

PLANNING AGREEMENT for Forest Glen Solar Farm

Land to which the Agreement applies: Lot 6 DP 755102 and Crown Land Lot 1 DP1198911, Lot 51 and Lot 52 DP755094.

Dubbo Regional Council (ABN 53 539 070 928) (Council)

X-ELIO Roma Hub Solar Farm Pty Ltd (ABN 45 637 568 453) acting as Trustee of X-Elio Roma Hub Trust (Company)



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Parties to this Agreement

Company	Name	X-ELIO Roma Hub Solar Farm Pty Ltd in its capacity as Trustee for X-Elio Roma Hub Trust
	Address	Level 4, 80 Market Street Melbourne VIC 3206
	ABN	45 637 568 453
	Contact name	Steffi Fernando
	Contact email	Steffi.Fernando@x-elio.com
Council	Name	Dubbo Regional Council
	Address	PO Box 81, Dubbo NSW 2830
	ABN	53 539 070 928
	Contact name	Jane Sullivan
	Contact email	infrastructurecontributions@dubbo.nsw.gov.au

Background

1. The Company has an approved Development Application (SSD-9451258) for the Forest Glen Solar Farm (FGSF) to carry out the Development on the subject land. The FGSF is proposed to have a generation capacity of 90MW (AC) that will supply electricity to the national grid as authorised by the Development Consent.
2. As a condition of consent for approval of the FGSF Development Application, the Minister for Planning has determined that the Company must enter into this Planning Agreement in accordance with the Act.
3. Pursuant to this Agreement, the Company has agreed to make the monetary contribution in relation to the FGSF development in accordance with this Agreement.
4. The Council agrees to be the custodian of the monetary contribution and to distribute and expend the funds of the Forest Glen Solar Farm Fund (FGSF Fund) in accordance with this Agreement.

Operative provisions

Part 1 - Preliminary

1 Definitions and Interpretation

1.1 In this Agreement the following definitions apply:

- 1.1.1 **Act** means the Environmental Planning and Assessment Act 1979 (NSW).
- 1.1.2 **Active Community Housing Provider** means a registered Community Housing Provider being a not-for-profit entity that has ownership or management of properties in the Dubbo Regional Local Government Area and actively manages or has a framework in place for active property and tenant wellbeing management.
- 1.1.3 **Agreement** means this Planning Agreement and any schedules, annexures, and appendices to this Agreement.
- 1.1.4 **Approved Local Project** means local projects as determined by Council for the purpose of funding from the Planning Agreement Component (2) in accordance with Schedule 1 of this Agreement.
- 1.1.5 **Audit** means audit requirements undertaken in accordance with the Act and Regulation.
- 1.1.6 **Company** means X-Elio Roma Hub Trust.
- 1.1.7 **Condition** means the execution of this Agreement, as a condition specified in the Forest Glen Solar Farm Development Consent or, when specified, any other condition included in the same.
- 1.1.8 **Contribution Year** means every 12-month period from 1 July each year.
- 1.1.9 **Construction Commencement Date** means the date when the Company has obtained all permits and approvals necessary for the commencement of construction of the Forest Glen Solar Farm and has started the construction works as authorised by the Forest Glen Solar Farm Development Consent.
- 1.1.10 **Condition precedent** means all relevant approvals have been obtained prior to commencement of works.
- 1.1.11 **Costs** means a cost, charge, expense, outgoing, payment, fee, and other expenditure of any nature.
- 1.1.12 **CPI** means the Consumer Price (Sydney All Groups) Index.
- 1.1.13 **Development Application** has the same meaning as in the Act.
- 1.1.14 **Development Consent** has the same meaning as in the Act.

