

# DOCUMENT ON EXHIBITION

## Bellambi Heights Battery Energy Storage System Project

**Exhibition Period: 28 Days  
16 August – 13 September 2024**

Please address any queries to:  
**Economic Development Coordinator**

**Please submit your feedback in writing  
addressed to the General Manager**

**Email:**  
[council@midwestern.nsw.gov.au](mailto:council@midwestern.nsw.gov.au)

**Post:**  
Mid-Western Regional Council  
PO Box 156  
Mudgee NSW 2850

## **Deed**

### **Bellambi Heights Battery Energy Storage System Project**

### **Planning Agreement**

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

**Mid-Western Regional Council**

**Vena Energy Services (Australia) Pty Ltd**

Date:

[Insert Date]

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**Mid-Western Regional Council**

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**Vena Energy Services (Australia) Pty Ltd**

**Summary Sheet**

**Council:**

**Name:** Mid-Western Regional Council ABN 96 149 391 332

**Address:** 86 Market Street, Mudgee NSW 2850

**Telephone:** 02 63782850

**Email:** council@midwestern.nsw.gov.au

**Representative:** Bradley Cam

**Developer:**

**Name:** Vena Energy Services (Australia) Pty Ltd

**Address:** Suite 1, Level 7, 200 Mary Street, Brisbane, QLD, 4000

**Telephone:** +61 417 997 099

**Email:** duncan.mortimer@venaenergy.com

**Representative:** Duncan Mortimer

**Land:**

See definition of *Land* in clause 1.1.

**Development:**

See definition of *Development* in clause 1.1.

**Development Contributions:**

See clause 10 and Schedule 1.

**Application of s7.11, s7.12 and s7.24 of the Act:**

See clause 8.

**Security:**

See Part 4.

**Registration:**

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See clause 18.

**Restriction on dealings:**

See clause 19.

**Dispute Resolution:**

See Part 3.

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# Bellambi Heights Battery Energy Storage System Project Planning Agreement

Mid-Western Regional Council

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Vena Energy Services (Australia) Pty Ltd

## Bellambi Heights Battery Energy Storage System Project Planning Agreement

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

### Parties

**Mid-Western Regional Council** ABN 96 149 391 332 of 86 Market Street, Mudgee NSW 2850 (**Council**)

and

**Vena Energy Services (Australia) Pty Ltd** ACN 609 132 747 of Suite 1, Level 7, 200 Mary Street, Brisbane, QLD, 4000 (**Developer**)

### Background

- A The Developer has made a Development Application with reference number SSD-33344237 to the Minister for Planning for consent under the *Environmental Planning and Assessment Act 1979 (Act)* to develop a 408MW battery energy storage system and associated infrastructure (**Bellambi Heights Battery Energy Storage System Project**).
- B The Bellambi Heights Battery Energy Storage System Project will be carried out on land within the Council's local government area.
- C Pursuant to s7.4 of the Act the Developer and the Council have agreed to enter into this Deed in connection with the Bellambi Heights Battery Energy Storage System Project.
- D The purpose of this Deed is for the Developer to provide monetary Development Contributions to the Council in connection with the Bellambi Heights Battery Energy Storage System Project to be applied towards public purposes identified in the Mid-Western Regional Council Community Plan and Delivery Program and identified in this Deed.

### Operative provisions

#### Part 1 - Preliminary

##### 1 Interpretation

- 1.1 In this Deed the following definitions apply:

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

**Annual Development Contribution** has the same meaning as defined in Column 4 of the table set out in Schedule 1.

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### Vena Energy Services (Australia) Pty Ltd

**Approval** includes approval, consent, licence, permission or the like.

**Authority** means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

**Bank Guarantee** means an irrevocable and unconditional undertaking in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
  - (i) Australia and New Zealand Banking Group Limited,
  - (ii) Commonwealth Bank of Australia,
  - (iii) Macquarie Bank Limited,
  - (iv) National Australia Bank Limited,
  - (iv) St George Bank Limited,
  - (v) Westpac Banking Corporation,
  - (vi) Sumitomo Mitsui Banking Corporation, or
- (b) any other financial institution approved by the Council acting reasonably.

