

# Wind Farm Neighbour Deed

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[Redacted] Pty Ltd

and

**[Insert name of Landholder]**

**DRAFT**



# Contents

## Table of contents

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<b>1</b>	<b>Definitions and interpretation</b>	<b>3</b>
	1.1 Definitions .....	3
	1.2 Interpretation .....	5
<b>2</b>	<b>Term</b>	<b>5</b>
<b>3</b>	<b>The Company's Obligations</b>	<b>5</b>
	3.1 Comply with Noise Limits .....	5
	3.2 Location of Wind Turbine Generators .....	5
	3.3 Initial Payment .....	5
	3.4 Annual Payments .....	6
	3.5 Goods and Services Tax .....	6
<b>4</b>	<b>The Landholder' Obligations</b>	<b>7</b>
	4.1 Wind Farm Impacts .....	7
	4.2 Agreed Letter .....	8
	4.3 Waiver of Planning Approval Conditions .....	8
	4.4 Release .....	8
<b>5</b>	<b>Access for Environmental Assessment and Monitoring</b>	<b>9</b>
<b>6</b>	<b>Dealings</b>	<b>9</b>
	6.1 Selling the Property .....	9
	6.2 Mortgages or Charges by the Landholder .....	10
	6.3 Consequences of the Landholder's Breach .....	10
	6.4 Assignment by the Company .....	10
<b>7</b>	<b>General</b>	<b>10</b>
	7.1 Landholder as Trustee .....	10
	7.2 Confidentiality .....	10
	7.3 Remedies and Plea in Bar .....	11
	7.4 Notices .....	11
	7.5 Governing law .....	11
	7.6 Entire agreement .....	11
	7.7 Further assurances .....	12
	7.8 Severance .....	12
	7.9 Counterparts .....	12
	7.10 Waiver .....	12
	7.11 Variation .....	12
	7.12 Costs .....	12
	<b>Executed as a Deed</b>	<b>13</b>

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## Wind Farm Neighbour Deed

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Date ►

Between the parties

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Company

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Landholder

**[insert name] of [insert address]**

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Recitals

- 1 The Company is the current Proponent of the \_\_\_\_\_ Wind Farm and is in the process of applying for Planning Approval and EPBC Approval for the \_\_\_\_\_ Wind Farm.
  - 2 The Landholder is the registered proprietor of the Property.
  - 3 The Property is located near the \_\_\_\_\_ Wind Farm.
  - 4 The Company has proposed certain benefit sharing arrangements for neighbouring residents.
  - 5 The Landholder has accepted the Company's proposal for benefit sharing.
  - 6 The parties have entered into this Deed to record the benefit sharing arrangements agreed and also address any potential impacts of the \_\_\_\_\_ Wind Farm on the Property.
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This Deed witnesses as follows:

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# 1 Definitions and interpretation

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## 1.1 Definitions

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

Term	Meaning
Agreed Letter	the letter from the Landholder in the form contained in Schedule 1.
Annual Payment	<b>\$(insert amount)</b> (exclusive of GST) per year as adjusted on each Annual Payment Review Date in accordance with clause 3.4(b).
Annual Payment Commencement Date	the date on which the Wind Farm is fully commissioned and generating electricity into the grid.
Annual Payment Review Date	each anniversary of the Annual Payment Commencement Date.
Business Day	Monday to Friday, excluding the NSW State public holidays.
Claims	any claims including actions, suits, causes of action, arbitrations, monies, debts, dues, costs, losses, demands, verdicts and judgments either at law or in equity or arising under the provisions of any statute, whether arising out of negligence or not, and whether in the present contemplation of the parties or not, and whether requiring the payment of money or the doing of work or otherwise.
Commencement Date	the date on which this Deed is executed by all of the parties to it.
Deed	this Deed as amended, supplemented or varied from time to time.
EPBC Approval	any approval granted under the <i>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</i> for the Wind Farm, as modified or replaced from time to time.
EPL	any environment protection licence issued under the <i>Protection of the Environment Operations Act 1997 (NSW)</i> for the Wind Farm, as modified or replaced from time to time.



