

## **Deed**

# **Beresfield Battery Project Planning Agreement**

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

**City of Newcastle**

**Beresfield BESS Pty Ltd**

18 February 2026

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## **Regulatory Compliance Tables**

**Table 1 – Provisions of Act**

<b>Act Provision</b>	<b>Requirement</b>	<b>Compliance</b>
<b>S.7.4(1)</b>	<b>'Planning Authority'</b>	Council
	<b>'Developer'</b>	Developer
	<b>Development Application</b>	See definition of ' <i>Development Application</i> ' in clause 1.1 and Item 3 of the VPA Particulars
	<b>Development Contributions</b>	See Part 2 and the Development Contributions Table
<b>S.7.4(1), (2)</b>	<b>Public Purpose</b>	See Column 2 of the Development Contributions Table
<b>S.7.4(3)(a)</b>	<b>Land</b>	See Definition of ' <i>Land</i> ' in clause 1.1 and Item 1 of the VPA Particulars
<b>S.7.4(3)(b)(ii)</b>	<b>Development</b>	See definition of ' <i>Development</i> ' in clause 1.1 and Item 2 of the VPA Particulars
<b>S.7.4(3)(c)</b>	<b>Details of Developer's Provision</b>	See Development Contributions Table
<b>S.7.4(3)(d)</b>	<b>Whether s7.11, s7.12 and Subdivision 4 of Division 7.1 of the Act Apply to the Development</b>	See clauses 7.1, 7.3 and 7.4 and Item 6.a, 6.c and 6.d of the VPA Particulars
<b>S.7.4(3)(e)</b>	<b>Whether benefits under Deed are or are not to be taken into consideration in determining a Development Contribution under s7.11</b>	See clause 7.2 and Item 6.b of the VPA Particulars
<b>S.7.4(3)(f)</b>	<b>Mechanism for the Resolution of Disputes</b>	See Part 3
<b>S.7.4(3)(g)</b>	<b>Enforcement of the Agreement by a Suitable Means in the Event of Breach by the Developer</b>	See Part 4

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<b>S.7.4 (10)</b>	<b>Conformity of Agreement with Act, Environmental Planning Instruments, &amp; Development Consents Applying to the Land</b>	Yes
<b>S.7.5</b>	<b>Public Notice &amp; Public Inspection of Draft Agreement</b>	Yes
<b>S.7.6</b>	<b>Registration</b>	N/A
<b>S.6.15(1)(d)</b>	<b>If the Development involves the subdivision of land, does this Agreement impose requirements that are required to be complied with before a subdivision certificate is issued?</b>	N/A

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**Table 2 – Provisions of Regulation**

<b>Regulation Provision</b>	<b>Requirement</b>	<b>Compliance</b>
<b>Environmental Planning and Assessment Regulation 2021</b>		
<b>S.203(1)</b>	<b>Form &amp; Subject-Matter</b>	Yes
<b>S.203(7)</b>	<b>Secretary's Practice Note</b>	Yes
<b>S.204</b>	<b>Public Notice &amp; Public Inspection of Draft Agreement</b>	Yes
<b>S.205</b>	<b>Explanatory Note</b>	See Appendix
<b>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</b>		
<b>Ss.21, 34</b>	<b>If the Development involves building work or subdivision work, does the Agreement specify requirements that are required to be complied with before a construction certificate or subdivision works certificate for the work is issued?</b>	Yes. The Agreement requires payment of the monetary contribution before the issue of a construction certificate for the development the subject of the Development Consent.

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## **Parties**

**Council**                      **City of Newcastle** ABN 25 242 068 129 of 12 Stewart Avenue,  
Newcastle West, NSW 2300

**Developer**                    **Beresfield BESS Pty Ltd** ABN 69 650 555 258 of Level 24,  
200 George Street, Sydney, NSW 2000

## **Background**

- A The Applicable Development Consent was granted on 22 December 2023.
- B The Developer seeks to enter into this Agreement in accordance with Condition A14 of the Applicable Development Consent, Division 7.1 of Part 7 of the Act, and the terms of the letter of offer made to Council on 12 October 2023.
- C The terms of the VPA Offer are summarised in Appendix 4 of the Applicable Development Consent and require the Developer to make Development Contributions to Council.
- D The Parties enter into this Agreement to give effect to the requirements of Condition A14 of the Applicable Development Consent.

