



BUSINESS PAPER

**EXTRA ORDINARY MEETING
OF COUNCIL**

To be held on

Monday, 6 May 2024

4:00pm

at

Walcha Council Chambers

2W Hamilton Street, Walcha

Members:

Mayor – Councillor Eric Noakes

Deputy Mayor – Councillor Anne-Marie Pointing

Councillor Mark Berry

Councillor Kevin Ferrier

Councillor Nena Hicks

Councillor Scott Kermodé

Councillor Aurora Reilly

Quorum – 4 Members to be Present

WO/2024/00767

AGENDA

Submitted to Council: 6 May 2024

..... General Manager Mayor



Dear Mayor & Councillors

You are requested to attend the Extra Ordinary Meeting of the Walcha Council to be held in the Council Chambers, Hamilton Street, Walcha on **Monday 6 May 2024** commencing at **4:00pm**.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Phillip Hood'.

Phillip Hood
General Manager

NOTICE:

The Ordinary, Extra-Ordinary and Committee open meetings of Council will be audio recorded for community transparency and minute taking purposes. The audio recording of all Ordinary and Extra-Ordinary Meetings of Council will be uploaded to Council's website.

ACKNOWLEDGEMENT OF COUNTRY:

We acknowledge the Dunghutti people as the traditional owners of the land that we meet on. We pay our respects to the Elders, past, present and emerging. We acknowledge and recognise their continuing connection to land, water and community of which we are a part.

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1. Leave of Absence

2. Declarations of Interest/Request via Audio Visual Link
Clr Nena Hicks

3. Notice of Motion
 - 3.1 Draft Renewable Energy Community Benefit Policy
WO/2024/00765
 - 3.2 Voluntary Planning Agreement (VPA) – Winterbourne Wind Pty Ltd
WO/2024/00766



Item 2: Declarations of Interest & Requests for Attendance via Audio Visual Link



Item 3:

Senior Officers Reports

That the Senior Officers' Reports be RECEIVED for further consideration.



Item: 3.1 **Ref:** WO/2024/00765
Title: Renewable Energy Community Benefit Policy
Author: General Manager
Previous Items: Not Applicable
Attachment: Draft Renewable Energy Community Benefit Policy – WINT/24/1626

Community Strategic Plan Reference:

Strategy 6.4.1: *Establish alternate renewable energy supplies that will meet our energy needs.*

Action 6.4.1.1: *Review and support Council's use of renewable energy opportunities.*

RECOMMENDATION: **That Council:**

- 1. ENDORSE the Draft Renewable Energy Community Benefit Policy and PLACE on public exhibition for 28 days;**
 - 2. ADOPT the Draft Renewable Energy Community Benefit Policy as presented subject to no submissions received during the public exhibition period;**
 - 3. DEVELOP the Terms of Reference and Constitution for the proposed Renewable Energy Community Advisory Committee.**
-

Introduction:

Increasing numbers of renewable energy projects are planned with the Walcha Council LGA in various stages of the State assessment process. Planning Agreements will typically be entered into with renewable energy developers to secure community benefits. These future community benefit payments are a once in a generation opportunity to deliver long term community legacy projects.

It is important for Council to establish a strategic framework in which to effectively manage community benefit payments in the best interests of the community. It is recommended that Council implements a number of key measures including:

- Creating a Renewable Energy Community Benefit Restricted Fund;
- Establishing a Renewable Energy Community Advisory Committee to provide advice to Council on community legacy projects to be funded from future renewable energy community benefit payments; and
- Calling for public nominations for membership of the Renewable Energy Community Advisory Committee.

Council have yet to adopt a Renewable Energy Community Benefit Policy and this report is to commence the process to do so.



Report:

A number of renewable energy projects in the Walcha LGA are in various stages of assessment and Council is currently negotiating a planning agreement with Winterbourne Wind to formalise future community benefit from this project. Once executed, the planning agreements will provide certainty about future community benefit payments for each project. It is anticipated that our neighbouring New England Councils will also develop similar community advisory committees and there may be an opportunity to collaborate on terms of reference and committee structure as these are progressed given some of the REZ developments cross LGA boundaries.

It is important that Council establishes a strong governance framework around future renewable energy community benefit payments. Accordingly, it is recommended that Council creates a Renewable Energy Community Benefit Restricted Fund for all community benefit payments until allocated to approved legacy community benefit projects.

The NSW Government exhibited the Draft Renewable Energy Planning Policy Framework and Guidelines from 14 November 2023 to 29 January 2024. The draft documents have not yet been finalised but can be accessed via this link: <https://www.planning.nsw.gov.au/policy-and-legislation/renewable-energy/energy-policy-framework>

The draft Benefit Sharing Guideline notes that the total funding for benefit sharing should be as follows:

- \$850 per megawatt per annum for solar energy development; or
- \$1,050 per megawatt per annum for wind energy development, paid over the life of the development and indexed to CPI.

