

Macquarie

Renewable Energy Buyers Consortium

Application for interim authorisation and final authorisation

PUBLIC VERSION

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1 Introduction

Macquarie Capital (Australia) Limited (**MCAL**) and its parent company Macquarie Corporate Holdings Pty Limited (**MCHPL**) (together, **Macquarie**) are seeking to identify, coordinate and secure a group of buyers (**Buyers**) to enter into Power Purchasing Agreements (**PPAs**) to support the development of a new renewable energy project (**Project**). Macquarie is also seeking to work with a developer to bring the Project to financial completion.

Currently, the Project relates to the development of a wind energy facility in Victoria. However, if Macquarie and the Buyers cannot reach agreement with the developer in relation to that specific project, Macquarie will seek to identify an alternative large-scale wind farm project in Australia for the Buyer Group.

MCAL is acting as advisor to the Project and developer, and MCHPL is seeking to identify, coordinate and secure the group of Buyers, who will enter into PPAs with the developer on substantially the same terms and price.

The Applicants (defined in section 3 below) are MCHPL on behalf of itself and MCAL, the developer and the Buyers. The Buyers are seeking a long-term agreement for renewable generation to reduce the impact of their respective electricity requirements and operations on the environment and to access wholesale pricing. A key goal of the Applicants is to support new renewable generation projects and achieve environmental and social governance goals.

The applicants are requesting interim and final authorisation from the ACCC. This application is supported by a submission annexed to this application as Annexure A, and further supporting documents at Confidential Annexure B.

2 Applicant

Name of Applicant:	Macquarie Corporate Holdings Pty Limited (ACN 096 705 109)
Address of Applicant:	Level 4, 50 Martin Place, Sydney NSW 2000
Contact person:	Wayne Leach King & Wood Mallesons Level 61, Governor Phillip Tower 1 Farrer Place Sydney NSW 2000 Tel. [REDACTED] Email: [REDACTED]
Description of business	Macquarie is an Australian multinational independent investment bank and financial services company, providing corporate M&A, advisory, investing, development and equities capabilities and a range of capital solutions from debt, equity, and private capital raising and financing to investing its own capital to enable new opportunities.
Email address for service of documents in Australia:	[REDACTED]

3 Classes of persons engaging in conduct

This application for interim and final authorisation under the *Competition and Consumer Act 2010* (Cth) (**CCA**) is made by MCHPL on behalf of itself and MCAL, the developer and any off-taker that it negotiates with, and may

subsequently enter into a PPA with the developer for the purchase of electricity from the Project (each, a **Buyer**, who together form a **Buyers Group**) (together, the **Applicants**).

At this stage it is anticipated that the Buyers Group may comprise 18-25 Buyers, who are large or medium-sized commercial and industrial customers with electricity consumption at sites located in Victoria. The Buyers operate across a diverse range of sectors including property, industrials, health, finance, telecommunications and retail. The Buyers that form the Buyers Group may change depending on the acceptability of the commercial terms agreed.

[Confidential]

As set out above, if Macquarie and the Buyers cannot reach agreement with the developer of the current Project, they will seek to identify an alternative large-scale wind farm project in Australia for the Buyer Group. In this situation, the identity of the developer may also change.

MCAL is acting as advisor to the developer / Project and its related body corporate, MCHPL, is coordinating the Buyers Group. MCAL has the exclusive rights from the developer to introduce Buyers to acquire approximately 50% of the electricity generated by the current Project over the duration of the PPAs, and to a fee in respect of those Buyers it introduces and signs onto PPAs. Macquarie expects that the developer will either contract the remainder of the electricity generated over time or sell it into the spot market.

For further details see Annexure A.

4 Proposed Conduct

4.1 Details of the Proposed Conduct

Macquarie seeks interim and final authorisation under the CCA on behalf of itself and each of the Applicants, to:

- (a) jointly negotiate, enter into and give effect to an overarching agreement (the PPA) under which:
 - (i) the Buyers in the Buyers Group will pay the substantially same price for electricity and green products subject to meeting agreed credit rating criteria and security requirements;
 - (ii) the pricing offered by the developer to the Buyers for the PPA will be in accordance with principles agreed to by the Buyers;
 - (iii) the Buyers in the Buyers Group will be subject to substantially same non-price terms and conditions; and
- (b) jointly discuss and exchange information (including between Buyers), that relates to:
 - (i) the potential Buyers that Macquarie can approach for the purposes of becoming customers for the Project;
 - (ii) the nature and operation of the Project relating to capacity, volumes, pricing and commitments; and
 - (iii) the terms and conditions of becoming a Buyer, including terms and conditions that relate to pricing, volume and commitments from which a Buyer could acquire energy; and