Term	Meaning
<b>Governmental Agency</b>	any government, governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, statutory or other authority, local council, tribunal, agency or entity or a minister of the Crown in any part of the world and includes the Land and Environment Court of New South Wales.
<b>Initial Payment</b>	§[To be inserted] (exclusive of GST).
<b>NSW LPI</b>	New South Wales Land and Property Information.
<b>Noise Guidelines</b>	the document entitled 'Wind Farms: Environmental Noise Guidelines' published in July 2009 by the South Australian Environment Protection Authority.
<b>Other Persons</b>	<ol style="list-style-type: none"> <li>1 any Proponent;</li> <li>2 any related bodies corporate (as defined in the <i>Corporations Act 2001 (Cth)</i>) of any Proponent; and</li> <li>3 any related bodies corporate (as defined in the <i>Corporations Act 2001 (Cth)</i>) of the Company.</li> </ol>
<b>Planning Approval</b>	any development consent granted under the <i>Environmental Planning and Assessment Act 1979 (NSW)</i> for the Wind Farm, as modified from time to time.
<b>Property</b>	The property known as [insert title details and address].
<b>Proponent</b>	the proponent, owner, operator and/or intended owner or operator of the Wind Farm.
<b>Wind Farm</b>	<p>the project the subject of:</p> <ol style="list-style-type: none"> <li>1 development application no. SSD to be lodged under the <i>Environmental Planning and Assessment Act 1979 (NSW)</i>; and</li> <li>2 referral no. lodged under the <i>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</i>,</li> </ol> <p>as modified or replaced from time to time.</p>
<b>Termination Date</b>	the date on which the Company gives notice to the Landholder that the Wind Farm has been decommissioned.
<b>WHO Guidelines</b>	the criteria for the protection of amenity as published in the World Health Organisation document entitled 'Guidelines for Community Noise' dated 1999.



## 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 this Deed binds them jointly and each of them severally;
- (d) a reference to any legislation includes all delegated or subordinate legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (e) a reference in this Deed to the Company or the Landholder includes each of their successors, assigns and transferees;
- (f) the words 'including' or 'includes' or any variation of them are not words of limitation; and
- (g) 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 Term

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This Deed commences on the Commencement Date and expires on the Termination Date.

## 3 The Company's Obligations

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### 3.1 Comply with Noise Limits

The Company comply with any noise limits contained in the Planning Approval and the EPL which apply to any dwelling located on the Property as at the Commencement Date.

### 3.2 Location of Wind Turbine Generators

Unless the Company obtains the prior written consent of the Landholder, which consent must not be unreasonably withheld or delayed, the Company must not construct any wind turbine generator as part of the Wind Farm closer than 1 km (when measured from the base of the tower of the wind turbine generator to the nearest external wall of the dwelling) of any dwelling located on the Property as at the Commencement Date;

### 3.3 Initial Payment

- (a) The Company must pay the Initial Payment to the Landholder within 7 days of the Commencement Date.
- (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.

### 3.4 Annual Payments

- (a) The Company must pay:
- (1) the first Annual Payment to the Landholder within 30 days of the Annual Payment Commencement Date; and
  - (2) the second and each subsequent instalment of the Annual Payment on an annual basis within 30 days of the second and each subsequent anniversary of the Annual Payment Commencement Date.

- (b) The Annual Payment will be reviewed on the Annual Payment Review Date using the following formula:

New Annual Payment = Annual Payment immediately before the relevant

Annual Payment Review Date  $\times \frac{a}{b}$

where

- a is the All Groups Consumer Price Index for the City of Sydney, as published by the Australian Bureau of Statistics (CPI), 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.

The parties agree that the new Annual Payment will not be lower than the Annual Payment immediately before the relevant Annual Payment Review Date.

- (c) The Company's obligation to make Annual Payments under clause 3.4(a) will cease on the earlier of:
- (1) the date on which the Company gives the Landholder notice that it has commenced the decommissioning of the Wind Farm; or
  - (2) the Termination Date.

### 3.5 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 included, the consideration for any supply made under or in connection with this Deed includes 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 inclusive 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.



