



APPENDIX C STAKEHOLDER ENGAGEMENT



C.5 NEIGHBOUR BENEFIT SHARING PROGRAM

Hills of Gold Wind Farm Neighbour Benefit Sharing Deed

Wind Energy Partners Pty Ltd

ABN 28 145 173 324

and

[insert Landholder's name(s)]

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Hills of Gold Wind Farm Neighbour Benefit Sharing Deed

Date

Parties

1. Wind Energy Partners Pty Ltd ABN 28 145 173 324 of [insert address] (Company)
2. [Insert Landholder's name(s)] of [insert address] (Landholder)

Background

- A. As at the date of this deed, the Company is the proponent of the Hills of Gold Wind Farm and is in the process of applying for Development Consent and EPBC Approval for the Hills of Gold Wind Farm.
- B. The Landholder is the registered proprietor of the Property.
- C. The Property is located near the Hills of Gold Wind Farm.
- D. The Company has offered certain benefit sharing arrangements to eligible neighbouring residents.
- E. The Landholder has accepted the Company's offer for benefit sharing.
- F. The parties have entered into this Deed to record the benefit sharing arrangements agreed and also to address the potential impacts, if any, of the Hills of Gold Wind Farm on the Property.

This Deed witnesses as follows:

1. Definitions, Interpretation and General Provisions

The definitions, interpretation and general provisions which apply to this Deed are contained in Schedule 1 to this Deed.

2. The Company's Obligations

2.1 Location of Wind Turbine Generators

The Company must not construct any wind turbine generator as part of the Hills of Gold Wind Farm closer than [1.0 km] to the Main Dwelling (when measured from the base of the tower of the wind turbine generator to the nearest external wall of the Main Dwelling).

2.2 Initial Payment

- (a) The Company must pay the Initial Payment to the Landholder within 21 days of the date of this Deed.
- (b) The Landholder acknowledges that the Initial Payment is both a sign-on-fee and a contribution towards expenses including any legal fees, costs and disbursements reasonably incurred by the Landholder in connection with this Deed.

2.3 Annual Payments

- (a) The Company must notify the Landholder:

- (i) of the Payment Commencement Date as soon as reasonably practicable after this date occurs; and
 - (ii) on or prior to the date on which payment of each subsequent instalment of the Annual Payment is due in accordance with clause 2.3(b), the date of each anniversary of the Payment Commencement Date; and
- (b) The Company must pay:
- (i) the first Annual Payment to the Landholder within 30 days of the Payment Commencement Date; and
 - (ii) subject to clause 2.3(e), each subsequent instalment of the Annual Payment on an annual basis, within 30 days of each anniversary of the Payment Commencement Date.
- (c) The parties acknowledge and agree that the Annual Payment will be calculated on the Payment Commencement Date, and each year thereafter on the anniversary of the Payment Commencement Date, as follows:
- (i) **[\$3,000.00]** where the closest Operating Turbine is located between 2km - 3km from the Main Dwelling (when measured from the base of the tower of the wind turbine generator turbine to the nearest wall of the Main Dwelling); or
 - (ii) **[\$1,500.00]** where the closest Operating Turbine is located between 3km - 5km from the Main Dwelling (when measured from the base of the tower of the wind turbine generator turbine to the nearest wall of the Main Dwelling).
- (d) The Annual Payment will be reviewed on the Annual Payment Review Date using the following formula:
- $$X = Y \times \frac{a}{b}$$
- Where:
- X is the new \$ amount which will apply with effect on each Annual Payment Review Date;
 - Y is the \$ amount which applied immediately before the relevant Annual Payment Review Date;
 - a is the All Groups Consumer Price Index (**CPI**) for the City of Sydney, as published by the Australian Bureau of Statistics, in the last publication before the relevant Annual Payment Review Date; and
 - b is the CPI last published immediately prior to the Annual Payment Review Date one year prior to the relevant Annual Payment Review Date.
- (e) The Company's obligation to make Annual Payments under clause 2.3(a) will:
- (i) be suspended if the Landholder breaches clauses 2.6 or 3.1(a) until such time as the breach is remedied to the Company's reasonable satisfaction; and
 - (ii) cease on the earlier of the date on which:
 - (A) the Company gives notice to the Landholder that it has commenced the decommissioning of the Hills of Gold Wind Farm; or

(B) this Deed is terminated in accordance with clause 5.

