



Business Papers 2022

MID-WESTERN REGIONAL COUNCIL

ORDINARY MEETING
WEDNESDAY 25 MAY 2022

SEPARATELY ATTACHED ATTACHMENTS

*A prosperous and progressive
community we proudly call home*



ATTACHMENTS

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Mid-Western Region Community Plan

my community
my plan



TOWARDS 2040

Mid-Western
Regional Council

COUNCIL'S VISION

A prosperous and
progressive community
we proudly call home.





Mayor's Message

The Mid-Western Region Towards 2040 Community Plan sets out the community's vision for the future – where we are, where we want to be and how we will get there.

The plan represents an opportunity to create and foster community-based goals, values and aspirations – to drive a sustainable community that reconciles the economic, social, environmental and civic leadership priorities for the region.

The Mid-Western Region is a modern and growing region. We continue to have strong growth in industry and population, driven by state significant development.

Coupled with the significant agricultural sector and increased tourism, this presents not only unique challenges but also opportunities for us as a community. Our role as individual custodians, community organisations, industry, business and government is to harness those opportunities.

The Towards 2040 Community Plan has been developed following an extensive consultation exercise in which over 1,500 residents participated in varying forms. It was their input that has forged the direction of the plan, and it will continue to be a vision that we can all contribute towards.



Cr Sam Paine
DEPUTY MAYOR



Cr Paul Cavalier



Cr Katie Dicker



Cr Alex Karavas



Cr Robbie Palmer



Cr Peter Shelley



Cr Phil Stoddart



Cr Percy Thompson



Cr Des Kennedy, Mayor

The Mid-Western Region

The prosperous Mid-Western Region is located just 3.5 hours from Sydney and offers a quality lifestyle in a dynamic economic environment.

Located in the Central West of NSW, the area covers approximately 9,000 square kilometres and has a population of more than 25,000.





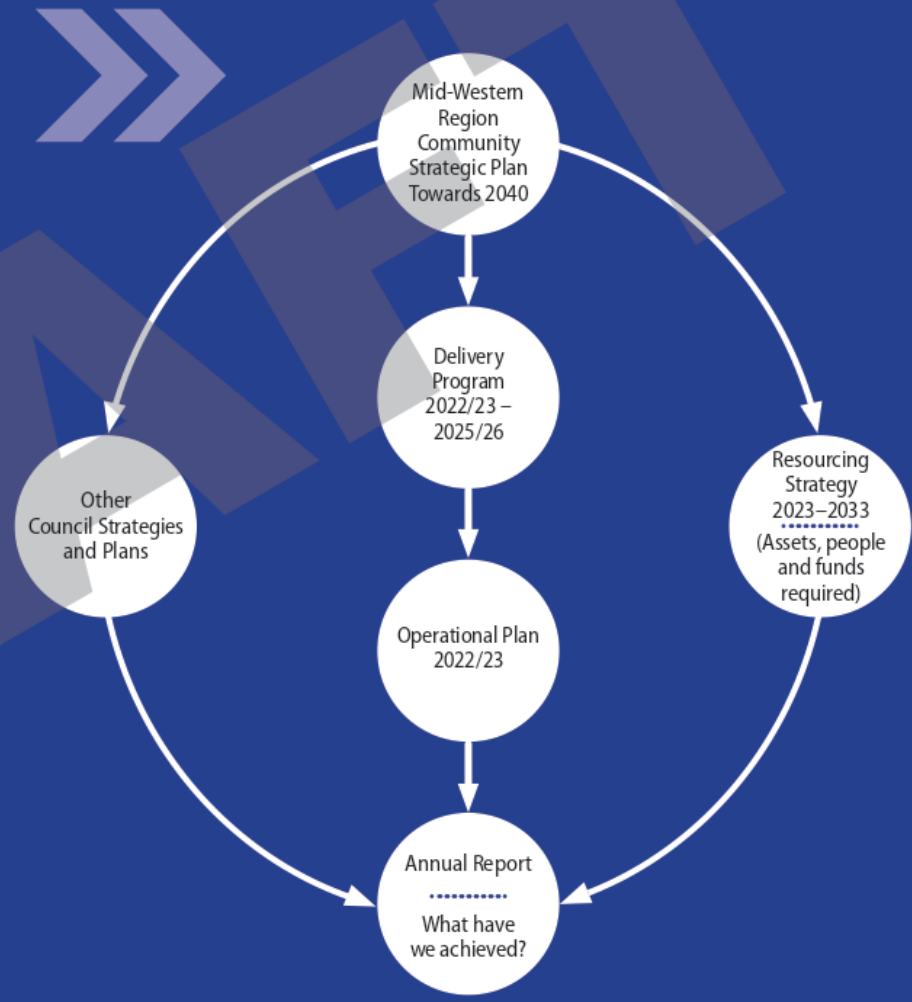
OUR COMMUNITY PLAN

Our plan sets out where, as a community, we want to be in the year 2040. It is a future vision developed collaboratively between the community and Council and represents the aspirations of the people who live and work within the Mid-Western Region and strategies for achieving these goals.

Towards 2040 addresses four key questions for the community:

- 1  Where are we now?
- 2  Where do we want to be in 2040?
- 3  How will we get there?
- 4  How will we know when we have arrived?

HOW THE COMMUNITY PLAN LINKS TO COUNCIL'S PLANS





THE RESOURCING STRATEGY CONSISTS OF THREE COMPONENTS

-  01 Long Term Financial Planning
-  02 Workforce Management Planning
-  03 Asset Management Planning

The Delivery Program summarises the activities that Council has prioritised over a four year term to achieve the Towards 2040 Community Plan, including Council's operations.

The Operational Plan includes a detailed budget for the activities that are to be undertaken each year to achieve the outcomes of the Delivery Program.

The Annual Report provides feedback to the community on Council's progress in achieving the Delivery Program objectives.



How does the Towards 2040 Community Plan link in with other plans?

A Strong Economy
Diverse economy with well-educated and skilled population, high living standards, productive and growing regions with world-class infrastructure and transport links, innovative businesses and industries.

Better Customer Service
Improving the customer experience for all kinds of services, providing high-quality integrated services, implementing best-practice productivity and digital capability for a world-class public service.

Highest Quality Education
Lifting literacy and numeracy standards across NSW public schools, unlock children's academic potential at school, increasing the number of Aboriginal young people reaching their learning potential.

Breaking the Cycle of Disadvantage
Protecting the most vulnerable children, keeping families safely together, providing safe and stable housing, reducing domestic violence reoffending, reducing homelessness.