- 1.1.15 **Dispute** means a dispute or difference between the Parties under or in relation to this Agreement.
- 1.1.16 **Event of Default** means a breach of this Agreement.
- 1.1.17 **Forest Glen Solar Farm or FGSF** means the photovoltaic facility of tracker structure technology with a proposed peak power of 90MW, Battery storage and Ancillary Infrastructure that would supply electricity to the national grid as authorized by the FGSF Development Consent- including all land on which it is proposed that the Forest Glen Solar Farm is located within the Dubbo Regional Local Government Area as specified in the FGSF Development Consent; and the land that is the subject of and is described in the FGSF Development Application.
- 1.1.18 **FGSF Development Application** means the application (SSD-9451258) approved by the Minister for Planning under the EP&A Act 1979 on 28 February 2023, as modified from time to time.
- 1.1.19 **Forest Glen Solar Farm Development Consent or FGSF Development Consent** means the development consent granted by the Department of Planning and Environment (DPE) pursuant to the FGSF Development Application as modified from time to time.
- 1.1.20 **FGSF Fund** means the funds contributed through the monetary contributions, for the purpose of the execution of either of the Planning Agreement Components, in accordance with this Agreement.
- 1.1.21 **Land** means the land identified in Schedule 3 and subject of this Agreement, being Lot 6 DP 755102 and Crown Land Lot 1 DP1198911, Lot 51 and Lot 52 DP755094, where the Forest Glen Solar Farm would be located.
- 1.1.22 **Monetary Contribution** means the monetary contribution to be made by the Company as specified in Schedule 1 which is required to be made under this Agreement.
- 1.1.23 **Party** means a party to this Agreement, including their successors and assigns.
- 1.1.24 **Planning Agreement** means this Agreement.
- 1.1.25 **Planning Agreement Component 1** means a social housing development scheme which aims to provide an innovative assistance solution to develop community housing in the Dubbo Local Government Area.
- 1.1.26 **Planning Agreement Component 2** means a Community Benefit Fund for local projects across the Dubbo Regional Local Government Area including from community groups and not-for-profit organisations.
- 1.1.27 **Rectify** means rectify, remedy, or correct.
- 1.1.28 **Regulation** means the Environmental Planning and Assessment Regulation 2021.

- 1.1.29 **Term** means the period described in clause 4 of this Agreement.
- 1.1.30 **Value** means the \$ amount agreed between the Parties as the value of a Monetary Contribution made under this Agreement, as shown in the Contributions Table, or as otherwise agreed between the Parties.

1.2 Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- 1.2.1 **Headings** are inserted for convenience only and do not affect the interpretation of this Agreement.
- 1.2.2 A reference in this Agreement to a **business day** means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter, or thing must be done on the next business day.
- 1.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.5 A reference in this Agreement to a \$ value relating to a Monetary Contribution is a reference to the value exclusive of GST.
- a) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.6 A reference to a clause, part, schedule, or attachment is a reference to a clause, part, schedule, or attachment of or to this Agreement.
- 1.2.7 An expression importing a natural person includes any Company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.8 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.9 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.10 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.11 A reference to this Agreement includes the agreement recorded in this Agreement.

- 1.2.12 A reference to a Party to this Agreement includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.13 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.14 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.15 Notes appearing in this Agreement are operative provisions of this Agreement.

2 Planning agreement under the Act

- 2.1 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

- 3.1 This Agreement applies to the Forest Glen Solar Farm Development Consent and evidences the Company's compliance with the relevant Condition(s) of the FGSF Development Consent.

4 Term of the Agreement

- 4.1 Subject to clause 4.2, this Agreement shall be in full force and effect from the date it is executed by the last Party until the date which the last agreed payment is made to the FGSF Fund in accordance with Schedule 1.
- 4.2 Without prejudice of clause 4.1, the obligation of the Company to make the Monetary Contribution will not be effective until the Construction Commencement Date.
- 4.3 If Construction Commencement Date has not occurred by the date the FGSF Development Consent expires, this Agreement will expire with the FGSF Development Consent (unless extended by agreement of both Parties) and no Party will have any obligation to the other Party in relation with this Agreement.

5 Warranties

- 5.1 The Parties warrant to each other that they:
 - 5.1.1 Have full capacity to enter into this Agreement, and
 - 5.1.2 Can fully comply with their obligations under this Agreement.

6 Further agreements

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Agreement that are not inconsistent with this Agreement for the purpose of implementing this Agreement.

Part 2 - Payment of the Monetary Contribution

7 The Monetary Contribution under this Agreement

- 7.1 The Company is required to make the Monetary Contribution to the FGSF Fund as described in the Monetary Contributions Table in Schedule 1 and in accordance with the provisions of this Agreement.
- 7.2 The Monetary Contribution will cease on the date on which the last agreed payment is made under the provision of funds to Council to the total of \$1,000,000.00 plus CPI, as reflected in the Table in Schedule 1.
- 7.3 The Company agrees to pay interest on any overdue part or whole of the Monetary Contribution payable:
- a) from the date on which the overdue part or whole of the Monetary Contribution is due for payment under this agreement.
 - b) until the date on which the overdue part or whole monetary contribution is paid,

at the bank bill swap interest rate within Australia that is published by the Australian Financial Markets Association, during the relevant period when the relevant Monetary Contribution is overdue.

8 Application of the Monetary Contribution

- 8.1 Council will apply each Monetary Contribution in accordance with Schedule 2 towards the public purpose for which it is made, either under Planning Agreement Component 1 or Planning Agreement Component 2.

(1) Planning Agreement Component 1

Funding for a Community Housing Development Incentivisation Scheme, which aims to aid towards the development of community housing in the Dubbo Regional Local Government Area.

