

Participation Agreement

Moorabool Wind Farm Pty Ltd

and

John William & Suzanne Lorraine Dean

Address: 183 Condis Lane, Mount Egerton VIC 3352

Table of contents

1.	Definitions and interpretation clauses	2
1.1	Definitions	2
1.2	Words and Expressions	4
2.	Developer's obligations	4
2.1	Payments	4
2.2	Assignment by Developer	5
3.	Landholder's warranties	5
4.	Landholder's obligations	6
4.1	Acknowledgement and Acceptance	6
4.2	Section 173 Agreement	7
4.3	Restrictions on Development	7
4.4	Landholder's consent	7
4.5	Dealings by the Landholder	8
4.6	Release	8
4.7	Development and planning applications	8
4.8	Further matters	8
4.9	Adequate Compensation	9
5.	Further Term	9
6.	Termination	9
6.1	Developer may terminate	9
6.2	Consequences if agreement ends	10
7.	Caveat	10
8.	Goods and Services Tax	10
9.	Confidentiality	11
10.	Dispute resolution	11
11.	General	12
11.1	Notices	12

11.2	Governing law and jurisdiction	12
11.3	Entire agreement	12
11.4	Paramountcy of document	12
11.5	No merger	13
11.6	Attorneys	13
11.7	Amendment	13
11.8	Survival	13
11.9	Severability	13
11.10	Waiver	13
11.11	Rights, remedies additional	13
11.12	Further assurances	13
11.13	Counterparts	14
Schedule 1	Form of Section 173 Agreement	15
<hr/>		
Schedule 2	Site Plan	25
<hr/>		
Signing page		25
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Participation Agreement

Date _____ 2016.

Parties **Moorabool Wind Farm Pty Ltd**

ACN 135 829 846 of Office 5, Level 1, 12-14 Prince Street, Gisborne
VIC 3437

(Developer)

John William Dean and Suzanne Lorraine Dean

both of RMB 363 Careys Road, Lal Lal VIC 3352

(Landholder)

- Recitals**
- A. The Landholder is, at the date of this agreement, the registered proprietor of the Property.
 - B. The Developer is proposing to construct, use and operate the Wind Farm on the Site.
 - C. In consideration of the payments to be made by the Developer to the Landholder pursuant to this agreement, the Landholder agrees to obligations and restrictions in respect of the Landholder and the Property for the benefit of the Developer and the Site, on the terms contained in this agreement.
-

The parties agree, in consideration of, among other things, the mutual promises contained in this agreement as follows:

1. Definitions and interpretation clauses

1.1 Definitions

In this agreement:

Additional Charges	means any new or additional statutory or municipal rates or charges that the Landholder incurs as a result of the development and operation of the Wind Farm on the Site.
Agreement	means this participation agreement, including all Schedules and annexures (as amended).
Annual Fee	means \$8,000.00 per annum (plus GST).
Business Day	means any day on which trading banks are open for normal banking business in Melbourne other than a Saturday, Sunday or public holiday.
Claim	means any claim, demand, action, suit or proceeding for damages, debt, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy whether arising at common law, in equity, under statute or otherwise in relation to the Wind Farm.
Commencement Date	means the date the Wind Farm commences on any allotment that comprises part of the Site and which abuts the Property.
Development Approval	means any consent, approval, permit, authority or licence required by Law including but not limited to the <i>Planning & Environment Act 1987</i> (Vic).
Dwelling	means the dwelling at the location marked "Dwelling" on the Site Plan.
Further Terms	means two consecutive terms each of five years following the Term, and a Further Term means one of them.
GST	has the meaning given to that term in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).

Law	means the requirement of any legislation or delegated or subordinate legislation including any statute, ordinance, code, rule, regulation, proclamation or by-law, present or future and whether State or Federal.
Permitted Dwelling	means the proposed dwelling to be built by the Landholder at the location marked "Permitted Dwelling" on the Site Plan.
Planning Permit	means planning permit PL-SP/05/0461 for the Wind Farm under the Moorabool Planning Scheme, as amended or varied from time to time.
Property	means all of the land described in certificate of title Volume 10674 Folio 444 including the Dwelling which, for convenience, is depicted on the attached Site Plan.
Related Persons	means in relation to a party, all related bodies corporate of that party, all current and former directors, officers, agents, servants, employees, third party contractors and sub-contractors of that party and the current and former legal, accounting and other professional advisers to that party.
Responsible Authority	has the meaning given in the <i>Planning & Environment Act 1987</i> (Vic) in relation to any relevant matter or thing.
Section 173 Agreement	means the agreement under section 173 of the <i>Planning & Environment Act 1987</i> (Vic) to be entered into by the Developer, the Landholder and the Responsible Authority as contemplated in clause 4.1, in the form attached at Schedule 1.
Sign On Bonus	means a one-off payment of \$25,000.00 (inclusive of GST (if any)).
Site	means the site of the Wind Farm, being the whole of each property identified in the Planning Permit as land to which the Planning Permit applies.
Site Plan	The plan titled "Site Plan" attached as Schedule 2 to this agreement which shows the Site boundary in relation to the Property.
Term	means twenty-five years from the Commencement Date.

