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## **ADVERTISED PLAN**

REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

VOLUME 08504 FOLIO 504

Security no : 124119310003S

Produced 24/10/2024 05:35 PM

CROWN GRANT

LAND DESCRIPTION

Crown Allotment 2 Parish of Lawaluk.

REGISTERED PROPRIETOR

Estate Fee Simple

Sole Proprietor

GRAEME ANDREW FAGG of MOUNT MERCER 3352  
U974839A 09/09/1997

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AK099990S 24/12/2012

RABOBANK AUSTRALIA LTD

CAVEAT AH489684C 13/09/2010

Caveator

MT MERCER WINDFARM PTY LTD

Grounds of Claim

LEASE WITH THE FOLLOWING PARTIES AND DATE.

Parties

THE REGISTERED PROPRIETOR(S)

Date

16/06/2008

Estate or Interest

LEASEHOLD ESTATE

Prohibition

ANY INSTRUMENT THAT AFFECTS MY/OUR INTEREST

Lodged by

K&L GATES (17)

Notices to

MERIDIAN ENERGY AUSTRALIA of 9 QUEEN STREET, BASEMENT LEVEL, MELBOURNE VIC.  
3000

AMENDMENT OF ADDRESS ON CAVEAT AJ837289E 3/08/2012

Any crown grant reservations exceptions conditions limitations and powers noted on the plan or imaged folio set out under DIAGRAM LOCATION below.

For details of any other encumbrances see the plan or imaged folio set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 Planning and Environment Act 1987

AG375292Q 27/02/2009

DIAGRAM LOCATION

SEE TP665672Y FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

DOCUMENT END

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TITLE PLAN		EDITION 1	TP 665672Y
<b>Location of Land</b> Parish: LAWALUK Township: Section: Crown Allotment: 2 Crown Portion:  Last Plan Reference: Derived From: VOL 8504 FOL 504 Depth Limitation: 50 FEET		<b>Notations</b> SUBJECT TO THE RESERVATIONS EXCEPTIONS CONDITIONS AND POWERS CONTAINED IN CROWN GRANT VOL. 8504 FOL. 504 AND NOTED ON SHEET 2 OF THIS PLAN  ANY REFERENCE TO MAP IN THE TEXT MEANS THE DIAGRAM SHOWN ON THIS TITLE PLAN	
<b>Description of Land / Easement Information</b>  <b>COLOUR CODE</b> R = RED Y = YELLOW		THIS PLAN HAS BEEN PREPARED FOR THE LAND REGISTRY, LAND VICTORIA, FOR TITLE DIAGRAM PURPOSES AS PART OF THE LAND TITLES AUTOMATION PROJECT COMPILED: 25/10/2000 VERIFIED: P.C.	
LENGTHS ARE IN LINKS Metres = 0.3048 x Feet Metres = 0.201168 x Links		Sheet 1 of 2 sheets	

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TITLE PLAN

TP 665672Y

## LAND DESCRIPTION INCLUDING RESERVATIONS EXCEPTIONS CONDITIONS AND POWERS SHOWN ON THE CROWN GRANT

All THAT PIECE OF LAND in the said State containing five hundred and sixty acres and thirty perches more or less being Allotment two in the Parish of Lewsluk County of Grenville

and red delineated and colored yellow in the map in the margin hereof TOGETHER with the right to sink wells for water and to the use for all purposes of any wells and springs now or hereafter upon the said land as though this Grant had been made without any limitation as to depth PROVIDED that this Grant is made subject to—