(2) Planning Agreement Component 2

Community Benefit Fund for eligible local projects across the Dubbo Regional Local Government Area from not-for-profit entities and community groups including members of the community through incorporated or not-for-profit.

If in the opinion of Council, no qualified parties have sought participation in Planning Agreement Component 1 for the round of funds provided in that year, notice shall be given to the Company that Planning Agreement Component 2 will be enacted.

- 8.2 If Council does not receive any expressions of interest or if in the opinion of Council and the Company no suitable expressions of interest have been received, Planning Agreement Component 1 shall cease to operate, and Planning Agreement Component 2 will operate and revert to a Community Benefit Fund.
- 8.3 Council will under no circumstances refund any monetary contribution made under this Agreement.

9 Application of Section 7.11, 7.12 and 7.24 of the Act to the Development

- 9.1 The Agreement *excludes* the application of Section 7.11 to the Development.
- 9.2 The Agreement *excludes* the application of Section 7.12 to the Development.
- 9.3 This Agreement *excludes* the application of Section 7.24 to the Development.

10 Allocation of Funds

- 10.1 Within 3 months of the notice required to be provided, Council must prepare guidelines to govern the administration of the FGSF Funds (which may be amended from time to time).
- 10.2 The Council must consult and agree with the Company in relation to the preparation of the guidelines.
- 10.3 The guidelines must provide for the following:
- 10.3.1 Eligibility criteria for applications.
 - 10.3.2 Timeframes for expenditure of the monetary contribution (which should be within 12 months of the Council's decision to grant funds).
 - 10.3.3 Advertisement of the availability of funds for FGSF Fund projects.
 - 10.3.4 If requested by the Company, the Council must consult the Company in relation to applications made for funding for Community Benefit Funds projects from the FGSF Community Benefit Fund.

11 Registration

- 11.1 The parties agree that this agreement will be registered on the Forest Glen Solar farm land pursuant to section 7.6 of the EP&A Act 1979 by X-ELIO Roma Hub Solar Farm Pty Ltd.

- 11.2 The parties agree that notice of registration will be provided to Council within 3 months of the execution of this agreement by Council and the Company.

12 Indexation of Monetary Contribution

- 12.1 All monetary contributions are to be indexed from the date of this Agreement to the date of payment in accordance with the following formula:

$$MC = \frac{A \times B}{C}$$

Where:

- MC** is the Monetary Contribution for the following Contribution year;
- A** is the Monetary Contribution payable during the Contribution Year just ended;
- B** is the most recent Index number (last published) before the end of the Contribution Year just ended;
- C** is the most recent Index number (last published) before the commencement of the Contribution Year just ended.

13 How money is paid

- 13.1 A monetary contribution is made for the purposes of this Agreement when the Council receives the full amount of the monetary contribution payable under this Agreement (in accordance with the Monetary Contribution Table in Schedule 1) in cash or by an endorsed bank cheque or by deposit by means of electronic fund transfer of cleared funds into a bank account nominated by the Council. Council will not accept any other forms of payment.

Part 3 - Review and Monitoring

14 Review of Agreement

- 14.1 If either Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement the Party may request a review of the whole or any part of this Agreement.
- 14.2 For the purposes of clause 14.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other Authority to restrict or prohibit any aspect of the Development.
- 14.3 If a review is requested in accordance with clause 14.1, the Parties are to use all reasonable endeavours, in good faith, to agree on and implement appropriate amendments to this Agreement.

- 14.4 If this Agreement becomes illegal, unenforceable, or invalid because of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.
- 14.5 A failure by a Party to agree to take action as requested by the other Party as a consequence of a review referred to in clause 14.1 (but not 14.4) is not a Dispute for the purposes of this Agreement and is not a breach of this Agreement.
- 14.6 If the Parties agree to amend this Agreement under this clause any such amendment must be in writing and signed by the Parties and exhibited in accordance with the Act and Regulation.

15 Monitoring and Reporting

- 15.1 The Company acknowledges that the Council will continuously monitor compliance with the Company's obligations under this Agreement.

Part 4 - Dispute Resolution

16 Notice of Dispute

- 16.1 If a party claims that a dispute has arisen under this Agreement (Claimant), it must give written notice to the other party (Respondent) stating the matters in dispute and designating as its representative a person to negotiate the dispute (Claim Notice). If a notice is given, the Parties are to meet within 10 business days of the notice to resolve the Dispute.
- 16.2 If the Dispute is not resolved within a further 20 business days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 16.3 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 16.4 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 16.5 The Parties are to share equally the costs of the President, the expert, and the expert determination.

