



SNOWY MONARO
REGIONAL COUNCIL

BUSINESS PAPER

PUBLIC EXHIBITION COPY

**Extraordinary Council Meeting
11 December 2019**

CONFLICTS OF INTEREST

A conflict of interest arises when the Mayor or Council staff are influenced, or are seen to be influenced, in carrying out their duties by personal interests. Conflicts of interest can be pecuniary or non-pecuniary in nature.

A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of a financial gain or loss.

A non-pecuniary interest can arise as a result of a private or personal interest, which does not relate to money. Examples include friendship, membership of an association or involvement or interest in an activity.

The Mayor or staff member who considers they may have a conflict of interest should read Council Policy.

The responsibility of determining whether or not the Mayor or Council employee has a pecuniary or non-pecuniary interest in a matter, is the responsibility of that individual. It is not the role of the Mayor or General Manager, or another Council employee to determine whether or not a person may have a conflict of interest.

Should you be unsure as to whether or not you have a conflict of interest you should err on the side of caution and either declare a conflict of interest or, you should seek the advice of the Director General of Local Government.

The contact number for the Director General of Local Government is 4428 4100.

COUNCIL CODE OF CONDUCT

The Council Code of Conduct is a requirement of Section 440 of the Local Government Act 1993, which requires all councils to have a code of conduct to be observed by the Mayor, members of staff and delegates of the Council attending a Council meeting or a meeting of a committee of Council.

The code of conduct sets out the responsibilities of the Mayor and Council employees attending a Council meeting or a meeting of a committee of Council. The code also sets out how complaints against a Council employee, the Mayor or General Manager are to be made.

COUNCIL CODE OF MEETING PRACTICE

The Council Code of Meeting Practice is a requirement of Section 360(3) of the Local Government Act 1993, which requires all councils to have a code of meeting practice. The code of meeting practice is to be observed by the Administrator, members of staff, delegates of the Council and members of the public attending a Council or a meeting of a committee of Council.

Acknowledgement of Country

Council wishes to show our respect to the First Custodians of this land the Ngarigo, Walgalu, Ngunnawal and Bidhawal people and their Ancestors past and present.

Webcasting

Council meetings are recorded and live streamed to the internet for public viewing. By entering the Chambers during an open session of Council, you consent to your attendance and participation being recorded and streamed on Councils website www.snowymonaro.nsw.gov.au

**EXTRAORDINARY COUNCIL MEETING
TO BE HELD IN COUNCIL CHAMBERS, 81 COMMISSIONER STREET, COOMA NSW
2630**

**ON WEDNESDAY 11 DECEMBER 2019
COMMENCING AT 4:00 PM**

BUSINESS PAPER

1. OPENING MEETING

2. ACKNOWLEDGEMENT OF COUNTRY

3. APOLOGIES AND APPLICATIONS FOR LEAVE OF ABSENCE BY COUNCILLORS

4. CITIZENSHIP CEREMONIES

Nil.

5. DISCLOSURE OF INTEREST

(Declarations also to be made prior to discussions on each item)

6. MATTERS DEALT WITH BY EXCEPTION

Nil.

7. CONFIRMATION OF MINUTES

Nil.

8. OTHER REPORTS TO COUNCIL

8.1 KEY THEME 4. LEADERSHIP

8.1.1 Sale of Southern Phone Shares

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9. CONFIDENTIAL MATTERS

Nil.

8.1.1 SALE OF SOUTHERN PHONE SHARES

Record No:

Responsible Officer:	Acting Director Corporate and Community Services
Key Theme:	4. Leadership Outcomes
CSP Community Strategy:	11.2 Council utilises sound fiscal management practices, pursues and attracts other sources of income
Delivery Program Objectives:	11.2.3 Alternative sources of revenue to rating income are identified and maximised Ordinary Council at its meeting on 19 December 2019 resolved that the matter be deferred to the meeting to be held on 16 January 2020.
Attachments:	1. Southern Phone Share Sale Agreement
Cost Centre	
Project	
Further Operational Plan Actions:	

EXECUTIVE SUMMARY

Council has previously considered the sale and agreed to proceed with the sale, with the details of the sale to be negotiated by the Mayor and Chief Executive Officer. All member councils have agreed to undertake the sale on the basis of one member one share and this is how the sale will proceed.

The following officer's recommendation is submitted for Council's consideration.

OFFICER'S RECOMMENDATION

That Council:

- a) Agree to the sale of Southern Phone Company shares to AGL Energy in line with the attached share sale agreement; and
- b) Delegate the Chief Executive Officer to execute any relevant documentation necessary.

