

**PLANNING AGREEMENT**

Ridgey Creek Battery Energy Storage System  
(SSD-48756517)

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**BETWEEN**

Ridgey Creek BESS Pty Ltd

and

Parkes Shire Council

20<sup>th</sup> August 2024

## Planning Agreement: Ridgely Creek BESS

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## Details

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### Parties

Name **Parkes Shire Council**  
**ABN: 96 299 629 630**

Short form name **PSC**  
Notice details The General Manager  
Parkes Shire Council  
2 Cecile Street | PO Box 337  
Parkes NSW 2870  
council@parkes.nsw.gov.au

Name **Ridgey Creek BESS Pty Ltd**  
**ABN 50 655 361 292**

Short form name The Company

Notice details Director: Victor Bocioc  
Level 36, Governor Phillip Tower  
1 Farrer Place,  
Sydney NSW 2000

### Background

- A. Ridgey Creek BESS Pty Ltd (the **Company**), plans to build, own and operate the Ridgey Creek Battery Energy Storage System (BESS) on a site 10 km west of Parkes, NSW adjacent to the Henry Parkes Way. The facility is proposed to have a maximum output of 130 MW and a maximum energy storage of 260 MWh. The facility is planned to have an operational life of up to 30 years. The construction period will be approximately 18 months, with a peak of 50 workers. There may be one or two operational workers.
- B. As contemplated by section 7.4 of the Environmental Planning & Assessment Act (**'Planning Agreements'**), the Company wishes to make, and Parkes Shire Council (**'PSC'**) wishes to receive, Development Contributions for the benefit of residents and ratepayers and to do so efficiently and equitably through the management services provided by PSC, with input from the community and the Company.
- C. The Company commits to paying to PSC, Development Contributions to the total value of \$680,000 (2024 dollars, indexed to CPI) in accordance with the terms set out in this Agreement.
- D. The Company and PSC have negotiated this Planning Agreement whereby the Company agrees to provide Development Contributions to PSC to fund community enhancement projects as deemed

appropriate by both parties. Indicatively, the Development Contributions will be allocated 95% to Community Benefit Projects and 5% to administration, unless otherwise agreed by the parties.

- E. To avoid any doubt, the Company will pay for all road upgrade and 'make good' road maintenance costs associated with the Project's construction, refurbishment and decommissioning phases, as required by Conditions of Consent and also Council's responsibilities as the local Roads Authority. Such payments lie outside the ambit of the Planning Agreement.

## Agreed terms

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### 1. Defined terms & interpretation

#### 1.1 Defined terms

The meaning of capitalised terms and the provisions relating to the interpretation of this Agreement are as follows:

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

**Agreement** means this Planning Agreement including any schedules.

**Annual Payment** means the annual Development Contribution of \$21,500 + CPI from the Company to PSC. First paid at the Commencement of Operations (defined below) and for a total of twenty years.

**Approval** means any consent, modification, certificate, licence, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this Agreement.

**Authority** means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal or agency.

**Business Day** means any day except for a Saturday, Sunday, or bank or public holiday in New South Wales.

**Cash Rate** means the interest rate determined by the Reserve Bank of Australia which banks pay to borrow funds from other banks in the money market on an overnight basis. For the avoidance of doubt, the term Cash Rate has the same meaning as that adopted by the Reserve Bank of Australia.

**Commencement Date** means the date on which this Agreement comes into effect in accordance with clause 4.

**Commencement of Construction** means at the commencement of Project-related construction activity, including public road upgrading works.

**Commencement of Operations** means electro-mechanical completion of the Project so that the Project has fully completed all reports and tests by Network Service Provider and AEMO and generates revenue.

**CPI** means the All-Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics.

**Decommissioning** means that the facility and associated infrastructure is removed from the site and the site is rehabilitated, allowing land to be returned to its former use.

