

Form 603
Corporations Act 2001
Section 671B

Notice of initial substantial holder

To Company Name/Scheme ZENITH ENERGY LIMITED
ACN/ARSN 615 682 203

1. Details of substantial holder (1)

Name Elemental Infrastructure Bidco Pty Ltd ACN 639 583 536 (Elemental Bidco) and each of the entities listed in Annexure A (each an **Affiliated Entity**, and together **Affiliated Entities**)

ACN/ARSN (if applicable) As above or set out in Annexure A

The holder became a substantial holder on 06 / 03 / 2020

2. Details of voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
Ordinary shares	25,267,586	25,267,586	16.91% (based on 149,385,586 ordinary shares on issue)

3. Details of relevant interests

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
Elemental Bidco	Relevant interest under section 608(1)(b) and (c) of the Corporations Act 2001 (Cth) pursuant to the exclusivity deed dated 6 March 2020 between Elemental Bidco, Zanea Pty Limited ACN 009 396 623, Enertech Pty Ltd ACN 009 080 899 as trustee for the Enertech Executives Superannuation Fund, and William (Doug) Walker (Exclusivity Deed), attached as Annexure B.	25,267,586
Each of the Affiliated Entities	Relevant interest under section 608(3) of the Corporations Act 2001 (Cth) being a relevant interest in the securities in which Elemental Bidco has a relevant interest.	25,267,586

4. Details of present registered holders

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities
Elemental Bidco and each of the Affiliated Entities	Zanea Pty Limited ACN 009 396 623	Zanea Pty Limited ACN 009 396 623	24,353,793 ordinary shares
Elemental Bidco and each of the Affiliated Entities	Enertech Pty Ltd ACN 009 080 899 as trustee for the Enertech Executives Superannuation Fund	Enertech Pty Ltd ACN 009 080 899 as trustee for the Enertech Executives Superannuation Fund	913,793 ordinary shares

5. Consideration

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non-cash	
Elemental Bidco and each of the Affiliated Entities	06/03/2020	n/a – acquisition of a relevant interest pursuant to the Exclusivity Deed		25,267,586 ordinary shares

6. Associates

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:

Name and ACN/ARSN (if applicable)	Nature of association
Elemental Bidco and each of the Affiliated Entities	Each entity is an associate of each other entity under section 12(2) of the Corporations Act

7. Addresses

The addresses of persons named in this form are as follows:

Name	Address
Elemental Bidco	Level 31, 126 Phillip Street, Sydney, New South Wales 2000
Elemental Infrastructure Midco Pty Ltd	Level 31, 126 Phillip Street, Sydney, New South Wales 2000
Elemental Infrastructure Holdco Pty Ltd	Level 31, 126 Phillip Street, Sydney, New South Wales 2000
Pacific Equity Partners Secure Assets Fund, L.P. (a Cayman Islands Exempted Limited Partnership) acting via its general partner Pacific Equity Partners Secure Assets Fund GP (Jersey) Limited	89 Nexus Way, Camana Bay, Grand Cayman, KY1-9009, Cayman Islands
PEP Investor Administration Secure Assets A Pty Limited as trustee for Pacific Equity Partners Secure Assets Fund A (Australasia)	Level 31, 126 Phillip Street, Sydney, New South Wales 2000
PEP Investment Pty Limited	Level 31, 126 Phillip Street, Sydney, New South Wales 2000
Eagle Coinvestment Pty Limited as trustee for Pacific Equity Partners Secure Assets Executives Coinvestment Trust A	Level 31, 126 Phillip Street, Sydney, New South Wales 2000
Summit Coinvestment, L.P. (a Cayman Islands Exempted Limited Partnership) acting via its general partner Pacific Equity Partners Secure Assets Fund Coinvestment GP II Limited	89 Nexus Way, Camana Bay, Grand Cayman, KY1-9009, Cayman Islands
Pacific Equity Partners Investors Administration Pty Limited as trustee for Summit Coinvestment (Australasia)	Level 31, 126 Phillip Street, Sydney, New South Wales 2000

Signature

print name

capacity

Director, Elemental
Infrastructure Bidco Pty
Ltd
for and on behalf of each
other substantial holder
named in this notice

sign here

date

10/03/2020

DIRECTIONS

- (1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.
- (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.
- (6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (7) Include details of:
 - (a) any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and

- (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).

