
DATED 22/6/2026

2026

Deniliquin Battery Energy Storage System

21541 Riverina Highway Deniliquin

PLANNING AGREEMENT
Environmental Planning and Assessment Act 1979 (NSW)

EDWARD RIVER COUNCIL ABN 90 407 359 958

and

AE BESS 4 Pty Ltd (ACN 669 179 006) as Trustee for AE BESS 4 Unit Trust



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THIS Deed is dated: 22/6/2026

PARTIES

EDWARD RIVER COUNCIL

ABN 90 407 359 958

of 180 Cressy Street, Deniliquin NSW 2710

(Council)

and

AE BESS 4 Pty Ltd (ACN 669 179 006) as Trustee for AE BESS 4 Unit Trust

of Suite 2, Level 10, 52 Alfred Street, Milsons Point NSW 2061

(Developer)

BACKGROUND

- A. The Land is located in the local government area of Council.
- B. The Developer proposes to carry out the Development on the Land.
- C. The Developer has lodged the Development Application in respect of the Development of the Land.
- D. The Developer has offered to enter into this Deed with Council to make the Development Contributions if Development Consent is granted for the Development of the Land.
- E. The Minister has approved Council entering into this Deed for the purposes of section 7.4(3A) of the Act.

OPERATIVE PROVISIONS

1. Definitions and interpretation

1.1. Definitions

In this Deed, unless the context clearly indicates otherwise, capitalised terms have the meaning given to them in Schedule 6.

1.2. Interpretation

In the interpretation of this Deed, the following rules apply, unless the context makes it clear that a rule is not intended to apply:

- (a) Headings are for convenience only, and do not affect interpretation.
- (b) A reference to:
 - i. a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - ii. a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;

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

2. Operation and application of this Deed

2.1. Operation

This Deed commences on and from the latter date of the following occurring:

- (a) the Deed is executed by all parties; and
- (b) the Development Consent is granted for the Development.

2.2. Planning agreement under the Act

- (a) This Deed constitutes a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 1 summarises the requirements for planning agreements under section 7.4 of the Act and the way the parties agree that this Deed addresses those requirements.

2.3. Application

This Deed applies to:

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

3. Application of sections 7.11, 7.12 and Subdivision 4, Division 7.1 of Part 7 of the Act

The application of sections 7.11, 7.12 and Subdivision 4, Division 7.1 of Part 7 of the Act apply to the extent provided at Table 1 of Schedule 1.

4. **Development Contributions**

4.1. **Developer to provide Development Contributions**

The Developer will make the Development Contributions to Council described in Schedule 3 at the time or times and in the manner set out in Schedule 3.

4.2. **Undertaking and Acknowledgement**

Subject to section 7.3 of the Act, Council undertakes to use or expend the Development Contributions for one or a combination of any public purposes, which are not wholly unrelated to the Development, and the Developer acknowledges that otherwise:

- (a) the Council has not made any warranty or representation that the Development Contributions (or any part of them) must, or will, be used for, or expended on, a particular purpose; and
- (b) the Council has no obligation to use or expend the Development Contributions (or any part of them) on a particular purpose.

4.3. **Interest**

If the Developer fails to pay any of the Development Contributions as required under this Deed in accordance with the timing set out in the table at clause 1 in Schedule 3 of this Deed (**Overdue Payment**), the Developer must also pay to Council interest at the rate as set from time to time in rule 36.7(1) of the *Uniform Civil Procedure Rules 2005* (NSW) in relation to the Overdue Payment. Interest is due on the daily balance of the Overdue Payment from the due date for payment of the Overdue Payment until all outstanding amounts (including interest on the Overdue Payment) have been paid to Council.

4.4. **Energisation**

The Developer must provide Council notice, in accordance with clause 15.15, promptly following Energisation.

5. **Review**

- (a) This Deed may be reviewed or modified by the parties at any time by agreement. Any review or modification of this Deed will be conducted in the circumstances and in the manner determined by the parties.
- (b) Any review or modification of this Deed under clause 5(a) must be done in accordance with s203(5) of the Regulation.

6. **Not used**

7. **Dispute Resolution**

7.1. **Contribution Amount**

If there is a dispute as to the value of a Contribution Amount payable by the Developer then:

- (a) the Developer is, if the Council demands it, to pay the undisputed amount; and
- (b) the parties are to follow the dispute resolution process outlined in this clause 7.