**Development** means the Ridgely Creek BESS that is the subject of the Development Consent.

**Development Application** has the same meaning as in part 4 of the Act.

**Development Consent** means the consent issued by the Minister for Planning in respect of the Ridgely Creek BESS, namely State Significant Development (SSD) number SSD-48756517.

**Development Contributions** means the financial contributions to be made by Ridgely Creek BESS Pty Ltd to PSC for a 'Public Purpose' as defined herein and in accordance with clause 5.

**DPHI** means the NSW Department of Planning, Housing and Infrastructure.

**GST** has the same meaning as in the GST Law.

**GST Law** has the same meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

**Initial Payment** means the initial Development Contribution of \$250,000 + CPI from the Company to PSC. Payable at the Commencement of Construction.

**Interest Rate** means the rate which is the Cash Rate as set by the Reserve Bank of Australia as at the date that payments fall due, plus a margin of 2% per annum.

**Law** means:

- (a) the common law including principles of equity;
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations and by-laws; and
- (c) any Approval, including any condition or requirement under it.

**LGA** means the Local Government Area.

**Minor Modification** means a modification that addresses a minor error, misdescription or miscalculation, or a modification that a person acting reasonably would determine involves minimal, negligible or inconsequential environmental, social or economic impacts, relative to the scale of the original project.

**Modification** means a modification to the Development Consent that would result in material changes to the approved Development.

**Party** means a party to this Agreement, including their successors and assigns.

**Planning Agreement** has the same meaning as in section 7.1 of the Act.

**Project** means the Ridgely Creek BESS that is the subject of the Development Consent.

**Proposed System Size** means the system size of the Project, which at the time of this Agreement is 130MW/260MWh.

**Public Purpose** has the same meaning as in the Act and includes (without limitation) any of the following:

- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services,
- (b) the provision of (or the recoupment of the cost of providing) affordable housing,
- (c) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,
- (d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,
- (e) the monitoring of the planning impacts of development, and
- (f) the conservation or enhancement of the natural environment.

**Public Purpose Projects**, also known as Community Benefit Projects, means projects that benefit the public of Parkes Shire and are in accord with the public purpose provisions of the Act and as selected for funding by Council, the community and the Company.

**Register** means the Torrens Title register maintained under the *Real Property Act 1900* (NSW).

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

**Reserve Bank of Australia** means Australia's central bank as constituted under the *Reserve Bank Act 1959* (Cth).

**Tax Invoice** has the same meaning as in the GST Law.

**Term** means from the Commencement Date of the Planning Agreement until the cessation of BESS operations, refurbishment and site decommissioning, as specified in the Development Consent.

**PSC** means Parkes Shire Council.

**BESS Operations** has the same meaning as in the Development Consent.

## 1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to time is to Sydney, NSW, Australia time;
- (g) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more Parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more Parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it; and



- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed, or the event must occur on or by the next Business Day.

### **1.3 Headings**

Headings are for ease of reference only and do not affect interpretation.

## **2. Planning Agreement under the Act**

The Parties agree that this Agreement is a Planning Agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

## **3. Application of this Agreement**

This Agreement applies to the Development.

## **4. Operation of this Agreement**

This Agreement takes effect from the date the Agreement is signed as required by section 203 of the Regulation.