- (c) individually enter into a PPA with the developer on the same (or substantially the same) price and non-price terms and conditions; and
- (d) jointly negotiate and (as relevant) enter into “sleeving arrangements” under which an intermediary retailer administers the transfer of money and energy under the PPA, in place of the Buyer. The retailer intermediary may, on request, provide firming services to each Buyer by smoothing supply from the intermittent generation of renewable projects, in return for a fee to that intermediary retailer,

(together, the **Proposed Conduct**).

The information referred to in paragraph (b) above relates only to information that needs to be shared between some or all of the Applicants to facilitate the acquisition of electricity from the Project. This includes, for example, information about the capacity and output of the Project, the amount and price of the electricity to be acquired and the terms on which electricity is acquired from the Project. The Applicants will not share any competitively sensitive information relating to the Buyers’ separate businesses or operations (including, for example, other costs, inputs, or other suppliers and supply arrangements or prices).

In relation to paragraph (d) above, Macquarie anticipates that not all Buyers will enter into sleeving arrangements – this will be a matter for each Buyer to decide.

The Applicant notes that once the PPAs have been signed by the Buyers and energy off-take has commenced, the PPAs will operate as standalone, bilateral agreements between each Buyer and the developer. That is, any variations to the PPAs (whether in relation to price or non-price terms) will be bilaterally negotiated between the particular Buyer and the developer and there will be no need for collective negotiation.

To the extent that the Buyers as part of the Buyer Group are ultimately unsuccessful in reaching an agreed PPA with the developer regarding the Project, Macquarie may endeavour to assist the Buyers in identifying a similar opportunity so as ensure that the Buyers are able to achieve the above outcomes of the Proposed Conduct.

4.2 Relevant provisions of the CCA

Macquarie, on behalf of itself and the Applicants, seeks authorisation to:

- (a) make and give effect to a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of the CCA;
- (b) make and give effect to a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, in contravention of section 45(1)(a) or 45(1)(b) of the CCA; and
- (c) engage in a concerted practice which would be, or might be, in contravention of section 45(1)(c) of the CCA.

4.3 Rationale for the proposed conduct

The Applicants wish to develop an energy option that allows the Buyers to switch to renewable energy by pooling their electricity demand, so that their combined load is sufficient to underwrite an investment in new renewable energy projects. This supports the Applicants’ commitment to securing a reliable supply of renewable energy to reduce the impact of their operations on the environment.

Further details regarding the rationale are set out in Annexure A.

4.4 Term of authorisation

Macquarie, on behalf of itself and the Applicants, seeks both interim and final authorisation for the Proposed Conduct.

Macquarie requests the ACCC to grant authorisation in respect of the Proposed Conduct for a period of 14 years. This is based on the length of time that negotiations with Buyers is anticipated to take plus the term of the PPA with Buyers. Macquarie considers that this length of time is appropriate because it reflects the minimum period of commitment required to negotiate and underwrite the large-scale investment, and the duration of the PPAs.

The indicative timeline for the Project involves the following steps to enable development of the Project over the next 3-4 years:

- Initial negotiations with potential Buyers and signing of binding term sheets;
- Negotiation and signing of full form PPAs;
- Financial close for the Project; and
- Construction of the Project.

[Confidential]

4.5 Interim authorisation

The Applicants are seeking interim authorisation to enable the Applicants to progress the negotiation process while its authorisation application is being determined.

Given the proposed timeline for the project as set out above, Macquarie requests that the ACCC grants an interim authorisation in respect of the Proposed Conduct as soon as practicable (i.e. within the ACCC's usual 28-day period for granting interim authorisations).

Macquarie has been developing a PPA term sheet for the Project with the currently proposed developer, and this has only recently been finalised. Macquarie therefore now has the necessary certainty from the developer to proceed with approaching potential Buyers and moving towards a negotiation on price and terms. In the initial stages, Macquarie will approach Buyers on a bilateral basis. However, it is likely that as the negotiations progress, Macquarie may need to discuss the matters set out in section 4.1 above with the Buyers collectively. Accordingly, this application is being made now to enable negotiations to proceed collectively as quickly as possible.