It is recommended that Council's Renewable Energy Community Benefit Policy align with the State's draft Benefit Sharing Guideline and recent Coalition of Renewable Energy Mayors (CoREM) discussions.

Legal Implications:

There are no legal implications arising from this report.

Financial Implications:

There are no financial implications arising from this report.



Environmental Implications:

There are no environmental implications arising from this report.

Social Implications:

There are no social implications arising from this report.

Policy Implications:

The Renewable Energy Community Benefit Policy provides a framework for Council to negotiate community benefit payments with renewable energy developers. The proposed Renewable Energy Community Benefit Restricted Fund will ensure appropriate governance and accounting processes are in place for the administration of future community benefit payments.



WALCHA COUNCIL

ADMINISTRATION POLICY

DRAFT Renewable Energy Community Benefit Policy

Applicability

All Councillors and Council Staff

Publication Requirement

Internal and External

Assigned Responsible Officer

General Manager

Document Status

Version	Date Reviewed	Prepared by	Endorsed	Approved
1.0	2 May 2024	Executive Assistant		

Amendment Record

Amendment Version #	Date Reviewed	Description of Amendment



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1. PLANNING AGREEMENTS

Walcha Council will use the Planning Agreement provisions of the *Environmental Planning & Assessment Act, 1979* (EP&A Act) to deliver the objectives of the Policy.

S 7.4(1) of the EP&A Act states: A voluntary planning agreement (VPA) is an agreement between Council and a developer, who has made, or proposes to make, a development application, under which the developer is required to dedicate land free of cost; pay a monetary contribution; provide any other material public benefit to be used for or applied towards a public purpose.

Planning Agreements may be formulated with direct reference to, or in consideration of, this Policy. However, this Policy does not bind Council or otherwise prevent Council from entering into Planning Agreements that do not strictly adhere to the Policy, should the Agreements otherwise provide alternative and equivalent community benefit, and are supported by the community.

Where there is a disparity between the conditions of a developer VPA and the requirements of this Policy (which may change over time), the VPA will be adhered to.

2. LEGISLATIVE CONTEXT

Section 1.3 of the EP&A Act provides legislative basis for the Policy.

Subdivision 2 of the EP&A Act provides the legislative basis for planning agreements.

3. OBJECTIVE

The Renewable Energy Community Benefit Policy will support the promotion of benefit sharing strategies associated with the development of State Significant and Regionally Significant renewable energy projects in the Walcha Council Local Government Area that:

- Secure off-site benefits for the community so that renewable energy development delivers a net community benefit;
- Ensures that the wider community shares in the benefits resulting from renewable energy development in the Local Government Area; and
- Ensures that the costs and benefits of renewable energy development will be equitably distributed within the community and inter-generationally.

The Renewable Energy Community Benefit Policy will be updated as needs so that it is suitable to deliver on Walcha Councils Community Strategic Goals and provides clear expectations to renewable energy developers.



4. COMMUNITY BENEFIT

Community benefit excludes that which is required to mitigate adverse impacts of development including, but not limited to, host and adjoining landowner payments required to obtain consent or prescribed by legislation, or acute impacts to Council assets e.g. damage to local road infrastructure.

The public purpose that funds will be applied to includes works to embellish public spaces, the provision of spaces for public recreation and community facilities, initiatives to support affordable housing and/or development activity, works to rehabilitate or conserve biodiversity values, new community infrastructure, support of local volunteer or community group activities or some other public purpose if the Council reasonably considers that the public interest would be better served by applying the funds towards that purpose.

Community benefit does not include using funds as a financial off-set or subsidy to Council operational activities whereby a direct link from the funds to the prescribed community benefit cannot be defined. For example, the funds could be used to implement new infrastructure at the Walcha Memorial Baths, but could not be used to off-set operational losses of the facility.

5. GOVERNANCE AND INTER-GENERATIONAL EQUITY

Council will ensure a governance structure that as far as possible reflects the needs and concerns of the immediate communities of impact and the broader Local Government Area to assist with determining the public purpose for funds.

A Community Benefit Advisory Committee will provide advice to Council on the projects to which community benefit funds may be allocated. While project proposals and community initiatives may come from any source, the Community Benefit Advisory Committee will have the opportunity to provide feedback and/or endorsement for any and all uses of the Community Benefit Fund.

Developer representatives from where the community benefit funds are derived will not form part of the Committee, but will have the ongoing opportunity to present to the Committee in regards to specific projects or initiatives, and have access to recommendations and minutes which will also be made public.

