

Jeremiah Wind Farm

Planning Agreement

between

Cootamundra-Gundagai Regional Council

and

Jeremiah Wind Farm Pty Ltd

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Planning Agreement

Date

Between the parties	
	Cootamundra-Gundagai Regional Council ABN 46 211 642 339 of PO Box 420 Cootamundra NSW 2590 (Council)
	Jeremiah Wind Farm Pty Ltd ABN 633 467 535 of Suite 1.01, Level 1, 17 Moore Street Canberra ACT 2601 (Company)
Recitals	<ol style="list-style-type: none">1 The Company has agreed to pay Monetary Contributions in relation to the Jeremiah Wind Farm to the Council's Community Enhancement Fund on the terms of this agreement.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 agreement.3 The Company has lodged the Jeremiah Wind Farm Development Application.
Now it is agreed as follows:	

1 Definitions and interpretation

1.1 Definitions

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

Term	Meaning
Approved Local Projects	each Local Project for whatever purpose approved for funding from the Community Enhancement Fund in accordance with this agreement.
Auditor	an appropriately qualified auditor appointed by the Council.
Construction	as defined in the Jeremiah Wind Farm Development Consent.
Community Donations Policy	the Council's Community Donations Policy adopted by resolution number 112/2020 as amended from time to time.
Community Donations Procedure	the Council's Community Donations Procedure created in April 2020 as amended from time to time.
Community Enhancement Fund	the fund to be established by the Council and administered in accordance with this agreement.
Contribution Year	means every 12 month period from 1 July each year.
Construction Certificate	has the meaning contained in the EP&A Act 1979.
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

Term	Meaning
	needed basis and shall be no more than \$5,000 per annum, indexed to CPI over the life of the project
EP&A Act 1979	the <i>Environmental Planning and Assessment Act 1979</i> (NSW), as amended from time to time.
Index Number	the Consumer Price Index for Sydney number or equivalent index published from time to time by the Australian Bureau of Statistics.
Intended Turbine	each wind turbine permitted to be constructed and, as at the date of commencement of Construction, intended, by the Company, to be constructed as per the final layout plan.
Jeremiah Land	means: <ul style="list-style-type: none"> • all land on which it is proposed that associated and ancillary infrastructure for the Jeremiah Wind Farm that is within the Cootamundra-Gundagai Regional Council local government area as specified in the Jeremiah Development Consent; and • the land that is the subject of and is described in the Jeremiah Wind Farm Development Application.
Jeremiah Wind Farm	the construction and operation of a wind energy facility to be known as the Jeremiah Wind Farm, on the Jeremiah Land consisting of up to 65 wind turbines, battery storage and associated infrastructure as authorised by the Jeremiah Wind Farm Development Consent. Also referred to in this agreement as the Development.
Jeremiah Wind Farm Development Application	the application SSD-22472709 lodged with the Minister for Planning under the EP&A Act 1979, as modified from time to time.
Jeremiah Wind Farm Development Consent	the development consent granted by the Minister pursuant to the Jeremiah Wind Farm Development Application as modified from time to time.

Term	Meaning
Local Project	any local community purpose that may be considered for funding so that it becomes an approved Local Project.
Local Projects	<p>any projects proposed to be carried out by members of the community through incorporated or registered not for profit organisations within the Cootamundra-Gundagai Regional Council local government area and located in the vicinity of the Jeremiah Wind Farm which are aimed at:</p> <ol style="list-style-type: none"> 1 enhancing any aspect of the local environment including, but not limited to, ameliorating any impacts from the Jeremiah Wind Farm; or 2 providing any community service or facility or benefit or educational assistance, <p>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.</p>
Mediator	a person appointed as mediator under clause 11.5 of this agreement.
Monetary Contribution	<p>means:</p> <ol style="list-style-type: none"> 1 from the date of Construction until the Wind Farm is deemed operational, has been commissioned and is generating electricity, the amount of \$3,500.00 per annum per Intended Turbine to be constructed within Cootamundra-Gundagai Regional Council local government area as adjusted in accordance with clause 5.1(b) of this agreement 2 after the Wind Farm is deemed operational, has been commissioned and is generating electricity, the amount of \$3,500.00 per annum per Operating Turbine constructed within Cootamundra-Gundagai Regional Council local government area as adjusted in accordance with clause 5.1(b) of this agreement.
Operating Turbine	each wind turbine constructed and commissioned as part of the Jeremiah Wind Farm which generates electricity into the transmission network during any part of the relevant

Term	Meaning
	Contribution Year within Cootamundra-Gundagai Regional Council local government area.
Regulation	the <i>Environmental Planning and Assessment Regulation 2000</i> (NSW).
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.

1.2 Interpretation

- (a) Clause headings are for convenience only and will be ignored in the interpretation of this agreement.
- (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 agreement 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 agreement is a planning agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the EP&A Act 1979.

3 Application of this agreement

This agreement applies to the Jeremiah Wind Farm Development Consent and evidences the Company and the Company's compliance with the relevant condition(s) of the Jeremiah Development Consent.

4 Operation of this agreement

The parties agree that this agreement 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 within 14 days of 1 July of each year for each turbine which was an Intended Turbine or an Operating Turbine (as applicable) during the preceding Contribution Year.
- (b) The parties agree that the Monetary Contribution will be reviewed on 1 July of each year 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 agreement 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 agreement 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 agreement;
 - (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 agreement in accordance with clause 5.2(b).
- (b) The Council must invest all Monetary Contributions paid by the Company under this agreement 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* (NSW).
- (c) The Council may disburse Monetary Contributions paid by the Company under this agreement to Approved Local Projects that propose to invest the disbursed money for the purposes of the Approved Local Project.