7.2. **Reference to dispute**

If a dispute arises between the parties in relation to this Deed (**Dispute**), the parties must not commence any court proceedings relating to the Dispute unless the parties have complied with clauses 7.3 to 7.6, except where a party seeks urgent interlocutory relief.

7.3. **Notice of dispute**

A party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) the nature of the Dispute;

- (b) the alleged basis of the Dispute; and
- (c) the position which the party issuing the Notice of Dispute believes is correct.

7.4. Representatives of parties to meet

The representatives of the parties must promptly (and in any event within 20 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified Dispute.

7.5. Further notice if not settled

If the Dispute is not resolved within 10 Business Days after the nominated representatives have met, either party may give to the other party a written notice calling for mediation of the Dispute under clause 7.6 (**Mediation Notice**).

7.6. Mediation

If a party gives a Mediation Notice calling for the Dispute to be mediated:

- (a) the parties must mediate the Dispute in accordance with the Mediation Guidelines of the Law Society of New South Wales published by the Law Society of New South Wales, from time to time;
- (b) the mediator will be agreed between the parties, or failing agreement within 15 Business Days of receipt of the Mediation Notice, either party may request the President of the Law Society of New South Wales to appoint a mediator;
- (c) the mediator appointed pursuant to this clause 7.6 must:
 - i. have reasonable qualifications and practical experience in the area of the Dispute; and
 - ii. have no interest or duty which conflicts or may conflict with his or her function as a mediator, he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) the mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) the parties must within 15 Business Days of receipt of the Mediation Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);
- (f) the parties must arrange and attend mediation within 6 weeks of the receipt of the Mediation Notice unless otherwise agreed by the parties in writing;
- (g) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (h) in relation to costs and expenses:
 - i. each party will bear its own costs incurred arising from or in connection with the mediation; and
 - ii. the costs of the mediator will be shared equally by the parties.

7.7. Expert Determination

- (a) If the mediation referred to in clause 7.6 has not resulted in settlement of the Dispute, the parties may by agreement jointly appoint an expert to determine the Dispute in accordance with this clause 7.7.
- (b) The expert must:
 - i. have no interest or duty which conflicts or may conflict with his or her function as an expert, he or she being required to fully disclose any such interest or duty before his or her appointment;
 - ii. act independently as an expert and not as an arbitrator; and

- iii. proceed with expedition in any manner as the expert thinks fit but must observe rules of natural justice but not the rules of evidence, not accept verbal submission unless other parties are present and on receipt of written submissions from one party ensure that a copy of such submission is given promptly to the other party or parties.
- (c) The parties must promptly comply with all directions given by the expert in relation to the resolution of the Dispute, including giving the expert any documents, records or information the expert requests.
- (d) The expert shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties in the expert determination.
- (e) The expert determination is binding on the parties, except in the case of fraud or misfeasance by the expert.
- (f) In relation to costs and expenses:
 - i. each party will bear its own costs arising from or in connection with the appointment of the expert and the expert determination; and
 - ii. the costs of the expert will be shared equally by the parties.

7.8. No suspension of contractual obligations

Subject to any interlocutory order obtained under clause 7.2, the referral to or undertaking of a Dispute resolution process under this clause 7 does not suspend the parties' obligations under this Deed.

7.9. Adjustment of amount payable

- (a) If, following resolution of the Dispute, it is determined that the Developer owes the Council an additional amount, then the Developer is required to pay that amount to the Council within 30 days.
- (b) If, following resolution of the Dispute, it is determined that the Developer has overpaid the Council, then the overpaid amount may be deducted from any unpaid further instalments of the Contribution Amount, or if there are no unpaid further instalments of the Contribution Amount, then Council is required to pay the overpaid amount to the Developer within 30 days.

7.10. Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 7 is to attempt to settle the Dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 7 for any purpose other than in an attempt to settle the Dispute.

8. Enforcement

8.1. Developer to provide Security

To secure the performance of the Developer's obligations under this Deed, the Developer will provide the Security to Council in accordance with the terms and procedures set out in Schedule 5.

8.2. Dispute Resolution

Without limiting any other remedies available to the parties, this Deed may be enforced by any party in any court of competent jurisdiction subject to clause 7 (Dispute Resolution) and clause 15.5 (Governing law and jurisdiction).