- (a) the reservation to Us Our heirs and successors of—
  - (i) all gold silver uranium thorium and minerals within the meaning of the *Mines Act* 1958 and petroleum within the meaning of the *Petroleum Act* 1958 (hereinafter called "the reserved minerals");
  - (ii) rights of access for the purpose of searching for and obtaining the reserved minerals in any part of the said land;
  - (iii) rights for access and for pipe-lines works and other purposes necessary for obtaining and conveying on and from the said land any of the reserved minerals which is obtained in any part of the said land;
- (b) the right to resume the said land for mining purposes pursuant to section 205 of the *Land Act* 1958;
- (c) the right of any person being the holder of a miner's right or of a mining lease or mineral lease under the *Mines Act* 1958 or any corresponding previous enactment to enter on the said land and to mine for gold or minerals within the meaning of that Act and to erect and occupy mining plant or machinery thereon in the same manner and under the same conditions and provisions as those under which such a person has now the right to mine for gold and silver in and upon Crown lands provided that compensation as prescribed by Part II. of that Act is paid for surface damage to be done to the said land by reason of mining thereon.
- (d) the full and free right and liberty to and for the State Electricity Commission of Victoria its servants and agents to enter on the land delineated and colored red and carry out thereon such works as are necessary or incidental to the transmission of electricity across the said land and for that purpose without compensation to the grantee to exercise all or any of the powers conferred on the said Commission by Section 106(1) of the State Electricity Commission Act 1958.

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LENGTHS ARE IN  
LINKS

Metres = 0.3048 x Feet  
Metres = 0.201168 x Links

Sheet 2 of 2 sheets

FORM 13

APPLICATION BY A RESPONSIBLE AUTHORITY FOR THE  
MAKING OF A RECORDING OF AN AGREEMENT

Planning and Environment Act 1987



AG375292Q



Lodged by:  
Name: McKean Park Lawyers  
Phone: (03) 8621 2888  
Address: Level 11, 575 Bourke Street, Melbourne 3000  
Ref: Mr M Flynn:81831  
Customer Code: 1220D

The Authority having made an agreement referred to in Section 181(1) of the *Planning and Environment Act 1987* requires a recording to be made in the Register for the land.

Land: Volume 8504 Folio 504 and Volume 10978 Folio 376  
Authority: Minister for Planning OF LEVEL 17 & NICHOLSON STREET <sup>REA</sup>  
EAST MELBOURNE VIC. 3002  
Section and Act under which agreement was made: Section 173 of the *Planning and Environment Act 1987*.

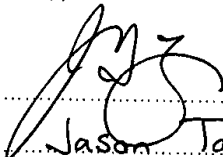
A copy of the agreement is attached to this application.

Signature for the Authority:

Name of Officer:

Position:

Date:

  
Jason Taylor

Manager Planning and Development

8 December 2008

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## Agreement

**AG375292Q**



## Section 173 Agreement

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Minister for Planning

Graeme Andrew Fagg

Mt Mercer Wind Farm Pty Ltd

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Contents

Table of contents

	<b>The agreement</b>	<b>1</b>
	<b>Operative part</b>	<b>3</b>
<b>1</b>	<b>Definitions and interpretation</b>	<b>3</b>
	1.1 Agreement components .....	3
	1.2 Definitions .....	3
	1.3 Interpretation .....	4
<b>2</b>	<b>Operation</b>	<b>4</b>
	2.1 Agreement to operate as section 173 agreement .....	4
	2.2 Proper law .....	5
	2.3 Commencement .....	5
	2.4 End of agreement .....	5
	2.5 Reading down and severability .....	5
<b>3</b>	<b>Owner's covenants</b>	<b>5</b>
	3.1 Acknowledged noise exceedance .....	5
	3.2 Shadow flicker .....	6
	3.3 Indemnity and release .....	6
<b>4</b>	<b>Owner must not assign or part with possession</b>	<b>6</b>
<b>5</b>	<b>GST</b>	<b>6</b>
	5.1 GST pass-on .....	6
	5.2 Tax invoice .....	7
<b>6</b>	<b>Dispute resolution</b>	<b>7</b>
	6.1 Procedure .....	7
<b>7</b>	<b>General provisions</b>	<b>8</b>
	7.1 Obligation to run with the land .....	8
	7.2 General acknowledgment .....	8
	7.3 Further documents .....	8
	7.4 Registration .....	8
	7.5 Notice .....	8
	7.6 Costs .....	8
	<b>Signing page</b>	<b>9</b>

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The agreement

Section 173 Agreement

Date ▶ 29 August 2008 GF



Between the parties

Minister Minister for Planning  
of Level 17, 8 Nicholson Street  
East Melbourne VIC 3002  
(Minister)