## **Operative provisions**

### **Part 1 - Preliminary**

#### **1 Definitions & Interpretation**

##### **Definitions**

- 1.1 In this Deed, the words and phrases appearing in Column 1 of the following table have the meaning set out in Column 2 of that table corresponding to those words or phrases except in so far as the context or subject-matter otherwise indicates or requires:

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**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Word or phrase</b>	<b>Meaning</b>
<b>Act</b>	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
<b>Applicable Contributions Plan</b>	means the contributions plan (within the meaning of the Act) specified in Item 5 of the VPA Particulars as amended or substituted from time to time.
<b>Applicable Development Consent</b>	means the development consent specified or described in Item 4 of the VPA Particulars or granted in respect of the Development.
<b>Construction</b>	has the same meaning as in the Applicable Development Consent.
<b>Construction Certificate</b>	has the same meaning as in the Act.
<b>Contribution Value</b>	in relation to an Item specified in the Development Contributions Table means the \$ amount specified in Column 4 of that Table corresponding to the Item.
<b>Cost</b>	means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.
<b>CPI</b>	means the ' <i>Consumer Price Index – Sydney All Groups</i> ' published by the Australian Bureau of Statistics.
<b>Deed</b>	means this Deed and includes any schedules, annexures and appendices to this Deed.
<b>Development</b>	means the development specified or described in Item 2 of the VPA Particulars.
<b>Development Application</b>	means the development application within the meaning of the Act specified or described in Item 3 of the VPA Particulars.
<b>Development Contribution</b>	means the dedication of land free of cost, a monetary contribution, the provision of any other material public benefit including but not limited to the provision of Works, or any combination of them.
<b>Development Contributions Table</b>	means the table contained in Schedule 2.

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<b>Dispute</b>	means a dispute or difference between the Parties under or in relation to this Deed.
<b>GST</b>	has the same meaning as in the GST Law.
<b>GST Law</b>	has the same meaning as in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
<b>Item</b>	means a numbered item appearing in the VPA Particulars or the Development Contributions Table.
<b>Land</b>	means the land specified or described in Item 1 of the VPA Particulars.
<b>N/A</b>	means Not Applicable
<b>Party</b>	means a party to this Deed.
<b>Regulation</b>	means the <i>Environmental Planning and Assessment Regulation 2021</i> (NSW).
<b>Section 7.11 Contribution</b>	means a monetary contribution payable to the Council under s7.11 of the Act pursuant to the Applicable Development Consent.
<b>VPA Particulars</b>	means the information contained in Schedule 1.

## Interpretation

- 1.2 In the interpretation of this Deed, 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 Deed.
  - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday or a public holiday 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 Deed 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 Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
  - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
  - 1.2.6 A reference in this Deed 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.

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- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 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.
- 1.2.11 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.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

## **2 Status of this Deed**

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.

## **3 Commencement**

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
  - 3.1.1 both executed the same copy of this Deed, or
  - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

## **4 Application of this Deed**

- 4.1 This Deed applies to the Land and to the Development.

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### **5 Warranties**

- 5.1 The Parties warrant to each other that they:
- 5.1.1 have full capacity to enter into this Deed, and
  - 5.1.2 are able to fully comply with their obligations under this Deed.

### **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 Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

### **7 Application of s7.11, s7.12 & Subdivision 4, Division 7.1 of the Act**

#### **Section 7.11 of the Act**

- 7.1 Item 6.a of the VPA Particulars states whether this Deed excludes (wholly or in part) the application of section 7.11 of the Act to the Development.
- 7.2 If Item 6.a of the VPA Particulars states that this Deed does not wholly exclude the application of section 7.11 of the Act to the Development, Item 6.b of the VPA Particulars states whether the benefits provided by the Developer under this Deed are to be taken into consideration when determining a Development Contribution under section 7.11 relating to the Development.

