

## 9.5 Wind farms

The following provisions must be addressed when designing a commercial wind farm in the Shire and preparing the development application.

For the purposes of this Plan, commercial wind power generation includes wind power generation turbine(s) or towers with a peak capacity of power rated output greater than 10kW. The erection of a wind monitoring tower also requires Council's consent.

### Objectives

- To provide development controls and guidelines that assist in achieving the objectives of the LEP,
- To provide information to be included and assessed with each development application for commercial wind power generation,
- To minimise potential land use conflicts,
- To ensure road and access issues are identified as significant aspects of gaining consent for a wind farm, and
- To ensure that adequate provisions are made to restore developed land at the end of the project's useful life.

### Development Application requirements

The application must be accompanied by a Statement of Environmental Effects (SEE) or Environmental Impact Statement (EIS) depending on the size of the proposal. Applicants should refer to the Act and associated legislation for the latest requirements for Designated and Integrated development.

### State Significant Development

Currently the Minister for Planning has determined that the following criteria are used for State Significant Development [as defined by Schedule 1 of State Environmental Planning Policy (Major Development) 2005]:

- If the development has a capital investment value of more than \$30 million, or
- If the development has a capital investment value of more than \$5 million and is located in an environmentally sensitive area of State significance.

Any development meeting these criteria is required to lodge the development application with the Department of Planning. Developers should refer to the requirements of Part 3A of the Act.

### Statement of Environmental Effects (SEE) or Environmental Impact Statement (EIS)

The SEE or EIS as a minimum shall contain the following information:

- The location of the property, boundary dimensions and site area. This should include a map of 1:25,000 scale showing the location of the proposed development, the route of transmission lines to the electricity grid (and include access road, pylon, gradient and erosion control assessments), the service roads on and to the site, and the proximity to significant features such as dwellings, environmentally sensitive land, prime crop and pasture land, forests, national parks, heritage items and aircraft facilities.
- The site plan or plans showing positions of the proposed wind turbines, site boundaries, native vegetation, the proposed vehicular access points, the location of existing and proposed vegetation and trees on the land, the location and uses of all existing and proposed buildings, power lines, sub-station and fences on the land.

- A description of the proposed wind turbine/s, including all relevant details such as number, make, model, dimensions, generation capacity materials and colour.
- A land use description of the adjoining land and/or affected lands and landscape including assessment of the likely future impact.

**Note:** Applicants are encouraged to keep the local community fully informed throughout their design process.

- A noise impact assessment demonstrating compliance with the Department of Environment, Climate Change and Water licensing requirements (whether a licence is required or not) which references the South Australian Environment Protection Authority (EPA) Wind farms environmental noise guidelines (July 2009). The application shall also detail proposed monitoring program(s) to validate predicted noise impacts on neighbouring properties. The impact of the van den Berg effect is also to be considered.
- A description and assessment of the visual effects including photomontages, plate or panoramic photomontages, computer assisted photo simulations or other graphic representations of the appearance of the wind turbines and transmission lines. View shed modelling via the use of a suitable GIS (e.g. "MapInfo") is encouraged. Shadow prediction and shadow flicker assessments shall be included in the visual assessment(s).
- An evaluation of the electromagnetic radiation and/or interference from the wind turbines and/or transmission lines. This should include impacts on human and animal health and local television and radio reception and other local communications.
- A construction program environmental management plan incorporating the proposed staging of the project, erosion and sedimentation controls, heavy vehicle movements, site access including all service roads, transmission towers, substation, underground wiring, construction phase impacts including facilities, waste disposal, staff/contractor numbers etc, weed control, farm impacts and all other works.
- An evaluation of flora and fauna impacts with specific mention of migratory species potentially impacted by the development. Where the development is in close proximity to known habitats of rare or endangered species, early consultation with the Department of Environment, Climate Change and Water is highly recommended.
- A decommissioning and site restoration plan and program.
- All of the relevant issues in the Planning NSW EIA Guidelines and the NSW Wind Energy Handbook (NSW Department of Industry and Investment) current at the time of the application (*Please note that this Handbook was published in 2002 and some information is no longer valid. In particular, the reader is advised to seek updated information regarding 'The wind energy market' (Section 3) and 'Planning issues for wind farms in NSW' (Section 5).*)
- Demonstration that relevant Agencies issues have been addressed (e.g. CASA for aviation safety, SCA for water quality issues etc.)
- The heritage significance of the site and surrounds. Reference shall include Council's LEP, the Heritage Branch, Department of Environment, Climate Change and Water, the National Trust of Australia and the Australian Heritage Council (Australian Government). The Wind Farm and Heritage Policy (Draft) prepared by the former NSW Heritage Office shall also be referenced.
- Assessment of the development regarding all relevant legislation and applicable policies. See item (q) of this Plan for some of these listings.

