

AL060591S



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Application to record covenant

Section 88(1) Transfer of Land Act 1958

Lodged by:

Name: ~~Attens~~ Bald Hills Wind Farm Pty Ltd
Phone: +61 3 ~~0613 8198~~ 9605 8872
Address: ~~101~~¹²⁰ Collins Street, Melbourne
Reference: MJDM: MJGM:120168066
Customer Code: ~~0951H~~ 16127J

The applicant applies for the recording in the Register of the covenant in relation to the burdened land.

Burdened land: *That part of Certificate of Title Volume 7399 Folio 750 shown on the plan attached to the covenant* ^{hatched} ~ j. m. w
13/5/14

Applicant: *Ellerslie Park Pty Ltd (ACN 004 969 171) of 330 Harding Lawson Road, Fish Creek, Victoria*

Benefited land: *Certificate of Title Volume 9698 Folio 880.*

Covenant: *A copy of the covenant is attached to this application*

Date: **6 MAY 2014**

Signature of applicant

or

Signature of Australian Legal Practitioner under the *Legal Profession Act 2004* for applicant



CLIVE WILLIAM WHITE B. JURIS LL B
65 Main Street Foster 3960 Victoria
An Australian Legal Practitioner
(within the meaning of the
Legal Profession Act 2004).

or

Signature of Licensed Conveyancer under the *Conveyancers Act 2006* for applicant

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Deed of Restrictive Covenant

Ellerslie Park Pty Ltd

Bald Hills Wind Farm Pty Ltd

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Property: 330 Harding Lawson Road, Fish Creek
Victoria

Allens
101 Collins Street
Melbourne VIC 3000
Tel +61 3 9614 1011
Fax +61 3 9614 4661
www.allens.com.au

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Deed of Restrictive Covenant

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Deed of Restrictive Covenant

Date 5 MAY 2014

Parties

- 1. **Ellerslie Park Pty Ltd** (ACN 004 969 171) of 330 Harding Lawson Road, Fish Creek, Victoria (the **Covenantor**)
- 2. **Bald Hills Wind Farm Pty Ltd** (ACN 117 264 712) of Level 15, 120 Collins Street, Melbourne Victoria (the **Covenantee**)

Recitals

- A The Covenantor is the registered proprietor of the Burdened Land.
- B The Covenantee is the registered proprietor of the Benefited Land which it uses for the purposes of the operation of the Wind Energy Facility.
- C The Covenantor has agreed with the Covenantee to grant a restrictive covenant over the Burdened Land on the terms and conditions contained in this Deed.

It is agreed as follows

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Benefited Land means the land comprised in Certificate of Title Volume 9698 Folio 880.

Burdened Land means that part of Crown Allotment 40A Parish of Tarwin South (which is part of the Land) shown hatched on the Plan.

Dwelling has the meaning given in the South Gippsland Planning Scheme.

Land means Crown Allotments 40 and 40A Parish of Tarwin South, being the whole of the land described in Certificate of Title Volume 7399 Folio 750.

NZ Standard means the New Zealand Standard NZ6808:1998 'Acoustics – The Assessment and Measurement of Sound from Wind Turbine Generators'.

Plan means the plan contained in Schedule 1.

Planning Permits means the planning permits TRA/03/002 and 2003/563 issued by the Minister for Planning and dated 19 August 2004, and any amendments to the planning permits authorised from time to time by the Minister for Planning and includes the EPBC approval dated 21 December 2006 issued by the Federal Minister for the Environment, as amended from time to time.

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Term means the period commencing on the date of this Deed and expiring on 7 February 2061.

Wind Energy Facility means the wind energy facility known as the Bald Hills Wind Farm which is the subject of the Planning Permits.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this Deed.
- (f) A reference to an agreement or document (including a reference to this Deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document.
- (g) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form but excludes a communication by electronic mail.
- (h) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (i) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (k) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (l) A reference to *dollars* and \$ is to Australian currency.
- (m) A reference to a *right* or *obligation* of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).

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Deed of Restrictive Covenant

- (n) Mentioning anything after *includes, including, for example,* or similar expressions, does not limit what else might be included.
- (o) Nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or a relevant part of it.

2. Acknowledgment

The Covenantor:

- (a) acknowledges and agrees that:
 - (i) the Land comprises part of the development site as contemplated by the Planning Permits; and
 - (ii) the Planning Permits and the Native Vegetation Management Plan prepared by the Covenantee under Planning Permit 2003/563 apply to the Land; and
- (b) accepts that if a Dwelling is constructed on the Burdened Land then:
 - (i) the predicted noise levels from the Wind Energy Facility in relation to that Dwelling may not comply with the NZ Standard and, in particular, may exceed the sound levels specified in condition 19 of Planning Permit TRA/03/002; and
 - (ii) that Dwelling may experience blade shadow flicker in excess of 30 hours per annum.