Connected Communities
Delivering a network of welcoming and inclusive spaces in local neighbourhoods, greener public spaces, increasing tree canopy and green cover, enhancing outdoor recreation and exercise opportunities.

Improved Health System
Improving service levels in hospitals, improving outpatient and community care, holistic approach to suicide prevention and mental health and wellbeing.

DRAFT CENTRAL WEST AND ORANA REGIONAL PLAN

The Regional Plan outlines the goals and actions for the Central West and Orana Region to achieve a sustainable future. It applies to 19 local government areas including the Mid-Western Region, covering an area of 125,666 square kilometres.

The vision for the Central West and Orana Region closely reflects the vision and priorities identified in the Towards 2040 Community Plan. There are direct linkages between the goals, strategies and actions in both plans for the next 20 years. There are 22 key objectives outlined in the Plan under the following parts:

- A sustainable and resilient place
- People, housing and communities
- Prosperity, productivity and innovation
- Location specific responses



Community consultation

The community played an integral role in the development and review of the Towards 2040 Community Plan with over 1,500 people taking part in a variety of consultation and community engagement activities.

The Community Engagement Strategy adopted by Council to inform this review of the Community Plan was based on social justice principles of equity, access, participation and rights, and included a range of opportunities for people to be involved in the process. The review process included activities to inform,

engage and consult the community and key stakeholders between June 2021 and March 2022, including:

- Telephone surveys
- Online surveys
- Postcard exercise
- Direct mail
- Permanent displays

Community engagement had a dual

purpose to both create awareness and seek feedback on the goals and strategies identified in the Community Plan. This was achieved by asking people to consider what they like about the region now, what they would like the region to look like in the future and what they see as key priorities for Council to investigate.



What our community wants

CONSULTATION OUTCOMES

The results of extensive community consultation showed that we continue to value: our friendly community, the range of parks and facilities for all ages, activities for youth, ongoing improvements to our transport network and economic diversity.

During consultation, the community was asked what they liked about the region. Further, they were asked what their priorities for the region were for the next three, five and ten years.

Feedback was sought from the community on the range of services Council provides and satisfaction with existing service levels.



MOST LIKED ABOUT THE REGION



IMPORTANT PRIORITIES FOR THE REGION



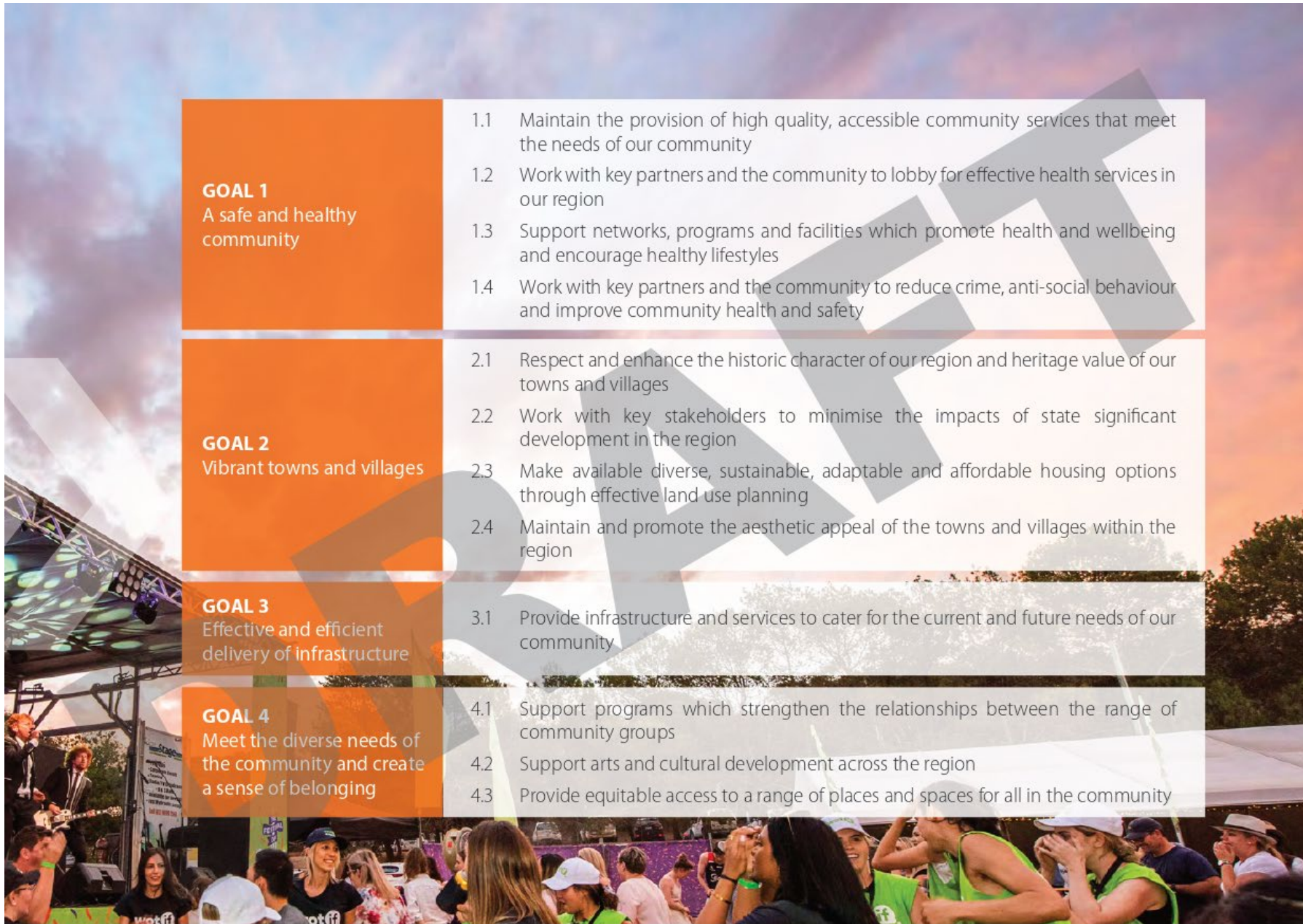


Looking After Our Community

COMMUNITY INPUT	MEASURES
<ul style="list-style-type: none"> Be a local volunteer Make use of local facilities and services Be a responsible pet owner Join one of the many community groups or organisations involved in various community projects across the region Dispose of hazardous waste in approved locations Report safety and maintenance issues at public parks, facilities, playgrounds and buildings to Council Be proud of your town and your street Respect the heritage and culture of others Embrace a healthy lifestyle and get involved in local sporting and physical activities 	<ul style="list-style-type: none"> An increase in the proportion of new housing stock that is affordable housing Development is of a high quality in keeping with the character of our towns and villages An increase in the proportion of people who feel safe in our community An increase in the number of community members participating in community events, volunteering, activities and organisations An increase in community participation in sporting and recreational activities An increase in the proportion of people who are satisfied with infrastructure conditions and service levels An increase in the proportion of people who feel they have equitable access to community services and facilities to meet their needs Improved playground and recreational facilities An increase in the proportion of community members who are satisfied with the range and quality of community and cultural facilities and opportunities

OUTCOME

Vibrant towns and villages with a rich history, a safe and healthy community, and a strong sense of community pride – a great place for families.