#### **Section 7.12 of the Act**

- 7.3 Item 6.c of the VPA Particulars states whether this Deed excludes (wholly or in part) the application of section 7.12 of the Act to the Development.

#### **Subdivision 4 of Division 7.1 of the Act**

- 7.4 Item 6.d of the VPA Particulars states whether this Deed excludes (wholly or in part) the application of Subdivision 4 of Division 7.1 of the Act to the Development.

## **Part 2 – Development Contributions**

### **8 Provision of Development Contributions**

#### **Development Contributions**

- 8.1 The Developer is to make the Development Contribution to the Council in accordance with the Development Contributions Table.

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#### Contribution Values

- 8.2 The Parties acknowledge and agree that a Contribution Value constitutes the agreed value of the public benefit of a Development Contribution required to be made under this Deed.

#### Indexation of monetary contributions

- 8.3 The Contribution Value will be indexed quarterly in accordance with CPI from the date of determination of the Development Application.
- 8.4 The formula for indexing the Contribution Value is:

$$\$C_{PY} = \frac{\$C_D \times CPI_{PY}}{CPI_D}$$

Where:

**\$C<sub>PY</sub>** is the amount of the contribution at the date of payment.

**\$C<sub>D</sub>** is the amount of the contribution at the date of determination of the Development Application.

**CPI<sub>PY</sub>** is the Consumer Price Index (Sydney – All Groups) (CPI) as published by the Australian Bureau of Statistics (ABS) for the financial quarter at the date of payment.

**CPI<sub>D</sub>** is the CPI (Sydney – All Groups) as published by the ABS for the financial quarter at the date of the determination of the Development Application.

#### Application of Development Contributions

- 8.5 The Council is to apply the Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.

#### Flexibility in application of Development Contributions

- 8.6 Despite clause 8.5, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed (**Alternative Public Purpose**) if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that Alternative Public Purpose rather than the purpose so specified.
- 8.7 At least 10 Business Days before applying the Development Contributions towards an Alternative Public Purpose under clause 8.6, Council must provide written notice to the Developer describing the Alternative Public Purpose and how the Council reasonably considers the public interest is better served by applying the Development Contribution in that manner.

## 9 Payment of monetary Development Contributions

- 9.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

## **Part 3 – Dispute Resolution**

### **10 Dispute Resolution – mediation**

#### **Application of clause**

- 10.1 This clause 10 applies to any Dispute arising in connection with this Deed other than a dispute to which clause 11 applies.

#### **When Dispute arises**

- 10.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

#### **Meeting between Parties**

- 10.3 If a notice is given under clause 10.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.

#### **Meditation of Dispute**

- 10.4 If the Dispute is not resolved within a further 28 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.

#### **Exercise of legal rights**

- 10.5 If the Dispute is not resolved by mediation within a further 28 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.

#### **Costs**

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

### **11 Dispute resolution – expert determination**

#### **Application of clause**

- 11.1 This clause 11 applies to a Dispute arising in connection with this Deed if:
- 11.1.1 the Parties agree that the Dispute can be appropriately determined by Expert Determination, or
  - 11.1.2 the Chief Executive Officer (or equivalent) of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion at the joint request of

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the Parties that the Dispute can be determined by a member of that body.

### **When Dispute arises**

- 11.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

### **Meeting between Parties**

- 11.3 If a notice is given under clause 11.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.

### **Expert determination**

- 11.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.

### **Expert determination binding**

- 11.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.

### **Costs of Parties**

- 11.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.

### **Costs of Expert**

- 11.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

## **Part 4 - Enforcement**

### **12 Breach of obligations**

#### **Notice of breach**

- 12.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
- 12.1.1 specifying the nature and extent of the breach,
  - 12.1.2 requiring the Developer to:
    - (a) rectify the breach if it is capable of rectification, or
    - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if the breach is not reasonably capable of Rectification; and

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- 12.1.3 specifying the period within which the breach is to be Rectified or compensation paid, being a period that is reasonable in the circumstances.