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3. Restrictive Covenant

The Covenantor in consideration of the sum of \$1.00 paid by the Covenantee to the Covenantor (which payment is acknowledged by the Covenantor), covenants with the Covenantee and its successors and transferees that during the Term:

- (a) it will not build, erect or construct or allow to be built, erected or constructed on the Burdened Land or any part thereof, any Dwelling; and
- (b) it will not use the Burdened Land or any part of the Burdened Land or permit the Burdened Land or any part of the Burdened Land to be used for a Dwelling.

4. Release

The Covenantor releases to the full extent permitted by Law the Covenantee from, and covenants that it will not bring any action or claim against the Covenantee for, any losses, damages, liabilities, actions, suits, claims, demands, costs and expenses of every kind which relate to:

- (a) the amenity of any Dwelling erected or constructed on the Burdened Land; or

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Deed of Restrictive Covenant

- (b) any noise, shadow flicker, undue blade glint or other form of nuisance arising from the Wind Energy Facility and experienced by people at any Dwelling erected or constructed on the Burdened Land.

5. Covenants run with the land

That parties agree that the covenants referred to in this Deed will take effect as separate and several covenants with the intent that:

- (a) the benefit of those covenants will attach to and run at law and in equity with the Benefited Land and every part of the Benefited Land for the benefit of the Covenantee, its successors and transferees; and
- (b) the burden of those covenants will be annexed to and run at law and in equity with the Burdened Land and every part of the Burdened Land for the Covenantor, its successors and transferees.

6. Expiration of covenants

The covenants referred to in this deed will expire on the expiration of the Term.

7. No Waiver

A failure to exercise or a delay in exercising any right, power or remedy under this Deed does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

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8. Further Assurances

Each party must do anything necessary (including executing agreements and documents) to give full effect to this Deed and the transactions contemplated by it. In particular, the Covenantor will provide all necessary assistance to enable the registration of this Deed on title to the Burdened Land, including making the Certificate of Title for the Burdened Land available at the Land Registry of Victoria.

9. Severability of provisions

Any provision of this Deed that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Deed nor affect the validity or enforceability of that provision in any other jurisdiction.

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Deed of Restrictive Covenant

10. Governing Law and Jurisdiction

This Deed is governed by the laws of Victoria. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