GOAL 1
A safe and healthy
community

- 1.1 Maintain the provision of high quality, accessible community services that meet the needs of our community
- 1.2 Work with key partners and the community to lobby for effective health services in our region
- 1.3 Support networks, programs and facilities which promote health and wellbeing and encourage healthy lifestyles
- 1.4 Work with key partners and the community to reduce crime, anti-social behaviour and improve community health and safety

GOAL 2
Vibrant towns and villages

- 2.1 Respect and enhance the historic character of our region and heritage value of our towns and villages
- 2.2 Work with key stakeholders to minimise the impacts of state significant development in the region
- 2.3 Make available diverse, sustainable, adaptable and affordable housing options through effective land use planning
- 2.4 Maintain and promote the aesthetic appeal of the towns and villages within the region

GOAL 3
Effective and efficient
delivery of infrastructure

- 3.1 Provide infrastructure and services to cater for the current and future needs of our community

GOAL 4
Meet the diverse needs of
the community and create
a sense of belonging

- 4.1 Support programs which strengthen the relationships between the range of community groups
- 4.2 Support arts and cultural development across the region
- 4.3 Provide equitable access to a range of places and spaces for all in the community



OUTCOME

Conserving and promoting the natural beauty of our region.

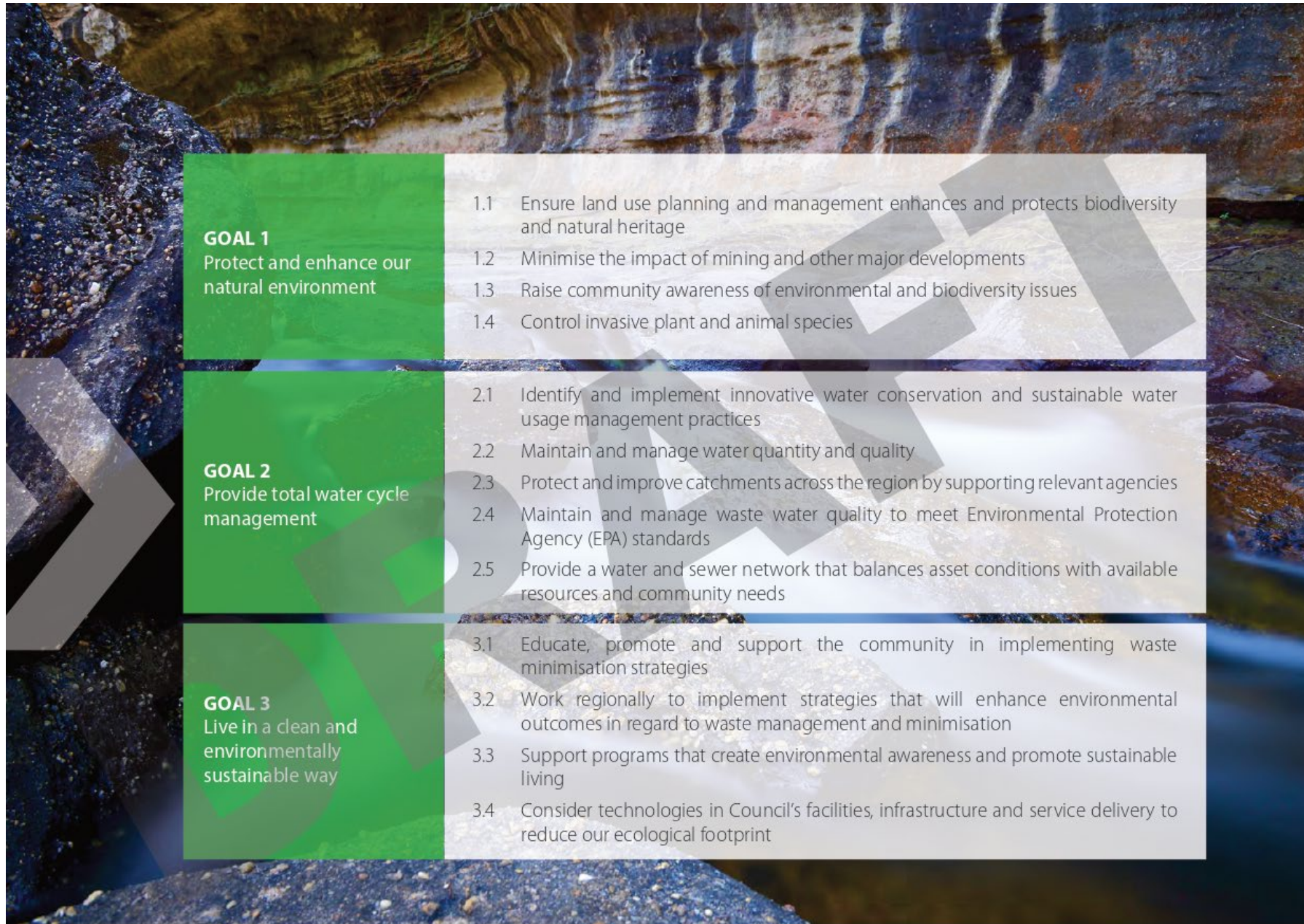
Protecting our Natural Environment

COMMUNITY INPUT

- Continue to reduce, reuse, recycle – minimising waste to landfill
- Reduce consumption of energy and fossil fuels, and consider alternative resources
- Take ownership of our natural environment and protect it through responsible practices
 - Control invasive plant and animal species on private property
 - Support and participate in Council's environmental programs and initiatives
 - Minimise water consumption
 - Keep our waterways clean – the drain is just for rain
 - Educate each other on environmentally sustainable living practices and reduce our environmental footprint
- Dispose of rubbish properly, do not litter in streets and other public places