17 Disposal by the Company of its interest in the Development

- 17.1 The Council agrees that the Company may assign, transfer, or otherwise deal with the Company's rights, duties, or obligations under this agreement to:
- a) a related body corporate of the Company (within the meaning of the *Corporations Act 2001* (Cth)) or a partnership comprised of related bodies corporate of the Company;
 - b) a joint venturer or partner of the Company in respect of the Forest Glen Solar Farm; or
 - c) any third party, subject to the Company proving to the reasonable satisfaction of the Council that such party is able to comply with the Company's obligations under this agreement (and to avoid any doubt the consent of the Council is not required if the third party has, or is a related body corporate of a Company (within the meaning of the *Corporations Act 2001* (Cth)) which has experience with solar farm projects or other similar infrastructure projects), without the consent of the Council.
- 17.2 The Company shall be released and discharged from any obligations under this agreement on and from the date of the assignment and the performance of the terms of this agreement from the date of the assignment and from all claims and demands in connection with this agreement that arise after the date of the assignment in the event of the Company assigning the Company's rights and obligations under this agreement, provided always that the Company is responsible for any action claim or demand with respect of the performance of this agreement for any period prior to and including the date of the assignment

18 Mediation

- 18.1 This clause applies to any Dispute arising in connection with this Agreement other than a Dispute to which clause 16 applies.
- 18.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 18.3 If a notice is given under clause 18.2, the Parties are to meet within 14 days of the notice to attempt to resolve the Dispute.
- 18.4 If the Dispute is not resolved within a further 20 business days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 18.5 If the Dispute is not resolved by mediation within a further 20 business days, or such longer period as may be necessary to allow any mediation process which

has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

- 18.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 18.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 5 - Indemnities & Insurance

19 Risk

- 19.1 The Company performs this Agreement at its own risk and its own cost.

20 Release

- 20.1 The Company releases the Council from any Claim it may have against the Council arising in connection with the performance of the Company's obligations under this Agreement except if, and to the extent that, the Claim arises because of the Council's negligence or default.

21 Indemnity

- 21.1 A party must indemnify the other Party from and against all Claims that may be sustained, suffered, recovered, or made against that Party arising in connection with the performance of the other Party's obligations under this Agreement except if, and to the extent that, the Claim arises because of the relevant Party's negligence or default.

Part 6 - Other Provisions

22 Confidentiality

- 22.1 This agreement is a public document, and its terms are not confidential.
- 22.2 The parties acknowledge that:
- 22.2.1 Confidential Information may have been supplied to some or all the Parties in negotiations leading up to the making of this agreement; and
- 22.2.2 the Parties may disclose to each other further Confidential Information in connection with the subject matter of this agreement.

- 22.3 Subject to clauses 22.4 and 22.5, each Party agrees:
- 22.3.1 not to disclose any Confidential Information received before or after the making of this agreement to any person without the prior written consent of the Party who supplied the confidential information; or
 - 22.3.2 to take all reasonable steps to ensure all confidential information received before or after the making of this agreement is kept confidential and protected against unauthorised use and access.
- 22.4 A Party may disclose confidential information in the following circumstances:
- 22.4.1 to comply with the law, or the requirements of any Authority; or
 - 22.4.2 to any of their employees, consultants, advisers, financiers, or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers, or contractors undertake to keep the Confidential Information confidential.
- 22.5 The obligations of confidentiality under this clause do not extend to information which is public knowledge other than because of a breach of this clause.

23 Notices

- 23.1 Any notice, consent, information, application, or request that is to or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- 23.1.1 delivered or posted to that Party at its address, or
 - 23.1.2 emailed to that Party at its email address.
- 23.2 For the purposes of this clause, a Party's address and email address are as noted under 'Parties to this Agreement'.
- 23.3 If a Party gives the other Party 5 business days' notice of a change of its address or email, any notice, consent, information, application, or request is only given or made by that other Party if it is delivered, posted, or emailed to the latest address.
- 23.4 Any notice, consent, information, application, or request is to be treated as given or made if it is:
- 23.4.1 delivered, when it is left at the relevant address,
 - 23.4.2 sent by post, 2 business days after it is posted, or
 - 23.4.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.

- 23.5 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

24 Costs

- 24.1 The Company is to pay to the Council reasonable costs of preparing, negotiating, executing, and stamping and registering this Agreement, and any document related to this Agreement within 15 business days of a written demand by the Council for such payment.
- 24.2 The Company is also to pay to the Council the Council's reasonable costs of enforcing this Agreement within 15 business days of a written demand by the Council for such payment.

25 Entire Agreement

- 25.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 25.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent, or employee of that Party, before this Agreement was executed, except as permitted by law.