9. GST

9.1. Definitions

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

9.2. **Intention of the parties**

The parties intend that:

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

9.3. **Reimbursement**

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

9.4. **Consideration GST exclusive**

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Deed are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 9.

9.5. **Additional Amounts for GST**

- (a) To the extent an amount of GST is payable on a supply made by a party (**Supplier**) under or in connection with this Deed (**GST Amount**), the recipient must pay to the Supplier the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided. The Supplier must provide a tax invoice to the recipient on or before the date the consideration is payable.
- (b) Clause 9.5 applies to non-monetary consideration.

9.6. **No merger**

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

10. **Assignment and transfer**

10.1. **Right to assign or novate**

- (a) The Developer must not assign this Deed to any person except in accordance with this clause 10.1.
- (b) The Developer must not assign its rights or benefits or novate its obligations to another party, unless:
 - (i) the Developer is not in material breach of its obligations under this Deed;
 - (ii) the Developer has first satisfied Council (acting reasonably and without delay) that the person to whom the Developer's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise to perform the Developer's obligations under this Deed insofar as those obligations are to be assigned or novated to the Incoming Party;
 - (iii) the Developer has, at no cost to Council, first procured the execution of a deed by the Incoming Party with Council and the Developer on terms satisfactory to Council (acting reasonably and without delay) under which the Incoming Party agrees to comply with the terms and conditions of this Deed as though the Incoming Party were the Developer (**Incoming Party Deed**); and

- (iv) the Developer has obtained written notice from Council (acting reasonably and without delay) that Council is satisfied as to the requirements in clause 10.1(b)(i) to clause 10.1(b)(iii).
- (c) Within 20 Business Days of Council giving notice to the Developer under clause 10.1(b)(iv), Council agrees to initiate the process for exhibition of this Deed, if re-exhibition is required under the Act.
- (d) The Council agrees to countersign the Incoming Party Deed and return it to the Developer:
 - (i) within 14 days of the end of any exhibition period required pursuant to clause 10.1(c); or
 - (ii) if exhibition is not required, within 14 days of receipt of the Incoming Party Deed executed by the Developer and Incoming Party.
- (e) The Developer must pay Council's reasonable legal costs and other expenses incurred under this clause 10.1 within 28 Business Days of receipt of a tax invoice.

10.2. **Release**

The Council acknowledges and agrees that on and from the date of the fully executed Incoming Party Deed:

- (a) the Developer is released and discharged from all obligations arising under this Deed on and from the date of the Incoming Party Deed; and
- (b) Council will not seek to enforce the terms of this Deed against the Developer in the event of any breach of this Deed by the Incoming Party.

11. **Capacity**

11.1. **General warranties**

Each party warrants to each other party that:

- (a) this Deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms;
- (b) they have full capacity to enter into this Deed and are able to fully comply with their obligations under this Deed; and
- (c) unless otherwise stated, it has not entered into this Deed in the capacity of trustee of any trust.

11.2. **Power of attorney**

If an attorney executes this Deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

12. **No fetter**

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

13. **Trust**

13.1. Capacity of the Developer as Trustee

- (a) Subject to clauses 13.1(c) and 13.1(d):
 - (i) AE BESS 4 Pty Ltd (**Trustee**) enters into this Deed as trustee of the AE BESS 4 Unit Trust (**Trust**) and in no other capacity;