BACKGROUND

Council has previously considered the sale of Southern Phone to AGL. At the time details of the way the sale would be structured were still being negotiated. The discussions centred on whether the sale should proceed on the basis of each member council gaining an equal share and how shares held by merged councils should be treated. All Council have agreed to the share sale proceeding on an equal share to be provided to all members.

The solicitors handling the sale have requested Council to pass a resolution specifically approving the sale agreement and authorising the execution of the documentation, which is why the matter has been returned to Council.

8.1.1 SALE OF SOUTHERN PHONE SHARES

This provides a substantial return on the investment of \$2 initially made to become a member of Southern Phone.

QUADRUPLE BOTTOM LINE REPORTING

1. Social

Nil.

2. Environmental

Nil.

3. Economic

Council will receive \$785,714 for its shareholding in Southern Phone. In addition a special dividend will be declared. It is unknown the exact amount of the special dividend will be until the sale is finalised.

4. Civic Leadership

Nil.

Share Sale Agreement

AGL Energy Limited
The party listed at Schedule 1



Level 12
60 Carrington Street
SYDNEY NSW 2000
DX 262 SYDNEY NSW
Tel: (02) 8915 1000
Fax: (02) 8916 2000
www.addisonslawyers.com.au
Ref: KJP:SOU012/4001

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DETAILS

Date:

Parties

(1) The party listed in Schedule 1 (Seller)

(2) **AGL Energy Limited (Buyer)**

ACN	115 061 375
Address	Level 24, 200 George Street, SYDNEY NSW 2000
Email	CompanySecretary@agl.com.au
Attention	Company Secretary

Recitals

- A. The Company conducts the Business.
- B. The Seller holds all of the Sale Shares.
- C. The Seller agrees to sell and transfer all right, title and interest in and to the Sale Shares to the Buyer, and the Buyer agrees to purchase and accept the transfer of the Sale Shares, in accordance with the terms and conditions of this agreement.

Operative Parts

1. Defined terms and interpretation

1.1 Defined terms

In this agreement:

Affiliate means:

- (a) in relation to any entity, any other entity that:
 - (i) is a Related Body Corporate of the first mentioned entity; or
 - (ii) Controls, is Controlled by, or is under common Control with the first mentioned entity; and
- (b) in relation to any person, an entity that is Controlled by that person.

Business means the business of the Company, being, as at the date of this agreement, a business providing telecommunications services.

Business Day means a day which is not a Saturday, Sunday, a bank holiday or a public holiday in Sydney, Australia.

Business Hours means from 9.00 a.m. and 5.00 p.m. on a Business Day.

Buyer Warranties means the representations and warranties in Schedule 3.

Control means the capacity of a person or entity to determine the outcome of decisions about a second entity's financial and operating policies and, in determining whether a person or entity has this capacity:

- (a) the practical influence that person or entity can exert (rather than the rights it can enforce) is the issue to be considered; and
- (b) any practice or pattern of behaviour affecting the second entity's financial or operating policies is to be taken into account (even if it involves a breach of agreement or a breach of trust).

Company means Southern Phone Company Limited ACN 100 901 184.

Company Completion Steps means the steps the Company is required to complete for Completion to occur as set out in the Implementation Deed.

Completion means the completion of the sale and purchase of the Sale Shares in accordance with clause 3.

Completion Date means the date that is five Business Days after the Conditions have been satisfied or waived in accordance with the Implementation Deed, or such other date as the Seller's Representative and the Buyer may agree in writing.

Conditions has the meaning given to that term in the Implementation Deed.

Constitution Amendment Resolution means the special resolution to amend the Constitution as set out in the Notice of Meeting.

Corporations Act means the *Corporations Act 2001* (Cth).

Details means, in relation to a party, the details for that party set out at the beginning of this agreement (in the case of the Buyer) or Schedule 1 (in the case of the Seller).

Encumbrance means:

- (a) a mortgage, charge, pledge, lien, hypothecation or title retention arrangement;
- (b) any third party interest (for example, a trust or an equity);
- (c) a "security interest" as defined under the PPSA;
- (d) a right of a person to acquire a security or to restrain someone from acquiring a security (including under a right of pre-emption or a right of first refusal); or
- (e) an agreement to grant or create any of the above or to allow any of them to exist.

Government Agency means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in Australia (whether federal, state or local) or any other part of the world, except for the Seller.

GST means a goods and services tax or similar value added tax levied or imposed under the GST Law.

GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any regulation made under that Act.

Immediately Available Funds means electronic means of transfer of cleared funds by real-time gross settlement.

Implementation Deed means the implementation deed dated 15 October 2019 between the Company and the Buyer.

