

## **1. ATTACHMENTS**

### **10.2. PROPOSED FIRE CONTROL CENTRE - HEADS OF AGREEMENT (HOA) - ATTACHMENT**

1. Draft Heads of Agreement - Joint RFS Fire Control Development

**Attachment 1 - 20231121 DRAFT Heads of Agreement - Joint RFS Fire Control Development Tumut - amended 20240306 for 20240321 Business Paper**



**NSW RURAL FIRE SERVICE**



# Joint Development – Snowy Valleys Fire Control Centre & Forestry Office at Tumut Aerodrome

## Heads of Agreement

**Snowy Valleys Council**  
SVC

**NSW Rural Fire Service**  
NSWRFS

**Forestry Corporation of NSW**  
FCNSW

## Contents

<b>1.</b>	<b>Definitions and interpretations</b> .....	<b>1</b>
1.1	Definitions .....	1
1.2	Interpretation.....	2
<b>2.</b>	<b>The Project</b> .....	<b>3</b>
2.1	Project Agreement.....	3
2.2	The Project.....	3
2.3	Design.....	3
2.4	Project Control Group.....	4
2.5	Appointment of contractors.....	4
2.6	Timetable .....	4
2.7	Vesting of Facility in Council .....	5
<b>3.</b>	<b>Occupation</b> .....	<b>5</b>
3.1	Grant of occupation .....	5
3.2	Occupation management committee.....	6
3.3	Payment of outgoing and general costs .....	6
3.4	Insurances .....	6
3.5	Cleaning, maintenance and repair .....	6
3.6	Signage.....	6
<b>4.</b>	<b>Negotiations, documentation and further assurances</b> .....	<b>6</b>
4.1	General commercial terms only .....	6
4.2	Further terms.....	7
4.3	Undertaking to negotiate.....	7
4.4	Preparation of the Project Agreement and Occupancy Agreement .....	7
<b>5.</b>	<b>Binding obligations</b> .....	<b>7</b>
<b>6.</b>	<b>Relationship</b> .....	<b>7</b>
<b>7.</b>	<b>Unfettered discretion</b> .....	<b>7</b>
<b>8.</b>	<b>Confidentiality</b> .....	<b>8</b>
8.1	Confidentiality.....	8
8.2	Exceptions .....	8
<b>9.</b>	<b>General</b> .....	<b>8</b>
9.1	Governing law .....	8
9.2	Costs.....	8
<b>10.</b>	<b>Schedule 1 – Facility</b> .....	<b>8</b>
<b>11.</b>	<b>Annexure A – Master Plan and Schedule</b> .....	<b>8</b>
	<b>Annexure A – Location and Concept Master Plan</b> .....	<b>11</b>

## Heads of Agreement

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**Parties** Snowy Valley Council ABN 53 558 891 887 of 76 Capper Street, Tumut NSW 2720 (SVC)

NSW Rural Fire Service ABN 250 031 292 21 of No 4 Murray Rose Avenue, Sydney Olympic Park NSW 2141 (NSW RFS)

Forestry Corporation of NSW ABN 43 141 857 613 of 121-131 Oratava Avenue, West Pennant Hills NSW 2125 (FCNSW)

### Background

- A. NSW RFS requires a new Fire Control Centre within the Snowy Valleys Council local government area, within or near to the township of Tumut.
- B. FCNSW requires a new area administration facility within or near to the township of Tumut.
- C. The parties have identified the Site as an appropriate location for the Project.
- D. SVC has agreed to:
  - a) make the Site available to the NSW RFS and FCNSW
  - b) permit NSW RFS and FCNSW to occupy the Site upon completion of the Project, for the Initial Term, with the option of extension for the Option Terms, on the general terms set out in this Agreement.
- E. The NSW RFS and FCNSW have agreed to jointly carry out and deliver the Project on the Site on the general terms set out in this Agreement
- F. This Agreement sets out the principles agreed between the parties as to the development and occupancy of the Site.

### Operative Provisions

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#### 1. Definitions and interpretations

##### 1.1 Definitions

In this agreement:

**Initial Term** means a period of 20 years from the date of practical completion of the Fire Control Centre.

**EP&A Act** means the Environmental Planning and Assessment Act 1979 (NSW)

**Facility** means the proposed built infrastructure to be constructed on the Site

**FCNSW Occupied Area** means the area to be funded by Forestry Corporation.

**LG Act** means the Local Government Act 1993 (NSW)

**Option term** means two options of 10 years each

**Master Plan and Schedule** means the plan and schedule for the Project attached at Annexure A, as varied from time to time

**Occupation Agreement** means an agreement to be entered into between SVC and FCNSW in relation to FCNSW's occupation of the FCNSW Occupied Area and use of the Site.