Wind Farm means the Wind Farm permitted under the Planning Permit of the Site.

1.2 Words and Expressions

The parties agree that in the interpretation of this agreement:

- (a) the singular includes the plural and the plural includes the singular;
- (b) a reference to a gender includes a reference to each other gender;
- (c) a reference to a person includes a reference to a firm, corporation or other corporate body and its successors in law;
- (d) if a party consists of more than one person this agreement binds them jointly and each of them severally;
- (e) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (f) the recitals to this agreement are and will be deemed to form part of this agreement including any terms defined within the Recitals;
- (g) a reference in this agreement to 'the Developer' or 'the Landholder' includes each of its successors, assigns and personal representatives;
- (h) a reference to money means Australian Dollars unless otherwise stated;
- (i) the words 'including' or 'includes' or any variation of them are not words of limitation;
- (j) where the day on or by which anything is to be done is not a Business Day, that thing must be done on or by the next succeeding Business Day;
- (k) if any example is given of anything (including, but not limited to, a right, obligation or concept) the example does not limit the scope of that thing; and
- (l) no provision of this agreement will be construed adversely to a party solely on the ground that the party was responsible for preparation of this agreement or that provision.

2. Developer's obligations

2.1 Payments

- (a) The Developer will pay the Landholder:

- (i) the Annual Fee by advance annual instalments within ten (10) Business Days after the Commencement Date and on each anniversary of the Commencement Date; and
 - (ii) the Additional Charges within twenty (20) Business Days of receipt by the Developer of a substantiated Claim by the Landholder for such Additional Charges;
 - (iii) the Sign On Bonus, within ten (10) Business Days of the Developer receiving this agreement fully and properly executed by the Landholder.
- (b) The Developer's obligation to make the payments set out in clause 2.1(a)(i) and 2.1(a)(ii):
- (i) commences on the Commencement Date; and
 - (ii) terminates on the earlier of:
 - (A) when the Term (and any Further Term) ends or this agreement ends or is terminated in accordance with clause 6; and
 - (B) when the Section 173 Agreement ends or is terminated.

2.2 Assignment by Developer

- (a) Subject to clause 2.2(b), the Developer may assign, mortgage, charge or otherwise dispose of or encumber the whole or any part of its interest, benefit and rights under this agreement at any time.
- (b) Where the Developer seeks to assign or transfer its interest, benefit or rights under this Agreement, it may only do so if the assignee or transferee first agrees with the Landholder that with effect from completion of the assignment or transfer, the assignee or transferee will assume and perform the obligations of the Developer remaining unperformed or unfulfilled and otherwise give effect to the rights of the Landholder pursuant to this agreement.

3. Landholder's warranties

The Landholder warrants to the Developer that:

- (a) the Landholder is the legal and beneficial owner of the Property;
- (b) the Landholder has obtained any necessary consents from any mortgagee or any other person having any interest in the Property prior to its execution of this agreement;
- (c) there is not presently pending any action, demand, suit, claim, dispute or other proceeding affecting the Property (**Property Claim**) or any part of it to the best of the knowledge of the Landholder;

- (d) the Landholder will inform and provide full details of any Property Claim to the Developer as soon as such Property Claim arises; and
- (e) execution of this Agreement by the Landholder is not contrary to and does not contravene any arrangement, agreement or undertaking that the Landholder has with any third party.

4. Landholder's obligations

4.1 Acknowledgement and Acceptance

- (a) The Landholder acknowledges and agrees that the Annual Fee is adequate compensation and consideration for all matters contemplated by this Agreement including (without limitation) any nuisance caused by the construction, use and operation of the Wind Farm This may include (but is not limited to):
 - (i) noise levels generated by construction, use and operation of the Wind Farm which:
 - (A) may be heard on the Property and Dwelling including the Permitted Dwelling; and
 - (B) may exceed the noise limits set out in the conditions in the Planning Permit;

but which shall not exceed maximum sound power levels to avoid sleep disturbance as recommended and published by the World Health Organisation (WHO) in the *WHO Guidelines for Community Noise* in April 1999;
 - (ii) any reduction in amenity levels at the Dwelling and Permitted Dwelling;
 - (iii) the shadow flicker generated by the Wind Farm which may be greater than 30 hours per year at the Property.
- (b) Without limiting the generality of clause 4.1(a), in consideration of the Annual Fee the Landowner agrees that the Landowner will not:
 - (i) require the Developer to provide any acoustic suppression or treatment measures in order to minimise any noise impacts resulting from the Wind Farm on the Property or any Dwelling or Permitted Dwelling on the Property (**Acoustic Suppression**); or
 - (ii) require the Developer to provide any landscaping treatment to the Property in order to minimise the visual impact of the Wind Farm on the Property or any dwelling on the Property (**Landscaping**); and
 - (iii) make any request under the Planning Permit:
 - (A) for any Acoustic Suppression or attenuation measures; or

- (B) for any Landscaping for visual suppression or attenuation measures.
- (c) The Developer relies on the Landowner's acknowledgements and agreement in this clause 4.1.