Interim authorisation is required to enable Macquarie to meet the timelines for obtaining and securing Buyer interest in the Project, which in turn will allow the developer to arrange and secure financing for the Project before the proposed financial close date.

The interim authorisation would cover the joint discussions and negotiations referred to in section 4.1 above up until the point that the ACCC grants final authorisation. While the Applicants hope to obtain final authorisation before full-form PPAs are signed, if they are signed before the ACCC has issued its final determination, those PPAs would be expressly subject to a condition that the ACCC grants final authorisation.

Macquarie considers that the request for interim authorisation is reasonable and justified given the compressed timeline for the Project, and that there are clear

public benefits to the Proposed Conduct, and no discernible public detriments. In particular:

- (a) the Term Sheet and full form PPA will be conditional on ACCC authorisation – the Buyers will not enter into any binding Term Sheet until interim authorisation is granted and any PPA negotiated by the Buyers Group will be subject to final authorisation;
- (b) the benefits of the conduct cannot be realised unless the parties are able to move relatively quickly (expedited by collective negotiation), so that they are in a position to complete negotiations, and sign PPAs which enable the Project to secure finance;
- (c) the Proposed Conduct is reversible – carrying out collective negotiations and sharing information – only to the extent necessary to enter into the PPAs – is unlikely to have any impact on any relevant market, as it will not result in any change in any change to market structure or the buying behaviour of, or the entry into any final contracts by, the Buyers; and
- (d) the Project needs to proceed with obtaining finance and the financing strategy is dependent on the quantity of generation contracted under PPAs and the identity and credit profile of the Buyers - any further delay to progressing the Project through securing Buyers via collective negotiation of the PPAs will have significant flow-on delay to the commencement of the Project (which will take 2 - 4 years to build), and the achievement of each Applicant's renewable energy policies and targets. The timing of the project is also critical to the Buyers as any delay may mean they need to explore alternative ways to meet those policies and targets within their relevant timeframes.

If interim authorisation is not granted, and the Applicants need to wait until the ACCC issues a final determination, then the Applicants' ability to engage jointly on key issues will be limited which may have an impact on the timing of the Project.

For further details, see Annexure A below, the Process Letter to buyers attached as Confidential Annexure B.

5 Who may be directly impacted by Proposed Conduct

Macquarie considers that the Proposed Conduct will have very little (if any) impact on alternate electricity suppliers in the National Electricity Market (**NEM**). As set out in section 6.3 below, the combined electricity generated from the current Project will account for between 0.5-3% of electricity in the NEM and between 2-5% of electricity consumption in Victoria.¹ As set out above, the Buyers will acquire a proportion of the electricity generated from the Project (which will necessarily be an even smaller share of electricity generated in the NEM and in Victoria).

6 Market information and concentration

6.1 Relevant markets

Based on the current Project, Macquarie considers that the relevant markets for the purposes of the ACCC's assessment of this application are:

¹ Source: AEMO 2020 ISP forecast of as-generated generation in FY 2025 under central scenario of VIC. Note – these figures are presented as ranges to address confidentiality considerations and given that the Project may change.

- (a) the markets for the generation and wholesale supply of electricity in the NEM or, in the alternative, in Victoria; and
- (b) the markets for the retail supply of electricity to commercial and industrial customers in Victoria.

6.2 Description of industry, and goods/services acquired by Applicants

The Applicants wish to source renewable energy which will be certified as carbon neutral. Renewable energy is energy that can be obtained from natural resources that can be constantly replenished, using renewable energy technologies such as bioenergy, hydropower, and geothermal, ocean, solar and wind energies.

For further details, see Annexure A.

6.3 Estimated market shares and factors that would limit or prevent any anti-competitive effect

As set out above, the Project accounts for a small proportion of electricity generation in the NEM and in Victoria, and the Buyers will account for only a proportion of the electricity generated by the Project.

The Buyer Group is not exclusive, with businesses able to request to become a Buyer subject to meeting certain minimum usage, credit and risk criteria and agreeing to the terms and conditions of the PPA. In addition, a Buyer will not be required to source all their electricity needs from the Project and can therefore source part of their electricity needs from alternative suppliers.