MEASURES

- Minimise damage to our natural environment from economic activities
- A reduction in tonnes of waste to landfill per capita
- An increase in the use of alternative water sources
- Improved standards of water quality in our waterways
- Meet Best Practice Management Guidelines for Water Supply
- An increase in the use of alternative energy sources



GOAL 1
Protect and enhance our natural environment


- 1.1 Ensure land use planning and management enhances and protects biodiversity and natural heritage
- 1.2 Minimise the impact of mining and other major developments
- 1.3 Raise community awareness of environmental and biodiversity issues
- 1.4 Control invasive plant and animal species

GOAL 2
Provide total water cycle management

- 2.1 Identify and implement innovative water conservation and sustainable water usage management practices
- 2.2 Maintain and manage water quantity and quality
- 2.3 Protect and improve catchments across the region by supporting relevant agencies
- 2.4 Maintain and manage waste water quality to meet Environmental Protection Agency (EPA) standards
- 2.5 Provide a water and sewer network that balances asset conditions with available resources and community needs

GOAL 3
Live in a clean and environmentally sustainable way

- 3.1 Educate, promote and support the community in implementing waste minimisation strategies
- 3.2 Work regionally to implement strategies that will enhance environmental outcomes in regard to waste management and minimisation
- 3.3 Support programs that create environmental awareness and promote sustainable living
- 3.4 Consider technologies in Council's facilities, infrastructure and service delivery to reduce our ecological footprint



Building a Strong Local Economy

OUTCOME

A prosperous and diversified economy delivering lifestyle benefits to the community through employment, income and sustainable economic growth.

COMMUNITY INPUT

- Shop locally to support our local economy
- Look for local job opportunities
- Promote the region to friends and visitors as a great place to live, work, invest and visit
- Attend and enjoy local festivals and events
- Create opportunities for trainees, work experience and apprenticeships

MEASURES

- An increase in the size of the local labour force
- Decreased unemployment
- Increased economic activity in the region
- An increase in available housing stock
- An increase in the availability of educational offerings in the region
- An increase in the number of visitors
- An increase in the number of residents
- An increase in the proportion of community members satisfied with the range of products and services available locally



GOAL 1
A prosperous and diversified economy

- 1.1 Support the attraction and retention of a diverse range of businesses and industries
- 1.2 Encourage the development of a skilled and flexible workforce to satisfy local industry and business requirements

GOAL 2
An attractive business and economic environment

- 2.1 Promote the region as a great place to live, work, invest and visit
- 2.2 Provide leadership on economic development initiatives and identify resources and infrastructure required to drive investment and economic growth in the region
- 2.3 Support the expansion of essential infrastructure and services to match business and industry developments in the region

GOAL 3
A range of rewarding and fulfilling career opportunities to attract and retain residents

- 3.1 Support projects that create new jobs in the region and help to build a diverse and multi-skilled workforce
- 3.2 Build strong linkages with institutions providing education, training and employment pathways in the region



Connecting Our Region

COMMUNITY INPUT	MEASURES
<ul style="list-style-type: none"> Report safety and maintenance issues for roads and footpaths to Council Lobby the State Government for improved transport links Use alternative transport as available Always drive safely and to the conditions of the roads 	<ul style="list-style-type: none"> An increase in the proportion of community members who are satisfied with road conditions An increase in the availability of viable and affordable public transport options Increased access to and usage of shared pathways An increase in the average condition of road surfaces An increase in the take up of technologies to support lifestyle and economic activities Improve mobile and broadband coverage across the region

OUTCOME

Linking our towns and villages and connecting our region to the rest of NSW.



GOAL 1
High quality road network
that is safe and efficient

- 1.1 Provide traffic management solutions that promote safer local roads and minimise traffic congestion
- 1.2 Provide a roads network that balances asset conditions with available resources and community needs

GOAL 2
Efficient connection of the
region to major towns and
cities

- 2.1 Develop a regional transport network in partnership with government agencies that grows with the needs of residents and businesses
- 2.2 Create a communication network that services the needs of residents and businesses

GOAL 3
An active travel network
within the region

- 3.1 Develop and enhance walking and cycling networks across the region
- 3.2 Support viable public transport options across the region



OUTCOME

A strong Council that is representative of our community and effective in meeting the needs of the community.

Good Government

COMMUNITY INPUT	MEASURES
<ul style="list-style-type: none"> ■ Talk to your Councillors about ideas and suggestions for improving Mid-Western Regional Council ■ Attend Council meetings ■ Read Community News and keep up to date with Council activities ■ Provide feedback on public exhibitions of policies, strategies, plans and community projects ■ Participate in community surveys ■ Make use of Council's website 	<ul style="list-style-type: none"> ■ Compliance with the Office of Local Government's 'Promoting Better Practice' program ■ An increase in the proportion of community members who are satisfied with the provision of information by Council ■ An increase in the percentage of service requests completed within established timeframes ■ Meet Office of Local Government's Performance Benchmarks ■ An increase in the percentage of correspondence and other contact acknowledged and completed within 14 days ■ An increase in the proportion of community members who are satisfied with the customer service provided by Council



GOAL 1
Strong civic leadership

- 1.1 Provide clear strategic direction through the Community Plan, Delivery Program and Operational Plan
- 1.2 Provide accountable and transparent decision making for the community
- 1.3 Provide strong representation for the community at regional, state and federal levels

GOAL 2
Good communications and engagement

- 2.1 Improve communications between Council and the community and create awareness of Council's roles and responsibilities
- 2.2 Encourage community access and participation in Council decision making

GOAL 3
An effective and efficient organisation

- 3.1 Pursue excellence in service delivery
- 3.2 Provide a positive and supporting working environment for employees
- 3.3 Prudently manage risks associated with all Council activities
- 3.3 Pursue efficiencies and ongoing business improvement



Further reading and references

Integrated Planning and Reporting Towards 2040

Community Engagement Strategy

Workforce Management Strategy

Asset Management Strategy and Policy

Asset Management Plans

- Roads, Bridges and Footpaths
- Buildings and Facilities
- Water Supply Infrastructure
- Sewerage Treatment Infrastructure
- Stormwater Drainage
- Waste Management Facilities

Long Term Financial Plan

Delivery Program and Operational Plan

Annual Report

External links

NSW State Priorities

Central West and Orana Regional Plan

Office of Local Government
(Integrated Planning and Reporting)

Contact us

Phone: 1300 765 002

Email: council@midwestern.nsw.gov.au

Visit: 86 Market Street, Mudgee
109 Herbert Street, Gulgong
99 Louee Street, Rylstone

Visit midwestern.nsw.gov.au to find Council's Integrated Planning and Reporting documents, as well as policies, strategies and financial reports.

