Rye Park Wind Farm

Community Enhancement Fund Agreement

The Upper Lachlan Shire Council

Rye Park Renewable Energy Pty Ltd

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Planning Agreement

Date 21 AUGUST 2017

Between the parties	
	The Upper Lachlan Shire Council ABN 81 011 241 552 of 44 Spring Street, Crookwell NSW 2583 **(Council)**
	Rye Park Renewable Energy Pty Ltd ABN 34 601 541 931 of Level 23 "Rialto Towers" 525 Collins Street Melbourne VIC 3000 **(Company)**
Recitals	1 The Company has agreed to pay Monetary Contributions in relation to the Rye Park Wind Farm to the Council's Community Enhancement Fund on the terms of this deed. 2 The Council agrees to be the custodian of the Monetary Contributions paid by the Company to the Community Enhancement Fund and to distribute and expend the funds in the Community Enhancement Fund in accordance with this deed. 3 The Company has lodged the Rye Park Development Application.
This deed witnesses as follows:	

1 Definitions and interpretation

1.1 Definitions

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

Term	Meaning
Approved Local Projects	each Local Project for whatever purpose (as determined by Council after recommendation by the Committee) approved for funding from the Community Enhancement Fund in accordance with this deed.
Auditor	an appropriately qualified auditor appointed by the Council.
Committee	the committee established to administer the Community Enhancement Fund in accordance with the DCP, pursuant to section 355 of the Local Government Act and, comprising: • the Mayor or Councillor Delegate; • the General Manager or delegate of the Council; • up to 2 community representatives who do not own any of the Rye Park Land; and • a representative appointed by the Company
Committee Charter	the charter governing aspects of the governance of the Committee, as modified from time to time.
Contribution Year	Means every 12 month period from 1 July each year.
Construction Certificate	has the meaning contained in the EP&A Act.
Community Enhancement Fund	the fund to be established by the Council and administered in accordance with this deed and the DCP.

Term	Meaning
Costs	includes costs, charges and expenses, including those incurred in connection with advisers. The cost of administering the Community Enhancement Fund shall be paid to Council out of the Monetary Contribution on an as needed basis and shall be no more than $5000 per annum, indexed to CPI over the life of the project
Local Project	Any local community purpose that may be considered for funding so that it becomes an approved Local Project.
Rye Park Wind Farm Development Application	The application no. SSD6693 lodged with the Minister for Planning under the EP&A Act on 18 January 2011, as modified from time to time.
Rye Park Wind Farm Development Consent	The development consent granted by the Minister pursuant to the Rye Park Wind Farm Development Application as modified from time to time.
Rye Park Land	• all other land on which it is proposed that associated and ancillary infrastructure for the Rye Park Wind Farm that will be located within the Upper Lachlan Local Government Area as specified in the Rye Park Development Consent; and • the land that is the subject of and is described in the Rye Park Wind Development Application.
Rye Park Wind Farm	the construction and operation of a wind energy facility to be known as the Rye Park Wind Farm, on the Rye Park Land consisting of up to 109 wind turbines and associated infrastructure as authorised by the Rye Park Development Consent. Also referred to in this agreement as the Development.
DCP	the *Upper Lachlan Development Control Plan 2010* as amended from time to time.
EP&A Act	the *Environmental Planning and Assessment Act 1979*

Term	Meaning
	(NSW) as amended from time to time.
Index Number	the Consumer Price Index for Sydney (All Groups) number or equivalent index published from time to time by the Australian Bureau of Statistics.
Local Projects	any projects proposed to be carried out within the Upper Lachlan Shire Council local government area and located within 20kms of the Rye Park Wind Farm which are aimed at: 1 enhancing any aspect of the local environment including, but not limited to, ameliorating any impacts from the Rye Park Wind Farm; or 2 providing any community service or facility or benefit or educational assistance. which may include the building of a Strategic Fund to develop a single or expensive Local Project that will require significant upfront or multi-year investment. members of the community through incorporated or registered non for profit organisations will be able to apply for funds under the CEF for community benefit or education support projects within 20km of the project. Should no suitable local projects be identified during any funding round within this boundary as the first priority applications will be considered within the current Upper Lachlan Shire Council boundaries as of 11 February 2016.
Mediator	a person appointed as mediator under clause 11.5 of this deed.
Monetary Contribution	the amount of $2,500 per annum per turbine constructed within Upper Lachlan Shire Council Local Government Area as adjusted in accordance with clause 5.1(b) of this deed.
Operating Turbine	each wind turbine constructed and commissioned as part of the Rye Park Wind Farm which generates electricity into the transmission network during any part of the relevant Contribution Year within Upper Lachlan Shire Council Local

Term	Meaning
	Government Area.
Strategic Fund	an allocation of the Monetary Contribution to an Approved Local Project where money is held by Council and dedicated to a large or multi-year funding commitment. authorisation is provided to Council to progressively or otherwise pool funds to fund prioritised projects as recommended by the Committee.