See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.

- (8) If the substantial holder is unable to determine the identity of the person (eg. if the relevant interest arises because of an option) write "unknown."
- (9) Details of the consideration must include any and all benefits, moneys and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.
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ANNEXURE A

This is Annexure A of 1 page referred to in Form 603 - Notice of initial substantial holder signed by me and dated 10 March 2020.



Name: Matthew Robinson

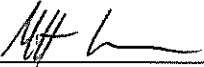
Title: Director

Elemental Infrastructure Bidco Pty Ltd ACN 639 583 538

Name	Address
Elemental Infrastructure Midco Pty Ltd ACN 639 583 207	Level 31, 126 Phillip Street, Sydney, New South Wales 2000
Elemental Infrastructure Holdco Pty Ltd ACN 639 582 737	Level 31, 126 Phillip Street, Sydney, New South Wales 2000
Pacific Equity Partners Secure Assets Fund, L.P. (a Cayman Islands Exempted Limited Partnership) acting via its general partner Pacific Equity Partners Secure Assets Fund GP (Jersey) Limited	89 Nexus Way, Camana Bay, Grand Cayman, KY1-9009, Cayman Islands
PEP Investor Administration Secure Assets A Pty Limited ACN 624 471 370 as trustee for Pacific Equity Partners Secure Assets Fund A (Australasia)	Level 31, 126 Phillip Street, Sydney, New South Wales 2000
PEP Investment Pty Limited ACN 083 026 984	Level 31, 126 Phillip Street, Sydney, New South Wales 2000
Eagle Coinvestment Pty Limited ACN 119 182 688 as trustee for Pacific Equity Partners Secure Assets Executives Coinvestment Trust A	Level 31, 126 Phillip Street, Sydney, New South Wales 2000
Summit Coinvestment, L.P. (a Cayman Islands Exempted Limited Partnership) acting via its general partner Pacific Equity Partners Secure Assets Fund Coinvestment GP II Limited	89 Nexus Way, Camana Bay, Grand Cayman, KY1-9009, Cayman Islands
Pacific Equity Partners Investors Administration Pty Limited ACN 161 245 263 as trustee for Summit Coinvestment (Australasia)	Level 31, 126 Phillip Street, Sydney, New South Wales 2000

ANNEXURE B

This is Annexure B of 16 pages (including this page) referred to in Form 603 - Notice of initial substantial holder signed by me and dated 10 March 2020.



Name: Matthew Robinson

Title: Director

Elemental Infrastructure Bidco Pty Ltd ACN 639 583 538



Exclusivity Deed

—

Elemental Infrastructure BidCo Pty Ltd (**Bidder**)
Zanea Pty Limited (**Zanea**)
Enertech Pty Ltd in its capacity as trustee for the
Enertech Executives Superannuation Fund
(**Enertech**)
William (Doug) Walker (**DW**)

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Exclusivity Deed

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Details

Date 6 March 2020

Parties

Name **Elemental Infrastructure BidCo Pty Ltd ACN 639 583 538**
Short form name **Bidder**
Notice details Address: Level 31, 126 Phillip Street Sydney, NSW 2000
Email: tony.duthie@pep.com.au and andrew.charlier@pep.com.au
Attention: Tony Duthie and Andrew Charlier

Copy to:
MinterEllison
Address: Level 40, Governor Macquarie Tower, 1 Farrer Place Sydney, NSW 2000
Email: michael.gajic@minterellison.com and chris.allen@minterellison.com
Attention: Michael Gajic and Chris Allen

Name **Zanea Pty Limited ACN 009 396 623**
Short form name **Zanea**
Notice details Address: Level 1, 160 Stirling Highway Nedlands, WA 6009
Email: doug.walker@zenithenergyld.com
Attention: Mr Doug Walker

