

PLANNING AGREEMENT

GREATER HUME SHIRE COUNCIL (ABN 44 970 341 154)

MINISTER FOR PLANNING AND PUBLIC SPACES (ABN 38 755 709 681)

FRV Services Australia Pty Limited (ABN 60 151 469 662)



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Contents

1. Definitions and interpretation.....	iii
1.1. Definitions	iii
1.1. Interpretation	vi
2. Operation and application of this Agreement	vii
2.1. Operation	vii
2.2. Planning agreement under the Act	vii
2.3. Application.....	vii
3. Application of sections 7.11, 7.12 and 7.24 of the Act.....	vii
4. Development Contribution	vii
4.1. Developer to provide Development Contribution	vii
4.2. Acknowledgement	vii
5. Dispute Resolution.....	viii
5.1. Reference to dispute	viii
5.2. Notice of dispute	viii
5.3. Representatives of parties to meet	viii
5.4. Further notice if not settled	viii
5.5. Mediation	viii
5.6. Litigation	ix
5.7. No suspension of contractual obligations	ix
5.8. Not use information	ix
6. GST.....	x
6.1. Definitions	x
6.2. Intention of the parties	x
6.3. Reimbursement.....	x
6.4. Consideration GST exclusive.....	x
6.5. Additional Amounts for GST	x
6.6. Non-monetary consideration.....	x
6.7. Not used	x
6.8. No merger	x
7. Assignment and transfer	x
7.1. Right to assign or novate	x
8. Capacity	xi
8.1. General warranties	xi
8.2. Power of attorney	xi
9. Not Used	Error! Bookmark not defined.

10.	No fetter	xi
10.1.	Discretion	xi
10.2.	No fetter	xi
11.	General Provisions	xii
11.1.	Enforcement	xii
11.2.	Entire Agreement	xii
11.3.	Variation	xii
11.4.	Waiver	xii
11.5.	Further assurances	xii
11.6.	Time for doing acts	xii
11.7.	Governing law and jurisdiction	xiii
11.8.	Severability	xiii
11.9.	Preservation of existing rights	xiii
11.10.	No merger	xiii
11.11.	Counterparts	xiii
11.12.	Relationship of parties	xiii
11.13.	Good faith	xiii
11.14.	Explanatory note	xiii
11.15.	Expenses and stamp duty	xiii
11.16.	Notices	xiv
Schedule 1	.....	xv
Schedule 2	.....	xvii
Schedule 3	.....	xix
Schedule 4	.....	xxiv
Schedule 5	.....	xxvii
Annexure A	.....	31
Annexure B	.....	32
Annexure C	.....	33
EXECUTION PAGE	.....	34

THIS PLANNING AGREEMENT dated

PARTIES

GREATER HUME SHIRE COUNCIL ABN 44 970 341 154
of 39 Young Street, Holbrook NSW 2644
(Council)

MINISTER FOR PLANNING AND PUBLIC SPACES ABN 38 755 709 681
of Level 15, 52 Martin Place, Sydney NSW 2000 (Minister)

FRV Services Australia Pty Limited (ABN 60 151 469 662) of Level 22, 6-10 O'Connell Street, Sydney NSW 2000
(Developer)

BACKGROUND

- A. The Landowner owns the Land.
- B. The Land is located in the local government area of Council.
- C. The Developer has rights in respect of the Land and proposes to carry out the Development on the Land.
- D. The Developer has lodged one or more Development Applications in respect of the Development of the Land.
- E. The Developer has offered to enter into this Agreement with Council to make the Development Contribution if the Development is undertaken and in accordance with the terms of this Agreement.
- F. The Minister is a party to this Agreement solely for the purposes of clause 3 of this Agreement, having regard to the requirement in section 7.4(3A) of the Act.

OPERATIVE PROVISIONS

1. Definitions and interpretation

1.1. Definitions

In this Agreement, unless the context requires otherwise:

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

AEMO means the Australian Energy Market Operator.

Agreement means this planning agreement, including any schedules, annexures or appendices to it.

Address for Service means the address of each party identified at Item 3 of Schedule 2 or any new address notified in writing by any party to all other parties as its new Address for Service.

Approved Local Project means each Local Project for whatever purpose (as determined by Council after recommendation by the Committee) approved for funding from the Community Fund in accordance with this Agreement.

Auditor means an appropriately qualified auditor appointed by Council.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Business Day means any day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, and excluding 27 to 31 December, and concludes at 5:00 pm on that day.