Insolvency Event means, in respect of a body corporate, the occurrence of any of the following in respect of that body corporate:

- (a) an order is made or an effective resolution is passed for the winding up, dissolution without winding up (otherwise than for the purposes of solvent reconstruction or amalgamation) or deregistration of that body corporate;
- (b) a receiver, receiver and manager, judicial manager, liquidator, administrator or like official is appointed or expected to be appointed over the whole or a substantial part of the undertaking or property of that body corporate;
- (c) a holder of an Encumbrance takes possession of or exercises any other rights arising from the Encumbrance over the whole or any substantial part of the undertaking and property of that body corporate, or indicates an intention to do so;
- (d) that body corporate becomes insolvent or any circumstance exists or arises which would require a court to presume that that body corporate is insolvent;
- (e) that body corporate enters into or takes any steps to enter or proposes to enter into any arrangement, compromise or assumption with or assignment for the benefit of its creditors or a class of them;
- (f) that body corporate stops, suspends or threatens to stop or suspend paying its debts as and when they fall due; or
- (g) any analogous event under the Laws of any applicable jurisdiction.

Law includes any law, regulation, authorisation, ruling, judgment, order or decree of any Government Agency and any statute, regulation, proclamation, ordinance or by-law.

Leakage means in respect of the Company:

- (a) any dividend or distribution declared, paid or made (or determined to be paid or made on or before Completion) by the Company to the Seller or any of its Affiliates;
- (b) any payment, rebate, discount or bonus (in cash or in kind) paid or to be paid by the Company to the Seller or any of its Affiliates as an incentive for Completion, or triggered by Completion;
- (c) any payments made or agreed to be made by the Company to the Seller or any of its Affiliates in respect of any capital in the Company being issued, redeemed, purchased or repaid, or any other return of capital by the Company;
- (d) any cancellation or forgiveness (or agreement to cancel or forgive) of any indebtedness for money owed to the Company, or the waiver or an agreement to waive by the Company of any amount owed to the Company or the Business, by the Seller or any of its Affiliates;
- (e) any liabilities assumed, guaranteed, indemnified or incurred by the Company, or the provision of any security or collateral by the Company, for the benefit of the Seller or any of its Affiliates;

- (f) any payment, or the provision of any benefit, by the Company to, or for the benefit of, the Seller or any of its Affiliates or the incurrence of any indebtedness or other obligation by the Company to the Seller or any of its Affiliates;
- (g) the payment of or agreement to pay any fees or costs or any Tax or GST incurred by the Company as a result of those matters set out in paragraphs (a) to (f) above, or the incurrence of any Tax as a result of any of those matters set out in paragraphs (a) to (f) above;
- (h) the payment of or agreement to pay any Transaction Costs in excess of \$2,700,382 plus interest earned on this amount,

in each case after the Locked Box Date and on or prior to the Completion Date, and **Leakage Payment** has a corresponding meaning, but does not include:

- (i) the Permitted Dividend;
- (j) any payment or thing that is expressly permitted or required to be done by or under the Implementation Deed;
- (k) a payment which is approved in writing by the Buyer; or
- (l) any Tax or GST incurred by the Company as a result of any matters set out in paragraphs (i) to (k) above.

Locked Box Date means 30 June 2019.

Loss means any damage, loss, cost (including legal costs, but only to the extent reasonably incurred) or expense incurred by the person concerned.

Notice has the meaning given in clause 9.1.

Notice of Meeting means the notice of the general meeting of the shareholders of the Company convened to consider the Constitution Amendment Resolution dated at or around the same date as the Seller received this agreement executed by the Buyer, and in the form agreed between the Buyer and the Company.

Permitted Dividend means a dividend declared and paid by the Company out of cash held in the account with designation "F2484" managed by Morgan Stanley Private Wealth Management immediately before Completion in an aggregate amount of up to \$2,700,382 plus interest earned on this amount, which amount will be reduced by the amount of Transaction Costs incurred, or agreed to be incurred, by the Company.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Purchase Price means, in relation to the Seller, the dollar amount set out adjacent to the name of the Seller in column 5 of Schedule 1 under the heading 'Purchase Price'.

Related Body Corporate has the meaning given by the Corporations Act.

Respective Proportion means the proportion equal to 1/35th.

Sale Shares means all of the shares in the issued capital of the Company that are described in Schedule 1.

Seller Warranties means the representations and warranties in Schedule 2.

Seller's Representative means Bill Hilzinger, or such other person as the Seller identifies in a Notice signed by all shareholders of the Company and delivered to the Buyer.

Tax means any tax, duty, levy, charge, impost, fee, deduction, goods and services tax, compulsory loan or withholding (together with any interest, penalty, fine or expense that is imposed on or in respect of any of the foregoing) which is assessed, levied, imposed or collected by any Government Agency.