- (ii) a liability arising under or in connection with this Deed is limited to and can be enforced against the Trustee only to the extent to which it can be satisfied out of the assets of the Trust (provided that the Trustee has sought indemnification for such liability);
 - (iii) references to the property, assets, business and undertaking of the Trustee are references to those things in its capacity as trustee of the Trust only; and
 - (iv) this limitation of the Trustee's liability applies despite any other provisions of this Deed and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed.
- (b) Subject to clauses 13.1(c) and 13.1(d), no party may sue the Trustee in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver (except in relation to assets of the Trust or the Trustee's Indemnity where Trustee's Indemnity means the present and future right and interest of the Trustee, in its capacity as trustee of the Trust, in respect of the administration of the Trust, the Trustee's right of indemnity from the Trust or any beneficiary, now or in the future, of the Trust (**Trust Beneficiary**), any equitable lien or other security interest held by or granted to the Trustee securing the Trustee's right of indemnity or any other present or future interest of it as trustee in respect of the assets of the Trust or any Trust Beneficiary and all moneys paid or payable under or in respect of any such right or interest), a liquidator, an administrator or any similar person to the Trustee or prove in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to the assets of the Trust or the Trustee's Indemnity).
- (c) The provisions of this clause 13.1 will not apply to any obligation or liability of the Trustee arising as a result of a reduction, or to the extent it is not satisfied because under the Trust Deed or by operation of law there is a reduction, in the extent of the Trustee's indemnification out of the assets of the Trust as a result of any of the following:
 - (i) the Trustee's fraud, wilful misconduct or deliberate breach of trust (or any other act or omission that a court determines should reduce the Trustee's indemnification as a matter of law);
 - (ii) any breach by the Trustee of any order or other relief obtained by another party to this Deed referred to in clause 13.1(d);
 - (iii) any wilful breach of this document; or
 - (iv) without limiting clause 13.1(c)(iii), any breach of clause 13.1(g).
- (d) Nothing in clauses 13.1(a), 13.1(b) or 13.1(c) prevents another party to this Deed obtaining any injunctive relief, order for specific performance, declaration or similar relief against the Trustee, proving or participating in, and otherwise benefiting from, any form of insolvency administration of the Trustee but only with respect to Trust assets or the Trustee's Indemnity, or bringing any other proceedings against the Trustee seeking relief or orders that are not inconsistent with the limitations in this clause.
- (e) No attorney, agent, receiver or receiver and manager appointed by another party to this Deed in accordance with this Deed has authority to act on behalf of the Trustee in a way which exposes the Trustee to any liability other than in its capacity as trustee and no act or omission of any such person will be considered fraud, negligence or breach of trust of the Trustee for the purpose of clause 13.1(c)(i).
- (f) The limitation in clause 13.1(a) is to be disregarded for the purpose of determining the following:

- (i) whether amounts are to be regarded as payable (and for this purpose damages or other amounts will be regarded as payable if they would have been owed had a barred suit or action been brought);
 - (ii) the calculation of amounts owing; or
 - (iii) whether a breach or default has occurred,
 - (iv) but any resulting liability will be subject to the limitations in this clause 13.1.
- (g) The Trustee represents and warrants that:
- (i) the Trust has been duly constituted and has not been terminated, nor has the date or any event occurred for the vesting of the Trust;
 - (ii) it is the sole trustee of the Trust, it has not given any notice of resignation and no action has been taken to remove it or to appoint an additional trustee to the Trust;
 - (iii) it has full legal capacity and power under the trust deed for the Trust (**Trust Deed**) to be the legal owner of the assets of the Trust and carry on the business of the Trust as it is now being conducted;
 - (iv) it has full legal capacity and power under the Trust Deed to execute this Deed and carry out the obligations contemplated by this Deed as the deed of the Trust;
 - (v) it has taken all required action under the Trust Deed to authorise its execution of this Deed and the performance of its obligations contemplated by this Deed and ensure the agreement is valid and binding on it as the trustee of the Trust;
 - (vi) it is executing this Deed and will perform its obligations as contemplated by this Deed as part of the proper administration of the Trust, for the commercial benefit of the Trust, and for the benefit of the beneficiaries of the Trust;
 - (v) there is no restriction or limitation on its right to be indemnified out of the assets of the Trust;
 - (vi) all rights of indemnity and any equitable lien which the Trustee has over the assets of the Trust will have priority over the rights of the beneficiaries of the Trust; and
 - (vii) it is not in breach of its obligations as the trustee of the Trust.

14. **Termination**

- (a) This Deed will terminate on the date of any of the following occurring:
 - (i) the Development Consent issued in respect of the Development lapses;
 - (ii) the Development Consent issued in respect of the Development is surrendered under s4.63 of the Act; or
 - (iii) the Developer makes the twentieth (20th) payment of the Annual Contribution Amount.
(Termination Date)
- (b) On and from the Termination Date, the Developer is released from all future obligations under this Deed and Council is entitled to retain any and all Development Contributions paid by the Developer to Council before the Termination Date under this Deed.
- (c) Following the Termination Date, Council is to return any Security to the Developer in accordance with this Deed.
- (d) This clause 14 does not merge on the termination of this Deed.