Commercial Operation Commencement Date means the date on which the Developer provides the Council with a notice confirming that 'Final Completion' under and as defined in the engineer procure and construct contract for the Development, 'Conversion' under and as defined in the Facility Agreement and all AEMO hold point testing has been achieved.

Commercial Operation End Date means the date on which the Development ceases to generate electricity or is disconnected from the grid.

Committee means the committee established to administer the Community Fund in accordance with section 355 of the Local Government Act 1993 (NSW) and comprising:

- (a) the Mayor or Councillor Delegate;
- (b) the General Manager or delegate of Council;
- (c) two (2) community representatives;
- (d) a representative of the Developer.

Committee Constitution means the constitution governing aspects of the governance of the Committee, as modified from time to time, at Annexure B to this Agreement.

Community Fund means the fund to be established by Council and administered in accordance with this Agreement.

Community Payment Monetary Contribution means the monetary contribution to be paid by the Developer in accordance with clause 2(b) of Schedule 3 to this Agreement, comprising each Contribution Instalment Amount and to a maximum value of **\$2,028,404.00** (excluding GST).

Contribution Instalment Amount means each instalment amount of the Community Payment Monetary Contribution set out in the table at clause 2(b) of Schedule 3 to this Agreement.

Council means Greater Hume Council ABN 44 970 341 154.

Council Delivery Plan means [●], a copy of which has been provided to the Developer.

CPI means the Sydney (All Groups) Consumer Price Index published by the Australian Bureau of Statistics, or if that index no longer exists, any similar index that the Council specifies, in its sole discretion, for the purposes of this Agreement.

Developer means FRV Services Australia Pty Limited (ABN 60 151 469 662) or any assignee or transferee under clause 7.1 (as applicable).

Development means the development of the Land by the Developer described at Item 2 of Schedule 2.

Development Application has the same meaning as in the Act, and specifically, refers to the development application identified at Item 4 of Schedule 2.

Development Consent has the same meaning as in the Act, and specifically, refers to the consent granted to the Development Application for the Development.

Development Contribution means the contributions to be provided by the Developer in accordance with Schedule 3.

Explanatory Note means the note exhibited with a copy of this Agreement when this Agreement is made available for inspection by the public pursuant to the Act, as required by the Regulation.

Facility Agreement means facility agreement with the Financiers for the Development.

Financial Close means the date that all conditions precedent under the Facility Agreement to entitle the Developer or its related body corporate to first drawdown under the Facility Agreement have been satisfied or waived, and notified to Council in accordance with cl 2.1(b) of this Agreement.

Financiers means the financiers for the Development (or their agents or trustees).

GST has the same meaning as in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Land means the Land described in Item 1 of Schedule 2.

Landowner means each of the Registered Proprietors identified at Item 1 of Schedule 2.

Lease means each lease of part of the Land to be entered into by the Project Trust and the Landowners on or about the date that this Agreement commences in accordance with clause 2.1.

Local Projects means any projects which:

- (a) fall within one of the following categories:
 - (i) capital works projects identified in a Council Delivery Plan;
 - (ii) tourism;
 - (iii) safety;
 - (iv) education;
 - (v) environment;
 - (vi) youth;
 - (vii) health;
 - (viii) local business; or
 - (ix) energy; and
- (b) are proposed to be carried out in, or within a 15 kilometre radius of, the Walla Walla and Culcairn townships, respectively.

Project Trust means Walla Walla Asset Co Pty Ltd as trustee for the Walla Walla Asset Trust.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

Total Development Contribution means the total contribution required to be paid by the Developer in accordance with this Agreement including the Upfront Contribution and the Community Payment Monetary Contribution to a maximum value of [\$2,728,404.00] (excluding GST).

Upfront Contribution means the aggregate of the Upfront Council Payment Monetary Contribution and Upfront Community Payment Monetary Contribution, being \$700,000 to be paid by the Developer in accordance with clause 2 of Schedule 3.

Upfront Council Payment Monetary Contribution has the meaning given to that term in clause 1(a) of Schedule 3.

Upfront Community Payment Monetary Contribution has the meaning given to that term in clause 1(a) of Schedule 3.

1.1. Interpretation

In the interpretation of this Agreement, the following rules apply, unless the context makes it clear that a rule is not intended to apply:

- (a) Headings are for convenience only, and do not affect interpretation.
- (b) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (c) A singular word includes the plural, and vice versa.
- (d) A word which suggests one gender includes the other genders.
- (e) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (g) A reference to including means "including, without limitation".

