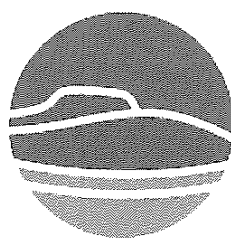

DATED

12 December 2022

PLANNING AGREEMENT

GREATER HUME SHIRE COUNCIL (ABN 44 970 341 154)

FRV SERVICES AUSTRALIA PTY LIMITED (ABN 60 151 469 662)



Greater
Hume
Council

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THIS PLANNING AGREEMENT dated 12 December 2022

PARTIES

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

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.

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.

Contribution Commencement Date means the latter of the date the Developer provides written notification to Council under clause 2.1(b) that the Developer has achieved;

- (a) Financial Close ; and
- (b) the date notified by the Developer to the Council as the date on which the Developer proposes to commence or actually commenced construction of the Development. For the purposes of this subclause, 'construction' has the meaning given to it in the Development Consent.

Commercial Operation Commencement Date means the date on which the Developer provides the Council with a notice confirming:

- (a) that 'Final Completion' under and as defined in the engineer procure and construct contract for the development;
- (b) that 'Conversion' under and as defined in the Facility Agreement;
- (c) all AEMO hold point testing has been achieved;
- (d) that Financial Close 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 A

Land to which this Agreement applies

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 Operational Plan has the same meaning ascribed to it by section 405 of the *Local Government Act 1993*.

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:

- (e) fall within one of the following categories:
 - (i) capital works projects identified in a Council Operational Plan;
 - (ii) tourism;
 - (iii) safety;
 - (iv) education;
 - (v) environment;
 - (vi) youth;
 - (vii) health;
 - (viii) local business; or
 - (ix) energy; and
- (f) 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 1(c) 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 form 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 does not exclude the application of section 7.11 of the Act to the Development.
- (b) This Agreement does not exclude the application of section 7.12 of the Act to the Development.
- (c) This Agreement does not exclude the application of section 7.24 of the Act to the Development.

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
Planning instrument and/or development application – (section 7.4(1)) The Developer has: <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. 	(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 are not 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 not excluded in respect of the Development.
Consideration of benefits under this Agreement if section 7.11 applies – (section 7.4 (3)(e))	Financial contributions to Council and Local Projects by way of use of a Community Fund
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	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an Occupation Certificate is issued	No

Schedule 2

Agreement Details (clause 1.1)

Item	Term	Description			
		Lot	Deposited Plan	Folio Identifier	Registered Proprietor
1	Land				
		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
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)	Contribution Commencement Date	Expenditure item(s) identified within the Council's Operational Plan or approved budget, 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)	Contribution Commencement Date	Local Projects
Community Payment Monetary Contribution	A maximum of \$2,028,404.00 (excluding GST)	In accordance with clause 2 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 the Contribution 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 1(c) 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 on its website 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 1(c) 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.

Schedule 5
Deed of novation

Dated [●]/[●]/20[●]

Novation Deed

between

[insert transferor]

[insert transferee]

and

GREATER HUME SHIRE COUNCIL

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

Annexure B
Committee Constitution

GREATER HUME COUNCIL
CONSTITUTION OF WALLA WALLA SOLAR FARM COMMITTEE
SECTION 355 COMMITTEE



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1. **Objective**

The objectives of this Constitution are:

- (a) to administer the Community Fund in accordance with the VPA;
- (b) to ensure that all meetings of the Committee are conducted in an orderly and proper manner, according to the principles of procedural fairness and due process;
- (c) to assist with the conduct of discussion and debate during Committee meetings;
- (d) to ensure that all Committee Members understand their rights and obligations during Committee meetings;
- (e) to ensure that all Committee Members have an equal opportunity to participate fully in the meeting;
- (f) to ensure that Committee Members participate in meetings that engender a positive meeting environment that is without malice and avoids insulting, improper or defamatory statements; and
- (g) to be an effective aid to good governance.