**Project** means:

- (a) The obtaining of all necessary approvals for the Works; and
- (b) The planning, design, develop, construction and commissioning of the Works.

**Project Agreement** means an agreement to be entered into between the parties in relation to the carrying out of the Project.

**PCG** means Project Control Group

**Project Costs** means the costs of carrying out the Project as agreed between the Parties, including:

- (a) The costs of the Works including costs of design, development, and construction, including all Approvals and certificates and any preliminary site upgrade works

**Progress Statement** means a monthly statement prepared by NSW RFS which:

- (a) Details the progression of the Works since the last Progress Statement
- (b) Itemises the Project Costs incurred since the last Progress Statement
- (c) Tracks how the expenditure of Project Costs exceeds or differs from the budgets approved by the PCG; and
- (d) Contains such reasonable supporting documentation to allow the Parties to verify the Project Costs

**RF Act** means the Rural Fires Act 1997 (NSW)

**RFS Occupied Area** means the area to be funded by the NSW Rural Fire Service.

**Service Level Agreement** means the rural fire district service agreement entered into between SVC and NSW RFS dated [insert date], pursuant to s.12A of the RF Act.

**Site** means that part of Lot 2 DP 1075294 Wee Jasper Road, Tumut NSW 2720 located at Tumut Aerodrome, which has an area of approximately 3.5 hectares and is identified in Annexure A - Location and Concept Master Plan.

**Works** means all works required to be undertaken or carried out on the Site to construct the Facility, and related improvements including any preliminary Site infrastructure upgrade works.

## 1.2 Interpretation

- (a) A reference to a party includes that party's executors, administrators, successors and permitted assigns.
- (b) A reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time.
- (c) A word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender.
- (d) A reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this

agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it.

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## 2. The Project

### 2.1 Project Agreement

- (a) The Parties will enter into a Project Agreement to govern the terms of the Project, in accordance with this Part 2.
- (b) Project Agreement shall set out the terms and conditions governing the Project.

### 2.2 The Project

- (a) NSW RFS, FCNSW and SVC will jointly carry out the Project.
- (b) In carrying out the Project, NSW RFS, FCNSW and SVC will:
  - (i) Engage a project manager to:
    - A. prepare an initial budget for the Works for approval by RFS, FCNSW and SVC;
    - B. design, plan, commence, construct and complete the Works in accordance with all approvals, certificates and other legal requirements, including lodging all applications and development applications on instruction from NSW RFS, FCNSW and SVC, as set out further in clause 2.3 below;
    - C. prepare the commercial conditions of contract and manage the procurement of contractors for the construction of the Facility;
    - D. assume the Principal Contractor role for the Works, within the meaning of the *Work Health and Safety Act 2011* (NSW), for the Project;
    - E. take out all necessary insurances, including public liability insurance and workers compensation;
    - F. rectify any defects in the Works; and
    - G. report to NSW RFS, FCNSW and SVC in the manner and frequency as required by them.
  - (ii) Pay the Project Costs in proportions set out in the Project Agreement
  - (iii) Report to the PCG on progress of the Project and seek all necessary approvals from the PCG, as set out in clause 2.5.

### 2.3 Design

- (a) The project manager engaged under clause 2.2 will be responsible for preparing the functional design brief and all design plans, specifications and schedule of finishes required to obtain development consent, the construction certificate and any other approval required to enable the construction of the Facility to the satisfaction of the NSW RFS and FCNSW.

- (b) NSW RFS and FCNSW will submit the design prepared under this clause 2.3 to the Project Control Group, in accordance with clause 2.4.
- (c) The Design of the facility is to be broadly based on the standard NSW RFS Large Fire Control Centre and FCNSW design requirements and must meet the needs of NSW RFS and FCNSW.

**2.4 Project Control Group**

- (a) The parties will appoint representatives to establish a Project Control Group (PCG) which will meet monthly (or such other times as agreed) until the completion of the works. The PCG will ensure the Facility and the Works are fit for purpose and in accordance with all approvals, design documents, development approvals and laws.
- (b) The parties will have one vote each in relation to any proposed decision or resolution. All Major Decisions in relation to the Project may only be made by unanimous agreement of the PCG.
- (c) For the purpose of this clause, Major Decisions of the PCG are:
  - (i) Approval of design documentation
  - (ii) Approval of development application and any modifications
- (d) At least five (5) business days prior to each PCG meeting, the Project Manager will provide a report to the parties containing information relevant to the progress of the Project, and the progress towards achieving the Milestones and information relevant to Major Decisions, including the progress of any application for or in relation to the works.

