

Planning Agreement

Muswellbrook Shire Council ABN 86 864 180 944

AND

AGL Macquarie Pty Ltd ACN 167 859 494

Planning Agreement

Date

Parties

MUSWELLBROOK SHIRE COUNCIL ABN 86 864 180 944 of Campbell's Corner, 60-82 Bridge Street, Muswellbrook, NSW 2333

(Council)

AND

AGL MACQUARIE PTY LTD ACN 167 859 494 of Level 24, 200 George Street, Sydney, NSW 2000

(AGL)

Background

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| A. | AGL owns the Land upon which the Liddell Power Station is located. |
| B. | AGL has made application for and has been issued with a Planning Secretary's Environmental Assessment Requirements (SEARS) by NSW Department of Planning and Environment for a proposed State Significant Development Application being Application Number SSD-24937520 (SSDA). The proposed SSDA will seek approval for some of the physical aspects of the Liddell Closure including demolition of the Liddell Power Station site. |
| C. | The parties are concerned about the socio-economic impacts of the prospective Liddell Closure on the community. |
| D. | Council and AGL are parties to the Memorandum of Understanding on Provision for Socio-Economic Impacts of Closure of Liddell Power Station executed 8 September 2021 (MOU). |
| E. | Consistent with its obligations under the MOU, AGL has made an offer in connection with the Liddell Closure to enter into this Agreement to make Contributions for public purposes associated with the Liddell Closure.

Council has no current plans to raise any Special Rate in connection to the Liddell Closure or the Development against the Land. |
| F. | This Agreement is entered into under Division 7.1 of Part 7 of the Act. |

Operative Provisions

1 Definitions

In this Agreement, unless the context indicates a contrary intention:

Act means the *Environmental Planning and Assessment Act 1979* (NSW);

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

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person;

Business Day means a day on which banks are open for general banking business in NSW, excluding Saturdays, Sundays and public holidays;

Claim means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this Agreement;

Contributions means a contribution made by AGL under this Agreement, pursuant to Schedule 2;

Development means the development approved pursuant to Development Application SSD-24937520, but excludes any Modification to Development Application SSD-24937520 that is not materially consistent with the Liddell Closure or Development Application SSD-24937520, unless mutually agreed between the parties in writing;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

Dispute means any dispute between the parties in connection with this Agreement;

Investment Committee means the committee established in accordance with Schedule 3 of this Agreement;

Land means the land owned by AGL as at the date of this Agreement upon which the Liddell Power Station is situated being the land and improvements comprised in the following titles:

Lot 2 DP774681	Lot 11 DP247944
Lot 19 DP247944	Lot 18 DP247944
Lot 19 DP752486	Lot 18 DP752486
Lot 2 DP966589	Lot 2 DP1022827
Lot 116 DP752486	Lot 162 DP752486
Lot 163 DP752486	Lot 601 DP1019325
Lot 2 DP1095515	Lot 1 DP1095515
Lot 2 DP1193252	Lot 4 DP1193430

Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

Liddell Closure means the closure, decommissioning and demolition of the Liddell Power Station and includes any required associated decontamination and rehabilitation of the Land being completed;

Liddell Power Station means the power station located on the Land which is operated by AGL as part of the integrated power generation complex located between the Muswellbrook and Singleton local government areas;

Modification has the same meaning as in the Act.

MOU means the Memorandum of Understanding on Provision for Socio-Economic Impacts of Closure for Liddell Power Station between AGL and Council, executed 8 September 2021;

Notice means a written notice, consent, approval, direction, order, information, application, request or other communication;

SEIA means the Socio-Economic Impact Assessment and report funded by AGL and prepared by AECOM pursuant to clause 3.2 of the MOU;

Special Rate has the same meaning as in the *Local Government Act 1993* (NSW); and

Upper Hunter Region means the Muswellbrook Shire local government area, the Singleton local government area and the Upper Hunter local government area.

2 Interpretation

In this Agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this Agreement or another document includes any document which varies, supplements, replaces, assigns or novates this Agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this Agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this Agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO or managing director)** the president, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;

- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this Agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in, Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this Agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

3 Planning Agreement under the Act

- (a) The parties agree that this Agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 1 of this Agreement summarises the requirements for planning agreements under s 7.4 of the Act and the way this Agreement addresses those requirements.