2. **Definitions**

In this Constitution, unless the context requires otherwise:

Auditor means an appropriately qualified auditor appointed by Council.

Constitution means and includes this document along with all schedules and attachments referred to in this document.

Chairperson means a member of the Committee whose appointment has been approved by Council.

Committee means the Walla Walla Solar Farm Committee, being a Section 355 Committee of Council.

Council means Greater Hume Council ABN 44 970 341 154.

Committee Member means a Committee Member of the Walla Walla Solar Farm Committee.

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

Developer means the developer as defined in the applicable VPA.

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

Financial Year means the period from 1 July year X to 30 June Year X + 1.

General Manager means the person appointed or acting in the position of General Manager of Greater Hume Council.

Intellectual Property means and includes the copyrights, trademarks, registered designs, patents and databases. In particular, it refers to a range of Council resources including written material, design drawings, maps and plans, computer programs and databases.

Law means any statute along with any regulation, rule, planning instrument, policy or plan having effect under any such statute.

LGA means the *Local Government Act 1993* (NSW).

Local Projects has the same definition ascribed to it within the VPA.

WHS Policy means any Work Health and Safety Policy or Procedure/s adopted by Council and includes any Manual or other document forming part of, or associated with, any such Policy.

Personal Information means "information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or the opinion" as defined in *Privacy and Personal Information Act 1998*, Section 4.

Record means recorded information, in any form, including data in computer systems, created or received and maintained by an organisation or person in the transaction of business or the conduct of affairs and kept as evidence of such activity.

Responsible Officer means the person nominated by the General Manager.

Schedule means the Schedule attached to this Constitution.

Secretary means the Secretary of the Committee.

Treasurer means the Chief Financial Officer or delegate of Council.

VPA means the Voluntary Planning Agreement between Greater Hume Council, Minister for Planning and Public Places and the Developer.

3. Purpose of the Constitution

- (a) The Committee has been established under the VPA to administer the Community Fund and is to be operated as a section 355 LGA Committee.
- (b) The Committee is acting on Council's behalf; the Committee is 'Council' and any action which the Committee undertakes is Council's responsibility.
- (c) The Constitution provides a mandatory set of rules that defines the functions that Council has delegated to the Committee, the manner in which those delegated functions are to be undertaken by the Committee, and an administrative structure and procedures to ensure that the Council is able to monitor the conduct and performance of the Committee, particularly with regard to managing potential liabilities that might arise as a result of the activities of the Committee, in a similar manner to that which Council monitors others performing Council's functions under delegation.

4. Term

- (a) The Council must establish the Committee on or before the Commercial Operation Commencement Date as defined in the VPA.
- (b) This Constitution operates for a term commencing from the date on which Council, by resolution, adopts this Constitution and concluding on the date which the final Contribution Amount under the VPA is utilised or allocated to a Local Project by the Committee.

5. Functions of the Committee

- (a) The Committee must comply with any Law, including but not limited to the LGA, in exercising any function delegated to it by Council;
- (b) When exercising any function delegated by Council, the Committee must comply strictly with the terms of the Constitution and any Council Policy.

6. Duties of the Committee

- (a) In accordance with Schedule 4 of the VPA and subject to any lawful direction of the Council, the Committee is required to do the following:
 - (i) adhere to policies or procedures developed to assist the Committee.
 - (ii) make available for any Responsible Officer of the Council any records of the Committee as requested.
 - (iii) adhere to this Constitution; and
 - (iv) appoint an Auditor in accordance with clause 16 of the Constitution.
- (b) The Committee must call for Funding Applications, as and when deemed appropriate by the Committee, and providing it is not less than on an annual basis in accordance with clause 3 of Schedule 4 of the VPA.
- (c) The Committee must notify the Developer of each Funding Application in accordance with clause 4 of Schedule 6 of the VPA.
- (d) The Committee must recommend allocation of funds from the Community Fund to Council in accordance with clause 5 of Schedule 4 of the VPA.
- (e) The Committee may make recommendations to Council that combine multiple years contributions to the Community Fund for expenditure on Local Projects. This may include delaying expenditure to enable the quantum in the Community Fund bank account to accumulate, or alternatively, requesting Council to advance funds from its general account to be repaid over a period of time from the Community Fund.