- (h) A reference to dollars or \$ is to an amount in Australian currency.
- (i) A reference to this document includes the agreement recorded by this document.
- (j) Words defined in the GST Act have the same meaning in clauses about GST.
- (k) The Schedules, Exhibits or Annexures for part of this Agreement.
- (l) This Agreement is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

2. Operation and application of this Agreement

2.1. Operation

- (a) This Agreement commences on the later of:
 - (i) the date it is executed by all parties;
 - (ii) the date that the Development Consent is granted; or
 - (iii) the date that the Developer achieves Financial Close.
- (b) For the purposes of clause 2.1(a)(iii), the Developer will achieve Financial Close on the date that the Developer provides the Council with a notice in writing stating that Financial Close has been achieved.

2.2. Planning agreement under the Act

- (a) This Agreement constitutes a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 1 of this Agreement summarises the requirements for planning agreements under section 7.4 of the Act and the way this Agreement addresses those requirements.

2.3. Application

This Agreement applies to:

- (a) the Land; and
- (b) the Development.

3. Application of sections 7.11, 7.12 and 7.24 of the Act

- (a) This Agreement excludes the application of section 7.11 of the Act to the Development.
- (b) This Agreement excludes the application of section 7.12 of the Act to the Development.
- (c) This Agreement excludes the application of section 7.24 of the Act to the Development.

4. Development Contribution

4.1. Developer to provide Development Contribution

The Developer undertakes to provide, or procure the provision of, to Council the Development Contribution in accordance with the provisions of Schedule 3 to this Agreement.

4.2. Acknowledgement

The Developer and Council acknowledge and agree that Council:

- (a) is to apply each Development Contribution made under this Deed toward the public purpose for which it was made and otherwise in accordance with this Deed, including the table at clause 1(a) of Schedule 3 to this Agreement;
- (b) despite clause 4.2(a), may apply the Upfront Council Payment Monetary Contribution towards a public purpose other than the public purpose specified in this Deed, if the Council reasonably considers that the public interest would be better served by applying the Upfront Council Payment Monetary Contribution towards that other purpose rather than applying the purpose so specified in the table at clause 1(a) of Schedule 3 to this Deed;
- (c) has no obligation to repay the Upfront Council Payment Monetary Contribution to the Developer; and
- (d) in circumstances where the Upfront Council Payment Monetary Contribution is transferred to any Authority, has not made any representation or warranty on behalf of that other Authority.

5. Dispute Resolution

5.1. Reference to dispute

If a dispute arises between the parties in relation to this Agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

5.2. Notice of dispute

A Party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

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

5.3. Representatives of parties to meet

- (a) The representatives of the parties must promptly (and in any event within 20 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting;
 - (ii) agree that further material or expert determination in accordance with clause 5.4 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
 - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

5.4. Further notice if not settled

If the dispute is not resolved within 10 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 5.5.

5.5. Mediation

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

- (a) the parties must agree to the terms of reference of the mediation within 15 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) the mediator will be agreed between the parties, or failing agreement within 15 Business Days of receipt of the Determination Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) the mediator appointed pursuant to this clause 5.5 must:
 - (i) have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) the mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) the parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution, provided such resolution must be passed within 20 Business Days of the Determination Notice);
- (f) the parties must arrange and attend mediation within 6 weeks of the receipt of the Determination Notice unless otherwise agreed by the parties in writing;
- (g) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (h) in relation to costs and expenses:
 - (i) each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) the costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

5.6. Litigation

If the dispute is not finally resolved in accordance with this clause 5, then either party is at liberty to litigate the dispute.

5.7. No suspension of contractual obligations

Subject to any interlocutory order obtained under clause 5.1, the referral to or undertaking of a dispute resolution process under this clause 5 does not suspend the parties' obligations under this agreement.

5.8. Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 5 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 5 for any purpose other than in an attempt to settle the dispute.

6. GST

6.1. Definitions

Words and expressions used in this clause which are not defined in this Agreement, but which are defined in the GST Act have the same meaning as in the GST Act.

6.2. Intention of the parties

The parties intend that Divisions 81 and 82 of the GST Act apply to the supplies made under and in respect of this Agreement.

6.3. Reimbursement

Any payment or reimbursement required to be made under this Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred must be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

6.4. Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

6.5. Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party (**Supplier**) under or in connection with this Agreement (**GST Amount**), the recipient must pay to the Supplier the GST Amount. The Supplier must provide a tax invoice to the recipient on or before the date the consideration is payable.

6.6. Non-monetary consideration

Clause 6.5 applies to non-monetary consideration.

6.7. Not used

6.8. No merger

This clause does not merge on completion or termination of this Agreement.