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Schedule 1

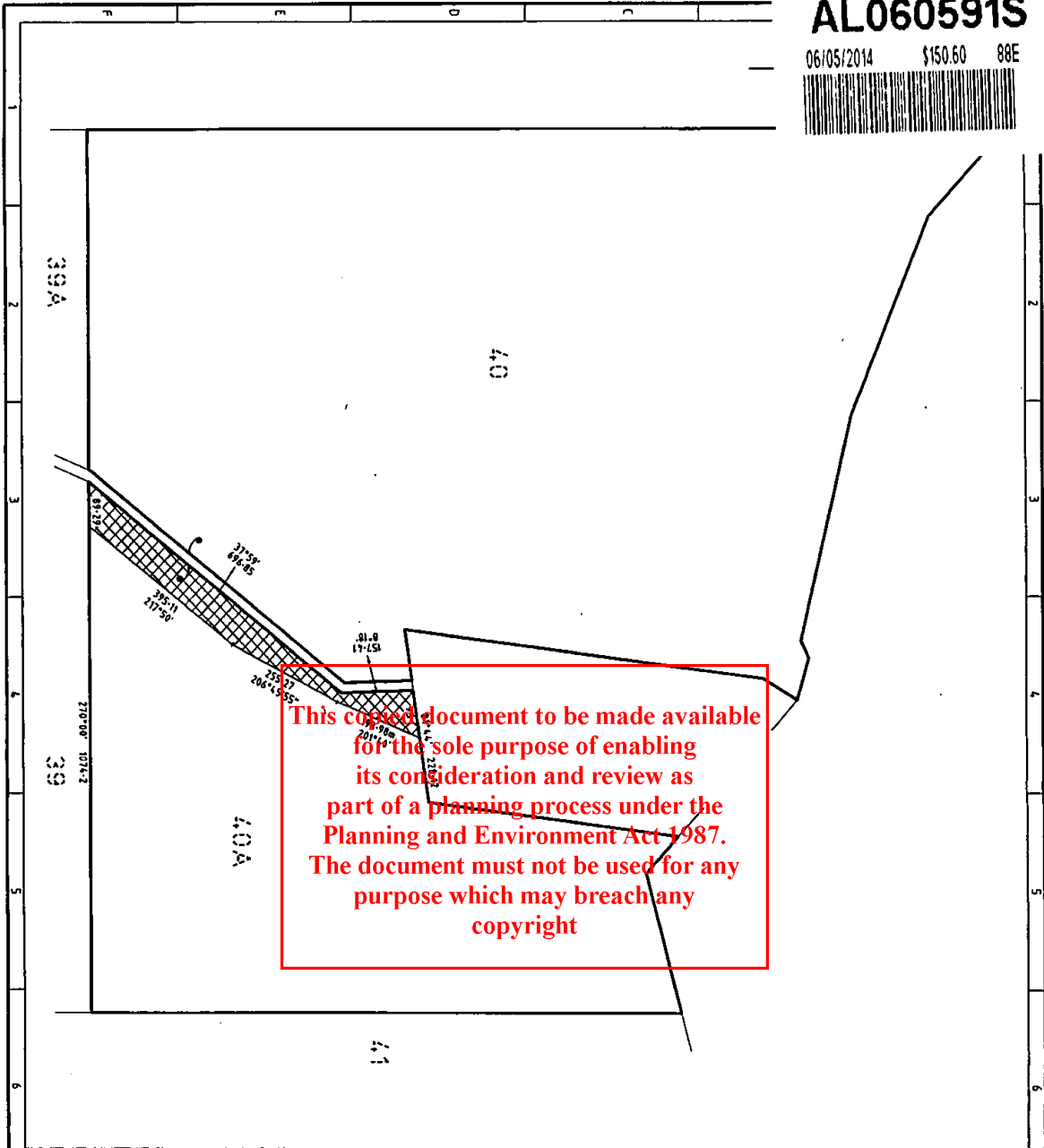
Plan

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OFFICE USE ONLY							
NOTATIONS	RESTRICTION AREA IS DEFINED AS THE AREA SHOWN CROSS HATCHED. RESTRICTION BOUNDARIES SHOWN ARE DERIVED FROM INFORMATION SUPPLIED BY BALD HILLS WIND FARM PTY LTD. SERVICANT TITLE SHOWN ENCLOSED BY THICK CONTINUOUS LINES. CT VOL. 7399 FOL. 750 - CROWN ALLOTMENT 40 AND 40A THIS PLAN IS NOT BASED ON SURVEY. CERTIFICATION BY SURVEYOR I, BRENT KEVIN OGRADY OF 765 GLENERRIE ROAD, HAMTHORN 3122 CERTIFY THAT THIS PLAN CORRECTLY REPRESENTS THE INFORMATION OBTAINED BY ME FROM THE SOURCES INDICATED ON THIS PLAN.						
	DATE: 06/08/2013 SURVEYORS REF: CA40A-3 VERSION 2 LICENSED SURVEYOR SURVEYING ACT 2004						
	PLAN FOR CREATION OF RESTRICTION						
	COUNTY BULN BULN PARISH TARWIN SOUTH CROWN ALLOTMENTS 40 & 40A						
	NUMBER OF SHEETS IN PLAN : 1 NUMBER OF THIS SHEET : 1 SCALE ORIGINAL SCALE SIZE 1:8000 SHEET SIZE A3 LENGTHS ARE IN METRES OFFICE USE ONLY						
VICTORIA	7	8	7	6	5	4	3

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Deed of Restrictive Covenant

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Executed and delivered as a deed in Victoria

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **Ellerslie Park Pty Ltd:**

Graham Hoskin
Director Signature

GRAHAM DONALD HOSKIN.
Print Name

Sue Hoskin
Director/Secretary Signature

SUE HOSKIN
Print Name

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **Bald Hills Wind Farm Pty Ltd:**