7. Limitations of Powers

- (a) The Committee must not do anything or allow any person acting under its direction to do anything contrary to the interests of Council.
- (b) The Committee must not, give or purport to give any funds, consent or approval (under the EPA, the LGA or any other Law) to any development or building works without the prior approval of Council.
- (c) The Committee must not, unless the Committee has obtained prior written approval from the General Manager, engage or contract with any person or corporation to provide any good or service for payment of any consideration or fee.
- (d) Committee Members are not permitted to speak to the media on any Council matters in their capacity as a Committee Member unless otherwise approved.
- (e) No powers or functions may be delegated by the Committee to any other person or committee unless provided in this Constitution.
- (f) The Committee shall not:
 - (i) do anything that is not within the powers, duties and functions delegated in this Constitution;
 - (ii) exercise any function which requires Council approval;
 - (iii) enter into any contracts or accept tenders;
 - (iv) enter into legal action on behalf of Council.

8. Committee membership

- (a) The Committee must comprise of:
 - (i) the Mayor or Councillor Delegate;
 - (ii) the General Manager or delegate of Council;
 - (iii) two (2) community representatives;
 - (iv) a representative of the Developer.
- (b) Committee membership for the two community representative positions is on an annual basis. Members may stand for re-election at each annual meeting.
- (c) Members must be over the age of eighteen (18) years.
- (d) The Committee shall, from its own members, elect a Chairperson and Secretary. These positions form the Executive of the Committee.
- (e) Council's Chief Financial Officer or delegate will attend Committee meetings, in a non-voting capacity, and undertake the role of Treasurer of the Committee.
- (f) In the event of a vacancy occurring for one or both of the community representative positions on the Committee for any reason, the Committee will seek nominations in a manner determined by Council.
- (g) The names and addresses of any nominees are to be forwarded to Council for consideration of appointment.
- (h) Each member of the Committee exercises that capacity, and provides any labour, on an honorary and voluntary basis. No member of the Committee shall be entitled to any remuneration or wage from Council as a result of that person's membership of the Committee, and there is no employer-employee relationship between Council and any member as a result of that membership.
- (i) The General Manager may, by notice in writing, terminate any community representative's membership of the Committee. Such written notice must be provided to each member of the Committee and to the person whose membership has been terminated pursuant to this sub-clause. Such termination takes effect on the date specified in the notice regardless of any request under this sub-clause for a review. The General Manager may, at his or her absolute discretion, withdraw any notice issued pursuant to this sub-clause without prejudice to the General Manager's ability to issue further notices under this sub-clause.
- (j) Any member of the Committee shall cease to hold office if:
 - (ii) the member becomes bankrupt;
 - (iii) the member resigns from office by notification in writing to the Committee and Council;
 - (iv) the member is absent for more than 6 months without leave from meetings of the Committee;
 - (v) Council passes a resolution to remove the member from the Committee;
 - (vi) the member fails to disclose any pecuniary interest in any matter with which the Committee is concerned and takes part in the consideration, discussion or votes on any question relating to the matter. For the purposes of this provision "pecuniary interest" has the same meaning as defined in Section 439AA of the LGA;
 - (vii) the member is convicted of an offence referred to in Part 4AA Fraud or Part 4AC Money Laundering of the Crimes Act 1900;

(viii) the member is prohibited under the Corporations Law (Cwlth) from managing a corporation.

(k) Council has the absolute unfettered right to remove any member(s) of the Committee.

(l) A member can resign at any time, or at the Annual General Meeting.

9. Executive

The Executive do not have greater decision-making powers than other Committee members.

At a minimum the Committee must have a Chairperson, Secretary and Treasurer.

9.1 Chairperson

The Chairperson is the spokesperson for the organisation and therefore needs to be certain that the organisation is running smoothly and achieving its aims and objectives.

