

PLANNING AGREEMENT for ORANA BESS

Land to which the Agreement applies: Lot 2 in DP 1226751 which is subject to subdivision into Lot 1 in DP 1301494

ADDRESS: 6945 Goolma Road, Montefiores, New South Wales, 2820

Dubbo Regional Council (ABN 53 539 070 928) (Council)

Wellington Battery ProjectCo Pty Ltd (ACN 655 856 652) (Developer)



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Parties to this Agreement

Developer	Name	Wellington Battery ProjectCo Pty Ltd
	Address	'KPMG Tower 3 International Towers' Level 38, 300 Barangaroo Avenue, Sydney NSW 2000
	ACN	655 856 652
	Contact Name	Tim Hoban
	Contact email	tim.hoban@akayshaenergy.com
	Phone	0437 136 149
Council	Name	Dubbo Regional Council
	Address	PO Box 81, Dubbo NSW 2830
	ABN	53 539 070 928
	Contact email	infrastructurecontributions@dubbo.nsw.gov.au

Background

The construction and operation of a 400MW/1600MWh Battery Energy Storage System (Orana BESS), generally comprising battery storage modules, inverters and transformers, on-site switching station, underground and above ground cables, connection to the existing Transgrid Wellington 330kV substation, access road and associated operational facilities including control room and site offices. Orana BESS will be located on a 10 hectare subdivision on existing Lot 2 DP1226751, which will be subdivided to new Lot 1 DP1301494, directly to the south of the Transgrid substation on Goolma Road.

Operative provisions

Part 1 - Preliminary

1 Definitions and Interpretation

- 1.1 In this Agreement the following definitions apply:
- 1.1.1 **Act** means the Environmental Planning and Assessment Act 1979 (NSW).
 - 1.1.2 **Agreement** means this Agreement and includes any schedules, annexures and appendices to this Agreement.
 - 1.1.3 **Contribution Year** means every 12 month period from 1 July of each year.
 - 1.1.4 **Costs** means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.
 - 1.1.5 **Department** means the Department of Planning and Environment or replacement government authority responsible for administering the Act and Development Consent.
 - 1.1.6 **Development** means the development of the Orana BESS.
 - 1.1.7 **Development Consent** means the development consent dated 22 December 2023, granted by the Minister for Planning under the Act, as modified from time to time, pursuant to application SSD 45242780.
 - 1.1.8 **Dispute** means a dispute or difference between the Parties under or in relation to this Agreement.
 - 1.1.9 **Event of Default** means a breach of this Agreement.
 - 1.1.10 **Land** means Lot 2 in DP 1226751 which is subject to subdivision into Lot 1 in DP 1301494.
 - 1.1.11 **Monetary Contribution** means the monetary contribution required to be made under this Agreement.
 - 1.1.12 **Operation** means the operation of the development, but does not include commissioning, trials of equipment or the use of temporary facilities.
 - 1.1.13 **Operations Date** means the date the Developer has issued notice of commencement of operation to the Department in accordance with the Development Consent.

- 1.1.14 **Party** means a party to this Agreement, including their successors and assigns.
- 1.1.15 **Regulation** means the Environmental Planning and Assessment Regulation 2021.
- 1.1.16 **Renewable Energy Benefit Framework** means the framework adopted by Council on 8 December 2022, as modified from time to time used to guide developers of Electricity Generating Works on Council's requirements to deliver benefits to the community.
- 1.1.17 **Value** means the \$ amount agreed between the Parties as the value of a Monetary Contribution made under this Agreement, or as otherwise agreed between the Parties.

1.2 Interpretation

In the interpretation of this Agreement, 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 Agreement.
- 1.2.2 A reference in this Agreement 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 Agreement 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 Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.5 A reference in this Agreement to a \$ value relating to a Monetary Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.9 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.

- 1.2.10 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.
- 1.2.11 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.12 A reference to this Agreement includes the agreement recorded in this Agreement.
- 1.2.13 A reference to a Party to this Agreement includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.14 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.15 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.16 Notes appearing in this Agreement are operative provisions of this Agreement.