Council have the final say in regards to the use of the funds. The Community Benefit Advisory Committee have no delegated authority to spend monies from the Community Benefit Fund and can only advise on its use to Council.



6. COMMUNITY BENEFIT FUND

The financial value of community benefit will vary from project to project and over time, however, the minimum community threshold for Walcha Council will be based on the NSW Government's Benefit Sharing Guidelines for renewable energy.

Funds will be kept as externally restricted funds, and the use of funds from individual developer contributions, or other sources, will be monitored and form part of the annual reporting process, such that the specific funding breakdown for each community project or initiative is clear.

Council will manage funds to ensure that they benefit future generations as well as the present generation, and that ongoing depreciation and maintenance costs, or any other unforeseen impacts, are taken into account for project proposals.



Item: 3.2 **Ref:** WO/2024/00766
Title: Voluntary Planning Agreement – WinterbourneWind Pty Ltd
Author: General Manager
Previous Items: Not Applicable
Attachment: No

Community Strategic Plan Reference:

Goal 6.4: *Walcha will increase the use and production of renewable energy.*
Action 6.4.1.1: *Review and support Councils use of renewable energy opportunities.*
Strategy 8.1.1 *Councillors will exhibit leadership on Council and regional committees as well as in community organisations.*
Action 8.1.1.1 *Provide the opportunity for the community to have input via Council committees.*

RECOMMENDATION: That Council:

- 1. PLACE the proposed Draft Voluntary Planning Agreement between Walcha Council and WinterbourneWind Pty Ltd prepared in accordance with Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning & Assessment Act 1979* (EP&A Act) on public exhibition for a period of no less than 28 days; and**
 - 2. REQUEST a further report to be submitted at the completion of the public exhibition period detailing any submissions received during exhibition or any minor changes proposed for Council’s consideration and final adoption.**
-

Introduction:

WinterbourneWind Pty Ltd is developing a wind energy project in the north east area of the Walcha LGA. The project will have a capacity of up to 700 MW and an estimated investment of over \$1 billion. While the final number of turbines will be subject to the specific consent conditions of the NSW Planning Dept, it is anticipated to be in the order of 119 turbines, 250 metres high with 90% of those located within Walcha LGA and the other 10% in Uralla Shire LGA. This obviously represents a significant impact to the Walcha community, both during construction and operation.

There are numerous documents related to the project available on WinterbourneWind’s website: <https://winterbournewindfarm.com.au/> and the project in general terms should be well known to Councillors and Walcha residents at this stage of the development assessment process.

As this is a state significant project, Walcha Council is not the consent authority for its potential approval. However, it is typical for these large-scale projects to offer financial payments to affected LGAs via a Voluntary Planning Agreement (VPA) as both an offset to the social impact the projects can represent to communities, and in lieu of other



developer contribution payments that might otherwise have been payable to the local council should they have been the consent authority.

These payments do not absolve the developer from any other compensatory payment or action that may form part of the consent conditions – for example repair of damaged road assets impacted by the construction activity, provision of suitable housing for workers, decommissioning obligations, etc.

Given the ambitious renewable energy targets that have been set by both state and federal governments, and the commitment of the state government in regards to the identified 'Renewable Energy Zones' – there will be an increasing number of renewable energy projects proposed in the near future. Many of those within the Walcha LGA as part of the New England Renewable Energy Zone (NEREZ).

To assist both developers and communities with the transition, the Planning Dept have released a draft Energy Policy Framework and Benefit Sharing Guidelines. The WinterbourneWind Project does not officially form part of the NEREZ as it connects to existing electrical transmission infrastructure, and the draft VPA attached to this report and previous public advertisements referencing a WinterbourneWind Community Benefit Fund both pre-date the release of the draft Benefit Sharing Guidelines. Nevertheless, the draft WinterbourneWind VPA can be considered with reference to the draft Benefit Sharing Guidelines as a broad indicator of its appropriateness with regard to future NEREZ renewable energy projects and anticipated Benefits.

Report:

The draft WinterbourneWind VPA was first submitted to both Walcha Council and Uralla Shire Council a full 12 months ago. The two Council's jointly engaged the legal services of Bradley Allen Love (BAL) Lawyers to assess the VPA, advise Council and assist in negotiating a draft VPA that meets Council's needs, adheres to previously adopted positions, policies and guidelines, and is suitable within the broader context of the NEREZ. The version attached to this report is representative of that work, and is now refined to a level of suitability that Council can choose to place on public exhibition for comment, with the aim to adopt at the end of the exhibition period with minimal changes.