#### **Recovery of costs by Council as debt due**

- 12.2 Despite any other provision of this Deed, any costs incurred by the Council in remedying a breach of this Deed may be recovered by the Council as a debt due in a court of competent jurisdiction.
- 12.3 For the purpose of clause 12.2, the Council's costs of remedying a breach the subject of a notice given under clause 12.1 include, but are not limited to:
  - 12.3.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
  - 12.3.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
  - 12.3.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

#### **Exercise of Council's rights at law or in equity**

- 12.4 Nothing in this clause 12 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

## **13 Enforcement in a court of competent jurisdiction**

- 13.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 13.2 For the avoidance of doubt, nothing in this Deed prevents:
  - 13.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
  - 13.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

## **Part 5 – Other Provisions**

### **14 Review of Deed**

#### **Where change of law occurs**

- 14.1 If this Deed becomes illegal, unenforceable or invalid as a result 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 Deed is entered into.

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### **15 Notices**

- 15.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 15.1.1 delivered or posted to that Party at its address set out in Item 8 or 9 of the VPA Particulars, or
  - 15.1.2 emailed to that Party at its email address set out in Item 8 or 9 of the VPA Particulars.
- 15.2 If a Party gives the other Party 3 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.
- 15.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 15.3.1 delivered, when it is left at the relevant address,
  - 15.3.2 sent by post, 2 business days after it is posted, or
  - 15.3.3 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.
- 15.4 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.

### **16 Costs of this Deed**

#### **Costs of Deed**

- 16.1 The Developer is to pay to the Council all of the Council's reasonable costs, up to a maximum amount of \$5,000 (ex GST), in relation to preparing, negotiating, publicly notifying, exhibiting, executing, amending and stamping this Deed, and any document related to this Deed, within 7 days of a written demand by the Council for such payment.

#### **Enforcement costs**

- 16.2 The Council may serve a notice in writing on the Developer (**'Enforcement Cost Notice'**) requiring the Developer to pay all or any reasonable costs and expenses incurred by the Council in connection with:
- 16.2.1 investigating a non-compliance by the Developer with this Deed, and
  - 16.2.2 enforcing compliance by the Developer with this Deed.
- 16.3 For the avoidance of doubt, the costs and expenses referred to in clause 16.2 may include the costs or expenses incurred by the Council relating to the preparation or serving of the Enforcement Cost Notice.
- 16.4 An Enforcement Cost Notice is to specify the amount required to be paid to the Council by the Developer and the date by which the amount is to be paid.

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- 16.5 The Council may recover any unpaid costs and expenses specified in an Enforcement Cost Notice as a debt in a court of competent jurisdiction.

### **No dispute**

- 16.6 Part 3 of this Deed does not apply anything done by the Council and any requirement imposed on the Developer by the Council in accordance with this clause 16.

## **17 Entire Deed**

- 17.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 17.2 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 Deed was executed, except as permitted by law.

## **18 Further Acts**

- 18.1 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 Deed and all transactions incidental to it.

## **19 Governing Law and Jurisdiction**

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

## **20 Joint and Individual Liability and Benefits**

- 20.1 Except as otherwise set out in this Deed:
- 20.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- 20.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

## **21 No Fetter**

- 21.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

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## **22 Illegality**

- 22.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

## **23 Severability**

- 23.1 If a clause or part of a clause of this Deed 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.
- 23.2 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 Deed, but the rest of this Deed is not affected.

## **24 Amendment**

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

## **25 Waiver**

- 25.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 25.2 A waiver by a Party is only effective if it:
- 25.2.1 is in writing,
  - 25.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
  - 25.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
  - 25.2.4 is signed and dated by the Party giving the waiver.
- 25.3 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.
- 25.4 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.
- 25.5 For the purposes of this Deed, 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.