4.2 **Section 173 Agreement**

- (a) The Landholder agrees that, if requested by the Developer, the Landholder must (within ten (10) Business Days after the Developer makes the request) enter into a Section 173 Agreement substantially in the form annexed to this agreement at Schedule 1, subject to any amendments required by the Developer (acting reasonably) or the Responsible Authority.
- (b) The Landholder agrees to comply with its obligations under the Section 173 Agreement on and from the date the Landholder enters into the Section 173 Agreement.

4.3 **Restrictions on Development**

The Landholder shall not carry out, or allow to be carried out, any development or use of the Property that is likely to unreasonably diminish the security or utility of the Property or the Site for use as part of the Wind Farm. In particular, without the prior written consent of the Developer, the Landholder shall not:

- (a) construct any dwelling on the Property additional to the Dwelling and Permitted Dwelling;
- (b) erect any device to convert wind energy on the Property, other than a water pumping or other windmill no higher than 25 metres above ground level solely and exclusively for the generation and supply of electricity to the Dwelling, Permitted Dwelling or other buildings and uses on the Property; or
- (c) otherwise obstruct or interfere with the potential operation or efficiency of wind turbine generators that form part of the Wind Farm,

however nothing in this clause 4.2(b) shall restrict the Landholder's right to practice good farming and animal husbandry on the Property.

4.4 **Landholder's consent**

- (a) The Landholder consents to the construction, use and operation of the Wind Farm and to the impacts generated by the construction, use and operation of the Wind Farm and all related activities including, but not limited to:
 - (i) noise levels generated by the construction, use and operation of the Wind Farm which may be heard on the Property, including at the Dwelling and improvements located on the Property, and which may exceed the noise limits set out in the Planning Permit;

- (ii) shadow flicker generated by the Wind Farm, which may exceed the limits for shadow flicker at dwellings set out in the Planning Permit; and
 - (iii) visual impacts.
- (b) The Landholder consents to the entry onto the Property by the Developer's representatives, on reasonable notice, to conduct sound measurement tests and collect data.

4.5 Dealings by the Landholder

- (a) The Landholder may sell the Property prior to the Commencement Date provided:
- (i) the Landholder has entered into the Section 173 Agreement in accordance with clause 4.2; and
 - (ii) the transferee of the Property agrees, as an enforceable term of transfer (and in writing) to be bound to the terms of this agreement prior to or on completion of the sale and transfer of the Property to the transferee .
- (b) In the event the Landholder sells the Property to a third party, the Developer agrees, if requested by the Landholder, to assign and novate this Agreement to the purchaser (such that the purchaser will be entitled to the Annual Fee for the remainder of the Term and any Further Term).

4.6 Release

To the extent permitted by law, the Landholder releases the Developer and its Related Persons from any damage, loss, cost, expense or Claim arising from or relating to any impact or effect of the Wind Farm on the Landholder or the Property, including but not limited to impacts or effects created by the construction, use and operation of the Wind Farm.

4.7 Development and planning applications

The Landholder must not object to any Development Approval or planning or other application or procedure made or initiated by the Developer or any other entity for any use or development of the Site or any neighbouring property that is related to or necessary for the Wind Farm, and must provide all reasonable assistance requested by the Developer for the purposes of obtaining approvals.

4.8 Further matters

The Landholder agrees to promptly and fully sign all documents, do all acts and provide all information as are reasonably requested by the Developer to give full financial, commercial, operation and legal effect to this agreement and to satisfy the commercial, legal and security requirements of any financier of the Wind Farm.

4.9 Adequate Compensation

The Landholder acknowledges and agrees that the payments set out in clause 2.1 are adequate compensation for (amongst other things) the Landholder's obligations under this clause 4 and the restrictions imposed by the Section 173 Agreement (if requested by the Developer).

5. Further Term

- (a) The Landholder and the Developer will renew this agreement for the Further Term:
 - (i) if the Developer gives the Landholder written notice not less than three calendar months prior to the expiry of, as relevant, the Term or the first Further Term; and
 - (ii) provided that the Developer is not in breach of this agreement in respect of which the Landholder has given written notice to the Developer and the breach remains unremedied by the Developer.
- (b) A renewal of this agreement for the Further Term will be on the same terms and conditions incorporated in this agreement, but excluding this option for renewal from any new agreement for a Further Term which would expire more than 35 years after the Commencement Date of this initial Term of this agreement.

6. Termination

6.1 Developer may terminate

The Developer may terminate this agreement by 30 days' written notice to the Landholder:

- (a) if, prior to the Commencement Date, the Developer decides not to proceed with the construction of the Wind Farm for any reason;
- (b) during the last five years of the Term;
- (c) at any time during a Further Term;
- (d) the Landholder ceases to own any part of, or interest in the Property (unless this Agreement has been novated in accordance with clause 4.4(b)); or
- (e) if the Landholder breaches this agreement and does not rectify that breach within ten (10) Business Days after the Developer gives the Landholder written notice of the breach.

