

# **PLANNING AGREEMENT for Wellington South Battery Energy Storage System**

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## **Land to which the Agreement applies:**

Lot 32 DP622471

6773 Goolma Road, Wuuluman

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**Dubbo Regional Council (ABN 53 539 070 928) (Council)**

**The Trustee for WEBESS01 Project Trust (ABN 50 714 284 083)**

(Developer)



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## Parties to this Agreement

<b>Developer</b>	Name	<b>The Trustee for WEBESS01 PROJECT TRUST</b>
	Address	Level 17, 167 Macquarie Street, Sydney NSW 2000
	ABN	50 714 284 083
<b>Council</b>	Name	Dubbo Regional Council
	Address	PO Box 81, Dubbo NSW 2830
	ABN	53 539 070 928
	Contact Name	Infrastructure Contributions
	Contact email	<a href="mailto:infrastructurecontributions@dubbo.nsw.gov.au">infrastructurecontributions@dubbo.nsw.gov.au</a>

## Background

- A The project incorporates a large-scale battery energy storage system (BESS) with a discharge capacity of 500 megawatts (MW) and a storage capacity of 1,000 megawatt hours (MWh), along with connection to the Wellington substation (and associated upgrade works) and associated ancillary infrastructure to facilitate transfer of energy to and from the electrical grid.
- B The project will be one of the largest battery projects in the State, contributing up to 1,000 MWh of storage capacity in the NEM. It will support new and existing renewable energy projects. The project will also provide broader security to the grid by providing back-up power during network disruptions.
- C The Developer has made an offer in connection with the Development Application to enter into this Planning Agreement. Monetary contributions will be paid every five years over 20 years, with the first payable upon the project's commencement of operation.

# Operative provisions

## Part 1 - Preliminary

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### 1 Definitions and Interpretation

1.1 In this Agreement the following definitions apply:

- 1.1.1 **Act** means the Environmental Planning and Assessment Act 1979 (NSW).
- 1.1.2 **Administration** means the costs, charges and expenses of administering and auditing the Monetary Contributions under this Agreement
- 1.1.3 **Agreement** means this agreement and includes any schedules, annexures and appendices to this Agreement.
- 1.1.4 **Audit** means audit requirements undertaken in accordance with the Act and the Regulation.
- 1.1.5 **Capital Investment Value** is the same definition as provided in the Regulation, represented as a real value on the date of Development Consent.
- 1.1.6 **Contribution Period** means every 5-year period from commencement of Operation and the anniversary of commencement of Operation.
- 1.1.7 **Contributions Table** means the table in Schedule 1.
- 1.1.8 **Costs** means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.
- 1.1.9 **Department** means the Department of Planning, Housing and Infrastructure or replacement government authority responsible for administering the Act and the Development Consent.
- 1.1.10 **Development** means the development authorised by the Development Consent for the Wellington South Battery Energy Storage System.
- 1.1.11 **Development Application** means the application SSD-27014706 approved by the Minister for Planning, as modified from time to time, for the Wellington South Battery Energy Storage System.
- 1.1.12 **Development Consent** means the development consent granted by the Minister for Planning pursuant to the Development Application, as modified from time to time.
- 1.1.13 **Dispute** means a dispute or difference between the Parties under or in relation to this Agreement.