## **5. Development Contributions**

- a) The Planning Agreement shall include provisions for the payment, collection, management and distribution of the Development Contributions under the Agreement;
- b) Subject to this Planning Agreement, the Company will pay Development Contributions to PSC to the total value of \$680,000 (2024 dollars, indexed to CPI) over the life of the Project;
- c) Upon notification by the Company to PSC of the Commencement of Construction (including public road upgrading works) of the Project, PSC shall submit to the Company a valid tax invoice for the initial Development Contribution of \$250,000 + CPI (Initial Payment). The Initial Payment is payable within 30 days of the issuance of a valid tax invoice;
- d) The first Annual Payment of \$21,500 +CPI (**Annual Payment**) shall be made upon the Commencement of Operations. Upon notification by the Company of the Commencement of Operations, PSC shall submit to the Company a valid tax invoice for the first and each of the subsequent Annual Payments which shall be payable within 30 days of the issuance of a valid tax invoice. The final Annual Payment will be made upon the commencement of the twentieth year of operations. Total of the Annual Payments to be \$430,000 plus CPI, effective from 1 January 2024;
- e) The Planning Agreement will incorporate provisions enabling termination of the Agreement should operations cease before the 20 years mark. In such circumstances Annual Payments would cease in alignment with the year of termination;
- f) Each party will pay their own legal costs and incidentals for the negotiation, preparation, and execution of this agreement;
- g) A Company representative is to be included in the Council-initiated meetings that decide how contributions are to be allocated;
- h) Except with the prior approval of the Council-initiated meetings, the Development Contributions will be allocated as follows: 95% to Public Purpose Projects and 5% for Council-related administration;

- i) The Company, Council and the local community representative in the Council-initiated meetings will frame the evaluation criteria for the selection of suitable projects including factors such as population in the project catchment, scope and versatility of the project to deliver different community benefits, enhancement of social wellbeing, improvement in education and skills in the local population, etc so that it leaves a lasting, substantive legacy; and
- j) PSC and the Company may publicly recognise the Company's Development Contribution and Public Purpose Projects in accordance with this sub-clause (j). PSC will liaise with the Company regarding any intended advertising, packaging and promotional communication material involving the Company and the Development Contribution. Both Parties will review the requests and documentation for approval in good faith and will not unreasonably withhold consent.

## 6. Indexation of Development Contributions

Where this Agreement provides that an amount is to be increased by CPI, then the amount will be increased in accordance the following formula:

$$A = B \times C/D$$

Where:

A = the current Development Contribution payable.

B = the contribution amount or rate stated in the Agreement.

C = the CPI most recently published before the date of payment for the current Development Contribution.

D = the CPI most recently published before the date of signing this Agreement.

## 7. Registration of this Agreement

### 7.1 Registration of this Agreement

- (a) Unless otherwise required by law, the Parties agree that this Agreement does not need to be registered on the Register to the land that is the subject of the Development.

## 8. Dispute Resolution

### 8.1 No arbitration or court proceedings

If a dispute arises out of this Agreement (**Dispute**), a Party must comply with this clause 8 before starting arbitration or court proceedings (except proceedings for interlocutory or other urgent relief).

### 8.2 Notification

- (a) A Party claiming a Dispute has arisen must give the other Party to the Dispute notice setting out details of the Dispute. The Dispute Notice must:
  - (i) be in writing;
  - (ii) include or be accompanied by reasonable particulars of the Dispute including:
    - (A) a brief description of the circumstances in which the Dispute arose;
    - (B) references to any provisions of this document acts, errors or omissions of any person, relevant to the Dispute; and
    - (C) where applicable, the financial quantum in dispute and if not precisely known, the best estimate available.

**8.3 Parties to resolve Dispute**

During the 30 days after a notice is given under clause 8.2 (or longer period if the Parties to the Dispute agree in writing), each Party to the Dispute must use its reasonable efforts to resolve the Dispute. If the Parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them so requests.

**8.4 Mediation**

- (a) If the Parties cannot resolve the Dispute within the 30 days, they must refer the Dispute to an accredited mediator if one of them so requests and the Parties must mediate the Dispute in accordance with the Mediation Rules the Australian Institute of Arbitrators and Mediators.
- (b) If the Parties do not agree on a mediator, either Party may request the President of the Australian Institute of Arbitrators and Mediators select the mediator and determine the mediator's remuneration, the costs of which must be borne equally by the Parties.
- (c) The Parties commit to adopting a spirit of goodwill and compromise, with an equal sharing of power, to reach a resolution within 60 days.

**8.5 Confidentiality**

Any information or documents disclosed by a Party under this clause 8:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

**8.6 Costs Incurred in Disputation**

Each Party to a Dispute must pay its own costs of complying with this clause 8. The Parties to the Dispute must equally pay the costs of any Mediator.

