

PLANNING AGREEMENT

GREATER HUME COUNCIL

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

NEOEN AUSTRALIA PTY LTD (ABN 57 160 905 706)



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THIS PLANNING AGREEMENT dated

PARTIES

GREATER HUME 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)

NEOEN AUSTRALIA PTY LTD ABN 57 160 905 706

of Level 10, 227 Elizabeth Street, Sydney NSW 2000

(Developer)

BACKGROUND

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

OPERATIVE PROVISIONS

1. Definitions and interpretation

1.1. Definitions

In this Agreement, unless the context requires otherwise:

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

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

Address for Service means the address of each party identified at Item 4 of Schedule 2 or any new address notified in writing by any party to the other party as its new Address for Service.

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

Bank Guarantee means an irrevocable and unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and

- (b) on terms acceptable to Council, in Council's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this Agreement) on demand.

Base CPI means the CPI number for the quarter ending immediately before the Commercial Operation Commencement Date.

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 which the Developer notifies to the Department, pursuant to condition [x] of the Development Consent, as being the relevant date on which the operations phase (rather than construction phase) of the Development is to occur.

Commercial Operation End Date means the date which the Developer notifies to the Department, pursuant to condition [x] of the Development Consent, as being the relevant date on which the decommissioning phase of the Development is to commence.

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.

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 July 2021 and each anniversary thereafter.

Current CPI means the CPI number for the quarter ending immediately before 30 June in the year in which the relevant adjustment is made.

Department means the NSW Department of Planning, Industry and Environment, and any successor department.

Developer means Neoen Australia Pty Ltd ABN 57 160 905 706.

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

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

Development Consent has the same meaning as in the Act, and specifically, includes the development consent granted to the Development Application for the Development, as set out at Schedule 5, including any modifications of that development consent as approved from time-to-time.

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

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

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 Leased Land and the Developer Land.

Landowners means the Registered Proprietors identified at Item 1 of Schedule 2 in respect of the Leased Land.

Leased Land means the land described as such in Item 1 of Schedule 2.

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

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

Related Entity means any special purpose vehicle, trust or other entity that is related to the Developer.

Security means a Bank Guarantee or an Insurance Bond.

Security Amount means the amount identified at Item 5 of Schedule 2.

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 form part of this Agreement.
- (l) This Agreement is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

2. Operation and application of this Agreement

2.1. Operation

This Agreement commences on the date it is executed by all parties.

2.2. Planning agreement under the Act

- (a) This Agreement constitutes a planning agreement within the meaning of section 7.4 of the Act.

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

2.3. Application

This Agreement applies to:

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

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

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

4. Development Contribution

4.1. Developer to provide Development Contribution

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

4.2. Acknowledgement

The Developer acknowledges and agrees that, subject to section 7.3 of the Act, Council:

- (a) has no obligation to use or expend the Development Contribution for a particular purpose despite any provision of this Agreement to the contrary and has no obligation to repay the Development Contribution; and
- (b) in circumstances where the Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority.

5. Enforcement

5.1. Developer to provide Security

The Developer has agreed to provide security to Council for the performance of the Developer's obligations under this Agreement by providing the Security to Council in accordance with the terms and procedures set out in Schedule 4.

6. Dispute Resolution

6.1. 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.

6.2. 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.

6.3. 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; or
- (ii) 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.

6.4. 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 6.5 or by expert determination under clause 6.6.

6.5. 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 6.5 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.

6.6. Expert determination

If the dispute is not resolved under clause 6.3 or clause 6.5, 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.

6.7. Litigation

If the dispute is not finally resolved in accordance with this clause 6, then either party is at liberty to litigate the dispute.

6.8. No suspension of contractual obligations

Subject to any interlocutory order obtained under clause 6.1, the referral to or undertaking of a dispute resolution process under this clause 6 does not suspend the parties' obligations under this agreement.

6.9. 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 6 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 6 for any purpose other than in an attempt to settle the dispute.

7. GST

7.1. Definitions

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

7.2. Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Act apply to the supplies made under and in respect of this Agreement; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

7.3. Reimbursement

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

7.4. Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 7.

7.5. Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party (**Supplier**) under or in connection with this Agreement (**GST Amount**), the recipient must pay to the Supplier the GST Amount. However, where a GST Amount is payable by Council as recipient of the supply, the Developer must ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of Council, including any gross up that may be required; and
- (b) the Developer provides a tax invoice to Council.

