



Hawkesbury City Council

attachment 1
to
item 173

Triparite Side Deed - Hawkesbury
Gas Contract (Amended)

date of meeting: 9 August 2016
location: council chambers
time: 6:30 p.m.

Side Deed – Hawkesbury Gas Contract

Clean Energy Finance Corporation
ABN 43 669 904 352

Landfill Gas Industries Pty Ltd
ACN 138 085 551

Hawkesbury City Council
ABN 54 659 038 834

Table of contents

1.	DEFINITIONS AND INTERPRETATION.....	1
1.1	Definitions	1
1.2	Interpretation.....	4
2.	CONSENT AND TERM OF DEED	4
3.	RIGHT OF ENTRY	5
4.	COVENANTS BY THE COUNCIL	5
5.	GENERAL PROVISIONS	7
5.1	Costs.....	7
5.2	GST	7
5.3	Assignment	7
5.4	Notices	8
5.5	Governing law and jurisdiction.....	8
5.6	Amendments.....	8
5.7	Third parties.....	8
5.8	Precontractual negotiation.....	8
5.9	Further assurance	8
5.10	Continuing performance	8
5.11	Waivers.....	9
5.12	Remedies.....	9
5.13	Severability	9
5.14	Counterparts	9
	Schedule 1 –	10

THIS DEED is made on

BETWEEN Clean Energy Finance Corporation

ABN 43 669 904 352

a Commonwealth authority constituted under the CEFC Act having its registered office at Suite 1702, 1 Bligh Street, Sydney NSW 2000
(**CEFC**)

AND Landfill Gas Industries Pty Ltd

ACN 138 085 551

of Level 30, 345 Queen Street, Brisbane, Queensland, 4000
(**LGI**)

AND Hawkesbury City Council

ABN 54 659 038 834

of 366 George Street, Windsor NSW 2756
(**Council**)

RECITALS

- A. The Council has entered into the contract described in Item 12 (**Hawkesbury Gas Contract**) with LGI for the purpose of the Project in Item 5 in respect of the site described in Item 1 (**Hawkesbury Site**).
- B. LGI has obtained financial accommodation from CEFC and has granted the security described in Item 3 (**Security**) to CEFC, assigning or charging to CEFC its interest in the Hawkesbury Gas Contract.
- C. CEFC has requested the Council to consent to the Security and to step into the Hawkesbury Gas Contract and perform LGI's obligations under the Hawkesbury Gas Contract following default under the Security (if required).

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed unless the context otherwise requires:

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Queensland and New South Wales.

Default Notice means in respect of a LGI Default, a written notice from the Council to LGI given in good faith and on reasonable grounds, referring to this deed and stating:

- (a) which LGI Default has occurred and whether it is a Remediable Default;
- (b) if a Remediable Default, the Remedy Period and the steps claimed necessary to remedy the LGI Default;
- (c) if a Non-Remediable Default:
 - (i) the amount (if any) claimed payable or other action required as reasonable compensation for the LGI Default, having regard to the nature and extent of the LGI Default; and
 - (ii) the Remedy Period for that Non-Remediable Default;

- (d) if the LGI Default is an Insolvency Event in respect of LGI, the Remedy Period applicable to the Insolvency Event in respect of LGI; and
- (e) the Default Rights (if any) that the Council proposes to exercise when the Remedy Period ends and the relevant clauses under the Hawkesbury Gas Contract giving rise to those Default Rights.

Default Right means any right, power, discretion or remedy of the Council to:

- (a) avoid, terminate, rescind, treat as terminated or repudiated, or otherwise bring to an end, the Hawkesbury Gas Contract; or
- (b) release LGI or the Council (as the case may be) from its obligations under the Hawkesbury Gas Contract; or
- (c) bring an action for damages against LGI in relation to the Hawkesbury Gas Contract,

however, it does not include steps required to be taken by the Council which are necessary to ensure the Council's rights under or in connection with the Hawkesbury Gas Contract or this deed are not adversely affected.

Enforcing Party means CEFC or any External Administrator, agent or attorney appointed by CEFC or acting under or in connection with a security.

External Administrator means an administrator, receiver, receiver and manager, controller or managing controller (each as defined in the Corporations Act), trustee, provisional liquidator, liquidator or any other person however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

GST means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act (GST Act)* or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act.

Insolvency Event means the happening of any one of:

- (a) the appointment of an External Administrator to LGI of any of its assets or any action is taken for the appointment of such a person; or
- (b) LGI is, states that it is or becomes unable to pay its debts when they all due or is deemed unable to pay its debts under the Corporations Act or any other application legislation.