**Capital Investment Value** has the same meaning as in the Regulation.

**Claim** includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

**Construction Certificate** has the same meaning as in the Act.

**Cost** means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

**CPI** means the *Consumer Price Index (All Groups – Sydney)* published by the Australian Bureau of Statistics.

**Deed** means this Deed and includes any schedules, annexures and appendices to this Deed.

**Developer's CSR Focus Areas** means the Developer's CSR Focus Areas as set out in Schedule 2, as amended from time to time.

**Development** means development for the purposes of the Project involving development of a 408MW battery energy storage system and associated infrastructure on the Land described in Development Application SSD-33344237 for which Development Consent is granted, as modified from time to time (whether pursuant to s4.55, 4.56 of the Act or a Development Consent to a new Development Application).

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means the monetary contribution to be paid by the Developer to Council as set out in Schedule 1 of this Deed, to be used for, or applied towards the public purpose for which it was made, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.



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### Vena Energy Services (Australia) Pty Ltd

**Dispute** means a dispute or difference between the Parties under or in relation to this Deed.

**Final Investment Decision** means the final investment decision by the Developer to commence the Development, following receipt of all necessary approvals to lawfully commence the Development and as formally notified to the Council in accordance with clause 9.1.1.

**First Operational Day** means the date specified in a notice issued under the Project's engineering, procurement, and construction agreement that the Project has achieved commercial operations.

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

**GST Law** has the same meaning as 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 Development Contribution** has the same meaning as defined in Column 4 of the table set out in Schedule 1.

**Land** means lots 102 and 101 in DP 1203462, also known as 696 Castlereagh Highway and 79 Puggoon Road, Beryl, NSW 2852.

**Mid-Western Regional Council Community Plan and Delivery Program** means the community strategic plan and delivery program adopted by the Council from time to time under the *Local Government Act 1993*.

**Party** means a party to this Deed.

**Public Purpose** means the public purpose set out in Column 2 of the table set out in Schedule 1.

**Project** means the Bellambi Heights Battery Energy Storage System Project.

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

**Security** means a Bank Guarantee required under this Deed to the satisfaction of the Council indexed in accordance with the CPI from the date of this Deed.

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 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

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any subordinate legislation or regulations issued under that legislation or legislative provision.

- 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.
- 3.3 This Deed expires on the later of the date:
  - 3.3.1 the Project has been decommissioned in accordance with the conditions of the Development Consent, or
  - 3.3.2 the Development Contribution has been paid in full to the Council.

## **4 Application of this Deed**

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

## **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 Surrender of right of appeal, etc.**

The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

## **8 Application of s7.11, s7.12 and Division 7.1, Subdivision 4 of the Act to the Development**

8.1 This Deed does not exclude the application of s7.11 of the Act to the Development.

8.2 This Deed does not exclude the application of s7.12 of the Act to the Development.

8.3 The benefits under this Deed are not to be taken into consideration when determining a development contribution under s7.11 of the Act in relation to the Development.

8.4 This Deed does not exclude the application of Division 7.1, Subdivision 4 (Housing Productivity Contributions) of the Act to the Development.

## **Part 2 – Development Contributions**

### **9 Notification to Council**

9.1 The Developer is to notify the Council in writing of:

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- 9.1.1 the Final Investment Decision promptly and no later than 5 business days after the making of that decision, and
  - 9.1.2 the Developer's receipt of all Approvals required to commence the Development promptly and no later than 5 business days after receipt of all such Approvals, and
  - 9.1.3 the date of the First Operational Day, once that date is known by the Developer, and no later than 5 business days after the First Operational Day.
- 9.2 The Developer has no obligation to make Development Contributions to the Council under this Deed if:
- 9.2.1 the Developer does not receive all Approvals required to commence the Development, or
  - 9.2.2 the Project does not reach the First Operational Day.