26 Further Acts

- 26.1 Each Party must promptly execute all documents and do all things that another Party from time-to-time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

27 Governing Law and Jurisdiction

- 27.1 This Agreement is governed by the law of New South Wales.
- 27.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 27.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

28 Joint and Individual Liability and Benefits

- 28.1 Except as otherwise set out in this Agreement:
- 28.1.1 any agreement, covenant, representation, or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and

- 28.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

29 No Fetter

- 29.1 The Parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the Act.
- 29.2 This Agreement is not intended to operate, and shall not be construed as operating to fetter, in any unlawful manner:
- 29.2.1 the power of Council to make any law; or
- 29.2.2 the exercise by Council of any statutory power, discretion, or duty.
- 29.3 Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law.

30 Severability

- 30.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable, or invalid, but can also be read in a way that makes it legal, enforceable, and valid, it must be read in the latter way.
- 30.2 If any clause or part of a clause is illegal, unenforceable, or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

31 Amendment

- 31.1 No amendment of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement in accordance with section 203 of the Regulation.

32 Waiver

- 32.1 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 obligation by, another Party.
- 32.2 A waiver by a Party is only effective if it:
- 32.2.1 is in writing,
- 32.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
- 32.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
- 32.2.4 is signed and dated by the Party giving the waiver.

- 32.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 32.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 32.5 For the purposes of this Agreement, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

33 GST

- 33.1 In this clause:
- 33.1.1 Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by GST Law.
- 33.1.2 GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
- 33.1.3 GST Law has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 33.1.4 Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.
- 33.1.5 Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.
- 33.2 Subject to clause 33.3, 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.
- 33.3 No additional amount shall be payable by the Council under clause 33.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 33.4 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the A New Tax System (Goods and Services Tax) Act 1999, the Parties agree:

- 33.4.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies.
- 33.4.2 that any amounts payable by the Parties in accordance with clause 33.2 (as limited by clause 33.3) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 33.5 No payment of any amount pursuant to this clause 33, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note to the recipient.
- 33.6 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense, or other liability.
- 33.7 This clause continues to apply after expiration or termination of this Agreement.

34 Auditing

- 34.1 During each year in which there are funds in the FGSF Fund, the Council must undertake audit functions in accordance with Act and Regulation to reconcile:
 - 34.1.1 The Monetary Contribution paid by the Company in accordance with Schedule 1;
 - 34.1.2 Any payments made by the Council for either of the alternative Planning Agreement components in accordance with Schedule 2;and identify any corrective payments required.
- 34.2 The Company and the Council must make any corrective payments identified as being necessary to reconcile the FGSF Fund.

35 Public Recognition

- 35.1 The Council must publicly and positively acknowledge the payment of the monetary contribution by the Company and the Company's role in funding each target activity or local project under the funding agreement in this Agreement.
- 35.2 The form of public acknowledgement required is to be agreed by Council and the Company (acting reasonably) but must include:
 - 35.2.1 The prominent inclusion of the Company's logo in any advertisement for funding applications or an announcement made in relation to the target activity or local project.

36 Explanatory Note

- 36.1 The Appendix contains the Explanatory Note relating to this Agreement as required by s205 of the Regulation.
- 36.2 Pursuant to s205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Agreement.

Schedule 1: Monetary Contribution

The monetary contribution of \$1,000,000.00 is to be paid over the Term of this Agreement. From construction commencement date until the total amount of \$1,000,000.00 is reached (as reflected in the Table below), the Company shall contribute \$200,000 per year on or within 14 days of **1 July of each year** to the FGSF Fund.

For the sake of clarity, the Parties acknowledge that this obligation will not be effective until the condition precedent has been satisfied.

The total monetary contribution under this Agreement shall be adjusted annually with the Consumer Price (Sydney All Groups) Index (CPI).

Funding Structure	Percentage (%) Expenditure Allocation of the Total	
Funding Part 1	Year 1 (20%)	\$200,000
Funding Part 2	Year 2 (20%)	\$200,000
Funding Part 3	Year 3 (20%)	\$200,000
Funding Part 4	Year 4 (20%)	\$200,000
Funding Part 5	Year 5 (20%)	\$200,000
	TOTAL (100%)	\$1,000,000.00