The main responsibilities of the Chairperson are:

- (a) chairing meetings of the Committee
- (b) being well informed of all Committee activities
- (c) being aware of the future directions and plans of members
- (d) having a good working knowledge of Council's policies and procedures
- (e) managing Committee meetings
- (f) managing the Annual General Meeting
- (g) being a supportive leader of all Committee members
- (h) ensuring that planning and budgeting is carried out in accordance with the wishes of the members
- (i) managing discussion and avoiding members dominating and/or excluding others.
- (j) During meetings, the Chairperson is responsible for ensuring:
 - i. meetings are correctly convened
 - ii. a quorum is present for all decisions
 - iii. meeting decisions are properly minuted
 - iv. maintaining order, and
 - v. the meeting is conducted while keeping the discussion focused on the business of the meeting and to clarify points and ensure that everyone understands the decisions being considered.

9.2 Secretary

The Secretary is often the key contact point for the organisation, that is, for correspondence, phone messages, etc. and is required to record the 'minutes' for each meeting.

The main responsibilities are:

- (a) arranging the meetings and preparing the Agenda at least 7 days prior to the date of the meeting

- (b) keeping Committee members properly informed by sending them notices of meetings, copies of agendas, correspondence, reports, etc. as required
- (c) receiving all incoming correspondence, if required, bring it to the attention of the Committee and/or where necessary writing and dispatching all outwards correspondence required by the Committee. A report listing all incoming and outgoing correspondence, along with progress reports on any works being done, should be presented to Committee meetings
- (d) taking and recording minutes of all meetings and distributing copies to Committee members
- (e) preparing minutes and other associated documents, distributing copies to committee members and providing a copy of the minutes to Council
- (f) liaising with the Chairperson between meetings so the business of the Committee is attended to and, in consultation with the Chairperson, to call special meetings as required
- (g) carrying out follow-up action which arises from the business of meetings
- (h) organising and delegating tasks
- (i) maintaining all committee records.

9.3 Treasurer

The Treasurer role will be undertaken by Council's Chief Financial Officer or delegate. The Treasurer is responsible for looking after the Committee's financial business records and is required to present a report of all receipts, payments and other transactions to each Committee meeting.

The main responsibilities of the Treasurer are:

- (a) manage a bank account within Council's financial management system
- (b) banking money received as soon as practicable after receipt
- (c) paying accounts as authorised by the Committee
- (d) providing original tax invoices, receipts, cheque butts, bank statements and all other supporting documentation to Council
- (e) reporting at each Committee meeting by presenting a simple financial report and bank reconciliation statement
- (f) ensuring that annual financial statements are prepared and audited prior to adoption at the Annual General Meeting
- (g) presenting a financial report to the Annual General Meeting
- (h) undertaking financial reporting as per the Annual Reporting requirements provided to each Committee
- (i) monitoring revenue and expenditure
- (j) ensuring that accurate financial records are maintained
- (k) ensuring that a copy of the annual accounts are submitted to Council by 31 July each year

10. Voting

- (a) Each member of the Committee as identified as clause 8(a) is entitled to one (1) vote on any issue put to the vote of members at any meeting of the Committee.
- (b) No member is permitted to participate in any debate before the Committee or vote put to the Committee where that member has, either directly or indirectly, a pecuniary interest in the issue(s)

debated or subject of that vote.

- (c) Each member is required to notify the Committee in writing of the nature of any pecuniary interest.
- (d) Voting is by a simple majority of the members.
- (e) Proxy votes will not be accepted.
- (f) In the event of a tied vote, the Chairperson has the casting vote.

11. Disclosure of Interest

- (a) The Committee is a Committee of Council and, as such, Chapter 14 (Honesty and Disclosure of Interests) of the LGA applies to all its members.
- (b) The Committee members must comply with Chapter 14 of the LGA.
- (c) All members of the Committee and those present at a meeting are expected to behave in a courteous and respectful manner towards each other. If behaviour at the meeting is disrespectful, discourteous, or unruly, the Chairperson can ask for the behaviour to cease and if this does not happen, adjourn the meeting. The meeting will be reconvened at a time agreed upon by the Committee.