## 10 Provision of Development Contribution

- 10.1 The Developer is to make the Development Contribution to the Council in accordance with Schedule 1 and any other provision of this Deed relating to the making of the Development Contribution.
- 10.2 The Council is to apply each 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.
- 10.3 Prior to the end of each financial year, Council must meet with the Developer to explain how the Development Contributions were utilised by Council over the previous financial year and how such activities align with the Public Purpose for which it was made.

## 11 Modification to Development and additional monetary Development Contribution

- 11.1 This clause applies on and from the date after the Development Consent is granted to Development Application SSD-33344237.
- 11.2 Each time an application to modify the Development Consent to Development Application SSD-33344237 is made, or a new Development Application is made in respect of the Project, the Developer is to notify the Council in writing of such application and the Capital Investment Value of the Development as modified.
- 11.3 Each time:
  - 11.3.1 the Development Consent to Development Application SSD-33344237 is modified, or
  - 11.3.2 a new Development Consent is granted in respect of the Project,  
**(Subject Modification)**an adjustment to the Annual Development Contribution is to be calculated in accordance with the following formulas:

Formula for Determining the Total Adjustment Amount

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$$A = 1\% \times (MCIV - ECIV)$$

Where:

**A** is the total adjustment amount arising from the Subject Modification

**MCIV** is the Capital Investment Value of the Development as modified by the Subject Modification

**ECIV** is the Capital Investment Value of the Development immediately before the Subject Modification

#### Formula for Determining the Adjusted Annual Development Contribution

$$N = ADC + A/Y$$

Where:

**N** is the dollar amount of the Adjusted Annual Development Contribution based on 'A' in the Formula for Determining the Total Adjustment Amount

**ADC** is the Annual Development Contribution immediately before the Subject Modification

**Y** is the number of unpaid instalments of the Annual Development Contribution at the time of the Subject Modification

- 11.4 The Parties agree that the amount calculated as 'N' in Formula for Determining the Adjusted Annual Development Contribution in clause 10.3 replaces the Annual Development Contribution provided for in Schedule 1 with respect to all unpaid instalments of the Annual Development Contribution, unless further adjusted in accordance with this clause.

## 12 Payment of monetary Development Contributions

- 12.1 The Annual Development Contributions are to be indexed from the date of this Deed until the date of payment in accordance with the CPI.
- 12.2 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

### 13 Dispute resolution – expert determination

- 13.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- 13.1.1 the Parties to the Dispute agree that it can be so determined, or
- 13.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the

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Dispute gives a written opinion that the Dispute can be determined by a member of that body.

- 13.2 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.
- 13.3 If a notice is given under clause 13.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 13.4 If the Dispute is not resolved within a further 28 days (or such longer period as agreed between the Parties), the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 13.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 13.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 13.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

## **14 Dispute Resolution – mediation**

- 14.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 13 applies.
- 14.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 14.3 If a notice is given under clause 14.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 14.4 If the Dispute is not resolved within a further 28 days (or such longer period as agreed between the Parties), 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.
- 14.5 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.
- 14.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 14.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

## **Part 4 – Enforcement**

### **15 Security for performance of obligations**

- 15.1 The Developer is to provide Security to the Council in accordance with this clause 15 as security for the Developer performing its obligations under this Deed.
- 15.2 At least 30 days before the First Operational Day, the Developer is to provide Security to the Council in the amount of \$150,000 (**‘Initial Security’**).
- 15.3 The Council may call-up or claim upon the Initial Security for any costs incurred by the Council in rectifying the Developer’s failure to pay the Initial Development Contribution, including:
- 15.3.1 the costs of the Council’s employees, agents and contractors reasonably incurred for that purpose,
  - 15.3.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
  - 15.3.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach,
- in accordance with clause 16.
- 15.4 Immediately after the Initial Development Contribution is paid by the Developer to the Council, the Council must return the Initial Security to the Developer in exchange for the Developer providing a replacement Security to the Council in the amount of \$100,000 (**‘Annual Development Contribution Security’**).
- 15.5 The Developer is required to maintain the Annual Development Contribution Security until the final Annual Development Contribution is made by the Developer to Council.
- 15.6 The Council may call-up or claim upon the Annual Development Contribution Security if the Developer fails to pay an Annual Development Contribution in accordance with Schedule 1, and for any costs incurred by the Council in rectifying the Developer’s failure to an Annual Development Contribution, including:
- 15.6.1 the costs of the Council’s employees, agents and contractors reasonably incurred for that purpose,
  - 15.6.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
  - 15.6.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach,
- in accordance with clause 16.
- 15.7 If the Council is entitled to call-up and use the Annual Development Contribution Security in accordance with this Deed at any time before the final Annual Development Contribution is required to be made by the Developer, the Developer must:
- 15.7.1 within 7 days of receiving a written notice from the Council, pay any shortfall between the Annual Development Contribution Security held at the time by the Council, and