1.2 Interpretation

(a) Clause headings are for convenience only and will be ignored in the interpretation of this 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 and a reference to a year means a calendar year.

(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:

(1) statutory modification or re-enactment of or any statutory provision substituted for that legislation, section or provision; or

(2) ordinances, by-laws, regulations and other statutory provision substituted for that legislation, section or provision.

(i) Other grammatical forms of defined words or expressions have corresponding meanings.

(j) 'Including' and similar expressions are not words of limitation.

2 Planning Agreement

The parties agree that this deed is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the EP&A Act.

3 Application of this deed

This deed applies to the Rye Park Development Consent and evidences the Company and the Company's compliance with the relevant condition(s) of the Rye Park Development Consent.

4 Operation of this deed

The parties agree that this deed will not operate or bind the parties unless and until the Company obtains a Construction Certificate.

5 Payment of the Monetary Contribution

5.1 The Monetary Contribution

(a) The Company must pay to the Council the Monetary Contribution in arrears on 1 July of each year for each turbine which was an Operating Turbine during the preceding Contribution Year.

(b) The parties agree that the Monetary Contribution will be reviewed on 1 July of each year, commencing at the June 2011 quarter, in accordance with the following formula:

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

Where:

MC = the Monetary Contribution payable for the following Contribution Year;

A = the Monetary Contribution payable during the Contribution Year just ended;

B = the Index Number last published before the end of the Contribution Year just ended; and

C = the Index Number last published before the commencement of the Contribution Year just ended.

(c) The monetary contribution is a taxable supply for GST in accordance with Clause 12.

5.2 General

(a) The obligation of the Company to pay any Monetary Contribution under this deed will cease on the date on which the last of the Operating Turbines is decommissioned.

(b) The parties agree that the Monetary Contribution paid in accordance with this deed will have the public purpose of facilitating Approved Local Projects.

(c) The Company agrees to pay interest on any overdue part or whole of the Monetary Contribution payable:

(1) from the date on which the overdue part or whole of the Monetary Contribution is due for payment under this deed;

(2) until the date on which the overdue part or whole Monetary Contribution is paid,

at the bank bill swap interest rate within Australia that is published by the Australian Financial Markets Association, during the relevant period when the relevant Monetary Contribution is overdue.

6 Community Enhancement Fund

6.1 Establishment of the Community Enhancement Fund

(a) The Council must hold and apply all Monetary Contributions paid by the Company under this deed in accordance with clause 5.2(b).

(b) The Council must invest all Monetary Contributions paid by the Company under this deed in an interest bearing account held in the name of the Council for the purpose of the Community Enhancement Fund pursuant to the provisions of section 625 of the Local Government Act 1993.

(c) The Committee may disburse Monetary Contributions paid by the Company under this deed to Approved Local Projects that propose to invest the disbursed money for the purposes of the Approved Local Project.

(d) A proportion (not less than 20% of the Community Enhancement Fund) will be allocated to local education assistance. Monies not expended through the local education assistance in any given year shall be transferred to the Community Enhancement Fund for the following year.

6.2 The Committee

(a) The Council must establish the Committee on or before the date on which the first instalment of the Monetary Contribution is paid under this deed.

(b) The Company must be represented by a company-nominated representative on the Committee.

(c) The Council must procure that the role of the Committee includes:

(1) to determine the form in which applications for funding for Local Projects from the Community Enhancement Fund are to be made;

(2) to recommend to the Council which applications for funding for Local Projects should be funded from the Community Enhancement Fund as required by clause 6.5(a);

(3) adherence to a Committee Charter; and

(4) to appoint the Auditor as required by clause 6.7(a).