7. Assignment and transfer

7.1. Right to assign or novate

- (a) Provided it is not in material breach of its obligations under this Agreement, the party seeking to assign its rights or novate its obligations under this Agreement (**Assigning Party**) may assign and/or novate its rights and/or obligations provided it has:
 - (i) provided evidence to the Council (acting reasonably) that the person to whom the Assigning Party's rights and/or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform the Assigning Party's obligations under this Agreement insofar as those obligations are to be novated to the Incoming Party; and
 - (ii) procured the execution of a deed substantially in the form set out in Schedule 5 by the Incoming Party and the Developer.

- (b) The Council acknowledges and agrees that despite clause 7.1(a), the Developer may:
 - (i) assign and/or novate its rights and obligations under this Agreement to Project Co at any time without the need to seek the consent of the Council, provided Project Co and the Developer have executed a deed substantially in the form of Schedule 5 and provided a copy of that deed has been provided to the Council; and
 - (ii) may grant the Financiers a security interest over all of its rights, title and interests in this Agreement.
- (c) Within 5 Business Days of the delivery to the Council of a deed executed by the Developer and the Incoming Party under clause 7.1(a)(ii) the Council agrees to countersign the deed and return it to the Developer.

8. Capacity

8.1. General warranties

Each party warrants to each other party that:

- (a) this Agreement creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this Agreement in the capacity of trustee of any trust.

8.2. Power of attorney

If an attorney executes this Agreement on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

9. Not Used

10. No fetter

10.1. Discretion

This Agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of Council, including but not limited to, any statutory power or discretion of Council relating to a Development Application or any other application for Development Consent (collectively, **Discretion**).

10.2. No fetter

No provision of this Agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this Agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

- (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is suitably satisfied;
- (b) in the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect; and
- (c) to endeavour to satisfy the common objectives of the parties in relation to the provision of this Agreement which is to be held to be a fetter to the extent that is possible having regard to the relevant court judgment.

11. General Provisions

11.1. Enforcement

- (a) Without limiting any other remedies available to the parties, this Agreement may be enforced by any party in any court of competent jurisdiction subject to clause 5 (Dispute Resolution).
- (b) Nothing in this Agreement prevents:
 - (i) a party from commencing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
 - (ii) the Council from exercising any functions under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

11.2. Entire Agreement

This Agreement constitutes the entire agreement between the parties regarding the subject matter of this Agreement and supersedes any prior negotiations, representations, understandings or arrangements made between the parties, whether orally or in writing.

11.3. Variation

This Agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

11.4. Waiver

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

11.5. Further assurances

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give full effect to the arrangements contained in this Agreement.

11.6. Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this Agreement, expires on a day other than a Business Day,the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5:00 pm on the specified day, it is taken to have been done on the following Business Day.

11.7. Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this Agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

11.8. Severability

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

11.9. Preservation of existing rights

The expiration or termination of this Agreement does not affect any right that has accrued to a party before the expiration or termination date.

11.10. No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement for any reason, does not merge on the occurrence of that event but remains in full force and effect.

11.11. Counterparts

This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

11.12. Relationship of parties

Unless otherwise stated:

- (a) nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

11.13. Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this Agreement.

11.14. Explanatory note

The Explanatory Note must not be used to assist in construing this Agreement.

11.15. Expenses and stamp duty

- (a) The Developer must pay its own and Council's legal costs and disbursements (capped at \$5,000) in connection with the negotiation, preparation, execution and carrying into effect of this Agreement.
- (b) The Developer must pay all Taxes assessed on or in respect of this Agreement and any instrument or transaction required or contemplated by or necessary to give effect to this Agreement (including stamp duty and registration fees, if applicable).

- (c) The Developer must pay the Council's costs under clause 11.15(a) by electronic funds transfer to the account nominated by Council within 30 Business Days of receipt of a valid tax invoice from Council.

11.16. Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this Agreement must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by prepaid ordinary mail within Australia; or
 - (iii) by email.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery but if delivery occurs after 5:00 pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
 - (ii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
 - (iii) sent by email:
 - A. before 5:00 pm on a Business Day, on that Day;
 - B. after 5:00 pm on a Business Day, on the next Business Day after it is sent; or
 - C. on a day that it is not a Business Day, on the next Business Day after it is sent, and the sender does not receive a delivery failure notice.