Masao
Director Signature

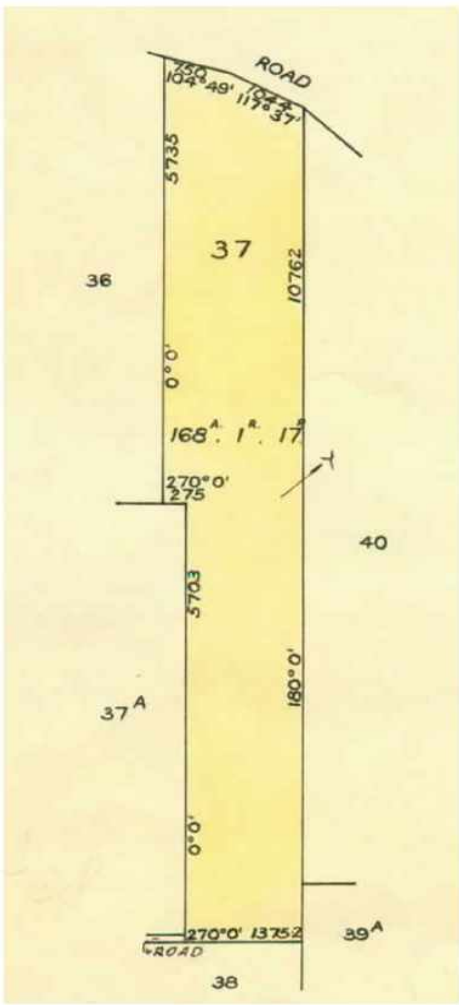
Masao Sakimoto
Print Name

渡邊 寛明
Director/Secretary Signature

Noriaki Watanobe
Print Name

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TITLE PLAN	EDITION 1	TP 439130B
<p>Location of Land</p> <p>Parish: TARWIN SOUTH Township: Section: Crown Allotment: 37 Crown Portion:</p> <p>Last Plan Reference: Derived From: VOL 8941 FOL 406 Depth Limitation: 50 FEET</p>	<p>Notations</p> <p>SUBJECT TO THE RESERVATIONS EXCEPTIONS CONDITIONS AND POWERS CONTAINED IN CROWN GRANT VOL. 8941 FOL. 406 AND NOTED ON SHEET 2 OF THIS PLAN</p> <p>ANY REFERENCE TO MAP IN THE TEXT MEANS THE DIAGRAM SHOWN ON THIS TITLE PLAN</p>	
<p>Description of Land / Easement Information</p> 		<p>THIS PLAN HAS BEEN PREPARED FOR THE LAND REGISTRY, LAND VICTORIA, FOR TITLE DIAGRAM PURPOSES AS PART OF THE LAND TITLES AUTOMATION PROJECT</p> <p>COMPILED: 15/05/2000 VERIFIED: C.L.</p> <p>COLOUR CODE Y = YELLOW</p> <div style="border: 2px solid red; padding: 10px; margin: 10px 0;"> <p>This copied document to be made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any copyright</p> </div> <p style="text-align: center; font-size: 24px; font-weight: bold; color: red;">ADVERTISED PLAN</p>
<p>LENGTHS ARE IN LINKS</p>	<p>Metres = 0.3048 x Feet Metres = 0.201168 x Links</p>	<p>Sheet 1 of 2 sheets</p>

TITLE PLAN	TP 439130B
LAND DESCRIPTION INCLUDING RESERVATIONS EXCEPTIONS CONDITIONS AND POWERS SHOWN ON THE CROWN GRANT	
<p style="text-align: right;">All THAT piece of land in the said State containing one hundred and sixty-eight acres one rood and seventeen perches more or less being Allotment thirty-seven in the Parish of Tarwin South County of Buln Buln —————</p> <p>delineated and colored yellow in the map in the margin hereof PROVIDED that this Grant is made subject to—</p> <p>(a) the reservation to Us Our heirs and successors of—</p> <p style="padding-left: 20px;">(i) all gold silver uranium thorium and minerals within the meaning of the <i>Mines Act 1958</i> and petroleum within the meaning of the <i>Petroleum Act 1958</i> (hereinafter called "the reserved minerals");</p> <p style="padding-left: 20px;">(ii) rights of access for the purpose of searching for and obtaining the reserved minerals in any part of the said land ;</p> <p style="padding-left: 20px;">(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 ;</p> <p>(b) the right to resume the said land for mining purposes pursuant to section 205 of the <i>Land Act 1958</i> ;</p> <p>(c) the right of any person being the holder of a miner's right or of a mining lease or mineral lease under the <i>Mines Act 1958</i> 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.</p>	
<p>This copied document to be made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any copyright</p>	
<p>ADVERTISED PLAN</p>	
LENGTHS ARE IN LINKS	Metres = 0.3048 x Feet Metres = 0.201168 x Links
Sheet 2 of 2 sheets	

TITLE PLAN		EDITION 1	TP 759591B
Location of Land Parish: TARWIN SOUTH Township: Section: Crown Allotment: 40, 40A Crown Portion: Last Plan Reference: Derived From: VOL 7399 FOL 750 Depth Limitation: 50 FEET		Notations SUBJECT TO THE RESERVATIONS EXCEPTIONS CONDITIONS AND POWERS CONTAINED IN CROWN GRANT VOL. 7399 FOL. 750 AND NOTED ON SHEET 2 OF THIS PLAN ANY REFERENCE TO MAP IN THE TEXT MEANS THE DIAGRAM SHOWN ON THIS TITLE PLAN	
Description of Land / Easement Information		THIS PLAN HAS BEEN PREPARED FOR THE LAND REGISTRY, LAND VICTORIA, FOR TITLE DIAGRAM PURPOSES AS PART OF THE LAND TITLES AUTOMATION PROJECT COMPILED: 27/11/2002 VERIFIED: L.S.	
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 759591B
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**LAND DESCRIPTION INCLUDING RESERVATIONS EXCEPTIONS
CONDITIONS AND POWERS SHOWN ON THE CROWN GRANT**

**THAT PIECE OF LAND in the said State containing
six hundred and twenty-eight acres and twenty-three perches more or less being Allotments forty and forty^A
in the Parish of Tarwin South County of Buln Buln**

delineated with the measurements and abutments thereof in the map drawn in the margin of these presents and therein colored yellow PROVIDED nevertheless that the grantee shall be entitled to sink wells for water and to the use and enjoyment of any wells or springs of water upon or within the boundaries of the said land for any and for all purposes as though he held the land without limitation as to depth EXCEPTING nevertheless unto Us Our heirs and successors all gold and silver and minerals as defined in the *Mines Act* 1928 in upon or under or within the boundaries of the land hereby granted AND reserving to Us Our heirs and successors free liberty and authority for Us Our heirs and successors and Our and their licensees agents and servants at any time or times hereafter to enter upon the said land and to search and mine therein for gold silver and minerals as aforesaid and to extract and remove therefrom any such gold silver and minerals and to search for and work dispose of and carry away the said gold silver and minerals lying in upon or under the land hereby granted and for the purposes aforesaid to sink shafts make drives erect machinery and to carry on any works and do any other things which may be necessary or usual in mining and with all other incidents that are necessary to be used for the getting of the said gold silver and minerals and the working of all mines seams lodes and deposits containing such gold silver and minerals in upon or under the land hereby granted AND ALSO reserving to Us Our heirs and successors—