Owner Graeme Andrew Fagg  
of 189 Grahams Road  
Mt Mercer, Victoria 3352  
(Owner)

Permit Holder Mt Mercer Wind Farm Pty Ltd  
ABN 86 118 169 421  
of Unit 6, 3-5 Stephens Street  
Riddells Creek Vic 3431  
(MMWF)

- Background
- 1 The Owner is, at the date of this agreement, the registered proprietor of the Land.
  - 2 The Minister is the responsible authority under the Planning Scheme to issue and enforce the Permit.
  - 3 MMWF has requested the Owner to enter into an agreement with MMWF through which the Owner accepts:
    - predicted noise levels at the Dwellings and on the Land and the exceedance of the noise limits specified in the NZ Standard; and
    - if the Owner wishes to reduce the noise levels at the Dwellings below those predicted then the Owner may implement appropriate acoustic attenuation measures entirely at the Owner's own cost without recourse to MMWF; and
    - predicted shadow flicker at the Dwellings and on the Land and the exceedance of the shadow flicker limits specified in the PPGWEF
    - to work co-operatively with MMWF to identify any turbines which cause considerable shadow flicker to ensure there are no exceedances of the shadow flicker guidelines in the

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## The agreement

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PPGWEF.

- 4 Condition 16 of the Permit identifies that an agreement pursuant to Section 173 of the Act must be entered into with the Minister, MMWF and a landowner whereby the landowner accepts predicted noise levels, or agrees to implement acoustic attenuation measures to ensure a reasonable level of acoustic amenity and acknowledges that the operation of the Wind Energy Facility may exceed the Standard.
- 5 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.

---

The parties agree

as set out in the Operative part of this agreement, in consideration of, among other things, the mutual promises contained in this agreement.

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Operative part

1 Definitions and interpretation

1.1 Agreement components

This agreement includes any schedule.

1.2 Definitions

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



Term	Meaning
Act	<i>Planning and Environment Act 1987.</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: 1 a Saturday or Sunday; or 2 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 6.
Dwellings	means the dwellings on the Land.
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	(1) Crown Allotment 2, Parish Lawaluk being the land contained in certificate of title volume 8504 folio 504; and (2) Lot 2 on title plan TP897308 being the land contained in certificate of title 10978 folio 376
NZ Standard	the New Zealand Standard NZ6808:1998 'Acoustics – The Assessment and Measurement of Sound from Wind Turbines Generators'

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2 Operation

**AG375292Q**



Term	Meaning
Permit	the permit PL-SP/05/0321 to use and develop the Wind Energy Facility.
Planning Scheme	the Golden Plains Planning Scheme.
PPGWEF	means the 'Policy and planning guidelines for development of wind energy facilities in Victoria'.
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 to be constructed by MMWF on the Land and adjacent properties in accordance with the Golden Plains Planning Scheme.

**1.3 Interpretation**

- (a) In this agreement:
  - (1) headings and bold type are for convenience only and do not affect the interpretation of this agreement;
  - (2) words importing the singular include the plural and vice versa;
  - (3) words importing a gender include any gender;
  - (4) where a word or phrase has a particular meaning, other grammatical forms of that word or phrase have a corresponding meaning;
  - (5) a covenant or obligation on the part of two or more persons binds them jointly and severally;
  - (6) 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;
  - (7) 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.

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- (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.

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### 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 agreement between the parties and in accordance with the Act, or otherwise as provided for in this agreement.
- (b) If this agreement ends, the Minister 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 to be erected on the Land and adjacent properties by MMWF will generate noise in the indoor habitable areas of the Dwellings and the outdoor areas of the Dwellings, which from time to time may reach or exceed:
  - (1) background level (L95) by more than 5dBA; or
  - (2) a level of 40dBA L95; and
- (b) the sound level from the Wind Energy Facility at any relevant nominated wind speed will exceed the noise limits determined under the NZ Standard at the Dwellings on the Land;
- (c) if the Owner wishes to reduce the predicted noise levels inside the Dwellings then the Owner may wish to implement appropriate acoustic attenuation measures entirely at the Owner's own cost and without recourse to MMWF; and

**AG375292Q**

27/02/2009 \$99.90 173



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### 4 Owner must not assign or part with possession

- (d) even if noise attenuation measures are implemented by the Owner to improve acoustic amenity in relation to the indoor habitable areas of the Dwellings, the operation of the Wind Energy Facility may still generate noise in outdoor areas at the Land, which may from time to time exceed the NZ Standard.