**8.7 Termination of process**

- (a) A Party to a Dispute may terminate the dispute resolution process by giving notice to each other after it has complied with clauses 8.1 to 8.3.
- (b) Clauses 8.5 and 8.6 survive termination of the dispute resolution process.

**8.8 Breach of this clause**

If a Party to a Dispute breaches this clause 8, the other Party to the Dispute does not have to comply with those clauses in relation to the Dispute.

**9. Enforcement**

- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any Court of competent jurisdiction, subject to clause 8.
- (b) Nothing in this Agreement prevents:
  - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
  - (ii) PSC from exercising any function under the Act or any other Act or Law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

**10. Termination**

- (a) This Agreement will terminate:

- (i) on the declaration by a court of competent jurisdiction that the Development Consent for the Development is invalid; or
  - (ii) upon notice to PSC by the Company, that the Project ceases to be constructed or ceases operation; or
  - (iii) at the end of the Term.
- (b) In the event of termination of this Agreement, any funds that have been paid by the Company as Development Contributions prior to termination:
- (i) can continue to be expended in accordance with the terms of this Agreement; and
  - (ii) are not refundable by PSC to the Company.

## 11. Review of this Agreement

- (a) During the Term of this Agreement, the Parties agree to act in good faith and a spirit of co-operation to promptly review and possibly amend or replace clauses in the Agreement. The Development Contributions stated herein will remain payable by the Company until such time as:
- (i) The Parties agree to modify them; or
  - (ii) Subject to clause 11(b), the Development Consent is the subject of a Modification or a new but related Development Application whereby the scope, extent or capacity of the Development is increased.
- (b) PSC agrees that if the Development Consent is the subject of a Minor Modification (as defined herein), a Modification or a new but related Development Application whereby the Proposed System Size as defined in this Agreement remains unchanged, then the Development Contributions will not be increased (except for CPI adjustments).
- (c) In the event that clause 11(a) is triggered and both Parties are unable to agree to amend or replace the Agreement, the Agreement shall remain in force.
- (d) No modification or review of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.
- (e) Regardless, at the commencement of the final two years of the Development, the Parties agree to discuss any future related development plans and, if appropriate, negotiate a replacement for, or an extension of, this Agreement as determined by circumstances at the time. Until such time as a new Agreement is struck, this current Agreement shall remain in force as per the terms herein.

## 12. No Fetter

### 12.1 Discretion

This Agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of PSC, including but not limited to any statutory power or discretion of PSC relating to the assessment and determination of any Development Application for the Development (all referred to in this Agreement as a **Discretion**).

### 12.2 No fetter

No provision of this Agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this Agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the Parties agree:

- (a) they will take all practical steps, including the execution of any further documents to ensure the objective of this clause is substantially satisfied;
- (b) in the event that clause 12.2(a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect; and
- (c) to endeavour to satisfy the common objectives of the Parties in relation to the provision of this Agreement, which is to be held to be a fetter to the extent that is possible, having regard to the relevant court judgment.

### 13. Notices

#### 13.1 Notices

Any notice given under or in connection with this Agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by email, by hand or, by prepaid post at the address below, or at the address last notified by the intended recipient to the sender after the date of this Agreement:

Name           **Parkes Shire Council**  
The General Manager  
  
Parkes Shire Council  
2 Cecile Street | PO Box 337  
Parkes NSW 2870  
council@parkes.nsw.gov.au

Name           Ridgey Creek BESS Pty Ltd  
Attention: Victor Bocioc  
  
Level 36, Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000

- (c) is taken to be given and made:
  - (i) in the case of email, when a delivery or read receipt notice is received by the sender;
  - (ii) in the case of delivery by post, seven Business Days after the date of posting (if posted to an address in the same country) or ten Business Days after the date of posting (if posted to an address in another country); and
  - (iii) in the case of hand delivery, when delivered.
- (d) if under clause 13.1(c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

## **14. GST**

### **14.1 Defined GST terms**

In this clause 14, words and expressions which are not defined in this Agreement, but which have a defined meaning in the GST Law have the same meaning as in the GST Law.