2 Planning agreement under the Act

- 2.1 This Agreement is a planning agreement governed by Subdivision 2 of Part 7 of the Act.

3 Application of this Agreement

- 3.1 This Agreement applies to the Land and the Development.

4 Date upon which this Agreement takes effect

- 4.1 This Agreement takes effect when signed by both Parties. The date on which it takes effect is specified at the end of this Agreement.

5 Warranties

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

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 Agreement that are not inconsistent with this Agreement for the purpose of implementing this Agreement.

7 Surrender of right of appeal

- 7.1 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 Agreement.

Part 2 - Payment of the Monetary Contributions

8 The Monetary Contribution under this Agreement

- 8.1 The Developer must notify the Council that Operation has occurred within 14 days of the Operations Date for the Development.
- 8.2 Upon receipt of the notice referred to in clause 8.1, the Council must issue an invoice, in the form of a No GST invoice, to the Developer for the amount of \$1.3 million as specified in Schedule 1 of this Agreement (**First Monetary Contribution**).
- 8.3 Upon the eighth anniversary of the Operations Date (**Second Monetary Contribution Date**) and thereafter until the twenty year anniversary of the Operations Date, the Council must invoice, in the form of a No GST invoice, to the Developer the amount of \$160,000 as adjusted in accordance with clause 12 as specified in Schedule 1 of this Agreement (**Second Monetary Contribution**).
- 8.4 The Developer will pay to the Council, within 30 days of receipt of each invoice, the amount of the monetary contribution specified and calculated in accordance with this Agreement.

9 Application of the Monetary Contribution

- 9.1 The Council will apply each of the amounts of the monetary contribution towards the use specified in Schedule 1 and Schedule 2 of this Agreement, and as otherwise agreed to by the Developer.
- 9.2 Council will under no circumstances refund any monetary contribution made under this Agreement.

10 Public Recognition

- 10.1 The Council must publicly and positively acknowledge the payment of the Monetary Contribution by the Developer and the Developer's role in funding each target activity or local project under the funding agreement in this Agreement.

- 10.2 The form of public acknowledgement required is to be agreed by Council and the Developer (acting reasonably) but must include:
- 10.2.1 the prominent inclusion of the Developer’s logo in any advertisement for funding applications or an announcement made in relation to the target activity or local project; and
 - 10.2.2 where appropriate, a permanent sign recognising that the Development is funded by the Developer via this Agreement, as approved by the Developer.

11 Application of Section 7.11, 7.12 and 7.24 of the Act to the Development

- 11.1 This Agreement excludes the application of Section 7.11 to the Development.
- 11.2 This Agreement excludes the application of Section 7.12 to the Development.
- 11.3 This Agreement excludes the application of Section 7.24 to the Development.

12 Indexation of Monetary Contribution

- 12.1 The Second Monetary Contribution payable under this Agreement and each subsequent monetary contribution shall be adjusted with the formula set out below calculated from the Operations Date but the parties acknowledge will not be payable until the Second Monetary Contribution Date and in accordance with clause 8.3

$$MC = \frac{A \times B}{C}$$

C

Where:

- MC** is the monetary contribution payable
- A** on the Operations Date is \$160,000; and
For each subsequent year: is the Monetary Contribution payable during the Contribution Year just ended.
- B** is the most recent Index number (last published) before the end of the Contribution Year just ended; and
- C** is the most recent Index number (last published) before the commencement of the Contribution Year just ended.

- 12.2 In this clause **Index** means: the Consumer Price Index (CPI) (Sydney All Groups). The table in the Schedule 1 provides the Developer’s obligation under this Agreement.

13 How money is paid

- 13.1 A monetary contribution is made for the purposes of this Agreement when the Council receives the full amount of the monetary contribution payable under this Agreement in cash or by endorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council. Council will not accept any other forms of payment.
- 13.2 Despite clause 13.1, if Council agrees, in its absolute discretion, to accept payment of a monetary contribution by EFTPOS using a credit card, the Developer will be required to pay a surcharge in accordance with Council's adopted schedule of fees and charges.