6.2 Consequences if agreement ends

Subject to clause 11.8, after this agreement terminates the parties have no further liability under this agreement except for any breach of this agreement occurring prior to the date of termination.

7. Caveat

- (a) The Landholder charges the Property with the observance and performance of its obligations under this agreement.
- (b) The Developer may lodge a permissive caveat on and against any title or titles to the Property to protect its interests under this agreement.
- (c) If the Developer lodges a caveat on the title to the Property in accordance with clause 7(b), then the Developer must:
 - (i) immediately withdraw the caveat if:
 - (A) this agreement expires or is terminated in accordance with its terms; or
 - (B) the Section 173 Agreement is to be registered on the title to the Property, in which case the Developer (as caveator) must consent to the registration of the Section 173 Agreement;
 - (ii) not unreasonably withhold its consent to the withdrawal of any caveat which is required by the Landholder in circumstances other than those listed in paragraph (i) (provided that the Developer will be permitted to re-lodge any caveat which is withdrawn by it in accordance with this paragraph (ii)); and
 - (iii) meet any and all costs associated with the lodging or withdrawing of any caveat under this clause 7(c).
- (d) The Landholder must not object to any caveat or seek or support the withdrawal of any caveat lodged by the Developer pursuant to this clause 7, except in the circumstances contemplated by clause 7(c). The Landholder acknowledges that (without limiting any other circumstances in which the Developer is entitled to terminate this agreement) any breach by the Landholder of this clause 7(d) entitles the Developer to terminate this agreement.

8. Goods and Services Tax

- (a) All monetary amounts specified in this Agreement do not include an amount for GST.

- (b) If GST is payable under A New tax System (Goods and Services Tax) Act 1999 (Cth) in respect of an amount specified in this Agreement:
 - (i) the Developer must pay the GST at the same time and in addition to the amount specified in this Agreement; and
 - (ii) the Landholder must provide the Developer with a tax invoice for the payment showing the Landholder's name and ABN, and the amount of GST as a separate amount on the invoice.

9. Confidentiality

- (a) The parties expressly acknowledge that the contents of this agreement (and any documents or information provided by one party to another pursuant to or in connection with this agreement) are confidential and shall not be disclosed to any person except where:
 - (i) disclosure is with the written consent of the other party;
 - (ii) disclosure is required by law;
 - (iii) disclosure is to legal advisers and any professional consultants engaged for the purpose of advising the party in relation to this agreement provided that any such consultants are first made aware of the restraint and prohibition contained in this clause;
 - (iv) disclosure is by the Developer to Related Persons and other entities that have or may have a financial or legal interest in the Wind Farm or the Site.
- (b) The Landholder expressly acknowledges that any information that the Landholder may obtain or become aware of about any intellectual property or activities of the Developer on or relating to the Site or the Wind Farm are confidential and must not be disclosed to any person other than as provided in this clause.
- (c) The Landholder agrees that it will not make any press announcement or other release relating to or in connection with this agreement without the prior written approval of the Developer agreeing to the form, manner and content of the announcement or release.

10. Dispute resolution

The parties agree to deal with any dispute arising out of or in relation to this agreement as follows:

- (a) the party asserting that there is a dispute arising from this agreement (Dispute) must send the other party notice setting out the nature of the dispute (Dispute Notice);
- (b) the parties must try to resolve any Dispute by direct negotiation; and
- (c) if the parties have not resolved a Dispute within twenty (20) Business Days from the receipt of the relevant Dispute Notice (or such longer period as may be agreed between the parties), either party may commence legal proceedings.
- (d) Nothing in this clause 10 will prevent either party from seeking to obtain urgent injunctive relief.

11. General

11.1 Notices

All notices, consents, documents or other communications required or permitted to be given by this agreement shall be deemed to have been received:

- (a) in the case of posting, when actually received, prima facie evidence of which shall include the receipt of a registered letter at the recipient's address;
- (b) in the case of email, when a transmission report shows delivery to the email address nominated by the intended recipient to the sender; and
- (c) in the case of telex or facsimile, the time and date appearing on the transmission copy.

11.2 Governing law and jurisdiction

This agreement is to be construed and take effect in accordance with the laws in force in the State of Victoria, and each of the parties submits to the jurisdiction of the courts and appeal courts of Victoria.

11.3 Entire agreement

This agreement constitutes the entire agreement between the parties in relation to its subject matter. All prior discussions, undertakings, agreements, representations, warranties and indemnities in relation to that subject matter are replaced by this agreement and have no further effect.

11.4 Paramountcy of document

If this agreement conflicts with any other document, agreement or arrangement, this agreement prevails to the extent of the inconsistency.

11.5 No merger

The provisions of this agreement will not merge on completion of any transaction contemplated in this agreement and, to the extent any provision has not been fulfilled, will remain in force.

11.6 Attorneys

Each person who executes this agreement on behalf of a party under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or circumstance that might affect his or her authority to execute this agreement under that power.