12. Meetings

- (a) At all meetings of the Committee, 3 out of 5 of the members shall constitute a quorum. A quorum must be present within fifteen minutes of the nominated commencement time.
- (b) The Chairperson shall preside at all meetings of the Committee.
- (c) Meetings may be held virtually by video-conference or by other means approved by Council.
- (d) Meetings are to be conducted in accordance with standard Council meetings procedure and the minutes of each meeting are to be forwarded to Council.
- (e) The Committee shall hold ordinary meetings biannually, on a day and at a time to be decided upon by the Committee.
- (f) The Committee shall hold an Annual General Meeting, to receive annual reports and elect a Committee Executive once every twelve months.
- (g) Where any Member objects to a resolution carried at a meeting of the Committee, such objections must be recorded in the minutes of the Committee and such resolution shall not be valid (and so must not be acted upon or implemented by the Committee) until Council resolves to confirm the resolution of the meeting of the Committee.
- (h) The majority of the members of a Committee may resolve that a member of the Committee is to be disqualified. Such resolution shall be recorded in the minutes of any such meeting and those minutes must be submitted to the General Manager by the Secretary within seven (7) days of the meeting at which the Committee made that resolution. Such resolution is of no effect unless confirmed by resolution of Council, whose determination shall be final and absolute.
- (i) Committee members and the general public are entitled to view the Committee's Minute Book or receive a copy of the Minutes of the Committee resolved by the Committee.
- (j) At all meetings of the Committee only business included in the Agenda may be dealt with

(excepting the Annual General Meeting) unless all the members of the Committee are present and they unanimously consent to such other business being transacted or if the Chairperson rules the matter is of an urgent nature.

- (k) Minutes of all meetings shall be recorded by the Secretary in an approved manner and a copy forwarded with Notice of Next Meeting to the General Manager of Council.
- (l) All Committee members are entitled to attend all meetings of the Committee.
- (m) Committee meetings shall be open for attendance by members of the community and there should not be indiscriminate exclusion of anyone wanting to attend, however, the Committee may resolve to close a meeting or part thereof where matters under discussion would unnecessarily prejudice or embarrass individuals or organisations and/or potentially prejudice any business transactions.
- (n) The Committee should endeavour to give public notice of its meetings.

13. Annual General Meetings

- (a) The Annual General Meeting shall be called by the Chairperson of the Committee or, if not so called, by the General Manager of Council.
- (b) The Secretary shall give at least four weeks' prior notice of an Annual General Meeting. The notice, giving full details of date, time, place and business of the meeting, is to be sent to all members of the Committee and to the General Manager of Council.
- (c) The Annual General Meeting of the Committee shall take place at an agreed time each year for the following purposes:
 - (ii) to confirm the Minutes of the previous Annual General Meeting.
 - (iii) to receive the annual financial reports for the preceding twelve (12) months.
 - (iv) to receive nominations and conduct the election of office bearers for the ensuing year.
 - (v) to transact any business of which at least fourteen days' written notice has been given to the Secretary for inclusion in the Agenda.
- (d) Council will advertise the Annual General Meeting on its website on behalf of the Committee.
- (e) Members of the public are entitled to address meetings of the Committee with the consent of the Chairperson.

14. Extraordinary Meetings

- (a) The Secretary may, upon receipt of written authority of the Chairperson or on receipt of a written request signed by no less than three members of the Committee, call a special meeting at a time and at a place determined by the Secretary provided that the time is not less than forty-eight (48) hours prior to the giving of notice of this special meeting by the Secretary. Any such notice must specify the agenda for the special meeting. Failure to receive notice of a special meeting shall not affect the validity of a special meeting.
- (b) Unless all members of the Committee unanimously consent to business other than that contained in the agenda for the special meeting being determined at that special meeting, no special

meeting shall consider any business other than that for which the special meeting was convened and as contained in the agenda for that special meeting.