6.2 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 Council,

the Council must publicly advertise in the Council's newsletter and on the Council's website (or any periodic Council publication) and in the local newspapers the availability of funds in the Community Enhancement Fund and call for applications to be made to the Council, in the form required by the Council, which is to have regard to the Community Donations Policy and the Community Donations Policy Procedure – Application Form, from the public, community groups and individuals for funding for Local Projects (**Funding Applications**).

6.3 Notification to Company

The Council must:

- (a) notify the Company of each application made for funding for Local Projects from the Community Enhancement Fund;
- (b) consult with the Company in relation to applications made for funding for Local Projects from the Community Enhancement Fund;
- (c) provide regular updates to the Company in relation to the implementation and delivery of the funds, particularly in respect to the requirements set out in clause 6.4(a); and
- (d) notify the Company of each Local Project which is to be funded from the Community Enhancement Fund, including the amounts of any funding.

6.4 Allocation of Funds

- (a) Notwithstanding any clause to the contrary, the Council must procure that the funds from the Community Enhancement Fund be:
 - (1) in each Contribution Year, allocated in the following percentages:
 - (A) 30% to Local Projects with transport asset maintenance purposes; and
 - (B) 70% to Local Projects with community purposes; and
 - (2) in the initial 2 Contribution Years, allocated to the Local Projects in and in proximity to Adjungbilly. Local Projects in such area will at all times be considered to a higher regard than to other Local Projects in the Cootamundra-Gundagai Regional Council local government area.
- (b) The agreement expressly authorises the Council to progressively or otherwise pool funds to fund prioritised Local Projects.
- (c) 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.

6.5 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 6.5(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.

6.6 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 6.4;
 - (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 7.11 and 7.12 of the EP&A Act 1979 to the Development

The parties agree that as the Jeremiah Wind Farm is excluded from the application of these sections, the terms of this agreement 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 agreement will not be registered on the Jeremiah Land pursuant to section 7.6 of the EP&A Act 1979.

9 Disposal by the Company of its interest in the Development

- (a) Subject to clause 9(b), prior to the Company disposing of any part of its interest in the Jeremiah Wind Farm to any third party, the Company must procure entry by that third party into an agreement with the Council and the Minister (as appropriate) on substantially the same terms and conditions as this agreement.

- (b) The Company may transfer and assign this agreement to a related body corporate (as that term is defined in the *Corporations Act 2001* (Cth)) without the need to enter into a new agreement, provided that the Company must provide notice of such transfer or assignment to the Council promptly after it has been affected.
- (c) Subject to the Company complying with its obligations under clause 9(a) or clause 9(b), the Council will release the Company from any further obligation under this agreement on and from the date on which it ceases to have any interest in the Jeremiah Wind Farm.

10 No fetter

Nothing in this agreement 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 agreement (**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 her function as mediator, she being required to fully disclose any such interest or duty before her appointment;
- (d) the Mediator shall be required to undertake to keep confidential all matters coming to her knowledge by reason of her appointment and performance of her 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 agreement, notwithstanding the existence of a dispute.

12 GST

12.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 12 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 12:
 - (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 agreement 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 agreement:

- (a) any amount payable or consideration to be provided under any provision of this agreement (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 agreement 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 agreement;
- (b) performing its obligations under this agreement; and
- (c) the advertising and exhibiting of this agreement in accordance with the EP&A Act 1979.

13.2 Notices

- (a) A party notifying or giving notice under this agreement 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 agreement, 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 agreement 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 agreement.

13.5 Prior Agreements Superseded

This agreement:

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

13.6 Modification of Agreement

- (a) The parties note that pursuant to clause 25C of the Regulation, this Agreement may be amended or revoked by further agreement in writing signed by the parties to the Agreement (including by means of a subsequent planning agreement).
- (b) The parties note that in the event that this agreement is amended or revoked, Council is to ensure that public notice of the proposed amendment or revocation is given in accordance with clause 25D of the Regulation.

13.7 Representations and Warranties

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

13.8 Severability

- (a) If any provision of this agreement 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 party's obligations under this agreement.

13.9 Confidentiality, Media Releases and Enquiries

- (a) The parties agree that the terms of this executed agreement are not confidential and this agreement 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 agreement, without obtaining the other party's prior written approval (which approval may not be unreasonably withheld).

13.10 Counterparts

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

13.11 No Fiduciary Relationship

Nothing in this agreement 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 agreement and all transactions incidental to it.

13.13 Enforcement

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

Schedule 1

Schedule 1: Notice Details

Cootamundra-Gundagai Regional Council

Address PO Box 420
Cootamundra NSW 2590

Attention General Manager

Email mail@cgrc.nsw.gov.au

Jeremiah Wind Farm Pty Ltd C/O CWP Renewables

Address Suite 1.01, Level 1, 17 Moore Street
Canberra ACT 2601

Attention Company Secretary

Email JWF.notices@cwprenewables.com

Executed as an agreement

The Common Seal of Cootamundra-Gundagai Regional Council ABN 46 211 642 339 is fixed to this document in the presence of:

Signature of sole Director and sole
Company Secretary

Full name (print)

Signed and delivered for
Cootamundra-Gundagai Regional Council

sign here ► _____
Authorised Officer

print name _____

in the presence of

sign here ► _____
Witness

print name _____

_____(Date)

Signed and delivered for
Jeremiah Wind Farm Pty Ltd

sign here ► _____
Authorised Officer

print name _____

in the presence of

sign here ► _____
Witness

print name _____

_____(Date)

Executed by Jeremiah Wind Farm Pty Ltd)
ACN 633 467 535 in accordance with section 127(1))
of the *Corporations Act 2001 (Cth)*:)

Signature of director

Signature of director

Name (please print)

Name (please print)