7.6. Non-monetary consideration

Clause 7.5 applies to non-monetary consideration.

7.7. Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 7.5 the Developer must assume Council is not entitled to any input tax credit.

7.8. No merger

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

8. Assignment and transfer

8.1. Right to assign or novate

- (a) Subject to sub-clause (b), prior to a proposed assignment or novation of its rights or obligations under this Agreement, the Developer or any successor to the Developer (**Assigning Party**) must seek the consent of Council and:
 - (i) satisfy Council (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform the Assigning Party's obligations under this Agreement insofar as those obligations are to be novated to the Incoming Party;
 - (ii) procure the execution of an agreement by the Incoming Party with Council on terms satisfactory to Council (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this Agreement as though the Incoming Party were the Assigning Party; and
 - (iii) satisfy Council (acting reasonably) that it is not in material breach of its obligations under this Agreement.
- (b) The Council must not refuse consent to a proposed assignment or novation of the Developer's rights or obligations under this Agreement where such assignment or novation is to a Related Entity.
- (c) The Assigning Party must pay Council's reasonable legal costs and expenses incurred under this clause 8.1.

8.2. Replacement Security

Provided that:

- (a) the Developer has complied with clause 8.1; and
- (b) the Incoming Party or the Related Entity (as the case may be) has provided Council with a replacement Security in accordance with the requirements of Schedule 4 and on terms acceptable to Council,

Council will promptly return the Security to the Developer.

9. Capacity

9.1. 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.

9.2. 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.

10. Reporting requirement

- (a) By 1 September each year or as otherwise agreed with Council, the Developer must deliver to Council a report (in a format acceptable to Council) 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 non-compliance with this Agreement and the reason for the non-compliance.
- (b) Upon Council's request, 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.

11. No fetter

Nothing in this Agreement is to be construed as requiring Council to do anything that would cause Council to breach any of Council's obligations at law and without limitation, nothing in this Agreement shall be construed as limiting or fettering in any way the discretion of Council in exercising any of Council's statutory functions, powers, authorities or duties.

12. General Provisions

12.1. 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.

12.2. 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.

12.3. Waiver

- (a) A right 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 does not constitute a waiver of that

right, 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.

12.4. 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.

12.5. 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.

12.6. 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.

12.7. 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.

12.8. 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.

12.9. 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.

12.10. Counterparts

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

12.11. 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.

12.12. 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.

12.13. Explanatory note

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

12.14. Expenses and stamp duty

- (a) The Developer must pay its own and Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Agreement.
- (b) 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.
- (c) 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).
- (d) 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 clauses 12.14(a) and (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.

12.15. 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) 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.

Draft 22.04.21

Schedule 1

Table 1 - Requirements under section 7.4 of the Act

Requirement under the Act	This Agreement
Planning instrument and/or development application – (section 7.4(1)) The Developer has: <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	(a) No (b) Yes (c) No
Description of the land to which this Agreement applies – (section 7.4(3)(a))	See definition of Land in clause 1.1
Description of development to which this Agreement applies – (section 7.4(3)(b))	See definition of Development in clause 1.1
Description of change to the environmental planning instrument to which this Agreement applies – (section 7.4 (3)(b))	Not applicable
The scope, timing and manner of delivery of contribution required by this Agreement – (section 7.4 (3)(c))	See Schedule 3
Applicability of sections 7.11 and 7.12 of the Act – (section 7.4 (3)(d))	The application of sections 7.11 and 7.12 of the Act are 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 6
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 11

Table 2 – Other matters

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

Item	Term	Description		
1	Leased Land	Lot	Deposited Plan	Registered Proprietor
		Lots 45 to 47, 53 and 54	DP 753735	[REDACTED]
		Lots 73 and 86	DP 753764	[REDACTED]
		Lot 1	DP 171815	[REDACTED]
		Lot 1	DP 575478	[REDACTED]
		Lot B	DP 972054	[REDACTED]
		Lot 1	DP 945904	[REDACTED]
		Lots 70 to 72	DP 753764	[REDACTED]
		as shown as cross-hatched on the plan at Annexure A to this Agreement		
2	Development	Culcairn Solar Project which includes: <ul style="list-style-type: none"> the construction and operation of a solar photovoltaic energy generation facility with an estimated capacity of 350 MW; and associated infrastructure, including a grid connection and battery storage. 		
3	Address for Service	Council Name: Greater Hume Council Attention: Director Environment & Planning Address: 39 Young Street, Holbrook NSW 2644 Email: ckane@greaterhume.nsw.gov.au		
		Developer [Neoen Note to Council: these details are to be confirmed] Name: Neoen Australia Pty Ltd Attention: «Insert name» Address: «Insert address» Email: «Insert email address»		
4	Development Application	SSD 10288		
5	Security Amount	\$600,000		