4 Application of this Agreement

This Agreement applies to the Land.

5 Operation of this Agreement

- (a) This Agreement commences on and from the date it is executed.
- (b) On and from the date of termination of this Agreement in accordance with clause 9, this Agreement will cease to have effect and the Council will immediately return to AGL any title documentation or other security it holds under this Agreement.

6 Application of s 7.11, s 7.12 and s 7.24 of the Act

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Development.
- (b) This agreement does not exclude the application of section 7.12 of the Act to the Development.
- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.
- (d) The benefits under this Agreement and the MOU are to be taken into consideration in determining development contributions under section 7.11 of the Act relating to the Development and the Liddell Closure. If required, Council agrees to make a submission to the Department of Planning and Environment confirming the agreement reached between the parties in respect of this clause 6(d).

7 Contributions to be made under this Agreement

7.1 Contributions

- (a) AGL must make Contributions to Council in accordance with Schedule 2 of this Agreement.
- (b) Council will apply each Contribution made by AGL under this Agreement:
 - (i) in accordance with Schedule 3;
 - (ii) for the benefit of the public of the Upper Hunter Region; and
 - (iii) otherwise in accordance with this Agreement.

7.2 Monetary Contributions

- (a) Monetary Contributions paid in accordance with Schedule 2 must be paid by electronic transfer into a bank account, the details of which are to be provided by Council to AGL.
- (b) A monetary Contribution is made for the purposes of this Agreement when Council receives the full amount of the contribution payable under this Agreement in cash or by unendorsed bank cheque or by deposit by means of electronic funds transfer of cleared funds into the bank account nominated by Council.

7.3 Adjustment for CPI

- (a) The amount of the Contributions in Schedule 2 are subject to adjustment for changes in CPI as follows:

$$DCP = \frac{DC \times A}{B}$$

where:

- DCP = the actual Contribution payment amount payable at the time the particular payment is made;
- DC = the particular Contribution payment amount required to be paid as per Schedule 2;
- A = the most recent CPI published by the Australian Bureau of Statistics prior to the date the payment is due to be made; and
- B = the most recent CPI published by the Australian Bureau of Statistics prior to the date of the MOU.

- (b) If after the formula in clause 7.3(a) is applied the Contribution amount will be less than \$500,000, the Contribution will not be adjusted.

7.4 Previous Contributions

- (a) The parties acknowledge that, to date, under the MOU, AGL as a sign of AGL's commitment to contributing to the mitigation of the socio-economic impacts of the Liddell Closure has paid the following amount to Council:
 - (i) \$1.35million, paid to Council on 27 November 2021.
- (b) The parties acknowledge that, to date, under the MOU, AGL has funded the cost of the SEIA up to a total cost of between \$180,000 and \$200,000.
- (c) The parties agree and acknowledge that the contributions made by AGL pursuant to the MOU serve a public benefit and have been made in addition to the Contributions and Continuing Contributions, as outlined in Annexure A, anticipated by this Agreement.

7.5 Continuing Contributions

- (a) The parties acknowledge that AGL is currently making and has agreed to make a number of financial and other contributions to the community, in addition and separate to the Contributions provided by AGL pursuant to clause 7.1(a), to ameliorate the socio-economic impacts of the Liddell Closure.
- (b) The additional and separate financial and other contributions provided by AGL are identified in Annexure A to this Agreement.
- (c) AGL will use reasonable endeavours to provide and/or satisfy the contributions identified in Annexure A.
- (d) AGL will provide an annual report to the Investment Committee containing information not limited to:
 - (i) the status of AGL providing or satisfying each of the contributions identified in Annexure A;
 - (ii) any additional contributions or actions that AGL has undertaken to alleviate the socio-economic impacts of the Liddell Closure; and
 - (iii) objectives and goal relevant to satisfying the contributions in Annexure A in the proceeding 12 months.

8 Registration of this Agreement

8.1 AGL interest

AGL represents and warrants to Council that:

- (a) as at the date of this Agreement it is the registered proprietor of the Land; and
- (b) it has obtained the consent of each person who has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW) to enable registration of this Agreement pursuant to clause 8.2.