**Note:** Additional information may be required depending upon the circumstances of the development proposal and level of detail, and accuracy provided within the development application.

## Controls

The following must be included as part of the design criteria and assessment of any related development application:

- a. The development should be sited and carried out to minimise impacts on, or restrictions to normal grazing, farming, forestry practices;
- b. The development should be carried out in a way that minimises any adverse effects on adjoining land and the development site, particularly in the way of:
  - (i) land degradation
  - (ii) alteration to drainage patterns
  - (iii) pollution of ground water
  - (iv) spread of noxious plants and animals, and
  - (v) bushfire hazard
- c. The developer must assess the visual impact of the project including an assessment of scenic value. The developer must consult with the Council and the community on appropriate visual impact measures;
- d. In addition to point c. the developer must assess the cumulative impact of the development in regard to existing wind farms, identified sites of proposed wind farms. Council does not favour large expanse of ridgelines being covered with wind farms and turbines;
- e. Proposed wind turbines shall comply with the South Australian Environment Protection Authority Wind farms environmental noise guidelines (July 2009). Note that where noise levels are found to exceed EPA guidelines, Council may require remediation work such as cessation or decommissioning of the turbines to reduce the noise impacts on sensitive receptors such as non related dwellings;
- f. Where visible from a non related dwelling or immediate surrounds, the development shall not be located within 15 times the blade tip height or 2.0 km's (whichever is the greater) of any dwelling not associated with the development or 15 times the blade tip height or 2.0 km's (whichever is the greater) from any lot that has been created for the purpose of a dwelling. Where turbines are proposed to be significantly higher than such properties/dwellings or where the turbines will dominate the immediate view from the dwelling or dwelling lot, increasing these separation distances is recommended;
- g. The development shall not be located within two times the height of the turbine (including the tip of the blade) from a formed public road. A greater distance may be required by the road authority;
- h. The development shall not be located within two times the height of the turbine (including the tip of the blade) from a non related property boundary;
- i. Turbine locations shall be located sensitive to non related dwellings surrounding the development. Existing and proposed screenings could be used to minimise visual impacts to non related properties. Note due to the height of turbines, screening is not the preferred choice of dealing with visual impact. The developers priority should be endeavouring to position the turbines in locations with low visual impact to nearby properties, especially existing dwellings and lots provided for dwellings;
- j. Turbine locations are to be sensitive to existing related dwellings on the subject site. Issues of excessive noise, shadow flicker, and general proximity to turbines should be minimised;
- k. Turbine locations should not surround a non related property. Where a non related property has turbines adjacent to more than one axis of the property, there should be sufficient setbacks/distances to the development to minimise the visual impact of that property;