2.4 Wind Farm Acknowledgement

- (a) The Landholder:
- (i) acknowledges and accepts the construction and operation of the Hills of Gold Wind Farm in proximity to the Property, including any visual impacts, including shadow flicker, and noise impacts which may result;
 - (ii) must not bring, or procure any third party to bring, any Claims against the Company or Other Persons in relation to any such impacts, except to the extent that:
 - (A) such impacts constitute a breach of the Development Consent; or
 - (B) the noise impacts from the Hills of Gold Wind Farm result in noise impacts on the Main Dwelling which exceed the noise criteria for landholders who have entered into agreements in relation to wind farms as outlined in the *Wind farms – environmental noise guidelines (SA 2009)* (which are adopted by the *Wind Energy: Noise Assessment Bulletin (NSW 2016)*);
 - (iii) must procure that any occupier of any Dwelling on the Property complies with clause 2.4(a)(ii) as if they were a party to this Deed; and
 - (iv) acknowledges that the Annual Payment is provided as full compensation for any impacts and undertakes not to make any request under the conditions of the Development Consent to require the Company or the Other Persons to provide any visual impact mitigation measures to the Property to minimise the visual impact of the Hills of Gold Wind Farm on their Property or Dwelling

2.5 Agreed Letter

The Landholder must provide the Company with a signed letter in the form of the Agreed Letter as soon as practicable after the date of this Deed.

2.6 Process for Raising Project Concerns

- (a) If the Landholder has any Project Concerns, the Landholder must, before raising the Project Concerns with any other person (including any Governmental Agency or the media):
- (i) notify the Company of the Project Concerns and provide sufficient information to enable the Company to understand the nature of the Project Concerns and the Landholder's desired outcome; and
 - (ii) comply with the processes set out in clauses 2.6(b) and 2.6(c).
- (b) If the Landholder notifies the Company of any Project Concerns under clause 2.6(a):
- (i) the Company must provide an initial response as soon as practicable; and
 - (ii) either party may request a meeting to discuss the Project Concerns and if so, the parties must meet as soon as reasonably practicable (and no later than 20 Business Days) and negotiate in good faith to attempt to resolve the Landholder's Project Concerns (provided that neither party is required to agree to attend more than 2 meetings).

- (c) If the Landholder's Project Concerns are not resolved after complying with the processes in clause 2.6(b), the Landholder may raise the Project Concerns with:
 - (i) the National Wind Farm Commissioner (if such a role exists at the time); or
 - (ii) if the matter relates to any:
 - (A) application for any Approval made to a Governmental Agency; or
 - (B) Approval granted by a Governmental Agency,the relevant Governmental Agency.
- (d) If the Landholder's Project Concerns are not resolved within a reasonable timeframe (being not less than 20 Business Days) of completing the relevant processes under clause 2.6(c), the Landholder may raise the Project Concerns with any other person or body at its discretion.

3. Dealings

3.1 Dealings with the Property

- (a) Before assigning or transferring the whole or any part of the Property to a third party (**Proposed Transferee**), the Landholder must first:
 - (i) notify the Company of the proposed assignment or transfer of the Property;
 - (ii) ensure that the Proposed Transferee is made aware of this Deed; and
 - (iii) where the Proposed Transferee is interested in securing the benefits offered to the Landholder under this Deed, do all things reasonably required to assist the Company and the Proposed Transferee to enter into a Deed (in the form reasonably required by the Company) under which the Proposed Transferee agrees to be bound by this Deed with effect from the date of completion of the transfer, as if the references to 'the Landholder' in this Deed were taken to be references to the Proposed Transferee.
- (b) If the Landholder assigns or transfers:
 - (i) all of their interest in all of the Property to a Proposed Transferee, then the Company will cease to be required to pay the Annual Payment to the Landholder on the date on which the Property is transferred to the Proposed Transferee; or
 - (ii) some of the Property to a third party (**Relevant Part**) then, on the date on which the Relevant Part is transferred to the Proposed Transferee then the Annual Payment will be reduced by an amount corresponding to the proportion which the Relevant Part bears to the Property.

