



# Memorandum of Understanding

BEGA VALLEY SHIRE COUNCIL.  
MANAGEMENT OF VEGETATION NEAR  
NETWORK ASSETS

# MEMORANDUM OF UNDERSTANDING

## BETWEEN

ESSENTIAL ENERGY (ABN 37 428 185 226), a NSW state-owned corporation constituted by the *Energy Services Corporations Act 1995* (NSW)

Of PO Box 5730, Port Macquarie NSW 2444 ("**Essential Energy**")

AND

BEGA VALLEY SHIRE COUNCIL (ABN 26 987 935 332)

Of PO Box 492, Bega NSW 2550 ("**Council**")

## BACKGROUND

- A. Essential Energy and Council have agreed to document the manner in which they will work together to ensure the safe and environmentally responsible Vegetation Management, within the Bega Valley Shire Council local government area, which is near network assets owned by Essential Energy.
- B. On a non-binding basis, this Memorandum sets out the expectations of each party in respect of Vegetation Management.
- C. Each party has agreed to act in good faith in giving effect to this Memorandum.

## IT IS AGREED

### 1. DEFINITIONS

Unless the context otherwise requires, in this Memorandum:

"**Completion Date**" means the date being five (5) years after the Date of this Memorandum.

"**Date of this Memorandum**" means the date on which the last party to this Memorandum signs this Memorandum.

"**Memorandum**" means this Memorandum of Understanding, and includes Annexure A.

"**Network Asset**" has the meaning given to it in Annexure A to this Memorandum

"**Vegetation Management**" has the meaning given to it in Annexure A to this Memorandum.

### 2. UNDERSTANDING

- 2.1. The parties agree that Annexure A to this Memorandum documents particular objectives, processes and arrangements, and the parties' respective responsibilities, in respect of Vegetation Management, which have been developed and agreed by the parties.
- 2.2. The parties will, on a best endeavours basis and acting in good faith, and without limiting or affecting any party's responsibilities or rights under any applicable law:
  - (1) work together in a collaborative manner in accordance with, and so as to meet the objectives set out in, Annexure A; and
  - (2) perform their respective responsibilities described in Annexure A.



### 3. NON-BINDING MEMORANDUM

3.1. The parties hereby acknowledge and agree that:

- (1) this Memorandum merely constitutes a statement of the parties' mutual intentions as at the Date of this Memorandum and does not contain all matters upon which agreement between them might have to be reached in order for the matters contemplated by this Memorandum to be put into effect;
- (2) with the exception of clauses 5, 6, 7, 8 and 11 of this Memorandum of Understanding, the terms of this Memorandum are not legally binding upon any party;
- (3) subject to clause 3.1(2), nothing in this Memorandum will be construed as creating any legal relationship between the parties;
- (4) subject to clause 3.1(2), this Memorandum does not create any legal right(s) in favour of either party; and
- (5) nothing in this Memorandum affects any other agreement(s) which may exist between the parties as at the Date of this Memorandum or at any subsequent date, including in respect of Vegetation Management.

### 4. TERM

- 4.1. This Memorandum will commence on the Date of this Memorandum and remain in effect until the Completion Date, unless terminated earlier by the written agreement of the parties or in accordance with clause 5.1.
- 4.2. The Completion Date may be extended by written agreement between the parties.

### 5. TERMINATION AND LIABILITY

- 5.1. Either party may terminate this Memorandum by providing one month's written notice to the other party.
- 5.2. Unless this Memorandum expressly states otherwise (or the parties agree otherwise in writing), neither party will incur any financial liability to each other party under this Memorandum (including in connection with any termination of this Memorandum).
- 5.3. Upon the expiry or earlier termination (howsoever arising) of this Memorandum, in the event that a party ("**First Party**") is in possession of any equipment, materials, documents, data or other information or intellectual property ("**Items**") that are the property of the other party ("**Second Party**"), then the First Party must (at the request of the Second Party) promptly return all such Items to the Second Party, or destroy (or in the case of machine readable records, erase) any Items if **directed to do so by the Second Party.**