DRAFT



midwestern.nsw.gov.au

MID-WESTERN REGIONAL COUNCIL
PO Box 156, Mudgee NSW 2850

86 Market Street MUDGEE
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Stubbo Solar Farm Planning Agreement

Mid-Western Regional Council
ABN 96 149 391 332

and

UPC Renewables Australia Pty Ltd
ABN 27 616 856 672

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Planning Agreement

Date

Parties

1. **Mid-Western Regional Council** ABN 96 149 391 332 of 86 Market Street, Mudgee, NSW 2850 (**Council**)
2. **UPC Renewables Australia Pty Ltd** ABN 27 616 856 672 of Suite 2, Level 2, 15 Castray Esplanade, Battery Point TAS 7004 (**Developer**)

Background

- A. The Developer lodged the Development Application seeking development consent under the Act to carry out the Development on the Land.
- B. On 29 June 2021, Development Consent was granted by the Executive Director, Energy, Resources and Industry Assessments of the Department of Planning, Industry and Environment as delegate of the Minister for Planning and Public Spaces.
- C. The Development is situated in the local government area of the Council.
- D. Condition 11 of Schedule 2 of the Development Consent relevantly requires the Developer to, prior to commencement of construction, unless otherwise agreed by the Secretary of the Department of Planning, Industry and Environment, enter into a voluntary planning agreement with the Council in accordance with:
 1. Division 7.1 of Part 7 of the Act; and
 2. the terms of the letter of offer dated 27 May 2021 as summarised in Appendix 3 to the Development Consent:
- E. By way of this Agreement, the Developer agrees to provide the Construction Contribution and the Annual Development Contribution on the terms and conditions of this Agreement, pursuant to section 7.4 of the Act.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

The meaning of capitalised terms and the provisions relating to the interpretation of this Agreement are as follows:

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

Agreement means this Planning Agreement including any schedules;

Annual Development Contribution means the annual contribution to be paid by the Developer to the Council in accordance with clause 6 which will be:

- (a) calculated in accordance with the following formula (on a GST inclusive basis):

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ADC = MW X \$300

Where:

- (i) **ADC** means the Annual Development Contribution, in Australian dollars; and
 - (ii) **MW** means the final installed capacity (in megawatts) of the Development, and
- (b) adjusted in accordance with clause 6(c) of this Agreement;

Annual Statement means a letter specifying:

- (a) the specific Community Projects which have been funded by any Contributions paid under this Agreement during the preceding financial year, including:
 - (i) a description of each Community Project; and
 - (ii) the amount funded using the Contributions towards each specific Community Project;
- (b) the balance of the Contributions paid under this Agreement which remain held by the Council and are yet to be applied by the Council towards Community Projects.

Business Day means any day except for a Saturday, Sunday, or bank or public holiday in Sydney;

Commencement Date means the day on which this Agreement comes into operation in accordance with clause 4;

Community Projects means any specific projects for the benefit of the community which are determined by the Council in accordance with:

- (a) the priorities identified in the Mid-Western Regional Council Community Plan and Delivery Program; and
- (b) the requirements of clauses 7(c) and 7(d).

Construction means as defined in the Development Consent;

Construction Commencement Date means the day on which the Developer commences Construction as notified to the Department in writing in accordance with condition 4 of Schedule 4 of the Development Consent;

Construction Contribution means \$100,000 (inclusive of GST) to be paid by the Developer to the Council in two equal instalments in accordance with clause 5(b);

Contributions means the Construction Contribution and each Annual Development Contribution;

Decommissioning means as defined in the Development Consent;

Decommissioning Commencement Date means the day on which Decommissioning of the Project commences;

Department means the Department of Planning Infrastructure and Environment.

Development means the Stubbo Solar Farm as described in the EIS and approved by the Development Consent;

Development Application means State significant development application no. SSD-10452 lodged pursuant to the Act;

Development Consent means State Significant Development Consent No. SSD-10452 granted under section 4.38 of the Act, as modified from time to time;

EIS means as defined in the Development Consent;

Force Majeure Event means any event or circumstance or combination of events or circumstances that:

- (a) is not within the reasonable control of the Developer; and
- (b) the occurrence or effect of which the Developer could not have avoided through the exercise of Good Electricity Industry Practice as defined in the National Electricity Rules; and

includes, without limitation, any action taken by a Transmission Network Service Provider, the Australian Energy Regulator or the Australian Energy Market Operator or market disruption.

GST has the same meaning as in the GST Law;

GST Law has the same meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST;

Index Number means the Consumer Price Index for Sydney (All Groups) number or equivalent index published from time to time by the Australian Bureau of Statistics;

Land means the land listed in Appendix 2 to the Development Consent;

Law means:

- (a) the common law including principles of equity;
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations and by-laws; and
- (c) any Approval, including any condition or requirement under it;

Mid-Western Region Community Plan and Delivery Program means:

- (a) the Mid-Western Region Community Plan; and
- (b) the Delivery Program of Council for the Mid-Western Region.

adopted by the Council from time to time (and includes any document which replaces these and provides a similar function or purpose).

Minimum Threshold Amount means 90% of the P99 forecast of monthly generation for the Stubbo Solar Farm.

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Operation means as defined in the Development Consent and, for the avoidance of doubt, will only occur while the Development is exporting electricity to the distribution network;

Operation Commencement Date means the date on which the Developer commences Operation as notified to the Department in writing in accordance with condition 4 of Schedule 4 of the Development Consent;

Party means a party to this Agreement, including their successors and assigns;

Planning Agreement has the same meaning as in section 7.1 of the Act;

Term means the period from the day on which this Agreement comes into operation in accordance with clause 4 until the Decommissioning Commencement Date.

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **dollars** or **\$** is to Australian currency;
- (f) a reference to time is to Sydney, Australia time;
- (g) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;

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- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

2. Planning Agreement under the Act

The Parties agree that this Agreement is a Planning Agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

3. Application of this Agreement

This agreement applies to the Land and the Development.

4. Operation of this Agreement

This Agreement operates on and from the date this Agreement is entered into as required by clause 25C(1) of the *Environmental Planning and Assessment Regulation 2000* (NSW).

