



PLANNING AGREEMENT

Spicers Creek Wind Farm
(SSD-41134610)

BETWEEN

SCWF Project Co Pty Ltd

and

Warrumbungle Shire Council

Planning Agreement: Spicers Creek Wind Farm

Details	4
Agreed terms	5
1. Defined terms & interpretation	5
1.1 Defined terms	5
1.2 Interpretation	8
1.3 Headings	9
2. Planning Agreement under the Act	9
3. Application of this Agreement	9
4. Operation of this Agreement	9
5. Development Contributions	10
5.1 Total Development Contributions	10
5.2 Timing of payment of Development Contributions	10
5.3 Calculation of Development Contributions	10
5.4 CIV Notice	11
5.5 Interest on unpaid amounts	11
5.6 Administration of the Fund	11
5.7 Reporting and auditing	12
5.8 Public Recognition, confidentiality and media releases	12
6. Indexation of Development Contributions	13
7. Security of this Agreement	13
7.1 Registration of this Agreement	13
7.2 Disposal by the Developer of its interest in the Development	13
8. Application of sections 7.11 and 7.12 of the Act	13
9. Dispute Resolution	14
9.1 No arbitration or court proceedings	14
9.2 Notification	14
9.3 Parties to resolve Dispute	14
9.4 Mediation	14
9.5 Confidentiality	14
9.6 Costs Incurred in Disputation	14
9.7 Termination of process	14
9.8 Breach of this clause	15
10. Enforcement	15
11. Termination	15
12. Modification of the Development Consent	15
13. Costs of Negotiating and Preparing the Planning Agreement	15
14. No Fetter	15
14.1 Discretion	15
14.2 No fetter	16

15. Notices	16
15.1 Notices	16
16. GST	17
16.1 Defined GST terms	17
16.2 GST to be added to amounts payable	17
16.3 Tax invoice	17
16.4 GST obligations to survive termination	17
17. General	17
17.1 Relationship between Parties	17
17.2 Time for doing acts	17
17.3 Further acts	18
17.4 Variation	18
17.5 Counterparts and electronic execution	18
17.6 Entire Agreement	18
17.7 Invalidity	18
17.8 Waiver	19
17.9 Governing law and jurisdiction	19
17.10 Representations and warranties	19
17.11 Explanatory Note	19
Schedule 1	20
Schedule 2 : Explanatory Note	21
Signing page	24

Details

Parties

Name	Warrumbungle Shire Council ABN 63 348 671 239
Short form name	WSC or Council
Notice details	Attention: The General Manager Address: 14-22 John Street, Coonabarabran NSW 2357 PO Box 191 Coonabarabran NSW 2357 Email: info@warrumbungle.nsw.gov.au
Name	SCWF Project Co Pty Ltd (ACN 681 998 818) as trustee for the SCWF Trust (ABN 39 713 382 946)
Short form name	Developer
Notice details	Attention: The Project Manager and the Company Secretary Address: 171-173 Mounts Bay Road, Perth WA 6000 Email: spicerscreekwind@squadronenergy.com and company.secretary@squadronenergy.com

Background

- A. The Developer has the benefit of the Development Consent.
- B. The Developer has agreed to pay the Development Contributions in relation to the Project on the terms of this Agreement.
- C. WSC agrees to administer the Development Contributions in accordance with this Agreement.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

The meaning of capitalised terms and the provisions relating to the interpretation of this Agreement are as follows:

Act means the *Environmental Planning and Assessment Act 1979* (NSW) as amended from time to time.

Affected Communities means the population that lives in the towns, villages and rural districts such as Coolah, Dunedoo, Uarbry, Leadville, Mendooran, Binnaway and Cobbora.

Agreement means this Planning Agreement including any schedules.

Approval means any consent, modification, certificate, licence, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this Agreement.

Auditor means an appropriately qualified auditor appointed by the Council.

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal or agency.

Business Day means any day except for a Saturday, Sunday, or bank or public holiday in New South Wales.

Cash Rate means the interest rate determined by the Reserve Bank of Australia which banks pay to borrow funds from other banks in the money market on an overnight basis. For the avoidance of doubt, the term Cash Rate has the same meaning as that adopted by the Reserve Bank of Australia.

CIV means Capital Investment Value as defined in the dictionary of the Regulation at the time the Development Application for the Project was lodged.

Note: capital investment value of a development or project includes all costs necessary to establish and operate the project, including the design and construction of buildings, structures, associated infrastructure and fixed or mobile plant and equipment, other than the following costs—

(a) amounts payable, or the cost of land dedicated or other benefit provided, under a condition imposed under the Act, Division 7.1 or 7.2 or a planning agreement,

(b) costs relating to a part of the development or project that is the subject of a separate development consent or project approval,

(c) land costs, including costs of marketing and selling land,

(d) GST, within the meaning of the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth.