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	Contribution Amount (Excluding GST)	Timing
Construction Phase	\$150,000.00	Payable within 3 months from the date the Developer receives notice that the Accommodation and Employment Strategy has been approved pursuant to condition 32 of the Development Consent.
Operations Phase	\$150,000.00 per annum (as adjusted for CPI in accordance with this Schedule 3)	Commencing with an initial payment on the Commercial Operation Commencement Date and then on each anniversary of the Commercial Operation Commencement Date until the Commercial Operation End Date, subject to clause 2 of this Schedule 3

- (b) The 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.
- (c) For the second and all subsequent Contribution Amounts made during the Operations Phase identified in clause 1 of this Schedule 3, the annual Contribution Amount will be adjusted by CPI in accordance with clause 1(d) of this Schedule 3.
- (d) The second and all subsequent Contribution Amounts payable by the Developer under this Agreement after the occurrence of a CPI Adjustment Date is to be adjusted by multiplying the previous Contribution Amount payable (as previously adjusted in accordance with this clause, where relevant) by an amount equal to the Current CPI divided by the Base CPI.

2. 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
Security terms (clause 5)

1. Developer to provide Security

- (a) In order to secure the payment or performance of the Development Contribution, the Developer has agreed to provide the Security.
- (b) The Security must:
 - (i) name the Council; and
 - (ii) not have an expiry date, or if it has an expiry date, the Security must be replaced by the Developer not less than 30 Business Days prior to expiry.

2. Security

- (a) At the time the Developer signs this Agreement, the Developer must provide the Security to Council in the amount of the Security Amount in order to secure the Developer's obligations under this Agreement.
- (b) Subject to clause 8.2, from the date of execution of this Agreement until the date that the Developer has provided the Development Contribution, Council is entitled to retain the Security.

3. Claims on Security

- (a) Council may:
 - (i) call upon the Security where the Developer has failed to pay a Contribution Amount by the date for payment of that Contribution Amount under this Agreement; and
 - (ii) retain and apply such monies towards the Contribution Amount and any costs and expenses incurred by the Council in rectifying any default by the Developer under this Agreement.
- (b) Prior to calling upon the Security the Council must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Security.
- (c) If:
 - (i) Council calls upon the Security; and
 - (ii) applies all or part of such monies towards the remaining Development Contributions and any costs and expenses incurred by the Council in rectifying any default by the Developer under this Agreement; and
 - (iii) has notified the Developer of the call upon the Security in accordance with clause (b) of this Schedule 4,

then the Developer must provide to the Council a replacement Security to ensure that at all times until the date that the Security is released in accordance with clause 4 of this Schedule, the Council is in possession of Security in an amount equivalent to the Security Amount.

4. Release of Security

If:

- (a) the Developer has satisfied all of its obligations under this Agreement; and
- (b) the whole of the monies secured has not been expended and the monies accounted for in accordance with clause 2 of this Schedule 4,

then Council will promptly return the Security (less any costs, charges, duties and taxes payable), or the remainder of the monies secured (as the case may be), to the Developer.

Draft 22.04.21

Draft 22.04.21

Annexure A
Land to which this Agreement applies

Draft 22.04.21

EXECUTION PAGE

Executed as an Agreement

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

.....
Councillor/Mayor

.....
General Manager/Councillor

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

.....
Signature of witness

.....
Signature of the Minister for Planning and Public Spaces or
delegate

.....
Name of witness in full and address

.....
Name of Minister for Planning and Public Spaces or delegate

EXECUTED by **«insert name» ABN «insert ABN»**
in accordance with section 127 of the *Corporations
Act 2001* (Cth):

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director

.....
Name of Director/Secretary