

## **Landowners Agreement**

  
and

**Pacific Hydro Portland Wind Farm Pty Ltd**

**ACN 103 162 474**

**Freehills**

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Reference AND.JCHP.80408953

## **This option deed**

is made on 31<sup>st</sup> October 2003 between the following parties:

- 1 [REDACTED]  
of [REDACTED]
- 2 **Pacific Hydro Portland Wind Farm Pty Limited**  
of Level 10, 474 Flinders Street, Melbourne, Victoria 3000

### **Recitals**

- A. You are the registered proprietor of the Land.
- B. You have agreed to grant Us an option to lease the Property subject to the provisions of this deed.
- C. We may enter onto the Land to conduct investigations to determine whether the Land is suitable for the operation of wind generators.
- D. If the Land is suitable for the operation of wind generators, we may:
  - (i) exercise the Option to enter into the Agreement for Lease.
  - (ii) construct the Works; and
  - (iii) operate wind generators on the Property. The proposed number of generators is identified in Item 3 of the Schedule.
- E. After construction of the Works, we will survey the Land to identify the areas occupied by the Works and the easements for other infrastructure. The Lease will (when that survey is complete) only relate to this area.
- F. At the expiration of the Lease we will either:
  - (i) renew the Lease; or
  - (ii) remove the Works above the surface of the Land.
- G. We are currently a wholly-owned subsidiary of Pacific Hydro Limited.

### **This deed witnesses**

that in consideration of, among other things, the mutual promises contained in this deed, the parties agree:

## **1 Definitions and Interpretation**

### **1.1 Meaning of words**

In this deed:

**You, Your** means the person named in Item 1 and, where the context allows, includes your executors, administrators, employees, contractors, authorised representatives and successors and the person who is entitled to the fee simple reversion in the Land during the Option Period.

We, Us, Our means the person named in Item 2 and, where the context allows, includes our executors, administrators employees, contractors, authorised representatives and successors and, if We assign the Option under clause 8, our assignees;

## 1.2 Definitions

In this deed:

**Agreement for Lease** means the agreement to lease the Property between You and Us as set out in clause 4.

**Carriageway Easements** has the meaning given to them in the Lease;

**Commencing Date** means the Commencing Date of the Lease;

**Dispose** means assign, transfer or otherwise dispose of or grant or permit or suffer the grant of any legal or equitable interest (either in whole or in part) whether by sale, lease, declaration or creation of a trust or otherwise;

**Distribution Line Easements** has the meaning given to them in the Lease;

**Extension Fee** means the amount in Item 8(a);

**Exercise Notice** means a notice of exercise of option in or to the effect of the form of notice in Annexure A;

**Extension Period** means the period in Item 8(b);

**Item** means an item in the Schedule;

**Land** means the land described in Item 5;

**Lease** means the lease in the form in Annexure D, or as otherwise amended under this deed under which You are to grant Us a lease of the Property together with the Carriageway Easements and the Distribution Line Easements;

**New Zealand Standard** means "Acoustics - The Assessment and Measurement of Sound from Wind Turbine Generators" (NZ 6808:1998);

**Option** means the option to enter into an Agreement for Lease in respect of the Property granted by this deed;

**Option Fee** means the amount in Item 6;

**Option Period** means the period in Item 7 as extended under clause 9;

**Preliminary Works** means inspections, surveys, soil tests, investigations and the erection of wind-monitoring equipment undertaken by Us on the Land;

**Property** means that part of the Land that will be the subject of the Lease, as shown on the Survey Plan;

**Survey Plan** means the plan prepared by our consultants and delivered to You in accordance with clause 5.11; and

**Wind Farm Approval** means the planning approval (as amended from time to time) granted to the Tenant for the use and development of the Wind Farm which will include the development and operation of Generators in the immediate vicinity of the Land.

