

**PLANNING AGREEMENT for**  
**SPICERS CREEK WIND FARM**

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**Dubbo Regional Council** (ABN 53 539 070 928) (Council)

**Spicers Creek Wind Farm Pty Ltd** (ACN 648 166 269) (Developer)



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## Parties to this Agreement

<b>Developer</b>	Name	<b>Spicers Creek Wind Farm Pty Ltd</b>
	Address	171 – 173 Mounts Bay Road, Perth WA 6000
	ABN	83 648 166 269
	Contact Name	The Project Manager
	Contact email	<a href="mailto:info@spicerscreekwindfarm.com.au">info@spicerscreekwindfarm.com.au</a>
<b>Council</b>	Name	<b>Dubbo Regional Council</b>
	Address	PO Box 81, Dubbo NSW 2830
	ABN	53 539 070 928
	Contact Name	Infrastructure Contributions
	Contact email	<a href="mailto:infrastructurecontributions@dubbo.nsw.gov.au">infrastructurecontributions@dubbo.nsw.gov.au</a>

## Recitals

- 1 The Developer has lodged the Development Application to carry out the Development on the Project Site.
- 2 The Developer has made an offer in connection with the Development Application to enter into this deed to make the Monetary Contributions.
- 3 The Council agrees to be the custodian of the Monetary Contributions paid by the Developer and to distribute and expend the Monetary Contributions in accordance with this Agreement.

## Operative provisions

### Part 1 - Preliminary

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#### 1 Definitions and Interpretation

1.1 In this Agreement the following definitions apply:

- 1.1.1 **Act** means the *Environmental Planning and Assessment Act 1979* (NSW).
- 1.1.2 **Administration Fee** means includes costs, charges and expenses, including those incurred in connection with advisers, of administering and auditing the Monetary Contributions paid under this Agreement.
- 1.1.3 **Agreement** means this deed and includes any schedules, annexures and appendices to this Agreement.
- 1.1.4 **Audit** means audit requirements undertaken in accordance with the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2021*.
- 1.1.5 **CIV** means Capital Investment Value as defined in the dictionary of the Regulation.
- 1.1.6 **Committed Turbine** means a wind turbine specified in the Pre-Construction Notice to be installed in the Dubbo Regional LGA based on the Final Layout Plans. A wind turbine ceases to be a Committed Turbine when it is decommissioned.
- 1.1.7 **Community Benefit Fund Projects** means projects funded by the Spicers Creek Planning Agreement Fund, granted by the Council to community groups and other not-for-profit organisations for projects principally situated within 20km of the Project Site (in respect of the Contribution Years 1-5) and within 30km of the Project Site (in respect of the Contribution Years 6-30), and for projects in Wellington but does not include projects in the Dubbo urban area.
- 1.1.8 **Community Engagement Strategy** means the Council's adopted Community Engagement Strategy, as amended from time to time, or any replacement strategy for community and stakeholder engagement and participation in Council decision-making.
- 1.1.9 **Construction Commencement Date** means the date of commencement of construction notified by the Developer to the Department in accordance with the Development Consent.
- 1.1.10 **Contribution Year** means every 12 month period from 1 July each year, and in respect of the first Contribution Year, the period from the Construction Commencement Date to 1 July.