5. Construction Contribution

- (a) Once Construction of the Project commences, the Developer must promptly notify the Council of the Construction Commencement Date.
- (b) The Developer must pay the Council the Construction Contribution in two equal instalments as follows:
 - (i) \$50,000 (inclusive of GST) within 20 Business Days of the Construction Commencement Date; and
 - (ii) \$50,000 (inclusive of GST) within 6 months of the Construction Commencement Date.

6. Annual Development Contribution

- (a) Once the Development commences Operation, the Developer must promptly notify the Council of:
 - (i) the Operation Commencement Date;

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- (ii) the installed capacity (in megawatts) of the Development as Constructed; and
 - (iii) the Minimum Threshold Amount.
- (b) Subject to clauses 6(d) and 6(e), the Developer must pay to the Council the Annual Development Contribution in arrears on each anniversary of the Operation Commencement Date.
- (c) The Annual Development Contribution will be revised on 1 July of each year following the Operation Commencement Date in accordance with the following formula:

$$\text{ADC} = \frac{A \times B}{C}$$

Where:

ADC means the Annual Development Contribution payable for that year, in Australian dollars;

A means the Annual Development Contribution payable for the previous year;

B means the Index Number last published before the end of the year just ended; and

C means the Index Number last published before the commencement of the year just ended.

- (d) The obligation of the Developer to pay the Council the Annual Development Contribution will:
- (i) be suspended if the Council does not provide the Developer with an Annual Statement as required under this Agreement until such time as the relevant Annual Statement has been provided to the Developer; and
 - (ii) cease on the Decommissioning Commencement Date.
- (e) If the output of the Stubbo Solar Farm falls below the Minimum Threshold Amount during any month as a result of a Force Majeure Event then Annual Development Contribution will be reduced on a proportional basis to reflect the number of months during which the output of the Stubbo Solar Farm fell below the Minimum Threshold Amount. By way of example only:
- (i) if a major storm event damages 50% of the solar panels (but the remaining 50% of the solar panels are able to keep generating output notwithstanding this); and
 - (ii) it takes 6 months to repair or replace the damaged solar panels so that the Stubbo Solar Farm can result generating at the Minimum Threshold Amount,
 - (iii) this will result in the Stubbo Solar Farm operating 50% below the Minimum Threshold Amount for 6 months of the relevant year; and

the Annual Development Contribution will accordingly be reduced by 25% to reflect this.

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- (f) Once Decommissioning of the Project commences, the Developer must promptly notify the Council of the Decommissioning Commencement Date.

7. Application of Contributions

- (a) The Contributions paid under this Agreement must be applied by the Council for the public purpose of delivering and facilitating Community Projects.
- (b) The Developer may submit potential projects for consideration by the Council in allocating the Contributions paid under this Agreement towards Community Projects.
- (c) In determining which Community Projects the Contributions paid under this Agreement will be applied towards, the Council must:
 - (i) consult with the Developer regarding potential projects; and
 - (ii) give priority to projects in Gulgong and within 25km of the Development.
- (d) The Council and the Developer acknowledge that the Development will require the use of roads more than 25 km away from the Development and has the potential to require worker accommodation to be provided more than 25 km away from the Development. Accordingly, the Contributions paid under this Agreement may be applied to community projects which are located more than 25km from the Development where appropriate to offset such impacts.

8. Annual Statement

- (a) The Council must provide the Developer with an Annual Statement 14 days prior to the Council publishing its Annual Report on its website each year.
- (b) The Council's obligation to provide an Annual Statement under clause 8(a):
 - (i) commences following receipt of the first instalment of the Construction Contribution; and
 - (ii) ceases on the Decommissioning Commencement Date.
- (c) The Council acknowledges and agrees that the Developer may make the Annual Statement publicly available, including by:
 - (i) publishing it on its website;
 - (ii) otherwise providing it to members of the public; or
 - (iii) referencing it in any media statement,after Council has published its Annual Report on its website.

9. Payments and Interest

- (a) Each Contribution payable under this Agreement is to be paid by means of electronic funds transfer of cleared funds into the bank account nominated in writing by the General Manager of the Council.
- (b) The Developer agrees that any overdue Contribution payable under this Agreement will be Escalated at the CPI:
 - (i) from the date on which the relevant Contribution is due for payment under this Agreement;
 - (ii) until the date on which the relevant Contribution is paid.
- (c) In clause 9(b), **Escalated at the CPI** means multiplied by:

$$1 + \frac{A \times B}{B}$$

where:

- (i) **A** means the Index Number last published before the relevant Contribution is paid; and
- (ii) **B** means the Index Number last published before the Contribution was due for Payment.

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

- (a) This Agreement excludes application of sections 7.11 and 7.12 of the Act to the Development.
- (b) This Agreement does not exclude the application of section 7.24 of the Act to the Development.

11. No Registration

The Parties agree that this Agreement will not be registered on any of the land subject to the Development.

12. Dispute Resolution

12.1 No arbitration or court proceedings

If a dispute arises out of this Agreement, a Party must comply with this clause before starting arbitration or court proceedings (except proceedings for interlocutory relief).

12.2 Notification

A Party claiming a Dispute has arisen must give the other Party to the Dispute notice setting out details of the Dispute.

12.3 Parties to resolve Dispute

During the 14 days after a notice is given under clause 12.2 (or longer period if the Parties to the Dispute agree in writing), each Party to the Dispute must use

its reasonable efforts to resolve the Dispute. If the Parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.

12.4 Mediation

- (a) If the Parties do not agree within 14 days of receipt of notice under clause 12.3 (or any further period agreed in writing by them), the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales.
- (b) If the Parties do not agree on a mediator a party may at any time request the President of the Planning Institute (NSW Division) or the President of the NSW Law Society, whichever is the most appropriate, to select the mediator and determine the mediator's remuneration, which cost must be borne by the Parties equally.

12.5 Confidentiality

Subject to clause 8(c), any information or documents disclosed by a Party under this clause 12:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

12.6 Costs

Each Party to a Dispute must pay its own costs of complying with this clause 12. The parties to the Dispute must equally pay the costs of any mediator.

12.7 Termination of process

- (a) A Party to a Dispute may terminate the dispute resolution process by giving notice to each other after it has complied with clauses 12.1 to 12.3.
- (b) Clauses 12.5 and 12.6 survive termination of the dispute resolution process.

12.8 Breach of this clause

If a Party to a Dispute breaches this clause 12, the other Party to the Dispute does not have to comply with those clauses in relation to the Dispute.

