

12.1 Creation and retention of records

The Australian Standard on Records Management (AS 4390-1996, Part 1. Clause 4.2.1) defines a record as Recorded information, in any form, including data in computer systems, created or received and maintained by an organisation or person in the transaction of business or the conduct of affairs and kept as evidence of such activity.

12.2 The Secretary is responsible in addition to the duties set out in 6.29(c)-(e) for;

- a) Preparing agendas, notices of meetings and circulating same and minutes of meetings.
- b) Recording the minutes of all meetings. In respect of any meeting of the Committee, each Committee Member shall be required to sign an attendance sheet, which will form part of the minutes.



- c) Conducting all correspondence on behalf of the Committee.
- d) Retaining copies of all outgoing correspondence.
- e) Retaining the original of all incoming correspondence.

12.3 Committees need to be aware of the importance of minutes, because of their legal status and their liability to subpoena in court cases.

- a) An agenda is to be sent out to all Committee Members at least one week prior to the meeting.
- b) Minutes of the matters discussed will be kept and a copy forwarded to Council and to all Committee members.
- c) The Chair/Deputy Chair is required to sign the minutes of a meeting as the true record of proceedings of the meeting. The minutes must record all motions and amendments put to the meeting, and the results. There is no need to record what members said at the meeting, but there may be occasions when it is appropriate to record the thrust of the debate.
- d) The Chair/Deputy Chair and the Secretary are responsible for the form of the minutes for proper confirmation, and must check that there have been no un-authorised alterations to those minutes. The Chair/Deputy Chair signs the minutes after they have been confirmed by the appropriate meeting (usually the next committee meeting). The signing must not take place until the motion for confirmation has been completed. The motion to confirm the minutes can only be moved and seconded by a person in attendance at that meeting to which the minutes relate.

12.4 Ownership and legislation

- a) In respect to record keeping, the Committee must act in accordance with Council's Records Management Directive, and associated procedures as determined by Council.
- b) The Management Directive and procedures reflect the requirements of public offices in the creation, management, and protection of their records as legally required by the State Records Act of 1998.
- c) As determined by the State Records Act 1998, neither the Committee nor Council is the owner of records created and maintained by them. As a public office Council's records are officially records of the state and must be managed by Council and Committees accordingly.

12.5 Destruction of records

- a) No incoming or outgoing correspondence may be destroyed, with the exception of advertising material, newsletters, and magazines.

12.6 Storage and custody of records


- a) Records should be stored in an area away from potential hazards, e.g. fuel, water, fire, vermin.
- b) Records should be stored in a secure location, e.g. locked cupboard or room.
- c) Release of original or photocopied records to any person, other than a current Committee member or an authorised officer of the Council, is prohibited.

12.7 Access to records

- a) Access to records by persons other than current Committee members or an authorised officer of the Council is prohibited.
- b) Request for access to records, for persons other than those stated above, must be made through Council's Public Officer.
- c) The Committee acknowledges it has a responsibility under the Privacy and Personal Information Protection Act 1998 to protect the personal information and privacy of individuals in general. The Committee will not provide to any person other than a committee member any personal information unless it has been specifically collected for the purposes for which it is being requested. This includes contact details for a member of the Committee unless that member has agreed those details can be provided to members of the public.

12.8 Return of records to Council

Any records still held by a Committee prior to 2002 must be returned to Council for archival storage. Access to these records can be arranged through Council's 355(b) Committee



Responsible Officers.

- a) Return of original records to Council is to be done annually following each individual Committee's AGM.
- b) Photocopies of returned records will be provided, within reason, if required for ongoing business activities. Arrangements can be made through Council's 355(b) Committee Officers.

### **13. REPORTS**

#### **13.1 Monthly - Financial Reporting and attachments**

To be forwarded to Council's designated Responsible Officer twice a year in a format as provided by Council.

#### **13.2 Annual - Financial Summary Statement**

To be forwarded prior to 31 July each year to the General Manager, for submission to Council in a format as provided by Council.

#### **13.3 Annual Reports**

To be forwarded prior to 31 July each year to Council's designated Responsible Officer and include:

- a) A summary of activities and projects undertaken by the Committee during the previous financial year proposed projects and activities to be undertaken by the Committee during that current financial year.
- b) Elected Executive
- c) Updated List of Account Signatories

#### **13.4 Recommendations for Fees and Charges**

- a) To be forwarded to Council by 1st December each year.
- b) The schedule of fees and charges is set by Council, taking into consideration the recommendations of the Committee and the operating requirements of the facility.
- c) The Committee is not able to provide subsidies or waive hire fees.

### **14. INTELLECTUAL PROPERTY**

#### **14.1 The Committee acknowledges and agrees:**

- a) It is important for Council to develop, maintain, protect and manage the organisation's intellectual property including copyrights, trademarks, registered designs, patents and databases.
- b) The Committee, as a delegate of Council, has a duty to observe and help protect Council's intellectual property by not copying or supplying such property without the express permission of Council.
- c) Council retains ownership of all intellectual property created by Committee members in the course of their Committee work.