Schedule 2: Operation of this Agreement under Planning Agreement Component

Operation of this Agreement under Planning Agreement Component 1	Operation of this Agreement under Planning Agreement Component 2
<p>Funds under component 1 are to be allocated to social housing development schemes which aim to provide an innovative assistance solution to develop community housing in the Dubbo Regional Local Government Area.</p>	<p>Funds under component 2 are to be allocated for community benefit (Community Benefit Fund) for eligible local projects across the Dubbo Regional Local Government Area including the community and incorporated or not-for-profit organisations.</p>
<p>Council and the Company agree that an Expression of Interest (EOI) process is undertaken by Council through invitation of active Community Housing providers in the Dubbo Regional Local Government Area.</p> <p>Council and the Company will assess any expressions of interest provided and is subject to following criteria:</p> <ol style="list-style-type: none"> 1. The number of community housing properties that could be developed with the funding. 2. Length of time to deliver the community housing properties to tenants (this should be no greater than a timeframe of two years). 3. How long each property will be held as community housing. 4. Evidence of a robust tenant selection scheme in place. 5. Evidence of suitable systems and programs being in place to manage the welfare of tenants. 	<p>Council will, on an annual basis publicly advertise that funds are available and call for applications. Applications will be rated on the following criteria:</p> <ol style="list-style-type: none"> 1. Delivers social, cultural, economic, or environmental benefits to local communities in the Dubbo Regional Local Government Area. 2. Address an identified community priority and demonstrate that any ongoing or recurrent costs of the project can be met by the community group once grant funding has been expensed. 3. An organisation must demonstrate the capacity to manage funds and deliver the project and shall comply with the Company's Compliance Code requirements. 4. The proposed project/activity must be based within the Dubbo Regional Local Government Area.

6. Evidence of a suitable property management system being in place.
7. Evidence of the financial ability to deliver projects and provide the necessary tenant welfare and property management systems.
8. The development of a long-term pathway for maintaining the properties for the purposes of Community Housing.

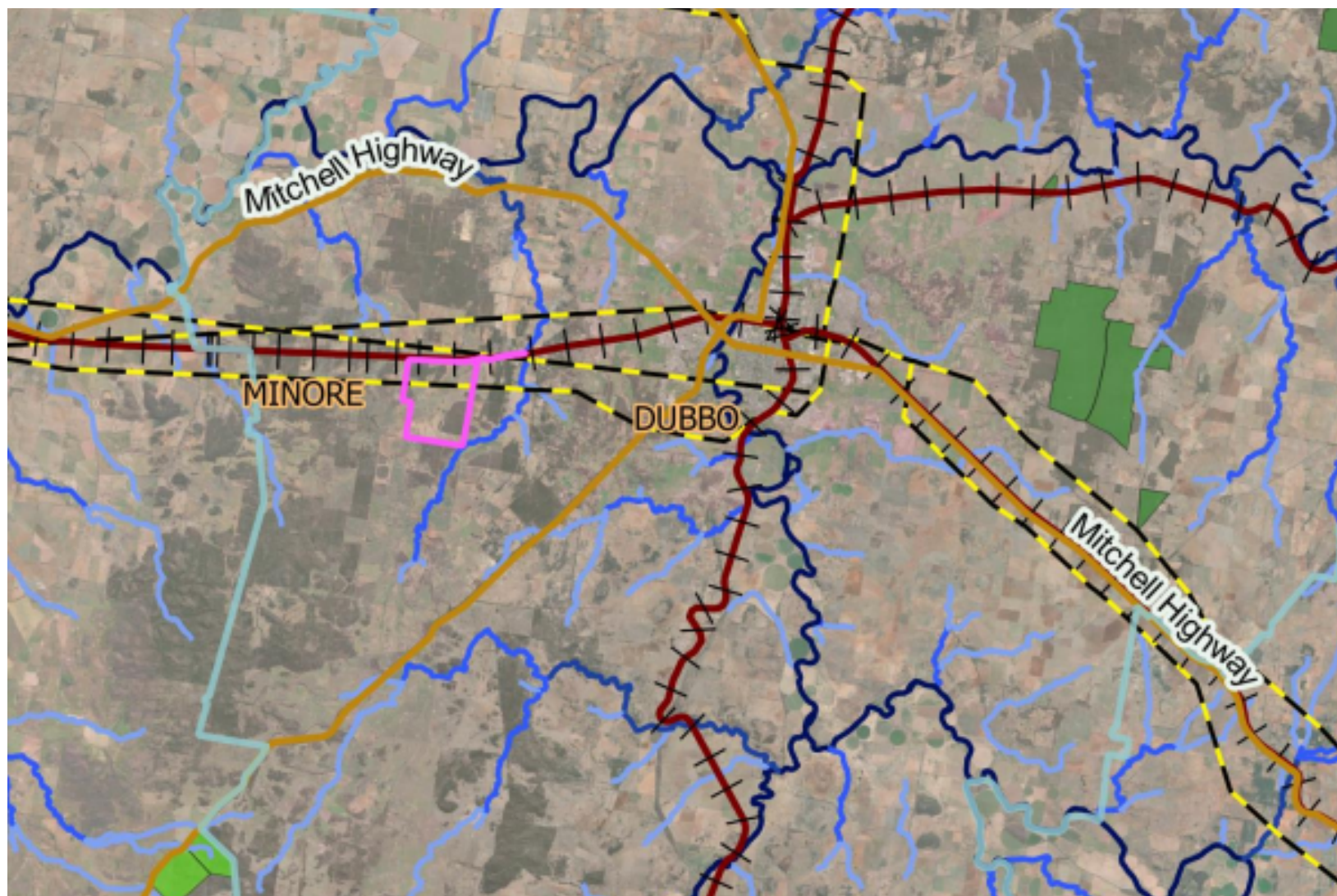
The assessment of any expressions of interest will be undertaken with the Company and Council. The Parties acknowledge that any Community Housing Provider shall comply with the Company's Compliance Code requirements to be considered under an Expression of Interest.