Part 3 - Review and Monitoring

14 Review of Agreement

- 14.1 If either Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement the Party may request a review of the whole or any part of this Agreement.
- 14.2 For the purposes of clause 14.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other Authority to restrict or prohibit any aspect of the Development.
- 14.3 If a review is requested in accordance with clause 14.1, the Parties are to use all reasonable endeavours, in good faith, to agree on and implement appropriate amendments to this Agreement.
- 14.4 If this Agreement 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 Agreement is entered into.
- 14.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 14.1 (but not 14.5) is not a Dispute for the purposes of this Agreement and is not a breach of this Agreement.
- 14.6 If the Parties agree to amend this Agreement under this clause 14, any such amendment must be in writing and signed by the Parties and exhibited in accordance with the Act and Regulation.

15 Monitoring and Reporting

- 15.1 The Developer acknowledges that the Council will continuously monitor compliance with the Developer's obligations under this Agreement.

16 Notation on Planning Certificate

- 16.1 Not applicable under this Agreement.

Part 4 - Dispute Resolution

17 Notice of Dispute

- 17.1 If a party claims that a dispute has arisen under this agreement (Claimant), it must give written notice to the other party (Respondent) stating the matters in dispute and designating as its representative a person to negotiate the dispute (Claim Notice). If a notice is given, the Parties are to meet within 10 business days of the notice in an attempt to resolve the Dispute.

18 Mediation

- 18.1 If the Dispute is not resolved within a further 20 business days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 18.2 If the Dispute is not resolved by mediation within a further 20 business 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.
- 18.3 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation and the Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 5 - Indemnities

19 Risk

- 19.1 The Developer performs this Agreement at its own risk and its own cost.

20 Release

- 20.1 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 Agreement except if, and to the extent that, the Claim arises because of the Council's negligence or default.

21 Indemnity

- 21.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with a breach by the Developer of its obligations under this Agreement except if, and to the extent that, the Claim arises because of the Council's negligence or default.

Part 6 - Other Provisions

22 Confidentiality

- 22.1 This agreement is a public document, and its terms are not confidential.
- 22.2 The parties acknowledge that:
- 22.2.1 Confidential Information may have been supplied to some or all of the Parties in negotiations leading up to the making of this agreement; and
 - 22.2.2 the Parties may disclose to each other further Confidential Information in connection with the subject matter of this agreement.
- 22.3 Subject to clauses 22.4 and 22.5, each Party agrees:
- 22.3.1 not to disclose any Confidential Information received before or after the making of this agreement to any person without the prior written consent of the Party who supplied the Confidential Information; or
 - 22.3.2 to take all reasonable steps to ensure all Confidential Information received before or after the making of this agreement is kept confidential and protected against unauthorised use and access.
- 22.4 A Party may disclose Confidential Information in the following circumstances:
- 22.4.1 in order to comply with the law, or the requirements of any Authority; or

- 22.4.2 to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the Confidential Information confidential.
- 22.5 The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

23 Notices

- 23.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- 23.1.1 delivered or posted to that Party at its address, or
- 23.1.2 emailed to that Party at its email address.
- 23.2 For the purposes of this clause a Party's address and email address are as noted under 'Parties to this Agreement'.
- 23.3 If a Party gives the other Party 5 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.
- 23.4 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 23.4.1 delivered, when it is left at the relevant address,
- 23.4.2 sent by post, 2 business days after it is posted, or
- 23.4.3 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.
- 23.5 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

24 Approvals and Consent

- 24.1 Council agrees that following receipt of the requisite documentation from the Developer, it will use best endeavours to promptly certify the land subdivision and provide the construction and occupation certificates.