# Beresfield Battery Project Planning Agreement

## City of Newcastle

### Beresfield BESS Pty Ltd

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## 26 GST

26.1 In this clause:

**Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.

**GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

**GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**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.

**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.

26.2 Subject to clause 26.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

26.3 Clause 26.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.

26.4 No additional amount shall be payable by the Council under clause 26.2 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.

26.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed 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:

26.5.1 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;

26.5.2 that any amounts payable by the Parties in accordance with clause 26.2 (as limited by clause 26.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

26.6 No payment of any amount pursuant to this clause 26, 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 as the case may be to the recipient.

26.7 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.

26.8 This clause continues to apply after expiration or termination of this Deed.

## **Beresfield Battery Project Planning Agreement**

**City of Newcastle**

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### **27 Explanatory Note**

- 27.1 The Appendix contains the Explanatory Note relating to this Deed required by section 205 of the Regulation.
- 27.2 Pursuant to section 205 of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

# Beresfield Battery Project Planning Agreement

City of Newcastle

Beresfield BESS Pty Ltd

## Schedule 1: VPA Particulars

Item	Details
1. <b>Land</b>	Lot 630 in Deposited Plan 1180006 and Lot 6 in Deposited Plan 1160356
2. <b>Development</b>	means the development known as the Beresfield Battery Energy Storage System Project as set out in the Development Application and authorised by the Applicable Development Consent
3. <b>Development Application</b>	means the State Significant development application number SSD 31940756 for the Development made under the Act
4. <b>Applicable Development Consent</b>	means the development consent granted by the delegate of the Minister for Planning and Public Spaces for the Development under section 4.38 of the Act on 22 December 2023
5. <b>Applicable Development Contributions Plan</b>	City of Newcastle Section 7.12 Development Contributions Plan adopted 26 October 2021
6. <b>Application of the following provisions of the Act to the Development:</b>  a. <b>Section 7.11</b>  b. <b>Consideration of benefits under section 7.11(6)</b>  c. <b>Section 7.12</b>  d. <b>Subdivision 4 of Division 7.1</b>	Does not exclude  Not to be considered  Does not exclude  Does not exclude
7. <b>Registration of this Deed</b>	No
8. <b>Council Contact for Notices</b>	<b>Postal Address:</b> 12 Steward Avenue, Newcastle West, NSW 2300  <b>Email:</b> mail@ncc.nsw.gov.au  <b>Telephone:</b> 02 4974 2000  <b>Representative:</b> Chief Executive Officer
9. <b>Developer Contact for Notices</b>	<b>Postal Address:</b> Level 24, 200 George Street,

## Beresfield Battery Project Planning Agreement

City of Newcastle

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	Sydney, NSW 2000
	<b>Email:</b> gtischljar@agl.com.au
	<b>Telephone:</b> 0455 241 365
	<b>Representative:</b> Greg Tischljar, Group Manager Power Development

# Beresfield Battery Project Planning Agreement

City of Newcastle

Beresfield BESS Pty Ltd

## Schedule 2: Development Contributions Table

<b>COLUMN 1</b> <b>Item No / Details</b>	<b>COLUMN 2</b> <b>Public Purpose</b>	<b>COLUMN 3</b> <b>Timing</b>	<b>COLUMN 4</b> <b>Contribution Value \$</b>
<b>Monetary Contribution</b>			
One off, monetary contribution of \$37,485 (ex GST)	Broad community benefits, including funding in part or in full:  a) the Beresfield childcare energy efficiency upgrade project; and/or  b) the social infrastructure set out in the Schedule of Works at Appendix B of the Applicable Contributions Plan.	Prior to the issuing of a construction certificate for the Development in accordance with the Applicable Development Consent	\$37,485 (ex GST)

**Beresfield Battery Project Planning Agreement**

**City of Newcastle**

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**Execution**

Executed as a Deed

**Dated: 18 February 2026**

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**Executed by the COUNCIL** by its authorised delegate, pursuant to a resolution made on