CIV Notice means a notice submitted by the Developer to the WSC in accordance with clause 5.4 of this Agreement.

Commencement Date means the date on which this Agreement comes into operation in accordance with clause 4.

Committed Turbine means a wind turbine specified in a CIV Notice to be installed in the WSCs LGA based on the Final Layout Plans. A wind turbine ceases to be a Committed Turbine when it is Decommissioned.

Construction Commencement Date means the date that construction (as defined in the Development Consent) commences in accordance with the Development Consent.

Contribution Year means every 12-month period from 1 July each year.

CPI means the All-Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics.

Decommissioning means “decommissioning” and “rehabilitation” as defined in, and in accordance with, the Development Consent, and decommission and decommissioned are defined accordingly.

Decommissioning Completion Date means the date that all Committed Turbines are Decommissioned in accordance with the Development Consent.

Development Application has the same meaning as in part 4 of the Act.

Development Consent means the Original Development Consent or the Modified Development Consent.

Development Contributions means the First Initial Contribution, the Second Initial Contribution and the annual instalments to be made by the Developer in accordance with clause 5 of this Agreement.

DPHI means the NSW Department of Planning, Housing and Infrastructure or replacement Authority responsible for administering the Act and the Development Consent.

Final CIV means the CIV of the Project, as committed to for construction by the Developer at the Financial Close Date based on the Final Layout Plans, as stated in the CIV Notice (which, for the avoidance of doubt, may be varied in the event of a Modified Development Consent).

Final Layout Plans means the detailed plans of the final layout of the Project as at the Financial Close Date, proposed to be submitted by the Developer in accordance with condition C8 of the Development Consent, or otherwise in accordance with a Modified Development Consent.

Financial Close Date means the date all final internal and external approvals are obtained for the financing of the construction of the Project.

First Initial Contribution means the portion of the Development Contributions to be made by the Developer to the WSC in accordance with clause 5.3(a)

GST has the same meaning as in the GST Law.

GST Law has the same meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Interest Rate means the rate which is the Cash Rate as set by the Reserve Bank of Australia as at the date that payments fall due, plus a margin of 2% per annum.

Land means the land detailed in Appendix 2 of the Development Consent.

Law means:

- (a) the common law including principles of equity;
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations and by-laws; and

(c) any Approval, including any condition or requirement under it.

LGA means the Local Government Area.

Minor Modification means a modification that addresses a minor error, misdescription or miscalculation, or a modification that is of minimal environmental impact, being an application processed under section 4.55(1) or 4.55(1A) of the Act.

Modification Application means an application to modify the Development Consent that is not a Minor Modification.

Modified Development Consent means the Original Development Consent, as modified by a Modification Application.

Original Development Consent means the development consent issued by the Minister for Planning dated 31 October 2024 in respect of the Development namely State Significant Development number SSD-41134610.

Party means a party to this Agreement, including their successors and assigns.

Planning Agreement has the same meaning as in section 7.1 of the Act.

Planning Agreement Management Committee ('Committee') means the committee established by WSC that will assist Council manage the Planning Agreement Development Contributions provided by the renewable energy generation projects located in the LGA. The Committee, chaired by the Mayor, will comprise two elected Councillors and four community representatives. The community representatives will be appointed from the Affected Communities.

Pre-construction Minor Works Date means the date that pre-construction minor works (as referred to in the Development Consent) are commenced.

Project means the Spicers Creek Wind Farm that is the subject of the Development Consent.

Project Decommissioning Date means the date that each turbine for the Project within the WSC LGA is decommissioned in accordance with the conditions of the Development Consent.

Project Years means the life span of the Project, expressed in years, as stated in the Development Consent commencing on the Construction Commencement Date and ending on the Decommissioning Completion Date.

Public Purpose has the same meaning as in the Act and includes (without limitation) any of the following:

- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services,
- (b) the provision of (or the recoupment of the cost of providing) affordable housing,
- (c) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,
- (d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,
- (e) the monitoring of the planning impacts of development, and
- (f) the conservation or enhancement of the natural environment.

Public Purpose Projects means those local projects recommended by WSC's Planning Agreement Management Committee and selected by the full Council for a Public Purpose, associated with developments, including the Project, situated in the Central West Orana Renewable Energy Zone, including some that may occur beyond the Affected Communities.

Register means the Torrens Title register maintained under the *Real Property Act 1900* (NSW).

