

Deed

Hunter Power Project (Kurri Kurri Power Station) Planning Agreement

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

Cessnock City Council

Snowy Hydro Limited

Date:

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Summary Sheet

Council:

Name: Cessnock City Council

Address: 62-78 Vincent Street, CESSNOCK NSW 2325

Telephone: 02 4993 4100

Email: council@cessnock.nsw.gov.au

Representative: Ken Liddell

Developer:

Name: Snowy Hydro Limited

Address: Monaro Highway Cooma

Telephone: 0400 725 560

Email: Daryl.Young@snowhydro.com.au

Representative: Daryl Young

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Regulatory Compliance Tables

Table 1 – Provisions of Act

Act Provision	Requirement	Compliance
S7.4 (1)	'Planning Authority'	Council
	'Developer'	Developer
	Development Contributions	See clause 11, Part 2 and Schedule 2
S7.4 (1), (2)	Public Purpose	See column 2 of Schedule 2
S7.4 (3)(a)	Land	See Definition of ' <i>Land</i> ' in clause 1.1
S7.4 (3)(b)(i)	Instrument Change	N/A
S7.4 (3)(b)(ii)	Development	See definition of ' <i>Development</i> ' in clause 1.1
S7.4 (3)(c)	Details of Developer's Provision	See clause 12, Part 2 and Schedule 2
S7.4 (3)(d)	Whether s7.11, s7.12 and s7.24 of the Act Apply to the Development	See clause 10 and Items 4, 5 and 6 in Schedule 1
S7.4 (3)(e)	Whether Benefits are or are not to be Taken into Consideration in Determining a Development Contribution under s7.11	See clause 10
S7.4 (3)(f)	Mechanism for the Resolution of Disputes under the Agreement	See Part 3
S7.4 (3)(g)	Enforcement of the Agreement by a Suitable Means in the Event of Breach by the Developer	See Part 4
S7.4 (10)	Conformity of Agreement with Act, Environmental Planning Instruments, & Development Consents Applying to the Land	Yes
S7.5	Public Notice & Public Inspection of Draft Agreement	Yes
S6.15(1)(d)	If the Development involves the subdivision of land, does this Agreement impose requirements that are required to be complied with before a subdivision certificate is issued?	N/A

Hunter Power Project (Kurri Kurri Power Station) Planning Agreement**Cessnock City Council****Snowy Hydro Limited****Table 2 – Provisions of Regulation**

Regulation Provision	Requirement	Compliance
Clause 203	Form & Subject-Matter	Yes
Clause 203(6)	Secretary's Practice Note	Yes
Clause 204	Public Notice & Public Inspection of Draft Agreement	Yes
Clause 205	Explanatory Note	See Appendix
Clause 21 of the Regulation (Certification)	If the Development involves building work or subdivision work, does the Agreement specify requirements that are required to be complied with before a construction certificate for the work is issued?	No
Clause 48 of the Regulation (Certification)	If an occupation certificate is required in respect of the Development, does the Agreement impose requirements that are required to be complied with before such a certificate is issued?	No

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

Parties

Cessnock City Council ABN 60 919 148 928 of 62-78 Vincent Street, CESSNOCK NSW 2325 (Council)

and

Snowy Hydro Limited ABN 17090 574 431 of Monaro Highway, Cooma NSW (Developer)

Background

- A The Developer is the proponent of the Hunter Power Project (Kurri Kurri Gas-Fired Power Station).
- B On 12 December 2020, Hunter Power Project (Kurri Kurri Gas-Fired Power Station) was declared a critical State significant infrastructure project by order under clause 12 of Schedule 5 of *State Environmental Planning Policy (State and Regional Development) 2011*.
- C The Infrastructure Approval for the Hunter Power Project (Kurri Kurri Gas-Fired Power Station) was granted by the Minister for Planning and Public Spaces on 17 December 2021.
- D Conditions A25 to A27 of the Infrastructure Approval requires the Developer and the Council within 6 months (or such later date agreed by the Secretary) of the date of commencement of the development to enter into a Planning Agreement in accordance with Division 7.1 of Part 7 of the Act and the terms of the Developers offers set out in Appendix 3 to the Infrastructure Approval.
- E Appendix 3 to the Infrastructure Approval provides for a funding contribution of \$880,000 for projects agreed between the Developer and the Council that have a community benefit and demonstrated link to the development.
- F The date for entering into a Planning Agreement has been extended by the Secretary to 29 February 2024.
- G The Developer and the Council have agreed to the development contributions set out in Schedule 2 to enable the Developer to meet the requirements of Conditions A25 to A27 of the Infrastructure Approval.