13. 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 12.1.
- (b) Nothing in this Agreement prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this Agreement relates; and

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- (ii) the Council from exercising any function 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.

14. Termination

- (a) This Agreement will terminate:
 - (i) if a court of competent jurisdiction declares that the Development Consent is invalid; or
 - (ii) at the end of the Term.
- (b) In the event of termination of this Agreement, any Contribution that have been paid by the Developer under this Agreement prior to termination are to be retained by the Council and can continue to be expended in accordance with the terms of this Agreement.

15. Review of this Agreement

- (a) The Parties agree that this Agreement may be reviewed or modified and that any review or modification of this Agreement will be conducted in the circumstances and in the manner determined by the Parties.
- (b) No modification or review of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

16. Assignment

- (a) Subject to clause 16(b), a Party must not assign, novate or otherwise transfer its rights and/or obligations under this Agreement unless the other Party has provided its prior written consent.
- (b) The Developer is not to assign, novate or otherwise transfer its rights and/or obligations under the Agreement unless:
 - (i) the Developer has, at no cost to the Council, first procured the execution by the person to whom the Developer's rights or obligations under this Agreement are to be assigned or novated, of a deed in favour of the Council on terms satisfactory to the Council (acting reasonably);
 - (ii) the Council has given written notice to the Developer stating that it considers (acting reasonably) that the transferee, assignee or novatee, is reasonably capable of performing its obligations under this Agreement,
 - (iii) the Developer is not in breach of the Agreement, and
 - (iv) the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld or delayed.
- (c) The Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Agreement unless and until it has complied with its obligations under clause 16(b).

17. No fetter

17.1 Discretion

This Agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including but not limited to any statutory power or discretion of the Council relating to the assessment and determination of any development application in relation to the Development (all referred to in this Agreement as a Discretion).

17.2 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 substantially satisfied;
- (b) in the event that clause 17.2(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.

18. Notices

18.1 Notices

Subject to clause 18.2, any notice given under or in connection with this Agreement (Notice):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post at the address below, or at the address last notified by the intended recipient to the sender after the date of this Agreement:
 - (i) Mid-Western Regional Council
86 Market Street, Mudgee NSW 2850
Attention: General Manager
 - (ii) UPC Renewables Australia Pty Ltd
Suite 2, Level 2, 15 Castray Esplanade, Battery Point TAS 7004
Attention: Company Secretary
- (c) is taken to be given and made:
 - (i) in the case of hand delivery, when delivered; and

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- (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
- (d) if under clause 18.1(c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

18.2 Notices sent by email

- (a) A Party may serve a Notice by email if the Notice:
 - (i) includes a signature block specifying:
 - (A) the name of the person sending the Notice; and
 - (B) the sender's position within the relevant party;
 - (ii) states in the body of the message or the subject field that it is sent as a Notice under this Agreement;
 - (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this Agreement;
 - (iv) is sent to the email address below or the email address last notified by the intended recipient to the sender:
 - (A) Mid-Western Regional Council
Attention: General Manager
Email: council@midwestern.nsw.gov.au
 - (B) UPC Renewables Australia Pty Ltd
Attention: Company Secretary
Email: admin.support@upc-ac.com
- (b) The recipient of a Notice served under this clause 18.2 must:
 - (i) promptly acknowledge receipt of the Notice; and
 - (ii) keep an electronic copy of the Notice,
- (c) Failure to comply with clause 18.2(b) does not invalidate service of a Notice under this clause.

18.3 Receipt of Notices sent by email

- (a) A Notice sent under clause 18.2 is taken to be given or made:
 - (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;

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- (ii) when the Notice enters an information system controlled by the recipient; or
 - (iii) when the Notice is first opened or read by the recipient,
- whichever occurs first.
- (b) If under clause 18.3(a) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

19. GST

19.1 Defined GST terms

In this clause 19, words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and

19.2 GST to be added to amounts payable

If GST is payable on a taxable supply made under, by reference to or in connection with this Agreement, the party providing the consideration for that Taxable Supply must also pay the GST Amount as additional consideration. This clause does not apply to the extent that the consideration for the Taxable Supply is expressly agreed to be GST inclusive. Unless otherwise expressly stated, prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.

19.3 Tax invoice

If a Party is liable for GST on any payments made under this Agreement, the other Party must issue a tax invoice (or an adjustment note) to the liable Party for any GST payable under this agreement within seven days of a written request. The tax invoice (or adjustment note) must include the particulars required by the GST Law to obtain an input tax credit for that GST.

19.4 GST obligations to survive termination

This clause 19 will continue to apply after expiration of termination of this Agreement.

20. General

20.1 Relationship between Parties

- (a) Nothing in this Agreement:
 - (i) constitutes a partnership between the Parties; or
 - (ii) except as expressly provided, makes a Party an agent of another Party for any purpose.
- (b) A Party cannot in any way or for any purpose:
 - (i) bind another Party; or

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- (ii) contract in the name of another Party.
- (c) If a Party must fulfil an obligation and that Party is dependent on another Party, then that other Party must do each thing reasonably within its power to assist the other in the performance of that obligation.

20.2 Time for doing acts

- (a) If the time for doing any act or thing required to be done or 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 5pm on the specified day, it is taken to have been done on the following Business Day.

20.3 Further assurances

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

20.4 Variation

A provision of this Agreement can only be varied by a later written document executed by or on behalf of each of the Parties.

20.5 Counterparts

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

20.6 Legal expenses

Each Party is to pay its own legal costs and disbursements in connection with the negotiation, preparation and execution of this Agreement.

20.7 Entire agreement

The contents of this Agreement constitute the entire agreement between the Parties and supersede any prior negotiations, representations, understandings or arrangements made between the Parties regarding the subject matter of this Agreement, whether orally or in writing.

20.8 Invalidity

- (a) A word or provision must be read down if:
 - (i) this Agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this Agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:

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- (i) despite the operation of clause 20.8(a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this Agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this Agreement has full effect even if clause 20.8(b)(i) or 20.8(b)(ii) applies.

20.9 Waiver

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.

20.10 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.