### **14.2 GST to be added to amounts payable**

If GST is payable on a taxable supply made under, by reference to or in connection with this Agreement, the Party providing the consideration for that Taxable Supply must also pay the GST Amount as additional consideration. This clause does not apply to the extent that the consideration for the Taxable Supply is expressly agreed to be GST inclusive, unless otherwise expressly stated, prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.

### **14.3 Tax invoice**

If a Party is liable for GST on any payments made under this Agreement, the other Party must issue a tax invoice (or an adjustment note) to the liable party for any GST payable under this Agreement within seven days of a written request. The tax invoice (or adjustment note) must include the particulars required by the GST Law to obtain an input tax credit for that GST.

### **14.4 GST obligations to survive termination**

This clause 14 will continue to apply after expiration of termination of this Agreement.

## **15. General**

### **15.1 Relationship between Parties**

- (a) Nothing in this Agreement:
  - (i) constitutes a partnership between the Parties; or
  - (ii) except as expressly provided, makes a Party an agent of another Party for any purpose.
- (b) A Party cannot in any way or for any purpose:
  - (i) bind another Party; or
  - (ii) contract in the name of another Party.
- (c) If a Party must fulfil an obligation and that Party is dependent on another Party, then that other Party must do each thing reasonably within its power to assist the other in the performance of that obligation.

### **15.2 Time for doing acts**

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

### **15.3 Further assurances**

Each Party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Agreement.

**15.4 Variation**

A provision of this Agreement can only be varied by a later written document executed by or on behalf of all Parties.

**15.5 Counterparts**

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

**15.6 Entire Agreement**

The contents of this Agreement constitute the entire Agreement between the Parties and supersede any prior negotiations, representations, understandings or arrangements made between the Parties regarding the subject matter of this Agreement, whether orally or in writing.

**15.7 Invalidity**

- (a) A word or provision must be read down if:
  - (i) this Agreement is void, voidable, or unenforceable if it is not read down;
  - (ii) this Agreement will not be void, voidable or unenforceable if it is read down; and
  - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
  - (i) despite the operation of clause 15.7(a), the provision is void, voidable or unenforceable if it is not severed; and
  - (ii) this Agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this Agreement has full effect even if clause 15.7(b)(i) or 15.7(b)(ii) applies.

**15.8 Waiver**

A right or remedy created by this Agreement cannot be waived except in writing signed by the Party entitled to that right. Delay by a Party in exercising a right or remedy does not constitute a waiver of that right or remedy, 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.

**15.9 Governing law and jurisdiction**

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

## Schedule 1–Requirements under Section 7.4 of the Act

The Parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the Planning Agreement complying with the Act.

<b>Requirement under the Act</b>	<b>This Planning Agreement</b>
Planning instrument and/or development application – [Section 7.4 (1)]. Ridgely Creek BESS Pty Ltd has:	
(a) sought a change to an environmental planning instrument	No
(b) made, or proposes to make, a development application	Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies	No
<b>Description of the land to which this Planning Agreement applies-</b> [Section 7.4 (3)(a)]	Not applicable.
<b>Description of the development to which this Planning Agreement applies –</b> [Section 7.4 (3)(b)]	See the ‘Background’ section of the Agreement and the definition of Development in Clause 1.1.
<b>The nature and extent, timing and manner of delivery of Development Contributions required by this document –</b> [Section 7.4 (3)(c)]	See clause 5 of this Agreement.
<b>Applicability of Section 7.11 (an amenity or services contribution) and Section 7.12 (a fixed development levy) of the Act –</b> [Section 7.4 (3)(d)]	The Development Contributions agreed to in this Agreement shall be in complete and final satisfaction of all obligations of Ridgely Creek BESS Pty Ltd to make contributions including pursuant to section 7.11 and section 7.12 of the Act.
<b>Applicability of section 7.24 (a special infrastructure contribution) of the Act –</b> [Section 7.4 (3)(d)]	The application of section 7.24 of the Act is excluded.
<b>Consideration of benefits under this Planning Agreement if section 7.11 applies –</b> [Section 7.4 (3)(e)]	The Development Contributions agreed to in this Agreement shall be in complete and final satisfaction of all obligations of Ridgely Creek BESS Pty Ltd to make contributions including pursuant to section 7.11 and section 7.12 of the Act.
<b>Mechanism for Dispute resolution –</b> [Section 7.4 (3)(f)]	See clause 8 of this Agreement.