Regulation means the *Environmental Planning and Assessment Regulation 2021* (NSW) as amended from time to time.

Related Entity has the meaning given to 'related body corporate' in the *Corporations Act 2001* (Cth), but on the basis that 'subsidiary' has the meaning given to Subsidiary in this agreement and that 'body corporate' includes any trust, fund or other entity.

Reserve Bank of Australia means Australia's central bank as constituted under the *Reserve Bank Act 1959* (Cth).

Tax Invoice has the same meaning as in the GST Law.

Term means the term of this Agreement, starting from the Commencement Date and ending on the Decommissioning Completion Date.

Second Initial Contribution means the portion of the Development Contributions to be made by the Developer to the WSC in accordance with clause 5.3(b).

Subsidiary has the meaning given to 'subsidiary' in the *Corporations Act 2001* (Cth) but on the basis that:

- i. a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share and the relevant 'board' for the purposes of section 46(a)(i) of the *Corporations Act 2001* (Cth) will be the board of directors of the trustee of the trust; and
- ii. a corporation or trust may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation.

WSC means Warrumbungle Shire Council.

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to time is to Sydney, NSW, Australia time;

- (g) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
 - (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
 - (k) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
 - (l) any agreement, representation, warranty or indemnity by two or more Parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
 - (m) any agreement, representation, warranty or indemnity in favour of two or more Parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
 - (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it; and
 - (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed, or the event must occur on or by the next Business Day.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

2. Planning Agreement under the Act

The Parties agree that this Agreement is a Planning Agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

3. Application of this Agreement

This Agreement applies to the Development, the Land within the WSC LGA, the Development Consent and evidences the Developer's compliance with relevant condition(s) of the Development 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, being the date this Agreement is executed in accordance with section 203 of the Regulation.
- (b) The parties agree that clause 5 will not operate or bind the parties unless and until the Developer achieves the Financial Close Date.

5. Development Contributions

5.1 Total Development Contributions

- (a) The total Development Contributions to be paid by the Developer to the Council under this Agreement will be calculated in accordance with the following formula:

Total Development Contributions = 1.5% x (Final CIV ÷ number of turbines on the Final Layout Plans) x number of Committed Turbines.

- (b) The obligation of the Developer to pay the annual instalment of the Development Contributions will cease on the Decommissioning Completion Date.
- (c) If the Project continues to operate beyond the Project Years in accordance with the Development Consent, then the Developer agrees to continue to pay the annual instalments of the Development Contributions in accordance with this Agreement.

5.2 Timing of payment of Development Contributions

The Developer must pay to the Council:

- (a) The First Initial Contribution within 30 days of the Pre-Construction Minor Works Date;
- (b) The Second Initial Contribution within 30 days of the anniversary of the due date for payment of the First Initial Contribution; and
- (c) The remainder of the Development Contributions in annual instalments each Contribution Year in arrears, commencing on the first occurrence of 1 July after the Construction Commencement Date until the Decommissioning Completion Date.

5.3 Calculation of Development Contributions

- (a) The First Initial Contribution will be 10% of the total Development Contributions calculated under clause 5.1.

- (b) The Second Initial Contribution, will be calculated in accordance with the following formula:

$X = (1.5\% \times (N \times \text{number of Committed Turbines}) \text{ minus the First Initial Contribution}) \div \text{Project Years.}$

Where:

X = annual instalment payable

N = Final CIV ÷ number of turbines on the Final Layout Plans

- (c) The remainder of the annual instalments of the Development Contributions will be calculated in accordance with the following formula:

$X = (1.5\% \times (N \times \text{number of Committed Turbines}) \text{ minus the First Initial Contribution and the Second Initial Contribution}) \div \text{Project Years.}$

Where:

X = annual instalment payable

N = Final CIV ÷ number of turbines on the Final Layout Plans

- (d) The first and last annual instalment for a Contribution Year will be calculated pro-rata.
- (e) In the event that the Final CIV is varied in a CIV Notice served under clause 5.4(b), any portion of the Development Contributions not yet paid are to be re-calculated in accordance with the formulas in this clause.

5.4 CIV Notice

Within thirty (30) Business Days of:

- (a) the Financial Close Date, and
- (b) if applicable, the grant of a Modified Development Consent;

the Developer must serve WSC with a notice, specifying the following information:

- (i) The total number of turbines for the Project as shown on the Final Layout Plans;
- (ii) The number of Committed Turbines;
- (iii) A report providing a detailed calculation of, and monetary amount of, the Final CIV. The report must be prepared by a suitably qualified quantity surveyor, being a current member of the Australian Institute of Quantity Surveyors or replacement professional body, or as otherwise agreed between the parties, acting reasonably.