If Council does not receive any expressions of interest or if in the opinion of Council and the Company no suitable expressions of interest have been received, Planning Agreement Component (1) shall cease to operate, and Alternative Planning Agreement Component (2) will operate and revert to a Community Benefit Fund.

Assessment of applications received will be undertaken as follows:

- Applications are received from public community groups and individuals for funding for local projects.
- The Company and Council will assess applications and the Company is to make submissions on the applications.
- The successful applicants will be chosen by a formal meeting of Council.
- Once endorsed, Council will advise the successful applicants.

Schedule 3: Development Layout





Execution

Executed as an Agreement

Dated:

Executed by **Dubbo Regional Council**

The Common Seal of Dubbo Regional Council was hereunto affixed this ^{15th} day of May 2024 pursuant to a resolution of Council dated 21 March 2024

[Redacted Signature]

Signature of Chief Executive Officer



[Redacted Signature]

Signature of Mayor

Executed by/on behalf of **X-Elio Roma Hub Solar Farm Pty Ltd** in accordance with s127(1) of the *Corporations Act 2001 (Cth)*.

[Redacted Signature]

Signature of

[Redacted Name]

Name

[Redacted Signature]

Signature of

[Redacted Name]

Name

Appendix 1: Explanatory Note

Draft Planning Agreement for Forest Glen Solar Farm (VPA21-001)

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft Planning Agreement for Forest Glen Solar Farm which applies to Lots 6 DP1755102, Lots 51 and 52 DP755094, and Crown Land Lot 1 DP118911.

1 Introduction

Clause 25E of the Environmental Planning and Assessment Regulation 2000 (the **Regulation**) requires a planning authority proposing to enter into a Planning Agreement under clause 7.4 of the Environmental Planning and Assessment Act 1979 (the **Act**) to prepare an explanatory note about the Planning Agreement.

This explanatory note has been prepared jointly by Dubbo Regional Council and X-Elio Roma Hub Solar Farm Pty Ltd.

2 Parties

The Parties to the Planning Agreement are:

- Dubbo Regional Council (ABN 53 539 070 928) of Corner Church and Darling Street, Dubbo NSW 2830 (**Council**); and
- X-Elio Roma Hub Solar Farm Pty Ltd (ABN 45 637 568 453) Level 4, 80 Market Street Melbourne VIC 3206 (the **Company**).

3 Background and description of the development

On 28 February 2023, the NSW Department of Planning and Environment approved SSD-9451258 for the construction, operation and decommissioning of a photovoltaic solar farm located approximately 16KMs west of Dubbo.

The project will have an installed capacity of approximately 90MW that will supply electricity to the national grid, and comprise the following:

- Solar array;
- Upgrades to Delroy Road and new internal roads;
- Underground and above ground cables;
- Battery storage (25MW);
- Onsite substation and operational facilities;
- Connection to the onsite Essential Energy 132 kV transmission line.