3.2 Assignment by the Company

- (a) The Company may assign this Deed to any person without the Landholder's consent.
- (b) The Company will give written notice to the Landholder that it has assigned this Deed.
- (c) If clause 3.2(b) applies, the Landholder must, upon the request of the Company, and at the cost and expense of the Company, enter into a Deed of covenant with the Company's assignee to continue to observe and perform the Landholder's covenants under this Deed in favour of the assignee as if the assignee was originally a party to this Deed.

- (d) On assignment of this Deed, the Company is released from its obligations arising under this Deed from the date of assignment.

4. Termination

The Company may terminate this Deed by giving notice to the Landholder at any time if:

- (a) the Landholder breaches this Deed and does not rectify the breach within a reasonable time of being notified of the breach by the Company; or
- (b) the Landholder sells or otherwise disposes of its interest in the Property.

Executed as a deed

The Common Seal of Wind Energy Partners Pty Ltd ABN 28 145 173 324 is fixed to this document in the presence of:

.....
Signature of director

.....
Name (please print)

.....
Signature of director or company secretary*
*delete whichever does not apply

.....
Name (please print)

Signed Sealed and Delivered by **Insert Landholder Name** in the presence of:

.....
Signature of witness

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

.....
Address of witness
(please print)

.....
Signature

Signed Sealed and Delivered by **Insert Landholder Name** in the presence of:

.....
Signature of witness

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

.....
Address of witness
(please print)

.....
Signature

Schedule 1 - General

1. Definitions and Interpretation

1.1 Definitions

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

Agreed Letter means the letter from the Landholder in the form contained in Schedule 2.

Annual Payment means an amount calculated in accordance with clause 2.3(c) of this Deed as adjusted on each Annual Payment Review Date in accordance with clause 2.3(d) of this Deed.

Annual Payment Review Date means each anniversary of the Payment Commencement Date.

Approvals means any approval required from any Governmental Agency for the construction or operation of the Hills of Gold Wind Farm and includes:

- (c) any Development Consent;
- (d) any environment protection licence issued under the *Protection of the Environment Operations Act 1997* (NSW) for the Hills of Gold Wind Farm; and
- (e) any approval granted under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*,

as modified, varied, reissued or replaced from time to time.

Business Day means Monday to Friday, excluding the NSW State public holidays.

Claims means any claims including actions, suits, causes of action, monies, debts, dues, costs, losses, demands, verdicts and judgments.

Project Concern means any submission in relation to any application for any Approval or any concern, complaint, objection, grievance or adverse comment relating to the Hills of Gold Wind Farm, the Company, any Other Persons or any other persons associated with the Hills of Gold Wind Farm.

Deed means this Deed as amended, supplemented or varied from time to time.

Development Consent means any development consent granted under the *Environmental Planning and Assessment Act 1979 (NSW)* for the Hills of Gold Wind Farm, as modified from time to time.

Dwelling means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

Governmental Agency means any government, governmental, semi-governmental, administrative, or judicial body or court, department, local council, agency or minister of the Crown.

Hills of Gold Wind Farm means the project the subject of development application no. SSD 18_9679 lodged under the *Environmental Planning and Assessment Act 1979 (NSW)* as modified, varied or replaced from time to time.

Initial Payment means \$1,500.00.

Landholder means [insert Landholder name(s) and address]

Main Dwelling means the main dwelling located on the Property as marked on the plan in Schedule 3.

Operating Turbine means a wind turbine generator constructed and commissioned as part of the Hills of Gold Wind Farm which generates electricity into the transmission network.

Other Persons means:

- (a) any Proponent;
- (b) any related bodies corporate (as defined in the *Corporations Act 2001* (Cth)) of any Proponent;
- (c) any related bodies corporate (as defined in the *Corporations Act 2001* (Cth)) of the Company; and
- (d) any person who owns the land on which the Hills of Gold Wind Farm is located.

Payment Commencement Date means the date on which all wind turbine generator constructed and commissioned as part of the Hills of Gold Wind Farm are fully commissioned and generating electricity into the grid.

Property means the property contained in folio identifier [insert folio identifier details] known as [insert address].

Proponent means the proponent, owner, operator and/or intended owner or operator of the Hills of Gold Wind Farm.