15. General Provisions

15.1. Entire Agreement

This Deed constitutes the entire agreement between the parties regarding the subject matter of this Deed and supersedes any prior negotiations, representations, understandings or arrangements made between the parties, whether orally or in writing.

15.2. Waiver

- (a) A right created by this Deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligations by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligations or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

15.3. Further assurances

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give full effect to the arrangements contained in this Deed.

15.4. Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this Deed,
 expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5:00 pm on the specified day, it is taken to have been done on the following Business Day.

15.5. Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this Deed.
- (b) The parties submit to the exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

15.6. Severability

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

15.7. Preservation of existing rights

The expiration or termination of this Deed does not affect any right that has accrued to a party before the expiration or termination date.

15.8. No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Deed for any reason, does not merge on the occurrence of that event but remains in full force and effect.

15.9. **Counterparts**

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

15.10. **Electronic Execution**

The parties irrevocably:

- (a) consent to any party signing this Deed electronically by means of a digital signature or a visual representation of a person's handwritten signature or mark; and
- (b) confirm that electronic execution by a party is evidence of that party's identity and intention to be bound by the electronic signature and this Deed.

15.11. **Relationship of parties**

Unless otherwise stated:

- (a) nothing in this Deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

15.12. **Good faith**

Each party must act in good faith towards all other parties to this Deed and use its best endeavours to comply with the spirit and intention of this Deed.

15.13. **Explanatory note**

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

15.14. **Expenses and stamp duty**

- (a) The Developer must pay its own legal costs and disbursements and must pay Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this Deed and the Explanatory Note in accordance with the Regulation, such amounts to be included within the cap in clause 15.14(a).
- (c) The Developer must pay by deposit by means of electronic funds transfer into an account specified by Council in writing, or such other alternative method of payment if agreed with Council, in respect of Council's costs pursuant to clauses 15.14(a) and 15.14(b):
 - (i) where Council has provided the Developer with a tax invoice of the sum of such costs prior to execution, within 10 Business Days after the date of execution of this Deed; or
 - (ii) where Council has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days after receipt of the tax invoice from Council of the sum of such costs and demand for payment.

15.15. **Notices**

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this Deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by prepaid ordinary mail within Australia; or

- (iii) sent by email.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery but if delivery occurs after 5:00 pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
 - (ii) sent by prepaid ordinary mail within Australia, on the date that is 7 Business Days after the date of posting; or
 - (iii) sent by email:
 - A. before 5:00 pm on a Business Day, on that day;
 - B. after 5:00 pm on a Business Day, on the next Business Day after it is sent; or
 - C. on a day that it is not a Business Day, on the next Business Day after it is sent, provided that the sender does not receive a delivery failure notice.

Schedule 1 (Requirements under the Act)

Table 1 - Requirements under section 7.4 of the Act

Requirement under the Act	This Deed
Planning instrument and/or development application – (section 7.4(1)) The Developer has: (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) No (b) Yes (c) No
Description of the land to which this Deed applies – (section 7.4(3)(a))	See Schedule 2
Description of development to which this Deed applies – (section 7.4(3)(b))	See Schedule 2
Description of change to the environmental planning instrument to which this Deed applies – (section 7.4(3)(b))	Not applicable
The scope, timing and manner of delivery of contribution required by this Deed – (section 7.4(3)(c))	See Schedule 3
Applicability of sections 7.11 and 7.12 of the Act – (section 7.4(3)(d))	Sections 7.11 and 7.12 of the Act are excluded .
Applicability of Subdivision 4, Division 7.1 of Part 7 of the Act – (section 7.4(3)(d))	Subdivision 4, Division 7.1 of Part 7 is excluded .
Consideration of benefits under this Deed if section 7.11 applies – (section 7.4(3)(e))	Not applicable.
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See clause 7
Enforcement of this Deed – (section 7.4(3)(g))	See clause 8
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause 12

Table 2 – Other matters

Requirement under the Act	This Deed
Registration of the Planning Agreement – (section 7.6)	Not applicable.
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued	Security must be provided by the Developer to Council (Schedule 5, clause 2). The Initial Upfront Contribution Amount must be paid by the Developer to Council (Schedule 3, clause 1).
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued	Not applicable.