7 Public benefits

The Proposed Conduct will provide significant public benefits by increasing renewable energy generation and promoting new investment in renewable energy (thereby promoting economic, environmental and community benefits).

For further details, see Annexure A.

8 Public detriments

Macquarie does not believe there are any potential detriments to the public likely to result from the Proposed Conduct. The Proposed Conduct will not lead to a lessening of competition in any market and in fact is likely to be pro-competitive.

For further details, see Annexure A.

Declaration by Applicant(s)

[Note: Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.]

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



Signature of authorised person

Authorised Representative

Authorised Representative

Office held

Brian Morris

Lillian McManus

(Print) Name of authorised person

This 11th day of June 2021.

Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

Annexure A - Supporting submission

1 Introduction

Macquarie is seeking to identify, coordinate and secure a group of Buyers to enter into PPAs to support the development of a new renewable energy project (**Project**). Macquarie is also seeking to work with a developer to bring the Project to financial completion.

Currently, the Project relates to the development of a wind energy facility in Victoria. However, if Macquarie and the Buyers cannot reach agreement with the developer in relation to that specific project, Macquarie will seek to identify an alternative large-scale wind farm project in Australia for the Buyer Group.

MCAL is acting as advisor to the Project and developer, and MCHPL is seeking to identify, coordinate and secure the group of Buyers, who will enter into PPAs with the developer on substantially the same terms and price.

MCAL is acting as advisor to the Project and developer with exclusive rights from the developer to introduce a group of Buyers to acquire up to 50% of the electricity generated by the currently identified Project and will obtain a commission in respect of those buyers it introduces and signs onto PPAs.

This application for interim and final authorisation under the CCA is made by MCHPL on behalf of itself and MCAL, the developer, and the Buyers (together, the **Applicants** as defined in section 3 of the application).

2 The Project

The currently identified Project comprises the construction of a wind farm, including wind turbines and associated electricity infrastructure in Victoria [**Confidential**] and the purchase by off-takers of electricity from the wind farm.

The Project is anticipated to be large enough in scale and output to satisfy the demands of the Buyers Group and other off-takers seeking a renewable energy source.

PPAs are required to secure financing for the Project, with financial close anticipated to be in December 2021. Construction is anticipated to take 2-4 years, with commercial operations targeted to start in 2025. Development costs for the Project are currently estimated at [**Confidential**].

Buyers of energy from the Project will also purchase Green Products. A Green Product means Large-scale Generation Certificates equivalent to 1MWh of electricity created by an accredited renewable generator (**LGCs**), GreenPower rights (described at section 4.2(b) below) and other rights, entitlements, credits or similar rights capable of being created by the Project which is linked to the environmental benefits of the Project.

3 Scope of authorisation

3.1 Proposed Conduct

Macquarie seeks interim and final authorisation, on behalf of itself and each of the Applicants, for each of the matters set out in section 4.1 of the application for authorisation (the **Proposed Conduct**). The process letter sent by Macquarie to potential Buyers is attached as Confidential Annexure B.

MCHPL will manage and coordinate the Buyers Group. Its roles and responsibilities will include:

- (a) preparing the Buyers Group arrangements and preparing the ACCC Application;
- (b) managing ACCC and other regulatory approvals processes;
- (c) arranging for the provision of strategic advice regarding energy markets and supply to the developer and Buyers; and
- (d) managing the negotiation process with the Buyers Group and finalising the template PPA.

Depending on negotiations, it may also, for the period of construction provide regular reporting and progress updates to Buyers and assist with discussions between Buyers as a group and the Project during this phase.

4 Rationale for the Proposed Conduct

4.1 Rationale for the Proposed Conduct

The rationale for the Proposed Conduct is:

- (a) for Buyers to secure a reliable supply of renewable energy to reduce the impact of their operations on the environment;
- (b) to underwrite and support the new Project by securing foundation customers;
- (c) to increase investment in renewable energy generation assets in Australia;
- (d) for the Buyers to obtain LCGs and meet their renewable energy targets;
- (e) for the Buyers to access to the wholesale energy market and secure wholesale pricing and reasonable terms through the scale of their collective acquisition;
- (f) to develop economies of scale that enables smaller customers to contract with the Project when they would otherwise be too small or alternatively, to obtain better electricity pricing and terms than they would otherwise obtain contracting on an individual basis; and
- (g) to continue and assist in the development of the framework and process by which groups and interested parties may acquire renewable sources of energy supply to achieve their carbon neutral business objectives.