5.5 Interest on unpaid amounts

The Developer agrees to pay interest to WSC on any amount of the Development Contributions from 30 Business Days it becomes due for payment, during the period that it remains unpaid, on demand, or at times determined by WSC, calculated on daily balances. The rate to be applied to each daily balance is the Interest Rate.

5.6 Administration of the Fund

- (a) WSC may, at its sole discretion, subject to compliance with any Law, consolidate into a single fund (to be called a ‘Renewable Energy Future Fund’) (the **Fund**) the Development Contributions paid by the Developer and other renewable energy generators or firming suppliers.
- (b) A Planning Agreement Management Committee (‘Committee’) established by WSC will assist Council manage the planning agreement Development Contributions provided by the renewable energy generation projects located in the LGA.
- (c) The Committee will be chaired by the Mayor and will comprise two elected Councillors and four community representatives. The four community representatives will be appointed from the Affected Communities and surrounding districts.
- (d) The core duties of the Committee are to:
 - (i) make recommendations to the Council in relation to the expenditure of REZ-related Development Contributions, mindful, inter alia, of (ii) to (v) below, with Council being the final determining body;
 - (ii) identify the selection criteria for Public Purpose Projects;
 - (iii) extend invitations to the public to seek project funding; assess the merits of bids; determine the successful applications; follow up on progress and the performance of the funded projects and prepare annual reports;
 - (iv) seek input from renewable energy developers whose Development Contributions are scheduled for allocation and expenditure, with any resultant written feedback from the developers included in the Council’s business papers;
 - (v) allocate a minimum of 65% of Development Contributions to Public Purpose Projects and 5% to the Administration Fee. Any road maintenance allocations shall be determined by Council.

5.7 Reporting and auditing

- (a) WSC will provide a concise annual performance report to the Developer which specifies how the Development Contributions have been allocated, managed, spent and accounted. The annual performance report will be supplied to the Developer at the time WSC issues the annual Tax Invoice for the annual instalments of the Development Contributions. The annual performance report will include:
 - (i) A financial statement addressing incoming and outgoing monies and any amounts that have not been spent and are currently being held by WSC;
 - (ii) A summary of community projects and road maintenance allocations funded by the Development Contributions over the previous 12 months; and
 - (iii) A summary of the community projects (including the estimated cost) that the Committee is contemplating supporting in the next year.
- (b) During each Contribution Year, the Council must have an Auditor reconcile:
 - (i) the Development Contribution paid by the Developer under clause 5;
 - (ii) all payments made by the Council from the Fund;and identify any corrective payments required.
- (c) The Developer and the Council must make any corrective payments identified by the Auditor as being necessary.
- (d) The costs of the Auditor will be paid out of the Administration Fee.
- (e) The Developer will pay the contributions specified in clause 5.7(c) within 30 days of receiving a valid Tax Invoice (i.e. accompanied by the annual performance report).
- (f) The contributions are deemed to be paid when cleared funds are deposited by means of electronic funds transfer into the bank account nominated by WSC.

5.8 Public Recognition, confidentiality and media releases

- (a) The Council must publicly and positively acknowledge the payment of the Development Contributions by the Developer and the Developer's role in funding Public Purpose Projects.
- (b) The form of public acknowledgment required by clause 5.8(a) is to be agreed by the Council and the Developer (acting reasonably) prior to the Pre-Construction Minor Works Date in a public notification plan, the first draft of which is to be prepared by the Developer, which must include:
 - (i) The prominent inclusion of the Developer's logo in any advertisement for funding applications or an announcement made in relation to the Development Contributions; and
 - (ii) where appropriate, a permanent sign recognising that a Public Purpose Project is funded by the Developer.
- (c) The public notification plan agreed between the parties in accordance with clause 5.8(b) may be amended from time to time by agreement between the parties.
- (d) This Agreement is a public document and its terms are not confidential.
- (e) 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).

6. Indexation of Development Contributions

Where this Agreement provides that an amount is to be increased by CPI, then the amount will be increased in accordance the following formula:

$$A = B \times C/D$$

Where:

A = the current Development Contribution payable.

B = the contribution amount or rate stated in the Agreement.

C = the CPI most recently published before the date of payment for the current Development Contribution.

D = the CPI most recently published before the Financial Close Date.

7. Security of this Agreement

7.1 Registration of this Agreement

- (a) Unless otherwise required by law, the Parties agree that this Agreement will not be registered on the Register in respect of the Land pursuant to section 7.6 of the Act.