The NSW Government draft Renewable Energy Benefit Sharing Guidelines recommend an amount of \$1050 per megawatt per annum for wind energy development adjusted for CPI. WinterbourneWind's VPA stipulates an amount of \$1M upfront, \$750,000 p.a. up to 600MW and \$1000 p.a. per MW for every MW above 600MW, adjusted for CPI. Based on the anticipated capacity and 30 year life of the project, this equates to \$1174 per megawatt per annum – i.e. higher than the NSW government Guideline value. For Walcha, our 90% 'share' will be \$900,000 first year, then \$765,000 p.a. for remaining 29 years - \$23,085,000 before adjusting for inflation.



Other elements of the draft VPA include:

- Requirement to create a restricted and reportable Community Benefit Fund so that all monies received and expended is transparent to the community.
- Requirement to create a Community Benefit Advisory Committee to “make recommendations to Walcha Council for the expenditure of monetary contributions made in connection with renewable energy developments, including the allocation of funds from the Walcha Community Benefit Fund”
- Requirement for funds to be spent in accordance with the recommendations from a Community Benefit Advisory Committee, and “be consistent with any policy adopted by Walcha Council in relation to a renewable energy community benefit restricted fund (as in force from time to time) or, if no such policy has been adopted, the policy principles set out in any benefit sharing guideline prepared by the Department of Planning, Housing and Infrastructure or its successors (as in force from time to time).”
- Walcha Council has the final say on any money spent from the Fund.

Given the VPA’s broad adherence, and exceedance, to the draft Renewable Energy Benefit Sharing Guidelines, it is recommended that Council put the draft VPA with WinterbourneWind to the community for their input. Council can determine whether to sign the VPA, or request further changes prior to signing, based on the feedback received.

The timing of this report and the exhibition period allows Councillors and Council staff to discuss the VPA with the Walcha community during the 2024-2025 Operational Plan public exhibition and Regional Meetings that are being held across the LGA on 13 May and 15 May 2024, though written submissions will also be considered during the exhibition period.

Endorsement of the VPA **does not** constitute endorsement of the WinterbourneWind Project, which will be assessed by the NSW Planning Department, or if required, the Independent Planning Commission.

Legal Implications:

This Agreement is a legal agreement between Walcha Council (and Uralla Shire Council) and WinterbourneWind Pty Ltd. The draft version attached to this report has been informed via advice received by BAL Lawyers.

Financial Implications:

This VPA represents significant financial contributions to be made to Walcha Council for the length of the WinterbourneWind Project – being approximately \$23,085,000 over 30 years before adjusting for inflation.



Environmental Implications:

There are no environmental implications arising from this report.

Social Implications:

There may be no amount of money received via a VPA that will satisfy all members of the Walcha Community. However, the eventual adoption of this VPA will represent significant financial benefit to the Walcha community that is at least comparable with draft Guideline and industry standards.

Policy Implications:

The draft VPA has been updated to refer to the draft Walcha Council Renewable Energy Community Benefit Policy that is intended to also be on public exhibition at the same time. Adoption of the final Renewable Energy Community Benefit Policy will be targeted at the same time as adoption of the WinterbourneWind VPA, though the Policy has broader applications than just this project and this VPA.



Winterbourne Wind Farm

Planning agreement

Minister administering the *Environmental Planning
and Assessment Act 1979*

Walcha Council

Uralla Shire Council

WinterbourneWind Pty Ltd



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Schedule 1

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Planning agreement

Date ►

Between the parties

Minister administering the *Environmental Planning and Assessment Act 1979*

ABN 20 770 707 468

(Minister)

Walcha Council

ABN 24 780 320 847 of 2W Hamilton Street, Walcha NSW 2354

(Walcha Council)

Uralla Shire Council

ABN 55 868 272 018 of 32 Salisbury Street, Uralla NSW 2358

(Uralla Council)

WinterbourneWind Pty Ltd

ABN 59 113 000 150 of Level 4, 477 Collins Street, Melbourne VIC 3004

(WWPL)

Recitals

[Drafting note: Recitals are subject to update based on status as at signing]

- 1 WWPL has agreed to pay the Total Community Contribution in relation to the Project to the Community Benefit Funds on the terms of this agreement.
 - 2 Walcha Council agrees to be the custodian of the Walcha Community Benefit Fund and to distribute and expend the funds in accordance with this agreement.
 - 3 Uralla Council agrees to be the custodian of the Uralla Community Benefit Fund and to distribute and expend the funds in accordance with this agreement.
-

- 4 WWPL has lodged the Project DA and obtained the Project Consent.

