

Planning Agreement

between



Wellington Council

ABN: 57 268 387 231

and



Bodangora Wind Farm Pty Ltd

ACN: 134 443 904

1st March 2013

Wellington Council

PO Box 62 Wellington NSW 2820

Phone 02 6840 1700

mail@wellington.nsw.gov.au / www.wellington.nsw.gov.au

1. PARTIES

- Wellington Council of 1 Nanima Crescent, Wellington, NSW 2820 ('**Council**');
- Bodangora Wind Farm Pty Ltd of Level 22, 56 Pitt Street, Sydney, NSW 2000 ('**Proponent**').

2. BACKGROUND

- 2.1 On 14th October 2010 the Proponent made a Development Application to the NSW Department of Planning & Infrastructure for Development Consent to carry out the Development on the Land (approximately 15 kilometres northeast of Wellington township). This Development is identified by the Department of Planning & Infrastructure as Major Project Application No. 10_0157.
- 2.2 The Proponent has agreed to enter into this Agreement and, provided that Construction Commencement is achieved, to pay the Development Contributions to the Council on the basis that Development Consent is granted by the NSW Government.

3. OPERATIVE PROVISIONS OF THIS AGREEMENT

3.1 PLANNING AGREEMENT UNDER THE ACT

The Parties agree that this Agreement is a Planning Agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

3.2 APPLICATION OF THIS AGREEMENT

This Agreement applies to the Development as identified in Attachment A of this Agreement on Land which is identified in Attachment A of this Agreement.

3.3 OPERATION OF THIS AGREEMENT

- a) The operation of this Agreement is subject to and conditional upon:
- (i) final Development Consent for the Development being received on terms and conditions acceptable to the Proponent acting reasonably; and
 - (ii) Construction Commencement being achieved,
- (together the '**Conditions**').
- b) This Agreement shall have no force or effect until both of the Conditions have been satisfied.
- c) Payment of the financial contributions due in the first calendar year shall be made pro rata, dependent on the date in that year the Conditions are met.

3.4 DEFINITIONS AND INTERPRETATION

In this Agreement, the following definitions apply:

Act means the *Environmental Planning and Assessment Act, 1979*.

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required by law or by adjoining owners for the commencement and carrying out of the Development generally and includes an approval under Part 3A of the Act (if relevant).

Base Year means the calendar year commencing 1 January 2013.

Business Day means a day on which banks are open for general business in Sydney excluding Saturdays, Sundays and public holidays.

Conditions is defined in clause 3.3(a).

Council means Wellington Council.

Construction Commencement means the Project has reached financial close in securing all debt and equity required to build the Project, the Department has approved the Construction Environmental Management Plan for the Project and an Environmental Protection Licence has been issued by the NSW Department of Environment on terms acceptable to the Proponent and the Proponent has mobilised to site in preparation for commencing civil works on public road infrastructure requirements in accordance with the findings of the Traffic Study, the agreed scope of which is the Traffic Study Brief dated 2nd November 2012. For the avoidance of doubt, mobilisation to site does not include undertaking activities such as geotechnical investigations, surveys of any nature or resource monitoring.

CPI means:

- a) the Consumer Price Index (All Groups, Sydney) published by the Australian Bureau of Statistics from time to time; or
- b) if for any reason the Consumer Price Index (All Groups, Sydney) is not published for any year, or if publication is delayed until after the relevant CPI Adjustment Date, the Consumer Price Index (All Groups, Sydney) published for the previous year; or
- c) if the Australian Bureau of Statistics ceases to publish the Consumer Price Index (All Groups, Sydney) and publishes another index which replaces it, then the other index.

CPI Adjustment Date means 1 January in each successive year after the Base Year.

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Department means the NSW Department of Planning and Infrastructure.

Development or **Project** means the project known as the 'Bodangora Wind Farm' as detailed in Attachment A of this document.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution or the provision of a material public benefit, the schedule of which is listed in Table 1 contained herein.

Dispute is defined in clause 7.1.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other act or regulation relating to the imposition or administration of the GST.

Insolvency Event means any of the following events:

- a) a Party ceases to (or is unable to) pay its creditors (or any class of them) in the ordinary course of business, or announces its intention to do so;
- b) a receiver, manager, receiver and manager, administrator or similar officer is appointed with respect to a Party or any of its assets;
- c) a Party enters into, or resolves to enter into, a scheme of arrangement, compromise or composition with any class of creditors;
- d) a resolution is passed or an order is made for the winding up or dissolution of a Party; or
- e) anything having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Land means the land described in Attachment A of this Agreement.

Modification means a modification to the Development Application that would result in thirty five (35) or more wind turbines being approved for the Project.