- l. A communications study should identify the existing status of communications and detail the proposed method of dealing with potential communication interference. Developers are advised that many parts of the Upper Lachlan Shire have very poor radio, TV, mobile phone, two way reception and the like. The development should not detract from the reception of any of these or other communication methods. Where necessary, it may be required to install additional services (boosters/communication towers/ re-transmission towers etc) to maintain such services in the vicinity of the development. Where this is determined to be necessary, the work and equipment shall be at the developers cost;
- m. The construction phase of the wind farm shall occur only on identified roads/routes. Construction vehicles, including concrete trucks, carriers of turbine components, and related heavy vehicles (including relevant contractors) shall only travel the approved road. This route shall be identified and approved in accordance with this Plan;
- n. Council requires substantial investigations into the road chosen for the preferred route. Detailed road condition reports will be required as part of any consent. Council requires the use of the ARRB 'laser car' and 'gypsy camera' for this purpose;
- o. Council will usually require road works to cope with the over size and overweight traffic movements related to the construction of a wind farm. Bonds will also be required for any potential damage to roads during the construction phase. The road works and bond amounts will be determined by Council professional staff, but will be determined generally by the length of road and condition of road surface/base bridge, drainage etc relevant to the selected route. Where road works are determined necessary for the development, costs associated with the road works shall be the developer's responsibility;
- p. Internal roads (roads within the property subject to the development) shall be the responsibility of the developer. Council will require proof that they have been adequately designed and constructed for their purpose. Council (and often other State Government Agencies) shall be provided with adequate information about the environmental aspects of the internal road construction;
- q. All infrastructure related to the wind farm should be included in the development application. Management of temporary facilities, waste, numbers of contractors/employees, etc, should be part of the Development Application information. All infrastructure should be located in low visual impact locations and interconnection cables/wiring and the like should be underground;
- r. Developers shall consider and refer to the Department of Planning's NSW Wind Energy Environmental Impact Assessment Guidelines, the NSW Wind Energy Handbook, Best Practice Guidelines for implementation of Wind Energy projects in Australia (AusWEA), South Australian Environment Protection Authority Wind farms environmental noise guidelines (July 2009) and all other relevant policies and legislation applicable to the proposed development. Reference to relevant Council policies and documents should also be made;
- s. Council prefers to have a viewing area where safe vehicle and pedestrian movements can view the wind farm in a safe manner. The developer should liaise with relevant officers of Council's Works and Operation Department and the RTA;
- t. Within six months of the wind turbine generators become redundant, any rights of carriageways that were constructed to enable maintenance to be conducted on the wind turbine generators are to be extinguished by the developer, unless otherwise agreed with the landowner.
- u. Within six months of the Wind Turbine Generators becoming redundant, or not being commissioned, they are to be fully dismantled and removed from the site by the developer. A security guarantee/bond is to be lodged with the consent authority prior to operations commencing in an amount determined by the consent authority to cover the cost of future work; and
- v. The proponent is to provide details of the proposed connection to the electricity reticulation network as part of the Development Application Environmental Assessment.

## **Other Aspects**

### Notification

On lodgement of the DA, Council will notify property owners within a 5 kilometre radius of the development. All submissions received will be presented to the Council (or the Minister) for their consideration in the assessment and determination process. Where Council is the consent authority, Council will hold a notification and submission period of not less than 60 days and will require the developer to hold a minimum of one public information night during the exhibition and submission period. The developer should consider additional consultation with the community and effected property owners.

### Community Enhancement Program

Prior to the commencement of construction, the proponent is to prepare a Community Enhancement Program prepared in consultation with the local community and Council to be funded by the proponent at the rate of \$850.00 per megawatt of generating capacity per farm per annum indexed to the consumer price index for Sydney commencing at the September 2006 quarter.

### Infrastructure

Much of Council's road network is generally not capable of sustaining the overweight loads involved with wind farms and will often require substantial upgrading to permit the wind farm construction vehicles to travel across Council maintained roads. As described above, bonds will be required to ensure any road damage is repaired to Council's satisfaction (minimum pre construction road condition). Such bonds are payable prior to commencement of the earthworks or construction phase of the development.