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).

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Approval includes approval, consent, licence, permission or the like and includes, without limitation, a Development Consent and a Certificate issued under Part 6 of the Act.

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

Confidential Information means any information and all other knowledge at any time disclosed (whether in writing or orally) by the Parties to each other, or acquired by the Parties in relation to the other's activities or services which is not already in the public domain and which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either Party as confidential (whether in writing or otherwise);
- (c) any Party knows or ought to know is confidential; or
- (d) is information which may reasonably be considered to be of a confidential nature.

Contribution Item means an item of Development Contribution specified in Column 1 of Schedule 2.

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

CPI means the Consumer Price Index (All-Groups Sydney) as provided by the Australian Bureau of Statistics.

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

Development means the development specified or described in Item 3 of Schedule 1.

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

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

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.

Infrastructure Approval means the Infrastructure Approval issued for the Hunter Power Project (Kurri Kurri Gas-Fired Power Station) by the Minister for Planning and Public Spaces on 17 December 2021.

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Intellectual Property means all copyright (including moral rights), patents, trademarks, designs, confidential information, circuit layouts, data and any other rights from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

Land means the land specified or described in Item 1 of Schedule 1.

Map means the map in Schedule 3.

Occupation Certificate has the same meaning as in the Act.

Party means a party to this Deed.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Regulation (Certification) means the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*

- 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 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.

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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 servants, 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 all executed the same copy of this Deed, or

3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.

3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

4 Application of this Deed

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

5 Warranties

5.1 Each Party represents and warrants that:

5.1.1 it has full legal capacity and power to:

(a) own its property and carry on its business,

(b) enter into this Deed and carry out the transactions it covers,

5.1.2 it holds each authorisation necessary to:

(a) properly execute this document and carry out the transactions,

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(b) make this document legal, valid, binding and admissible in evidence,

(c) properly carry on its business,

(d) and it is complying with any conditions of those authorisations,

5.1.3 it is not entering into this Deed as a trustee of any trust or settlement,

5.1.4 it has the full power to enter into and perform its obligations under this Deed and that, when executed, this Deed will constitute legal, valid and binding obligations according to its terms.

6 Power of attorney

6.1 Each person who executes this document under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so.

7 Parties' relationship

7.1 Nothing in this Deed:

7.1.1 makes the Developer a partner, agent or legal representative of the Council,

7.1.2 creates a partnership, agency or trust,

7.1.3 confers on the Developer any authority to bind the Council in any way.

7.2 The rights of the Parties do not merge once the Development Contributions obligations under this Deed are completed or this Deed is terminated.

8 Further agreements

8.1 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.

9 Surrender of right of appeal, etc.

9.1 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 Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

10 Application of s7.11, s7.12 and s7.24 of the Act to the Development

10.1 This Deed excludes the application of s7.11, s7.12 and s7.24 of the Act to the Development to the extent provided for in Items 4, 5 and 6 in Schedule 1 respectively.

10.2 The benefits under this Deed are to be taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development to the extent provided for in Item 7 in Schedule 1.

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11 Provision of Development Contributions

- 11.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 2, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 11.2 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.
- 11.3 Despite clause 11.2, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

Part 2 – Provisions relating to monetary contributions

12 Payment of monetary Development Contributions

- 12.1 The Developer is to pay to the Council monetary Development Contributions specified in Part A of Schedule 2 in the manner and at the time or times specified in that Part.
- 12.2 The amount of a monetary Development Contribution is to be indexed from the date of this Deed in accordance with positive movements to the index specified in Item 9 of Schedule 1.
- 12.3 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 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.