- 1.1.11 **Costs** means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.
- 1.1.12 **Decommission** means the deconstruction and removal of wind turbines and above ground ancillary infrastructure in accordance with the Development Consent to the satisfaction of the Developer, and decommissioned is to be construed accordingly.
- 1.1.13 **Decommissioning Completion Date** means the date that each Committed Turbine within the Dubbo Regional LGA is decommissioned.
- 1.1.14 **Department** means the Department of Planning and Environment or replacement government authority responsible for administering the Act and the Development Consent.
- 1.1.15 **Development** means the development authorised by the Development Consent for the Spicers Creek Wind Farm.
- 1.1.16 **Development Application** means the application SSD 44134610 lodged with the Minister for Planning under the Act, as modified from time to time, for the Spicers Creek Wind Farm.
- 1.1.17 **Development Consent** means the development consent granted by the Minister for Planning pursuant to the Development Application, as modified from time to time.
- 1.1.18 **Dispute** means a dispute or difference between the Parties under or in relation to this Agreement.
- 1.1.19 **Final CIV** means the CIV of the Committed Turbines, as stated in the Pre-Construction Notice.
- 1.1.20 **Final Layout Plans** means the detailed plans of the final layout of the Committed Turbines for the Development submitted by the Developer to the Department in accordance with the Development Consent.
- 1.1.21 **Framework** means the Renewable Energy Benefit Framework adopted by the Council on 8 December 2022 used to guide developers of Solar and Wind Energy on Council's requirements to deliver benefits to the community, a copy of which is annexed at Annexure B, as amended and adopted by the Council from time to time.
- 1.1.22 **Local Government Area or LGA** means the 'area' as defined in the *Local Government Act 1993* (NSW).
- 1.1.23 **Local Projects** means projects to be carried out for the purposes specified in the Framework that are not otherwise to be carried out or funded by or on behalf of a government entity or by or on behalf of the Developer in association with the Development, with a preference for projects principally situated within 30km of the Project Site and for projects in Wellington but not projects in the Dubbo urban area. For the avoidance of doubt, Local Projects

may include Road Projects amongst other community benefits as included in the Framework.

- 1.1.24 **Monetary Contribution** means the annual monetary development contribution payable by the Developer to the Council each Contribution Year, calculated based on 1.5% of the Final CIV across the Project Years, and in accordance with clause 5.3 of this Agreement as adjusted in accordance with clause 8 of this Agreement.
- 1.1.25 **Nominated Strategic Project** means the Strategic Project nominated by the Council to which the Strategic Project component of the Monetary Contribution paid in Contribution Years 1 to 5 of this Agreement is allocated, being the replacement of the causeway on Forestvale Road with a bridge and ancillary works.
- 1.1.26 **Party** means a party to this Agreement, including their successors and assigns.
- 1.1.27 **Plan** means the plan annexed to this Agreement at Annexure A.
- 1.1.28 **Pre-Construction Notice** means the notice submitted by the Developer to the Council on or before the Construction Commencement Date, in accordance with clause 5.2.1 of this Agreement, including the matters specified in clause 5.2.2 of this Agreement.
- 1.1.29 **Project Site** has the meaning given in the Development Application and as shown in blue on the Plan.
- 1.1.30 **Project Years** means the life span of the Development, expressed in years, as stated in the Development Consent commencing on the Construction Commencement Date and ending on the Decommissioning Completion Date.
- 1.1.31 **Regulation** means the *Environmental Planning and Assessment Regulation 2021* as amended or replaced from time to time.
- 1.1.32 **Related Entity** has the meaning given to 'related body corporate' in the *Corporations Act 2001* (Cth), but on the basis that 'subsidiary' has the meaning given to Subsidiary in this agreement and that 'body corporate' includes any trust, fund or other entity.
- 1.1.33 **Road Projects** means works to maintain Council public roads that are not otherwise to be carried out or funded by or on behalf of a government entity or by or on behalf of the Developer in association with the Development, with a preference for projects principally situated within 20km of the Project Site and for road works in Wellington.
- 1.1.34 **Spicers Creek Planning Agreement Fund** means the fund to be established by the council and administered in accordance with this Agreement.



- 1.1.35 **Strategic Projects** means large-scale strategic infrastructure projects valued at more than \$1 million CIV within the Dubbo Regional LGA that are not otherwise to be carried out or funded by or on behalf of a government entity. Strategic projects are projects that are in accordance with one of the community benefits identified in the Framework.
- 1.1.36 Subsidiary has the meaning given to 'subsidiary' in the *Corporations Act 2001* (Cth) but on the basis that:
- (i) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share and the relevant 'board' for the purposes of section 46(a)(i) of the *Corporations Act 2001* (Cth) will be the board of directors of the trustee of the trust; and
  - (ii) a corporation or trust may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation.

## **1.2 Interpretation**

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- 1.2.1 **Headings** are inserted for convenience only and do not affect the interpretation of this Agreement.
- 1.2.2 A reference in this Agreement to a **business day** means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.5 A reference in this Agreement to a \$ value relating to a Monetary Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.



- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Agreement includes the agreement recorded in this Agreement.
- 1.2.14 A reference to a Party to this Agreement includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.17 Notes appearing in this Agreement are operative provisions of this Agreement.