The parties agree as follows:

1 Definitions and interpretation

1.1 Definitions

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

Term	Meaning
Community Benefit Funds	the Walcha Community Benefit Fund and Uralla Community Benefit Fund.
Contribution Year	every 12 month period from 1 July each year.
Costs	includes costs, charges and expenses, including those incurred in connection with advisers.
CPI	the Consumer Price Index for Canberra or equivalent index published from time to time by the Australian Bureau of Statistics.
EP&A Act	the <i>Environmental Planning and Assessment Act 1979</i> (NSW), as amended from time to time.
EP&A Regulation	the <i>Environmental Planning and Assessment Regulation 2021</i> (NSW), as amended from time to time.
Funding Allocation	the following allocation of funds that comprise the Total Community Contribution: <ul style="list-style-type: none"> • 90% of funds to the Walcha Community Benefit Fund; and • 10% of funds to the Uralla Community Benefit Fund.



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Term	Meaning
Further Community Contribution	\$750,000 (excluding GST) each Contribution Year plus an additional \$1,000 (excluding GST) each Contribution Year for every installed one (1) megawatt over 600 megawatts for the Project, as adjusted in accordance with clause 5.1(c) of this agreement.
Initial Community Contribution	\$1,000,000 (excluding GST), as adjusted in accordance with clause 5.1(c) of this agreement.
LGA	local government area.
Mediator	a person appointed as mediator under clause 13.5 of this agreement.
Project	the construction and operation of a wind energy facility on the Project Land in accordance with the Project Consent, to be known as the Winterbourne Wind Farm.
Project Consent	the development consent granted by the relevant consent authority under the EP&A Act with respect to the Project DA, as modified from time to time.
Project DA	development application number SSD-10471 for the Project, as modified from time to time.
Project Decommissioning Date	the date when the final wind turbine for the Project is 'decommissioned' in accordance with the conditions of the Project Consent.
Project Financial Close Date	the date when notice to proceed (or similar) is issued by WWPL to a contractor for the 'construction' of the Project in accordance with the conditions of the Project Consent.
Project Land	all land on which it is proposed that associated and ancillary infrastructure for the Project that is within the Walcha Council LGA and Uralla Council LGA as specified in the Project Consent and the Project DA.



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Term	Meaning
Project Operation Commencement Date	the date when the 'operation' of the Project has commenced in accordance with the conditions of the Project Consent.
Review Date	[insert date] and after [insert date] the same date in each subsequent year. [Drafting note: Every 12 months from the date of signing. Dates are subject to update based on timing for signing]
Total Community Contribution	the Initial Community Contribution and the Further Community Contributions.
Uralla Committee	has the meaning given at clause Error! Reference source not found. of this agreement.
Uralla Community Benefit Fund	community benefit fund established pursuant to clause 7.1 of this agreement for the purpose of providing funding within the Uralla Council LGA in accordance with clause 7.3(c) of this agreement (including in the event of any council amalgamation).
Walcha Committee	has the meaning given at clause Error! Reference source not found. of this agreement.
Walcha Community Benefit Fund	community benefit fund established pursuant to clause 6.1 of this agreement for the purpose of providing funding within the Walcha Council LGA in accordance with clause 6.3(c) of this agreement (including in the event of any council amalgamation).

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.



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- (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) '\$' refers to Australian dollars.
- (k) '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.

3 Application of this agreement

This agreement applies to the Project Consent and evidences WWPL's compliance with the relevant condition(s) of the Project Consent.

4 Operation of this agreement

- (a) Subject to clause 4(b), this agreement operates and binds the parties from the date of this agreement.
- (b) The parties agree that clause 5 will not operate or bind the parties unless and until WWPL achieves the Project Financial Close Date.

5 Payment of the Total Community Contribution

5.1 Total Community Contribution

- (a) On the Project Financial Close Date, WWPL must pay the Initial Community Contribution in accordance with the Funding Allocation to the Community Benefit Funds.
- (b) Subject to clause 5.2(a), from the Project Operation Commencement Date, WWPL must pay the Further Community Contribution in accordance with the Funding Allocation to the Community Benefit Funds in arrears within the first 14 days of each Contribution Year.
- (c) Subject to clause 5.2(a), the parties agree that on each Review Date the amount of the Initial Community Contribution and the Further Community Contribution will each be adjusted in accordance with the following formula:

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

Where:

A = the amount of the original obligation, or if the obligation has been adjusted, the amount of the adjusted obligation;

B = the CPI number published for the last quarter before the Review Date; and

C = the CPI number published for the quarter immediately preceding the date of this agreement or, if the obligation has been adjusted, the CPI number published for the quarter before the previous Review Date.

5.2 General

- (a) The obligation of WWPL to pay the Further Community Contributions under this agreement will cease on the Project Decommissioning Date.
- (b) The parties agree that the Total Community Contribution paid in accordance with this agreement will have the public purpose of facilitating the Community Benefit Funds.
- (c) WWPL agrees to pay interest on any overdue part or whole of any Further Community Contribution payable:
 - (1) from the date on which the overdue part or whole of any Further Community Contribution is due for payment under this agreement; and
 - (2) until the date on which the overdue part or whole of any Further Community 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 Further Community Contribution is overdue.