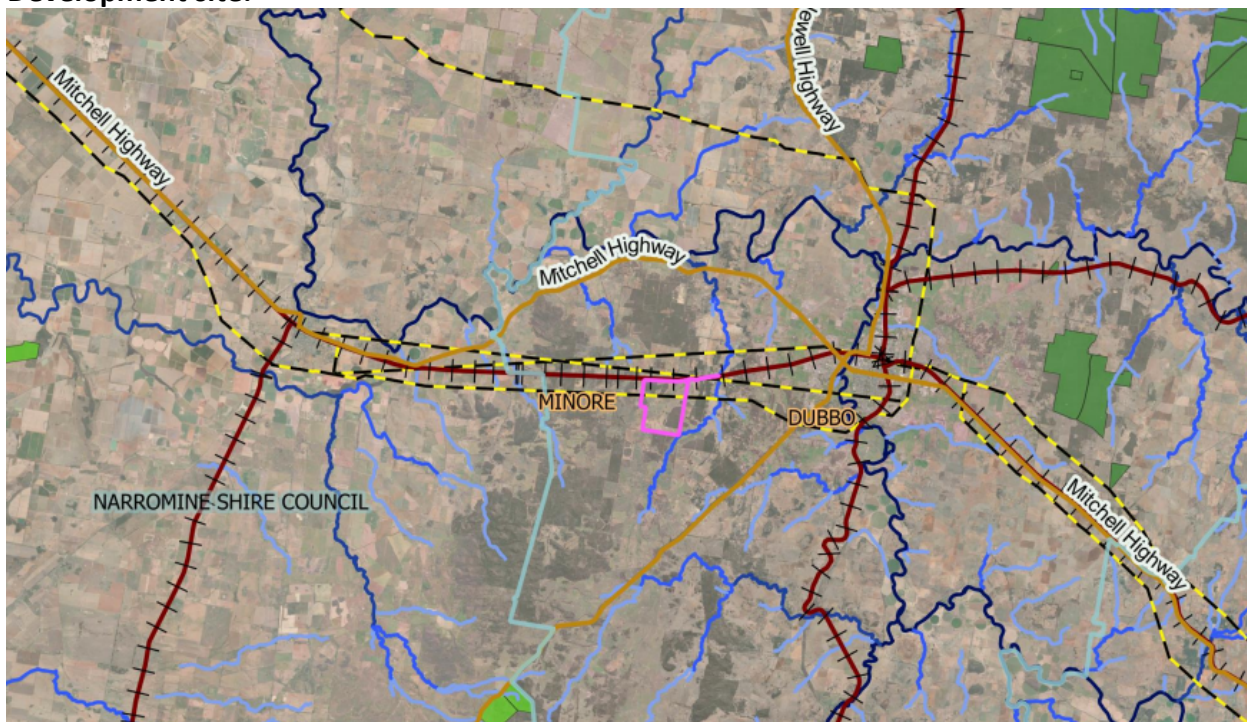
4 Summary of objectives, nature, and effect of the Planning Agreement

The objectives of the Planning Agreement are:

- The Planning Agreement provides that the Company will make a monetary contribution of \$200,000 per year on 1 July of each year for a period of 5 years.
- The monetary contribution is to be paid from construction commencement date until a total of \$1,000,000 is reached.
- Council will distribute and expend funds as follows:

Planning Agreement Component (1)	Planning Agreement Component (2)
<p>Funds are to be allocated to social housing development schemes which aim to provide an innovative assistance solution to develop community housing in the Dubbo Regional Local Government Area.</p> <p>If Council does not receive any expressions of interest or if in the opinion of Council and the Company no suitable expressions of interest have been received in that year, Planning Agreement Component (1) shall cease to operate, and Planning Agreement Component (2) will operate and revert to a Community Benefit Fund.</p>	<p>Funds are to be allocated for community benefit for eligible local projects across the Dubbo Regional Local Government Area including community and incorporated and/or not for profit organisations.</p>

Development site:



5 Assessment of the merits of the Planning Agreement

5.1 The planning purpose served by the Planning Agreement, and whether it provides for a reasonable means of achieving the planning purpose.

The Planning Agreement facilitates the provision of social housing schemes and the provision of community benefit funds for the continued health, wellbeing, and development of the community through two funding parts and is a reasonable means for achieving these planning purposes.

5.2 How the Planning Agreement promotes the public interest and objects of the Act.

The Planning Agreement promotes the public interest and objective of the Act by securing monetary contributions for the purpose of social housing development schemes which aims to provide an innovative assistance solution to the development of community housing in the Dubbo Regional Local Government Area and a Community Benefit Fund for eligible local projects including community and incorporated and not for profit organisations.

5.3 How the Planning Agreement promotes elements of the Council's charter under the Local Government Act 1993

The Planning Agreement promotes elements of Council's charter by:

- Providing effective and efficient services to meet the diverse needs of the local community in a way that provides the best possible value for residents and ratepayers.
- Investing in responsible and sustainable infrastructure for the benefit of the local community.
- Providing a means that allows the wider community to make submissions to Council in relation to the Planning Agreement; and
- Managing lands and other assets so that current and future local community needs can be met in an affordable way.

5.4 How the Planning Agreement conforms to Council's capital works program

The works identified in the Planning Agreement directly address and respond to strategic priorities identified within relevant Council strategies, plans and delivery programs.

5.5 Whether the Planning Agreement specifies certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.

The Planning Agreement does not specify any requirements that must be complied with prior to the issuing of a construction certificate, occupation certificate or subdivision certificate. Clause 4 of the Planning Agreement sets out the requirements for when the Planning Agreement becomes operative and binding, being the Construction Commencement Date.

6 Notes

This explanatory note is a summary only and is not to be relied upon as a complete description or used as an aid in construing the Planning Agreement.