## **2 Planning agreement under the Act**

- 2.1 This Agreement is a planning agreement within the meaning of section 7.4(1) of the Act, governed by Subdivision 2 of Part 7 of the Act, and the parties agree on the matters set out in Schedule 2.

## **3 Application of this Agreement**

- 3.1 This Agreement applies to the land within the Project Site and the Development.

## **4 Date upon which this Agreement takes effect**

- 4.1 This Agreement will not take effect unless and until the date of a notice of determination of the Development Application to grant Development Consent for the Development.

## **Part 2 - Payment of the Monetary Contributions**

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### **5 The Monetary Contribution under this Agreement**

- 5.1 The Developer must pay to the Council the Monetary Contribution in arrears within 14 Business Days of 1 July each Contribution Year.
- 5.2 Pre-Construction Notice
- 5.2.1 Within thirty (30) Business Days after the Construction Commencement Date, the Developer must serve the Council with a Pre-Construction Notice.
- 5.2.2 The Pre-Construction Notice served under clause 5.2.1 must include the following:
- (i) The total number of Committed Turbines;
  - (ii) The number of Committed Turbines that will be installed on land within the Dubbo Regional LGA;
  - (iii) A report from a suitably qualified person providing a detailed calculation of, and monetary amount of, the Final CIV.
- 5.3 Calculation of Monetary Contribution
- 5.3.1 Each annual Monetary Contribution will be an amount equal to "X" in the following formula;
- $X = 1.5\% \times (N \times \text{number of Committed Turbines within the Dubbo Regional LGA}) \div \text{Project Years}.$
- $N = \text{Final CIV} \div \text{Committed Turbines}$
- 5.4 The Developer's obligation under clause 5.1 ceases in respect of a Committed Turbine when a Committed Turbine is decommissioned.
- 5.5 The obligation of the Developer to pay any Monetary Contribution under this agreement will cease on the Decommissioning Completion Date.
- 5.6 If a Monetary Contribution is required to be paid by the Developer under clause 5.1 and the relevant period to which the payment relates is less than a full year, the Monetary Contribution is to be adjusted on a pro-rata basis.

### **6 Interest on unpaid amounts**

- 6.1 The Developer agrees to pay interest on any overdue part or whole of any Monetary Contribution payable:
- 6.1.1 from the date on which the overdue part or whole of the Monetary Contribution is due for payment under this Agreement;
  - 6.1.2 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.

## 7 Application of Section 7.11, 7.12 and 7.24 of the Act to the Development

- 7.1 This Agreement excludes the application of Section 7.11 of the Act to the Development.
- 7.2 This Agreement excludes the application of Section 7.12 of the Act to the Development.
- 7.3 This Agreement excludes the application of Section 7.24 of the Act to the Development.

## 8 Indexation of Monetary Contribution

- 8.1 From the anniversary of the first payment of a Monetary Contribution, all subsequent Monetary Contributions are to be indexed in accordance with the following formula:

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

Where:

- MC** is the Monetary Contribution for the following Contribution year;
- A** is the Monetary Contribution payable during the Contribution Year just ended;
- B** is the most recent Index number (last published) being the Index published in Quarter 1 before the end of the Contribution Year just ended
- C** is the most recent Index number (last published) being the Index published in Quarter 1 before the commencement of the of the Contribution Year just ended;

- 8.2 In this clause **Index** means: the Consumer Price Index – Groups, Weighted Average of Eight Capital Cities or equivalent index published from time to time by the Australian Bureau of Statistics.

## 9 How money is paid

- 9.1 A Monetary Contribution is made for the purposes of this Agreement when the Council receives the full amount of the Monetary Contribution payable under this Agreement by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council. Council will not accept any other forms of payment.