- 1.1.14 **Event of Default** means a breach of this Agreement.
- 1.1.15 **Indexation** means the Consumer Price Index – Sydney All Groups.
- 1.1.16 **Monetary Contribution** means the monetary contribution required to be made under this Agreement, as further described in clause 8.
- 1.1.17 **Land** means Lot 32 DP622471.
- 1.1.18 **Operating Capacity** means the installed discharge capacity, measured in megawatts.
- 1.1.19 **Operation** is the same definition as provided in the Development Consent.
- 1.1.20 **Operations date** means the date of commencement of operation as notified to the Department in accordance with the Development Consent.
- 1.1.21 **Party** means a party to this Agreement, including their successors and assigns.
- 1.1.22 **Rectify** means rectify, remedy or correct.
- 1.1.23 **Regulation** means the Environmental Planning and Assessment Regulation 2021.
- 1.1.24 **Renewable Energy Benefit Framework** means the Renewable Energy Benefit Framework adopted by Council on 8 December 2022, and amended from time to time, used to guide developers of electricity generating works on Council's requirements to deliver benefits to the community.
- 1.1.25 **Strategic Project** means strategic infrastructure projects located within the former Wellington Local Government Area that are not otherwise to be carried out or funded by or on behalf of a government entity. Strategic Projects are projects that are in accordance with Council's Renewable Energy Benefit Framework and the Developer's Business Standards, as amended from time to time.
- 1.1.26 **Total Delivery Capacity** means the total delivery capacity identified in Condition A5 of the Development Consent, as modified from time to time.
- 1.1.27 **Wellington South BESS Planning Agreement Fund** means the fund to be established by Council and administered in accordance with this Agreement.
- 1.1.28 **Youth and Welfare Support Initiatives** means the funds allocated towards not-for-profit organisations that focus on intervention strategies for disengaged youth.

## 1.2 Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- 1.2.1 **Headings** are inserted for convenience only and do not affect the interpretation of this Agreement.
- 1.2.2 A reference in this Agreement to a **business day** means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.5 A reference in this Agreement to a \$ value relating to a Monetary Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.9 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.10 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.11 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.12 A reference to this Agreement includes the agreement recorded in this Agreement.
- 1.2.13 A reference to a Party to this Agreement includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.

- 1.2.14 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.15 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.16 Notes appearing in this Agreement are operative provisions of this Agreement.

## **2 Planning agreement under the Act**

- 2.1 This Agreement is a planning agreement within the meaning of Section 7.4(1) of the Act, governed by Subdivision 2 of Part 7 of the Act.

## **3 Application of this Agreement**

- 3.1 This Agreement applies to the Land and the Development.

## **4 Date upon which this Agreement takes effect**

- 4.1 This Agreement takes effect when signed by both Parties. The date on which it takes effect is specified at the end of this Agreement.

## **5 Warranties**

- 5.1 The Parties warrant to each other that they:
  - 5.1.1 Have full capacity to enter into this Agreement, and
  - 5.1.2 Are able to fully comply with their obligations under this Agreement.

## **6 Further agreements**

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Agreement that are not inconsistent with this Agreement for the purpose of implementing this Agreement.

## **7 Surrender of right of appeal**

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Agreement, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Agreement.



## Part 2 - Payment and Application of the Monetary Contributions

### 8 The Monetary Contribution under this Agreement

- 8.1 Prior to commencing Operation, or other timeframe agreed by Council, the Developer must serve Council with a notice that specifies:
- 8.1.1 the date of commencement of Operation, as per the Development Consent; and
  - 8.1.2 the Capital Investment Value of the project.
- 8.2 The Developer is required to make each Monetary Contribution in accordance with the provisions of this Agreement.
- 8.3 The Developer must pay to Council the Monetary Contribution on commencement of each Contribution Period in accordance with clause 12.1
- 8.4 Each Monetary Contribution will be an amount equal to the following formula, and be indexed in accordance with clause 11:
- $$\text{Monetary Contribution} = \text{Capital Investment Value} \times 0.45\% \times (\text{Operating Capacity} \div \text{Total Delivery Capacity}) \div 4$$
- For the avoidance of doubt, the dollar value referenced in this clause is in real terms as at the commencement of Operation.
- 8.5 If the Operating Capacity increases after the Monetary Contribution is paid to Council in a Contribution Period, the Developer must:
- 8.5.1 notify Council of the increase in Operating Capacity within 10 business days of the increase occurring, or other timeframe agreed by Council, and
  - 8.5.2 pay an additional Monetary Contribution on a pro-rata basis for the remainder of the Contribution Period in accordance with clause 12.1
- 8.6 The Developer's requirement to pay the Monetary Contribution under this Agreement will cease when all four Monetary Contribution payments (and, if applicable, any additional Monetary Contribution payable pursuant to clause 8.5) have been received under this Agreement.