Schedule 1

Table 1 - Requirements under section 7.4 of the Act

Requirement under the Act	This Agreement
<p>Planning instrument and/or development application – (section 7.4(1))</p> <p>The Developer has:</p> <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) No (b) Yes (c) No
Description of the land to which this Agreement applies – (section 7.4(3)(a))	See definition of Land in clause 1.1
Description of development to which this Agreement applies – (section 7.4(3)(b))	See definition of Development in clause 1.1
Description of change to the environmental planning instrument to which this Agreement applies – (section 7.4 (3)(b))	Not applicable
The scope, timing and manner of delivery of contribution required by this Agreement – (section 7.4 (3)(c))	See Schedule 3
Applicability of sections 7.11 and 7.12 of the Act – (section 7.4 (3)(d))	The application of sections 7.11 and 7.12 of the Act is excluded in respect of the Development
Applicability of section 7.24 of the Act – (section 7.4 (3)(d))	The application of section 7.24 of the Act is excluded in respect of the Development.
Consideration of benefits under this Agreement if section 7.11 applies – (section 7.4 (3)(e))	Not applicable
Mechanism for Dispute Resolution – (section 7.4 (3)(f))	See clause 5
Enforcement of this Agreement – (section 7.4 (3)(g))	See clause 11.1
No obligation to grant consent or exercise functions – (section 7.4 (10))	See clause 10

Table 2 – Other matters

Requirement under the Act	This Agreement
Registration of the Planning Agreement – (section 7.6 of the Act)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	No

Requirement under the Act	This Agreement
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an Occupation Certificate is issued – (clause 25E(2)(g) of the Regulation)	No

Draft

Schedule 2**Agreement Details (clause 1.1)**

Item	Term	Description			
1	Land	Lot	Deposited Plan	Folio Identifier	Registered Proprietor
		16	753735	16/753735	Daniel Warwick Anthony Phegan and Caroline Margaret Horan Phegan
		17	753735	17/753735	Daniel Warwick Anthony Phegan and Caroline Margaret Horan Phegan
		20	753735	20/753735	Daniel Warwick Anthony Phegan and Caroline Margaret Horan Phegan
		21	753735	21/753735	Daniel Warwick Anthony Phegan and Caroline Margaret Horan Phegan
		87	753735	87/753735	Daniel Warwick Anthony Phegan and Caroline Margaret Horan Phegan
		88	753735	88/753735	Daniel Warwick Anthony Phegan and Caroline Margaret Horan Phegan
		89	753735	89/753735	Daniel Warwick Anthony Phegan and Caroline Margaret Horan Phegan
		108	753735	108/753735	Daniel Warwick Anthony Phegan and Caroline Margaret Horan Phegan
		109	753735	109/753735	Daniel Warwick Anthony Phegan and Caroline Margaret Horan Phegan
		118	753735	118/753735	Daniel Warwick Anthony Phegan and Caroline Margaret Horan Phegan

		3	253113	3/253113	Daniel Warwick Anthony Phegan and Caroline Margaret Horan Phegan
		1	1069452	1/1069452	Andrew McArthur Williams, Judith Anne Williams, and Andjud Nominees Pty Ltd
		A	376389	A/376389	Andrew McArthur Williams, Judith Anne Williams, and Andjud Nominees Pty Ltd
		1	933189	1/933189	Andrew McArthur Williams, Judith Anne Williams, and Andjud Nominees Pty Ltd
		as shown as cross-hatched on the plan at Annexure A to this Agreement			
2	Development		The construction, operation and decommissioning of a photovoltaic solar farm that would produce up to 300 Megawatts of alternating current (AC) electricity and associated infrastructure, including a substation, staff amenities, internal access tracks and fencing, generally in accordance with the Development Application		
3	Address for Service		Council Name: Greater Hume Shire Council Attention: Director Environment & Planning Address: 39 Young Street, Holbrook NSW 2644 Email: ckane@greaterhume.nsw.gov.au		
			Developer Name: FRV Services Australia Pty Limited (ABN 60 151 469 662) Attention: Carlo Frigerio Address: Level 22, 6-10 O'Connell Street, Sydney NSW 2000 Email: carlo.frigerio@frv.com		
4	Development Application		State significant development application number SSD-9874		

Schedule 3

Development Contributions (clause 4)

1. Development Contributions

- (a) The Developer undertakes to provide the Development Contribution to Council in the manner set out in the table below:

Development Contribution	Aggregate Value	Timing	Public Purpose
Upfront Council Payment Monetary Contribution	\$500,000 (excluding GST)	Commercial Operation Commencement Date	Expenditure item(s) identified within the Council's Operational Plan or approved budget for the year 2020-2021 or 2021-2022, provided such expenditure item(s) are Local Projects and the Developer has consented to the Local Project.
Upfront Community Payment Monetary Contribution	\$200,000 (excluding GST)	Commercial Operation Commencement Date	Local Projects
Community Payment Monetary Contribution	A maximum of \$2,028,404.00 (excluding GST)	Pursuant to clause 3 of this Schedule	Local Projects

- (b) Council and the Developer acknowledge and agree that the sum of the Upfront Council Payment Monetary Contribution, Upfront Community Payment Monetary Contribution and Community Payment Monetary Contribution (being in aggregate \$2,728,404.00) is the Development Contribution under this Agreement.
- (c) The Development Contribution must be paid by deposit by means of electronic funds transfer into an account specified by Council in writing.