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### **Vena Energy Services (Australia) Pty Ltd**

- 15.7.2 within 30 days of receiving a written notice from the Council reinstate the Annual Development Security held by the Council to the amount of \$100,000, and must do so each and every time after the Council has called-up and used the Annual Development Security.
- 15.8 The Council is to release and return the Annual Development Contribution Security or any unused part of it to the Developer within 14 days after the Developer pays the final Annual Development Contribution to Council in accordance with this Deed.
- 15.9 The Developer may at any time provide the Council with a replacement Initial Security or Annual Development Contribution Security.
- 15.10 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 15.11 The Council may call-up or claim upon the Security for an amount due and owing in accordance with clause 16.
- 15.12 The Developer is to ensure that the amount of the Security provided to the Council is indexed every 5 years in accordance with the CPI.

## **16 Breach of obligations**

- 16.1 If the Developer breaches this Deed, Council may give a written notice to the Developer:
  - 16.1.1 specifying the nature and extent of the breach,
  - 16.1.2 requiring the Developer to rectify the breach, or
  - 16.1.3 specifying the period within which the breach is to be rectified, being a period that is reasonable in the circumstances.
- 16.2 If the Developer fails to fully comply with a notice referred to in clause 16.1, the Council may, without further notice to the Developer, call-up or claim upon the Security for an due and owing in accordance with this Deed.
- 16.3 Nothing in this clause 16 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.

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

- 17.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction, subject to clause 13 and 14.
- 17.2 For the avoidance of doubt, nothing in this Deed prevents:
  - 17.2.1 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
  - 17.2.2 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 – Registration & Restriction on Dealings**

### **18 Registration of this Deed**

- 18.1 The Parties agree not to register this Deed for the purposes of s7.6(1) of the Act.

### **19 Restriction on dealings**

- 19.1 The Developer is not to:
- 19.1.1 if it is the owner of the Land, sell or transfer the Land, or
  - 19.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,
- to any person unless:
- 19.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council (acting reasonably), and
  - 19.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
  - 19.1.5 the Developer is not in breach of this Deed, and
  - 19.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld or unduly delayed.
- 19.2 Subject to clause 19.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 19.1.
- 19.3 Clause 19.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title of the Land at the time of the sale.

## **Part 6 – Indemnities & Insurance**

### **20 Risk**

- 20.1 The Developer performs this Deed at its own risk and its own cost.

### **21 Release**

- 21.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's

obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

## **22 Indemnity**

- 22.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council directly arising from a breach of this Deed except if, and to the extent that, the Claim arises because of the Council's act or omission, negligence or default.

## **Part 7 – Other Provisions**

### **23 Annual report by Developer**

- 23.1 The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed.
- 23.2 The report referred to is to be in such a form and to address such matters as reasonably required by the Council from time to time, including the matters the Council is required to report on as outlined in clause 206 of the Regulation and updates as to the progress of the construction and operation of the Development (where relevant).

### **24 Review of Deed**

- 24.1 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.

### **25 Notices**

- 25.1 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:
- 25.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
- 25.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 25.2 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.
- 25.3 Any notice, consent, information, application or request is to be treated as given or made if it is:

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- 25.3.1 delivered, when it is left at the relevant address,
- 25.3.2 sent by post, 2 business days after it is posted, or
- 25.3.3 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.