8.2 Registration of this Agreement

- (a) AGL agrees to procure the registration of this Agreement under the *Real Property Act 1900* (NSW) on the relevant titles to the Land in accordance with section 7.6 of the Act.
- (b) AGL, at its own expense, will within 3 months after the date of this Agreement, take all practical steps, and otherwise do anything that Council reasonably requires to procure the registration of this Agreement on the titles to the Land under the *Real Property Act 1900* (NSW).
- (c) AGL acknowledges and agrees that Council may lodge and maintain a caveat against the title to the Land reflecting its rights under this Agreement provided that any caveat lodged by Council will be removed contemporaneously with registration of this

Agreement against the title to the Land.

8.3 Removal of Agreement

When requested to do so after termination of this Agreement, Council will promptly execute such documents and take such steps as may reasonably be required to remove notification of registration of this Agreement from the title to the Land. AGL will reimburse Council for its reasonable costs and disbursements in complying with this clause 8.3.

9 Termination

- (a) This Agreement terminates on the declaration by a Court of competent jurisdiction that Development Consent SSD- 24937520 is invalid.
- (b) This Agreement terminates on the date 7 years after the date of closure of the Liddell Power Station (28 April 2023) provided that AGL has provided all of the Contributions required under this Agreement up until that date.
- (c) AGL's obligations under clauses 7.5 and 8.3 continue in effect until fully complied with regardless of any termination of this Agreement.
- (d) This Agreement terminates at such other time as mutually agreed between the parties in writing.

10 Review of this Agreement

- (a) This Agreement may be reviewed or modified by agreement of the parties provided that no review will be undertaken within the 3 years following the date of this Agreement.
- (b) No review or modification of this Agreement will be of any force or effect unless it is in writing and signed by the parties to this Agreement.
- (c) A party is not in breach of this Agreement if it does not agree to an amendment to this Agreement requested by a party in, or as a consequence of, a review.

11 Dispute Resolution

11.1 General

This clause applies to any Dispute arising in connection with this Agreement.

11.2 Notice of Dispute

The party wishing to commence the dispute resolution process must give written notice (Notice of Dispute) to the other party of:

- (a) the nature of the Dispute;
- (b) the alleged basis of the Dispute; and
- (c) the position which the party issuing the Notice of Dispute believes is correct.

11.3 Representatives of parties to meet

- (a) The representatives of the parties must promptly (and in any event within 20 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified Dispute.
- (b) The parties may, without limitation:
 - (i) resolve the Dispute during the course of that meeting,

- (ii) agree that further material or expert determination in accordance with clause 11.6 about a particular issue or consideration is needed to effectively resolve the Dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
- (iii) agree that the parties are unlikely to resolve the Dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant Dispute.

11.4 Further Notice if not settled

If the Dispute is not resolved within 20 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the Dispute (Determination Notice) by mediation under clause 11.5 or by expert determination under clause 11.6.

11.5 Mediation

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) the parties must agree to the terms of reference of the mediation within 10 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) the mediator will be agreed between the parties, or failing agreement within 10 Business Days of receipt of the Determination Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) the mediator appointed pursuant to this clause 11.5 must:
 - (i) have reasonable qualifications and practical experience in the area of the Dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as a mediator, he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) the mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) the parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation;
- (f) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a Dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) in relation to costs and expenses:
 - (i) each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) the costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

11.6 Expert determination

If the Dispute is not resolved under clause 11.3 or clause 11.5, or the parties otherwise

agree that the Dispute may be resolved by expert determination, the parties may refer the Dispute to an expert, in which event:

- (a) the Dispute must be determined by an independent expert in the relevant field:
 - (i) agreed upon and appointed jointly by the parties; and
 - (ii) in the event that no agreement is reached, or no appointment is made within 10 Business Days of the agreement, to refer the Dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) the expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) the determination of the Dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) any determination made by an expert pursuant to this clause is final and binding upon the parties unless:
 - (i) within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and intends to commence litigation; or
 - (ii) the determination is in respect of, or relates to, termination or purported termination of this Agreement by a party, in which event the expert is deemed to be giving a non-binding appraisal.

11.7 No suspension of contractual obligations

Subject to any interlocutory order, the referral to or undertaking of a Dispute resolution process under this clause 11 does not suspend the parties' obligations under this Agreement.