### Consultation with State Government Authorities

Proponents are advised to consult with public authorities that may have a role in assessing their application and Council may forward the DA to the following Agencies:

- Department of Planning
- Heritage Branch (Department of Planning)
- Department of Environment, Climate Change and Water
- Primary Industries (Department of Industry and Investment)
- Roads and Traffic Authority of NSW (Department of Transport and Infrastructure)
- Sydney Catchment Authority (SCA)
- The relevant Catchment Management Authority
- Civil Aviation Safety Authority (CASA)
- Australian Rail Track Corporation
- NSW Rural Fire Service (Department of Police and Emergency Services)

Other agencies and community groups may also be consulted. It is recommended that the proponent familiarise themselves with local groups that may be interested in their development for local feedback.

### 3.17 Community Enhancement Program

To provide guidelines in respect to State Significant development regarding the level of monetary contribution and operation of a Community Enhancement Program (CEP) within the Shire.

Council seeks to maximize the opportunity afforded by development proposals to enhance the community's quality of life and well being.

Some State Significant projects have the potential to portray or impart a negative effect on the attractiveness of the Shire to potential and existing residents. In an effort to offset the potential negative effects of some of these developments, Council proposes to implement a CEP.

Through its Community Enhancement Program, Council aims to:

- address issues directed at improving the quality of life for the people of the Shire, and
- be prepared to advocate for reasonable contributions towards the provision of community facilities and services from developments having a significant social impact on the community

The Council has determined its Community Enhancement Program as follows:

#### Community Enhancement Program as at March 2008

<b>Projects</b>	<b>Estimated Capital Cost</b>
Upper Lachlan Historical Centre	\$1.0 M
Upper Lachlan Art Gallery	\$1.0 M
Upper Lachlan Civic & Community Centre	\$3.0 M
Heated Pool Facilities <ul style="list-style-type: none"> <li>• Crookwell</li> <li>• Gunning</li> <li>• Taralga</li> </ul>	\$1.75 M
Public Hall Improvements <ul style="list-style-type: none"> <li>• Crookwell</li> <li>• Taralga</li> <li>• Collector</li> <li>• Binda</li> <li>• Bigga</li> <li>• Breadalbane</li> </ul>	\$1.0 M
Main Street Improvements <ul style="list-style-type: none"> <li>• Crookwell</li> <li>• Gunning</li> <li>• Taralga</li> <li>• Collector</li> </ul>	\$1.5 M
Public Park Improvements <ul style="list-style-type: none"> <li>• Crookwell</li> <li>• Taralga</li> <li>• Collector</li> <li>• Gunning</li> <li>• Breadalbane</li> </ul>	\$1.0 M
Minor Projects Undefined	\$2.0 M
Community Assistance	\$2.0 M
Community Contributions <ul style="list-style-type: none"> <li>• Landcare</li> <li>• Sporting Organisations</li> <li>• Academic Scholarships</li> <li>• Rural Fire Service</li> <li>• Heritage buildings</li> </ul>	Not specified

## **Implementation**

Council will be the custodian of the funds and responsible for the allocation of these funds in accordance with Local Government accounting regulations to particular projects in consultation with various contributing developers.

Council will publicly advertise the availability of funds on an annual basis.

Projects will be as agreed on a consensus basis by a Committee comprising:

- Mayor – Upper Lachlan Shire Council
- General Manager – Upper Lachlan Shire Council
- Authorised Representative of Funding Organisation

Council will submit to the State Government that any approvals granted for major developments address their adverse local effects. These developments have the Minister for Planning as the consent authority.

Council will seek to ensure that developments make tangible contributions to local community development through contributions to the CEP. These contributions will take the form of monetary contributions.

The form of condition which is proposed is as follows:

### ***“Financial Contribution to Upper Lachlan Shire Council for Community Enhancement***

*Prior to the commencement of construction, the Applicant shall enter into a legally binding agreement with Upper Lachlan Shire Council for financial a contribution to Council for the purpose of community enhancement to mitigate the social, amenity and associated community infrastructure requirements emanating from the operation of the development.”*

The legally binding agreement shall take the form of the agreement provided at Appendix A – Wind Farm Planning Agreement.