## 4 The Landholder' Obligations

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### 4.1 Wind Farm Impacts

- (a) The Landholder acknowledges and agrees that:
- (1) the construction and operation of the Wind Farm may impact on the Property including, but not limited to noise and visual impacts;
  - (2) the Company has provided the Landholder with information regarding any anticipated impacts of the Wind Farm on the Landholder's existing dwelling on the Property;
  - (3) it has informed itself in relation to the potential impacts, if any, of the Wind Farm on the Property;
  - (4) it is satisfied that any potential impacts of the Wind Farm will not adversely affect its use and amenity of the Property;
  - (5) this Deed constitutes a noise agreement which satisfies the requirements of the Noise Guidelines; and
  - (6) the Property is, by reason of this Deed, associated with the Wind Farm for all purposes under the conditions of the Planning Approval, the EPBC Approval and the EPL and will continue to be so associated until the Termination Date.
- (b) The Landholder consents to:
- (1) the construction and operation of the Wind Farm; and
  - (2) the impacts generated, if any, by the construction and operation of the Wind Farm and all related activities including, but not limited to noise and visual impacts,
- except to the extent that the noise impacts resulting from the operation of the Wind Farm on any dwelling located on the Property as at the Commencement Date exceed the guideline limits set out in the WHO Guidelines.
- (c) The Landholder must not:
- (1) bring proceedings (or cause or permit any third party to bring any proceedings) seeking to enforce any condition of the Planning Approval, the EPBC Approval or the EPL relating to noise or visual impacts;
  - (2) make any Claims against the Company or the Other Persons in relation to the impacts (including, but not limited to, noise and visual impacts) resulting from the construction or operation of the Wind Farm; or
  - (3) make any complaint, demand or objection (or procure that any third party makes any complaint, demand or objection) to any Governmental Agency in relation to any impacts arising during, or as a result of, the construction or operation of the Wind Farm,
- except to the extent that the noise impacts resulting from the operation of the Wind Farm on any dwelling located on the Property as at the Commencement Date exceed the guideline limits set out in the WHO Guidelines.



- (d) The Landholder must not object, or procure any third party make an objection to, any application:
  - (1) made for the Planning Approval, the EPBC Approval or the EPL; or
  - (2) to vary the Planning Approval, the EPBC Approval or the EPL.
- (e) The Landholder must procure that any occupier of any dwelling on the Property complies with clauses 4.1(c) and 4.1(d) as if they were a party to this Deed.

## 4.2 Agreed Letter

- (a) The Landholder must provide a letter to the Company in the form of the Agreed Letter on the Commencement Date.
- (b) The Landholder agrees that the Company may provide a copy of the letter provided by the Landholder under clause 4.2(a) to:
  - (1) any Governmental Agency;
  - (2) the Other Persons;
  - (3) its legal or other professional advisers or auditors; or
  - (4) a bona fide purchaser of the Wind Farm,provided that, in each case, the Company takes reasonable steps to ensure that the confidentiality of the Agreed Letter is maintained to the extent practicable.

## 4.3 Waiver of Planning Approval Conditions

The Landholder:

- (a) waives any rights which the Landowner may, at any point in time, have under the conditions of the Planning Approval to:
  - (1) require the Company or the Other Persons to acquire some or all of the Property in accordance with a process prescribed by the Planning Approval (**Land Acquisition Rights**);
  - (2) require the Company or the Other Persons to provide any acoustic suppression or treatment measures in order to minimise any noise impacts resulting from the Wind Farm on any dwelling on the Property (**Acoustic Suppression Rights**); or
  - (3) require the Company or the Other Persons to provide any landscaping treatment to the Property in order to minimise the visual impact, if any, of the Wind Farm on any dwelling on the Property (**Landscaping Rights**); and
- (b) undertakes not to make any request under the Planning Approval:
  - (1) to have some or all of the Property acquired pursuant to any Land Acquisition Rights which they may have;
  - (2) for any acoustic suppression or attenuation measures pursuant to any Acoustic Suppression Rights which they may have; or
  - (3) for any acoustic suppression or attenuation measures pursuant to any Landscaping Rights which they may have.

## 4.4 Release

- (a) The Landholder releases the Company and the Other Persons from all Claims:



- (1) which it may have against the Company or the Other Persons; or
- (2) which might be payable by the Company or the Other Persons,  
(whether arising before or after the Commencement Date) in respect of, or in relation to:
  - (A) the construction or operation of the Wind Farm;
  - (B) any impact of the Wind Farm on the Property or on any other land owned by the Landholder, including, without limitation, noise and visual impacts;
  - (C) the conditions of the Planning Approval, the EPBC Approval and the EPL;
  - (D) matters the subject of 4.4(a)(2)(A) to 4.4(a)(2)(C) above.
- (b) The release contained in clause 4.4(a) does not extend to or permit the Company or the Other Persons to generate noise levels which exceed the guideline limits set out in the WHO Guidelines as a result of the operation of the Wind Farm.
- (c) Nothing in clause 4.4(a) affects or releases any right created by this Deed.

## 5 Access for Environmental Assessment and Monitoring

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- (a) The Landholder grants the Company a licence for the Company (and its employees, agents, consultants and contractors) to access the Property at any time after Commencement Date to carry out any environmental assessment or monitoring related to the Wind Farm.
- (b) In accessing the Property under clause 5(a), the Company must:
  - (1) give at least 24 hours prior notice to the Landholder (except in the case of an emergency);
  - (2) use reasonable endeavours to cause as little interference and inconvenience to the Landholder as far as is reasonably practical;
  - (3) only remain on the Property for so long as is reasonably necessary; and
  - (4) leave the Property in the condition in which it was in prior to the Company accessing the Property as far as is reasonably practical.