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

15 Arbitration Excluded

- 15.1 The arbitration of any Dispute between the Parties arising under, or in connection with, this Deed is expressly excluded.

Part 4 - Enforcement

16 Breach of obligations

- 16.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
 - 16.1.1 specifying the nature and extent of the breach,

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16.1.2 requiring the Developer to:

- (a) rectify the breach if it reasonably considers it is capable of rectification, or
- (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,

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

16.2 Any costs incurred by the Council in remedying a breach in accordance with clause 16.1 may be recovered by the Council as a debt due in a court of competent jurisdiction.

16.3 For the purpose of clause 16.2, the Council's costs of remedying a breach the subject of a notice given under clause 16.1 include, but are not limited to:

16.3.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,

16.3.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and

16.3.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

16.4 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 Subject only to clauses 13 and 14 the Parties may enforce this Deed in any court of competent jurisdiction.

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 9 – Other Provisions

18 Confidentiality

18.1 The terms of this Deed are not confidential and this Deed may be treated as a public document and exhibited or reported without restriction by any Party.

18.2 The Parties acknowledge that:

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- 18.2.1 Confidential Information may have been supplied to some or all of the Parties in the negotiations leading up to the making of this Deed, and
- 18.2.2 the Parties may disclose to each other further Confidential Information in connection with the subject matter of this Deed.
- 18.3 Subject to clauses 18.5 and 18.6, each Party agrees:
- 18.3.1 to not publicly announce or disclose any Confidential Information received before or after the commencement of this Deed to any person without the prior written consent of the Party who supplied the Confidential Information, and
- 18.3.2 to take all reasonable steps to ensure all Confidential Information received before or after the commencement of this Deed is kept confidential and protected against unauthorised use and access,
- 18.3.3 to promptly notify the other Parties if it becomes aware that the law might require the information to be disclosed,
- 18.3.4 to ensure that only authorised persons have access to the information and that it is stored safely and securely.
- 18.4 The Parties must immediately notify each other if they become aware of a breach of confidentiality of Confidential Information relating to the Developer Works or this Deed.
- 18.5 A Party may disclose Confidential Information in the following circumstances:
- 18.5.1 in order to comply with the Law, or
- 18.5.2 in order to comply with the Listing Rules of the Australian Securities Exchange Limited,
- 18.5.3 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 information confidential,
- 18.5.4 as required under this Deed,
- but only if, before the Party discloses any Confidential Information, it notifies the other Party in writing of the information it proposes to disclose and explains why it proposes to do so.
- 18.6 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.

19 Notices

- 19.1 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:
- 19.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
or

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19.1.2 emailed to that Party at its email address set out in the Summary Sheet.

19.2 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.

19.3 Any notice, consent, information, application or request is to be treated as given or made if it is:

19.3.1 delivered, when it is left at the relevant address,

19.3.2 sent by post, 2 business days after it is posted, or

19.3.3 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.

19.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

20 Approvals and Consent

20.1 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.

20.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

21 Costs

21.1 The Developer must pay to the Council the Council's Costs specified in Item 17 of Schedule 1 of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.

21.2 The Developer must pay to the Council the Council's reasonable Costs of implementing, monitoring and enforcing this Deed within 7 days of a written demand by the Council for such payment.

22 Entire Deed

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

22.2 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.

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23 Further Acts

23.1 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.

24 Notations on section 10.7(5) Planning Certificates

24.1 The Developer acknowledges that the Council may, in its absolute discretion, make a notation under section 10.7(5) of the Act regarding this Agreement on any certificate issued under section 10.7(2) of the Act relating to the Land, and is not to raise an objection, make any claim or demand or bring any action in that regard.

25 Governing Law and Jurisdiction

25.1 This Deed is governed by the law of New South Wales.

25.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

25.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

26 No Fetter

26.1 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.

27 Illegality

27.1 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.

28 Severability

28.1 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.