6.3 Call for Funding Applications

During:

(a) November to January in each year in which there are funds in the Community Enhancement Fund; or

(b) any further period determined by the Committee,

the Council must publicly advertise in the Council's Voice newsletter (or any periodic Council publication which replaces the Voice newsletter) and in the local newspapers the availability of funds in the Community Enhancement Fund and call for applications to be made to the Committee, in the form required by the Committee, from the public, community groups and individuals for funding for Local Projects (**Funding Applications**).

6.4 Notification to Company

The Council must procure that the Committee:

(a) notifies the Company of each application made for funding for Local Projects from the Community Enhancement Fund;

(b) if requested by the Company, consult the Company in relation to applications made for funding for Local Projects from the Community Enhancement Fund; and

(c) notifies the Company of each Local Project which is to be funded from the Community Enhancement Fund, including the amounts of any funding.

6.5 Allocation of Funds

(a) The Council must procure that the Committee makes recommendations to the Council as to which of the Funding Applications the Committee recommends be funded from the Community Enhancement Fund.

(b) The deed expressly authorises Council to progressively or otherwise pool funds to fund prioritised Local Projects as recommended by the Committee.

(c) The Council must:

(1) consider the funding recommendations of the Committee;

(2) consider any Committee consultation with the Company pursuant to clause 6.4(b); and

(3) procure that Council confirms which Local Projects will be funded from the Community Enhancement Fund in accordance with the recommendations of the Committee.

(d) The Council must pay funds from the Community Enhancement Fund to each Approved Local Project, and may require each Approved Local Project to enter into a Funding Agreement where appropriate.

6.6 Public Recognition

(a) The Council must publicly and positively acknowledge:

(1) the payment of the Monetary Contribution by the Company; and

(2) the Company's role in funding any Approved Local Projects via the Community Enhancement Fund.

(b) The form of public acknowledgment required by clause 6.6(a) is to be agreed by the Council and the Company (acting reasonably) but must include:

(1) The prominent inclusion of the Company's logo in any advertisement for Funding Applications or an announcement made in relation to the Approved Local Projects and funding determinations; and

(2) where appropriate for particular approved Local Projects, a permanent sign recognising that the Approved Local Project was funded by the Company via the Community Enhancement Fund.

6.7 Auditing

(a) During each year in which there are funds in the Community Enhancement Fund, the Council must appoint an Auditor to reconcile:

(1) the Monetary Contribution paid by the Company under clause 5;

(2) any payments made by the Council in accordance with clause 6.5;

(3) any money that is withheld from annual disbursement for the purpose of building a Strategic Fund to apply towards a specific Approved Local Project;

and identify any corrective payments required.

(b) The Company and the Council must make any corrective payments identified by the Auditor as being necessary to reconcile the Community Enhancement Fund.

(c) The costs of the Auditor will be paid out of the Community Enhancement Fund.

7 Application of sections 94 and 94A of the EP&A Act to the Development

The parties agree that as the Rye Park Wind Farm is excluded from the application of these sections, the terms of this deed and the Community Enhancement Fund are, in effect, offered by the Company in substitution for the contributions that would otherwise be made under those sections.

8 No Registration

The parties agree that this deed will not be registered on the Rye Park Land pursuant to section 93H of the EP&A Act.

9 Disposal by the Company of its interest in the Development

(a) Prior to the Company disposing of any part of its interest in the Rye Park Wind Farm to any third party, the Company must procure entry by that third party into a deed with the Council and the Minister (as appropriate) on substantially the same terms and conditions as this deed.

(b) Subject to the Company complying with its obligations under clause 9(a), the Council will release the Company from any further obligation under this deed on and from the date on which it ceases to have any interest in the Rye Wind Farm.

10 No fetter

Nothing in this deed shall be construed as requiring the 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.

11 Dispute Resolution

11.1 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**).

11.2 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.

11.3 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.

11.4 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**).

11.5 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 appointment of a Mediator will be agreed between the parties, or failing agreement within 5 business days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply to appoint a mediator;

(c) the Mediator appointed pursuant to this clause 11.5 must:

  (1) have reasonable qualifications and practical experience in the area of the dispute; and

  (2) have no interest or duty which conflicts or may conflict with 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 any mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;

(g) in relation to costs and expenses:

(1) each party will bear their own professional and expert costs incurred in connection with the mediation;

(2) the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

11.6 Litigation

If the dispute is not finally resolved in accordance with clause 11.5, either party is at liberty to litigate the dispute.

11.7 Exchange of information

The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process established by this clause 11 for any purpose other than an attempt to settle a dispute between the parties.