12 Enforcement

12.1 Default

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this Agreement, it may give notice in writing to the other party (Default Notice) giving all particulars of the matters in respect of which it considers Default has occurred and by such notice require the Default to be remedied within a reasonable time not being less than 30 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the Default and the action required to remedy it and whether or not the continuation of the Default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may if the Default Notice relates to a Dispute refer the Dispute to dispute resolution under clause 11 of this Agreement.

12.2 General enforcement

- (a) Without limiting any other remedies available to the parties, this Agreement may be enforced by a party in any Court of competent jurisdiction.
- (b) For the avoidance of doubt, nothing in this Agreements prevents:

- (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; or
- (ii) the Council from exercising any function under the Act or any other Act or Law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

13 Assignment

AGL must not assign or deal with any right under this Agreement until this Agreement has been registered against the title to the land.

14 Approvals and consents

Except as otherwise set out in this Agreement, and subject to any Law, a party may give or withhold an Approval or consent to be given under this Agreement in that party's absolute discretion and subject to any conditions determined by that party. A party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

15 Council's position

15.1 Agreement does not fetter Discretion

This Agreement is not intended to operate to fetter, in any manner the:

- (a) power of Council to make any Law; or
- (b) exercise by Council of any statutory power or discretion including, but not limited to, any statutory power or discretion of the Council relating to the Liddell Closure or any application for development consent (all referred to in this Agreement as a "Discretion").

15.2 Severance of provisions

- (a) No provision of this Agreement is intended to, or does, constitute any unlawful fetter on any exercise of any Discretion. If, contrary to the operation of this clause, any provision of this Agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:
 - (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 15 is substantially satisfied; and
 - (ii) in the event that clause 15.2(a)(i) cannot be achieved without giving rise to a fetter on a Discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect.

15.3 Exercise of discretion

Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a discretion, and if Council has in this Agreement contracted out of a provision or exercised a discretion under this Agreement, then to that extent this Agreement is not to be taken to be inconsistent with the Law.

16 Notices

16.1 Notices

- (a) Any Notice that must or may be given or made to a party to this Agreement is only given or made if it is in writing and sent in one or more of the following ways:
 - (i) delivered or posted to that party at its address set out below;
 - (ii) faxed to that party at its fax number set out below; or

(iii) emailed to that party at its email address set out below

Council

Attention	The General Manager
Address	PO Box 122, Muswellbrook, NSW, 2333
Email	records@muswellbrook.nsw.gov.au

AGL

Attention	Teagan Cronin Divisional Governance & Excellence Manager
Address	Private Mail Bag 2 Muswellbrook NSW 2333
Email	tcronin@agl.com.au

- (b) If a party gives the other party 3 Business Days' notice of a change of its address, number or email, any Notice is only given or made by that party if it is delivered, posted or emailed to the latest address or email.
- (c) Any Notice is to be treated as given or made at the following time if it is:
 - (i) delivered, when it is left at the relevant address;
 - (ii) sent by post, 5 Business Days after it is posted.
- (d) If any Notice is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

16.2 Notices sent by email

- (a) A party may serve a Notice by email if the Notice:
 - (i) includes a signature block specifying:
 - a. the name of the person sending the Notice; and
 - b. the sender's position within the relevant party;
 - (ii) states in the body of the message or the subject field that it is sent as a Notice under this Agreement;
 - (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this Agreement; and
 - (iv) is sent to the email address specified in clause 16.1(a) or the email address last notified by the intended recipient to the sender.
- (b) The recipient of a Notice served under this clause 16.2 must:
 - (i) promptly acknowledge receipt of the Notice; and
 - (ii) keep an electronic copy of the Notice.
- (c) Failure to comply with clause 16.2 does not invalidate service of a Notice under this clause.

16.3 Receipt of Notices sent by email

- (a) A Notice sent under clause 16.2 is taken to be given or made:
 - (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;
 - (ii) when the Notice enters an information system controlled by the recipient; or
 - (iii) when the Notice is first opened or read by the recipient, whichever occurs first.
- (b) If under clause 16.3 a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 5:00 pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

17 Interest to accrue

17.1 Interest

- (a) AGL agrees to pay interest on any amount under this Agreement which is not paid on the due date for payment. Interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days.
- (b) AGL agrees to pay interest under this clause on demand from Council.