2. Payment of the Development Contribution

- (a) The Developer must pay the Upfront Council Payment Monetary Contribution and Upfront Community Payment Monetary Contribution within 30 Business Days of Financial Close (being the Commercial Operation Commencement Date), subject to Council providing the Developer with a valid tax invoice requesting payment of the Upfront Council Payment Monetary Contribution and Upfront Community Payment Monetary Contribution.

- (b) Subject to clauses 2(c) - 2(e) of this Schedule, the Developer must pay each Contribution Instalment Amount to Council by way of each of the payments set out in the table below on or before achievement of the Payment Milestone applicable to the payment:

Payment	Payment Milestone	Requirements to achieve completion of Payment Milestone	Contribution Instalment Amount (excluding GST)
1.	Payment Milestone 1	1 year after the Commercial Operation Commencement Date	\$ 50,000.00
2.	Payment Milestone 2	2 years after the date on which Payment Milestone 1 was achieved.	\$ 51,000.00
3.	Payment Milestone 3	3 years after the date on which Payment Milestone 1 was achieved.	\$ 52,020.00
4.	Payment Milestone 4	4 years after the date on which Payment Milestone 1 was achieved.	\$ 53,060.40
5.	Payment Milestone 5	5 years after the date on which Payment Milestone 1 was achieved	\$ 54,121.61
6.	Payment Milestone 6	6 years after the date on which Payment Milestone 1 was achieved	\$ 55,204.04
7.	Payment Milestone 7	7 years after the date on which Payment Milestone 1 was achieved	\$ 56,308.12
8.	Payment Milestone 8	8 years after the date on which Payment Milestone 1 was achieved	\$ 57,434.28
9.	Payment Milestone 9	9 years after the date on which Payment Milestone 1 was achieved	\$ 58,582.97
10.	Payment Milestone 10	10 years after the date on which Payment Milestone 1 was achieved	\$ 59,754.63
11.	Payment Milestone 11	11 years after the date on which Payment Milestone 1 was achieved	\$ 60,949.72
12.	Payment Milestone 12	12 years after the date on which Payment Milestone 1 was achieved	\$ 62,168.72

13.	Payment Milestone 13	13 years after the date on which Payment Milestone 1 was achieved	\$ 63,412.09
14.	Payment Milestone 14	14 years after the date on which Payment Milestone 1 was achieved	\$ 64,680.33
15.	Payment Milestone 15	15 years after the date on which Payment Milestone 1 was achieved	\$ 65,973.94
16.	Payment Milestone 16	16 years after the date on which Payment Milestone 1 was achieved	\$ 67,293.42
17.	Payment Milestone 17	17 years after the date on which Payment Milestone 1 was achieved	\$ 68,639.29
18.	Payment Milestone 18	18 years after the date on which Payment Milestone 1 was achieved	\$ 70,012.07
19.	Payment Milestone 19	19 years after the date on which Payment Milestone 1 was achieved	\$ 71,412.31
20.	Payment Milestone 20	20 years after the date on which Payment Milestone 1 was achieved	\$ 72,840.56
21.	Payment Milestone 21	21 years after the date on which Payment Milestone 1 was achieved	\$ 74,297.37
22.	Payment Milestone 22	22 years after the date on which Payment Milestone 1 was achieved	\$ 75,783.32
23.	Payment Milestone 23	23 years after the date on which Payment Milestone 1 was achieved	\$ 77,298.98
24.	Payment Milestone 24	24 years after the date on which Payment Milestone 1 was achieved	\$ 78,844.96
25.	Payment Milestone 25	25 years after the date on which Payment Milestone 1 was achieved	\$ 80,421.86
26.	Payment Milestone 26	26 years after the date on which Payment Milestone 1 was achieved	\$ 82,030.30