Council has a direct involvement in some areas of community development, particularly with the provision of capital works. These areas are identified in the Section 94 Contributions Plan and include improvements to parks and playgrounds, sporting fields and reserves and community buildings.

In some circumstances Council will make direct financial contributions to service providers through one off donations or ongoing support. Council may provide assistance to accommodate services.

Council will consider joint ventures with other local government, State and Federal governments as well as community organisations and facilities.

## **Contributions**

Council has adopted an annual contribution of \$850.00 per megawatt of generating capacity (indexed to the CPI for Sydney commencing at the September, 2006 quarter) in respect to wind farms.

In other circumstances, the level of contribution is expected to be based on a percentage of the capital cost and the value of annual outputs.

These and other contributions are expected to be subject to negotiation with Council.

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**Appendix A – Wind Farm Planning Agreement**

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## **Planning Agreement**

Under s.93F of the *Environmental Planning and Assessment Act 1979*

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**The Upper Lachlan Shire Council**  
ABN 81 011 241 552

**[Insert Name]**  
ABN [Insert Number]

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**AGREEMENT**

This Deed is made the \_\_\_\_\_ day of \_\_\_\_\_ 2010.

**BETWEEN:**            **The Upper Lachlan Shire Council** ABN 81 011 241 552 of 10 Spring Street,  
Crookwell NSW 2580 “**Council**”

**AND:**                    **[Insert Name]** ABN **[Insert Number]** of **[Insert Address]** “**Company**”

**RECITALS**

**The Company:**

- A.    The Company is constructing a wind farm pursuant to development consent issued by **[Insert Details]** on the **[Insert Date]**
- B.    The Company acknowledges a corporate social responsibility to the wider Upper Lachlan community and is prepared to contribute to a Community Enhancement Program.

The agreed level of contribution is \$850.00 per megawatt of generating capacity per year to the Upper Lachlan Council commencing upon commissioning of the project to fund community infrastructure and services in the locality of the project.

The contribution is to be adjusted to take account of the increase in the Consumer Price Index (Sydney) commencing at the September 2006 quarter.

**The Council:**

- A.    The Council agrees to be the custodian of the funds and to distribute and expend the funds in accordance with Local Government accounting regulations.
- B.    The Council agrees to publicly advertise the availability of funds on an annual basis.
- C.    Projects will be as agreed on a consensus basis by a committee comprising;
  - Mayor of Upper Lachlan Shire Council
  - General Manager of Upper Lachlan Shire Council
  - Authorised Representative of **[Insert Name]**

## 1. Interpretation

### 1.1 Definitions

The following definitions apply in this deed:

**Authorised Representative** means a Senior Manager of [Insert Name]

**Authority** means a government, semi-government, local government.

**Costs** includes costs, charges and expenses, including those incurred in connection with advisers.

**EP&A Act** means the *Environmental Planning and Assessment Act 1979 (as amended)*.

**Mediator** means a person appointed as mediator under clause 14.5.

**Planning Agreement** means a planning agreement under s.93F of the *Environmental Planning and Assessment Act 1979 (as amended)*.

### 1.2 Interpretation of words and phrases

- (a) Clause headings are for convenience only and will be ignored in the interpretation of the Deed.
- (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 Deed will be deemed or construed as creating the relationship of partnership.
- (f) References to a month mean a calendar month.
- (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:
  - (i) Statutory modification or re-enactment of or any statutory provision substituted for that legislation, section or provision.
  - (ii) Ordinances, by-laws, regulations and other statutory provision substituted for that legislation, section or provision.
- (i) No waiver of any breach of this Deed or of any of its terms will be effective unless the waiver is in writing and signed by the party against whom the waiver is claimed, and no waiver of any breach will operate as a waiver of any other breach or subsequent breach.
- (j) Other grammatical forms of defined words or expressions have corresponding meanings.
- (k) 'Including' and similar expressions are not words of limitation.