Party means a party to this agreement, including its successors and assigns.

Proponent means Bodangora Wind Farm Pty Ltd or any subsequent owner of the Development.

3.5 INTERPRETATION OF THIS AGREEMENT

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

- a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- b) 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.
- c) If the day in 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.
- d) A reference in this Agreement to 'dollars' or '\$' means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- e) 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.
- f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- g) A reference to a clause, part, schedule or attachment is a reference to a clause, part schedule or attachment to this Agreement.

- h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- i) 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.
- j) 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.
- k) References to the word 'include' or 'including' are to be construed without limitation.
- l) A reference to this Agreement includes the agreement recorded in this Agreement.
- m) A reference to a party to this Agreement includes a reference to the servants, agents, and contractors of the party, and the party's successors and assigns.
- n) Any schedules, tables and attachments form part of this Agreement.

4. DEVELOPMENT CONTRIBUTIONS TO BE MADE UNDER THIS AGREEMENT

4.1 Subject to satisfaction of the Condition and the operation of clause 3.3, the Proponent commits to make the Development Contributions listed in Table 1 below to Council, by Electronic Funds Transfer, in accordance with the manner and timing stated in the same table.

Table 1: The Development Contributions

Number	Contribution Description	Total Contribution	Payment Schedule (per year)
1	Community Benefit Fund	1,250,000	\$50,000/year paid for 25 years, with 50% payable on 1 st July and 50% payable on 5 th January each year.
2	Road Maintenance	625,000	\$25,000/year paid for 25 years with 50% payable on 1 st July and 50% payable on 5 th January each year.
3	Project Related Council Administration and Observations	250,000	\$10,000/year paid for 25 years, with 50% payable on 1 st July and 50% payable on 5 th January each year.
	Total over the first 25 years of the life of the Project	2,125,000 +CPI	

The Proponent will not be required to make any ad hoc contributions (in addition to the Development Contributions) however it may at its discretion make other donations for community purposes.

- 4.2 On each CPI Adjustment Date, Development Contributions which are payable by the Proponent will be indexed by reference to the CPI for the year ending 31 September in the calendar year preceding the year in which the CPI Adjustment Date occurs. The adjustment is to be calculated by the following formula:

$$DC_n = DC_1 \times I_n / I_1$$

where:

DC_n is the indexed Development Contribution (for year n);

DC₁ is the original amount of the Development Contribution, as set out in Table 1;

I_n is the CPI for the year ending 31 September in the calendar year preceding the year for which the calculation is being made; and

I₁ is the CPI for the Base Year.

- 4.3 The Development Contributions paid pursuant to subclause 4.1 may be pooled with other monies held by Council which have similar and relevant objectives, subject to the Proponent having the opportunity to make representations for certain expenditure for the benefit of Bodangora and district residents. The Council must have regard to the opinions expressed by the Proponent but will not be bound by them.
- 4.4 In addition to the Development Contributions listed in Table 1 above, and as per the findings of the Traffic Study (acceptable to both Parties), the Proponent undertakes at its own expense to:
- a) upgrade Gillinghall Road (and related intersections, causeways, etc) from the intersection with Goolma Road to the intersection of Driell Creek Road, in accordance with plans approved by Council, prior to any Project construction work commencing (other than site mobilisation);
 - b) upgrade other roads, bridges, intersections, in the Bodangora district that require modification in the reasonable opinion of Council, to allow construction of the Development, in accordance with plans approved by Council, prior to any Project construction work commencing (other than site mobilisation);
 - c) maintain Gillinghall Road from the intersection with Goolma Road to the intersection of Driell Creek Road for the duration of the construction phase of the Development, to the reasonable satisfaction of Council;
 - d) If, during the life of the Project, Council provides evidence of significant increases in traffic volumes or vehicle types on other roads in the locality not addressed in the abovementioned Traffic Study that can be directly attributable to the Project, the Proponent agrees to reach a negotiated settlement with Council to provide additional funds for road repair, maintenance or upgrade works. In an endeavour to avoid this impact the Proponent will require contractors and staff to travel on designated routes; and

- d) pay Council \$120/tonne (adjusted for CPI in accordance with clause 4.2 as if they were Development Contributions) plus any carbon cost imposed by the waste management facility that accepts the waste generated by the Project.

The works a) to c) above shall be carried out by the Proponent as soon as practicable after the date the Conditions are satisfied but subject always to the operation of clause 3.3.

5. CONFIDENTIALITY

- 5.1 The Parties agree that the terms of this Agreement are not confidential and that this Agreement may be treated as a public document and exhibited or reported without restriction by either Party.