25 Costs

- 25.1 The Developer is to pay to the Council the Council's costs of preparing, negotiating, executing and stamping and registering this Agreement, and any document related to this Agreement within 5 business days of a written demand by the Council for such payment.
- 25.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Agreement within 5 business days of a written demand by the Council for such payment.

26 Entire Agreement

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

27 Further Acts

- 27.1 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 Agreement and all transactions incidental to it.

28 Governing Law and Jurisdiction

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

29 Joint and Individual Liability and Benefits

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

30 No Fetter

- 30.1 The Parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the Act.
- 30.2 This Agreement is not intended to operate, and shall not be construed as operating to fetter, in any unlawful manner:
- 30.2.1 the power of Council to make any law; or
- 30.2.2 the exercise by Council of any statutory power, discretion or duty.
- 30.3 Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law.

31 Illegality

- 31.1 If this Agreement 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 Agreement is entered into.

32 Severability

- 32.1 If a clause or part of a clause of this Agreement 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.
- 32.2 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 Agreement, but the rest of this Agreement is not affected.

33 Amendment

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

34 Waiver

- 34.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 34.2 A waiver by a Party is only effective if it:
- 34.2.1 is in writing,
- 34.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,

- 34.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
- 34.2.4 is signed and dated by the Party giving the waiver.
- 34.3 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.
- 34.4 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.
- 34.5 For the purposes of this Agreement, 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.

35 GST

- 35.1 In this clause:
 - 35.1.1 Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.
 - 35.1.2 GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
 - 35.1.3 GST Law has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
 - 35.1.4 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.
 - 35.1.5 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.
- 35.2 Subject to clause 35.3, 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.
- 35.3 No additional amount shall be payable by the Council under clause 35.2 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.

- 35.4 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement 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:
- 35.4.1 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;
- 35.4.2 that any amounts payable by the Parties in accordance with clause 35.2 (as limited by clause 35.3) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 35.5 No payment of any amount pursuant to this clause 35, 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.
- 35.6 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.
- 35.7 This clause continues to apply after expiration or termination of this Agreement.

36 Explanatory Note

- 36.1 The Appendix contains the Explanatory Note relating to this Agreement required by s205 of the Regulation.
- 36.2 Pursuant to s205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Agreement.

Schedule 1: Monetary Contribution

Year	Amount	Use	Timing of payment
Year 1	\$1.3 million	For funding towards the Wellington Showground shared pathway	Upon receipt of the notice referred to in clause 8.1
Year 8 – 20	\$160,000 as adjusted pursuant to clause 12	In accordance with Schedule 2	Upon the eighth anniversary of the Operations Date and thereafter until the twenty year anniversary of the Operations Date

Schedule 2: Use of Monetary Contribution

Council will utilise the Monetary Contribution received from the Developer towards the benefit of the community of the Dubbo Regional Council Local Government Area as described in the Renewable Energy Benefit Framework adopted by Council in 2022, as amended from time to time.

The benefit/s to the community includes (but may not be limited to) the following:

- Road infrastructure provision and maintenance.
- Housing opportunities and initiatives.
- Strategic planning.
- Economic development and investment attraction opportunities and initiatives.
- Skills development.
- Community facilities and recreation opportunities.
- Youth welfare and support.
- Town centre development and maintenance in Wellington.
- Other infrastructure provision that provides for the continued health, wellbeing and development of the community.

Council will engage with the Developer to identify opportunities within the Wellington community, and the Developer, acting reasonably, shall agree to the appropriate allocation of the Monetary Contribution.

Execution

Executed as an Agreement

Dated: 19/8/24

Executed by **Dubbo Regional Council**

The Common Seal of Dubbo Regional Council was hereunto affixed this 2nd day of August 2024 pursuant to a resolution of Council dated 25 July 2024.

[Redacted Signature]

Signature of Chief Executive Officer



[Redacted Signature]

Signature of Mayor

Executed by/on behalf of **Wellington Battery ProjectCo Pty Ltd** by its authorised representative.

[Redacted Signature]

Signature of

Signature of

[Redacted Name]

Name

Name