## **2. Planning Agreement under the EP&A Act**

The parties agree that this deed is a planning agreement within the meaning of section 93F of the EP&A Act.

## **3. Application of this Deed**

This Deed applies to the Development.

## **4. Dispute Resolution**

### **4.1 Notice of Dispute**

If a party claims that a dispute has arisen under this Deed (*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*).

### **4.2 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.

### **4.3 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.

### **4.4 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*").

### **4.5 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 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 4.5 must:

- (i) have reasonable qualifications and practical experience in the area of the dispute; and
  - (ii) 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 a 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:
- (i) each party will bear their own professional and expert costs incurred in connection with the mediation;
  - (ii) 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.

#### **4.6 Litigation**

If the dispute is not finally resolved in accordance with clause 4, either party is at liberty to litigate the dispute.

#### **4.7 Continue to Perform obligations**

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

### **5. Costs**

The Developer agrees to pay or reimburse the costs of the Council in connection with:

- (a) the negotiation, preparation and execution of this planning agreement; and
- (b) advertising and exhibiting this planning agreement in accordance with the EP&A Act within 5 business days after the execution of this planning agreement.

### **6. GST**

#### **6.1 Acknowledgment**

The parties acknowledge that:

- (a) it is the intention of this that in addition to entitlement to the payment or provision by a party (recipient) of any consideration otherwise required to be paid or provided to another party (supplier) under any provision of this document,

including, but not limited to, the amount by which such consideration may be increased from time to time under the provisions of clause 6.3 (“Original Consideration”) the supplier must be fully indemnified by the recipient by payment to the supplier (in addition to payment or provision of the Original Consideration) of all of the GST the supplier must pay on any supply made by the supplier under or in connection with:

- (i) this document; and
  - (ii) any of the transactions contemplated by this document, (each a “Relevant Supply”), and
- (b) the provisions of this Deed are to be interpreted and applied so as to give the fullest effect to the intention referred to in clause 6(a).

#### **6.2 Original Consideration is GST Exclusive**

The Original Consideration and any other consideration given under this document is a GST exclusive amount.

#### **6.3 Original Consideration to be Increased for any GST**

In addition to payment or provision of the Original Consideration (being the consideration payable or to be provided under any other provision of this Agreement and including, but not limited to, the amount by which any consideration has been formerly increased in accordance with the operation of this clause 6.3(a) the recipient must also pay to the supplier (by way of increase in the Original Consideration for the Relevant Supply) the GST payable by the supplier on each Relevant Supply the supplier makes.

#### **6.4 Interpretation**

In this clause 6:

- (a) “GST” has the meaning it has in the GST Act and any general interest charge, special interest charge, other interest and any additional tax or penalty (howsoever described);
- (b) “GST Act” means the *A New Tax System (Goods and Services Tax) Act 1999* as amended or replaced from time to time;
- (c) “GST law” means the same as GST law means in the GST Act; and
- (d) except to the extent that the provisions of this clause 6 require otherwise, any expression used that is defined in the GST law has that defined meaning.

### **7. Reimbursement of Expenses**

If this planning agreement requires the supplier to pay for, reimburse or contribute to any expense or liability (“reimbursable expense”) incurred by the recipient, the amount to be paid, reimbursed or contributed will be the amount of the reimbursable expense reduced by the amount of any input tax credit to which the recipient is entitled in respect of the reimbursable expense. The recipient will be presumed to be entitled to a full input tax credit unless the Developer demonstrates otherwise.

## **8. No Fetter**

- (a) This Deed is not intended to operate to fetter, in any unlawful manner:
  - (i) the sovereignty of the Parliament of the State to make any Law;
  - (ii) the power of the Executive Government of the State to make any statutory rule; or
  - (iii) the exercise of any statutory power or discretion of any minister of the State or any Authority (all referred to in this clause as a "Discretion").
- (b) If, contrary to the operation of this clause 7, any provision of this planning Deed is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
  - (i) they will take all practical steps, including the execution of any further documents to ensure the objective of this clause is substantially satisfied;
  - (ii) in the event that this clause cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this Deed has full force and effect; and
  - (iii) to endeavour to satisfy the common objectives of the parties in relation to the provision of this Deed which is held to be an unlawful fetter to the extent that is possible having regard to the relevant court judgment.