6 Walcha Community Benefit Fund

6.1 Walcha Community Benefit Fund

- (a) Walcha Council intends to establish a renewable energy community benefit restricted fund into which monetary contributions from developers of renewable energy projects within Walcha Council's LGA may be paid (**Walcha Community Benefit Fund**).
- (b) If a Walcha Community Benefit Fund has been formed by the time payment of a monetary contribution is due under this agreement then the relevant monetary contribution must be paid into that fund.
- (c) If a Walcha Community Benefit Fund has not been formed at the time payment of a monetary contribution is due under this agreement, those monetary contributions must be paid into and held in an interest-bearing bank account pursuant to the provisions of section 625 of the *Local Government Act 1993* (NSW). Walcha Council may transfer such monetary contributions into a Walcha Community Benefit Fund at a later time, and is to give WWPL notice of any such transfer.

6.2 Walcha Committee

- (a) Prior to payment of the Initial Community Contribution, Walcha Council must establish a community advisory committee (**Walcha Committee**). The role of the Walcha Committee is to make recommendations to Walcha Council for the expenditure of monetary contributions made in connection with renewable energy developments, including the allocation of funds from the Walcha Community Benefit Fund.
- (b) WWPL will have a standing invitation to:
 - (1) attend meetings of the Walcha Committee;
 - (2) make nominations as to the allocation of funds from the Walcha Community Benefit Fund; and
 - (3) make submissions to the Walcha Committee on any nominations as to the allocation of funds from the Walcha Community Benefit Fund.
- (c) Any person will have a standing invitation to:
 - (1) make nominations as to the allocation of funds from the Walcha Community Benefit Fund; and
 - (2) make submissions to the Walcha Committee on any nominations as to the allocation of funds from the Walcha Community Benefit Fund.
- (d) Minutes of all Walcha Committee meetings will be recorded and made available to WWPL on request.
- (e) Walcha Council or the Walcha Committee must publicly request nominations as to the allocation of funds from the Walcha Community Benefit Fund and must be made to the Walcha Committee in a form required by the Walcha Committee.

6.3 Allocation of funds

- (a) Walcha Council must procure that the Walcha Committee make recommendations regarding the expenditure of funds from the Walcha Community Benefit Fund.
- (b) Subject to clause 6.3(c), Walcha Council may spend, invest or accumulate the monetary contributions in the Walcha Community Benefit Fund or do a combination of those things.
- (c) Walcha Council's expenditure of funds from the Walcha Community Benefit Fund must:
 - (1) be for a public purpose within the meaning of section 7.4 of the EP&A Act;
 - (2) not be used for operational costs of Walcha Council;
 - (3) be done having considered the recommendations of the Walcha Committee; and
 - (4) be consistent with any policy adopted by Walcha Council in relation to a renewable energy community benefit restricted fund (as in force from time to time) or, if no such policy has been adopted, the policy principles set out in any benefit sharing guideline prepared by the Department of Planning, Housing and Infrastructure or its successors (as in force from time to time).
- (d) Walcha Council must pay funds from the Walcha Community Benefit Fund to an approved recipient and may require an approved recipient to enter into a funding agreement where appropriate.

6.4 Public recognition

- (a) Walcha Council must publicly and positively acknowledge:
 - (1) the payment of the Initial Community Contribution and any Further Community Contributions by WWPL in accordance with the Funding Allocation; and
 - (2) WWPL's role in making monetary contributions to the Walcha Community Benefit Fund.
- (b) The form of public acknowledgment required by clause 6.4(a) is to be agreed by Walcha Council and WWPL (acting reasonably) but must include:
 - (1) the prominent inclusion of WWPL's logo in any public request nominations as to the allocation of funds from the Walcha Community Benefit Fund; and
 - (2) where appropriate for each particular target activity, a permanent sign recognising that the target activity was funded by WWPL via the Walcha Community Benefit Fund.

6.5 Reporting

Walcha Council must report:



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- (a) the balance of the monetary contributions held in accordance with clause 6.1 as part of its annual report; and
- (b) if requested by WWPL or the Walcha Committee at any other time:
 - (1) the balance of the monetary contributions in the Walcha Community Benefit Fund and a detailed transaction listing; and
 - (2) the approved expenditure of the monetary contributions in the Walcha Community Benefit Fund (or any part of them) for the preceding Contribution Year, including the names of recipients or projects.