27.	Payment Milestone 27	27 years after the date on which Payment Milestone 1 was achieved	\$ 83,670.91
28.	Payment Milestone 28	28 years after the date on which Payment Milestone 1 was achieved	\$ 85,344.32
29.	Payment Milestone 29	29 years after the date on which Payment Milestone 1 was achieved	\$ 87,051.21
30.	Payment Milestone 30	30 years after the date on which Payment Milestone 1 was achieved	\$ 88,792.23
Total			\$ 2,028,404

- (c) On each Payment Milestone, the Council will provide the Developer with a valid tax invoice for the relevant Contribution Instalment Amount with payment terms of at least 30 Business Days (**Instalment Invoice**).
- (d) Not less than 15 Business Days before the relevant Payment Milestone, if the Development was curtailed or disconnected by AEMO during the previous 12-month period, the Developer will provide the Council with a notice stating the number of days that the Development was curtailed or disconnected (**Adjustment Notice**).
- (e) If the Council receives an Adjustment Notice from the Developer, the Contribution Instalment Amount required to be paid in the relevant Instalment Invoice will be adjusted (**Adjusted Contribution Instalment Amount**) in accordance with the following formula:

$$A = B \times C$$

A = Adjusted Contribution Instalment Amount

B = number of days that the Project was curtailed or disconnected by AEMO during the previous 12-month period divided by 365 days

C = Contribution Instalment Amount

- (f) The parties agree that the Upfront Community Payment Monetary Contribution and the Community Payment Monetary Contribution paid in accordance with this Schedule:
 - (i) will have the public purpose of facilitating Approved Local Projects;
 - (ii) must be paid to the Community Fund; and
 - (iii) will be applied by Council in accordance with **Schedule 4** to this Agreement.
- (g) The parties agree that the Upfront Council Payment Monetary Contribution paid in accordance with this Schedule will have the public purpose set out in, and will be applied by Council in accordance with, clause 4.2 of this Agreement.
- (h) For the avoidance of doubt, if the Developer does not undertake the Development, the Developer is not required to pay any Development Contribution.

3. **Payment in advance**

Nothing in this agreement shall be read as to prevent the Developer from paying any of the remaining value of monetary contributions in advance.

Schedule 4

Community Fund (clause 2 of Schedule 3)

1. Establishment of the Community Fund

- (a) Council must hold and apply the Upfront Community Payment Monetary Contribution and all Contribution Instalment Amounts paid to the Community Fund in accordance with clause 2(f) of **Schedule 3**.
- (b) Council must invest the Upfront Community Payment Monetary Contribution and all Contribution Instalment Amounts paid to the Community Fund and forming part of the Development Contribution in an interest-bearing account held in the name of Council for the purpose of the Community Fund pursuant to the provisions of section 625 of the Local Government Act 1993 (NSW).
- (c) The Committee may disburse the Development Contribution in the Community Fund to Approved Local Projects that propose to invest the disbursed money for the purposes of an Approved Local Project.

2. The Committee

- (a) The Council must establish the Committee on or before the date on which the Upfront Community Payment Monetary Contribution is paid.
- (b) The Developer must be represented by a Developer-nominated representative on the Committee.
- (c) The Council must ensure that the role of the Committee includes:
 - (i) determining the form in which applications for funding for Local Projects from the Community Fund are to be made;
 - (ii) recommending to Council which applications for funding for Local Projects should be funded from the Community Fund as required by clause 5(a) of this **Schedule 4**;
 - (iii) adherence to a Committee Constitution; and
 - (iv) to appoint the Auditor as required by clause 6(a) of this **Schedule 4**.

3. Call for Funding Applications

- (a) For a minimum:
 - (i) 28 Business Days in each year in which there are funds in the Community Fund; or
 - (ii) any further period determined by the Committee,

Council must publicly advertise «in/on» the «insert publication, website etc» the availability of funds in the Community Fund and call for applications to be made to the Committee, in the form required by the Committee, from all public, community groups and individuals for funding of Local Projects (**Funding Applications**).

4. Notification to Developer

- (a) The Committee must:
 - (i) notify the Developer of each Funding Application;
 - (ii) if requested by the Developer, consult the Developer in relation to Funding Applications; and
 - (iii) notify the Developer of each Local Project which is to be funded from the Community Fund, including the amounts of any funding.

5. Allocation of funds

- (a) The Committee must make recommendations to Council as to which of the Funding Applications the Committee recommends be funded from the Community Fund.
- (b) Council must:
 - (i) consider the funding recommendations made by the Committee;
 - (ii) consider any Committee consultation with the Developer pursuant to clause 4(a)(ii) of this **Schedule 4**;
 - (iii) procure that Council confirms which Local Projects will be funded from the Community Fund in accordance with the recommendations of the Committee.
- (c) Council must pay funds from the Community Fund to each Approved Local Project, and may require each Approved Local Project to enter into a Funding Agreement where appropriate.
- (d) The costs incurred by Council in administering the Community Fund shall be paid to Council out of the Community Fund on an as needed basis and shall be no more than \$5,000.00 per annum indexed to CPI.