## **9. General**

### **9.1 Notices**

- (a) A party notifying or giving notice under this Deed must do so in writing sent by prepaid registered post or facsimile and the original by post to the Authorised Representative at the address or facsimile number specified in this Agreement.
- (b) A notice given in accordance with clause 8.1 will be deemed to have been given and received:
  - (i) if delivered, on receipt;
  - (ii) if posted, three Business Days after posting;
  - (iii) if sent by facsimile on confirmation of the correct transmission of the facsimile; and
  - (iv) 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.

### **9.2 Authorised Representatives**

- (a) The Authorised Representatives may perform any function of the respective parties under this Deed.
- (b) A notice or communication given or made to an Authorised Representative is effective as if it had been given by the party they represent.
- (c) A party may substitute an Authorised Representative after first giving written notice to the other party.

## **10. New Laws**

If the Developer is obliged by a new legal requirement to do something or pay an amount which it is already contractually obliged to do or pay under this Deed then, to the extent only that the relevant obligation is required under both the new legal requirement and this Deed, compliance with the new legal requirement will constitute compliance with the relevant obligation under this Deed.



**11. Waiver**

- (a) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Deed, 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.
- (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.

**12. Governing Law**

This Deed is governed by New South Wales law.

**13. Prior Agreements Superseded**

This Deed:

- (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 Deed; and
- (b) is the entire agreement between the parties in respect of the matters covered by this Deed.

**14. Modification of Deed**

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

**15. Representations and Warranties**

The parties represent and warrant that they have power to enter into this Deed and comply with their obligations under the Deed and that entry into this Deed will not result in the breach of any law.

**16. Severability**

- (a) The parties agree that to the extent permitted by Law, this Deed prevails to the extent it is inconsistent with any Law.
- (b) If a clause or part of a clause of this Deed 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.
- (c) If any clause or part of a clause is illegal, enforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

## **17. Confidentiality, Media Releases And Enquiries**

- (a) The parties agree that the terms of this Deed are not confidential and this Deed may be treated as a public document and exhibited or reported without restriction by any party.
- (b) If requested by a party, the other party must:
  - (i) not issue, publish or authorise any media release or advertisement concerning this Deed, without obtaining the other party's prior written approval; and
  - (ii) obtain a similar obligation from their contractors.
- (c) The parties agree, and must procure that any Mediator agrees as a condition of their appointment:
  - (i) Confidential Information has been supplied to some or all of the parties in the negotiations leading up to the making of this Deed; and
  - (ii) the parties may disclose to each other further Confidential Information in connection with the subject matter of this Deed; and
  - (iii) subject to paragraphs (iv) and (C) below, to keep confidential all Confidential Information, disclosed to them during or in relation to the expert determination or mediation; and
  - (iv) a party may disclose Confidential Information in the following circumstance:
    - I. to a party or adviser who has signed a confidentiality undertaking to the same effect as this clause 8.10; or
    - II. in order to comply with a Law, State Government policy, local government policy or the ASX Listing Rules; or
    - III. for a purpose necessary in connection with an expert determination or mediation.
- (d) The parties must keep confidential and must not to disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
  - (i) views expressed or proposals or suggestions made by a party or the expert during the expert determination or mediation relating to a possible settlement of the dispute;
  - (ii) admissions or concessions made by a party during the expert determination or mediation in relation to the dispute; or
  - (iii) information, documents or other material, including Confidential Information concerning the dispute which are disclosed by a party during the expert determination or mediation unless such information, documents or facts will have been otherwise discoverable in judicial or arbitral proceedings.

## **18. No Fiduciary Relationship**

Nothing in this Deed 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.