LGI Default means the occurrence of:

- (a) a stop or suspension of performance of LGI's obligations under the Hawkesbury Gas Contract; or
- (b) any breach by LGI of, or event of default or termination event (however defined) under, the Hawkesbury Gas Contract;
- (c) an Insolvency Event in respect of LGI; or
- (d) any other event or circumstance,

which entitles (or which the giving of notice, satisfaction of a condition or lapse of time, would entitle) the Council to exercise a Default Right.

LGI Fixtures means chattels, plant or machinery owned by LGI and used in LGI's business at the Hawkesbury Site from time to time but does not include the infrastructure (including wells, flares, pipework, pumps and all other associated landfill gas infrastructure) and operating systems at the Hawkesbury Site.

Non-Remediable Default means a default by LGI other than:

- (a) a Remediable Default; or
- (b) an Insolvency Event in respect of LGI.

Remediable Default means a default by LGI:

- (a) which is a failure to pay money; or
- (b) which in the Council's reasonable opinion, can be remedied to the Council's reasonable satisfaction.

Remedied or Remedy (or any similar expression) means:

- (a) in the case of a Remediable Default which is a failure to pay money, the payment of the money; or
- (b) in the case of any other LGI Default:
 - (i) payment of compensation or undertaking an agreed course of action to the Council's reasonable satisfaction (having regard to the nature of the LGI Default, the time required to pay the compensation or take the course of action and the resources available to LGI); or
 - (ii) the appointment of an External Administrator in respect of LGI or the LGI Fixtures;
 - (iii) or in any case, the assignment or novation of LGI's interest in the Hawkesbury Gas Contract to a person who agrees to remedy the relevant Remediable Default or other LGI Default in accordance with item (a) or (b) above as applicable.

Remedy Period means for a LGI Default, the period starting on the date CEFC receives a copy of a Default Notice under clause 4(a) and ending:

- (a) for a Remediable Default, on the last day of the period specified in the Default Notice by which the LGI Default must be remedied, which last day must be:
 - (i) in the case of a failure to pay money, at least 20 Business Days after the date of the Default Notice; or
 - (ii) in the case of any other Remediable Default, at least 30 Business Days after the date of the Default Notice; or
- (b) for a Non-Remediable Default, on the later of:
 - (i) expiry of 30 Business Days; and
 - (ii) the last day of the period specified in the Default Notice by which monetary compensation or other action must be agreed as specified in the Default Notice; or
- (c) for an Insolvency Event in respect of LGI, on the later of:
 - (i) expiry of 30 Business Days; and
 - (ii) the last day of any period specified in the Default Notice,

or any longer period:

- (d) allowed for remedy or cure of the LGI Default under the Hawkesbury Gas Contract;

- (e) agreed between CEFC and the Council; or
- (f) as extended in accordance with clause 4(f).

1.2 Interpretation

In this deed unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this deed includes its successors and permitted assigns;
- (g) any reference to any agreement, document or deed includes that agreement, document or deed as amended, supplemented, restated or replaced at any time;
- (h) the use of the word includes or including is not to be taken as limiting the meaning of the words preceding it;
- (i) the expression at any time includes reference to past, present and future time and the performance of any action from time to time;
- (j) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (k) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (l) reference to an item is a reference to an item in Schedule 1 to this deed;
- (m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this deed;
- (n) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this deed means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
- (o) when a thing is required to be done or money required to be paid under this deed on a day which is not a Business Day, the thing must be done and the money paid on the immediately preceding Business Day; and
- (p) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated

2. CONSENT AND TERM OF DEED

- (a) The Council consents to LGI giving the Security and acknowledges that LGI's interest and rights in the LGI Fixtures and the Hawkesbury Gas Contract are subject to the Security.

3. RIGHT OF ENTRY

The Council permits CEFC, its employees and agents, and any External Administrator appointed pursuant to the Security to enter upon the Hawkesbury Site from time to time:

- (a) to manage or inspect improvements, fixtures, fittings and chattels (including the gas extraction network and pipe works for gas extraction) that are used to operate and conduct LGI's business at the Hawkesbury Site;
- (b) to operate LGI's business after LGI is in default under the Security in accordance with the procedures outlined in this deed;
- (c) to do everything necessary at the Hawkesbury Site,

for the purposes of exercising all or any of CEFC's rights, powers and remedies conferred on CEFC or an External Administrator by the Security.

For the avoidance of doubt, CEFC will have no liability or obligation to remove the LGI Fixtures from the Hawkesbury Site.