### 9 Application of the Monetary Contribution

- 9.1 The Council will apply each Monetary Contribution towards the public purpose identified in Schedule 1 in accordance with the relevant Contribution Period.

- 9.2 Within three months of commencement of Operation, Council and the Developer must prepare guidelines to govern administration of the Youth and Welfare Support Initiatives (which may be amended from time to time). The guidelines must provide for the following:
- 9.2.1 The number of rounds for applications during the Contribution Period;
  - 9.2.2 Eligibility criteria and expected outcomes for applications;
  - 9.2.3 Timeframes for expenditure of funds;
  - 9.2.4 Criteria and process for assessing applications projects;
  - 9.2.5 Conditions of funding for projects including probity requirements utilising ethics and compliance standards materially equivalent to those of Council and the Developer;
  - 9.2.6 Advertisement of the availability of funds for Youth and Welfare Support Initiatives.
- 9.3 If requested by the Developer, Council must facilitate the participation of the Developer in the Council's decision making in relation to the expenditure of the Planning Agreement Funding in the following way:
- 9.3.1 Council must provide the Developer with briefing information in relation to potential projects eligible for funding from the Planning Agreement Fund, including relevant background, alignment with the community benefits identified in the Framework, community need and financial implications.
  - 9.3.2 The Developer will have 15 business days to review the information and provide submission/s to the Council at its discretion.
  - 9.3.3 Any submissions made by the Developer must be included in the business papers and considered by Council when resolving to expend monies from the Planning Agreement Fund.
- 9.4 This Agreement expressly authorises Council to progressively or otherwise pool funds for Youth and Welfare Support Initiatives and Strategic Projects, subject to the Developer having the opportunity to make representations to Council.
- 9.5 This Agreement acknowledges that in order to meet its business standards the Developer may also execute a formal agreement with recipient projects/groups.
- 10 Application of Section 7.11, 7.12 and 7.24 of the Act to the Development**
- 10.1 This Agreement excludes the application of Section 7.11 of the Act to the Development.

- 10.2 This Agreement excludes the application of Section 7.12 of the Act to the Development.
- 10.3 This Agreement excludes the application of Section 7.24 of the Act to the Development.

## **11 Indexation of Monetary Contribution**

- 11.1 All monetary contributions are to be indexed (except for the first Monetary Contribution) from the commencement of Operation to the date of payment in accordance with the following formula:

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

Where:

- MC** is the Monetary Contribution for the following Contribution Period, calculated in accordance with clause 8.4;
- A** the Monetary Contribution, calculated in accordance with clause 8.4, payable during the Contribution Year just ended;
- B** is the most recent Index number (last published) before the end of the Contribution Period just ended;
- C** is the most recent Index number (last published) at commencement of Operation.

## **12 How the Monetary Contribution is Paid**

- 12.1 The Council must issue a tax invoice to the Developer for payment of the Monetary Contribution. The Developer must pay to Council the Monetary Contribution within 30 business days after having received a tax invoice from Council.
- 12.2 A Monetary Contribution is made for the purposes of this Agreement when the Council receives the full amount of the Monetary Contribution payable under this Agreement by endorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council. Council will not accept any other forms of payment.
- 12.3 Despite clause 12.2, if Council agrees, in its absolute discretion, to accept payment of a Monetary Contribution by EFTPOS using a credit card, the Developer will be required to pay a surcharge in accordance with Council's adopted schedule of fees and charges.
- 12.4 Council will under no circumstances refund any Monetary Contribution made under this Agreement.