- (i) all petroleum as defined in the *Mines (Petroleum) Act* 1935 on or below the surface of the said land and
- (ii) the right of access for the purpose of searching for and for the operations of obtaining such petroleum in any part or parts of the said land and
- (iii) rights of way for access and for pipe-lines and other purposes necessary for obtaining and conveying such petroleum in the event of such petroleum being obtained in any part or parts of the said land

PROVIDED ALWAYS that the said land is and shall be subject to be resumed for mining purposes under Section 168 of the *Land Act* 1928. AND PROVIDED also that the said land is and shall be subject to 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* 1928 or any corresponding previous enactment to enter thereon and to mine for gold silver or minerals within the meaning of the said Act and to erect and occupy mining plant or machinery thereon in the same manner and to the same extent and provisions as those to which such person would be entitled to mine for gold and silver in and upon Crown lands.

PROVIDED FURTHER and this grant is upon this express condition that neither the grantee nor any one claiming from through or under him shall claim or be entitled to any compensation in respect of damage to be done to the land hereby granted or to any part thereof or to any improvements thereon by mining therein or thereon within the meaning of the *Mines Act* 1928 or of any Act for the time being in force relating to mining or by the cutting or removing of any live or dead timber thereon or therefrom for mining purposes within the meaning of the said Act or for any purpose authorized by the said Act.

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AK085738G



FORM 18

Section 181

**APPLICATION BY A RESPONSIBLE AUTHORITY FOR THE MAKING OF A
RECORDING OF AN AGREEMENT
Planning and Environment Act 1987**

Lodged by: ~~DPCD Legal~~ Bald Hills Wind Farm Pty Ltd

Name: ~~Fania Heber~~ Brendan Wood

Phone: ~~9208 3987~~ 03 9605 8889

Address: ~~Level 14, 1 Spring St, MELBOURNE VIC 3002~~ Level 40, 120 Collins St
Melbourne VIC 3000

Ref: 11/012547 Customer Code:

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 8941 Folio 406

Authority: Minister for Planning, Level 7, 1 Spring St, MELBOURNE VIC 3000

Section and Act under which agreement made: section 173 *Planning and Environment Act 1987*

A copy of the Agreement is attached to this Application.

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Signature for the Authority:

Name of Officer: Jane Monk

Date: 9 / 10 / 2012

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Section 173 Landowner Agreement for Native Vegetation Offsets

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This Agreement is made the *9th* day of *October* 2012
pursuant to Section 173 of the *Planning and Environment Act 1987*
(the Act)

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Allens
101 Collins Street
Melbourne VIC 3000
Tel +61 3 9614 1011
Fax +61 3 9614 4661
www.allens.com.au

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Section 173 Landowner Agreement for Native Vegetation Offsets

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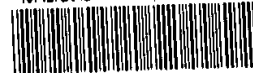
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18/12/2012 \$110.30 173



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Section 173 Landowner Agreement for Native Vegetation Offsets

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Date

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18/12/2012 \$110.30 173



Parties

1. **Minister for Planning** of Level 7, 1 Spring Street, Melbourne in the State of Victoria (the *Responsible Authority*).
2. **Cameron Rodney Delbridge** of 115 Old Fish Creek Yanakie Road, Fish Creek (the *Owner*).
3. **Bald Hills Wind Farm Pty Ltd** (ACN 117 264 712) of Level 40, 120 Collins Street, Melbourne (*BHWF*).

Recitals

- A The Owner is the registered proprietor or is entitled to be registered as the proprietor of an estate in fee simple of the Subject Land.
- B The Minister for Planning issued Planning Permit PA/03/002 for use and development of the Bald Hills Wind Farm on land near the Subject Land (*Wind Farm Planning Permit*) and a second Planning Permit 2003/563 allowing the removal of native vegetation required for the wind farm (*Wind Farm Vegetation Removal Permit*).
- C In accordance with Condition 16 of the Wind Farm Planning Permit, and Condition 4 of the Wind Farm Vegetation Removal Permit, the parties enter into this Agreement to provide for Native Vegetation Offsets whereby:
- (a) BHWF will purchase from the Owner the Offsets located on the Subject Land; and
 - (b) BHWF undertakes to manage the Offset according to the terms and conditions of this Agreement and in compliance with the conditions of the Wind Farm Planning Permits.

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It is agreed as follows.

2. Definitions

In this Agreement, the words and expressions set out in this clause have the following meaning unless the context admits otherwise:

Act means the *Planning and Environment Act 1987* (Vic).

Section 173 Landowner Agreement for Native Vegetation Offsets

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Agreement means this deed and any agreement executed by the parties expressed to be supplemental to this deed.

Business Day means any day except Saturday or Sunday or a day that is a public holiday in Melbourne.

DSE means the Victorian Department of Sustainability and Environment.

Mortgagee means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as Mortgagee of the Subject Land or any part of it.

Offsets means the native vegetation offset requirements of the Wind Farm Planning Permits and to the satisfaction of DSE.