6. AMENDMENT TO THIS AGREEMENT

- 6.1 This Agreement may only be amended if Council and the Proponent agree to enter into a new Agreement or in accordance with clause 19.

7. DISPUTE RESOLUTION

- 7.1 In the event a dispute between the Parties arises in relation to any activity, payment or item as covered in this Agreement (a "Dispute"), the Dispute is to be resolved through the following process (as required):

- a) A Party claiming that a Dispute has arisen must give written notice to the other Party specifying the nature of the Dispute;
- b) Within ten (10) days of receipt of notice of a claim of a Dispute, both Parties must endeavour, in good faith, to resolve the Dispute swiftly using informal dispute resolution methods such as discussion or expert evaluation as agreed by both Parties;
- c) If the Parties fail to resolve the Dispute within 21 Business Days of receipt of notice (or any further period agreed in writing by them) as to:
 - i) the Dispute resolution method and procedures to be adopted;
 - ii) the timetable for all steps in those procedures; or
 - iii) if applicable, the selection and compensation of the independent person required for any agreed expert evaluation,

the Parties must mediate the Dispute in accordance with the Alternative Dispute Resolution process of the Law Society of NSW. The Parties must request the President of the Law Society of NSW or the President's nominee to select the mediator;

- d) The costs associated with the mediation must be shared equally between the Parties, unless the mediator determines otherwise; and
- e) If the Dispute is not resolved within 60 Business Days after the initial notice of the Dispute is given under clause 7.1(a), then either Party, having exhausted efforts to resolve the Dispute in accordance with this section, may, in writing, terminate the Dispute resolution process and commence court proceedings in relation to the Dispute.

8. ENFORCEMENT

- 8.1 The Proponent commits an "event of default" if it commits, permits or suffers to occur any breach or default in the due and punctual observance and performance of any of the covenants, obligations and provisions to be performed or observed by the Proponent under this Agreement.
- 8.2 Where the Proponent commits an event of default the Council may:
- a) serve a notice on the Proponent requiring the breach of this Agreement to be rectified within a reasonable period (being not less than 28 Business Days from the date of the notice); and
 - b) claim damages for breach of contract from the Proponent.
- 8.3 The rights vested in Council pursuant to clause 8.2 above do not prevent the Council from exercising any other rights that it may possess at law.
- 8.4 If there is any Dispute as to whether an event of default has occurred, then any enforcement by the Council of this Agreement shall be suspended pending the outcome of the Dispute resolution procedure prescribed in clause 7.

9. TERMINATION AND SUSPENSION

- 9.1.1 Subject always to clause 8.4, this Agreement terminates upon the occurrence of any of the following events:
- a) the Parties agree in writing to terminate this Agreement;
 - b) an Insolvency Event affects a Party; or
 - c) the Council, acting reasonably, serves notice on the Proponent terminating this Agreement where the Proponent has failed to comply with a notice issued in accordance with clause 8.2(a).
- 9.2 Upon termination of this Agreement:
- a) all future rights and obligations of the Parties under this Agreement are discharged; and
 - b) all pre-existing rights and obligations of the Parties under this Agreement continue to subsist.

10. NOTICES

- 10.1 Any notice, consent, information, application or request that must 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:
- a) delivered or posted to that Party at its address set out below; or
 - b) faxed to that Party at its fax number set out below.

Wellington Council

Attention: Mr Michael Tolhurst, General Manager

Address: 1 Nanima Crescent, Wellington, NSW 2820

PO Box 62, Wellington, NSW 2820

Fax Number: (02) 6840 1791

Bodangora Wind Farm Pty Ltd

Attention: Mr Frank Boland, Development Manager

Address: Level 22, 56 Pitt Street, Sydney, NSW 2000

Fax Number: (02) 9247 6086

- 10.2 If a Party gives the other Party three Business Days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 10.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- a) if it is delivered, when it was left at the relevant address;
 - b) if it is sent by post, two Business Days after it is posted; or
 - c) if it is sent by fax, as soon as the sender receives from the sender's fax machine, a fax report of an error free transmission to the correct fax number.
- 10.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5 pm 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.

11 COSTS

Each Party shall pay its own costs in relation to negotiating, preparing and executing this Agreement.

12 ENTIRE AGREEMENT

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

13 FURTHER ACTS

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

14 GOVERNING LAW AND JURISDICTION

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

15 NO FETTER

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, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

16 REPRESENTATIONS AND WARRANTIES

16.1 Each of the Parties represents and warrants to the other Party that it has power to enter this Agreement and comply with its obligations under this Agreement and that entry into this Agreement will not result in the breach by it of any law applicable to it.