Signature of authorised delegate

Michelle Bisson

Name of authorised person

Executive Director Planning & Environment

Office held



Signature of witness

Michelle Taylor

Name of witness

A/Executive Assistant

Office held

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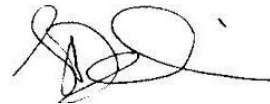
**Executed by the Developer** in accordance with s127(1) of the Corporations Act 2001 (Cth)



Signature of Director

Melinda Hunter

Name of Director



Signature of Director/Secretary

Suzanna Dabski

Name of Director/Secretary

## **Beresfield Battery Project Planning Agreement**

**City of Newcastle**

**Beresfield BESS Pty Ltd**

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### **Appendix: Explanatory Note**

(Clause 27 of this Agreement)

*Environmental Planning and Assessment Regulation 2021*

(Section 205)

### **Draft Planning Agreement**

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

#### **Parties**

##### **Council**

**City of Newcastle** ABN 25 242 068 129 of 12 Stewart Avenue, Newcastle West, NSW 2300

##### **Developer**

**Beresfield BESS Pty Ltd** ABN 69 650 555 258 of Level 24, 200 George Street, Sydney, NSW 2000

#### **Description of the Land to which the Draft Planning Agreement Applies**

The land to which the Agreement applies is described as Lot 630 in Deposited Plan 1180006 and Lot 6 in Deposited Plan 1160356, known as 53 Weakleys Drive, Beresfield (**Land**).

#### **Description of Development Consent to which the Agreement applies**

The Agreement relates to the development known as the Beresfield Battery Energy Storage System Project which is the subject of development application SSD 31940756, to which consent was granted by the delegate of the Minister for Planning and Public Spaces on 22 December 2023 (**Development Consent**).

The Developer is proposing to carry out the Development in accordance with the Development Consent. Condition A14 of the Development Consent states the Developer may enter into the Agreement in accordance with Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the terms of the letter of offer made to Council on 12 October 2023.

## **Beresfield Battery Project Planning Agreement**

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### **Description of Development Contributions**

The Agreement requires a monetary contribution in the amount of \$37,485 (ex GST) adjusted in accordance with increases in the CPI from the date of determination of the Development Consent to the date of payment.

The monetary contribution is to be directed by Council towards broad community benefits. In particular, the monetary contributions will be used to fund, in part or in full, the social infrastructure set out in the Schedule of Works at Appendix B of the City of Newcastle Section 7.12 Development Contributions Plan adopted 26 October 2021.

### **Summary of Objectives, Nature and Effect of the Draft Planning Agreement**

#### **Objectives of Draft Planning Agreement**

The draft Agreement will contribute to funding, in part or in full, the Beresfield childcare energy efficiency upgrade project and/or the transport and social infrastructure set out in the Schedule of Works at Appendix B of the City of Newcastle Section 7.12 Development Contributions Plan adopted 26 October 2021. In doing so, the Agreement promotes the following objectives of the EP&A Act:

- To promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources (section 1.3(a) of the EP&A Act).
- To facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment (section 1.3(b) of the EP&A Act).
- to promote the orderly and economic use and development of land (section 1.3(c) of the EP&A Act).

### **Assessment of the Merits of the Draft Planning Agreement**

#### **The Planning Purposes Served by the Draft Planning Agreement**

The delivery of the contributions will provide community benefits associated with facilitating the delivery of public transport and social works envisaged by the relevant planning strategies of the Council.

#### **How the Draft Planning Agreement Promotes the Public Interest**

The delivery of the contributions under the Agreement will be in the public interest because they will result in the provision of public infrastructure and improve the amenity for residents of the broader locality. This could

## **Beresfield Battery Project Planning Agreement**

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include funding in part the following works noted in Appendix B of the City of Newcastle Section 7.12 Development Contributions Plan adopted 26 October 2021:

- Cycleway network
- Pedestrian accessibility and mobility network
- Bus shelters
- Town Centres Public Domain Improvements
- Digital Infrastructure
- Open Space and recreation facilities embellishment
- Community space embellishment

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

Yes. The Agreement requires the contributions to be made prior to the issue of a construction certificate for the development the subject of the Development Consent.