### 3.2 Shadow flicker

- (a) The Owner acknowledges that the Wind Energy Facility to be erected on the Land and adjacent properties by MMWF will create shadow flicker at the Dwellings, which may approach the limit of 30 hours per year as set out in the PPGWEF and condition 21 of the Permit.
- (b) To reduce shadow flicker so that the limits described in clause 3.2(a) are not exceeded, the Owner must:
  - (1) give written notice to MMWF identifying the particular turbine and the time of day in which considerable shadow flicker is experienced at the Dwellings; and
  - (2) co-operate with MMWF in its efforts to reduce shadow flicker at the Dwellings through a controlled shut down procedure or any other wind energy facility operating procedure or other mitigation measure as determined by MMWF at its absolute discretion.

### 3.3 Indemnity and release

The Owner releases and indemnifies MMWF 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 or shadow flicker created by the development or use of the Wind Energy Facility and experienced by individuals at the Dwellings or on the Land.

## 4 Owner must not assign or part with possession

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The Owner must not, without the written consent of the Minister for Planning, allow the Dwellings to be occupied by any person other than a person (including any family member of such a person):

- (a) with an ownership interest in the Land;
- (b) with a management interest in either the Land or the land on which the Wind Energy Facility is located; or
- (c) who receives or has received a financial benefit as a result of the location of the Wind Energy Facility on the Land and adjacent properties.

## 5 GST

---

### 5.1 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:

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## 6 Dispute resolution

- (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.

### 5.2 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.

## 6 Dispute resolution

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### 6.1 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:
  - (1) a party gives a Dispute Notice to the other party; and
  - (2) 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 6.1, will be appointed on the basis that:
  - (1) the Expert must be qualified and skilled in the areas primarily in dispute;
  - (2) the Expert must determine the dispute and give written notice of that determination to the parties within 20 Business Days of appointment;
  - (3) the Expert will act as an Expert and not as an arbitrator in resolving the dispute or difference;
  - (4) the decision of the Expert will be final and binding on all the parties;
  - (5) the Expert may engage other consultants to advise the Expert if it is considered necessary; and
  - (6) 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.

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**AG375292Q**



**7 General provisions**

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**7.1 Obligation to run with the land**

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.

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 give effect, do all acts and sign all documents requiring those successors to give effect to this agreement.

**7.2 General acknowledgment**

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

**7.3 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.

**7.4 Registration**

Without the limiting the scope and generality of clause 7.3, the parties must do all things necessary to enable the Minister, in its discretion, to register this agreement with the Registrar of Titles in accordance with section 181 of the Act.

**7.5 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.

**7.6 Costs**

MMWF must pay all reasonable costs and expenses of the Minister (including without limitation legal costs and expenses) of and incidental to the negotiation, preparation, stamping and registration of this agreement.

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Signing page

Executed as an agreement

Signed by  
Graeme Andrew Fagg

sign here ▶ Graeme A Fagg  
Graeme Andrew Fagg

print name \_\_\_\_\_

in the presence of

sign here ▶ Dorothy J. Fagg  
Witness

print name DOROTHY F. FAGG

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Signed by  
**Mt Mercer Wind Farm Pty Ltd**  
by

**AG375292Q**

27/02/2009 \$99.90 173



sign here ▶ [Signature]  
Company Secretary/Director  
print name K. H. KRAMPZ

sign here ▶ [Signature]  
Director  
print name G. Heinderhau

Executed by the  
**Minister for Planning**  
By being Signed Sealed and Delivered  
by the said **The Honourable Justin Mark Madden** in Victoria

sign here ▶ [Signature]  
Minister for Planning  
print name Justin Mark Madden

in the presence of

sign here ▶ [Signature]  
Witness  
print name JAMES DYER