## 6 Dealings

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### 6.1 Selling the Property

- (a) The Landholder must notify the Company if they propose to assign or transfer their interest in some or all of the Property to a third party (**Proposed Transferee**).
- (b) Before assigning or transferring the whole or any part of the Property, the Landholder must first procure that the Proposed Transferee enters into a deed with the Company, in a form reasonably required by the Company, under which the Proposed Transferee agrees to be bound by this Deed (or, in the case of a



disposal of a lesser interest in the land than ownership, those provisions of this Deed as relevant to that interest), with effect from the date of completion of the disposal, as if the references to 'the Landholder' in this Deed were taken to be references to the Proposed Transferee.

## **6.2 Mortgages or Charges by the Landholder**

The Landholder:

- (a) warrants that, as at the Commencement Date, each existing mortgagee or chargee of the Property has agreed to be bound by the terms of this Deed; and
- (b) must ensure that any new mortgagee or chargee of the Property agrees to be bound by the terms of this Deed.

## **6.3 Consequences of the Landholder's Breach**

If the Landholder breaches clauses 6.1 or 6.2 then:

- (1) the Company's obligation to make any further Annual Payments under clause 3.4 will cease until such time as the breach is remedied; and
- (2) the Landholder indemnifies the Company from and in respect of all claims and liabilities incurred or suffered by or brought, or made or recovered against the Company or the Other Persons to the extent caused or contributed to by any such breach of the Landholder.

## **6.4 Assignment by the Company**

- (a) The Company may assign the benefit of this Deed to any person without the Landholder's consent.
- (b) The Company will give written notice to the Landholder that it has assigned the benefit of this Deed.
- (c) If clause 6.4(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.

# **7 General**

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## **7.1 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.

## **7.2 Confidentiality**

The terms of this Deed are confidential to the parties and must not be disclosed directly or indirectly, in whole or in part, by any of the parties other than:



- (a) to enforce this Deed;
- (b) as required by law,
- (c) to any of the parties' immediate family members, insurers, accountants, legal or other professional advisers or auditors, in each case on a confidential basis;
- (d) by the Company to:
  - (1) any Governmental Agency;
  - (2) the Other Persons; or
  - (3) a bona fide purchaser of the Wind Farm,provided that, in each case, the Company takes reasonable steps to ensure that the confidentiality of this Deed is maintained to the extent practicable.

### **7.3 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.

### **7.4 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 party at the address number specified in this Deed or to such other address as notified by each relevant party from time to time for the purpose of this clause.
- (b) A notice given in accordance with clause 7.4(a) will be deemed to have been given and received:
  - (1) if delivered, on receipt;
  - (2) if posted, three business days after posting;
  - (3) if sent by facsimile on confirmation of the correct transmission of the facsimile; andany 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.

### **7.5 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.

### **7.6 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.



## **7.7 Further assurances**

Each party must execute and do all acts and things necessary or desirable to implement and give full effect to the provisions and purpose of this Deed.

## **7.8 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 remain in full force and effect and are unaffected by that severance.

## **7.9 Counterparts**

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

## **7.10 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.

## **7.11 Variation**

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

## **7.12 Costs**

Subject to clause 3.3, each party must pay its own costs of and incidental to the negotiation, preparation and execution of this Deed.



# Executed as a Deed

## Company

The common seal of  
**Pty Ltd**  
is fixed to this document in the presence of

sign here ► \_\_\_\_\_  
Company Secretary/Director

print name \_\_\_\_\_

sign here ► \_\_\_\_\_  
Director

print name \_\_\_\_\_

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## Landholder

Signed sealed and delivered by  
**[Insert]**

sign here ► \_\_\_\_\_

print name \_\_\_\_\_

in the presence of

sign here ► \_\_\_\_\_  
Witness

print name \_\_\_\_\_

print  
address \_\_\_\_\_



# Schedule 1

## Form of Letter

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The Minister for Planning  
The Department of Planning and Environment  
23-33 Bridge Street,  
Sydney NSW 2000

### Wind Farm - SSD

Dear Minister,

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

We confirm that:

- the Property is now associated with the [ ] Wind Farm; and
- we do not object to the [ ] Wind Farm, including to any noise or visual impacts which the [ ] Wind Farm may have on the Property.

Yours sincerely,

[insert name and signature of the Landholder]