
DATED

2021

PLANNING AGREEMENT

GREATER HUME SHIRE COUNCIL

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

JINDERA SOLAR FARM PTY LTD



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THIS PLANNING AGREEMENT dated

PARTIES

GREATER HUME SHIRE COUNCIL ABN 44 970 341 154

of 39 Young Street, Holbrook NSW 2644

(**Council**)

MINISTER FOR PLANNING AND PUBLIC SPACES ABN 38 755 709 681

of Level 15, 52 Martin Place, Sydney NSW 2000 (**Minister**)

JINDER A SOLAR FARM PTY LTD ABN 98 623 377 453

of Suite 2, Level 25, 100 Miller Street, North Sydney NSW 2060

(**Developer**)

BACKGROUND

- A. The Land is located in the local government area of Greater Hume Shire Council.
- B. The Developer proposes to carry out the Development on the Land.
- C. The Developer has lodged the Development Application seeking development consent from the Minister to carry out the Development on the Land.
- D. The Developer has offered to enter into this Agreement with Council to make the Development Contribution.
- E. The Minister is a party to this Agreement solely for the purposes of clause 3 of this Agreement, having regard to the requirement in section 7.4(3A) of the Act.

OPERATIVE PROVISIONS

1. Definitions and interpretation

1.1. Definitions

In this Agreement, unless the context requires otherwise:

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

Agreement means this 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 a public purpose (as determined by Council after recommendation by the Committee which is not inconsistent with, or has the potential to adversely impact the Development, Developer or renewable energy industry sector.) 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.

Base CPI means:

- 1. For the first CPI Adjustment Date it means the CPI number for the quarter ending immediately before the Commercial Operation Commencement Date; and

2. For the second and all subsequent CPI Adjustment Dates it means the CPI number adopted by the parties as the Current CPI for the previous CPI Adjustment Date in each instance for the Council Payment Monetary Contribution and the Community Fund Monetary Contribution.

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

Commercial Operation Commencement Date means the date on which the Development has been fully commissioned on the electricity grid in accordance with the Development Consent and is able to export all of its rated output.

Commercial Operation End Date means the date on which the Developer notifies Council in writing that it has permanently ceased operations of the Development and commenced decommissioning in accordance with the Development Consent.

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) up to 2 community representatives; and
- (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 in accordance with this Agreement, at Annexure B to this Agreement.

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

Community Fund Monetary Contribution means that part of the Development Contribution identified at Schedule 3.

Contribution Amount means an amount of the monetary contribution to be paid by the Developer in accordance with Schedule 3.

Council means Greater Hume Council ABN 44 970 341 154.

Council Payment Monetary Contribution means that part of the Development Contribution identified at Schedule 3.

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.

CPI Adjustment Date means:

1. For the Council Payment Monetary Contribution it means the date of each Contribution Milestone 2 to 6 inclusive as identified in clause 2(a) of Schedule 3; and
2. For the Community Fund Monetary Contribution it means 1 July occurring after the Commercial Operation Commencement Date and each anniversary thereafter.

Current CPI means the CPI number for the quarter ending immediately before the relevant CPI Adjustment Date.

Developer means Jindera Solar Farm Pty Ltd ABN 98 623 377 453.

Development means the Jindera Solar Farm as authorised by the Development Consent as described at Item 2 of Schedule 2.

Development Application has the same meaning as in the Act, and where relevant for the purposes of this Agreement refers to the development application identified at Item 4 of Schedule 2.

Development Consent has the same meaning as in the Act, and where relevant for the purposes of this Agreement, refers to the development consent granted to the Development Application for the Development, including any modifications of that Development Consent in accordance with the Act.

Development Contribution means the contributions identified in Schedule 3 which are to be provided by the Developer in accordance with this Agreement.

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.

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 the subject of the Development Consent, including (but not limited to) the Land described in Item 1 of Schedule 2.

Local Projects means any projects which:

- (a) fall within one of the following categories:
 - (i) tourism;
 - (ii) safety;
 - (iii) education;
 - (iv) environment;
 - (v) youth;
 - (vi) health;
 - (vii) local business; or
 - (viii) energy;
- (b) are proposed to be carried out within the local government area of Council; and
- (c) are not inconsistent with, or have the potential to adversely impact the Development, Developer or renewable energy industry sector.