### 6. CONFIDENTIALITY

- 6.1. Without limiting clause 7.2, the parties agree that they will not, at any time, disclose any information in relation to the affairs of business, or method of carrying on business, of the other without the consent of the other party, unless required:
  - (1) by law or regulation or for the purposes of Government accountability; or
  - (2) to perform its responsibilities under this Memorandum.
- 6.2. The parties agree that general information about the parties' arrangements in respect of Vegetation Management may be disclosed by either party to members of the public.
- 6.3. A party disclosing information under this clause 6 will provide written notification of that disclosure (including the context in which the disclosure was made) to the other party as soon as reasonably practicable following the disclosure.



## 7. INTELLECTUAL PROPERTY

- 7.1. In the event that a party generates, creates, contributes to, writes or produces any document, material or other thing in connection with this Memorandum ("**IPR Item**"), that party will retain any and all intellectual property rights, and any other right, title or interest, in that IPR item (unless the parties agree otherwise in writing).
- 7.2. To the extent that a party ("**Licensee**") requires the use of any intellectual property (including an IPR Item) owned by the other party ("**Licensor**") for the purposes of performing its responsibilities under this Memorandum, then the Licensor grants to the Licensee a non-exclusive and royalty-free licence to use that intellectual property for that purpose only, subject to such terms (if any) as the Licensor might reasonably impose (including the execution of a written agreement).

## 8. GOVERNING LAW AND JURISDICTION

- 8.1. The parties agree that in the event that laws need to be applied to this Memorandum, the laws of the State of New South Wales will apply and each party hereby submits to the non-exclusive jurisdiction of the courts of the State of New South Wales and any courts competent to hear appeals therefrom.

## 9. COUNTERPARTS AND ELECTRONIC EXECUTION

- 9.1. The parties agree that this Memorandum may be:
  - (1) executed in any number of counterparts, and all such counterparts together constitute one and the same instrument;
  - (2) executed electronically in accordance with applicable laws and using an encrypted digital code applied to an electronic document that verifies a person's intention to sign this Memorandum; and
  - (3) executed partly electronically in accordance with clause 9.1(2) and partly by hand, in which case the electronically executed document may be printed and signed and will be treated as the original Memorandum.

## 10. AMENDMENTS

- 10.1. Both parties acknowledge that this Memorandum may be reviewed, updated, and amended from time to time, if the requirement arises, by the written agreement of both parties.

## 11. DISPUTE RESOLUTION

- 11.1. Both parties are committed to complying with all terms of this Memorandum. However, in the event of a dispute arising between the parties concerning any part of this Memorandum these shall be resolved through good faith negotiations between representatives of both parties.



Signed for and on behalf of  
**Essential Energy** (ABN 37 428 185 226) by its Attorney,  
pursuant to Power of Attorney Registered Book **4795**  
No **694**  
who declares that they have not received any  
notice of revocation of same, in presence of:

*Rob.*

.....  
Signature of Witness

*[Handwritten Signature]*

.....  
Signature of Attorney

*Joanne Rob*

.....  
Name of Witness

*Luke Jenner*

.....  
Name of Attorney

*21/8/2024*

.....  
Date signed

Signed for and on behalf of  
**Bega Valley Shire Council** (ABN 26 987 935 332)  
by its delegate, who represents and warrants that  
they are duly authorised to execute this Memorandum  
under the *Local Government Act 1993* (NSW),  
in the presence of:

*[Handwritten Signature]*

.....  
Signature of Witness

*Anthony McMahon Russell*

.....  
Signature of Delegate

*Jackie Grant*

.....  
Name of Witness

*Anthony McMahon*  
.....  
Name of Delegate

*Russell Fitzpatrick*  
Mayor

*16/08/2024*

.....  
Date signed