<b>Requirement under the Act</b>	<b>This Planning Agreement</b>
<b>Enforcement of this document</b> – [Section 7.4 (3)(g)]	See clause 9 of this Agreement.
<b>No obligation to grant consent or exercise functions</b> – [Section 7.4 (9)]	See clause 12 of this Agreement.

## Schedule 2: Explanatory Note

---

Ridgey Creek BESS Pty Ltd

and

Parkes Shire Council

### Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the proposed Planning Agreement (**Planning Agreement**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**). For the avoidance of doubt, this Explanatory Note does not form part of the Planning Agreement and does not bind any of the Parties.

This explanatory note has been prepared in accordance with section 205 of the *Environmental Planning and Assessment Regulation 2021* (NSW). It will be exhibited with a copy of the Agreement when the Agreement is made available for inspection by the public in accordance with the Act, as specified by section 205 of the Regulation.

### Parties to the Planning Agreement

The Parties to the Planning Agreement are Parkes Shire Council (**PSC**) and Ridgey Creek BESS Pty Ltd (the Company).

The Company has made an offer to enter into the Planning Agreement in connection with a State Significant Development (namely SSD-48756517) for the development of the Ridgey Creek BESS (**Development**).

The Company has negotiated a Planning Agreement with PSC, in whose LGA the Development is to be located.

### Description of the Subject Land

There is no land to which this planning agreement applies.

### Description of the Development Application (Proposed Development)

The Company is seeking approval to build, own and operate Ridgey Creek Battery Energy Storage System (BESS) on a site 10 km west of Parkes, NSW adjacent to the Henry Parkes Way. The facility is proposed to have a capacity of 130 MW / 260 MWh.

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

The objective of the Planning Agreement is to facilitate the delivery of the Development Contributions to PSC for the provision of public benefits.

The Planning Agreement provides that the Company wishes to make, and PSC wishes to receive, Development Contributions primarily for the benefit of residents and ratepayers. The Key Terms of the Agreement are as follows:

- a) The Company will pay Development Contributions to PSC to the total value of \$680,000 (2024 dollars, indexed to CPI) over the life of the Project;

- b) The Initial Payment shall be \$250,000 + CPI effective from 1 January 2024, is payable within 30 days of the commencement of Project-related construction activity, including public road upgrading works. The first of subsequent Annual Payments of \$21,500 shall be made within 30 days of the Commencement of Operations, namely at the Commencement of Operations.
- c) The second and subsequent Annual Payments shall be made on the anniversary of the first. The last Annual Payment shall be made upon the commencement of the twentieth year of operations. The total of the Annual Payments is to be \$430,000 plus CPI, effective from 1 January 2024;
- d) The Planning Agreement will incorporate provisions enabling termination of the agreement should operations cease before the 20 years mark. In such circumstances Annual Payments would cease in alignment with the year of termination and paid on a pro rata basis;
- e) A Company representative is to be included in the Council-initiated meetings that decide how contributions are to be allocated;
- f) Except with the prior approval of the Council-initiated meetings, the Development Contributions will be allocated as follows: 95% to community benefit projects and 5% for administration;
- g) The Company, Council and the local community representative in the Council-initiated meetings will frame the evaluation criteria for the selection of suitable projects including factors such as population in the project catchment, scope and versatility of the project to deliver different community benefits, enhancement of social wellbeing, improvement in education and skills in the local population, etc so that it leaves a lasting, substantive legacy; and
- h) The Planning Agreement will include provisions for the public recognition by Council of expenditure of the Development Contributions provided by the Company.