25.4 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 Sydney, New South Wales, it is to be treated as having been given or made at the beginning of the next business day.

## **26 Approvals and Consent**

- 26.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 26.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## **27 Costs**

- 27.1 The Developer is to pay to the Council \$5,000.00+GST for preparing, negotiating and executing this Deed within 30 days of the date of this Deed.

## **28 Entire Deed**

- 28.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 28.2 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.

## **29 Further Acts**

- 29.1 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.

## **30 Governing Law and Jurisdiction**

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

## **31 Joint and Individual Liability and Benefits**

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

## **32 No Fetter**

- 32.1 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.

## **33 Illegality**

- 33.1 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.

## **34 Severability**

- 34.1 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.
- 34.2 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.

## **35 Amendment**

- 35.1 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(5) of the Regulation.

## **36 Waiver**

- 36.1 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.
- 36.2 A waiver by a Party is only effective if it:
- 36.2.1 is in writing,

# Bellambi Heights Battery Energy Storage System Project Planning Agreement

## Mid-Western Regional Council

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### Vena Energy Services (Australia) Pty Ltd

- 36.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
- 36.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
- 36.2.4 is signed and dated by the Party giving the waiver.
- 36.3 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.
- 36.4 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.
- 36.5 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.

## 37 GST

- 37.1 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.
- 37.2 Subject to clause 37.4, 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.
- 37.3 Clause 37.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 37.4 No additional amount shall be payable by the Council under clause 37.2 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.
- 37.5 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:

# Bellambi Heights Battery Energy Storage System Project Planning Agreement

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- 37.5.1 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;
- 37.5.2 that any amounts payable by the Parties in accordance with clause 37.2 (as limited by clause 37.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 37.6 No payment of any amount pursuant to this clause 37, 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.
- 37.7 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.
- 37.8 This clause continues to apply after expiration or termination of this Deed.

## 38 Explanatory Note

- 38.1 The Appendix contains the Explanatory Note relating to this Deed required by section 205 of the Regulation.
- 38.2 Pursuant to section 205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

**Bellambi Heights Battery Energy Storage System Project Planning Agreement**

**Mid-Western Regional Council**

**Vena Energy Services (Australia) Pty Ltd**

**Schedule 1**

(Clause 10)

**Development Contributions**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Contribution</b>	<b>Public Purpose</b>	<b>Manner &amp; Extent</b>	<b>Timing</b>
A monetary contribution of \$4,130,900 payable in instalments as set out in Column 4.	To be applied towards projects identified in the Mid-Western Regional Council Community Plan and Delivery Program and not-inconsistent with the Developer's CSR Focus Areas.	To be paid in accordance with Column 4 of this table and this Deed.	<p>To be paid in 26 instalments as follows:</p> <ul style="list-style-type: none"><li>• an instalment of \$2,065,450 (being 50% of the amount specified in Column 1) to be paid within 20 days of the First Operational Day ('<b>Initial Development Contribution</b>').</li><li>• second and subsequent instalments of \$82,618 per year (indexed with the CPI in accordance with clause 12.1) being equal instalments of the remaining amount of monetary Development Contribution to be paid on each anniversary of the First Operational Day for 25 years ('<b>Annual Development Contribution</b>').</li></ul> <p>The Annual Development Contribution is subject to adjustment in accordance with clause 11.3.</p>

## **Schedule 2**

(Clause 1.1 and 10)

### **Developer's CSR Focus Areas**

<b>Focus Area</b>	<b>Description</b>
1. Environmental Conservation	Promote environmental conservation and protection through initiatives aimed to mitigate climate change, protect ecosystems, and create a more sustainable future for the planet.
2. Community Well-being	Promote health care, education, social welfare, cultural enrichment, and sustainable development within the community.
3. Infrastructure Development	Provide quality civil works to the communities where we operate.