## **10 Establishment of the Spicers Creek Planning Agreement Fund**

- 10.1 The Council must apply each Monetary Contribution towards the public purposes identified in Schedule 1, in accordance with the percentage allocations in Schedule 1, or as otherwise determined by the Council in accordance with clause 10.5 of this Agreement.
- 10.2 The Council must invest all Monetary Contributions paid by the Developer under this Agreement in an interest-bearing account held in the name of the Council for the purpose of the Spicers Creek Planning Agreement Fund pursuant to the provisions of section 625 of the *Local Government Act 1993* (NSW).
- 10.3 In the event that, due to unforeseen and exceptional circumstances, it is not reasonably practicable for the Nominated Strategic Project to be carried out utilising Monetary Contributions under this Agreement in the timeframe specified in Schedule 1, an alternative Strategic Project is to be nominated in accordance with the procedures set out in clause 11 below.
- 10.4 The agreement expressly authorises Council to progressively or otherwise pool funds for Strategic Projects, Road Projects and Local Projects.
- 10.5 Prior to the end of the fifth (5<sup>th</sup>), tenth (10<sup>th</sup>), fifteenth (15<sup>th</sup>), twentieth (20<sup>th</sup>) and twenty fifth (25<sup>th</sup>) Contribution Year, the Council will review and determine whether the percentage allocations specified in Schedule 1 of this Agreement should be varied. Prior to making a decision to vary some or all of the percentage allocations specified in Schedule 1 of this Agreement, the Council must consult in accordance with the guidelines prepared under clause 12.1.1 of this Agreement.

## **11 Participation in the Spicers Creek Planning Agreement Fund**

- 11.1 If requested by the Developer, the Council must facilitate the participation of the Developer in the Council's decision making in relation to the expenditure of the Spicers Creek Planning Agreement Fund in the following way:
  - 11.1.1 In relation to the Strategic Projects, Local Projects and Road Projects, the Council must provide the Developer with briefing information in relation to potential projects eligible for funding from the Spicers Creek Planning Agreement Fund, including relevant background, alignment with the community benefits identified in the Framework, strategic need, community need and financial implications.



11.1.2 The Developer will have 14 business days to review the information and provide submission/s to the Council, at its discretion.

11.1.3 Any submissions made by the Developer must be included in the business papers and considered by Council when resolving to expend monies from the Spicers Creek Planning Agreement Fund.

## **12 Community participation in the Spicers Creek Planning Agreement Fund**

12.1 The Council must facilitate consultation with the community in accordance with Council's Community Engagement Strategy, in relation to the expenditure of the Spicers Creek Planning Agreement Fund in the following way:

12.1.1 Within 3 months of the Construction Commencement Date, the Council must prepare guidelines (which may be amended from time to time) to govern consultation with the community in relation to Strategic Projects, Local Projects and Road Projects (which may be amended from time to time). The guidelines must:

- (i) be prepared in accordance with the consultation and engagement requirements provided for in Council's Community Engagement Strategy;
- (ii) provide for the community to be provided with a minimum period of 28 days in which to provide any written submissions to Council on the proposed Strategic Projects, Local Projects and Road Projects.

12.2 In relation to Strategic Projects, Local Projects and Road Projects, the Council must consult the community in accordance with the guidelines prepared in 12.1.1 prior to any funding decision being made by Council.

12.3 The community must be provided with a minimum period of 28 days in which to provide any written submissions to Council on the proposed Strategic Projects, Local Projects and Road Projects.

12.4 Any submissions made by the community must be included in the Business Papers and considered by Council when resolving to expend any monies from the Spicers Creek Planning Agreement Fund.

## **13 Community Benefit Fund**

13.1 Within 3 months of the Construction Commencement Date, the Council must prepare guidelines to govern the administration of the Community Benefit Fund (which may be amended from time to time).

13.2 If requested by the Developer, the Council must consult with the Developer in relation to the preparation of the guidelines.

13.3 The guidelines must provide for the following:

- 13.3.1 Eligibility criteria for applications;
- 13.3.2 Timeframes for expenditure of funds (which should be within 12 months of the Council's decision to grant);
- 13.3.3 Advertisement of the availability of funds for Community Benefit Fund Projects;
- 13.3.4 If requested by the Developer, the Council must consult the Developer in relation to applications made for funding for Community Benefit Fund Projects from the Spicers Creek Planning Agreement Fund.

## **14 Notification to Developer**

- 14.1 The Council must notify the Developer of the recipients of funding from the Spicers Creek Planning Agreement Fund for Community Benefit Fund Projects.