15. Financial records

- (a) Committees appointed under Section 355(b) of the LGA are subject to the same standards of financial accountability as Council. All funds and assets held by the Committee belong to Council. The Committee is responsible for the care and control of these funds.
- (b) The Committee, on behalf of Council, is required to comply with Council procedures and instructions, which are designed to ensure that records and day-to-day transactions are handled according to required standards.
- (c) The Treasurer shall be responsible for ensuring:
 - (i) the proper keeping of the books and accounts of the Committee, which shall be kept as directed by the General Manager and made available to the Council when required for that purpose by the General Manager.
 - (ii) accounts must be accessible by the General Manager who must be able to authorise, in his or her own right, withdrawals from any account held by the Committee.
 - (iii) forwarding monthly financial and GST reporting, if any, to Council's designated Responsible Officer twice a year in a format as directed by the General Manager.
- (d) All monies received by the Committee shall be deposited, within seven (7) days of receipt into an interest-bearing account held in the name of Council for the purpose of a Community Fund pursuant to the provisions of section 625 LGA.

16. Records and record keeping

The Australian Standard on Records Management (AS 4390-1996, Part 1. Clause 4.2.1) defines a record as Recorded information, in any form, including data in computer systems, created or received and maintained by an organisation or person in the transaction of business or the conduct of affairs and kept as evidence of such activity.

16.1 Ownership and legislation

As determined by the State Records Act 1998, neither the Committee nor Council is the owner of records created and maintained by them. As a public office Council's records are officially records of the state and must be managed by Council and Committees accordingly.

16.2 Storage and custody of records

- (a) Records should be stored in an area away from potential hazards, e.g. fuel, water, fire, vermin.
- (b) Records should be stored in a secure location.
- (c) Release of original or photocopied records to any person, other than a current Committee member or an authorised officer of the Council, is prohibited.

16.3 Access to records

- (a) Access to records by persons other than current Committee members or an authorised officer of the Council is prohibited.
- (b) Request for access to records, for persons other than those stated above, must be made through Council's Public Officer.
- (c) The Committee acknowledges it has a responsibility under the Privacy and Personal Information

Protection Act 1998 to protect the personal information and privacy of individuals in general. The Committee will not provide to any person other than a Committee member any personal information unless it has been specifically collected for the purposes for which it is being requested. This includes contact details for a member of the Committee unless that member has agreed those details can be provided to members of the public.

16.4 Responsible Officers.

- (a) Return of original records to Council is to be done annually following each individual Committee's Annual General Meeting.
- (b) Photocopies of returned records will be provided, within reason, if required for ongoing business activities.

17. Auditing

- (a) At least once every 5 years, Council must appoint an Auditor to reconcile:
 - (ii) the Community Fund Monetary Contribution paid by the Developer under clause 3 of Schedule 3 of the VPA;
 - (iii) any payments made by Council in accordance with clause 5 of Schedule 4 of the VPA;
 - (iv) 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.
- (c) The costs of the Auditor will be paid out of the Community Fund.

18. Intellectual property

The Committee acknowledges and agrees:

- (a) it is important for Council to develop, maintain, protect and manage the organisation's intellectual property including copyrights, trademarks, registered designs, patents and databases.
- (b) the Committee, as a delegate of Council, has a duty to observe and help protect Council's intellectual property by not copying or supplying such property without the express permission of Council.
- (c) Council retains ownership of all intellectual property created by Committee members in the course of their Committee work.

19. Dispute resolution

Where the Committee is unable to reach a determination of any issue, the Committee must refer that issue to the General Manager for determination of the dispute, whose determination of the dispute shall be final and binding upon the Committee.

20. Work health & safety

- (a) In undertaking all of its activities Council will seek to ensure that the obligations of the *Work Health and Safety Act, 2011* are observed.
- (b) Committee members and volunteers undertaking work or activities on Council land are subject to Work Health & Safety Legislation.