1.2 Interpretation

The parties agree that in the interpretation of this Deed:

- (a) the singular includes the plural and the plural includes the singular;
- (b) a reference to a person includes a reference to a firm, corporation or other corporate body and its successors in law;
- (c) if a party consists of more than one person then this Deed binds them jointly and each of them severally;
- (d) a reference to a clause means a clause of this Deed;
- (e) a reference to any legislation includes all delegated or subordinate legislation made under it and any amendments, consolidations, replacements or re-enactments of any of them;
- (f) a reference in this Deed to the Company or the Landholder includes each of their successors, assignees and transferees;
- (g) a reference to the date of this Deed is a reference to the date endorsed on this Deed as being the date on which the parties entered into this Deed or, if there is no such date endorsed, the date on which this Deed was executed by the last party to execute this Deed;
- (h) the words 'including' or 'includes' or any variation of them are not words of limitation; and

- (i) if any example is given of anything (including, but not limited to, a right, obligation or concept) the example does not limit the scope of that thing.

2. General

2.1 Goods and Services Tax

- (a) Any reference in this clause or this Deed to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly excluded, the consideration for any supply made under or in connection with this Deed excludes any GST payable in respect of the supply.
- (c) Any amount referred to in this Deed which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- (d) Any party who makes a supply under or in connection with this Deed must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply and, notwithstanding any other provision of this Deed, no party will be required to make any payment under this Deed which relates to any taxable supply until such time as they have received a tax invoice.

2.2 Landholder as Trustee

The Landholder warrants to the Company that, if the Landholder is the trustee of a trust, the property of which includes the Property, the Landholder is authorised to enter this Deed.

2.3 Remedies and Plea in Bar

- (a) The Landholder acknowledges that damages may not be an adequate remedy if it breaches this Deed.
- (b) This Deed may be pleaded and tendered by any party or the Other Persons as an absolute bar and defence to any proceeding brought in breach of the terms of this Deed.

2.4 Notices

- (a) The Company must, as soon as reasonably practicable after the Company has finalised its construction schedule for the Hills of Gold Wind Farm, provide notice to the Landowner of the expected Payment Commencement Date.
- (b) A party notifying or giving notice under this Deed must do so in writing sent by prepaid registered post or email (with the original by post) to the party at the address specified in this Deed or to such other address as notified by each relevant party from time to time for the purpose of this Deed.
- (c) A notice given in accordance with clause 5(a) above will be deemed to have been given and received:
 - (i) if posted, three Business Days after posting; and
 - (ii) if sent by email, on the Business Day after emailing unless an email failure notice is received by the issuing party.

2.5 Governing law

- (a) This Deed is governed by the laws of NSW.

- (b) Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in NSW and courts of appeal from them in respect of any proceedings arising out of, or in connection with, this Deed. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

2.6 Entire agreement

This Deed constitutes the entire agreement between the parties with respect to its subject matter. It supersedes all previous agreements between the parties with respect to the matter the subject of this Deed.

2.7 Severance

If any part of this Deed is, or becomes, void or unenforceable, that part is, or will be, severed from this Deed so that all parts that are not, or do not become, void or unenforceable and remain in full force and effect and are unaffected by that severance.

2.8 Counterparts

If this Deed consists of a number of counterparts, each is an original and all of the counterparts together constitute the same document.

2.9 Waiver

No party may rely on the words or conduct (including delay in the exercise of a right) of any other party as a waiver of any right arising under or in connection with this Deed unless the waiver is in writing and signed by the party granting the waiver.

2.10 Variation

A variation of any term of this Deed must be in writing and signed by the parties.

2.11 Costs

Subject to clause 2.2 of this Deed, each party must pay its own costs of and incidental to the negotiation, preparation and execution of this Deed.

Schedule 2 - Form of Letter

The Minister for Planning and Public Spaces
The Department of Planning, Industry and Environment
GPO Box 39, Sydney NSW 2001

Hills of Gold Wind Farm - SSD 18_9679

Dear Minister,

We own [insert property details and address] (the **Property**).

We confirm that:

- we have reached an agreement with the Hills of Gold Wind Farm in relation to the Property; and
- we acknowledge and accept the construction and operation of the Hills of Gold Wind Farm and do not object to any visual or noise impacts which the Hills of Gold Wind Farm may have on the Property.

Yours sincerely,

[insert Landholder name(s)]

Schedule 3 - Main Dwelling Plan

[Insert plan or aerial photo with the Main Dwelling as agreed marked]