4. COVENANTS BY THE COUNCIL

The Council covenants, acknowledges and agrees with CEFC:

- (a) to give to CEFC a Default Notice in respect of each LGI Default;
- (b) that if a Remediable Default occurs, to not exercise any Default Rights in relation to that Remediable Default unless:
 - (i) it has given a Default Notice to LGI and CEFC; and
 - (ii) within the relevant Remedy Period:
 - (A) LGI or an Enforcing Party does not Remedy the Remediable Default; or
 - (B) CEFC has not appointed an External Administrator to step in to operate LGI's business;
- (c) that if a Non-Remediable Default occurs, to not exercise any Default Rights in relation to that Non-Remediable Default unless it has given a Default Notice to LGI and CEFC and either:
 - (i) if the LGI Default can reasonably be monetarily compensated:
 - (A) the Default Notice contains a reasonable claim for compensation in money for the LGI Default; and
 - (B) within the relevant Remedy Period:
 - (1) LGI or an Enforcing Party does not pay the money claimed; or
 - (2) CEFC has not appointed an External Administrator to step in to operate LGI's business; or
 - (ii) if the LGI Default cannot reasonably be monetarily compensated:
 - (A) the Council has consulted with CEFC in good faith before expiry of the Remedy Period to agree a basis on which the Council is prepared to continue to perform the Hawkesbury Gas Contract; and

- (B) within the relevant Remedy Period:
- (1) the Council and CEFC fail to agree on the matter referred to in clause 4(c)(ii)(A), or if the matter is agreed, implementation of the agreed matter is not being diligently pursued; or
 - (2) CEFC has not appointed an External Administrator to step in to operate LGI's business;
- (d) that if an Insolvency Event occurs in respect of LGI, to not exercise any Default Right in relation to that Insolvency Event unless:
- (i) it has given a Default Notice to LGI and CEFC; and
 - (ii) within the relevant Remedy Period, CEFC does not appoint an External Administrator in respect of LGI or the LGI Fixtures;
- (e) to deem any breach of the Hawkesbury Gas Contract remedied by CEFC or an External Administrator to have been remedied by LGI including where CEFC or an External Administrator pays and the Council accepts reasonable compensation in return for agreeing to allow the Hawkesbury Gas Contract to continue;
- (f) that if CEFC requests, the Council agrees not to unreasonably withhold its agreement to extend a Remedy Period where an Enforcing Party is diligently pursuing Remedy of the relevant LGI Default;
- (g) that:
- (i) CEFC may at any time after default by LGI under the Security and with the Council's written consent, assign, sub-license or novate LGI's interest in the Hawkesbury Gas Contract and the LGI Fixtures to any person or corporation if CEFC complies with the provisions of the Hawkesbury Gas Contract relating to any assignment, sub-licence or novation of LGI's interest in the Hawkesbury Gas Contract on the basis that the assignee, sub-licensee or novatee will, following completion of the assignment, sublicensing or novation:
 - (A) have the benefit of all rights, powers, remedies and discretions of LGI under the Hawkesbury Gas Contract; and
 - (B) assume the obligations and liabilities of LGI under the Hawkesbury Gas Contract, except for any obligations or liabilities arising from the acts, omissions or negligence of LGI that have arisen prior to the date of completion of the assignment, sublicensing or novation;
 - (ii) it will not unreasonably or arbitrarily withhold consent to any assignment, sub-licence or novation of LGI's interest in the Hawkesbury Gas Contract by CEFC where the assignee, sub-licensee or novatee is solvent and has the necessary financial and other resources to assume LGI's rights, duties and obligations under the Hawkesbury Gas Contract;
 - (iii) LGI will remain responsible and liable to the Council for any obligations or liabilities arising from the acts, omissions or negligence of LGI prior to the date of completion of the relevant assignment, sub-licensing or novation and, to that extent:

- (A) the relevant provisions of the Hawkesbury Gas Contract will remain binding on LGI; and
 - (B) completion of the relevant assignment, sub-licensing or novation will not prejudice any right, power or remedy of the Council against LGI nor prevent the Council from exercising any right, power or remedy it has or might at any time have in respect of any act, omission or negligence of LGI; and
- (iv) that it will not sell, assign or otherwise dispose of the fee simple or other estate in the land where the Hawkesbury Site is without first advising CEFC of its intention to do so and using reasonable endeavours to procure the entry into a deed in substantially the same terms as this deed by the purchaser, assignee or person acquiring the fee simple or estate in the land where the premises are; and
- (v) that, if CEFC or an External Administrator appointed by CEFC at any time after default by LGI under the Security enters into the Hawkesbury Gas Contract, the Council will not (despite the provisions of the Hawkesbury Gas Contract) treat that entry as a breach of the Hawkesbury Gas Contract while CEFC or the External Administrator, as the case may be, observes and performs the obligations of LGI under the Hawkesbury Gas Contract and in particular, causes the business permitted by the Hawkesbury Gas Contract to be carried on at the Hawkesbury Site in a business-like manner during the hours and days required by the Hawkesbury Gas Contract.