Minister means the minister administering the Act.

Real Property Act means the *Real Property Act 1900* (NSW).

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.

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
 - (v) not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (vi) anything (including a right, obligation or concept) includes each part of it.
- (c) A singular word includes the plural, and vice versa.
 - (d) A word which suggests one gender includes the other genders.
 - (e) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
 - (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (g) A reference to including means “including, without limitation”.
 - (h) A reference to dollars or \$ is to an amount in Australian currency.
 - (i) A reference to this document includes the agreement recorded by this document.
 - (j) Words defined in the GST Act have the same meaning in clauses about GST.
 - (k) The Schedules, Exhibits or Annexures for part of this Agreement.
 - (l) This Agreement is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

2. Operation and application of this Agreement

2.1. Operation

2.2. Planning agreement under the Act

- (a) This Agreement constitutes a planning agreement within the meaning of section 7.4 of the Act and commences on the date it is executed by all parties.
- (b) Schedule 1 of this Agreement summarises the requirements for planning agreements under section 7.4 of the Act and the way this Agreement addresses those requirements.

2.3. Application

This Agreement applies to:

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

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

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

4. Development Contribution

4.1. Developer to provide Development Contribution

- (a) The Developer undertakes to provide to Council the Development Contribution in accordance with the provisions of Schedule 3 to this Agreement.

- (b) The Developer's obligation to provide to Council the Development Contribution ceases upon the earlier of:
 - (i) the date upon which the Developer has paid in full the Council Payment Monetary Contribution and Community Fund Monetary Contribution in accordance with Schedule 3 to this Agreement; or
 - (ii) the Commercial Operation End Date.
- (c) If the Commercial Operation End Date occurs prior to the date referred to in clause 4.1(b)(i) above, then the Developer remains liable under this Agreement for the payment of any Development Contribution obligation that accrued prior to that Commercial Operation End Date but is otherwise released by Council from any further obligation to make any Development Contributions under this Agreement.

4.2. Acknowledgement

The parties acknowledge and agree that, subject to section 7.3 of the Act:

- (a) Council has no obligation to use or expend the Council Payment Monetary Contribution for a particular public purpose, subject to the provisions of this Agreement, and has no obligation to repay the Council Payment Monetary Contribution; and
- (b) Notwithstanding clause 4.2 (a) above, Council acknowledges its obligation to use the Community Fund Monetary Contribution for the public purpose of facilitating Approved Local Projects in accordance with, among other provisions of this Agreement, clause 3 of Schedule 3 and Schedule 4.

5. 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 7.
- (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.

6. Registration

6.1. Registration of Agreement

The parties agree that the existence of this Agreement will not be registered on titles to the Land.

7. Dispute Resolution

7.1. 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.

7.2. 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.

7.3. **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 7.6 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.

7.4. **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 7.5 or by expert determination under clause 7.6.

7.5. **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 7.5 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);
- (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.

7.6. **Expert determination**

If the dispute is not resolved under clause 7.3 or clause 7.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) the dispute must be determined by an independent expert in the relevant field:
 - (i) agreed upon and appointed jointly by the parties; provided that
 - (ii) in the event that no agreement is reached or no appointment is made within 20 Business Days of the agreement to refer the dispute to an expert; then
 - (iii) appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) the expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) the determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) any determination made by an expert pursuant to this clause is final and binding upon the parties unless:
 - (i) within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
 - (ii) the determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

7.7. Litigation

If the dispute is not finally resolved in accordance with this clause 7, then either party is at liberty to litigate the dispute.

7.8. No suspension of contractual obligations

Subject to any interlocutory order obtained under clause 7.7, the referral to or undertaking of a dispute resolution process under this clause 8 does not suspend the parties' obligations under this agreement.

7.9. 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 7 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 8 for any purpose other than in an attempt to settle the dispute.

8. GST

8.1. Acknowledge and agreement of the parties

The parties acknowledge and agree that Division 81 of the GST Act applies to the supplies made under and in respect of this Agreement such that clause 8.4 does not apply to the Development Contribution.

8.2. 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.

