

# **Wollar Solar Farm Planning Agreement**

Mid-Western Regional Council  
ABN 96 149 391 332

and

Wollar Solar Development Pty Ltd  
ABN 88 621 969 266

## Table of Contents

<b>1.</b>	<b>Defined terms &amp; interpretation</b>	<b>3</b>
1.1	Defined terms	3
1.2	Interpretation	5
1.3	Headings	6
<b>2.</b>	<b>Planning Agreement under the Act</b>	<b>6</b>
<b>3.</b>	<b>Application of this Agreement</b>	<b>6</b>
<b>4.</b>	<b>Operation of this Agreement</b>	<b>6</b>
<b>5.</b>	<b>Development Contribution</b>	<b>6</b>
<b>6.</b>	<b>Application of the Development Contribution</b>	<b>6</b>
<b>7.</b>	<b>Application of sections 7.11, 7.12 and 7.24 of the Act</b>	<b>7</b>
<b>8.</b>	<b>Dispute Resolution</b>	<b>7</b>
8.1	No arbitration or court proceedings	7
8.2	Notification	7
8.3	Parties to resolve Dispute	7
8.4	Mediation	7
8.5	Confidentiality	8
8.6	Costs	8
8.7	Termination of process	8
8.8	Breach of this clause	8
<b>9.</b>	<b>Enforcement</b>	<b>8</b>
<b>10.</b>	<b>Termination</b>	<b>8</b>
<b>11.</b>	<b>Review of this Agreement</b>	<b>9</b>
<b>12.</b>	<b>Assignment</b>	<b>9</b>
<b>13.</b>	<b>No fetter</b>	<b>9</b>
13.1	Discretion	9
13.2	No fetter	9
<b>14.</b>	<b>Notices</b>	<b>10</b>
14.1	Notices	10
14.2	Notices sent by email	10
14.3	Receipt of Notices sent by email	11
<b>15.</b>	<b>GST</b>	<b>12</b>
15.1	Defined GST terms	12
15.2	GST to be added to amounts payable	12
15.3	Tax invoice	12
15.4	GST obligations to survive termination	12
<b>16.</b>	<b>General</b>	<b>12</b>
16.1	Relationship between Parties	12
16.2	Time for doing acts	12
16.3	Further assurances	13
16.4	Variation	13

**Table of Contents (ctd)**

2

16.5	Counterparts	13
16.6	Legal expenses	13
16.7	Entire agreement	13
16.8	Invalidity	13
16.9	Waiver	14
16.10	Governing law and jurisdiction	14
<b>Schedule 1 – Section 7.4 Requirements</b>		<b>15</b>

# Planning Agreement

## Date

## Parties

1. **Mid-Western Regional Council** ABN 96 149 391 332 of 86 Market Street, Mudgee, NSW 2850 (**Council**)
2. **Wollar Solar Development Pty Ltd** ABN 88 621 969 266 of 52 Dalton Road, St Ives Chase, NSW 2075 (**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 24 February 2020, Development Consent was granted by the Executive Director, Energy, Resources and Compliance 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. The Development Consent relevantly requires the Development to be carried out in accordance with the EIS. The EIS is defined by the Development Consent to include an email sent from the Developer to the Council on 11 October 2019 committing to make a voluntary contribution for local road network maintenance.
- E. By way of this Agreement, the Developer agrees to provide the 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;

**Approval** means any consent, modification, certificate, licence, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this Agreement;

**Authority** means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal or agency;

**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;

**Construction** means as defined in the Development Consent;

**Development** means the Wollar Solar Farm as described in the EIS;

**Development Application** means State significant development application no. SSD 9254 lodged pursuant to the Act;

**Development Consent** means State Significant Development Consent No. SSD-9254 granted under section 4.38 of the Act, as modified from time to time;

**Development Contribution Amount** means \$200,000 (exclusive of GST);

**EIS** means as defined in the Development Consent;

**Fair Wear and Tear** means any damage caused to the Local Road Network as a result of vehicles, including any over-dimensional and heavy vehicles, travelling to and from the Development, but does not include any extraordinary damage caused by a one off incident (for example, damage caused by a vehicle overturning or inadvertently dragging an item trapped below a vehicle along the road surface);

**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;

**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;

**Local Road Network** means any road for which the Council is the roads authority under the *Roads Act 1993 (NSW)* including, but not limited to, Ulan-Wollar Road, Wollar Road, Phillip Street, Barigan Street, Maitland Street, Barigan Road and Maree Road;

**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 Commencement Date until the Development has been decommissioned in accordance with the conditions of the Development Consent; and

**Traffic Management Plan** means the traffic management plan prepared and approved under the conditions of the Development Consent as amended from time to time.