11.8 Continue to Perform obligations

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

12 GST

12.1 Interpretation

(a) Except where the context suggests otherwise, terms used in this clause 7 have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time).

(b) In this clause 7:

(1) **"monetary consideration"** means any consideration expressed as an amount of money; and

(2) **"non taxable supply"** means a supply that is not a taxable supply.

(c) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause.

(d) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

12.2 Reimbursements

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

12.3 Additional amount of GST payable

If GST becomes payable on any supply made by a party (**"Supplier"**) under or in connection with this deed:

(a) any amount payable or consideration to be provided under any provision of this deed (other than this clause), for that supply is exclusive of GST;

(b) any party (**"Recipient"**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**"GST Amount"**) at the same time as any other consideration is to be first provided for that supply; and

(c) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with this clause.

12.4 Variation

(a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 12.3), varies from the additional amount paid by the Recipient under clause 12.3, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.

(b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

13 General

13.1 Costs

The parties agree to meet their own Costs in connection with:

(a) the negotiation, preparation and execution of this deed;

(b) performing its obligations under this deed; and

(c) the advertising and exhibiting of this planning agreement in accordance with the EP&A Act.

13.2 Notices

(a) A party notifying or giving notice under this deed must do so in writing addressed to that party in accordance with the details nominated in Schedule 1 (or any alternative details nominated to the sending party by notice).

(b) A notice given in accordance with clause 13.2(a) will be deemed to have been given and received:

(1) if delivered, on receipt;

(2) if posted via registered post, three business days after posting;

(3) if sent by email on confirmation of the correct transmission of the email; and

(4) 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.

13.3 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 and signed by the party against whom the waiver is claimed;

(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.

13.4 Governing Law

This deed is governed by New South Wales law and each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed.

13.5 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.

13.6 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.

13.7 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.

13.8 Severability

(a) If any provision of this deed is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.

(b) Clause 13.8(a) does not apply where the provision to be severed would materially adversely affect the nature or extent of a parties obligations under this deed.

13.9 Confidentiality, Media Releases and Enquiries

(a) The parties agree that the terms of this executed 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 not issue, publish or authorise any media release or advertisement concerning this deed, without obtaining the other party's prior written approval (which approval may not be unreasonably withheld).

13.10 Counterparts

This deed may be executed in any number of counterparts that together will constitute one instrument. A party may execute this deed by signing any counterpart.

13.11 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.

13.12 Further Acts

Each party must promptly execute all documents and do all things reasonably required to effect, perfect or complete this deed and all transactions incidental to it.

13.13 Enforcement

Subject to compliance with clause 11, this deed may be enforced by any party in any court of competent jurisdiction.

Schedule 1

Schedule 1: Notice Details

	The Upper Lachlan Shire Council
Address	44 Spring Street, Crookwell NSW 2583
Attention	General Manager
Fax	02 4830 1045
Email	jbell@upperlachlan.nsw.gov.au

	Rye Park Renewable Energy Pty Ltd
Address	Level 23, "Rialto Towers", 525 Collins Street, MELBOURNE VICTORIA 3000
Attention	Company Secretary
Email	ryeparkwindfarm@tiltrenewables.com

Executed as a deed

The Common Seal of **Upper Lachlan Shire Council ABN 81 011 241 552** is fixed to this document in the presence of:

Signature of sole Director and sole Company Secretary

Full name (print)

Signed and delivered for
The Upper Lachlan Shire Council

sign here ► J X Bell
Authorised Officer

print name JOHN BELL

in the presence of

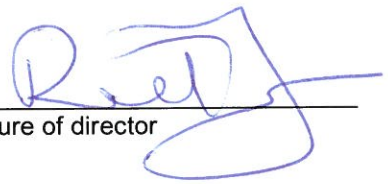
sign here ►
Witness

print name HELEN PETERSON

21 AUGUST 2017 (Date)

Executed by Rye Park Renewable Energy Pty Ltd)
ABN 34 601 541 931)
)

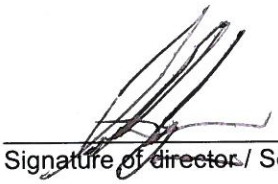
Company
in accordance with section 127(1) of the
Corporations Act 2001 (Cth):



Signature of director

ROBERT FARRON

Name (please print)



Signature of ~~director~~ / Secretary

Stephen Symons

Name (please print)