



June 2024 Ordinary Meeting

Item 6.2:

Winterbourne Wind Pty Ltd – Voluntary
Planning Agreement

Attachments:

1. Draft Voluntary Planning Agreement
2. Explanatory Note



HERBERT
SMITH
FREEHILLS

Agreement

DRAFT – 01.05.2024

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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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. |
| 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. |



| Term | Meaning |
|--|--|
| 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. |
| 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. |



| Term | Meaning |
|--------------------------------------|---|
| 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.
- (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:

- (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:
 - (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:
- (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:
- (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;
- (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:
 - (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 Schedule 1 (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.

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.
- (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.

Schedule 1

Notice details

Minister

Address 52 Martin Place, Sydney NSW 2000

Attention **[Drafting note: Table to be updated]**

Phone

Email

Walcha Council

Address 2W Hamilton Street, Walcha NSW 2354

Attention **[Drafting note: Table to be updated by Walcha Council.]**

Phone

Email

Uralla Shire Council

Address 32 Salisbury Street, Uralla NSW 2358

Attention **[Drafting note: Table to be updated by Uralla Council.]**

Phone

Email

WWPL

Address Level 4, 477 Collins Street, Melbourne VIC 3004

Attention

Phone

Email



Signing pages

Executed as an agreement

[Drafting note: Execution blocks to be confirmed.]

Minister administering the *Environmental Planning and Assessment Act 1979*

Signed for
**Minister administering the
*Environmental Planning and
Assessment Act 1979***

by its authorised representative

in the presence of

sign here ► _____
Delegate of the Minister

sign here ► _____
Witness

print name _____

print name _____

Walcha Council

Signed for
Walcha Council

by its authorised representative

in the presence of

sign here ► _____
Representative

sign here ► _____
Witness

print name _____

print name _____

Uralla Council

Signed for
Uralla Shire Council

by its authorised representative

in the presence of

sign here ► _____
Representative

sign here ► _____
Witness

print name _____

print name _____



WWPL

Signed by
WinterbourneWind Pty Ltd
by

sign here ► _____
Director

sign here ► _____
Director

print name _____

print name _____

EXPLANATORY NOTE PURSUANT TO SECTION 205 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2021

DRAFT PLANNING AGREEMENT Winterbourne Wind Farm (Proposed Development)

Purpose

This explanatory note supports the notification of a draft planning agreement (**Planning Agreement**) under section 7.4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**) by meeting the statutory requirements of section 205 of the *Environmental Planning and Assessment Regulation 2021* (NSW) (**EP&A Regulation**).

This explanatory note has been prepared having regard to the *Planning agreements – Practice note – February 2021* and is not to be used to assist in construing the Planning Agreement.

Parties to the Planning Agreement

The parties to the Planning Agreement are the Minister administering the *Environmental Planning and Assessment Act 1979* (NSW) (ABN 20 770 707 468) (**Minister**), Walcha Council (ABN 24 780 320 847) (**Walcha Council**), Uralla Shire Council (ABN 55 868 272 018) (**Uralla Council**) and Winterbourne Wind Pty Ltd (ABN 59 113 000 150) (**WWPL**) as developer.

Description of the Subject Land

The Planning Agreement applies to the 'Project Land' (as defined in the Planning Agreement) (**Subject Land**).

Description of the Proposed Development

WWPL is seeking consent to construct and operate a wind energy facility on the Subject Land with up to 119 wind turbine generators, together with associated and ancillary infrastructure, as described in the Environmental Impact Statement dated 27 October 2022 and other documents in connection with State significant development application number SSD-10471.

An indicative plan of the Proposed Development is provided at the end of this explanatory note.

Summary of the objectives, nature and effect of the Planning Agreement

Objectives

The objective of the Planning Agreement is to secure public benefits in connection with the Proposed Development.

Nature

The nature of the Planning Agreement is to secure the allocation of the following funds (adjusted for inflation pursuant to the Planning Agreement) for the public purpose of facilitating the community benefit funds administered by Walcha Council and Uralla Council:

- an initial monetary contribution of \$1,000,000 (excluding GST); and
- further monetary contributions of \$750,000 (excluding GST) each 'Contribution Year' (as defined in the Planning Agreement), plus an additional \$1,000 for every installed megawatt over 600 megawatts for the Proposed Development.

The funds will be allocated in accordance with the 'Funding Allocation', which distributes 90% of the funds to the 'Walcha Community Benefit Fund' and 10% of the funds to the 'Uralla Community Benefit Fund' (as each term is defined in the Planning Agreement).

The initial monetary contribution must be paid on the 'Project Financial Close Date' (as defined in the Planning Agreement). The further monetary contributions will commence from the 'Project Operation Commencement Date' (as defined in the Planning Agreement) and ceases on the 'Project Decommissioning Date' (as defined in the Planning Agreement).

EXPLANATORY NOTE PURSUANT TO SECTION 205 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2021

DRAFT PLANNING AGREEMENT Winterbourne Wind Farm (Proposed Development)

Effect

The effect of the Planning Agreement is for the public benefits to be delivered in a timely manner with the development of the Subject Land and operation of the Proposed Development (as set out in the Planning Agreement).

Assessment of the merits of the Planning Agreement

The public purpose of the Planning Agreement

The contributions to be provided pursuant to the Planning Agreement are to be used for or applied towards public purposes in accordance with section 7.4(2) of the EP&A Act. This may include the provision of, or funding, relating to, public amenities or public services, affordable housing or transport or other infrastructure.

Each Council intends to establish an advisory committee which will make recommendations in relation to the contributions made under the Planning Agreement. The community may also make nominations for the expenditure of the contributions on public purposes.

It is considered that the Planning Agreement provides for a reasonable means by which to achieve the public purpose given the extent of the statutory tools that are available to both Walcha Council and Uralla Council by which they can deliver the proposed public benefits.

How the Planning Agreement promotes the public interest and one or more of the objects of the EP&A Act

The Planning Agreement promotes the public interest by ensuring that an appropriate contribution is made towards the provision of infrastructure, facilities and services that will support the existing and future population and will contribute to greater amenity and infrastructure in the locality.

The Planning Agreement promotes the objects of the EP&A Act, in particular the object identified in section 1.3(c) of the EP&A Act which is to promote the orderly and economic use and development of land.

Conformance with capital works program

As the Planning Agreement provides for the payment of monetary contributions, the Councils' capital works programs do not apply.

However, the expenditure of the contributions by each Council will not be inconsistent with each Council's respective capital works program.

The impact of the Planning Agreement on the public or any section of the public

The Planning Agreement will benefit the public and local communities by enabling improved infrastructure, facilities and services in the Uralla and Walcha local government areas. In this way the Planning Agreement promotes the public interest. The Planning Agreement will not negatively impact the public, nor any section of the public.

Requirements relating to construction, occupation and subdivision certificates

The Planning Agreement does not specify requirements that must be complied with prior to the issue of a construction certificate, occupation certificate or subdivision certificate under the EP&A Act.