Schedule 1 – Section 7.4 Requirements

Provision of the Act	This Agreement
Under section 7.4 (1), the Developer has:	
(a) sought a change to an environmental instrument.	(a) No
(b) made, or proposes to make, a development application.	(b) Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No
Description of the land to which this document applies — (Section 7.4(3)(a))	The land listed in Appendix 2 to the Development Consent.
Description of the development to which this document applies — (Section 7.4(3)(b)(ii))	All of the Development on the Land the subject of the Development Consent.
The scope, timing and manner of delivery of contributions made by the Developer required by this document — (Section 7.4(3)(c))	See clauses 5 and 6 of this Agreement.
Applicability of Section 7.11 of the Act — (Section 7.11(3)(d))	The application of section 7.11 of the Act is wholly excluded in respect of all of the Development.
Applicability of Section 7.12 of the Act —(Section 7.11(3)(d))	The application of section 7.12 of the Act is wholly excluded in respect of all of the Development.
Applicability of Section 7.24 of the Act — (Section 7.11(3)(d))	The application of section 7.24 of the Act is not excluded in respect of the Development.
Mechanism for Dispute resolution — (Section 7.11(3)(f))	See clause 12 of this Agreement.
Enforcement of this document — (Section 7.4(3)(g))	See clause 13 of this Agreement.
Registration of this document	This Agreement will not be registered.
No obligation to grant consent or exercise functions — (Section 7.4(9))	See clause 17 of this Agreement.

Executed as an agreement

Signed for and on behalf of **Mid-Western Regional Council** ABN 96 149 391 332 in accordance with a resolution of the Council dated [insert] in the presence of:

.....
Signature of witness

.....
Signature of authorised
representative/agent

By executing this agreement the **representative/agent** states that **he/she** has received no notice that **his/her** authority to do so has been revoked.

.....
Name of witness
(please print)

.....
Name of authorised **representative/agent**
(please print)

Executed by UPC Renewables Australia Pty Ltd ABN 27 616 856 672 in accordance with section 127(1) of the *Corporations Act 2001 (Cth)*:

.....
Signature of director

.....
Signature of director or company secretary*
*delete whichever does not apply

.....
Name (please print)

.....
Name (please print)

Explanatory Note

Mid-Western Regional Council (ABN 96 149 391 332)

and

UPC Renewables Australia Pty Ltd (ABN 27 616 856 672)

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement (**Planning Agreement**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**).

This explanatory note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (NSW) (**Regulation**).

Parties to the Planning Agreement

The parties to the Planning Agreement are Mid-Western Regional Council (**Planning Authority**) and UPC Renewables Australia Pty Ltd (**Developer**).

The Developer made an offer to enter into the Planning Agreement. Condition 11 of Schedule 2 of development consent SSD 10452 granted under the Act by the delegate of the Minister for Planning and Public Spaces on 29 June 2021 (**Development Consent**) requires that a planning agreement be entered into in accordance with this offer.

Description of Subject Land

The Planning Agreement applies to the land set out in Appendix 2 to the Development Consent (**Subject Land**). A map of the Subject Land is attached to this explanatory note.

Description of the Development Consent

The Developer has obtained the Development Consent which authorises the development of the Stubbo Solar Farm (**Development**) subject to conditions. The Development includes:

- solar panels capable of generating approximately 400 megawatts of renewable energy;
- a lithium-ion battery energy storage system of up to 200 megawatts;
- an onsite substation and connection to TransGrid's existing 330 kV transmission line; and
- ancillary facilities including an operations and maintenance building, internal access tracks, laydown areas, car parking and security fencing.

Summary of Objectives, Nature and Effect of the Planning Agreement

The objective of the Planning Agreement is to assist in providing public services to the community by the Developer via financial contributions paid to the Planning Authority. The financial contributions will be used to fund specific community projects determined by Planning Authority in accordance with the priorities identified in the Mid-Western Region Community Plan and the Delivery Program of Council for the Mid-Western Region (**Mid-Western Region Community Plan and Delivery Program**).

The nature of the Planning Agreement is that the Developer will make two separate monetary contributions to the Planning Authority:

- a one-off payment of \$100,000 (exclusive of GST) (**Construction Contribution**) to the Planning Authority, paid in two equal instalments; and
- an annual contribution (**Annual Development Contribution**), being \$300 per megawatt based on the final installed capacity of the Development over the operational life of the Development. The amount of the Annual Development Contribution will be adjusted for inflation on a yearly basis.

The effect of the Planning Agreement is that:

- the Developer will pay the Construction Contribution and, when it falls due, the Annual Development Contribution to the Planning Authority; and
- the Planning Authority will apply to the Construction Contribution and the Annual Contribution to specific community projects determined by the Planning Authority:
 1. in accordance with the priorities contained in the Mid-Western Region Community Plan and Delivery Program;
 2. following consultation with Developer regarding potential projects; and
 3. with priority to be given to projects in Gulgong and within 25km of the Development.

The Planning Authority and Developer acknowledge that the Development will require the use of roads more than 25 km away from the Development and has the potential to require worker accommodation to be provided more than 25 km away from the Development. Accordingly, the Construction Contribution and Annual Development Contribution may be applied to community projects which are located more than 25km from the Development where appropriate to offset such impacts.

Assessment of the Merits of Planning Agreement

In accordance with sections 7.4(2)(a) and (d) of the Act, the Planning Agreement has the following public purposes (**Public Purpose**):

- "the provision of (or the recoupment of the cost of providing) public amenities or public services";
- "the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure"; and
- "the conservation or enhancement of the natural environment".

The Planning Authority and the Developer have assessed the Planning Agreement and hold the view that the provisions of the Planning Agreement comply with the requirements of the Development Consent and provide a reasonable means of achieving funding towards the Public Purpose as the Development Contribution will assist the Planning Authority in funding specific projects in accordance with the priorities contained in the Mid-Western Region Community Plan and Delivery Program.

The Impact of the Planning Agreement on the Public or any Section of the Public

The Planning Agreement will have a positive impact on the public and local community through the delivery of the Public Purpose, by providing additional funding towards the carrying out of public projects for the benefit of the community.

Consideration of the Planning Agreements Practice Note

In accordance with clause 25E(2) of the Regulation, the Planning Authority has considered the requirements of the Planning Agreements Practice Note issued by the Planning Secretary under clause 25B(2) of the Regulation.

Requirements relating to Construction, Occupation and Subdivision Certificates

The Planning Agreement does not specify any requirements that must be complied with prior to the issue of any construction certificate, occupation certificate or subdivision certificate for the Development.

Clauses 5 and 6 of the Planning Agreement set out, respectively, the timing for payment of the Construction Contribution and Annual Development Contribution.

Interpretation of Planning Agreement

The Explanatory Note is not intended to be used to assist in construing the Planning Agreement.

Map of the Subject Land