Tax Act means any law which imposes or relates to Tax, and includes capital gains tax, fringe benefits tax, income tax, prescribed payments tax, superannuation guarantee charge, PAYG withholding, undistributed profits tax, payroll tax, GST, group tax, land tax, import duty, excise, stamp duty, municipal and water rates, withholdings of any nature whatever imposed by a Government Agency, interest on tax payments and additional tax by way of penalty.

Transaction Costs means the fees or costs (excluding GST) incurred by the Company in relation to the implementation of the Transaction.

Transactions means the sale by the Seller and acquisition by the Buyer of the Sale Shares under this agreement.

1.2 Interpretation

In this agreement, headings are for ease of reference only and do not affect interpretation and, except where otherwise stated:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes other genders;
- (c) terms defined in the Corporations Act have the same meaning when used in this agreement;
- (d) if a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;
- (e) a reference to a recital, clause, schedule or annexure is to a recital or clause of or schedule or annexure to this agreement and a reference to this agreement includes any schedule;
- (f) a reference to a document includes a reference to that document as amended, novated, supplemented, varied or replaced;
- (g) the terms "include", "including" and similar expressions when introducing a list of items do not exclude a reference to other items;
- (h) a reference to a party is a reference to a party to this agreement and includes the party's successors and permitted assigns;
- (i) a reference to a person includes a natural person, partnership, firm, body corporate, trust, joint venture, association, governmental or local authority or agency or other entity;
- (j) a reference to a statute or statutory provision includes:
 - (i) a statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision;

- (ii) a statute or statutory provision which has been amended, extended, consolidated or replaced by the statute or statutory provision; and
- (iii) subordinate legislation made under the statute or statutory provision including but not limited to an order, regulation, or instrument;
- (k) reference to "\$", "A\$", "Australian Dollars" or "dollars" is a reference to the lawful tender for the time being and from time to time of the Commonwealth of Australia;
- (l) a provision of this agreement is not to be construed against a party solely on the ground that the party is responsible for the preparation of this agreement or a particular provision;
- (m) any agreement, covenant, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them severally and not jointly or jointly and severally;
- (n) any agreement, covenant, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them severally and not jointly or jointly and severally; and
- (o) a reference to "agreed form" means, in respect of a document, a form of that document agreed between the Buyer and the Seller's Representative and initialled by or on behalf of these parties on the date of this agreement for the purposes of identification.

1.3 Business Day and day

- (a) If this agreement requires that the day on which a thing must be done is a day which is not a Business Day, then that thing must be done on or by the immediately following Business Day.
- (b) A reference to a day (including a Business Day) is a reference to a time period which begins at midnight and ends 24 hours later.

1.4 Payments

All payments required to be made under this agreement must be made in Australian dollars and, unless otherwise expressly provided in this agreement, in Immediately Available Funds to:

- (a) an account nominated in writing by the Seller (in the case of a payment to the Seller);
- (b) to an account nominated in writing by the Buyer (in the case of a payment to the Buyer); or
- (c) any other method as agreed in writing between the Seller's Representative and the Buyer.

1.5 Relationship of the Seller's Representative

- (a) The Seller irrevocably appoints the Seller's Representative as its attorney, agent and representative for the purposes of this agreement, to exercise or discharge for it and on its behalf all of the rights, obligations, powers and discretions of the Seller expressed to be held by, or exercisable by, the Seller's Representative under this agreement, and all powers reasonably incidental thereto, including to give and

receive any consent, approval or agreement to amend or waive any term of this agreement.

- (b) The parties agree that the Seller's Representative shall be entitled on behalf of the Seller to exercise those rights, powers and discretions, give and receive those consents, approvals, amendments or waivers or to take those other actions referred to or contemplated by clause 1.5(a). Further, the Seller agrees that it shall be bound by any action, election, direction or document executed by or on behalf of the Seller's Representative and it will not challenge the validity or effectiveness of any document executed by the Seller's Representative.
- (c) The Seller acknowledges that the Buyer shall be entitled to rely on any action, election, direction or document executed by or on behalf of the Seller's Representative as agent for the Seller without any need for a reference as to that agency or the need for any further inquiry.
- (d) The Seller agrees not to revoke or attempt to revoke the appointment of the Seller's Representative under this clause 1.5 and to ratify everything done or caused to be done by the Seller's Representative under it.

2. Purchase of Sale Shares

2.1 Sale and purchase of Sale Shares

On Completion, the Seller must sell to the Buyer, and the Buyer must buy from the Seller, the legal and beneficial title to, and rights and interest in, free and clear of all Encumbrances, the Sale Shares, with all rights attaching or accruing to the Sale Shares on and from the Completion Date and otherwise on the terms of this agreement.

2.2 Title

Title, ownership and risk in the Sale Shares pass to the Buyer with effect on and from Completion.

2.3 Purchase Price

The total consideration for the purchase of the Sale Shares is the Purchase Price, which the Buyer must satisfy by paying to the Seller on Completion in accordance with clause 3.3(b).