As set out below, acquiring renewable energy from existing sources on an individual basis does not increase investment in renewable energy. By pooling demand, the Applicants can underwrite the investment in generation facilities such as the Project, and therefore increase Australia's investment in renewable energy while enabling a secure supply of renewable energy and Green Products for the Buyers.

Macquarie estimates that Buyers will acquire up to approximately 50% of the generation capacity of the currently identified Project.

4.2 Limited sources of renewable energy in Australia

According to Australian Renewable Energy Agency, “renewable energy” is energy produced using natural resources that are constantly replaced and never run out.

Renewable energy providers are a growing portion of electricity on the National Electricity Market (**NEM**). Currently, renewable energy from sources such as wind, solar and hydro provide around 21% of Australia’s electricity supply.²

If a business wishes to obtain their electricity from renewable sources, there are currently limited options available to them. They can:

(a) ***Install on-site renewables***

On-site renewables (e.g. rooftop solar) is relatively expensive to install and there are a number of practicalities that prevent its uptake. These include that some buildings in the inner-city are not suitable for solar due to being overshadowed by neighbouring buildings, heritage listing requirements and restrictions on development by property owners. There is also a lack of physical space to facilitate the construction and continued operation of on-site renewable facilities. Further the capital investment for on-site renewables is often significant and many organisations suffer from a lack of budgetary allowances to invest in such capital works.

(b) ***Enter into a GreenPower accredited power purchasing agreement***

The GreenPower scheme is an initiative of Australian Capital Territory, New South Wales, South Australian and Victorian governments, which allows customers to offset a portion of their electricity usage with renewable energy sources. When a customer selects a GreenPower contract, the participating retailers are required to purchase an equivalent amount of electricity from accredited renewable energy generators in the form of LGCs.

GreenPower purchasing agreements are generally more expensive than traditional electricity contracts³ and suffer from significant price fluctuations because they are tied to the wholesale electricity market price for LGCs. Price volatility has been extreme over the last decade, with the price per certificate rising from ~ \$35 in 2014/2015 to ~\$93 2016/2017.⁴ While prices have since fallen to about \$40 in July 2020 and are currently priced at about \$32,⁵ price uncertainty reduces the utility of GreenPower contracts to many businesses.

Purchasing GreenPower may not substantially increase investment in renewable energy generation, as the scheme generally relies on existing renewable energy generators to generate LGCs. However, it may indirectly promote investment in new renewable energy capacity if a significant number of customers take up these agreements and the spot price is increased enough to incentivise new production. That said, a range of other factors will influence whether a new renewable energy project will go ahead such as availability and cost of funding, government

² Department of Energy and Environment, <https://www.energy.gov.au/government-priorities/energy-supply>

³ <https://www.greenpower.gov.au/get-greenpower/how-much-does-greenpower-cost>; <https://www.choice.com.au/home-improvement/energy-saving/reducing-your-carbon-footprint/articles/greenpower-renewable-energy>

⁴ <https://www.energetics.com.au/insights/thought-leadership/the-outlook-for-lgc-prices-from-a-corporate-perspective>

⁵ <https://www.energetics.com.au/insights/thought-leadership/lgc-procurement-strategies-in-your-net-zero-emissions-journey>; <https://www.demandmanager.com.au/certificate-prices/> -

approvals, and government policy. According to Professor Chris Reidy from the Institute for Sustainable Futures, University of Technology Sydney, the current size of “the program is so small, however, that it is unlikely to make the difference when a generator is deciding whether to install new renewable energy.”⁶

(c) **Purchase LGCs**

Businesses may choose to directly purchase LGCs equivalent to their own electricity usage. LGCs are created and registered pursuant to the *Renewable Energy (Electricity) Act 2000* (Cth).

LGCs are created by accredited power stations that register their output on the Renewable energy certificates register, operated by the Clean Energy Regulator (**CER**). Once assessed by the CER, an LGC will be created and can be traded in the open market. Companies can purchase and then voluntarily “surrender” an LGC to meet their renewable energy.

As discussed above, purchase of LGCs does not involve direct investment in new renewable energy capacity because existing generators create LGCs.