5. GENERAL PROVISIONS

5.1 Costs

LGI must pay the Council's costs in relation to the preparation and entering of this deed and CEFC's and the Council's costs in relation to:

- (a) the negotiation, preparation, execution, performance, amendment or registration of, or any consent given or made; and
- (b) the performance of any action by that party in compliance with any liability arising,

under this deed, or any agreement, document or deed executed or effected under this deed, unless this deed provides otherwise.

5.2 GST

If any payment made by one party to any other party under or relating to this deed constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this deed.

5.3 Assignment

A party must not transfer any right or liability under this deed without the prior written consent of each other party, except where this deed provides otherwise.

5.4 Notices

- (a) Any notice to or by a party under this deed must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- (b) Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified in Item 4 or most recently notified by the recipient to the sender.
- (c) Any notice is effective for the purposes of this deed upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4 pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9 am on the next day following delivery or receipt.

5.5 Governing law and jurisdiction

- (a) This deed is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this deed against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (c) Each party by execution of this deed irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

5.6 Amendments

Any amendment to this deed has no force or effect, unless effected by a deed executed by the parties.

5.7 Third parties

This deed confers rights only upon a person expressed to be a party, and not upon any other person.

5.8 Precontractual negotiation

This deed:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

5.9 Further assurance

Each party must execute any deed and perform any action necessary to give full effect to this deed, whether before or after performance of this deed.

5.10 Continuing performance

- (a) The provisions of this deed do not merge with any action performed or deed executed by any party for the purposes of performance of this deed.
- (b) Any representation in this deed survives the execution of any deed for the purposes of, and continues after, performance of this deed.
- (c) Any indemnity agreed by any party under this deed:

- (i) constitutes a liability of that party separate and independent from any other liability of that party under this deed or any other agreement, document or deed; and
- (ii) survives and continues after performance of this deed.

5.11 Waivers

Any failure by any party to exercise any right under this document does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

5.12 Remedies

The rights of a party under this deed are cumulative and not exclusive of any rights provided by law.

5.13 Severability

Any provision of this deed which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this deed or the validity of that provision in any other jurisdiction.

5.14 Counterparts

This deed may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same deed.

Schedule 1 –

Item 1	Description of Hawkesbury Site	The Hawkesbury City Waste Management Facility located at 1 The Driftway, South Windsor NSW 2756 where the Project is operated pursuant to the Hawkesbury Gas Contract.
Item 2	Description of Hawkesbury Gas Contract	Hawkesbury Gas Contract dated 30 October 2015 for a term of 7 years between the Council and LGI (as varied, amended or extended from time to time).
Item 3	Security	General security agreement over all the present and after acquired property of LGI dated 18 December 2015 and registered on the Personal Property Securities Register as PPS Registration No. 201512170079968.
Item 4	Address, facsimile number and email address for service	<p>CEFC Address: Suite 1702, 1 Bligh Street, Sydney NSW 2000 Facsimile: +61 2 8039 0899</p> <p>LGI Landfill Gas Industries Pty Ltd ACN 138 085 551 Address: 220 Gympie Road, Strathpine, Queensland 4110 Facsimile:</p> <p>Council Hawkesbury City Council ABN 54 659 038 834 Address: 366 George Street, Windsor NSW 2756 Facsimile: 4587 7740</p>
Item 5	Project	The operation and maintenance of a landfill gas flare on the Hawkesbury Site.

EXECUTED as a DEED

Signed Sealed and Delivered for Clean Energy Finance Corporation ABN 43 669 904 352 by its duly authorised sub-attorneys pursuant to the Sub-Power of Attorney dated 10 July 2013 (made by Oliver Tennant Yates, Chief Executive Officer of CEFC acting in his capacity as attorney for CEFC pursuant to the power of attorney dated 10 July 2013) who each state that they are authorised to execute this deed on behalf of CEFC having received no notice of the revocation of the Sub-Power of Attorney in the presence of:

_____)	_____)
Signature of Witness)	Signature of Sub-Attorney)
))
))
_____)	_____)
Name of Witness)	Name/title of Sub-Attorney)
))
))
))
)	_____)
)	Signature of Sub-Attorney)
))
))
)	_____)
)	Name/title of Sub-Attorney)

EXECUTED by Landfill Gas Industries Pty Ltd ACN 138 085 551
in accordance with section 127 of the *Corporations Act 2001* (Cth)

Signature of director/secretary

Signature of director

Name of director/secretary

Name of director

EXECUTED for and on behalf of
Hawkesbury City Council
ABN 54 659 038 834 by its duly
appointed Delegates pursuant to the
resolution of Council made on [insert
date]

Signature of witness

Signature of delegate

Name of witness

Name of delegate

LGI acknowledges that this document has been entered into at its request and consents to the terms contained in this document.