2.4 Consent to variation of Constitution

By entering into this agreement, the Seller hereby consents to the amendments to the Company's Constitution proposed by the Constitution Amendment Resolution for the purposes of the *Corporations Act 2001* (Cth), the Constitution of the Company (including clause 9.1 to the extent relevant) and for all other purposes.

3. Completion

3.1 Completion

Subject to clause 3.7:

- (a) Completion is conditional on the satisfaction or waiver of the Conditions in accordance with the terms of the Implementation Deed; and
- (b) provided the Conditions are satisfied or waived in accordance with the terms of the Implementation Deed, Completion must take place on the Completion Date at

11:00am at the offices of Addisons, Level 12, 60 Carrington Street, Sydney NSW 2000 or such other time and place as the Seller's Representative and the Buyer agree in writing.

3.2 Actions by the Seller

- (a) On Completion, the Seller, or the Seller's Representative, must give to the Buyer, or procure that the Buyer is given:
- (i) transfers in favour of the Buyer in respect of the Sale Shares, in registrable form and executed by or on behalf of the Seller;
 - (ii) all original share certificates for the Sale Shares or an indemnity for any lost share certificates in the agreed form; and
 - (iii) if applicable, a copy of the power of attorney executed by the Seller authorising its attorney to execute this agreement and any of the documents listed in this clause 3.2 on behalf of the Seller.
- (b) From Completion, until the Sale Shares are registered in the name of the Buyer, the Seller must appoint the Buyer as the sole proxy of the holder of Sale Shares to attend shareholders' meetings and exercise the votes attaching to the Sale Shares; must not attend and vote at any shareholders' meetings; and must take all other actions in the capacity of a registered holder of the Sale Shares as the Buyer directs. The Buyer indemnifies the Seller against all Loss suffered or incurred by it arising out of the implementation of any action taken in accordance with the proxy referred to in this paragraph.

3.3 Actions by the Buyer

On Completion, the Buyer must:

- (a) countersign the transfer received from the Seller pursuant to clause 3.2(a)(i), and procure that each such transfer is delivered to the Company; and
- (b) pay to the Seller the Purchase Price.

3.4 Actions by the Company

The Seller acknowledges and agrees that for Completion to occur the Company must complete the Company Completion Steps, unless the Buyer, in its sole discretion, waives any or all actions that the Company is required to take in relation to the Company Completion Steps.

3.5 Interdependence of obligations

The obligations of the parties in respect of Completion are interdependent and Completion does not occur until the parties have complied with all of their obligations under clauses 3.2 and 3.3 and the Company has completed the Company Completion Steps, unless otherwise agreed between the Seller's Representative and the Buyer. All actions required to be performed under clauses 3.2 and 3.3 will be taken to have occurred simultaneously on the Completion Date.

3.6 Notice to complete

- (a) If any party (**Defaulting Party**) fails to satisfy any of its obligations under clause 3.2 or 3.3 on the day and at the place and time for Completion determined under clause 3.1, then the Buyer (if the Seller is the Defaulting Party) or the Seller's

Representative (if the Buyer is the Defaulting Party) (**Notifying Party**) may give the Defaulting Party a Notice requiring the Defaulting Party to satisfy those obligations within a period of 3 Business Days from the date of the Notice and declaring time to be of the essence.

- (b) If the Defaulting Party fails to satisfy those obligations within the time period contemplated in clause 3.6(a), then the Notifying Party may, without limiting any other rights it may have, terminate this agreement by Notice to the other party.

3.7 Termination

- (a) If the Implementation Deed is terminated in accordance with its terms before the Completion Date:

- (i) this agreement will automatically terminate upon the termination of the Implementation Deed; and
- (ii) Completion will not take place.

- (b) If this agreement is terminated in accordance with clause 3.6(b) or 3.7(a)(i):

- (i) there is no further obligation on any party to undertake or perform any of the unperformed obligations under this clause 3; and
- (ii) to the extent that any obligations under this clause 3 have already been undertaken or performed, the parties must do everything reasonably required to reverse those actions, including returning all documents delivered to it and repaying all payments received by it,

provided that each party retains all rights it has against each other party in respect of any breach of this agreement occurring prior to termination.

4. Locked Box

4.1 No Leakage undertaking

The Seller represents, warrants and undertakes to the Buyer that between the Locked Box Date and the Completion Date (inclusive):

- (a) it has not received, nor will it receive, from the Company any amount of Leakage; and
- (b) it has not, nor will it (including in its capacity as a shareholder of the Company, or by the giving of instructions to any director of the Company) agreed to, authorised, consented to or voted in favour of any Leakage.