Schedule 2 (Deed Details)
(clause 1.1)

Item	Term	Description		
1	Land	Lot	Deposited Plan	Registered Proprietor
		2	536901	Clive Alexander Landale
		as shown as cross-hatched on the plan at Annexure A to this Deed		
2	Development	The construction and operation of a battery energy storage system with and estimated capacity of 120MW / 480MWh and associated infrastructure, including connection into transmission infrastructure.		
3	Planning Proposal	Not applicable.		
4	Development Application	State Significant Development Application SSD-72258210		
5	Address for Service	Council Edward River Council Attention: Director Corporate Services Address: 180 Cressy Street, Deniliquin NSW 2710 Email: council@edwardriver.nsw.gov.au		
		Developer AE BESS 4 Pty Ltd (ACN 669 179 006) as Trustee for AE BESS 4 Unit Trust Attention: Tom Lukins Address: Suite 2, Level 10, 52 Alfred St, Milsons Point, NSW 2061 Email: tom.lukins@avenisenergy.com.au		

Schedule 3 (Development Contributions)
(clause 4)

1. Development Contributions

The Developer must pay the Development Contributions to Council, totalling \$1,440,000.00 (subject to indexation in accordance with clause 2 of this Schedule), at the time or times and in the manner set out in the table below:

	Development Contributions: Nature & Extent	Timing
1.	Initial Upfront Contribution Amount	The Developer must pay the Initial Upfront Contribution Amount (subject to indexation in accordance with clause 2 of this Schedule) to Council prior to the issue of a Construction Certificate in respect of the Development.
2.	Second Upfront Contribution Amount	The Developer must pay the Second Upfront Contribution Amount (subject to indexation in accordance with clause 2 of this Schedule) to Council on the Commercial Operation Date (Contribution Payment Date).
3.	Annual Contribution Amount	The Developer must pay the Annual Contribution Amount (subject to indexation in accordance with clause 2 of this Schedule) on each anniversary of the Contribution Payment Date for 20 years (i.e., a total of 20 instalments).

2. Indexation formula for Development Contributions

Any amount specified as the:

- (a) Initial Upfront Contribution Amount, but only if the payment of the Initial Upfront Contribution Amount occurs on a date that is later than 12 months after the date of this Deed;
- (b) Second Upfront Contribution Amount; or
- (c) Annual Contribution Amount,

must be increased annually on the date of the publication of the June quarterly CPI by the Commonwealth Statistician in accordance with the following formula:

$$A = B \times \left(\frac{C}{D} \right)$$

Where:

A is the indexed amount;

B is the monetary amount specified as either:

- (a) \$144,000, in the case of the Initial Upfront Contribution Amount;
- (b) \$144,000 in the case of the Second Upfront Contribution Amount; or

(c) \$57,600 in the case of the Annual Contribution Amount.

C is the most recent June quarter CPI published as at the date of calculation; and

D is the most recent June quarter CPI published as at the date of this Deed.

3. Payment in advance

Nothing in this Deed shall be read as to prevent the Developer from paying any of the remaining value of monetary contributions in advance.

Schedule 4 (Explanatory Note)

1. Introduction

- (a) The purpose of this **Explanatory Note** is to provide a plain English summary in support of the notification for the proposed Planning Agreement, made pursuant to section 7.4 of the *Environmental Planning & Assessment Act 1979*, for the proposed construction and operation of a battery energy storage system with an estimated capacity of 120MW / 480MWh and associated infrastructure, including connection into transmission infrastructure (**Development**) in the local government area of Edward River Council (**Planning Agreement**).
- (b) This Explanatory Note has been prepared jointly by the Parties as required by clause 205 of the *Environmental Planning & Assessment Regulation 2021*.

2. Parties to the Planning Agreement

The parties to the Planning Agreement are:

EDWARD RIVER COUNCIL ABN 90 407 359 958
of 180 Cressy Street, Deniliquin NSW 2710
(Council)

and

AE BESS 4 Pty Ltd (ACN 669 179 006) as Trustee for AE BESS 4 Unit Trust
(Developer)

3. Land to which the Planning Agreement Applies

The Planning Agreement applies to Lot 2 in DP536901.