Native Vegetation Management Plan means the native vegetation management plan prepared by BHWF and approved by DSE in relation to the Offsets and endorsed by the Responsible Authority under the Wind Farm Vegetation Removal Planning Permit.

Owner means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple of the Subject Land or any part of it and includes a Mortgagee in possession.

Planning Scheme means the South Gippsland Planning Scheme and any successor instrument or other planning scheme which applies to the Subject Land.

Responsible Authority means the Minister for Planning of the South Gippsland Shire Council as applicable at the time of its successor as the authority responsible for administering and enforcing the Wind Farm Planning Permits, this Agreement or the Planning Scheme and includes its agents, officers, employees, servants, workers and contractors.

Subject Land means the land known as 575 Bald Hills Road, Tarwin Lower described in Certificate of Title Volume 8941 Folio 406 and any reference to the Subject Land in this Agreement includes any lot created by the subdivision of the Subject Land or any part of it.

Wind Farm Planning Permits means:

- (a) the Wind Farm Planning Permit; and
- (b) the Wind Farm Vegetation Removal Permit.

3. Interpretation

In this Agreement, unless the context indicates otherwise:

- (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 their successors in law.
- (d) If a party consists of more than one person this Agreement binds them jointly and each of them severally.

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Section 173 Landowner Agreement for Native Vegetation Offsets

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- (e) A reference to a planning scheme includes any amendment, consolidation or replacement of such a scheme and any document incorporated by reference into such a scheme.
- (f) A reference to a statute includes any statutes amending, consolidating or replacing same and any subordinate instruments made under such statutes.
- (g) Where in this Agreement the Responsible Authority may exercise any power, duty or function, that power may be exercised on behalf of the Responsible Authority by an authorised or delegated officer.
- (h) All headings are for ease of reference only and shall not be taken into account in the construction or interpretation of this Agreement.
- (i) The recitals to this Agreement are and will be deemed to form part of this Agreement including any terms defined within the Recitals.
- (j) A reference to the Owner includes its officers, employees, agents, servants, workers and contractors.
- (k) A reference to the Responsible Authority includes its agents, officers, employees, servants, workers and contractors.
- (l) The obligations of the Owner under this Agreement, will take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land provided that if the Subject Land is subdivided, this Agreement must be read and applied so that each subsequent Owner of a lot is only responsible for those covenants and obligations which relate to that Owner's lot.
- (m) Any monetary amount in this Agreement is in Australian Dollars.

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4. Agreement under Section 173 of the Act and intention of the parties

- (a) The parties acknowledge and agree that, without limiting or restricting the 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.
- (b) The Owner's obligations under this Agreement will take effect as separate and several covenants which are annexed to and run with the Subject Land at law and equity, provided that if the Subject Land is subdivided, this Agreement must be read and applied so that each subsequent owner of a lot is only responsible for those covenants and obligations which relate to that owner's lot.

5. Commencement of Agreement

Unless otherwise provided in this Agreement, this Agreement commences from the date of this Agreement.

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Section 173 Landowner Agreement for Native Vegetation Offsets

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6. Acknowledgement and Agreement

The parties acknowledge and agree that the preparation and approval of the Native Vegetation Management Plan, and the entering into and ultimate registration of this Agreement together satisfies the Offset requirements in the Wind Farm Planning Permits.

7. Native Vegetation Obligations of BHWF

- (a) BHWF covenants and agrees with the Owner that, with respect to the Subject Land, it will at all times:
 - (i) carry out the works and activities on the Subject Land in accordance with the Native Vegetation Management Plan;
 - (ii) fence, protect and manage the offsets on the Subject Land in accordance with the Native Vegetation Management Plan; and
 - (iii) ~~implement and comply with all provisions, requirements and recommendations contained in the Native Vegetation Management Plan within the timeframes set out in the Native Vegetation Management Plan and the Wind Farm Planning Permits.~~

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- (b) ~~To the extent of any inconsistency between the obligations set out in the Native Vegetation Management Plan and the obligations set out in this Agreement, the Native Vegetation Management Plan will prevail.~~

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8. Native Vegetation Obligations of the Owner

- (a) The Owner covenants and agrees with BHWF, with respect to the Subject Land, it will at all times:
 - (i) carry out any works and activities on the Subject Land in accordance with the Native Vegetation Management Plan; and
 - (ii) allow BHWF and its agents and contractors access to the Subject Land to implement the requirements and recommendations contained in the Native Vegetation Management Plan within the timeframes set out in the Native Vegetation Management Plan and the Wind Farm Planning Permits.
- (b) To the extent of any inconsistency between the obligations set out in the Native Vegetation Management Plan and the obligations set out in this Agreement, the Native Vegetation Management Plan will prevail.
- (c) The Owner releases and indemnifies BHWF and the Responsible Authority from and against any costs, expenses, loss, claim, notices, liabilities, proceedings or actions arising in relation to the Subject Land.

Section 173 Landowner Agreement for Native Vegetation Offsets

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9. Further Obligations of the Owner

The Owner further agrees that:

(a) Notice and Registration

The Owner must bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns.