4.2 Indemnity for Leakage

Subject to clause 4.3, the Seller indemnifies the Buyer against:

- (a) the amount of any and all Leakage that the Seller has received or had the benefit of and any Loss resulting from the Leakage, where the indemnified amount must be an amount equal at least to the dollar amount of the Leakage on a dollar for dollar basis (and may be set off against the Buyer's obligation to pay the Purchase Price; and
- (b) without limiting clause 4.2(a), any breach of the warranty and undertaking given by the Seller under clause 4.1.

4.3 **Proportionate liability for Leakage relating to Transaction Costs**

The Seller's liability for or in connection with Leakage stated in paragraph (h) of the definition of Leakage is limited to the Seller's Respective Proportion of the amount of such Leakage and of any Loss resulting from such Leakage.

4.4 **No set-off**

All payments under this agreement must be paid without any set-off, deduction or withholding, except as otherwise provided for under clause 4.2(a).

5. Commitment to regional employment

Subject to Completion occurring, for at least the three year period after Completion, the Buyer must procure that the Company:

- (a) maintains its existing Moruya, NSW operations; and
- (b) retains its existing employees located in Moruya, subject to each employee's ongoing compliance with their terms of employment and the Buyer's applicable employment policies; and
- (c) uses reasonable commercial efforts to maintain the overall number of employees located in Moruya that the Company employs as at Completion.

6. Seller Warranties

- (a) The Seller gives the Seller Warranties in favour of the Buyer on the date of this agreement and immediately prior to Completion.
- (b) Each of the Seller Warranties remains in full force after Completion, is separate and independent and not limited or restricted by any other Seller Warranty.
- (c) The Seller acknowledges that the Buyer has entered into this agreement in reliance on the Seller Warranties.
- (d) The Seller is not liable under any Claim for breach of a Seller Warranty, and the Buyer is barred from making or continuing to pursue any such Claim, if the Buyer does not notify the Seller of the relevant Claim within 3 years of the date of Completion.
- (e) The maximum aggregate amount that the Buyer can recover from the Seller under any Claim for breach of one or more Seller Warranties is the Purchase Price.
- (f) The Seller must promptly notify the Buyer if at any time after the date of this agreement it becomes aware that a Seller Warranty was not true when given, or has ceased to be true; or an act or event that has occurred that would or might reasonably be expected to result in a Seller Warranty ceasing to be true if it were repeated immediately before or at Completion and must provide the Buyer with details of that fact.
- (g) The Seller undertakes to the Buyer and any person who was at the date of this agreement a current or former director, officer or employee of the Company and who at any time following Completion is a director, officer or employee of the Buyer or the Company that neither it nor any of its Affiliates will make a claim or demand against any officer in respect of any matter arising in connection with this agreement, including any breach of Seller Warranty.

7. Buyer Warranties

- (a) The Buyer gives the Buyer Warranties in favour of the Seller on the date of this agreement and immediately prior to Completion.
- (b) Each of the Buyer Warranties remains in full force after Completion, is separate and independent and not limited or restricted by any other Buyer Warranty.
- (c) The Buyer acknowledges that the Seller has entered into this agreement in reliance on the Buyer Warranties.

8. Announcements and confidentiality

8.1 Announcements

- (a) The Buyer and the Company will each make a public announcement of the execution of the Implementation Deed and related matters in the form and at the time agreed between them (**Agreed Announcement**).
- (b) A public announcement by the Seller or its Affiliates in connection with this agreement or the Transactions must be agreed by the Buyer and the Company before it is made, except if required by applicable law or a regulatory body (other than the Seller), in which case the Seller must, to the extent practicable, first consult with and take into account the reasonable requirements of the Buyer and the Company.

8.2 Confidentiality

Subject to clause 8.1, each party (**recipient**) must keep secret and confidential, and must not divulge or disclose for any purpose, the terms of this agreement or the Transactions, or any information provided to it under or in connection with this agreement or the Transactions by or on behalf of another party, except to the extent that:

- (a) the disclosure is made by the recipient to its councillors, directors, officers, employees, financiers, lawyers, accountants or other professional advisers, in which case the recipient must ensure that such persons keep the information secret and confidential and do not divulge or disclose the information to any person other than a person to whom the recipient is permitted to disclose that information in accordance with this clause 8;
- (b) if the Buyer is the recipient, the disclosure is made in connection with doing anything necessary or desirable in relation to the Implementation Deed or approval, execution, negotiation, or implementation of the Transaction or acquisition of any other securities in the Company, including to its bank and other persons to the extent required to raise funding for the Transactions, provided that its bank and such other persons are obliged to keep the information confidential or the disclosure is to the Australian Taxation Office as part of the Buyer's ongoing annual tax compliance obligations;
- (c) the information is in the public domain as at the date of this agreement or subsequently comes into the public domain other than as a result of a breach of any obligation of confidentiality binding on the recipient;
- (d) the recipient is required to disclose the information by Law or the rules of any recognised securities exchange on which the shares of the recipient or its ultimate holding company are quoted, provided that the recipient has to the extent permitted and practicable having regard to the required timing of the disclosure

consulted with the provider of the information as to the form and content of the disclosure;

- (e) the disclosure is required for use in legal proceedings regarding this agreement or the Transactions; or
- (f) the party from whom the recipient received the information or, where the relevant information is the terms of this agreement or the Transactions, the other party to this agreement (or the Seller's Representative if the other party is the Seller), has consented to the disclosure in writing before the disclosure is made.