11.7 Amendment

This agreement may not be amended or varied unless the amendment or variation is in writing signed by all parties.

11.8 Survival

The rights and obligations in clauses 4.1, 6.2, 7 and 9 and any other rights and obligations capable of survival survive the expiration or termination of this Agreement, subject to any express limitations on survivability contained in this Agreement.

11.9 Severability

Part or all of any provision of this agreement that is illegal or unenforceable will be severed from this agreement and will not affect the continued operation of the remaining provisions of this agreement.

11.10 Waiver

Waiver of any power or right under this agreement:

- (a) must be in writing signed by the party entitled to the benefit of that power or right; and
- (b) is effective only to the extent set out in that written waiver.

11.11 Rights, remedies additional

Any rights and remedies that a person may have under this agreement are in addition to and do not replace or limit any other rights or remedies that the person may have.

11.12 Further assurances

Each party must do or cause to be done all things necessary or reasonably desirable to give full effect to this agreement and the transactions contemplated by it (including but not limited to consents and the execution of any other documents).

11.13 Counterparts

This agreement may be executed in any number of counterparts and all counterparts taken together will constitute one document.

Schedule 1 Form of Section 173 Agreement

Date

Parties

Moorabool Shire Council

of 15 Stead Street, Ballan VIC 3342

(Council)

John William Dean and Suzanne Lorraine Dean

both of RMB 363 Careys Road, Lal Lal VIC 3352

(Owner)

Moorabool Wind Farm Pty Ltd

ACN 135 829 846 of Office 5, Level 1, 12-14 Prince Street, Gisborne
VIC 3437

(Developer)

Recitals

- A. The Owner is, at the date of this agreement, the registered proprietor of the Land.
- B. The Permit allows the use and development of the Wind Energy Facility on an area near the Land.
- C. Conditions 35 and 37 of the Permit have the effect that any Dwelling on the Land may be exempt from those conditions if an agreement with the Owner is entered into and registered on title.
- D. The Council is the Responsible Authority under the Act for the administration and enforcement of the Planning Scheme.
- E. The Developer has requested the Owner and Council to enter into this agreement with the Developer to be registered on title through which:
 - (a) the Owner acknowledges and accepts that the Wind Energy Facility will generate noise so that noise levels

at the Dwellings and on the Land may exceed the noise limits specified in condition 37 of the Permit.

- (b) the Owner acknowledges and accepts that the Wind Energy Facility will create shadow flicker so that shadow flicker at the Dwellings and on the Land may exceed the shadow flicker limits specified in condition 35 of the Permit.
 - (c) the Owner acknowledges and accepts that, if the Owner wishes to reduce the noise levels at the Dwellings below those predicted or measured, then the Owner may implement appropriate acoustic attenuation measures entirely at the Owner's own cost and discretion without recourse to the Developer.
- F. The Parties have agreed that without limiting or restricting their respective powers to enter into this agreement and insofar as it can be so treated, this agreement is made pursuant to section 173 of the Act.
- G. Without fettering its discretion, Council agrees to take all reasonable measures to ensure this agreement is promptly registered under section 181 of the Act.

The Parties agree, in consideration of, among other things, the mutual promises contained in this agreement as follows:

1. Definitions and interpretation clauses

1.1 Agreement components

This agreement includes any schedule.

1.2 Definitions

In this agreement:

- | | |
|------------------------|---|
| Act | <i>Planning and Environment Act 1987 (Vic).</i> |
| Adjustment Note | includes any document or record accepted by the Commissioner of Taxation as an adjustment note. |
| Business Day | a day that is not: <ul style="list-style-type: none"> (a) a Saturday or Sunday; or |

- (b) a day that is wholly or partly observed as a public holiday throughout Victoria.

Dispute Notice	a notice specifying particulars of a dispute or difference between the Parties and requiring the dispute to be resolved under clause 5.
Dwellings	means any Dwellings on the Land including Dwellings on the Land that had not been constructed at the date of issue of the Permit and at the date of the execution of this agreement.
Expert	a person who has tertiary qualifications and not less than 10 years' experience working in the area or field in which a dispute has arisen under this agreement.
GST	includes any replacement or subsequent similar tax.
Land	means all of the land described in certificate of title Volume 10674 Folio 444.
Occupants	any person residing in, or occupying, part or all of the Dwellings on a temporary or permanent basis, including but not limited to all tenants, invitees, licensees or other persons.
Permit	means planning permit number 2009012877A for the Wind Farm under the Moorabool Planning Scheme, as amended or varied from time to time.
Planning Scheme	the Moorabool Planning Scheme.
Tax Invoice	includes any document or record accepted by the Commissioner of Taxation as a tax invoice.
Wind Energy Facility	means the wind energy facility and associated infrastructure to be constructed on an area which includes the Land in accordance with the Permit.