4.3 Increasing uptake of renewable energy

The Commonwealth and States are encouraging the uptake of renewable energy in the NEM to reduce Australia’s carbon dioxide emissions (also known as CO₂ or greenhouse gases) and diversify the mix of energy generation towards more sustainable sources. Some legislative and policy initiatives include:

- The Federal Government’s Renewable Energy Target, which requires at least 33,000 gigawatt-hours (GWh) of Australia’s electricity to be generated from renewable sources by 2020 and maintain this level until 2030.⁷ This is equivalent to approximately 23.5% of Australia’s energy generation in 2020, and the target has been met.
- Australia’s international commitment under the 2015 United Nation’s Climate Change Conference (the Paris Agreement), to limit the global temperature increase to below 2 degrees Celsius (with a targeted increase of less than 1.5 degree Celsius). Australia has targeted a reduction in its CO₂ of 26%–28% below 2005 levels by 2030.
- The *Climate Change Act 2017* (Vic) establishes a legislative framework for Victoria to achieve its target of net zero emissions by 2050. Interim targets for 2025 and 2030 have yet to be set.⁸

Significant new investment in renewable energy is required to meet these renewable energy targets as well as being critical to support the orderly exit of coal fired generation as the Australian energy market undergoes significant transition to a cleaner, stronger and more affordable power system.

4.4 Counterfactual

If the ACCC does not grant authorisation, then each Buyer will need to independently obtain electricity. This is likely to have a significant impact on the Buyers and, in some cases, will mean that their ability to source renewable energy will be jeopardised. This is because not only will the Buyers be unable to achieve cost savings and efficiencies sought by the Proposed Conduct, some

⁶ <https://www.choice.com.au/home-improvement/energy-saving/reducing-your-carbon-footprint/articles/greenpower-renewable-energy>

⁷ Section 40 of the *Renewable Energy (Electricity) Amendment Act 2015* (Cth).

⁸ <https://www.climatechange.vic.gov.au/reducing-emissions/emissions-targets>

Buyers, in particular the smaller operators, will not be able to afford a direct renewable energy solution at all and also have too small a load size to be able to underwrite a renewable project alone with its off-take requirements.

Macquarie anticipates that the following outcomes will be likely if the Applicants are unable to engage in the Proposed Conduct:

- (a) some or many of the Applicants will not seek a PPA with a renewable project at all and will revert to business as usual electricity procurement from a retailer without any link to a project or purchase of LGCs – this means that there will be no direct support for the development of new renewable generation;
- (b) for those who do seek a PPA, higher transaction costs and higher energy costs, which will adversely impact customers and suppliers for goods and services provided by the Buyers;
- (c) individual Buyers, with small volumes, will have less ability to obtain beneficial commercial terms, which are likely to include terms that impose additional risks and costs on them; and
- (d) Buyers will not have a locked in long term supply of LGCs to meet their carbon neutrality goals leading to increased costs and uncertainty in reaching those goals.

5 The public benefits of the Proposed Conduct outweigh any public detriments

5.1 Introduction

To grant an authorisation, the ACCC must be satisfied that the public benefits of the Proposed Conduct, which might otherwise breach the CCA, outweigh any public detriments, including any adverse impacts on competition in relevant markets.

Based on the currently identified Project, Macquarie considers that the relevant markets for assessing the Proposed Conduct are:

- the markets for the generation and wholesale supply of electricity in the NEM or, alternatively, in Victoria; and
- the markets for the retail supply of electricity to commercial and industrial end customers in Victoria.

Wholesale electricity is traded through the NEM, which covers the Australian Capital Territory, New South Wales, South Australia, Queensland, Victoria and Tasmania. Generators in the NEM sell electricity on the wholesale spot market, where prices are determined by supply and demand for electricity.

5.2 Significant public benefits arising from Proposed Conduct

The term “public benefits” has traditionally been given a broad meaning, to mean anything of value to the community generally, including as one of its principal elements, the achievement of the economic goals of efficiency and progress.⁹ The Proposed Conduct will help to deliver significant environmental, economic and community benefits.

⁹ ACCC Guidelines for Authorisation of Conduct (non-merger), March 2019, p. 43; *Re 7-Eleven* (1994), ATPR 41-357 at 42,777. See also *Queensland Co-operative Milling Association Ltd* (1976), ATPR 40-012, at 17,242 and *VFF Chicken Meat Growers' Boycott Authorisation* (2006) AcompT 9 at [75].