6. Auditing

- (a) During each year in which there are funds in the Community Fund, Council must appoint an Auditor to reconcile:
 - (i) the Upfront Community Payment Monetary Contribution and all Contribution Instalment Amounts paid by the Developer under clause 2 of **Schedule 3**;

- (ii) any payments made by Council in accordance with clause 5 of this **Schedule 4**;
 - (iii) identify any corrective payments required.
- (b) The Developer and Council must make any corrective payments identified by the Auditor as being necessary to reconcile the Community Fund. For the avoidance of doubt, the Developer will not be required to pay any more than the Total Development Contribution.
- (c) The costs of the Auditor will be paid out of the Community Fund.

Draft

Schedule 5
Deed of novation

Draft

Dated [●]/[●]/20[●]

Novation Deed

between

[insert transferor]

[insert transferee]

and

GREATER HUME SHIRE COUNCIL

Draft

This deed is made on [●] 20[●]

Between:

Greater Hume Shire Council (the **Council**);

[insert] (Original Developer); and

[insert] (New Developer).

Whereas:

The Council and the Original Developer are parties to the VPA.

The parties have agreed to transfer the rights and obligations of the Original Developer to the New Developer, on the terms set out in this deed.

It is agreed:

1. Definitions and interpretation

1.1. Definitions

In this deed:

Effective Date means the date of this deed.

Trust means the '[insert name of Trust]', constituted by the trust deed [insert], as amended from time to time.

VPA means planning agreement between the Council and the Original Developer dated [insert].

1.2. Interpretation

Clause 1.1 (*Interpretation*) of the VPA is incorporated into this deed as if set out in full.

2. Novation and release

2.1. Novation of rights and obligations

On and from the Effective Date:

- (a) the Original Developer absolutely and unconditionally transfers all of its rights and obligations under the VPA to the New Developer;
- (b) the New Developer takes the benefit of all of the Original Developer's rights and assumes all of the Original Developer's obligations and liabilities under the VPA; and
- (c) each reference in the VPA to the Original Developer is to be read as if it were a reference to the New Developer.

2.2. Release

On and from the Effective Date, the Original Developer is released from all of its obligations and liabilities (but without prejudice to its obligations and liabilities under the VPA which have arisen prior to the Effective Date).

3. Variation

3.1. Variation of VPA

On and from the Effective Date, the parties agree that the VPA is varied as follows:

1. A new definition, at clause 1.1 after the definition 'Tax', is inserted as follows:

*“Trust means the **[insert name of Trust]**, constituted by the trust deed **[insert]**, as amended from time to time.”*

3.2. VPA otherwise unchanged

Except as varied under clause 3, the VPA remains unchanged and in full force and effect.

4. General

4.1. Governing law and jurisdiction

- (a) This deed is governed by the laws of New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

4.2. Legal costs

The New Developer shall cover the Council's costs for the negotiation and execution of this deed up to a cap of AUD\$1,000 (excluding GST).

4.3. Further action

Each party must do all things and execute all further documents necessary to give full effect to this deed.

4.4. Counterparts

This deed may be executed in any number of counterparts and all counterparts taken together will constitute one document.

Executed as a deed:

[insert signature blocks]

Annexure A
Land to which this Agreement applies

Draft

Annexure B
Committee Constitution

Draft

Draft

EXECUTION PAGE

Executed as an Agreement

THE SEAL of **GREATER HUME SHIRE COUNCIL**
was affixed in accordance with Reg 400 *Local Government (General) Regulation 2005* (NSW)
pursuant to a resolution:

.....

Councillor/Mayor

.....

General Manager/Councillor

SIGNED, SEALED AND DELIVERED for and on
behalf of the **Minister for Planning and Public
Spaces ABN 38 755 709 681**, in the presence of:

.....

Signature of witness

.....

Signature of the Minister for Planning and Public Spaces or
delegate

.....

Name of witness in full and address

.....

Name of Minister for Planning and Public Spaces or delegate

EXECUTED by **FRV Services Australia Pty Limited**
(ABN 60 151 469 662) in accordance with section
127 of the *Corporations Act 2001* (Cth):

.....

Signature of Director

.....

Signature of Director/Secretary

.....

Name of Director

.....

Name of Director/Secretary

Draft