(b) Mortgagee to be Bound

The Owner covenants to obtain the consent of any mortgagee to be bound by the covenants in this Agreement if the mortgagee becomes Mortgagee in possession of the Subject Land.

(c) Registration of Agreement

The Owner consents to the Responsible Authority making an application to the Registrar of Titles to make a recording of this Agreement on the Certificate of Title to the Subject Land in accordance with Section 181 of the Act, and will do all things necessary to enable the Responsible Authority to make an application, including the signing of any further agreement, acknowledgement or other document, and making the Certificate of Title for the Subject Land available at the Land Registry of Victoria.

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10. FIRB Approval

(a) This Agreement is subject to and conditional upon BHWF obtaining all necessary approvals under the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

(b) If BHWF does not obtain such approval, BHWF may terminate this Agreement by notice in writing to the Owner and the Responsible Authority.

11. Costs to be Paid

(a) BHWF must pay immediately on demand the reasonable costs and expenses (including legal expenses) of the Responsible Authority and the Owner incidental to the preparation, review, execution and registration of this Agreement.

(b) BHWF must pay its own costs and expenses (including legal expenses) incidental to the preparation, review, execution and registration of this Agreement.

12. Further Assurance

The parties to this Agreement must do or cause to be done all things that are reasonably necessary to give effect to this Agreement.

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Section 173 Landowner Agreement for Native Vegetation Offsets

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13. Agreement Runs with the Subject Land

The parties acknowledge and agree that the obligations in this Agreement take effect as covenants annexed to the Subject Land that run at law and in equity with Subject Land and bind the Owner.

14. Owner's Warranties

- (a) Without limiting the operation or effect which this Agreement has, the Owner warrants that apart from the Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.
- (b) Despite (a) above, the Owner may enter into relations with other parties to locate additional offsets on the Subject Land provided always that:
 - (i) such offsets are additional to those provided to BHWF pursuant to this Agreement; and
 - (ii) the provision of additional offsets on the Subject Land is consistent with the Owner's other obligations in this Agreement.

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15. Planning Objectives

The parties acknowledge that the provisions of this Agreement are intended to achieve or advance the objectives of Planning in Victoria as set out in the Act and the objectives of the Planning Scheme.

16. Successors in Title

Without limiting the operation or effect which this Agreement has, the Owner must ensure that, until such time as a memorandum of this Agreement is registered on the title to the Subject Land, its successors in title must be required to:

- (a) give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
- (b) execute a deed agreeing to be bound by the terms of this Agreement.

17. GST

17.1 Recovery of GST

If GST is payable, or notionally payable, on a supply made under or in connection with this Agreement, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided.

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This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

17.2 Liability net of GST

Where any indemnity, reimbursement or similar payment under this Agreement is based on any cost, expense or other liability, it shall be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.

17.3 Adjustment events

If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.

17.4 Survival

This clause will not merge upon completion and will continue to apply after expiration or termination of this Agreement.

17.5 Definitions

Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST law (as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)) shall have the same meaning in this clause.

18. General Matters

18.1 Service of Notice

A notice or other communication required or permitted to be served by a party on another party shall be in writing and may be served:

- (a) by delivering it personally on that party;
- (b) by sending it by pre paid post, addressed to that party at the address set out in this Agreement or subsequently notified to each party from time to time; or
- (c) by sending it by facsimile provided that a communication sent by facsimile shall be confirmed immediately in writing by the sending party by hand delivery or pre paid post.

18.2 Time of Service

A notice or other communication is deemed served:

- (a) if delivered personally, on the next following Business Day;
- (b) if posted within Australia to an Australian address, two (2) Business Days after the date of posting and in any other case, seven (7) Business Days after the date of posting;

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- (c) if sent by facsimile, on the next following Business Day unless the receiving party has requested retransmission before the end of that day; or
- (d) if received after 6.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

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19. No Waiver

Any time or other indulgence granted by the Responsible Authority to the Owner or any variation of the terms and conditions of this Agreement or any judgement or order obtained by the Responsible Authority against the Owner will not in any way amount to a waiver of any of the rights or remedies of the Responsible Authority in relation to the terms of this Agreement.

20. Jurisdiction

For the purposes of this Agreement, the parties acknowledge that they are subject to the jurisdiction of the Act and the Victorian Courts for the enforcement of this Agreement.

21. Severability

If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it shall be severed and the other provisions of this Agreement shall remain operative.

22. No Fettering of Responsible Authority's Powers

The parties acknowledge and agree that this Agreement does not fetter or restrict the power or discretion of the Responsible Authority to make any decision or impose any requirements or conditions in connection with the granting of any planning approval or certification of any plans of subdivision applicable to the Subject Land or relating to any use or development of the Subject Land.

23. Amendment

Subject to the consent of the Minister responsible for administering the Act, the parties may agree in writing to amend this Agreement.

24. Ending of Agreement

- (a) This Agreement will come to an end on the earlier of:
 - (i) BHWF advising the Responsible Authority and the Owner in writing that BHWF will not exercise its rights to remove native vegetation granted under the Wind Farm Planning Permits, and that therefore the Offsets are not required;

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- (ii) the expiry of the Wind Farm Planning Permits; and
 - (iii) the agreement between the parties in writing.
- (b) Once this Agreement ends, the Responsible Authority will, as soon as practicable following a request from the Owner and at the cost of the Owner, make application to the Registrar of Titles under Section 183(2) of the Act to cancel the recording of this Agreement on the register.