17.2 Rate of interest

The rate of interest applying to each daily balance is the maximum rate permitted to accrue on unpaid rates by Section 566(3) of the *Local Government Act 1993* (NSW).

18 General

18.1 Relationship of the Parties

- (a) Nothing in this Agreement constitutes a partnership between the parties, nor does it constitute one party to be the agent of the other.
- (b) A party cannot in any way or for any purpose bind another party or contract in the name of another party.

18.2 Entire Agreement

This Agreement constitutes the entire agreement of the parties in relation to its subject matter and, except for the MOU, supersedes all prior agreements, understandings and negotiations between the parties. Subject to any contrary requirement of any Law, no other covenants or provisions are implied or arise between the parties by way of collateral or other agreement. The existence of any such implication or collateral or other agreement is expressly negative to the extent permitted by Law.

18.3 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of or seeks to rely on this Agreement or any part of it.

18.4 Confidentiality

The parties agree that the terms of this Agreement are not confidential and this Agreement may be treated as a public document and exhibited or reported without restriction by any party.

18.5 Governing Law and Jurisdiction

- (a) The laws applicable in New South Wales govern this Agreement.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the New South Wales Courts and Courts competent to hear appeals from those Courts.

18.6 Counterparts

This Agreement may be executed in any number of counterparts and all such counterparts taken together will constitute the same instrument. A party can execute this Agreement by signing any counterpart. Counterparts can be exchanged electronically by way of email.

18.7 Costs

- (a) AGL must pay to Council the Council's reasonable costs (exclusive of GST) and disbursements in connection with the negotiation, preparation, execution, registration and release and discharge of this Agreement and any other document relating to this Agreement, and for all advertising and associated costs, within 7 days of a written demand by Council for such payment.
- (b) AGL must also pay to Council the Council's reasonable costs of enforcing this Agreement within 7 days of a written demand by Council for such payment.

18.8 Further assurances

Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

18.9 Representation and warranties

The parties represent and warrant that they have the power and authority to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any Law.

18.10 Severability

Subject to clause 15 this Agreement must, so far as possible, be interpreted or construed so as not to be invalid, illegal or unenforceable in any respect but if any provision on its true interpretation or construction is held to be illegal, invalid or unenforceable:

- (a) that provision will, so far as possible, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation of a partial character; or
- (b) if the provision or part of it cannot effectively be read down, that provision or part of it will be deemed to be void and severable and the remaining provisions of this Agreement will not in any way be affected or impaired and will continue notwithstanding that illegality, invalidity or unenforceability.

18.11 Waiver

- (a) A right or remedy created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any

other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

Schedule 1

Summary of requirements (Section 7.4)

Subject and subsection of the Act	Planning Agreement
Planning instrument and/or Development Application Section 7.4(1)	AGL proposes to make a Development Application, being SSDA 24937520
Description of the land to which the planning Agreement applies Section 7.4(3)(a)	See the definition of Land in clause 1.
The scope, timing and manner of delivery of contribution required by the Planning Agreement Section 7.4(3)(b)	See clause 7.
Applicability of section 7.11 of the Act Section 7.4(3)(d)	Not excluded. See clause 6.
Applicability of section 7.12 of the Act Section 7.4(3)(d)	Not excluded. See clause 6.
Applicability of section 7.24 of the Act Section 7.4(3)(d)	Not excluded. See clause 6.
Mechanism for dispute resolution Section 7.4(3)(f)	See clause 11.
Enforcement of the Planning Agreement Section 7.4(3)(g)	See clause 12.
Registration of the Planning Agreement Section 7.4(3)(g)	To be registered against the Land. See clause 8.
Provisions for enforcement Section 7.4(3)(g)	See clause 12.
No obligation to grant consent or exercise functions Section 7.4(9)	See clause 15.

Schedule 2

Contributions

AGL agrees to pay the following Contributions to Council:

- (a) \$500,000, subject to CPI indexation in accordance with clause 7.3 calculated from 1 July 2022, within 10 Business Days of receipt of an invoice from Council prior to 30 June 2023;
- (b) \$500,000, subject to CPI indexation in accordance with clause 7.3 calculated from 1 July 2022, within 10 Business Days of 30 June 2023;
- (c) \$500,000, subject to CPI indexation in accordance with clause 7.3 calculated from 1 July 2023, within 10 Business Days of 30 June 2024
- (d) \$500,000, subject to CPI indexation in accordance with clause 7.3 calculated from 1 July 2024, within 10 Business Days of 30 June 2025.