(a) **Environmental benefits**

The Proposed Conduct allows the Buyers to enter into PPAs with the developer which is critical to the Project's development and completion (PPAs with off-takers are critical to successful debt financing of renewable energy projects in Australia). Once completed, the currently identified Project will be a significant wind farm in Australia and will contribute to reducing greenhouse gases emitted in Australia.

If the Project is successful, Macquarie estimates that the switching from fossil fuels to renewable energy sources will lead to a reduction of more than 2 million tonnes of greenhouse gases per year. Macquarie is also hopeful that its and Buyers' commitment (as some high-profile organisations in Australia) to renewable energy will encourage other companies to take up similar renewable energy arrangements and pledge to achieve net zero emissions.

There are clear public benefits in reducing greenhouse emissions, as all Australians have an interest in preserving our quality of air, water and living standards.

The Project will also contribute to the Commonwealth's environmental policies to curb emissions under the Paris Agreement and assist in achieving the Victoria's renewable energy targets, which will slow the increase in global temperatures as a result of the greenhouse effect.

The Proposed Conduct facilitates better terms and pricing for the Buyers, facilitates the development of a major project and assists in achieving environment goals.

If the Project does not proceed, each Buyer will need to individually source and negotiate a supply of renewable energy to meet their renewable targets, or may not be able to do so at all. As a result, Buyers may encounter difficulty sourcing renewable energy contracts or pay higher prices for renewable energy than under the Proposed Conduct, leading the Buyers to continue sourcing a larger portion of their electricity from non-renewable sources.

(b) **Economic benefits**

The Proposed Conduct will have a number of economic benefits, including greater investment in renewable energy, increased competition in wholesale energy markets and reduced costs.

(i) Direct investment in new renewable generation

The energy demands of each Buyer individually would be unlikely to provide the impetus for any new investment in large-scale renewable energy generation. However, by aggregating demand for renewable energy, the scale of the Buyers' demand facilitates the Project reaching financial close and proceeding.

The Project will also expand the renewables industry (manufacturing, construction and technical expertise) in Victoria and in Australia more generally, which will reduce the cost of renewable energy projects in the future and improve business practices in the renewables industry.

If the Project does not proceed, there will be less investment in the construction of large-scale renewable generation. There may be some increased investment in smaller scale renewable energy

systems, such as rooftop solar. However, as discussed in section 4.2, such systems are comparatively more expensive and may not be suitable for all Buyers.

(ii) Access to a new energy source for smaller buyers

The Buyers Group and collective negotiations allows smaller buyers of renewable energy to buy-in to a large-scale project when they otherwise would not have, individually, demand large enough to give them access to, or justify investment in the development of this new source of renewable energy.

(iii) Increase in competition wholesale energy markets

Encouraging new electricity generation will increase competition for the generation and wholesale supply of electricity in the NEM or, alternatively, in Victoria. The aggregated electricity requirements of the Buyers (and term) are likely to incentivise competition for the supply of electricity, by supporting the development of a new project, compared to each individual Buyer negotiating for the supply of a smaller amount of electricity.

(iv) Reduced costs of electricity

Electricity is a significant cost for Australia businesses, with high energy costs for Australian businesses negatively impacting consumers.¹⁰ Electricity prices have risen by 56% in real terms over the last decade although there has been a reduction in the wholesale spot price since FY18-19 due to the development of renewables,¹¹ and particular focus is now on how the cost of energy is making Australian companies uncompetitive globally.¹²

The energy generated by the Project will contribute to reducing the electricity costs for the Buyers. Although each Buyer can source renewable electricity individually by installing small-scale renewable generation, by aggregating their demand they are able to directly invest in large-scale generation, which reduces the cost of electricity per GWh.

(v) Reduced transaction costs

If the Buyers are required to source PPAs individually, each Buyer would need to engage legal and technical advisors to negotiate each agreement and prepare the documentation. The Proposed Conduct allows these parties to collectively negotiate and eliminate replication of work, saving time and money, which will ultimately benefit the buyers and their customers.

If the Project does not proceed, the higher electricity and transaction costs borne by each Buyer may flow on to increased prices to customers for their goods and services.