8.3 After Completion

From Completion, the Buyer may disclose any confidential information relating to the Company and the Business in its discretion, except to the extent that such information relates to the Seller.

8.4 Buyer tax reporting

The parties acknowledge that if Completion occurs the Buyer will disclose the Transaction, including this Agreement, to the Australian Taxation Office as part of its ongoing annual tax compliance obligations.

9. Notices

9.1 Service of notices

A notice, demand, consent, approval, waiver or other communication under this agreement (**Notice**):

- (a) must be in legible writing and in English directed to the recipient's address for notices specified in the Details and Schedule 1 (as varied by any Notice);
- (b) must be hand delivered, left at or sent by prepaid post or email to the recipient's address for notices specified in the Details and Schedule 1 (as varied by any Notice); and
- (c) may be given by an agent of the sender.

9.2 Effective on receipt

A Notice given in accordance with clause 9.1 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered or left at the recipient's address, on delivery;
- (b) if sent by prepaid post, the third Business Day after the date of posting, or the seventh Business Day after the date of posting if posted to or from outside Australia; and
- (c) if sent by email, when received by the recipient's email server (whether or not filtered or classified as unsolicited email or spam) unless the sender receives an automated message that delivery of the email has failed,

but if the delivery or transmission under paragraph (a) or (c) is outside Business Hours, the Notice is taken to be received at the commencement of Business Hours after that delivery, receipt or transmission.

9.3 **Process service**

Any process or other document relating to litigation, administrative or arbitral proceedings in relation to this agreement may be served by any method contemplated by this clause in addition to any means authorised by Law.

10. **GST**

10.1 **Interpretation**

- (a) Except where the context suggests otherwise, terms used in this clause 10 have the meanings given to those terms by the GST Law.
- (b) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

10.2 **Additional amounts of GST payable**

If GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this agreement:

- (a) any amount payable or consideration to be provided under any provision of this agreement (other than this clause 10) for that supply is exclusive of GST;
- (b) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
- (c) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 10.2(b).

10.3 **Variation**

- (a) If the GST Amount properly payable in relation to a supply varies from the additional amount paid by the Recipient under clause 10.2, the Supplier must provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 10.3(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 10.2.
- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this agreement as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

10.4 **Reimbursement**

If a payment due under this agreement is a reimbursement, indemnification or payment by way of damages by one party of a Loss incurred or to be incurred by the other party, the payment will exclude any GST forming part of the amount to be reimbursed, indemnified or paid by way of damages to the extent to which the other party can claim an input tax credit on such amount.

10.5 **No merger**

This clause 10 will not merge on Completion or termination of this agreement.

11. General

11.1 Amendments

This agreement may be amended or varied only in writing and signed by the Buyer and the Seller's Representative.

11.2 Approvals, consents and exercise of rights

Except where this agreement expressly states otherwise, a party may:

- (a) in its absolute discretion, give conditionally or unconditionally or withhold any approval or consent under this agreement; and
- (b) exercise a right at its discretion and separately or concurrently with another right.

11.3 Assignment

Except where this agreement expressly states otherwise, a party may only assign this agreement or a right under this agreement with the prior written consent of each other party.

11.4 Counterparts

This agreement may be executed in counterparts and all executed counterparts together constitute one document.

11.5 Costs

Subject clause 11.6, each party must bear its own costs in relation to, and associated with, this agreement and giving effect to this agreement.

11.6 Duty

The Buyer must pay all stamp duty in respect of the execution, delivery and performance of this agreement.

11.7 Entire agreement

This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

11.8 Further action

Each party must, at its own expense, do everything reasonably necessary to give full effect to this agreement (including executing documents) and to use all reasonable endeavours to cause relevant third parties to do likewise.

11.9 No merger

Except where this agreement expressly states otherwise, the rights and obligations of the parties under this agreement do not merge on Completion.