7.2 Disposal by the Developer of its interest in the Development

- (a) Subject to clause 7.2(b) the Developer must not without the consent of the Council (which consent shall not be unreasonably withheld or delayed) assign, transfer or otherwise deal with the Developer's rights, duties or obligations under this agreement.
- (b) The Council agrees that the Developer may assign, transfer or otherwise deal with the Developer's rights, duties or obligations under this agreement to:
- (i) a Related Entity of the Developer or a partnership comprised of Related Entities of the Developer;
 - (ii) a joint venturer or partner of the Developer in respect of the Development; or
 - (iii) any third party, subject to the Developer proving to the reasonable satisfaction of the Council that such party is able to comply with the Developer's obligations under this Agreement (and to avoid any doubt the consent of the Council 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 the Council.
- (c) The Developer 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 the Developer assigning the Developer's rights and obligations under this agreement, provided always that the Developer 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.

8. Application of sections 7.11 and 7.12 of the Act

- (a) The application of sections 7.11 and 7.12 and Subdivision 4 of Division 7.1 of the Act to the Development is not excluded.

- (b) Benefits under this Agreement are to be taken into consideration in determining a development contribution under section 7.11 of the Act.

9. Dispute Resolution

9.1 No arbitration or court proceedings

If a dispute arises out of this Agreement (**Dispute**), a Party must comply with this clause 8 before starting arbitration or court proceedings (except proceedings for interlocutory or other urgent relief).

9.2 Notification

- (a) A Party claiming a Dispute has arisen must give the other Party to the Dispute notice setting out details of the Dispute. The Dispute Notice must:
 - (i) be in writing;
 - (ii) include or be accompanied by reasonable particulars of the Dispute including:
 - (A) a brief description of the circumstances in which the Dispute arose;
 - (B) references to any provisions of this document acts, errors or omissions of any person, relevant to the Dispute; and
 - (C) where applicable, the financial quantum in dispute and if not precisely known, the best estimate available.

9.3 Parties to resolve Dispute

During the 30 days after a notice is given under clause 9.2 (or longer period if the Parties to the Dispute agree in writing), each Party to the Dispute must use its reasonable efforts to resolve the Dispute. If the Parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them so requests.

9.4 Mediation

- (a) If the Parties cannot resolve the Dispute within the 30 days, they must refer the Dispute to an accredited mediator if one of them so requests and the Parties must mediate the Dispute in accordance with the Mediation Rules the Australian Institute of Arbitrators and Mediators.
- (b) If the Parties do not agree on a mediator, either Party may request the President of the Australian Institute of Arbitrators and Mediators select the mediator and determine the mediator's remuneration, the costs of which must be borne equally by the Parties.
- (c) The Parties commit to adopting a spirit of goodwill and compromise, with an equal sharing of power, to reach a resolution within 60 days.

9.5 Confidentiality

Any information or documents disclosed by a Party under this clause 9:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

9.6 Costs Incurred in Disputation

Each Party to a Dispute must pay its own costs of complying with this clause 9. The Parties to the Dispute must equally pay the costs of any Mediator.

9.7 Termination of process

- (a) A Party to a Dispute may terminate the dispute resolution process by giving notice to each other after it has complied with clauses 9.1 to 9.3.

- (b) Clauses 9.5 and 9.6 survive termination of the dispute resolution process.

9.8 Breach of this clause

If a Party to a Dispute breaches this clause 9, the other Party to the Dispute does not have to comply with those clauses in relation to the Dispute.

10. Enforcement

- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any Court of competent jurisdiction, subject to clause 9.
- (b) Nothing in this Agreement prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
 - (ii) WSC from exercising any function under the Act or any other Act or Law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

11. Termination

- (a) This Agreement remains in force until:
 - (i) terminated by operation of Law; or
 - (ii) the end of the Term;
 - (iii) the parties agree in writing to terminate this Agreement.
- (b) In the event of termination of this Agreement, any funds that have been paid by the Developer as Development Contributions prior to termination:
 - (i) can continue to be expended in accordance with the terms of this Agreement; and
 - (ii) are not refundable by WSC to the Developer.

12. Modification of the Development Consent

- (a) In the event that a Modification Application is granted such that the Development Consent that applies to the Project is the Modified Development Consent, the Developer must provide WSC with a CIV Notice in accordance with clause 5.4(b).
- (b) WSC agrees that if the Development Consent is the subject of a Minor Modification (as defined herein), then the Development Contributions will not be increased (except for CPI Adjustments).

13. Costs of Negotiating and Preparing the Planning Agreement

SQE will be responsible for the reasonable costs incurred by the Council in negotiating, drafting and executing this Agreement, to be paid into such bank account as Council specifies in writing to the Developer within 30 days of the receipt of a Tax Invoice from WSC by the Developer.