## **15 Public Recognition**

- 15.1 The Council must publicly and positively acknowledge the payment of the Monetary Contribution by the Developer and the Developer's role in funding the Nominated Strategic Project, any Community Benefit Fund, Strategic Project, Local Project and Road Project via the Spicers Creek Planning Agreement Fund;
- 15.2 The form of public acknowledgment required by clause 15.1 is to be agreed by the Council and the Developer (acting reasonably) prior to the Commencement of Development in a public notification plan, which must include:
  - 15.2.1 The prominent inclusion of the Developer's logo in any advertisement for funding applications or an announcement made in relation to the Community Benefit Fund; and
  - 15.2.2 where appropriate for the Nominated Strategic Project, each Strategic Project, Local Project and Road Project, a permanent sign recognising that the project is funded by the Developer via the Spicers Creek Planning Agreement Fund.
- 15.3 The public notification plan agreed between the parties in accordance with clause 15.2 may be amended from time to time by agreement between the parties.

## **16 Audit**

- 16.1 During each year in which there are funds in the Spicers Creek Planning Agreement Fund, the Council must undertake audit functions in accordance with the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2021, and will reconcile:



- 16.1.1 the Monetary Contribution paid by the Developer under clause 5.1;
  - 16.1.2 any payments made by the Council in accordance with clause 10.1;
- and identify any corrective payments required.
- 16.2 The Developer and the Council must make any corrective payments identified as being necessary to reconcile the Spicers Creek Planning Agreement Fund.
  - 16.3 The costs of Audit can be paid out of the Administration Fee.

### **Part 3 - Security, Enforcement and Dispute Resolution**

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#### **17 No registration**

- 17.1 The parties agree that this Agreement will not be registered on the land within the Project Site pursuant to section 7.6 of the Act.

#### **18 Disposal by the Developer of its interest in the Development**

- 18.1 Subject to clause 18.2 the Developer must not without the consent of the Council (which consent shall not be unreasonably withheld or delayed) assign, transfer or otherwise deal with the Developer's rights, duties or obligations under this agreement.
- 18.2 The Council agrees that the Developer may assign, transfer or otherwise deal with the Developer's rights, duties or obligations under this agreement to:
  - 18.2.1 a Related Entity of the Developer or a partnership comprised of Related Entities of the Developer;
  - 18.2.2 a joint venturer or partner of the Developer in respect of the Development; or
  - 18.2.3 any third party, subject to the Developer proving to the reasonable satisfaction of the Council that such party is able to comply with the Developer's obligations under this Agreement (and to avoid any doubt the consent of the Council is not required if the third party has, or is a related body corporate of a company (within the meaning of the *Corporations Act 2001* (Cth)) which has, experience with wind farm projects or other similar infrastructure projects),without the consent of the Council.
- 18.3 The Developer shall be released and discharged from any obligations under this agreement on and from the date of the assignment, and the performance of the terms of this agreement from the date of the

assignment, and from all claims and demands in connection with this agreement that arise after the date of the assignment in the event of the Developer assigning the Developer's rights and obligations under this agreement, provided always that the Developer is responsible for any action claim or demand with respect of the performance of this agreement for any period prior to and including the date of the assignment.

## **19 Dispute Resolution**

### **19.1 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).

### **19.2 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.

### **19.3 Negotiation**

The nominated representatives must:

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

### **19.4 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**).

### **19.5 Mediation**

The parties agree that a dispute shall be mediated if it is the subject of a Dispute Notice, in which case:

- 19.5.1 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);
- 19.5.2 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;



19.5.3 the Mediator appointed pursuant to this clause Part 3 - 19.5 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 her function as mediator, she being required to fully disclose any such interest or duty before her appointment;

19.5.4 the Mediator shall be required to undertake to keep confidential all matters coming to her knowledge by reason of her appointment and performance of her duties;

19.5.5 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;

19.5.6 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;

19.5.7 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.

## **19.6 Litigation**

If the dispute is not finally resolved in accordance with clause 19.5, either party is at liberty to litigate the dispute.

## **19.7 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 19 for any purpose other than an attempt to settle a dispute between the parties.

## **19.8 Continue to perform obligations**

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

### **19.9 Enforcement**

Subject to compliance with clause 19, this agreement may be enforced by any party in any court of competent jurisdiction.