28.2 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.

29 Amendment

29.1 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 clause 203(5) of the Regulation.

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30 Waiver

- 30.1 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.
- 30.2 A waiver by a Party is only effective if it:
- 30.2.1 is in writing,
 - 30.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 30.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 30.2.4 is signed and dated by the Party giving the waiver.
- 30.3 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.
- 30.4 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.
- 30.5 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.

31 Counterparts

- 31.1 This Deed may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

32 GST

- 32.1 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.

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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.

- 32.2 Subject to this clause 32, 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.
- 32.3 Clause 32.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 32.4 No additional amount shall be payable by the Council under clause 32.2 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.
- 32.5 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:
- 32.5.1 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;
- 32.5.2 that any amounts payable by the Parties in accordance with clause 32.2 (as limited by clause 32.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 32.6 No payment of any amount pursuant to this clause 32, 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.
- 32.7 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.
- 32.8 This clause continues to apply after expiration or termination of this Deed.

33 Explanatory Note

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

Hunter Power Project (Kurri Kurri Power Station) Planning Agreement**Cessnock City Council****Snowy Hydro Limited****Schedule 1**

(Clause 1.1)

Item 1	Land	Lot 1 DP 1276814 and Lot 2 DP 1286098
Item 2	Planning Proposal	N/A
Item 3	Development	Development of the Hunter Power Project (Kurri Kurri Gas-Fired Power Station) in accordance with the Infrastructure Approval granted by the Minister for Planning and Public Spaces on 17 December 2021.
Item 4	Application of S7.11	Section 7.11 of the Act is not excluded from applying to the Development by this Deed, noting that the Infrastructure Approval does not impose a condition under that section.
Item 5	Application of S7.12	Section 7.12 of the Act is not excluded from applying to the Development by this Deed, noting that Infrastructure Approval provides that section 7.12 contributions will not be payable unless the Deed is not entered into.
Item 6	Application of S7.24	Section 7.24 of the Act is not excluded from applying to the Development by this Deed.
Item 7	Whether the Benefits under this Deed are to Taken in Consideration in determining a Development Contribution under s7.11	The benefits under this Deed are not to be taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development'
Item 8	Indexation of Contribution Values (other than monetary Development Contributions)	N/A
Item 9	Indexation of Monetary Development Contributions	The amount of contribution payable will be calculated on the basis of the rate as at the date the Deed is executed and the most current quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of Statistics (ABS) as at the date of payment. Note: In the event that the CPI All Groups Index Number for Sydney is less than the previous CPI All Groups Index Number for Sydney, the current index shall be taken as not less than the previous index.
Item 10	Access to Council owned or controlled land	N/A
Item 11	Defects Liability Period	N/A
Item 12	Security	N/A

Hunter Power Project (Kurri Kurri Power Station) Planning Agreement**Cessnock City Council****Snowy Hydro Limited**

Item 13	Obligations to which Security Relates	N/A
Item 14	Timing of Security	N/A
Item 15	Indexation of Security	N/A
Item 16	Defects Liability Security	N/A
Item 17	Costs	Up to a cap of \$5,000.00 (for costs of the Council in preparing, negotiating and executing this Deed, including legal costs and costs of engaging any experts).
Item 18	Review of Deed	N/A

Hunter Power Project (Kurri Kurri Power Station) Planning Agreement**Cessnock City Council****Snowy Hydro Limited****Schedule 2**

(Clause 9)

Development Contributions**Table**

Column 1	Column 2	Column 3	Column 4	Column 5
Item/Contribution	Public Purpose	Manner & Extent	Timing	Contribution Value
A. Monetary Development Contributions				
Monetary contribution to assist with the embellishment of Lot 1 Sec 39 DP 758590, known as Booth Park Kurri Kurri, for the Public Purpose listed in Column 2.	Netball facility at Booth Park Kurri Kurri	Lump sum payment of the monetary contribution	Within 10 business days after execution of this Planning Agreement	\$880,000 (as adjusted for CPI in accordance with Item 9 of Schedule 1)