¹⁰ <https://energyconsumersaustralia.com.au/news/electricity-prices-falling-for-businesses-with-more-reductions-forecast>

¹¹ <https://www.infrastructureaustralia.gov.au/sites/default/files/2019-08/Australian%20Infrastructure%20Audit%202019%20-%207.%20Energy.pdf> (p 502)
<https://www.aer.gov.au/wholesale-markets/wholesale-statistics/annual-volume-weighted-average-spot-prices-regions>

¹² <https://www.ussc.edu.au/analysis/australias-energy-crisis-americas-energy-surplus>;
<https://www.theaustralian.com.au/commentary/saving-coalfired-power-stations-will-only-make-australia-worse-off/news-story/90953629a244bffb26cdeb137fa31338>

(c) **Community and regional benefits**

The currently identified Project has the potential to provide a significant number of jobs largely located in regional Australia. If it is approved, it will create regional employment over the lifetime of the Project, including construction of the energy generation systems and subsequent operation and maintenance of the facilities – it is anticipated that the currently identified Project will create 600–800 construction jobs and 50–100 operational jobs.

Residual employment benefits from the Project could boost employment in manufacturing, research and development, skilled trades, sales and administration. It is expected that most of these jobs will be created in regional areas of Victoria, strengthening Australian communities beyond the capital cities.

In addition, the developer in respect of the currently identified Project has made a number of commitments to the local community if the Project proceeds. These include, for example:

- a **[Confidential]** community benefit fund for a range of community-based initiatives overseen by a community group;
- a community investment initiative to assist host landholders and the community living in close proximity of the wind farm to invest financially in the project;
- an electricity offset & energy audit scheme that will share the financial benefit across a larger section of the community, while at the same time reducing the carbon footprint of the community by providing green electricity, equal to an amount of the average Victorian home at no cost to all non-host, habitable and registered primary dwellings close range of a constructed turbine;
- a financial incentive program for people living in close proximity to a turbine to receive a financial amount for each turbine constructed near their dwelling; and
- payments to hosting landholders of approximately **[Confidential]**.

5.3 No public detriment

The Australian Competition Tribunal has stated that public detriments may include any impairment to the community generally and any harm or damage to the aims pursued by society, including the achievement of economic efficiency.¹³

Macquarie considers that the Proposed Conduct will not lead to any public detriments, including any material impact on competition in the relevant markets. Macquarie submits that the Proposed Conduct is likely to be pro-competitive, rather than anti-competitive. To the extent that any public detriments are identified, these would not be material and would be outweighed by the substantial public benefits outlined above.

The largest customers of electricity generators are retail energy providers, who bundle electricity with network services for sale to residential, commercial and industrial energy users. The total consumption of electricity in the NEM in

¹³ ACCC Guidelines for Authorisation of Conduct (non-merger), March 2019, p. 67; *Re 7-Eleven Stores Pty Limited* (1994) ATPR 41-357 at 42,683.

2019/20 was 192.4 TWh,¹⁴ and the total consumption of electricity in Victoria in 2019/20 was 44.3 TWh respectively.

Macquarie estimates that the electricity that the Buyers will acquire from the Project will account for between 0.5–3% of electricity in the NEM and between 2–5% of electricity in Victoria.¹⁵ Therefore, a significant volume of electricity required by other users in the relevant markets will remain available to alternative suppliers outside the Project. For this reason, the Proposed Conduct will have no material impact on competition in any relevant markets.

In addition, the Buyer Group is not exclusive, with businesses able to request to become a Buyer subject to certain minimum usage, credit and risk criteria and agreeing to the terms and conditions of the PPA. In addition, a Buyer will not be required to source all their electricity needs from the Project and can therefore source part of their electricity needs from alternative suppliers.

Lastly, the Proposed Conduct does not require ongoing discussion or decision-making among Buyers for the administration and operation of their individual PPAs. Once the PPAs have been signed and supply has commenced, each Buyer is responsible for negotiating any further variations with the developer. However, as noted above, there may be some coordination in relation to reporting and discussions with Buyers during the construction phase.

¹⁴ <https://www.aer.gov.au/wholesale-markets/wholesale-statistics/national-electricity-market-electricity-consumption>

¹⁵ Note – these figures are presented as ranges to address confidentiality considerations and given that the Project may change.

Confidential Annexure B – Process letter

[Confidential]

Confidential Annexure C

[Confidential]