## **Part 4 - Warranties and Indemnities**

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### **20 Warranties**

- 20.1 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.

### **21 Risk**

- 21.1 The Developer performs this Agreement at its own risk and its own cost.

### **22 Release**

- 22.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Agreement except if, and to the extent that, the Claim arises because of the Council's negligence or default.

### **23 Indemnity**

- 23.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Agreement except if, and to the extent that, the Claim arises because of the Council's negligence or default.

## **Part 5 - Other Provisions**

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### **24 Confidentiality**

- 24.1 This agreement is a public document and its terms are not confidential.
- 24.2 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).
- 24.3 The parties acknowledge that:
- 24.3.1 confidential information may have been supplied to some or all of the Parties in negotiations leading up to the making of this agreement; and



24.3.2 the Parties may disclose to each other further confidential information in connection with the subject matter of this agreement.

24.4 Subject to clauses 24.5 and 24.6, each Party agrees:

24.4.1 not to disclose any confidential information received before or after the making of this agreement to any person without the prior written consent of the Party who supplied the confidential information; or

24.4.2 to take all reasonable steps to ensure all confidential information received before or after the making of this agreement is kept confidential and protected against unauthorised use and access.

24.5 A Party may disclose confidential information in the following circumstances:

24.5.1 in order to comply with the law, or the requirements of any Authority; or

24.5.2 to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the confidential information confidential.

24.6 The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

## **25 Notices**

25.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

25.1.1 delivered or posted to that Party at its address, or

25.1.2 emailed to that Party at its email address.

25.2 For the purposes of this clause a Party's address and email address are as noted under 'Parties to this Agreement'.

25.3 If a Party gives the other Party 5 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.

25.4 Any notice, consent, information, application or request is to be treated as given or made if it is:

25.4.1 delivered, when it is left at the relevant address,

25.4.2 sent by post, 7 business days after it is posted, or

25.4.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.

25.5 If any notice, consent, information, application or request is delivered, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

## **26 Time for doing acts**

26.1 If:

(i) the time for doing any act or thing required to be done; or

(ii) a notice period specified in this Agreement,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

26.2 If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

## **27 Costs**

27.1 The Developer is to pay to the Council the Council's reasonable costs of preparing, negotiating, executing and stamping and registering this Agreement, and any document related to this Agreement, within 30 Business Days of a written demand by the Council for such payment.

27.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Agreement within 20 business days of a written demand by the Council for such payment.

## **28 Entire Agreement**

28.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.

28.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

## **29 Further Acts**

29.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

29.2 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Agreement that are not inconsistent with this Agreement for the purpose of implementing this Agreement.



### **30 Governing Law and Jurisdiction**

- 30.1 This Agreement is governed by the law of New South Wales.
- 30.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 30.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

### **31 Joint and Individual Liability and Benefits**

- 31.1 Except as otherwise set out in this Agreement:
  - 31.1.1 any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and
  - 31.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

### **32 No Fetter**

- 32.1 The Parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the Act.
- 32.2 This Agreement is not intended to operate, and shall not be construed as operating to fetter, in any unlawful manner:
  - 32.2.1 the power of Council to make any law; or
  - 32.2.2 the exercise by Council of any statutory power, discretion or duty.
- 32.3 Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law.

### **33 Good faith**

- 33.1 Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

### **34 Illegality**

- 34.1 If this Agreement or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.

### **35 Severability**

- 35.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way

that makes it legal, enforceable and valid, it must be read in the latter way.

- 35.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

## **36 Amendment**

- 36.1 No amendment of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement in accordance with section 203 of the Regulation.

## **37 Electronic Execution and Counterparts**

- 37.1 This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument. An executed counterpart may be delivered as a scanned pdf file attached to an email.
- 37.2 This Agreement is binding on the parties on the exchange of executed counterparts. A copy of an original executed counterpart sent by email:
- 37.2.1 must be treated as an original counterpart;
  - 37.2.2 is sufficient evidence of the execution of the original; and
  - 37.2.3 may be produced in evidence for all purposes in place of the original.
- 37.3 A party may sign this Agreement electronically and bind itself accordingly. In addition, the intention is to print it out when so signed so that where a party prints it out, the first print-out by a party after all signatories who are signing have done so, will also be an executed original counterpart of this Agreement. Each signatory confirms that their signature appearing in this Agreement, including any such print-out (irrespective of which party printed it), is their personal signature.
- 37.4 A party which has executed a counterpart of this Agreement or its solicitor may exchange it with another party by sending a copy of that original executed counterpart by email to that other party or its solicitor and if requested by that other party or its solicitor must promptly deliver that original by hand or post. Failure to make that delivery does not affect the validity of this Agreement.