Name **Enertech Pty Ltd ACN 009 080 899 in its capacity as trustee for the Enertech Executives Superannuation Fund**
Short form name **Enertech**
Notice details Address: Level 1, 160 Stirling Highway Nedlands, WA 6009
Email: doug.walker@zenithenergyld.com
Attention: Mr Doug Walker

Name **William (Doug) Walker**
Short form name **DW**
Notice details Address: Level 1, 160 Stirling Highway Nedlands, WA 6009
Email: doug.walker@zenithenergyld.com
Attention: Mr Doug Walker

together, the Relevant Parties

Background

- A Target and Bidder have agreed to implement the Transaction on the terms, and subject to the conditions, of the Scheme Implementation Deed.
- B Bidder and each Relevant Party have agreed to work together on an exclusive basis to implement the Transaction on the terms of this deed.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document capitalised terms have the meaning given to them in the Scheme Implementation Deed, except as follows:

Associate has the meaning set out in section 12 of the Corporations Act, but in respect of the Relevant Parties does not include Bidder or any of Bidder's Related Bodies Corporate or Affiliates.

DW Target Shares means any Target Share in which a Relevant Party or any of their Related Bodies Corporate or respective Associates has a Relevant Interest.

Relevant Agreement has the meaning given to that term in the Corporations Act.

Scheme Implementation Deed means the scheme implementation deed entered into by Bidder and Target on or around the date of this deed.

1.2 Interpretation

In this deed, except where the context otherwise requires:

- (a) the singular includes the plural, and the converse also applies;
- (b) gender includes other genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this deed, and a reference to this deed includes any schedule or annexure;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (g) a reference to time is to Perth, Australia time;
- (h) a reference to a party is to a party to this deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (j) a reference to legislation or to a provision of legislation (including a listing rule or operating rule of a financial market or of a clearing and settlement facility) includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (k) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (l) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (m) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it; and
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

2. Exclusivity

2.1 Termination of existing discussions

Each Relevant Party undertakes that promptly following execution of this deed, each Relevant Party will notify any other person with whom that Relevant Party has, in the 3 months preceding the date of this deed, been in negotiations or discussions in respect of any Competing Proposal immediately prior to entry into this deed that any such negotiations or discussions previously in existence are terminated.

2.2 No-shop

During the term of this deed, the Relevant Parties must not, and must ensure that each of their respective Related Bodies Corporate, Representatives and Associates do not, directly or indirectly:

- (a) solicit, invite, encourage or initiate any enquiry, expression of interest, proposal, offer, negotiation or discussion; or
- (b) communicate any intention to do any of these things,

in relation to, or that could reasonably be expected to encourage or lead to, the making of an actual, proposed or potential Competing Proposal.

2.3 No-talk

Subject to clause 2.5, during the term of this deed, the Relevant Parties must not, and must ensure that each of their respective Related Bodies Corporate, Representatives and Associates do not, directly or indirectly:

- (a) negotiate, enter into or participate in negotiations or discussions with any other person; or
- (b) communicate any intention to do any of these things,

in relation to, or that could reasonably be expected to encourage or lead to, the making of an actual, proposed or potential Competing Proposal, even if that person's Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by a Relevant Party or a Related Body Corporate, Representative or Associate of that Relevant Party or the person has publicly announced the Competing Proposal.