14. No Fetter

14.1 Discretion

This Agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of WSC, including but not limited to any statutory power or discretion of

WSC relating to the assessment and determination of any Development Application for the Development (all referred to in this Agreement as a **Discretion**).

14.2 No fetter

No provision of this Agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this Agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the Parties agree:

- (a) they will take all practical steps, including the execution of any further documents to ensure the objective of this clause is substantially satisfied;
- (b) in the event that clause 14.2(a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect; and
- (c) to endeavour to satisfy the common objectives of the Parties in relation to the provision of this Agreement, which is to be held to be a fetter to the extent that is possible, having regard to the relevant court judgment.

15. Notices

15.1 Notices

Any notice given under or in connection with this Agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by email, by hand or, by prepaid post at the address below, or at the address last notified by the intended recipient to the sender after the date of this Agreement:

Name **Warrumbungle Shire Council**
 Attention: The General Manager

 Address: 14-22 John Street, Coonabarabran NSW 2357

 PO Box 191 Coonabarabran NSW 2357

 Email: info@warrumbungle.nsw.gov.au

Name **SCWF Project Co Pty Ltd**
 Attention: The Project Manager and Company Secretary

 ADDRESS: 171-173 Mounts Bay Road, Perth WA 6000

 Email: spicerscreekwind@squadronenergy.com and

 company.secretary@squadronenergy.com

- (c) is taken to be given and made:
 - (i) in the case of email, when a delivery or read receipt notice is received by the sender;
 - (ii) in the case of delivery by post, seven Business Days after the date of posting (if posted to an address in the same country) or ten Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of hand delivery, when delivered.

- (d) if under clause 15.1(c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

16. GST

16.1 Defined GST terms

In this clause 16, words and expressions which are not defined in this Agreement, but which have a defined meaning in the GST Law have the same meaning as in the GST Law.

16.2 GST to be added to amounts payable

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. This clause does not apply to the extent that the consideration for the Taxable Supply is expressly agreed to be GST inclusive, unless otherwise expressly stated, prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.

16.3 Tax invoice

If a Party is liable for GST on any payments made under this Agreement, the other Party must issue a Tax Invoice (or an adjustment note) to the liable party for any GST payable under this Agreement within seven days of a written request. The Tax Invoice (or adjustment note) must include the particulars required by the GST Law to obtain an input tax credit for that GST.

16.4 GST obligations to survive termination

This clause 16 will continue to apply after expiration of termination of this Agreement.

17. General

17.1 Relationship between Parties

- (a) Nothing in this Agreement will be construed or interpreted as:
 - (i) Constituting the relationship between the parties as that of a partnership, joint venture or fiduciary relationship; or
 - (ii) except as expressly provided, makes a Party an agent of another Party for any purpose.
- (b) A Party cannot in any way or for any purpose:
 - (i) bind another Party; or
 - (ii) contract in the name of another Party.
- (c) If a Party must fulfil an obligation and that Party is dependent on another Party, then that other Party must do each thing reasonably within its power to assist the other in the performance of that obligation.

17.2 Time for doing acts

- (a) If the time for doing any act or thing required to be done or a notice period specified in this Agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5pm on the specified day, it is taken to have been done on the following Business Day.

17.3 Further acts

Each Party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Agreement.

17.4 Variation

A provision of this Agreement can only be varied by a later written document executed by or on behalf of all Parties.

17.5 Counterparts and electronic execution

- (a) This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument. An executed counterpart may be delivered as a scanned pdf file attached to an email.
- (b) This Agreement is binding on the parties on the exchange of executed counterparts. A copy of an original executed counterpart sent by email:
 - i. must be treated as an original counterpart;
 - ii. is sufficient evidence of the execution of the original; and
 - iii. may be produced in evidence for all purposes in place of the original.
- (c) A party may sign this Agreement electronically and bind itself accordingly. In addition, the intention is to print it out when so signed so that where a party prints it out, the first print-out by a party after all signatories who are signing have done so, will also be an executed original counterpart of this Agreement. Each signatory confirms that their signature appearing in this Agreement, including any such print-out (irrespective of which party printed it), is their personal signature.
- (d) A party which has executed a counterpart of this Agreement or its solicitor may exchange it with another party by sending a copy of that original executed counterpart by email to that other party or its solicitor and if requested by that other party or its solicitor must promptly deliver that original by hand or post. Failure to make that delivery does not affect the validity of this Agreement.