8.3. 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.

8.4. Additional Amounts for GST

Subject to clause 8.1, 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), subject to the receipt of a tax invoice, the recipient must pay to the Supplier the GST Amount.

8.5. Non-monetary consideration

Clause 8.4 applies to taxable supplies made for either monetary or non-monetary consideration.

8.6. No merger

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

9. Assignment

9.1. Right to assign or novate

- (a) The Developer may assign or novate its rights or obligations under this Agreement to a third party, provided that:
 - (i) Council is satisfied (acting reasonably and without delay) that the incoming third party is solvent and capable of performing the Developer's obligations under this Agreement insofar as those obligations are to be assigned or novated to the third party ; and
 - (ii) procure the execution of an agreement by the third party with Council (acting reasonably and without delay) under which the third party agrees to comply with the terms and conditions of this Agreement as though the third party were the Developer.
- (b) The Developer must pay Council's reasonable legal costs and expenses incurred under this clause 9.1.

9.2. Right to transfer Land

- (a) The Developer may sell, transfer or assign (as the case may be) its interest in the whole or part of any part of the Land provided that:
 - (i) Council is satisfied (acting reasonably and without delay) that the incoming third party is solvent and capable of performing the Developer's obligations under this Agreement insofar as those obligations are to be sold, transferred or assigned (as the case may be) to the third party; and
 - (ii) procure the execution of an agreement by the third party with Council (acting reasonably and without delay) under which the third party agrees to comply with the terms and conditions of this Agreement as though the third party were the Developer.
- (b) The Developer must pay Council's legal costs and expenses incurred under this clause 9.2.

10. Capacity

10.1. 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.

10.2. 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.

11. Reporting requirement

- (a) Commencing on 1 September 2021 and then on each anniversary thereafter during the term of this Agreement, the Developer must deliver to Council a report for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:
 - (i) details of all Development Consents issued in relation to the Development;
 - (ii) a description of the status of the Development including a plan that identifies what parts of the Development have been completed, are under construction and are to be constructed;
 - (iii) a forecast in relation to the anticipated progression and completion of the Development; and
 - (iv) a compliance schedule showing the details of all Contribution Amounts provided under this Agreement as at the date of the report and indicating any material non-compliance with this Agreement and the reason for that non-compliance.
- (b) Upon reasonable written notice from the Council, the Developer must deliver to Council all documents and other information which, in the reasonable opinion of Council are necessary for Council to assess the status of the Development and the Developer's compliance with this Agreement.

12. No fetter

12.1. 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**).

12.2. 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.

13. General Provisions

13.1. 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.

13.2. 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.

13.3. 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.

13.4. 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.

13.5. 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.

13.6. 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.

13.7. 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.

13.8. 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.

13.9. 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.

13.10. Counterparts

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

13.11. 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.

13.12. 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.

13.13. Explanatory note

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

13.14. Expenses and stamp duty

- (a) Subject to clause 13.14(b), the Developer must pay its own and half of Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Agreement.
- (b) The Developer's liability under clause 13.14(a) for Council's reasonable legal costs and disbursements is capped at \$1,000.
- (c) The Developer must pay for all costs and expenses associated with the giving of public notice of this Agreement and the Explanatory Note in accordance with the Regulation.
- (d) 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).
- (e) The Developer must provide Council with bank cheques in favour of Council, or an alternative method of payment if agreed with Council, in respect of Council's costs pursuant to clause 13.14 (b):
 - (i) where Council has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this Agreement; or
 - (ii) where Council has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by Council for payment.

13.15. 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) in the case of a Notice to be given by Council, sent by email.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery but if delivery occurs after 5:00 pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
 - (ii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
 - (iii) sent by email:
 - A. before 5:00 pm on a Business Day, on that Day;
 - B. after 5:00 pm on a Business Day, on the next Business Day after it is sent; or
 - C. on a day that it is not a Business Day, on the next Business Day after it is sent,

and the sender does not receive a delivery failure notice.