1.3 Interpretation

- (a) In this agreement:
- (i) headings and bold type are for convenience only and do not affect the interpretation of this agreement;

- (ii) words importing the singular include the plural and vice versa;
 - (iii) words importing a gender include any gender;
 - (iv) where a word or phrase has a particular meaning, other grammatical forms of that word or phrase have a corresponding meaning;
 - (v) a covenant or obligation on the part of two or more persons binds them jointly and severally;
 - (vi) a reference to any Party in its capacity as owner of the Land includes its successors, assigns and transferees in all respects to the whole or any part of the Land;
 - (vii) a reference to a legislative enactment or a subordinate instrument (including the Act and the Planning Scheme) or any provision in any of them is a reference to that enactment, instrument, or provision as amended, re-enacted or remade (with or without modification) from time to time or a corresponding future enactment, instrument or provision.
- (b) Where this agreement requires something to be done by a certain day and that day is not a Business Day, that thing must be done on or by the next Business Day.

2. Operation

2.1 Agreement to operate as section 173 agreement

- (a) Without limiting any operation or effect which this agreement otherwise has, the Parties acknowledge that this agreement is made under section 173 of the Act.
- (b) The use and development of the Land is subject to the conditions and obligations set out in this agreement, which is intended to achieve or advance the objectives of planning in Victoria (as set out in section 4(1) of the Act) and of the Planning Scheme.
- (c) The fact that this agreement is made or purported to be made under section 173 of the Act or that a memorandum of this agreement is registered against the certificate of title to the Land does not mean that the obligations of the Owner under this agreement may only be enforced under the Act, and the Parties acknowledge that the Parties are entitled to all legal and equitable remedies or other relief available to them in relation to the enforcement of this agreement as if this agreement was not made under section 173 of the Act.

2.2 Proper law

This agreement is governed by, and the Parties submit to, the jurisdiction of the laws of the State of Victoria.

2.3 Commencement

This agreement is effective immediately upon signing.

2.4 End of agreement

- (a) This agreement may be ended by:
 - (i) agreement between the Parties; or
 - (ii) by the Developer giving notice to the Parties that the use and development permitted by the Permit has permanently ceased.
- (b) If this agreement ends, the Council must without delay tell the Registrar of Titles that this agreement has ended (either in whole or in part, which is applicable) pursuant to section 183 of the Act.

2.5 Reading down and severability

If a provision of this agreement is void, or voidable by a Party, unenforceable or illegal, but would not be so if read down or severed from the agreement, it must be read down or severed accordingly.

3. Owner's covenants

3.1 Acknowledged noise exceedance

The Owner acknowledges that:

- (a) the Wind Energy Facility will generate noise so that noise levels at the Dwellings and on the Land may exceed the noise limits specified in condition 37 of the Permit. Condition 37 is set out below:

Except as provided below in this condition, the operation of the wind energy facility must comply with the noise criteria specified in NZS 6808:2010 'Acoustics Wind farm noise' at any dwelling existing on land in the vicinity of the proposed wind energy facility as at 29 October 2010, to the satisfaction of the responsible authority.

In determining compliance with the standard, the following requirements apply:

- (a) *the sound level from the wind energy facility within 20 metres of any dwelling must not exceed a level of 40dBA (L90 10 min) or where the relation between background noise levels and wind speed has been determined by the method specified in Condition 36 of this permit, the background noise level by more than 5dBA or a level of 40dBA (L90 Min 10), whichever is the greater;*

- (b) *compliance must be separately assessed for all-time and night-time. For the purpose of this requirement, night-time is defined as 10.00pm to 7.00am; and*
- (c) *if the noise has a special audible characteristic the measured sound level must have a penalty of 6dB applied.*

Any dwelling may be exempt from this condition. This exemption will be given effect through a written agreement with the landowner of the dwelling and evidence of the agreement must be provided to the satisfaction of the responsible authority.

- (b) this agreement exempts any Dwelling on the Land from the above noise limits in accordance with Condition 37 of the Permit;
- (c) if the Owner wishes to reduce the predicted noise levels inside the Dwellings then the Owner may implement appropriate acoustic attenuation measures entirely at the Owner's own discretion and cost and without recourse to the Developer;
- (d) even if noise attenuation measures are implemented by the Owner to improve acoustic amenity at the Dwellings, the operation of the Wind Energy Facility may still generate noise at the Dwellings or on outdoor areas of the Land, which may from time to time exceed noise limits set under condition 37 of the Permit;
- (e) this clause 3.1 applies to all Occupants of the Dwellings; and
- (f) this clause 3.1 applies to all Dwellings on the Land including dwellings on the Land that had not been constructed at the date of issue of the Permit and at the date of the execution of this agreement.

3.2 **Shadow flicker**

- (a) The Owner acknowledges that:
- (b) the Wind Energy Facility will create shadow flicker so that shadow flicker at the Dwellings and on the Land may exceed the shadow flicker limits specified in condition 35 of the Permit. Condition 35 is set out below:

Shadow flicker from the wind energy facility must not exceed 30 hours per annum at any dwelling existing as at the date of this permit to the satisfaction of the Minister for Planning.

Any dwelling may be exempt from this exemption. This exemption will be given effect through a written agreement with the landowner of the dwelling and evidence of the agreement must be provided to the satisfaction of the responsible authority.