2.4 Notification of approaches

- (a) Subject to clause 2.4(d), during the term of this deed, the Relevant Parties must as soon as reasonably practicable and in any event within 2 Business Days of becoming aware of such matter, notify the Bidder in writing of:
 - (i) any negotiations or discussions or any approach, inquiry, request, or attempt to initiate any negotiations or discussions, or any intention to initiate any negotiations or discussions, in connection with or in respect of any actual, proposed or potential Competing Proposal; or
 - (ii) any proposal (whether or not made to the Target or any Target Group Member or Representative of a Target Group Member) in connection with or in respect of any actual, proposed or potential Competing Proposal,(each a Notifiable Matter).
- (b) A notification under clause 2.4(a) must, subject to clause 2.4(c), include the identity of the relevant person making the relevant approach, inquiry, request, or attempt or proposing the relevant actual, proposed or potential Competing Proposal, together with all material terms and conditions of the actual, proposed or potential Competing Proposal.
- (c) The Relevant Parties are not required to disclose the identity of the relevant person under clause 2.4(b) if the Target is, by operation of clause 9.6(c) of the Scheme Implementation Deed, not obliged to disclose the identity of the relevant person.
- (d) Clause 2.4(a) does not apply, and the Relevant Parties have no obligation to notify the Bidder in respect of any Notifiable Matter where the Target has notified the Bidder in

respect of the same Notifiable Matter in accordance with the Scheme Implementation Deed.

2.5 Paramountcy

- (a) Clauses 2.3, 3.1(d) and 4.3(a)(i) do not apply to the extent that any such clause restricts DW from taking or refusing to take any action in his executive capacity with respect to an actual, proposed or potential Competing Proposal in relation to which there has been no contravention by any Relevant Party of this clause 2 where:
 - (i) the Target Board has notified DW that, in accordance with clause 9.5 of the Scheme Implementation Deed, clause 9.3 and clause 9.4 of the Scheme Implementation Deed do not apply to that actual, proposed or potential Competing Proposal; and
 - (ii) the Target Board has lawfully instructed or directed DW in his executive capacity to take or not take such action in respect of that actual, proposed or potential Competing Proposal.
- (b) If this clause 2.5 applies in relation to an actual, proposed or potential Competing Proposal, then, notwithstanding any other provision of this deed, nothing in this deed prohibits DW from participating in, or providing any information in relation to or for the purposes of, any due diligence investigations in relation to Target being undertaken by any person in connection with that Competing Proposal or taking such action or inaction as is otherwise permitted under the terms of the Scheme Implementation Deed. For the avoidance of doubt, this clause 2.5(b) does not permit a Relevant Party to act contrary to clauses 4.1, 4.2 or 4.3 (other than clause 4.3(a)(i)).

3. Standstill

3.1 Relevant Party standstill

Subject to clause 3.3, during the term of this deed, the Relevant Parties must not, and must ensure that each of their respective Related Bodies Corporate and Associates do not, directly or indirectly:

- (a) sell, transfer or otherwise dispose of any Target Shares or a Relevant Interest in any Target Shares;
- (b) acquire any Target Shares or a Relevant Interest in any Target Shares;
- (c) enter into any derivative, swap or synthetic agreement, deed or arrangement under which payments may be made that are referable (in whole or part) to the price or value of Target Shares which would require disclosure under the Takeovers Panel's *Guidance Note 20: Equity Derivatives*;
- (d) enter into a Relevant Agreement with any person that would cause that Relevant Party's, or any other person's, voting power in Target to increase to more than 20%; or
- (e) subject to clause 2.5, aid, abet, counsel, assist, facilitate or induce any other person in doing, or publicly announcing that it will do, any of the things in clauses 3.1(a) to 3.1(d).

3.2 Bidder standstill

Subject to clause 3.3, during the term of this deed, Bidder must not, and must ensure that each of Bidder's Related Bodies Corporate and Affiliates does not, directly or indirectly:

- (a) sell, transfer or otherwise dispose of any Target Shares or a Relevant Interest in any Target Shares;
- (b) acquire any Target Shares or a Relevant Interest in any Target Shares;
- (c) enter into any derivative, swap or synthetic agreement, deed or arrangement under which payments may be made that are referable (in whole or part) to the price or value of Target Shares which would require disclosure under the Takeovers Panel's *Guidance Note 20: Equity Derivatives*;

- (d) enter into a Relevant Agreement with any person that would cause the Bidder's, or any other person's, voting power in Target to increase to more than 20%; or
- (e) aid, abet, counsel, assist, facilitate or induce any other person in doing, or publicly announcing that it will do, any of the things in clauses 3.2(a) to 3.2(d).