7 Uralla Community Benefit Fund

7.1 Uralla Community Benefit Fund

- (a) Uralla Council intends to establish a renewable energy community benefit restricted fund into which monetary contributions from developers of renewable energy projects within Uralla Council's LGA may be paid (**Uralla Community Benefit Fund**).
- (b) If a Uralla Council Community Benefit Fund has been formed by the time payment of a monetary contribution is due under this agreement then the relevant monetary contribution must be paid into that fund.
- (c) If a Uralla Community Benefit Fund has not been formed by the time payment of a monetary contribution is due under this agreement, those monetary contributions must be paid into and held in an interest-bearing bank account pursuant to the provisions of section 625 of the *Local Government Act 1993* (NSW). Uralla Council may transfer such monetary contributions into a Uralla Community Benefit Fund at a later time, and is to give WWPL notice of any such transfer.

7.2 Uralla Committee

- (a) Prior to payment of the Initial Community Contribution, Uralla Council must establish a community advisory committee (**Uralla Committee**). The role of the Uralla Committee is to make recommendations to Uralla Council for the expenditure of monetary contributions made in connection with renewable energy developments, including the allocation of funds from the Uralla Community Benefit Fund.
- (b) WWPL will have a standing invitation to:
 - (1) attend meetings of the Uralla Committee;
 - (2) make nominations as to the allocation of funds from the Uralla Community Benefit Fund; and
 - (3) make submissions to the Uralla Committee on any nominations as to the allocation of funds from the Uralla Community Benefit Fund.
- (c) Any person will have a standing invitation to:



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- (1) make nominations as to the allocation of funds from the Uralla Community Benefit Fund; and
- (2) make submissions to the Uralla Committee on any nominations as to the allocation of funds from the Uralla Community Benefit Fund.
- (d) Minutes of all Uralla Committee meetings will be recorded and made available to WWPL on request.
- (e) Uralla Council or the Uralla Committee must publicly request nominations as to the allocation of funds from the Uralla Community Benefit Fund and must be made to the Uralla Committee in a form required by the Uralla Committee.

7.3 Allocation of funds

- (a) Uralla Council must procure that the Uralla Committee make recommendations regarding the expenditure of funds from the Uralla Community Benefit Fund.
- (b) Subject to clause 7.3(c), Uralla Council may spend, invest or accumulate the funds in the Uralla Community Benefit Fund or do a combination of those things.
- (c) Uralla Council's expenditure of funds from the Uralla Community Benefit Fund must:
 - (1) be for a public purpose within the meaning of section 7.4 of the EP&A Act;
 - (2) not be used for operational costs of Uralla Council;
 - (3) be done having considered the recommendations of the Uralla Committee; and
 - (4) be consistent with any policy adopted by Uralla Council in relation to a renewable energy community benefit restricted fund (as in force from time to time) or, if no such policy has been adopted, the policy principles set out in any benefit sharing guideline prepared by the Department of Planning, Housing and Infrastructure or its successors (as in force from time to time).
- (d) Uralla Council must pay funds from the Uralla Community Benefit Fund to an approved recipient and may require an approved recipient to enter into a funding agreement where appropriate.

7.4 Public recognition

- (a) Uralla Council must publicly and positively acknowledge:
 - (1) the payment of the Initial Community Contribution and any Further Community Contributions by WWPL in accordance with the Funding Allocation; and
 - (2) WWPL's role in making monetary contributions to the Uralla Community Benefit Fund.
- (b) The form of public acknowledgment required by clause 7.4(a) is to be agreed by Uralla Council and WWPL (acting reasonably) but must include:

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- (1) the prominent inclusion of WWPL's logo in any public request nominations as to the allocation of funds from the Uralla Community Benefit Fund; and
- (2) where appropriate for each particular target activity, a permanent sign recognising that the target activity was funded by WWPL via the Uralla Community Benefit Fund.

7.5 Reporting

Uralla Council must report:

- (a) the balance of the monetary contributions held in accordance with clause 7.1 as part of its annual report; and
- (b) if requested by WWPL or the Uralla Committee at any other time:
 - (1) the balance of the monetary contributions in the Uralla Community Benefit Fund and a detailed transaction listing; and
 - (2) the approved expenditure of the monetary contributions in the Uralla Community Benefit Fund (or any part of them) for the preceding Contribution Year, including the names of recipients or projects.

8 Application of sections 7.11 and 7.12 of the EP&A Act

The parties agree that, as the Project is wholly excluded from the application of sections 7.11 and 7.12 of the EP&A Act, the terms of this agreement and the Community Benefit Funds, are, in effect, offered by WWPL (as applicant of the Project DA) in substitution for the contributions that would otherwise be made under sections 7.11 or 7.12 of the EP&A Act.

9 No registration

The parties agree that this agreement will not be registered on the Project Land pursuant to section 7.6 of the EP&A Act.