- (c) this agreement exempts any Dwelling on the Land from the above shadow flicker limits in accordance with Condition 35 of the Permit;
- (d) this clause 3.2 applies to all Occupants of the Dwellings; and

- (e) this clause 3.1 applies to all Dwellings on the Land including dwellings on the Land that had not been constructed at the date of issue of the Permit and at the date of the execution of this agreement.

3.3 Enforcement of the Permit

The Owner covenants:

- (a) not to raise any issues with Council concerning or seek enforcement of conditions 35 or 37 of the Permit under the Act; and
- (b) to use best endeavours to ensure that no Occupants of the Dwellings raise any issues to Council concerning or seek enforcement of conditions 35 or 37 of the Permit under the Act.

3.4 Indemnity and release

The Owner releases and indemnifies the Developer from and against any costs, expenses, loss, claim, notices, proceedings or actions arising in relation to the amenity of the Dwellings or the Land, including but not limited to noise and shadow flicker created by the development and use of the Wind Energy Facility and experienced by Occupants of the Dwellings on the Land and persons on the Land at anytime.

4. GST

4.1 GST pass-on

If GST is or will be imposed on a supply made under or in connection with this agreement, the supplier may, to the extent that the consideration otherwise provided for that supply under this agreement is not stated to already include an amount in respect of the GST on the supply:

- (a) increase the consideration otherwise provided for that supply under this agreement by the amount of the GST; or
- (b) otherwise recover from the recipient the amount of the GST.

4.2 Tax invoice

The recovery of any amount in respect of GST by the supplier under this agreement is subject to the issuing of the relevant Tax Invoice or Adjustment Note to the recipient. Subject to any other provision of this agreement, the recipient must pay any amount in respect of GST within 7 days of the issuing of the relevant Tax Invoice or Adjustment Note to the recipient.

5. Dispute resolution

5.1 Procedure

- (a) If a dispute or difference arises between the Parties in respect of the interpretation of this agreement or any other matter arising under this agreement either Party may give a Dispute Notice to the other.
- (b) If:
 - (i) a Party gives a Dispute Notice to the other Party; and
 - (ii) the Parties do not settle the dispute or difference specified in the Dispute Notice within 5 Business Days after the Dispute Notice is given,

the Parties must, within 10 Business Days after the Dispute Notice is given, jointly appoint an Expert to determine the dispute or difference.
- (c) If the Parties are unable to agree on an Expert, the appointment of the Expert will be made by the president for the time being of Law Institute of Victoria having regard to the nature of the matter in dispute and on application by either Party.
- (d) An Expert appointed under this clause 5.1, will be appointed on the basis that:
 - (iii) the Expert must be qualified and skilled in the areas primarily in dispute;
 - (iv) the Expert must determine the dispute and give written notice of that determination to the Parties within 20 Business Days of appointment;
 - (v) the Expert will act as an Expert and not as an arbitrator in resolving the dispute or difference;
 - (vi) the decision of the Expert will be final and binding on all the Parties;
 - (vii) the Expert may engage other consultants to advise the Expert if it is considered necessary; and
 - (viii) the costs of the Expert in resolving a dispute or difference including the costs of any consultants engaged by the Expert will be shared equally by the Parties or as otherwise directed by the Expert.

6. General provisions

6.1 Registration

- (a) Without fettering its discretion, Council agrees to take all reasonable measures to ensure this agreement is promptly registered under section 181 of the Act.

- (b) Without limiting the scope and generality of clause 6.4, the Parties must do all things necessary to enable the Council, in its discretion, to register this agreement with the Registrar of Titles in accordance with section 181 of the Act.

6.2 **Obligation to run with the land**

- (a) If this agreement is registered with the Registrar of Titles, any obligation imposed under this agreement on the Owner takes effect as a covenant which is annexed to and runs at law and in equity with the Land and binds the Owner, its successors, assigns and transferees, and the registered proprietor for the time being of the whole or any part of the Land.
- (b) Without limiting the operation or effect of this agreement, the Owner must ensure that, until this agreement is recorded on the folio of the register which relates to the Land, the Owner's successors in title will do all acts and sign all documents requiring those successors to give effect to this agreement.

6.3 **General acknowledgment**

The Parties expressly acknowledge that any obligation imposed upon Council under this agreement does not fetter the future exercise of any statutory discretion by Council, and the provisions of this agreement must be read accordingly.

6.4 **Further documents**

The Parties must do all things, and prepare and sign all further documents, necessary to give effect to this agreement and to ensure that this agreement is fully carried out.

6.5 **Notice**

Any notice or document under this agreement may be served on the Parties by being left at or posted by prepaid letter addressed to the person at its address stated at the commencement of this agreement (or any other address which is notified to all Parties from time to time) and is conclusively regarded as having been served 48 hours after it is posted.

6.6 **Costs**

The Developer must pay all reasonable costs and expenses of the Council of and incidental to the negotiation, preparation, stamping and registration of this agreement.