Hunter Power Project (Kurri Kurri Power Station) Planning Agreement

Cessnock City Council

Snowy Hydro Limited

Execution

Executed as a Deed

Dated: 22 November 2023

Executed on behalf of the Council in accordance with a resolution dated:

Ken Liddell

General Manager



Cessnock City Council

Jay Suvaal

Mayor



Cherie Lorenzen

Witness



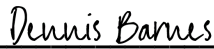
Cherie Lorenzen

Witness



Executed on behalf of Snowy Hydro Limited in accordance with s127 of the *Corporations Act 2001* (Cth)

DocuSigned by:



F28DC40681E041A...

Dennis Barnes

Director

DocuSigned by:



125680CA58C6422...

Suzannah Fletcher

Director / Secretary

Hunter Power Project (Kurri Kurri Power Station) Planning Agreement

Cessnock City Council

Snowy Hydro Limited

Appendix

(Clause 33)

Environmental Planning and Assessment Regulation 2021

(Clause 205)

Explanatory Note

Draft Planning Agreement

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

Parties

Cessnock City Council ABN 60 919 148 928 of 62-78 Vincent Street, CESSNOCK NSW 2325
(Council)

Snowy Hydro Limited ABN 17 090 574 431 of Monaro Highway, Cooma (Developer)

Description of the Land to which the Draft Planning Agreement Applies

Lot 1 DP 1276814 and Lot 2 DP 1286098

Description of Proposed Development

Development of the Hunter Power Project (Kurri Kurri Gas-Fired Power Station) in accordance with the Infrastructure Approval granted by the Minister for Planning and Public Spaces on 17 December 2021. (Development)

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

Objectives of Draft Planning Agreement

To meet the requirements of Conditions A25 to A27 of the Infrastructure Approval which requires the Developer to contribute \$880,000 to agreed project or projects with community benefit and a demonstrated link to the Development.

Nature of Draft Planning Agreement

The Draft Planning Agreement identifies a project with community benefit and a demonstrated link to the Development to which the required contribution can be applied and provides for the payment of that contribution.

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out of the Development by the Developer;
- provides for a funding contribution of \$880,000 to assist with the embellishment of Lot 1 Sec 39 DP 758590, known as Booth Park Kurri Kurri, for the public purpose of a netball facility; and

Hunter Power Project (Kurri Kurri Power Station) Planning Agreement

Cessnock City Council

Snowy Hydro Limited

- provides for the payment of the contribution within 10 days after execution of the agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- will assist Council provide new netball facilities at Kurri Kurri to:
 - replace the existing netball facilities that are no longer fit for purpose; and
 - encourage and promote physical activity, team sport and social wellbeing.
- meets the requirements of the Infrastructure Approval by assisting Council provide a community recreation facility to serve the needs of the community within the Kurri Kurri catchment, including the rapidly increasing population within the regionally significant growth corridor between Kurri Kurri and Maitland in which the Development will be located.

How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s1.3 (a) and (c) of the Act because it will:

- enable the provision of recreational facilities that promote the social welfare of the community;
- facilitate the development and the orderly economic use and development of the land, ensuring that the need for public amenities and services are provided by the Development.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Draft Planning Agreement Promotes the Principles for Local Government Contained in Chapter 3 of the Local Government Act 1993

The Draft Planning Agreement will provide for transport and recreational needs of the community. In doing so the Draft Planning Agreement is consistent with the following principles in section 8A of the *Local Government Act 1993*:

- Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way; and
- Councils should work with others to secure appropriate services for local community needs.

All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

Hunter Power Project (Kurri Kurri Power Station) Planning Agreement

Cessnock City Council

Snowy Hydro Limited

The contributions under this Draft Planning Agreement will be put towards the provision of public infrastructure that is not currently listed in Council's Capital Works Program. The Draft Planning Agreement is not, therefore, inconsistent with the Capital Works Program and will provide for additional facilities over and above that provided for in the Capital Works Program.

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

The Draft Planning Agreement does not restrict the issue of certificates.