**2.5 Appointment of contractors**

- (a) The Project Manager will engage and appoint all consultants and contractors for the Project in the manner required by the relevant procurement policies and regulations of the NSW Government, pursuant to clause 2.2(a) above.
- (b) The NSW RFS, FCNSW and SVC may elect to appoint representatives to undertake the relevant evaluation of any tender(s) submitted in relation to the Project as considered appropriate.

**2.6 Timetable**

The parties will use best endeavours to carry out and complete the project in a timely and efficient manner so as to achieve the following milestones and timetable:

Task / Milestone / Activity	Indicative Date
Project Initiation	December 2023
Complete Approvals and Tender for Principal Design Consultant (Completed by NSW RFS)	August 2023
Engagement of Principal Design Consultant (Completed by NSW RFS)	October 2023
Engagement of other specialist consultants, as required	March 2024
Coordinate Design Process including Client Work Shops	January – April 2024

Submission of Development Application to SVC	May 2024
Completion Design, specification & contract documents, formation of Selective Tender Panel and Approval to Call Tenders for Construction.	May - September 2024
Tender Period (assume 7 weeks)	September - October 2024
Complete Tender Assessment process; Tender Recommendation Report	October - November 2024
Award Contract	November 2024
Construction Period - Contract Administration Phase	November 2024 - November 2025
Construction Period - Contingency	November - December 2025
Construction Completion and Operational Maintenance Period and finalise ICT fit-out, test and commissioning.	December 2025 – December 2026
Occupation by the parties	January 2026

**2.7 Vesting of Facility in Council**

- (a) Upon completion of the Works, ownership of the Facility shall vest in SVC.
- (b) NSW RFS acknowledges that it has no right title or interest in the Facility pursuant to s.119(2) of the RFA.
- (c) FCNSW disclaims any right title and interest in the Facility as a result of its contribution of funds towards the Works.

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**3. Occupation**

**3.1 Grant of occupation**

- (a) SVC will grant to FCNSW a right to occupy the FCNSW Occupied Area for the Term following completion of the Works. SVC will enter into an occupation agreement with FCNSW on a commercial lease basis.

The formula below outlines the basis for the calculation of the right to occupy the FCNSW area>

AR = Annual Rent

LV = Land Value

OA = % of land area occupied FCNSW of the entire FCC and FCNSW land area.

Worked example.

$\$300,000 (LV) \times 40\% (OA\%) \times 6\% (CL\%) = \$7,200 \text{ pa (AR)}$

The above annual rent would be subject to increases in CPI.

SVC will grant to NSW RFS a right to occupy the NSW RFS Occupied Area for the Term following completion of the Works. This occupation will be governed by the SLA.

- (b) NSW RFS and FCNSW shall have shared access to all common areas, being shared meeting rooms, informal gathering spaces, reception, Operations Centre, ICT/Fire room and associated facilities, training facilities, communications



infrastructure, kitchen, driveways, carpark and other staff amenities and facilities on site as identified in Attachment A.

### **3.2 Occupation management committee**

- (a) On the commencement of the parties' occupation of the facility, the parties will appoint two representatives from each entity to establish an Occupation Management Committee (OMC) which will meet quarterly (or such other times as agreed) until the end of the Term (and any Option Term).
- (b) The OMC will oversee the general agreement between the parties and:
  - (i) resolve any issues that may arise;
  - (ii) develop and monitor the annual works plan to maintain the facility over the life of this agreement.

### **3.3 Payment of outgoing and general costs**

- (a) NSW RFS and FCNSW will pay all costs in relation to the Facility including operating expenses and capital expenses (in accordance with the annual works plan) in proportion to the size of their respective Facility entitlement areas.

### **3.4 Insurances**

- (a) The Site will be included as an asset in SVCs property insurance policy for the duration of the NSW RFS and FCNSW occupation. The NSW RFS and FCNSW will reimburse the SVC on an annual basis the additional insurance premium paid by SVC for the inclusion of the Site into its insurance policy.
- (b) NSW RFS and FCNSW will reimbursement SVC under cl 3.5(a) in proportion to the size of their respective entitlement areas.

### **3.5 Cleaning, maintenance and repair**

- (a) During the term, FCNSW will be responsible for the keeping the FCNSW Occupied Area tidy and in good repair and condition except for fair wear and tear.
- (b) During the term, NSW RFS will be responsible for the keeping the NSW RFS Occupied Area tidy and in good repair and condition except for fair wear and tear.
- (c) NSW RFS and FCNSW will be responsible for remediating or replacing damaged items in NSW RFS NSW RFS Occupied Area and the FCNSW Occupied Area respectively.
- (d) In the event of any damage to any common areas including goods or chattels in common areas, the parties agree to contribute to the repair or replacement in proportion to the size of their respective entitlement areas. If the damage was caused by one party, that party shall pay the full cost of repair or replacement.