Schedule 1

Table 1 - Requirements under section 7.4 of the Act

Requirement under the Act	This Agreement
<p>Planning instrument and/or development application – (section 7.4(1))</p> <p>(1) The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies,</p> <p>(2) The Developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose.</p>	<p>(1)</p> <p>(a) No</p> <p>(b) Yes</p> <p>(c) No</p> <p>(2) Yes – pay a monetary contribution to be applied towards a public purpose</p>
Description of the land to which this Agreement applies – (section 7.4(3)(a))	See definition of Land in clause 1.1
Description of development to which this Agreement applies – (section 7.4(3)(b))	See definition of Development in clause 1.1
Description of change to the environmental planning instrument to which this Agreement applies – (section 7.4 (3)(b))	Not applicable
The scope, timing and manner of delivery of contribution required by this Agreement – (section 7.4 (3)(c))	See Schedule 3
Applicability of sections 7.11 and 7.12 of the Act – (section 7.4 (3)(d))	The application of sections 7.11 and 7.12 of the Act is excluded in respect of the Development
Applicability of section 7.24 of the Act – (section 7.4 (3)(d))	The application of section 7.24 of the Act is excluded in respect of the Development.
Consideration of benefits under this Agreement if section 7.11 applies – (section 7.4 (3)(e))	Not applicable
Mechanism for Dispute Resolution – (section 7.4 (3)(f))	See clause 7
Enforcement of this Agreement – (section 7.4 (3)(g))	See clause 5
No obligation to grant consent or exercise functions – (section 7.4 (10))	See clause 12

Table 2 – Other matters

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

Schedule 2
Agreement Details (clause 1.1)

1	Land	Lot	Deposited Plan
		Lot 2	213465
		70, 90, 133 – 136, 138 – 141, 147, 148 and 153 – 155	753342
		1 - 3	1080215
		1	1252930 (former Crown Road)
		1	588720 (45m wide proposed transmission line easement for the grid connection corridor)
		Urana Road Walla Walla Jindera Road Ortlipp Road Council Road (CADID 105338106)	
2	Development	The construction, operation and decommissioning of a photovoltaic solar farm facility and associated infrastructure with an installed capacity of approximately 150 megawatts of electricity (direct current).	
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: Jindera Solar Farm Pty Ltd Attention: Head of Development Address: Suite 1, Level 25, 100 Miler Street, North Sydney NSW 2060 Email: shaq.m@hanwha.com	
4	Development Application	Jindera Solar Farm SSD-9549	

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	Value	Timing	Public Purpose
Council Payment Monetary Contribution	\$950,000	Pursuant to clause 2 of this Schedule 3	Expenditure item(s) identified within the Council's Operational Plan or approved budget for the year 2020-2021 or 2021-2022 provided such expenditure item(s) are Local Projects and the Developer has consented to the Local Project.
Community Fund Monetary Contribution	\$750,000	Pursuant to clause 3 of this Schedule 3	Local Projects

- (b) Council and the Developer acknowledge and agree that the sum of the Council Payment Monetary Contribution and the Community Fund Monetary Contribution (being in aggregate \$1,700,000) form the Development Contribution under this Agreement.
- (c) Each Contribution Amount must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council in writing.

2. Payment of the Council Payment Monetary Contribution

- (a) The Developer must pay the Council Payment Monetary Contribution to Council by way of each of the payments set out in the table below on or before achievement of the Contribution Milestone applicable to the payment:

Payment	Contribution Milestone	Requirements to achieve completion of Contribution Milestone	Contribution Amount
1	Contribution Milestone 1	Commercial Operation Commencement Date	\$700,000
2	Contribution Milestone 2	12 months after the date on which Contribution Milestone 1 was achieved	\$50,000 +CPI
3	Contribution Milestone 3	24 months after the date on which Contribution Milestone 1 was achieved.	Contribution Amount calculated at Contribution Milestone 2 +CPI
4	Contribution Milestone 4	36 months after the date on which Contribution Milestone 1 was achieved.	Contribution Amount calculated at Contribution Milestone 3 +CPI
5	Contribution Milestone 5	48 months after the date on which Contribution Milestone 1 was achieved.	Contribution Amount calculated at Contribution Milestone 4 +CPI

6	Contribution Milestone 6	60 months after the date on which Contribution Milestone 1 was achieved	Contribution Amount calculated at Contribution Milestone 5 +CPI
Total			\$950,000 +CPI as indexed in accordance with clause 2(b) of this Schedule 3