## 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;
- (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. Development Contribution

The Developer must pay the Development Contribution Amount of \$200,000 (excluding GST) to the Council (by unendorsed bank cheque or by means of electronic funds transfer of cleared funds into a bank account nominated by the Council) by the Business Day prior to the commencement of Construction (excluding construction of the approximately 2km internal access road required to access the site via the northern access point).

## 6. Application of the Development Contribution

The Parties acknowledge and agree that:

- (a) the Development Contribution Amount will cover all Fair Wear and Tear to the Local Road Network as a result of the Development;
- (b) the Council will apply the Development Contribution Amount towards the maintenance of the Local Road Network, including repairing all Fair Wear and Tear to the Local Road Network as a result of the Development;
- (c) the Development Contribution Amount does not cover:
  - (i) any damage to the Local Road Network as a result of the Development where that damage is not Fair Wear and Tear;
  - (ii) any works which the Council is carrying out under the terms of the Contract for Public Road Upgrades Works relating to Wollar Solar Farm signed by the Council on 30 July 2020; or
  - (iii) any further public road upgrades required under the Development Consent; and
- (d) the Traffic Management Plan contains protocols for;
  - (i) the carrying out of dilapidation surveys to assess the:
    - (A) existing condition of Ulan-Wollar Road, Wollar Road, Phillip Street, Barigan Street, Maitland Street, Barigan Road and

Maree Road prior to construction, upgrading or decommissioning activities associated with the Development; and

- (B) the condition of Ulan-Wollar Road, Wollar Road, Phillip Street, Barigan Street, Maitland Street, Barigan Road and Maree Road following construction, upgrading, or decommissioning activities; and
- (ii) the repair by the Developer of Ulan-Wollar Road, Wollar Road, Phillip Street, Barigan Street, Maitland Street, Barigan Road and Maree Road by the Developer in the event that any damage to these roads occurs which is:
  - (A) attributable to the Development; and
  - (B) not Fair Wear and Tear.

## **7. Application of sections 7.11, 7.12 and 7.24 of the Act**

This Agreement excludes application of sections 7.11 and 7.12 of the Act to the Development.

This Agreement does not exclude the application of section 7.24 of the Act to the Development.

## **8. Dispute Resolution**

### **8.1 No arbitration or court proceedings**

If a dispute arises out of this Agreement or the protocols contained in the Traffic Management Plan referenced in clause 6(d) (**Dispute**), a Party must comply with this clause 8 before starting arbitration or court proceedings (except proceedings for interlocutory relief).

### **8.2 Notification**

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

### **8.3 Parties to resolve Dispute**

During the 14 days after a notice is given under clause 8.2 (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.

### **8.4 Mediation**

- (a) If the Parties do not agree within 14 days of receipt of notice under clause 8.3 (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.

### **8.5 Confidentiality**

Any information or documents disclosed by a Party under this clause 8:

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

### **8.6 Costs**

Each Party to a Dispute must pay its own costs of complying with this clause 8. The parties to the Dispute must equally pay the costs of any mediator.

### **8.7 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 8.1 to 8.3.
- (b) Clauses 8.5 and 8.6 survive termination of the dispute resolution process.

### **8.8 Breach of this clause**

If a Party to a Dispute breaches this clause 8, the other Party to the Dispute does not have to comply with those clauses in relation to the Dispute.

## **9. 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 8.
- (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
  - (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.

## **10. 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 funds that have been paid by the Developer as Development Contribution Amounts prior to

termination are to be retained by the Council and can continue to be expended in accordance with the terms of this Agreement.