Schedule 3

Investment Committee

1 Definitions

In this Schedule 3, unless the context indicates a contrary intention:

Approved Funding Proposal means a Funding Proposal recommended by the Investment Committee in accordance with clause 4.1 and approved by Council in accordance with clause 4.3;

Community Representative means an Investment Committee Member who is not a representative of AGL or Council in accordance with clause 2.1(b)(iii);

Council Representative means a Councillor or employee of Council and appointed by Council to be an Investment Committee Member in accordance with clause 2.1(b)(ii);

Dealing in relation to the Land, means without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land;

Funding Proposal means a proposal for Council to spend some or all of the Contribution paid by AGL and which satisfies the Funding Proposal Criteria;

Funding Proposal Criteria means the criteria set out in clause 7 and which a Funding Proposal must satisfy before it can be approved by the Investment Committee;

Investment Committee Member means a member of the Investment Committee;

AGL Representative means an employee of AGL and appointed by AGL to be an Investment Committee Member in accordance with clause 2.1(b)(i); and

Recommended Funding Proposal means a Funding Proposal recommended by the Investment Committee in accordance with clause 4.1.

Terms that are not defined in this Schedule but that are defined in clause 1 of the Agreement, will have the same meaning in this Schedule as the meaning given to the term in the Agreement, unless the context makes it clear that a definition is not intended to apply.

2 Investment Committee

2.1. Establishment and Membership

- (a) As soon as practicable after this Agreement is executed, Council must establish an Investment Committee which must consist of six Investment Committee Members.
- (b) The membership of the Investment Committee shall comprise:
 - (i) two Investment Committee Members appointed by AGL;
 - (ii) two Investment Committee Members appointed by Council;
 - (iii) one Community Representative appointed in accordance with clause 2.3; and
 - (iv) one representative from a government organisation or related entity with a demonstrated interest in the public benefit of the Upper Hunter Region.
- (c) An Investment Committee Member appointed by AGL or Council must act in the best interests of the party which appointed it.

2.2. Chairperson

- (a) The chairperson for the Investment Committee must be a Council Representative.
- (b) The chairperson must be elected to the position of chairperson by a majority vote of the Investment Committee at the first meeting of the Investment Committee.
- (c) If the chairperson ceases to be an Investment Committee Member, then a new chairperson must be appointed by majority vote of the Investment Committee at the next Investment Committee meeting.
- (d) The chairperson will convene and chair the Investment Committee meetings.
- (e) The chairperson will determine the agenda items.

2.3. Community Representative

- (a) As soon as practicable after this Agreement is executed, Council must place an advertisement in the Hunter River Times and on its website and social media platforms for any person interested in the position of Community Representative on the Investment Committee.
- (b) Any resident in the Muswellbrook local government area, who is not eligible for the position of Council Representative or AGL Representative, may make an application to Council to be appointed as the Community Representative on the Investment Committee.
- (c) The Community Representative must be elected by majority vote of the Investment Committee at the first meeting of the Investment Committee from the persons who made an application to Council for appointment.
- (d) The Community Representative is elected to the Investment Committee for a two year period.
- (e) After a Community Representative has held that position on the Investment Committee for a two year period Council must readvertise the position in accordance with clause 2.3 of this Schedule.
- (f) A Community Representative can be re-elected to the position of Community Representative on the Investment Committee if that person has applied again to be a Community Representative on the Investment Committee.
- (g) If a Community Representative is not elected due to a lack of interest by the community in the position of Community Representative on the Investment Committee then provided Council has advertised the position in accordance with clause 2.3(a) the Investment Committee may proceed with operating in accordance with this Schedule 3 with a quorum of at least one Council Representative and one AGL Representative.

2.4. Alternative Investment Committee Member

AGL and Council may appoint an alternate Investment Committee Member who may exercise all powers of the Investment Committee member when attending in place of that Investment Committee Member.