- (b) On each CPI Adjustment Date (being the Contribution Milestone identified in clause 2(a) of this Schedule), the next Contribution Amount payable is to be adjusted as follows:

$$\text{ACA} = \frac{\text{CA} \times \text{Current CPI}}{\text{Base CPI}}$$

Where:

ACA = the Adjusted Contribution Amount payable on the relevant CPI Adjustment Date;
and

CA = the Contribution Amount applicable at the relevant Contribution Milestone as specified in clause 2(a) of this Schedule 3 (and as previously adjusted in accordance with this clause where relevant).

3. Payment of the Community Fund Monetary Contribution

- (a) The Developer must pay the Community Fund Monetary Contribution to the Community Fund by way of:
- (i) \$25,000 on or before the Commercial Operation Commencement Date;
 - (ii) \$25,000 plus CPI on or before each anniversary of the Commercial Operation Commencement Date until the first to occur of:
 - A. the Commercial Operation End Date; or
 - B. the expiry of 30 years after the first Community Fund Payment is made by the Developer.
- (b) The parties agree that the Community Fund Monetary Contribution paid in accordance with this clause will have the public purpose of facilitating Approved Local Projects.
- (c) On each CPI Adjustment Date, the next Community Fund Contribution Amount payable is to be adjusted as follows:

$$\text{ACA} = \frac{\text{CA} \times \text{Current CPI}}{\text{Base CPI}}$$

Where:

ACA = the Adjusted Contribution Amount payable on the relevant CPI Adjustment Date;
and

CA = the Community Fund Contribution Amount payable in accordance with clause 3(a) of this Schedule 3 (and as previously adjusted in accordance with this clause where relevant).

4. 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 3 of Schedule 3)

1. Establishment of the Community Fund

- (a) Council must hold and apply all Contribution Amounts paid to the Community Fund and forming part of the Community Fund Monetary Contribution in accordance with clause 3(b) of Schedule 3.
- (b) Council must invest all Contribution Amounts paid to the Community Fund and forming part of the Community Fund Monetary 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 Community Fund Monetary Contribution 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 first Contribution Amount forming part of the Community Fund 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) During:
 - (i) July 1 to September 30 in each year in which there are funds in the Community Fund; or
 - (ii) any further period determined by the Committee,

Council must publicly advertise in relevant channels determined by the Committee, such as Council media release and website, the availability of funds in the Community Fund (and include in the advertisement that those Funds have been provided by the Developer for the Jindera Solar Farm) 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**).

- (b) Funding Applications may only be made by or on behalf of residents or community groups located in the local government area of Council.

4. Notification to Developer

- (a) The Committee must:
 - (i) notify the Developer of each Funding Application;
 - (ii) consider in good faith any reasonable comments made by the Developer in relation to Funding Applications; and
 - (iii) notify the Developer of each Funding Application which it proposes to recommend for funding from the Community Fund, including the reasons for that decision and the proposed 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) For the purposes of clause 5(a) above, and in addition to the other matters that the Committee must consider under this Agreement, the Committee must ensure that:
 - (i) the maximum amount of recommended funding from the Community Fund must not exceed \$10,000 in respect of any single Funding Application; and
 - (ii) to the extent practicable and reasonable in the circumstances give priority to Funding Applications received from eligible applicants located within 5 km of the Development.
- (c) Council must, prior to the allocation of any funds in the Community Fund:
 - (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;
- (d) procure that Council confirms which Local Projects will be funded from the Community Fund in accordance with the recommendations of the Committee. 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.
- (e) 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 \$1,000 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 Community Fund Monetary Contribution paid by the Developer under clause 3 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.
- (c) The costs of the Auditor will be paid out of the Community Fund.

7. Acknowledgement of the Developer's Contribution

Where an Approved Local Project is funded in full, or in part, by money from the Community Fund, Council will acknowledge the funding provided by the Developer. This may take the form of a suitable plaque or information board being erected at the site of the Approved Local Project, or may take the form of an acknowledgement at a Council Meeting or via a media release or alternate method, as deemed appropriate by Council in its absolute discretion.

Annexure A
Committee Constitution