## **38 Relationship of parties**

- 38.1 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.



38.2 Unless otherwise stated:

- 38.2.1 nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- 38.2.2 no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

## **39 Waiver**

- 39.1 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 breach of obligation by, another Party.
- 39.2 A waiver by a Party is only effective if it:
  - 39.2.1 is in writing,
  - 39.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
  - 39.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
  - 39.2.4 is signed and dated by the Party giving the waiver.
- 39.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 39.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and 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.
- 39.5 For the purposes of this Agreement, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

## **40 GST**

- 40.1 In this clause:
  - 40.1.1 Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.
  - 40.1.2 GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
  - 40.1.3 GST Law has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

- 40.1.4 Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.
- 40.1.5 Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.
- 40.2 Subject to clause 40.3, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 40.3 No additional amount shall be payable by the Council under clause 40.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 40.4 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the A New Tax System (Goods and Services Tax) Act 1999, the Parties agree:
  - 40.4.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
  - 40.4.2 that any amounts payable by the Parties in accordance with clause 40.2 (as limited by clause 40.3) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 40.5 No payment of any amount pursuant to this clause 40, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 40.6 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 40.7 This clause continues to apply after expiration or termination of this Agreement.



#### **41 Explanatory Note**

- 41.1 Appendix C of this Agreement contains the Explanatory Note relating to this Agreement required by s205 of the Regulation.
- 41.2 Pursuant to s205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Agreement.

## Schedule 1

### Use of Monetary Contributions

Contribution Year	Allocation of Monetary Contributions	% of Monetary Contribution
Year 1-5	The Nominated Strategic Project	54%
	Community Benefit Fund Projects	6%
	Road Projects	38%
	Administration Fee	2%
Year 6-30	Strategic Projects	54%
	Community Benefit Fund Projects	6%
	Local Projects	38%
	Administration Fee	2%



## Schedule 2

### Requirements under s7.4 of the Act

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

Requirement under the Act	This deed
<b>Planning instrument and/or development application – (section 7.4(1))</b> The Developer has: <ul style="list-style-type: none"> <li>(a) sought a change to an environmental planning instrument.</li> <li>(b) made, or proposes to make, a Development Application.</li> <li>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</li> </ul>	(a) No (b) Yes (c) No
<b>Description of land to which this deed applies – (section 7.4(3)(a))</b>	Clause 3.1 and the definition of Project Site in clause 1.1
<b>Description of development to which this deed applies – (section 7.4 (3)(b))</b>	See definition of Development in clause 1.1
<b>Description of change to the environmental planning instrument to which this deed applies – (section 7.4 (3)(b))</b>	N/A
<b>The scope, timing and manner of delivery of contribution required by this deed – (section 7.4 (3)(c))</b>	Clause 5
<b>Applicability of sections 7.11 and 7.12 and 7.24 of the Act – (section 7.4 (3)(d))</b>	Clause 7
<b>Consideration of benefits under this deed if section 7.11 applies – (section 7.4 (3)(e))</b>	NA
<b>Mechanism for Dispute Resolution – (section 7.4(3)(f))</b>	See clause 19
<b>Enforcement of this deed – (section 7.4(3)(g))</b>	Part 3
<b>No obligation to grant consent or exercise functions – (section 7.4(10))</b>	See clause 31

Table 2 – Other matters

Requirement under the Act	This deed
<b>Registration of the Planning Agreement –</b> (section 7.6 of the Act)	No
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued –</b> (section 21 of <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> )	No
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued –</b> (section 48 of <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> )	No
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued –</b> (section 6.15(1)(d) of the Act)	No



## Execution

Executed as a deed

**Dated:** 8 March 2024


Executed by Dubbo Regional Council.