2.5. Term of Investment Committee Member

AGL Representatives and Council Representatives are appointed to the Investment Committee for a four year period, provided that for the initial term, the appointments shall be until the next general election of Council.

2.6. Replacement of Investment Committee Members

- (a) If an Investment Committee Member ceases for any reason to be a member of the Investment Committee or resigns as a member of the Investment Committee:
 - (i) if the Investment Committee Member is an AGL Representative, AGL must as soon as practicable appoint a new AGL Representative;

- (ii) if the Investment Committee Member is a Council Representative, Council must as soon as practicable appoint a new Council Representative; and
- (iii) if the Investment Committee Member is a Community Representative:
 - a. Council must, as soon as practicable, advertise in the Hunter River Times and on its website and social media platforms for any person interested in being appointed as the Community Representative on the Investment Committee; and
 - b. the remaining Investment Committee Members at the next meeting of the Investment Committee must appoint, by majority vote, a new Community Representative from the persons who made an application to Council for such appointment (in accordance with clause 2.3).
- (b) If an Investment Committee Member:
 - (i) dies or becomes bankrupt;
 - (ii) in the case of a Council Representative, ceases to be a Councillor or employee of Council, or
 - (iii) in the opinion of each of the other Investment Committee Members, consistently fails to perform his or her duties in relation to the Investment Committee,that Investment Committee Member will cease to be a member of the Investment Committee with immediate effect.

2.7. Meetings of the Investment Committee

- (a) The Investment Committee will determine the frequency of its meetings.
- (b) Despite clause 2.7(a) above, the Investment Committee must meet at least twice per Year.
- (c) Only the chairperson may call a meeting of the Investment Committee.
- (d) Any Investment Committee Member may request the chairperson to convene an extraordinary meeting of the Investment Committee to discuss any matter warranting urgent consideration. The chairperson will determine whether an extraordinary meeting is warranted.
- (e) At least two weeks' notice must be given to all members of any meeting of the Investment Committee (except extraordinary meetings where one week's notice can be given).
- (f) Council may determine the manner in which meetings of the Investment Committee are to be convened and conducted.
- (g) Council or AGL must provide facilities for Investment Committee meetings.

2.8. Proceedings of Investment Committee

- (a) The quorum for meetings of the Investment Committee is one AGL Representative and one Council Representative.
- (b) Meetings of the Investment Committee may be conducted by telephone or other electronic means provided all Investment Committee Members are able to be heard and communicate effectively.

2.9. Liability and Duties

If an Investment Committee Member acts in good faith (which does not preclude acting in the interests of or under the direction of the person appointing that Investment Committee

Member), he or she is not responsible or liable in any manner to any other Investment Committee Member, Council or AGL for any loss or expense.

3 The Role of the Investment Committee

- (a) The role of the Investment Committee is to consider, and, if it sees fit, recommend to Council, Funding Proposals submitted to it for consideration by an Investment Committee Member.
 - (b) The Investment Committee may not recommend a Funding Proposal unless it meets the Funding Proposal Criteria.
 - (c) The Investment Committee will evaluate and provide feedback to AGL on the annual report provided in accordance with clause 7.5.
 - (d) The Investment Committee will report to Council the annual report provided by AGL in accordance with clause 7.5.
-

4 Funding Proposals

4.1 Submitting funding Proposal for Consideration by Investment Committee

Any Investment Committee Member may submit a Funding Proposal to the Investment Committee for consideration, if the Funding Proposal:

- (a) satisfies the Funding Proposal Criteria; and
- (b) has been provided (by post or email) to all Investment Committee Members at least two weeks before the meeting at which the Funding Proposal is to be considered.

4.2 Consideration of Funding Proposal

- (a) All Funding proposals that satisfy clause 4.1 must be considered by the Investment Committee.
- (b) Council will provide the Investment Committee with a comprehensive report on all Funding Proposals.
- (c) A Funding Proposal will be recommended by the Investment Committee for funding if at least 75% of the Investment Committee vote in favour of the Funding Proposal.
- (d) An Investment Committee Member may declare themselves ineligible to vote on a matter where the Investment Committee Member considers that they have a material personal interest in the outcome of the matter and that this may result in a conflict of interest.
- (e) For the avoidance of doubt, where an Investment Committee Member is ineligible to vote at a meeting at which a decision is made, a vote of all remaining eligible Investment Committee Members will constitute a vote of the Investment Committee.
- (f) If a Funding Proposal is not approved by the Investment Committee, the Funding Proposal may be submitted for consideration at one subsequent Investment Committee meeting for further consideration.