### **13 Public Recognition**

- 13.1 The Council must, if requested by the Developer, publicly and positively acknowledge the payment of the Monetary Contribution by the Developer and the Developer's role in funding each project under the funding agreement in this Agreement at the time of announcement and when project progress and/or outcomes are communicated.
- 13.2 The form of public acknowledgement required is to be agreed by Council and the Developer (acting reasonably) but must include:
- 13.2.1 The prominent inclusion of the Developer's approved logo in any advertisement for funding applications and/or or recognition in any announcements made in relation to the target activity or local project; and
- 13.2.2 where appropriate, a permanent sign recognising that the project is funded by the Developer via this Agreement.

## **Part 3 - Review and Monitoring**

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### **14 Review of Agreement**

- 14.1 If either Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement the Party may request a review of the whole or any part of this Agreement.
- 14.2 For the purposes of clause 14.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other Authority to restrict or prohibit any aspect of the Development.
- 14.3 If a review is requested in accordance with clause 14.1, the Parties are to use all reasonable endeavours, in good faith, to agree on and implement appropriate amendments to this Agreement.
- 14.4 If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.
- 14.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 14.1 (but not 14.4) is not a Dispute for the purposes of this Agreement and is not a breach of this Agreement.

- 14.6 If the Parties agree to amend this Agreement under this clause 14, any such amendment must be in writing and signed by the Parties, and exhibited in accordance with the Act and Regulation.

## **15 Monitoring and Reporting**

- 15.1 The Developer acknowledges that the Council will continuously monitor compliance with the Developer's obligations under this Agreement.

## **16 Audit**

- 16.1 During each year in which there are funds in the Wellington South Battery Energy Storage Planning Agreement Fund, the Council must undertake audit functions in accordance with the Act and Regulation.

## **Part 4 - Dispute Resolution**

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### **17 Notice of Dispute**

- 17.1 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). If a notice is given, the Parties are to meet within 10 business days of the notice in an attempt to resolve the Dispute.
- 17.2 If the Dispute is not resolved within a further 20 business days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 17.3 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 17.4 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 17.5 The Parties are to share equally the costs of the President, the expert, and the expert determination.
- 17.6 The contents of the note issued under clause 17.1 are deemed to be confidential.

### **18 Mediation**

- 18.1 This clause applies to any Dispute arising in connection with this Agreement other than a Dispute to which clause 17 applies.
- 18.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

- 18.3 If a notice is given under clause 18.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 18.4 If the Dispute is not resolved within a further 20 business days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 18.5 If the Dispute is not resolved by mediation within a further 20 business days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 18.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 18.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

## **Part 5 - Indemnities & Insurance**

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### **19 Risk**

- 19.1 The Developer performs this Agreement at its own risk and its own cost.

### **20 Release**

- 20.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Agreement except if, and to the extent that, the Claim arises because of the Council's negligence or default.

### **21 Indemnity**

- 21.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Agreement except if, and to the extent that, the Claim arises because of the Council's negligence or default.

## **Part 6 - Other Provisions**

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### **22 Confidentiality**

- 22.1 This agreement is a public document and its terms are not confidential.

- 22.2 The parties acknowledge that:
- 22.2.1 Confidential Information may have been supplied to some or all of the Parties in negotiations leading up to the making of this agreement; and
  - 22.2.2 the Parties may disclose to each other further Confidential Information in connection with the subject matter of this agreement.
- 22.3 Subject to clauses 22.4 and 22.5, each Party agrees:
- 22.3.1 not to disclose any confidential information received before or after the making of this agreement to any person without the prior written consent of the Party who supplied the Confidential Information; or
  - 22.3.2 to take all reasonable steps to ensure all Confidential Information received before or after the making of this agreement is kept confidential and protected against unauthorised use and access.
- 22.4 A Party may disclose Confidential Information in the following circumstances:
- 22.4.1 in order to comply with the law, or the requirements of any Authority; or
  - 22.4.2 to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the Confidential Information confidential.
- 22.5 The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

## **23 Notices**

- 23.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- 23.1.1 delivered or posted to that Party at its address, or
  - 23.1.2 emailed to that Party at its email address.
- 23.2 For the purposes of this clause a Party's address and email address are as noted under 'Parties to this Agreement'.
- 23.3 If a Party gives the other Party 5 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.