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Section 173 Landowner Agreement for Native Vegetation Offsets

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Executed and delivered as a deed in Victoria

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Signed by Jane Monk, Director, ~~State~~ ^{Statutory} Planning Services, under delegation from the Minister for Planning in the presence of:



Lyn Mitchell

Signature of witness

Jane Monk

Signature of delegate

LYN MITCHELL

Full name of witness (print)

JANE MONK

Full name of delegate (print)

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Executed as a deed in accordance with section 127 of the Corporations Act 2001
Bald Hills Windfarm Pty Ltd
264 712

Director Signature

Ryotaro Sumi

Print Name

Director/Secretary Signature

Junichi Yamada

Print Name

Signed Sealed and Delivered by Cameron Rodney Delbridge in the presence of:

[Signature]

Witness Signature

Matthew Croome

Print Name

[Signature]

Signature

Section 173 Landowner Agreement for Native Vegetation Offsets

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Consent of Mortgagees

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Signed by Rabobank Australia Limited by its attorneys LYNDALL JAYNE VINES (Senior Manager) and APRIL ROSEMARY CHARLOTTE POPHAM (Manager) who respectively state at the time of executing this instrument they have no notice of the revocation of the Power of Attorney registered number BOOK 077, PAGE 007, ITEM 30 under the authority of which they have executed this instrument.

Lyndall Jayne Vines

April Rosemary Charlotte Popham

WITNESSED

noel can jayne vines date

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I certify that this is a true copy of the original document produced to me on 12/11/2012

BRENDAN MICHAEL WOOD
of 101 Collins Street, Melbourne
Victoria 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Act 2004

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

VOLUME 08941 FOLIO 406

Security no : 124119304116R

Produced 24/10/2024 03:46 PM

CROWN GRANT

LAND DESCRIPTION

Crown Allotment 37 Parish of Tarwin South.

REGISTERED PROPRIETOR

Estate Fee Simple

Sole Proprietor

CAMERON RODNEY DELBRIDGE of OLD FISH CREEK YANAKIE RD FISH CREEK
R818047D 12/03/1992

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE S655407V

PRIMARY INDUSTRY BANK OF AUSTRALIA LTD
VARIATION OF MORTGAGE AC943423W 25/06/2004

CAVEAT AF868874C 27/05/2008

Caveator

BALD HILLS WIND FARM PTY LTD

Grounds of Claim

LEASE WITH THE FOLLOWING PARTIES AND DATE.

Parties

THE REGISTERED PROPRIETOR(S)

Date

02/06/2007

Estate or Interest

LEASEHOLD ESTATE

Prohibition

UNLESS AN INSTRUMENT IS EXPRESSED TO BE SUBJECT TO MY/OUR CLAIM

Lodged by

HERBERT SMITH FREEHILLS (68)

Notices to

BALD HILLS WIND FARM PTY LTD of LEVEL 2 765 GLENFERRIE ROAD HAWTHORN VIC
3122

AMENDMENT OF ADDRESS ON CAVEAT AF892176R 06/06/2008

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
AK085738G 18/12/2012

DIAGRAM LOCATION

SEE TP439130B FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

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

VOLUME 11944 FOLIO 248

Security no : 124119300967P

Produced 24/10/2024 02:55 PM

LAND DESCRIPTION

Crown Allotment 40 Parish of Tarwin South.
PARENT TITLE Volume 07399 Folio 750
Created by instrument AQ453321Q 16/11/2017

REGISTERED PROPRIETOR

Estate Fee Simple

TENANTS IN COMMON

As to 397 of a total of 1000 equal undivided shares

Sole Proprietor

M CAMPKIN-SMITH PTY LTD of 4 THREADNEEDLE STREET BALWYN VIC 3103

As to 603 of a total of 1000 equal undivided shares

Sole Proprietor

MALCOLM CAMPKIN-SMITH of 4 THREADNEEDLE STREET BALWYN VIC 3103

AQ453321Q 16/11/2017

ENCUMBRANCES, CAVEATS AND NOTICES

COVENANT as to part AL060591S 06/05/2014

Expiry Date 07/02/2061

CAVEAT AF868783F 27/05/2008

Caveator

BALD HILLS WIND FARM PTY LTD

Grounds of Claim

LEASE WITH THE FOLLOWING PARTIES AND DATE.

Parties

THE REGISTERED PROPRIETOR(S)

Date

13/08/2007

Estate or Interest

LEASEHOLD ESTATE

Prohibition

ANY INSTRUMENT THAT AFFECTS MY/OUR INTEREST

Lodged by

HERBERT SMITH FREEHILLS (68)

Notices to

BALD HILLS WIND FARM PTY LTD of LEVEL 2 765 GLENFERRIE ROAD HAWTHORN VIC

3122

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DIAGRAM LOCATION

SEE TP759591B FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

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