PSC will, inter alia, identify the selection criteria for 'Public Purpose' projects as defined in the EP&A Act and Regulation, extend invitations to the public to seek project funding, assess the merits of bids, determine the successful applications, follow up on progress and the performance of the funded projects and prepare annual reports.

The 'Public Purpose' projects will provide public benefits that address broad, tangible and intangible environmental, social and economic aspects associated with the Project.

### **Assessment of Merits of Planning Agreement**

#### ***Purpose of the Planning Agreement***

In accordance with section 7.4, the Development Contributions, the subject of the Planning Agreement will be applied to a public purpose(s) that will ensure the provision of a public benefits.

PSC and the Company are both of the view that the provisions of the Planning Agreement provide a reasonable means of achieving a positive public purpose(s).

This is because the Development Contributions that are the subject of the Planning Agreement reflect there are broad tangible and intangible environmental, social and economic aspects related to the Development and the said contributions will assist PSC to provide needed material public benefits to its residents and ratepayers, namely through the application of the Development Contributions.

It is also acknowledged the Development will deliver valuable social and economic benefits to the Parkes LGA. These benefits and impacts will be outlined in more detail in the DPHI's Assessment Report.

#### ***How the Planning Agreement Promotes the Elements of PSC's Charter***

The Planning Agreement promotes a number of elements of PSC's Charter under section 8 of the *Local Government Act 1993* (NSW). In particular, the Planning Agreement, through the delivery of a public purpose(s) and material public benefit(s), allows PSC to:

- provide adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
- exercise community leadership;
- bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible; and
- keep the local community informed about its activities.

***The Impact of the Planning Agreement on the Public or any Section of the Public***

Under Council’s leadership, the Development Contributions will be planned and allocated in a transparent and accountable way, to a public purpose that will ensure the provision of public benefits, in accordance with the EP&A Act and Regulation and the Local Government Act.

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

The Planning Agreement promotes the public interest by committing the Company to make monetary contributions towards a public purpose(s).

***How the Planning Agreement Promotes the Objects of the Act***

Relevant Objects of the Act supported and promoted by this Planning Agreement include:

- 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; and
- to promote the orderly and economic use and development of land.

The Planning Agreement promotes these objects of the Act by requiring the Company to make monetary contributions towards public purposes.

***Requirements in relation to Construction, Occupation and Subdivision Certificates***

Clause 5 of the Planning Agreement sets out the timing for the payment of the Development Contributions.

The Planning Agreement does not require the payment of any monetary contributions and does not specify any requirements that must be complied with prior to the issue of any Subdivision Certificate, Construction Certificate or Occupation Certificate.

***Interpretation of Planning Agreement***

This Explanatory Note is not intended to be used to assist in construing the Planning Agreement.

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## Signing page

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**EXECUTED** as a Deed.

**SIGNED, SEALED AND DELIVERED** by  
**Ridgey Creek BESS Pty Ltd**  
**ABN 50 655 361 292**  
in accordance with section 127 of the  
*Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)

\_\_\_\_\_  
Full name (PRINT)

\_\_\_\_\_  
Full name (PRINT)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**SIGNED, SEALED AND DELIVERED**  
by the authorised delegate for  
**Parkes Shire Council**  
**ABN: 96 299 629 630**

in accordance with a resolution of the  
Council dated \_\_\_\_\_

\_\_\_\_\_  
Signature of authorised delegate

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

\_\_\_\_\_  
Full name (PRINT)

\_\_\_\_\_  
Full name of witness (PRINT)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date