17.6 Entire Agreement

The contents of this Agreement constitute the entire Agreement between the Parties and supersede any prior negotiations, representations, understandings or arrangements made between the Parties regarding the subject matter of this Agreement, whether orally or in writing.

17.7 Invalidity

- (a) A word or provision must be read down if:
 - (i) this Agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this Agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of clause 17.7(a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this Agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this Agreement has full effect even if clause 17.7(b)(i) or 17.7(b)(ii) applies.
- (d) Clause 17.7(b) 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.

17.8 Waiver

A right or remedy created by this Agreement cannot be waived except in writing signed by the Party entitled to that right. Delay by a Party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a Party of a right operate as a subsequent waiver of the same right or of any other right of that Party.

17.9 Governing law and jurisdiction

- (a) The Laws applicable in New South Wales govern this Agreement.
- (b) The Parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

17.10 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.

17.11 Explanatory Note

The explanatory note exhibited with this Agreement and attached at Schedule 2 must not be used to assist in construing this Agreement.

Requirements under Section 7.4 of the Act

The Parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the Planning Agreement complying with the Act.

Requirement under the Act	This Planning Agreement
Planning instrument and/or development application – [Section 7.4 (1)]. The Developer has:	
(a) sought a change to an environmental planning instrument	No
(b) made, or proposes to make, a development application	Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies	No
Description of the land to which this Planning Agreement applies- [Section 7.4 (3)(a)]	See the definition of “Land” in clause 1.1.
Description of the development to which this Planning Agreement applies – [Section 7.4 (3)(b)]	See the definition of “Project” in Clause 1.1.
The scope, timing and manner of delivery of Development Contributions required by this document – [Section 7.4 (3)(c)]	See clause 5 of this Agreement.
Applicability of Section 7.11 (an amenity or services contribution) and Section 7.12 (a fixed development levy) and 7.1, subdivision 4, of the Act – [Section 7.4 (3)(d)]	See clause 8(a) of this Agreement.
Consideration of benefits under this Planning Agreement if section 7.11 applies – [Section 7.4 (3)(e)]	See clause 8(b) of this Agreement
Mechanism for Dispute resolution – [Section 7.4 (3)(f)]	See clause 9 of this Agreement.
Enforcement of this document – [Section 7.4 (3)(g)]	See clause 10 of this Agreement.
No obligation to grant consent or exercise functions – [Section 7.4 (9) and 7.4(10)]	See clause 134 of this Agreement.

Schedule 2: Explanatory Note

SCWF Project Co Pty Ltd
and
Warrumbungle Shire Council

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the proposed Planning Agreement (**Planning Agreement**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**). For the avoidance of doubt, this Explanatory Note does not form part of the Planning Agreement and does not bind any of the Parties.

This explanatory note has been prepared in accordance with section 205 of the *Environmental Planning and Assessment Regulation 2021* (NSW) (**Regulation**) and the Planning Agreements Practice Note and its contents have been agreed by the parties. It will be exhibited with a copy of the Agreement when the Agreement is made available for inspection by the public in accordance with the Act, as specified by section 205 of the Regulation.

Parties to the Planning Agreement

The Parties to the Planning Agreement are Warrumbungle Shire Council (**WSC**) and SCWF Project Co Pty Ltd (the **Developer**).

The Developer has made an offer to enter into the Planning Agreement in connection with a State Significant Development (SSD-41134610) for the development of the Spicers Creek Wind Farm (**Development**).

Description of the Subject Land

The subject land to which this planning agreement applies is specified in the Development Consent. The site of the Development is located approximately 25km north-west of Gulgong and 35km north-east of Wellington, within the Dubbo Regional and Warrumbungle Shire local government areas (**LGA**). The site is located in the Central West Orana Renewable Energy Zone.

Description of the Proposed Development

The Developer is owned by the Squadron Energy group of companies which develops, operates and owns renewable energy assets in Australia.

The Developer has been granted development consent for the development of the Spicers Creek Wind Farm, a new 700 megawatt wind farm comprising up to 117 wind turbines and associated infrastructure. The Development Consent approves up to eleven turbines within Warrumbungle LGA.

Summary of Objectives, Nature and Effect of the Planning Agreement

The objective of the Planning Agreement is to provide for the Developer to make a monetary contribution to WSC for the provision of public benefits calculated based on 1.5% of the Capital Investment Value (**CIV**) of the Development per turbine in the WSC LGA subject to indexation in accordance with the Planning Agreement (**Contributions**).

The Planning Agreement provides that the Developer wishes to make, and WSC wishes to receive, Contributions primarily for the benefit of residents, ratepayers and communities that live in the towns, villages and rural districts such as Coolah, Dunedoo, Uarbry, Leadville, Mendooran, Binnaway and Cobbora to address the environmental, social and economic impacts associated with the Development on the community in the vicinity of the Development.