### **3.6 Signage**

- (a) The parties may bring on to the facility and install any lawful signage and property.

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## **4. Negotiations, documentation and further assurances**

### **4.1 General commercial terms only**

- (a) This agreement briefly records general commercial terms for the

- (i) carrying out and delivery of the Project on the Site by FCNSW and NSWRFSS
- (ii) occupation of the Facility/Site by NSW RFS and FCNSW upon completion of the Works; and

does not set out the full terms of the Project Agreement, the Occupancy Agreement and the SLA.

#### **4.2 Further terms**

- (a) The Project Agreement and Occupancy Agreement shall contain those reasonable representations, warranties, undertakings, procedural provision and other terms that the parties agree.

#### **4.3 Undertaking to negotiate**

- (a) The parties must each use their best endeavours to negotiate in good faith with each other and to have the:
  - (i) Project Agreement entered into by [insert date] unless the parties agree in writing to extend that date, and
  - (ii) The Occupancy Agreement entered into by [insert date] unless FCNSW and SVC agree to extend that date.

#### **4.4 Preparation of the Project Agreement and Occupancy Agreement**

- (a) The Project Agreement will be prepared by RFS, FCNSW and SVC
- (b) The Occupancy Agreement will be prepared by SVC, RFS and FCNSW

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### **5. Binding obligations**

The only legally binding terms in this agreement are:

- (a) Clauses 4.3 (undertaking to negotiate in good faith) and 8 (confidentiality)

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### **6. Relationship**

- (a) Parties are independent
- (b) No party has authority to take action on behalf of another party
- (c) Third parties have no power against a party due to action of another party

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### **7. Unfettered discretion**

Nothing in this agreement is taken to bind or influence SVC when performing its:

- (a) Approval process in relation to the provision of landowner consent to the development application for the Works; and
- (b) Approval process as the consent authority for the development application for the Works.

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**8. Confidentiality****8.1 Confidentiality**

- (a) Subject to clause 8.2, each party must keep confidential the terms of this agreement, all information in connection with this agreement and the transactions contemplated by it, however obtained.

**8.2 Exceptions**

- (a) A party may make any disclosure in relation to this agreement:
- (i) to a professional adviser or auditor if that person is obliged to keep that information confidential;
  - (ii) to comply with the law, or a requirement of a regulatory body;
  - (iii) to any of its employees to whom it is necessary to disclose the information;
  - (iv) to obtain the consent of a third party to a term of, or to an act under this agreement;
  - (v) to enforce its rights or to defend a claim or action under this agreement;
  - (vi) if the information has come into the public domain through no fault of the party making the disclosure

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**9. General****9.1 Governing law**

- (a) This agreement is governed by and must be construed according to the law applying in New South Wales.

**9.2 Costs**

- (a) Each party must pay its own costs and expenses in connection with negotiating, preparing and executing this agreement, Development and Occupancy Agreement and all other transactions contemplated by this agreement, including the costs and expenses of all consultants, advisers and others it engages to assist it in connection with those documents and transactions. No representation or reliance

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**10. Schedule 1 – Facility****11. Annexure A – Master Plan and Schedule**

**Signed** as an agreement dated this ..... day of .....2024

**Signed** on behalf of .....,  
**Snowy Valleys Council** in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

**Signed** on behalf of .....,  
**NSW Rural Fire Service** in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

**Signed** on behalf of .....,  
**Forestry Corporation of NSW** in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

## Schedule 1 - Facility

[the below to be developed ]

The Facility is to consist of:

1. Five buildings including Fire Control Centre with brigade station, storage shed, hangar and retardant base. The building sizes will be determined in the Concept Design and Approval process however as a guide based on NSWRFs standards:-
  - a. Main building approximately 1450m<sup>2</sup>
  - b. Stores building approximately 750m<sup>2</sup>
  - c. Brigade station approximately 300m<sup>2</sup>
  - d. Airbase building approximately 300m<sup>2</sup>
  - e. Hangar building approximately 500m<sup>2</sup>
  - f. Designated car parking for 90 vehicles and overflow undefined parking for 50 vehicles.
  - g. There is NO Hot Fire Training Ground.
  - h. Re-fuelling of Aircraft will be done (as per the current arrangement) at the existing Airport facility and not within this facility site.
2. Car parking, water tanks, water and sewage treatment infrastructure and an apron handstand area.

The parties acknowledge that they are currently no services available to the site. There is no potable water or reticulated sewerage to the site.

The facility will be upgraded for provision of these services, including:

1. self-sufficient and incorporate onsite potable water and sewerage treatment sufficient to service the facility, scalable for emergency purposes.
2. [List infrastructure upgrades]

**Annexure A – Location and Concept Master Plan**