16.2 Each Party warrants to each other Party that:

- a) this Agreement creates a legal, valid and binding obligation, enforceable against the relevant Party in accordance with its terms; and
- b) unless otherwise stated, it has not entered into this Agreement in the capacity of trustee of any trust.

17 SEVERABILITY

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. 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 the Agreement is not affected.

18 MODIFICATION

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

19 RENEWAL/REPLACEMENT OF THIS AGREEMENT

During the term of this Agreement, the Parties agree to review and amend the Agreement if a Modification to the original planning consent is sought for the Development. Any amendments

resulting from such a review will only become effective if the Modification is approved by the consent authority and the works relating to the Modification are commenced.

Regardless, during the twenty fifth year after commencement of construction of the Development, the Parties agree to negotiate a replacement for, or an extension of, this current Agreement as determined by circumstances at the time.

This Planning Agreement shall be deemed to remain in force, even beyond the initial twenty five year period, and until such time as it is renegotiated and replaced.

20 WAIVER

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. A waiver by a Party is only effective if it is in writing. 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 that obligation or breach in relation to any other occasion.

21 GST

- 21.1 Capitalised terms used in this clause 21 which are not otherwise defined have the same meanings as in the GST Law.
- 21.2 Any consideration or amount payable under this Agreement, including any non-monetary consideration (as reduced in accordance with clause 21.6 if required) ("**Consideration**") is exclusive of GST.
- 21.3 If GST is or becomes payable on a Supply made under or in connection with this Agreement, an additional amount ("**Additional Amount**") is payable by the Party providing the Consideration for the Supply ("**Recipient**") equal to the amount of GST payable on that Supply as calculated by the Party making the Supply ("**Supplier**") in accordance with the GST Law.
- 21.4 The Additional Amount payable under clause 21.3 is payable at the same time and in the same manner as the Consideration for the Supply but is only payable on receipt of a valid Tax Invoice.
- 21.5 If for any reason (including the occurrence of an Adjustment Event) the amount of GST payable on a Supply made under or in connection with this Agreement (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under clause 21.3:
- a) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
 - b) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and

- c) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within 14 days after becoming aware of the occurrence of the Adjustment Event.
- 21.6 Notwithstanding any other provision in this Sublease, if an amount payable under or in connection with this Agreement (whether by way of reimbursement or otherwise) is calculated by reference to an amount incurred by a Party, whether by way of cost, expense, outlay, disbursement or otherwise ("**Amount Incurred**"), the amount payable must be reduced by the amount of any Input Tax Credit to which that Party is entitled in respect of that Amount Incurred.
- 21.7 Any reference in this clause 21 to an Input Tax Credit to which a Party is entitled includes, without limitation, an Input Tax Credit arising from a Creditable Acquisition by that Party but to which the Representative Member of a GST Group of which the Party is a Member is entitled.

EXECUTION

DATED: 12th March 2013

EXECUTED AS AN AGREEMENT:

The Common Seal of Wellington Council was affixed in the presence of:



Mayor

Name (printed)

RODRICK BUHR



General Manager

Name (printed)

MICHAEL TOLHURST

Executed by **Bodangora Wind Farm Pty Ltd** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:



Director: GEOFFREY DUTAILLIS

Name (printed)



Director/Secretary: DAVID RICHARDSON

Name (printed)

ATTACHMENT A

THE DEVELOPMENT

The proposed Bodangora Wind Farm as described in the Environmental Assessment report dated May 2012 and further described in the Preferred Project Report of November 2012, and submitted to the NSW Department of Planning and Infrastructure for review and determination.

DESCRIPTION OF SUBJECT LAND

The Land Title details are shown below:

Property	Lot/Portion	DP	Turbine Numbers
Landowner A	72	754320	32, 38
Landowner B	97	754290	43
	11	133286	44
	2	133286	45
	2	133286	-
	199	754290	33, 36, 39, 41
	151	754290	-
	56	754320	26, 27
	55	754320	25
	74	754320	-
Landowner C	1	837502	34, 35, 37
	31	754290	10
	195	754290	-
Landowner D	181	754290	16
	161	754290	23
	59	754320	20
	169	754290	15, 21, 22, 24, 29, 30
	168	754290	31
Landowner E	89	754320	12, 13, 17, 18, 19
	88	754320	-
Landowner F	71	750557	-
	45	750776	-
	12	750776	-
	13	750776	-
	77	754320	-
	52	754320	-
	75	754320	-
	76	754320	-
Optional Landowner G	2	837502	-
Landowner H	190	754290	42
	98	754327	46
Optional Landowner I	3	754290	-