Subject to this Agreement, the Developer will make the Contributions to WSC in the following instalments:

- i. The first payment of the Contribution will be paid within 30 days of the commencement of Pre-Construction Minor Works (the 'First Initial Contribution'). The First Initial Contribution will be 10% of the CIV of the final layout of the Development. All subsequent payments of the Contribution will be proportionally reduced to account for the quantum of the First Initial Contribution;
- ii. The second payment of the Contribution (the Second Initial Contribution) will be paid on the anniversary of the First Initial Contribution payment date. The amount of the Second Initial Contribution is equivalent to an annual instalment. All subsequent payments of the Contribution will be proportionally reduced to account for the Second Initial Contribution.
- iii. Liability for the remainder of the Contribution (ie minus the First Initial Contribution and the Second Initial Contribution) will commence on the commencement of construction of the Development.
- iv. The remainder of the Contribution will be paid in annual instalments on the recurrence of 1 July, in arrears, over the life of the Development (30 years). The first and final years will be calculated pro-rata.
- v. The Contribution will be indexed by CPI from the date of the financial investment decision.

The obligation to pay Contributions continues to apply until the Development is decommissioned.

A Planning Agreement Management Committee ('Committee') established by WSC will assist Council manage the planning agreement Development Contributions provided by the renewable energy generation projects located in the LGA. The Committee, chaired by the Mayor, will comprise two elected Councillors and four community representatives. The four community representatives will be appointed from areas hosting renewable energy generation developments such as the 'Affected Communities' of Coolah, Dunedoo, Uarbry, Leadville, Mendooran, Binnaway and Cobbora and surrounding districts.

The Committee will seek input from developers to assist the Committee in its decision making. The Committee will not be a decision-making body but will make recommendations to Council, which will make the determinations.

Assessment of Merits of Planning Agreement

The Public Purpose of the Planning Agreement

In accordance with section 7.4(2) of the Act, the Planning Agreement has the following public purpose:

- The provision of (or recoupment of the cost of providing) public amenities or public services;
- The provision of (or recoupment of the cost of providing) transport or other infrastructure relating to land.
- The funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure;

- The conservation or enhancement of the natural environment.

WSC and the Developer are of the view that the provisions of the Planning Agreement provide a reasonable means of achieving a positive public purpose(s) because it provides for the Developer to make appropriate ongoing payments towards the provision of infrastructure, facilities and services.

The public purposes for which the Contribution may be used for or applied towards may include, but is not limited to, items included in WSCs capital works program.

The Impact of the Planning Agreement on the Public or any Section of the Public

Warrumbungle LGA is one of three key LGAs within the Central West Orana Renewable Energy Zone ('REZ'). The WSC and the Developer have negotiated the Planning Agreement to ensure affected communities benefit from large-scale renewable energy developments, and to address any adverse impacts associated with developments.

The governance arrangements for the Planning Agreement, including membership of the Committee, including representatives of affected communities, recognises that REZ projects should be managed jointly and that communities within the REZ may be impacted differently.

How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by committing the Developer to make monetary contributions towards a public purpose(s).

How the Planning Agreement Promotes the Objects of the Act

The Planning Agreement promotes the public interest by promoting the objects of the Act, in particular:

- to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources; and
- to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- to promote the orderly and economic use and development of land.

The Planning Agreement promotes these objects of the Act by requiring the Developer to make monetary contributions towards public purposes.

Requirements in relation to Construction, Occupation and Subdivision Certificates

Clause 5 of the Planning Agreement sets out the timing for the payment of the Development Contributions.

Given the nature of the Development, the Planning Agreement does not specify any requirements that must be complied with prior to the issue of any Subdivision Certificate, Construction Certificate or Occupation Certificate.

Interpretation of Planning Agreement

This Explanatory Note must not be used to assist in construing the Planning Agreement.

Signing page

EXECUTED as a Deed.

SIGNED, SEALED AND DELIVERED by
SCWF Project Co Pty Ltd ACN 681 998 818)
as trustee for the SCWF Trust (ABN 39 713 382
946)
in accordance with section 127 of the
Corporations Act 2001 (Cth) by:

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Full name (PRINT)

Full name (PRINT)

Date

Date

SIGNED, SEALED AND DELIVERED
by the authorised delegate for
Warrumbungle Shire Council
ABN 63 348 671 239

Signature of authorised delegate

Signature of witness

Full name (PRINT)

Full name of witness (PRINT)

Date

Date