The Common Seal of Dubbo Regional Council was hereunto affixed this 29<sup>th</sup> day of FEBRUARY 2024 pursuant to a resolution of Council dated 15 February 2024:

  
\_\_\_\_\_  
CEO




Executed by Spicers Creek Wind Farm Pty Ltd ABN 83 648 166 269 in accordance with s127(1) of the *Corporations Act 2001 (Cth)*.

  
\_\_\_\_\_  
**Signature of director**

\_\_\_\_\_  
Jason Paul Willoughby

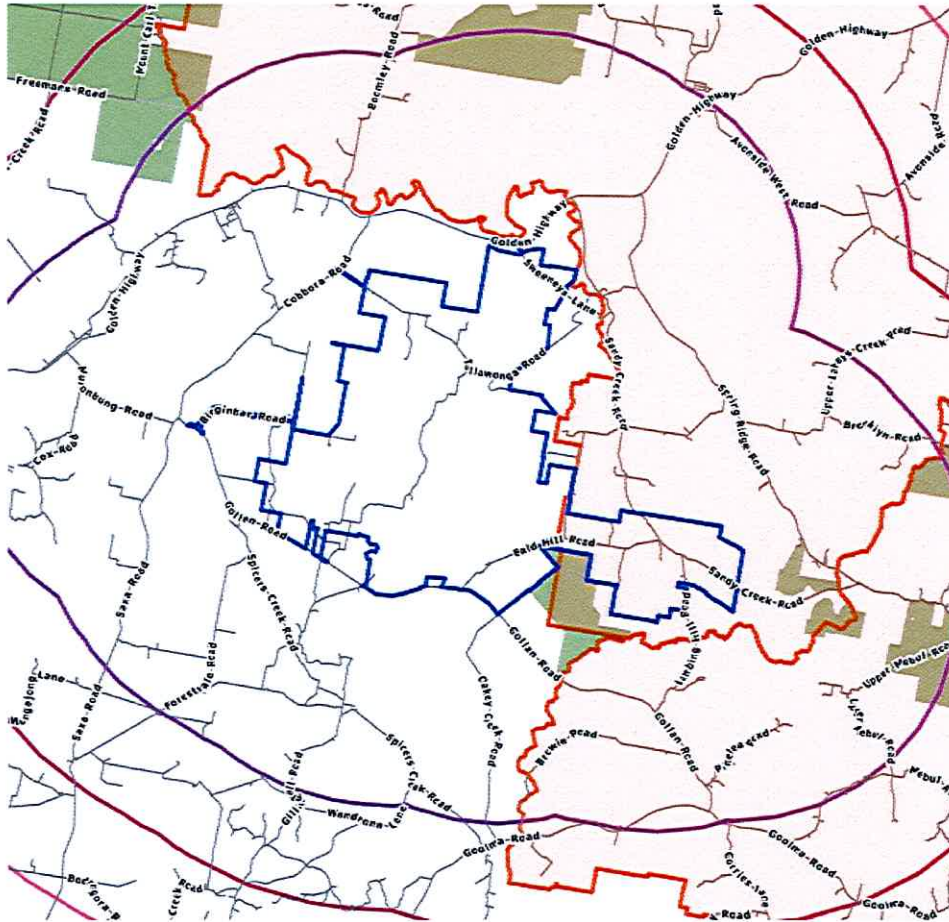
**Name**

  
\_\_\_\_\_  
**Signature of director/secretary**

\_\_\_\_\_  
Stephen Douglas Allen Bird

**Name**

## ANNEXURE A: PLAN





## **ANNEXURE B: RENEWABLE ENERGY BENEFIT FRAMEWORK**

Council will utilise the Monetary Contribution received from the Developer towards the benefit of the community of the Dubbo Regional Council Local Government Area.

The benefit/s to the community includes (but may not be limited to) the following:

- Road infrastructure provision and maintenance;
- Housing opportunities and initiatives;
- Strategic planning;
- Economic development and investment attraction opportunities and initiatives;
- Skills development;
- Community facilities and recreation opportunities;
- Youth welfare and support;
- Town centre development and maintenance in Wellington;
- Other infrastructure provision that provides for the continued health, wellbeing and development of the community.

## **ANNEXURE C: EXPLANATORY NOTE**