- (c) Any incidents or injuries to persons or property, including potential incidents or injuries, must be reported to Council within 24 hours.
- (d) Where there are witnesses to the injury or incident, the Committee must attempt to obtain and record the name, address and contact telephone number of each such witness.
- (e) The Committee shall ensure that all documents and records of compliance required by Council shall be tendered at the next ordinary meeting of the committee and shall form part of the minutes of that meeting.

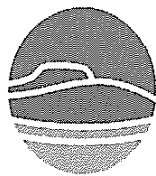
21. Amendment of the Constitution

- (a) The Constitution may only be altered by resolution of the Council.
- (b) The Committee may request Council to consider an amendment their Constitution once the proposed alteration is submitted to a General Meeting of the Committee and the notice convening such a meeting contains the proposed alteration or the effect thereof AND such proposed alteration is approved by majority of the members present at such a General Meeting.

22. Dissolution

- (a) Council may dissolve a Committee if that Committee is not complying with the roles and responsibilities of the Committee.
- (b) The Committee may be dissolved by Council in the event of membership dropping to less than four (4) persons. However, if a Committee chooses to remain active with less than four members, it is given six months to re-establish a viable membership (i.e. minimum of four members).
- (c) On dissolution of the Committee, the Secretary must forward immediately all records (minutes, correspondence, financial records) to Council.
- (d) Upon a resolution being passed by Council for the dissolution of the Committee, all assets and funds of the Committee shall, after payment of all expenses and liabilities, be handed over to Council for the future management of the facility or to be held in trust by Council until a Committee is re-established.

Appendix 1



Greater
Hume
Council

Nomination Form for Appointment to Solar Farm Community Fund (Community Representative)

1. NOMINEE DETAILS

Mr <input type="checkbox"/> Miss <input type="checkbox"/> Ms <input type="checkbox"/> Mrs <input type="checkbox"/>	Full Name:
Residential Address of nominee:	
Postal Address of nominee:	
Name of Committee:	
Group/Association Represented (if any):	
Phone/Mobile:	Email:

2. REASONS FOR WISHING TO JOIN THE COMMITTEE

I acknowledge receipt of the Privacy and Personal Information Protection Act 1998 Pre-Collection (Section 10).

I confirm I have read the contents of the notice and agree that personal information may be used for the purposes identified and provided to the recipients identified in the notice.

Nominee Signature: _____ Date: _____

Please return this form to The Secretary, Walla Walla Solar Farm Committee, C/- Greater Hume Shire Council, 39 Young Street (PO Box 99), Holbrook, NSW, 2644.

Appendix 2



Privacy and Personal Information Protection Act 1998 Pre-Collection (Section 10) Greater Hume Shire Council Section 355 Committees

The personal information that Council is collecting from you is personal information for the purposes of the Privacy and Personal Information Protection Act 1998 ('the Act').

The intended recipients of the personal information are:

- Members of the public and Council staff requiring contact information in relation to your Committee.
- The personal information will appear in the Council Agenda at the time that your nomination will be considered by Council and the personal information will as a result be available to Council, members of staff and members of the public who obtain copies of the Council Agenda.

The provision of the information by you is voluntary.

The personal information will be used by the Council to choose members of the Committee.

Council is collecting this personal information from you in order to maintain an accurate contact list for members of the public, Council officers and other Council Committee members who may need to contact the appropriate members of your Committee.

If you do not provide this information, we will not be able to include details in the database. You may make application for access amendment to information held by Council. You may also make a request that Council suppress your personal information from a public register. Council will consider any such application in accordance with the Act.

Council is to be regarded as the agency holding the information.

Enquiries concerning this matter may be addressed to Council's General Manager.

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


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

DocuSigned by:

.....
1192492685404F8...

Signature of Director

Carlo Frigerio
.....

Name of Director

DocuSigned by:

.....
7167BD60FCD4425...

Signature of Director/Secretary

Charles Grover
.....

Name of Director/Secretary