#### **14.2 The Committee refer to the Responsible Officer any questions relating to intellectual property rights or the use of another organisation's document.**

### **15. DISPUTE RESOLUTION**

- 15.1 Where the Committee is unable to reach a determination of any issue, the Committee must refer that issue to the Responsible Officer for determination. Where the Committee resolves that it is dissatisfied with the resolution of that dispute by the Responsible Officer it may, by notice in writing to the Director, request that the matter be referred to the Director for determination of the dispute. Where the Committee resolves that it is dissatisfied with the resolution of that dispute by the Director it may, by notice in writing to the General Manager, request that the matter be referred to Council for determination of the dispute by resolution of Council, whose determination of the dispute shall be final and binding upon the Committee.





## 16. AMENDMENT OF THE CONSTITUTION

- 16.1 The Constitution may only be altered by resolution of the Council.
- 16.2 The Committee may request Council to consider an amendment their Constitution Schedule once the proposed alteration is submitted to a General Meeting of the Committee and the notice convening such a meeting contains the proposed alteration or the effect thereof AND such proposed alteration is approved by at least three-fourths of the members present at such a General Meeting.

## 17. DISSOLUTION

- 17.1 Council may dissolve a committee at any time. Council may wish to dissolve a committee to carry out the control of the facility itself.
- 17.2 Council may also dissolve a committee if that Committee is not complying with the roles and responsibilities of the Committee.
- 17.3 The committee shall be dissolved in the event of membership dropping to less than four (4) persons. However, if a committee chooses to remain active with less than four members, it is given six months to re-establish a viable membership (i.e. minimum of four members).
- 17.4 If a committee or facility becomes inactive or inoperable, the Committee will be dissolved and all responsibilities will be taken over by the designated Council department (in this instance, consideration will need to be given to the long- term viability of the facility or function).
- 17.5 On dissolution of the committee, the Secretary/Treasurer or the responsible member must forward immediately all records (minutes, correspondence, financial records) to Council.
- 17.6 The committee can also be dissolved by a vote of 75% of members entitled to vote present at an Extraordinary Meeting convened to consider this option.
- 17.7 Upon a resolution being passed by Council for the dissolution of the Committee, all assets and funds of the Committee shall, after payment of all expenses and liabilities, be handed over to Council for the future management of the facility or to be held in trust by Council until a Committee is re-established

**Schedule to Hilltops Council Section 355 Committee Standard Constitution**

<b>Item 1</b>	<b>Name of Committee</b>	
<b>Item 2</b>	<b>Name of Council Group</b>	
<b>Item 3</b>	<b>Functions delegated by Council to Committee</b>	
<b>Item 4</b>	<b>Restriction on functions delegated</b>	
<b>Item 5</b>	<b>Policies and legislation the committee is required to comply with in addition to those set out in clause 5.3 of the standard constitution</b>	
<b>Item 6</b>	<b>Date on which constitution concludes</b>	
<b>Item 7</b>	<b>Maximum number and make-up of committee members</b>	
<b>Item 8</b>	<b>Councillors</b>	
<b>Item 9</b>	<b>Council employees</b>	
<b>Item 10</b>	<b>Name of financial institution and type of account</b>	
<b>Item 11</b>	<b>Name of any account operated by the committee</b>	
<b>Item 12</b>	<b>Area assigned to committee and/or map</b>	
<b>Item 13</b>	<b>Additional clauses or amendments to Standard Constitution or Schedule To be listed in full – body of constitution not to be altered</b>	
<b>Item 14</b>	<b>Changes to Standard Constitution or Schedule</b>	
<b>Item 15</b>	<b>Minimum number of meetings per annum</b>	

## Nomination Form for Appointment to Committee

### 1. NOMINEE DETAILS

Mr <input type="checkbox"/> Miss <input type="checkbox"/> Ms <input type="checkbox"/> Mrs <input type="checkbox"/>	Full Name:
Residential Address of nominee:	
Postal Address of nominee:	
Name of Committee:	
Group Represented:	
Phone/Mobile:	Email:

### 2. REASONS FOR WISHING TO JOIN THE COMMITTEE


I acknowledge receipt of the Privacy and Personal Information Protection Act 1998 Pre-Collection (Section 10).

I confirm I have read the contents of the notice and agree that personal information may be used for the purposes identified and provided to the recipients identified in the notice.

Nominee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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Nominee's under 18 years of age – Parent/Guardian Consent

I, \_\_\_\_\_ hereby consent to the nomination of \_\_\_\_\_  
to the \_\_\_\_\_ committee.

Parent/Guardian Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Please return this form to Hilltops Council, Locked Bag 5, Young NSW 2594**

## **Privacy and Personal Information Protection Act 1998**

### **Pre-Collection (Section 10)**

#### **Hilltops Council Section 355 Committees**

The personal information that Council is collecting from you is personal information for the purposes of the Privacy and Personal Information Protection Act 1998 ('the Act').

The intended recipients of the personal information are:

- Members of the public and Council staff requiring contact information in relation to your Committee.
- The personal information will appear in the Council Agenda at the time that your nomination will be considered by Council and the personal information will as a result be available to Council, members of staff and members of the public who obtain copies of the Council Agenda.

The provision of the information by you is voluntary.

The personal information will be used by the Council to choose members of the Committee.

Council is collecting this personal information from you in order to maintain an accurate contact list for members of the public, Council officers and other Council Committee members who may need to contact the appropriate members of your Committee.

If you do not provide this information, we will not be able to include details in the database.

You may make application for access amendment to information held by Council. You may also make a request that Council suppress your personal information from a public register. Council will consider any such application in accordance with the Act.

Council is to be regarded as the agency holding the information.

Inquiries concerning this matter may be addressed to Councils' General Manager.