- 23.4 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 23.4.1 delivered, when it is left at the relevant address,
  - 23.4.2 sent by post, 2 business days after it is posted, or
  - 23.4.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 23.5 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

## **24 Costs**

- 24.1 The Developer is to pay Council's actual costs of preparing, negotiating, executing and stamping and registering this Agreement, and any document related to this Agreement within 10 business days of a written demand by the Council for such payment.
- 24.2 The Developer is also to pay Council's reasonable costs of enforcing this Agreement within 10 business days of a written demand by the Council for such payment. These costs do not relate to those referred to in Council's Fees and Charges Document.

## **25 Entire Agreement**

- 25.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 25.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

## **26 Further Acts**

- 26.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

## **27 Governing Law and Jurisdiction**

- 27.1 This Agreement is governed by the law of New South Wales.
- 27.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.



27.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

## **28 Joint and Individual Liability and Benefits**

28.1 Except as otherwise set out in this Agreement:

28.1.1 any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and

28.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

## **29 No Fetter**

29.1 The Parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the Act.

29.2 This Agreement is not intended to operate, and shall not be construed as operating to fetter, in any unlawful manner:

29.2.1 the power of Council to make any law; or

29.2.2 the exercise by Council of any statutory power, discretion or duty.

29.3 Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law.

## **30 Illegality**

30.1 If this Agreement or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.

## **31 Severability**

31.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.

31.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

## **32 Amendment**

32.1 No amendment of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement in accordance with section 203 of the Regulation.

### **33 Waiver**

- 33.1 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 breach of obligation by, another Party.
- 33.2 A waiver by a Party is only effective if it:
- 33.2.1 is in writing,
  - 33.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
  - 33.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
  - 33.2.4 is signed and dated by the Party giving the waiver.
- 33.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 33.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and 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.
- 33.5 For the purposes of this Agreement, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

### **34 GST**

- 34.1 In this clause:
- 34.1.1 Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.
  - 34.1.2 GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
  - 34.1.3 GST Law has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
  - 34.1.4 Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

- 34.1.5 Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.
- 34.2 Subject to clause 34.3, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 34.3 No additional amount shall be payable by the Council under clause 34.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 34.4 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the A New Tax System (Goods and Services Tax) Act 1999, the Parties agree:
- 34.4.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 34.4.2 that any amounts payable by the Parties in accordance with clause 34.2 (as limited by clause 34.3) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 34.5 No payment of any amount pursuant to this clause 34, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 34.6 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 34.7 This clause continues to apply after expiration or termination of this Agreement.

## **35 Explanatory Note**

- 35.1 The Appendix contains the Explanatory Note relating to this Agreement required by s205 of the Regulation.
- 35.2** Pursuant to s205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Agreement

## Schedule 1

### Use of Monetary Contributions

Council will utilise the Monetary Contribution received from the Developer towards the benefit of the community of the Dubbo Regional Council Local Government Area as described in the Renewable Energy Benefit Framework, being allocated to Youth and Welfare Support Initiatives and Strategic Projects. The resulting projects must align with the Developer’s Business Standards.

Benefits to the community, as described in the Renewable Energy Framework may include (but may not be limited to) the following:

- Economic development and investment attraction opportunities and initiatives;
- Skills development;
- Community facilities and recreation opportunities;
- Youth welfare and support;
- Other infrastructure provision that provides for the continued health, wellbeing and development of the community.

Contribution Period	Allocation of Monetary Contribution	% of Monetary Contribution
Year 1 - 5	Youth and Welfare Support Initiatives	98%
	Administration	2%
Year 6 - 20	Strategic Project	98%
	Administration	2%