4.3 Approved Funding Proposal

- (a) Council may submit a Recommended Funding Proposal to the Muswellbrook Shire Council Councillors for resolution within the budget agreed by the Investment Committee and the timeframe as required by Council.
- (b) Council does not in any way guarantee the outcome of the Recommended Funding Proposal and the Investment Committee acknowledges that any Recommended Funding Proposal is advisory only and the Councillors are in no way restricted in their

decision making.

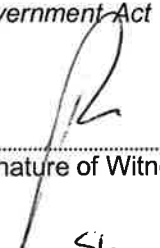
- (c) The timeframe to implement an Approved Funding Proposal may vary depending on the nature and complexity of the Approved Funding Proposal.
- (d) Council must report to the Investment Committee at the next meeting of the Investment Committee as to the progress and status of all Recommended Funding Proposals, including the amount of available monetary Contributions and where funds have been allocated and spent.
- (e) If, at the termination of this Agreement there are funds that have not been allocated, the Investment Committee will continue to operate until all funds have been expended in accordance with clause 4.2 of this Agreement and which satisfies the Funding Proposal Criteria.

5 Funding Proposal Criteria

- (a) A Funding Proposal must be for a public purpose as defined by section 7.4(2) of the Act and support one or more of the following priorities:
 - (i) regional economic diversification;
 - (ii) new job creation, skills and training;
 - (iii) sustainability and innovation; or
 - (iv) research and development.
- (b) A Funding Proposal may include:
 - (i) the maintenance or fit out of infrastructure;
 - (ii) environmental conservation works;
 - (iii) research, training or education;
 - (iv) community welfare;
 - (v) community events.
- (c) A Funding Proposal submitted to the Investment Committee for consideration must:
 - (i) describe the proposed expenditure including:
 - a. an overview of its benefit to the Upper Hunter Region community;
 - b. the reasons why the Contributions paid by AGL should be spent on the Funding Proposal;
 - (ii) set out an indicative costing for the proposed expenditure including any ongoing costs.
- (d) A Funding Proposal must not be submitted to the Investment Committee for consideration which:
 - (i) seeks to finance endeavours solely for personal gain; or
 - (ii) is from a discriminatory and/or exclusive organisation.

EXECUTED AS AN AGREEMENT:

EXECUTED by Muswellbrook Shire Council)
ABN 86 864 180 944 by its authorised)
delegate pursuant to Section 377 of the *Local)*
Government Act 1993 (NSW), in the presence
of:


Signature of Witness

Sharon Pope
Name of Witness (Print)


General Manager

DARAH KISSIGAD
Name of General Manager

EXECUTED by AGL Macquarie Pty Ltd ACN)
167 859 494 in accordance with Section 127 of)
the *Corporations Act 2001 (Cth)*:)


Signature of Director

Gary Brown

Name of Director (Print)


Signature of Director/Secretary

Suzanna Dabski

Name of Director/Secretary (Print)

Annexure A

Continuing Contributions

The SEIA recommended a range of mitigations to offset potential impacts resulting from the closure of Liddell Power Station. AGL has developed a Community Support Framework to align with these mitigations and is committed to the continuation of such activities, as outlined below:

- Continue to engage stakeholders and the community, including but not limited to the continuation of engagement with the AGL Macquarie Community Dialogue Group, with post closure information including timing and future land use.
- maintain existing investment in community activities;
- identify specific community investment opportunities related to mental health services in the Upper Hunter region;
- include local targets as part of demolition, remediation, and rehabilitation procurement strategy;
- provide opportunities for local indigenous procurement;
- continue support for local business chambers and seek community investment in local business development programs;
- continue working with all levels of government, local business and other stakeholders to identify commercial and social development needs and opportunities;
- collaborate with local councils, First Nations Peoples, and other key local stakeholders to identify opportunities for recreational, sporting and other community assets; and
- continue to pursue commercial site redevelopment opportunities that leverage the local skills base, contribute to regional economic diversification and create local jobs.