### **5.10 Works and damage**

We must:

- (a) not carry out any works (other than the Works) on the Land without Your consent (which consent must not be unreasonably withheld);
- (b) not bring noxious substances onto the Land;
- (c) not damage or remove any existing vegetation other than that described in and necessary to perform the Works without Your consent;
- (d) having regard to the Works immediately rectify at our expense any damage caused to the Land in entering and remaining on the Land or carrying out the Works;
- (e) clean all vehicles and earth-moving equipment brought onto the Land so that soil is not brought by us onto the Land;
- (f) leave gates as We find them; and
- (g) use existing tracks and roads where possible.

### **5.11 Survey Plan**

- (a) When we determine that the Works are complete, We will prepare the Survey Plan to identify:
  - (1) the Property;
  - (2) the Carriageway Easements and the Distribution Line Easements; and
  - (3) those other parts of the Land that We consider are reasonably required for purposes ancillary to the Works.
- (b) We will give You a copy of the Survey Plan as soon as practicable after it is prepared.
- (c) The Property will comprise those parts of the Land on which the wind generators, substations and associated infrastructure will be constructed and are those areas that we consider in our absolute discretion are the most convenient and economical locations for the Property.
- (d) The Carriageway Easements will be located on those parts of the Land that we reasonably determine are required for ingress to and egress from the wind generators, substations and associated infrastructure.
- (e) The Distribution Line Easements will be located on those parts of the Land that we reasonably determine are required for distributing energy produced by the wind generators.

### **5.12 New Zealand Standard**

- (a) The Landlord acknowledges that:
  - (1) Generators may generate noise on and over the Land which may exceed the New Zealand Standard;
  - (2) in particular, the operation of the Wind Farm may affect the use, amenity and development of the Land or the Property for residential or habitable use;



- (3) it has read and understood the New Zealand Standard;
  - (4) even where acoustic attenuation measures are implemented by the Tenant in relation to buildings or works on the Property, the operation of the Wind Farm may generate noise in outdoor areas on and over the Land which may from time to time exceed the New Zealand Standard; and
  - (5) that the terms and conditions of this clause constitute an agreement and acknowledgement for the purposes of condition 14 of the Wind Farm Approval that condition 13 thereof does not apply in respect of the Land.
- (b) The Tenant agrees that it must and if required at its own cost, implement appropriate acoustic attenuation measures (such as window glazing and insulation) to ensure a reasonable level of acoustic amenity in relation to indoor habitable areas of the dwelling located on the Land.
- (c) In consideration of the agreement contained in clause 1.2, the Landlord agrees to release and indemnify the Tenant in the manner set out in clauses 1.4 and 1.5.
- (d) The Landlord on behalf of itself and its successors and assigns releases to the full extent permitted by law the Tenant and its contractors, employees and agents from all claims and demands of every kind resulting from:
- (1) noise produced by Generators in the immediate vicinity of the Property or the Land which affects the use or development of the Property, including any noise which may exceed the New Zealand Standard;
  - (2) any purported nuisance caused by the Generators in the immediate vicinity of the Property or the Land.
- (e) The Landlord on behalf of itself and its successors and assigns indemnifies the Tenant and its officers, directors, employees, agents, representatives and mortgagees against all liability arising from, and expenses incurred in connection with:
- (1) any breach by Landlord of its obligations under this clause 1;
  - (2) noise produced by Generators in the immediate vicinity of the Property or the Land which affects the use of the Land, including any noise which may exceed the New Zealand Standard;
  - (3) any purported nuisance caused by the Wind Farm in the immediate vicinity of the Property or the Land;
  - (4) any claim action or proceeding by a third party against the Tenant in respect of the matters contained in this Lease and indemnity, including any claim or complaint by any tenant, occupier, licensee or invitee on the Land.

**Executed as a deed:**

**Signed by or for and on behalf of the Tenant**  
by a duly authorised representative in the  
presence of and who is identified as the Tenant  
or representative by :

Witness Signature

Full Name

Address

Signature of Pacific Hydro Portland  
Wind Farm Pty Ltd Representative

Full Name of Representative

**Signed sealed and delivered by**

in the presence of:

Witness

Name (please print)

Address