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

- (a) The objective of the Planning Agreement is to secure ongoing monetary contributions from the Developer for the Development for use by Council for public purposes.
- (b) The nature of the Planning Agreement is a written agreement executed by the Developer and Council under section 7.4 of the *Environmental Planning and Assessment Act 1979* which provides for the Developer to make contributions (as defined in Schedule 3 of the Planning Agreement) to Council for public purposes.
- (c) The effect of the Planning Agreement is that:
 - (i) it relates to the carrying out of the Development by the Developer;
 - (ii) makes provision for the Developer to make financial contributions to Council over time totalling \$1,440,000 (as adjusted annually for CPI);
 - (iii) it excludes the application of section 7.11, section 7.12 and Subdivision 4, Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979*;

- (iv) it does not require the registration of the agreement on title to the subject land;
- (v) requires the Developer to pay interest on late payments of financial contributions;
- (vi) requires the Developer to provide security of \$432,000.00 for the financial contributions, by way of a cash security deposit, a bank guarantee or insurance bond; and
- (vii) provides dispute resolution methods for a dispute under the agreement.

5. Assessment of the Merits of the Planning Agreement

The positive impacts of the Planning Agreement on the public (or relevant sections of the public) are:

- (a) The development of renewable energy infrastructure; and
- (b) The provision of funding over the life of the Developer's project to be used by Council for a public benefit administered in a community benefit fund.

The negative impacts of the Planning Agreement on the public (or relevant sections of the public) are:

- (a) Nil.

6. Identify how the Planning Agreement promotes the public interest

The Planning Agreement promotes the public interest by:

- (a) Facilitating and supporting renewable energy developments; and
- (b) Delivering funding over the life of the Developer's project to be used by Council for a public benefit administered in a community benefit fund.

7. Whether the Planning Agreement conforms with the planning authority's Capital Works Program

The Planning Agreement provides that the development contributions shall be used for a public purpose not wholly unrelated to the Development, but otherwise the Planning Agreement does not restrict how Council will use or expend the development contributions, which may include expenditure related to Council's Capital Works Program.

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

Before the issuance of a Construction Certificate for the Development, the Developer must provide to Council:

- (a) the Security for the financial contributions of \$432,000.00; and
- (b) the Initial Upfront Contribution Amount of \$144,000.00 (as adjusted annually for CPI).

9. Construction of the Agreement

This Explanatory Note is not to be used to interpret the Planning Agreement.

Schedule 5 (Security Terms)

(clause 8.1)

1. Developer to provide Security

- (a) In order to secure the payment of the Development Contributions the Developer has agreed to provide the Security.
- (b) The Security must:
 - (i) name Council; and
 - (ii) not have an expiry date.

2. Security

- (a) Prior to the issue of the first Construction Certificate for the Development, the Developer must provide the Security to the Council having a face value amount of \$432,000.00 (**Security Amount**) in order to secure the Developer's obligations under this Agreement.
- (b) Subject to clause 4 and clause 5(b) of this Schedule 5, Council is entitled to retain the Security until the Developer has satisfied all of its obligations under this Deed.

3. Claims on Security

- (a) Council may:
 - (i) call upon the Security where the Developer has failed to pay a Contribution Amount on or after the date for payment under this Deed; and
 - (ii) retain and apply such monies towards the Contribution Amount and any costs and expenses incurred by the Council in rectifying any default by the Developer under this Deed.
- (b) Prior to calling upon the Security, Council must give the Developer not less than 10 Business Days written notice of its intention to call upon the Security.
- (c) If:
 - (i) Council calls upon the Security; and
 - (ii) applies all or part of such monies towards the Contribution Amount and any costs and expenses incurred by the Council in rectifying any default by the Developer under this Deed; and
 - (iii) has notified the Developer of the call upon the Security in accordance with clause 1.1(b) of this Schedule 5,

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

4. Replacement Security

- (a) The Developer may:
 - (i) following the tenth and fifteenth payment of the Annual Contribution Amount; or
 - (ii) at any time where the Security amount exceeds the amount of outstanding Development Contributions payable under this Deed,

provide Council with replacement Security, provided that the replacement Security is in an amount that is not less than 30% of the outstanding Development Contributions payable under this Deed at the date the replacement Security is provided.

- (b) On receipt of a replacement Security, the Council must promptly release and return the Security that has been replaced to the Developer.