10 Disposal by WWPL of its interest in the Project

- (a) Subject to clause 10(b), WWPL must not without the consent of Walcha Council, Uralla Council and the Minister (as appropriate, which consent shall not be unreasonably withheld or delayed) assign, transfer or otherwise deal with WWPL's rights, duties or obligations under this agreement.
- (b) Walcha Council, Uralla Council and the Minister agree that WWPL may assign, transfer or otherwise deal with WWPL's rights, duties or obligations under this agreement to:



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- (1) a related body corporate of WWPL (within the meaning of the *Corporations Act 2001* (Cth)) or a partnership comprised of related bodies corporate of WWPL;
- (2) a joint venturer or partner of WWPL in respect of the Project; or
- (3) any third party, subject to WWPL proving to the reasonable satisfaction of Walcha Council, Uralla Council and the Minister (as appropriate) that such party is able to comply with WWPL's obligations under this agreement (and to avoid any doubt the consent of Walcha Council, Uralla Council and the Minister (as appropriate) is not required if the third party has, or is a related body corporate of a company (within the meaning of the *Corporations Act 2001* (Cth)) which has experience with wind farm projects or other similar infrastructure projects),

without the consent of Walcha Council, Uralla Council and the Minister (as appropriate).

- (c) WWPL shall be released and discharged from any obligations under this agreement on and from the date of the assignment and the performance of the terms of this agreement from the date of the assignment and from all claims and demands in connection with this agreement that arise after the date of the assignment in the event of WWPL assigning WWPL's rights and obligations under this agreement provided always that WWPL is responsible for any action claim or demand with respect of the performance of this agreement for any period prior to and including the date of the assignment.

11 Notice of change of beneficiary of the Project Consent

If WWPL intends to cease to be the person entitled to carry out the Project, it must give no less than 21 days advance notice to Walcha Council and Uralla Council of the identity of the person who will carry out the Project, including by providing contact details for the new person, and, if required by either Walcha Council or Uralla Council (acting reasonably), evidence of the new person's capacity to make the Total Community Contribution.

12 No fetter

Nothing in this agreement shall be construed as requiring Walcha Council and Uralla 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.



13 Dispute resolution

13.1 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**).

13.2 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.

13.3 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.

13.4 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**).

13.5 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 13.5 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;



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- (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.

13.6 Litigation

If the dispute is not finally resolved in accordance with clause 13.5, either party is at liberty to litigate the dispute.

13.7 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 13 for any purpose other than an attempt to settle a dispute between the parties.

13.8 Continue to perform obligations

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

14 GST

14.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 13 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 14, "**monetary consideration**" means any consideration expressed as an amount of money.

- (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.

14.2 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.

14.3 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 monetary 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 monetary 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 monetary 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.

14.4 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 14.3), varies from the additional amount paid by the Recipient under clause 14.3, 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.

15 General

15.1 Costs

- (a) Subject to clause 15.1(b) and 15.1(b)(2) as applicable, the parties agree to meet their own Costs in connection with:



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- (1) the negotiation, preparation and execution of this agreement;
 - (2) performing its obligations under this agreement; and
 - (3) the advertising and exhibiting of this planning agreement in accordance with the EP&A Act.
- (b) The Costs of administering this agreement:
- (1) for Walcha Council, including the Walcha Committee and the Walcha Community Benefit Fund, shall be paid to Walcha Council out of funds in the Walcha Community Benefit Fund on demand and shall be no more than \$5,000 per Contribution Year (adjusted on 1 July of each Contribution Year to increases in CPI following the Project Operation Commencement Date); and
 - (2) for Uralla Shire Council, including the Uralla Committee and the Uralla Community Benefit Fund, shall be paid to Uralla Council out of funds in the Uralla Community Benefit Fund on demand and shall be no more than \$5,000 per Contribution Year (adjusted on 1 July of each Contribution Year to increases in CPI following the Project Operation Commencement Date).

15.2 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 **Error! Reference source not found.** (or any alternative details nominated to the sending party by notice).
- (b) A notice given in accordance with clause 15.2(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.

15.3 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.



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15.4 Governing law

This agreement is governed by the laws of New South Wales 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.

15.5 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.

15.6 Modification of agreement

- (a) The parties note that pursuant to clause 203(5) of the EP&A 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, Walcha Council and Uralla Council is to ensure that public notice of the proposed amendment or revocation is given in accordance with clause 204 of the EP&A Regulation.

15.7 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.

15.8 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 15.8(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.

15.9 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.



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- (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).

15.10 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.

15.11 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.

15.12 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.

15.13 Enforcement

Subject to compliance with clause 13, this agreement may be enforced by any party in any court of competent jurisdiction.