Signing page

Executed as agreement

Executed for and on behalf of **Moorabool Shire Council** under delegated authority pursuant to Section 188(1)(b) Section (2)(b) Section 171(2)(a) of the *Planning and Environment Act 1987* by the Chief Executive Officer in the presence of:

Signature of witness

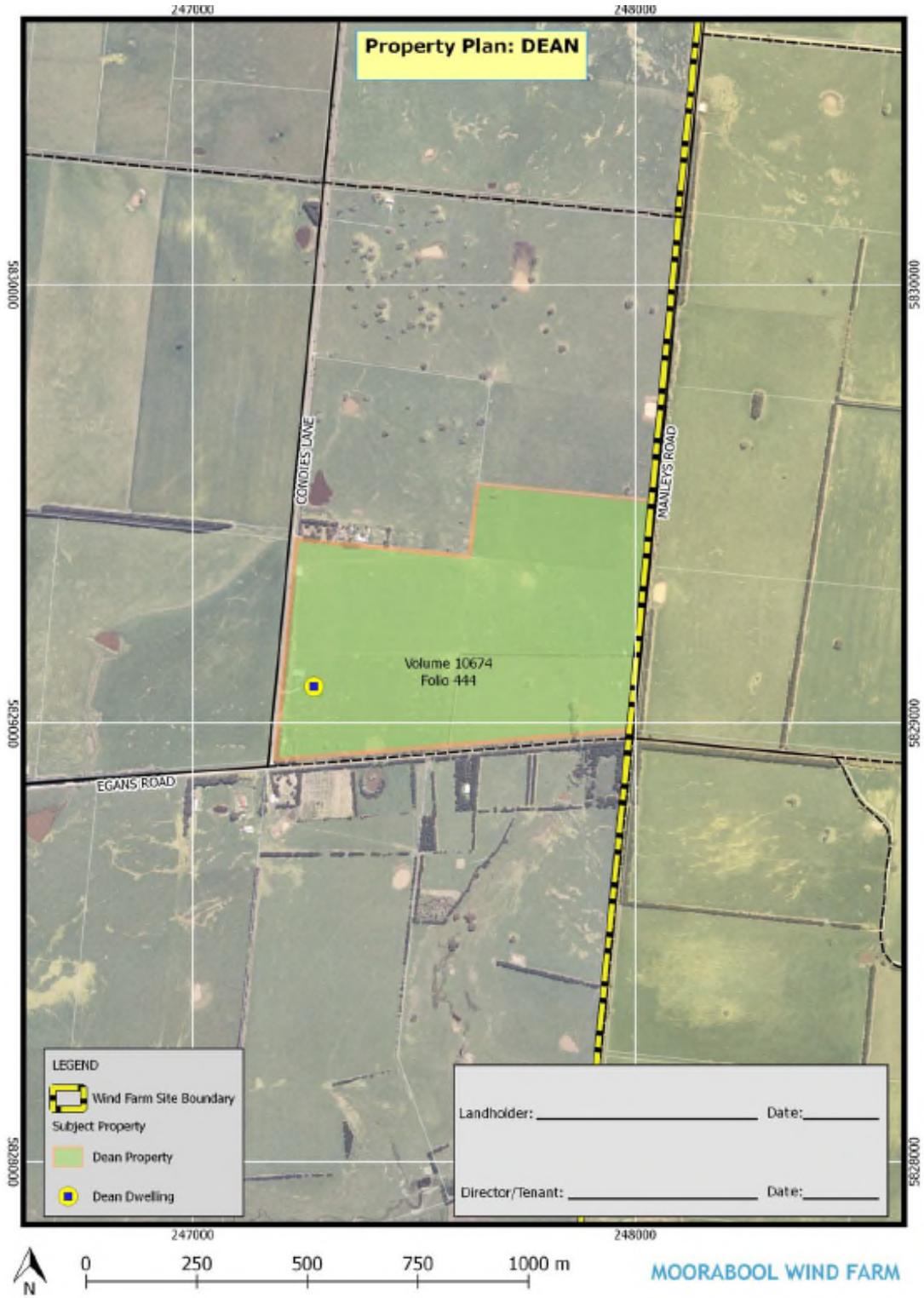
Signature of Chief Executive Officer

Full name of witness (print)

Full name of Chief Executive Officer (print)

[insert execution clauses for the Developer and Owner]

Schedule 2 Site Plan



Signing page

Executed as agreement

Executed for and on behalf of **Moorabool Wind Farm Pty Ltd ACN 135 829 846** by its attorney **Tobias Geiger** under power of attorney dated **28 June 2013** in the presence of:

Signature of witness

Full Name of witness (print)

Signature of attorney

By executing this agreement the attorney states that the attorney has not received notice of revocation of the power of attorney at the date of executing this agreement.

Executed by **John William Dean** in the presence of:

Signature of witness

Full name of witness (print)

Signature of **John William Dean**

Executed by **Suzanne Lorraine Dean** in the presence of:

Signature of witness

Full name of witness (print)

Signature of **Suzanne Lorraine Dean**