## **11. 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.

## **12. Assignment**

- (a) Subject to clause 12(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.
- (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 12(b).

## **13. No fetter**

### **13.1 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).

### **13.2 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 13.2(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.

## **14. Notices**

### **14.1 Notices**

Subject to clause 14.2, 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: Julie Robertson
  - (ii) Wollar Solar Development Pty Ltd  
52 Dalton Road St Ives Chase NSW 2075  
Attention: Rhyson Li
- (c) is taken to be given and made:
  - (i) in the case of hand delivery, when delivered; and
  - (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 14.1(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.

### **14.2 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: Julie Robertson  
Email: council@midwestern.nsw.gov.au
    - (B) Wollar Solar Development Pty Ltd  
Attention: Rhyson Li  
Email: rhyson.li@wollarsolarfarm.com
- (b) The recipient of a Notice served under this clause 14.2 must:
- (i) promptly acknowledge receipt of the Notice; and
  - (ii) keep an electronic copy of the Notice,
- (c) Failure to comply with clause 14.2(b) does not invalidate service of a Notice under this clause.

### **14.3 Receipt of Notices sent by email**

- (a) A Notice sent under clause 14.2 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;
  - (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 14.3(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.

## **15. GST**

### **15.1 Defined GST terms**

In this clause 15, 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

### **15.2 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.

### **15.3 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.

### **15.4 GST obligations to survive termination**

This clause 15 will continue to apply after expiration of termination of this Agreement.

## **16. General**

### **16.1 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
  - (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.

### **16.2 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.

### **16.3 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.

### **16.4 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.

### **16.5 Counterparts**

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

### **16.6 Legal expenses**

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

### **16.7 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.

### **16.8 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:
- (i) despite the operation of clause 16.8(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 16.8(b)(i) or 16.8(b)(ii) applies.

## **16.9 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.

## **16.10 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.

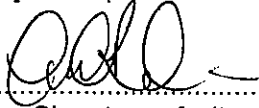
## Schedule 1 – Section 7.4 Requirements

<b>Provision of the Act</b>	<b>This Agreement</b>
Under section 7.4 (1), the Developer has:	
(a) sought a change to an environmental planning 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
<b>Description of the land to which this document applies — (Section 7.4(3)(a))</b>	The land listed in Appendix 2 to the Development Consent.
<b>Description of the development to which this document applies — (Section 7.4(3)(b)(ii))</b>	All of the Development on the Land the subject of the Development Consent.
<b>The scope, timing and manner of delivery of Development Contributions required by this document — (Section 7.4(3)(c))</b>	See clause 5 of this Agreement.
<b>Applicability of Section 7.11 of the Act — (Section 7.11(3)(d))</b>	The application of section 7.11 of the Act is wholly excluded in respect of all of the Development.
<b>Applicability of Section 7.12 of the Act —(Section 7.11(3)(d))</b>	The application of section 7.12 of the Act is wholly excluded in respect of all of the Development.
<b>Applicability of Section 7.24 of the Act — (Section 7.11(3)(d))</b>	The application of section 7.12 of the Act is not excluded in respect of the Development.
<b>Mechanism for Dispute resolution — (Section 7.11(3)(f))</b>	See clause 8 of this Agreement.
<b>Enforcement of this document — (Section 7.4(3)(g))</b>	See clause 9 of this Agreement.
<b>Registration of this document</b>	This Agreement will not be registered.
<b>No obligation to grant consent or exercise functions — (Section 7.4(9))</b>	See clause 13 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.

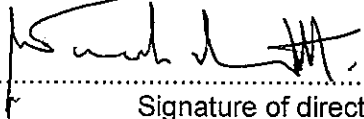
JULIE ROBERTSON

Name of witness (please print)

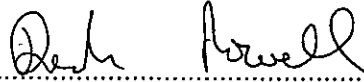
Bradley Allan Cam.

Name of authorised representative/agent (please print)

**Executed by Wollar Solar Development Pty Ltd** ABN 88 621 969 266 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

WARWICK SMITH

Name (please print)

DEREK ROWELL

Name (please print)