5. Release of Security

- (a) If the Developer has satisfied all of its obligations under this Deed and the whole of the monies secured has not been expended then Council will promptly return the security, or the remainder of the monies secured (as the case may be), to the Developer.
- (b) If:
 - (i) the Deed is assigned in accordance with clause 10 of this Deed; or
 - (ii) the Deed is terminated under clause 14 of this Deed; and
 - (iii) the whole of the monies secured has not been expended,then Council will promptly return the security, or the remainder of the monies secured (as the case may be), to the Developer, provided the Developer has complied with all its obligations under this Deed as at the date of assignment or termination.
- (c) The Developer will reimburse the Council for any reasonable external costs, charges, duties and taxes paid by it in relation to its holding and releasing of the security in accordance with this Schedule.

Schedule 6 (Definitions)

(clause 1.1)

In this Deed, unless the context clearly indicates otherwise:

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

Address for Service means the address of each party identified at Item 5 of Schedule 2 or any new address notified in writing by any party to the other party as its new Address for Service.

Annual Contribution Amount means \$57,600.00 as indexed in accordance with Schedule 3.

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

Commencement means the date this Deed commences pursuant to clause 2.1.

Commercial Operation Date means the date on which Energisation occurs.

Construction Certificate has the same meaning given to that term in the Act.

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

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth statistician or, if that index no longer exists, any similar index as agreed by the parties.

Council means Edward River Council ABN 90 407 359 958

Deed means this planning agreement, including any schedules, annexures or appendices to it.

Developer means AE BESS 4 Pty Ltd (ACN 669 179 006) as Trustee for AE BESS 4 Unit Trust or any assignee or transferee or successor who purports to act or rely on the Development Consent relating to the Development (as applicable).

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

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

Development Consent has the same meaning as in the Act.

Development Contributions means a monetary contribution, the dedication of land free of cost or the provision of any other material public benefit, or any combination of them, to be used for or applied towards a public purpose.

Energisation means when all the following has occurred:

- (a) a 'Certificate of Practical Completion' has been issued for the Development under the relevant construction contract for the Development;
- (b) registration of the Development has been completed with the relevant Network Service Provider and Australian Energy Market Operator where required;
- (c) the Development is electrically connected to, and capable of importing and exporting power from, the electricity network;
- (d) all commissioning tests and regulatory requirements have been successfully passed for the Development, including hold point testing and commissioning under the relevant connection agreements for the Development and the National Electricity Rules; and
- (e) all approvals required to operate the Development have been obtained

Explanatory Note means the note provided in Schedule 4 and exhibited with a copy of this Deed when this Deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

GST has the same meaning as in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Initial Upfront Contribution Amount means \$144,000.00 as indexed in accordance with Schedule 3.

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

Landowner means each of the registered proprietors identified at Item 1 of Schedule 2 in respect of the Land.

Occupation Certificate has the same meaning given to that term in the Act.

Regulation means the *Environmental Planning and Assessment Regulation 2021* (NSW).

Second Upfront Contribution Amount means \$144,000.00 as indexed in accordance with Schedule 3.

Security means a Security Deposit or an unconditional Bank Guarantee or an Insurance Bond from an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC08/01 dated 21 February 2008 as amended, supplemented or substituted from time to time.

Security Deposit means a payment by the Developer to secure its obligations as required under this Deed to be made to Council which to be deposited into an interest-bearing account in the Council's name for the duration of this Deed. The interest shall be accumulated and added to the amount held as the Security Deposit.

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

Annexure A (Plan of the Land)



EXECUTION PAGE

Executed as a Deed



THE SEAL of EDWARD RIVER COUNCIL ABN 90 407 359 958 was affixed in accordance with section 400 of the *Local Government (General) Regulation 2021* and witnessed by the following persons:

A handwritten signature in black ink, appearing to be "S. Kerrison", written over a horizontal dotted line.

Mayor

A handwritten signature in black ink, appearing to be "J. Gault", written over a horizontal dotted line.

General Manager

EXECUTED by AE BESS 4 Pty Ltd (ACN 669 179 006) as Trustee for AE BESS 4 Unit Trust in accordance with section 127 of the *Corporations Act 2001* (Cth):

A handwritten signature in black ink, appearing to be "S. Kerrison", written over a horizontal dotted line.

Signature of Director

Simon Kerrison

Name of Director

A handwritten signature in black ink, appearing to be "Imran Sheikh", written over a horizontal dotted line.

Signature of Director/Secretary

Imran Sheikh

Name of Director/Secretary