**Bellambi Heights Battery Energy Storage System Project Planning Agreement**

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**Vena Energy Services (Australia) Pty Ltd**

**Execution**

**Executed as a Deed**

**Dated:**

**Executed on behalf of the Council** pursuant to a resolution of the Council passed at a duly convened meeting held on: **[Insert]**

\_\_\_\_\_  
General Manager

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name of General Manager

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Address of Witness

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

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director / Secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

# **Bellambi Heights Battery Energy Storage System Project Planning Agreement**

**Mid-Western Regional Council**

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**Vena Energy Services (Australia) Pty Ltd**

## **Appendix**

*Environmental Planning and Assessment Regulation 2021*

(Section 205)

## **Explanatory Note**

### **Draft Planning Agreement**

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

### **Parties**

**Mid-Western Regional Council** ABN 96 149 391 332 of 86 Market Street, Mudgee NSW 2850 (**Council**)

**Vena Energy Services (Australia) Pty Ltd** ACN 609 132 747 of Suite 1, Level 7, 200 Mary Street, Brisbane, QLD, 4000 (**Developer**)

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

Lots 102 and 101 in DP 1203462, also known as 696 Castlereagh Highway and 79 Puggoon Road, Beryl, NSW 2852.

### **Description of Proposed Development**

Development involving a 408MW battery energy storage system and associated infrastructure described in Development Application SSD-33344237 for the Bellambi Heights Battery Energy Storage System Project for which Development Consent is granted.

### **Description of Development Contributions**

This planning agreement requires the Developer to pay monetary development contributions in the amount of \$4,130,900 in instalments over 25 years. The amount of the annual monetary development contributions of \$82,618 will be indexed in accordance with CPI from the date of this planning agreement until the date of payment.

# **Bellambi Heights Battery Energy Storage System Project Planning Agreement**

## **Mid-Western Regional Council**

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### **Vena Energy Services (Australia) Pty Ltd**

The first instalment of \$2,065,450 (being 50%) is required to be paid within 20 days of the commencement of Operations and the second and subsequent instalments of \$82,618 are required to be paid on each anniversary of the date the commencement of Operations.

If there is a modification to the Development, the Development is required to pay additional monetary development contributions in the amount of 1% of the increase in the capital investment value. This additional monetary contribution amount is to be paid within 30 days of the approval of the modification.

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

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

The Draft Planning Agreement is a voluntary planning agreement pursuant to section 7.4 of the EPA Act under which monetary development contributions are made by the Developer to the Council to be applied towards public purposes.

The objective of the Draft Planning Agreement is to secure the provision of monetary development contributions which are to be applied by the Council towards projects as identified in the Mid-Western Regional Council Community Plan and Delivery Program and which align with the Developer's CSR Focus Areas.

The Draft Planning Agreement:

- relates to the carrying out of the Bellambi Heights Battery Energy Storage System Project by the Developer,
- imposes obligations on the Developer to make monetary development contributions,
- does not exclude the application of sections 7.11, 7.12 and 7.24 of the EPA Act to the Bellambi Heights Battery Energy Storage System Project,
- is not to be registered on the title of the Land,
- requires the Developer to provide bank guarantees to secure its obligations under the agreement,
- provides dispute resolution methods for any dispute under the agreement.

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

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

Funds provided by this Planning Agreement will be utilised to deliver projects as identified in Mid-Western Regional Council's Community Plan and Delivery Program and which align with the Developer's CSR Focus Areas. The Community Plan is the highest level plan prepared by Council on behalf of the community. The plan was developed collaboratively with the community. The Mid-Western Region Community Plan sets out the community's vision for the future, including current situation, future goals and actions to achieve goals.

**Bellambi Heights Battery Energy Storage System Project Planning Agreement**

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**Vena Energy Services (Australia) Pty Ltd**

***Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program***

Where funding relates to projects that are capital works as identified in the Community Plan and Delivery Program, this agreement will conform to Mid-Western Regional Council's Capital Works Program.

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

No. The Draft Planning Agreement does not specify any requirements that must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.

DRAFT