11.10 Severability

If the whole or any part of a provision of this agreement is invalid or unenforceable in a jurisdiction it must, if possible, be read down for the purposes of that jurisdiction so as to be valid and enforceable. If however, the whole or any part of a provision of this agreement is

not capable of being read down, it is severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

11.11 Survival

Any obligation of confidentiality in this agreement is independent and survives termination of this agreement. Any other term which by its nature is intended to survive termination of this agreement survives termination of this agreement.

11.12 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise by a party of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be by Notice and signed by the party giving the waiver, provided that the Seller's Representative may give a waiver on behalf of any Seller.

11.13 Relationship

Except where this agreement expressly states otherwise, this agreement does not create a relationship of employment, trust, agency or partnership between the parties.

11.14 Remedies cumulative

The rights, powers and remedies provided in this agreement are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this agreement.

11.15 Governing law

This agreement will be governed by and construed in accordance with the Laws for the time being in force in the State of New South Wales and the parties, by entering into this agreement, are deemed to have submitted to the non-exclusive jurisdiction of the courts of that State.

Schedule 1 – Seller

Seller	Address	A Class Ordinary Shares	Preference Shares	Purchase Price
Snowy Monaro Regional Council	81 Commissioner Street, Cooma NSW 2630	3* (Share numbers 19, 36, 48)	1 (X)	\$785,714.00

*The parties acknowledge and agree that:

- the number of A Class Ordinary Shares held by the Seller may be subject to a buy-back or reconstruction (involving the cancellation of all but one of such A Class Ordinary Shares for nominal consideration) before Completion;
- the Buyer's offer is to acquire all of the Seller's securities in the Company for the Purchase Price, which in relation to A Class Ordinary Shares will be comprised of the number of A Class Ordinary Shares stated above or the number of A Class Ordinary Shares held by the Seller resulting from the implementation of a buy-back or reconstruction of the Seller's holdings in A Class Ordinary Shares in the Company, provided that the Seller holds at least one A Class Ordinary Share; and
- the Purchase Price is the total price for all of the Seller's securities in the Company and is a fixed dollar amount for all of the Seller's securities in the Company regardless of the number of A Class Ordinary Shares that comprise all of the A Class Ordinary Shares that the Seller owns at Completion, provided that it owns at least one A Class Ordinary Share at Completion.

Schedule 2 – Seller Warranties

Power and authority

1. The Seller has full power to and capacity to enter into and perform its obligations under this agreement.
2. All necessary authorisations for the execution, delivery and performance by the Seller of this agreement in accordance with its terms have been obtained.
3. This agreement is valid, binding and enforceable against the Seller in accordance with its terms.
4. The execution, delivery and performance by the Seller of this agreement does not constitute a breach of any law or obligation, or cause or result in a default under any agreement, or Encumbrance, by which it is bound and that would prevent it from entering into and performing its obligations under this agreement and there is no other arrangement or agreement between the Seller and another person in relation to the Sale Shares.

Ownership and no encumbrances or other arrangements

5. At Completion:
 - (i) the Seller is the legal and beneficial owner of the Sale Shares and has complete power and right to sell those Sale Shares to the Buyer and the Sale Shares are the only securities in the Company in which the Seller has any kind of interest;
 - (ii) the Buyer will acquire the full legal and beneficial ownership of the Sale Shares free and clear of all Encumbrances, subject to registration of the Buyer in the register of shareholders.

Schedule 3 Buyer Warranties

Power and authority

1. The Buyer is validly incorporated, organised and subsisting in accordance with the laws of its place of incorporation.
2. The Buyer has full power to and capacity to enter into and perform its obligations under this agreement.
3. All necessary authorisations for the execution, delivery and performance by the Buyer of this agreement in accordance with its terms have been obtained.
4. This agreement is valid, binding and enforceable against the Buyer in accordance with its terms.
5. The Buyer enters into and performs this agreement on its own account and not as trustee for or nominee of any other person.
6. The execution, delivery and performance by the Buyer of this agreement does not constitute a breach of any law or obligation, or cause or result in a default under any agreement, or Encumbrance, by which it is bound and that would prevent it from entering into and performing its obligations under this agreement.
7. No Insolvency Event has occurred in relation to the Buyer and there are no circumstances that justify the Buyer being the subject of an Insolvency Event.
8. The Buyer has available, in Immediately Available Funds, the necessary cash resources to pay the Purchase Price on Completion and meet its obligations under this agreement.

Executed as an agreement.

Executed by **Snowy Monaro Regional**)
Council ABN 72 906 802 034 by its attorney)
)

Signature of attorney

Signature of witness

Name of attorney

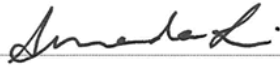
Name of witness

Executed by **AGL Energy Limited**)
ACN 115 061 375 by its attorney)
)



Signature of attorney
John Fitzgerald

Name of attorney



Signature of witness
Amanda Wei Dek Liu

Name of witness