3.3 Exceptions

Nothing in clauses 3.1 or 3.2 prevents a party (or any of its Associates, Related Bodies Corporate or Affiliates) from taking:

- (a) any steps to implement the Transaction; or
- (b) any action with the prior written consent of the Bidder (in the case of clause 3.1) or the Relevant Parties (in the case of clause 3.2).

4. Voting and election commitment

4.1 Voting commitment

The Relevant Parties will procure that each of their respective Related Bodies Corporate and Associates vote all DW Target Shares in favour of the Scheme at the Scheme Meetings.

4.2 Election commitment

The Relevant Parties will procure that each of their respective Related Bodies Corporate and Associates submit a valid Election under the terms of the Scheme, such that the aggregate Election in respect of all the DW Target Shares involves:

- (a) Scrip Consideration in respect of not less than 66% of the DW Target Shares; and
- (b) Cash Consideration in respect of the remaining number of DW Target Shares,,

and the Relevant Parties will procure that each of their respective Related Bodies Corporate and Associates do not revoke or withdraw such Election.

4.3 No support for Competing Proposals

- (a) During the term of this deed, the Relevant Parties must not, and must ensure that each of their respective Related Bodies Corporate and Associates do not, directly or indirectly:
 - (i) subject to clause 2.5, become involved in an actual, proposed or potential Competing Proposal;
 - (ii) accept in respect any of the DW Target Shares any offer made in connection with an actual, proposed or potential Competing Proposal;
 - (iii) vote in favour of any resolution in respect of any Competing Proposal; or
 - (iv) make any public statement to the effect that they will accept, vote in favour of or otherwise support an actual, proposed or potential Competing Proposal.
- (b) During the term of this deed, the Relevant Parties must procure that each of their respective Related Bodies Corporate and Associates vote all DW Target Shares against any resolution in respect of any Competing Proposal.

5. Relationship between the parties

5.1 No joint venture

Nothing in this deed will give rise to a partnership, joint venture, fiduciary relationship or agency relationship between the parties.

5.2 DW capacity

The parties acknowledge and agree that DW enters into this deed in his personal capacity and not in his capacity as a director or officer of Target.

6. Warranties

6.1 Relevant Party warranties

Each Relevant Party represents and warrants to Bidder that each of the following statements is true and correct in all material respects as at the date of this deed:

- (a) The Relevant Party has full power, capacity and authority to enter into and perform this deed.
- (b) This deed constitutes a valid and binding obligation of the Relevant Party, enforceable against the Relevant Party in accordance with its terms.
- (c) Except to the extent contemplated by clause 2.5, the entry into and performance of this deed by the Relevant Party will not put the Relevant Party in breach of any obligation or agreement to which that Relevant Party is bound.
- (d) Insolvency:
 - (i) no trustee or similar officer is appointed in respect of the Relevant Party or the Relevant Party's assets;
 - (ii) no order has been made for the bankruptcy of the Relevant Party or the Relevant Party's estate and no event has occurred that would give a court the right to make such an order;
 - (iii) there is no moratorium of any debts of the Relevant Party, personal insolvency agreement or any other assignment, composition or arrangement with creditors or any similar proceeding or arrangement by which the assets of the Relevant Party are subjected conditionally or unconditionally to the control of the Relevant Party's creditors or a trustee is ordered or applied for;
 - (iv) The Relevant Party has not been declared or taken under any applicable law to be insolvent or unable to pay its debts nor has the Relevant Party admitted in writing that it is insolvent or unable to pay its debts;
 - (v) no writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process has been made or issued against or in relation to any asset of the Relevant Party; and
 - (vi) no event has occurred under any law which is analogous to, or which has a substantially similar effect to, any of the events referred to in paragraphs (i) to (v) above.
- (e) DW has the following interests in Target Shares:
 - (i) DW is not the registered holder of any Target Shares;
 - (ii) Zanea is the registered holder of 24,353,793 Target Shares;
 - (iii) DW is the registered holder of all of the shares in Zanea;
 - (iv) Zanea is an Associate of DW;
 - (v) Enertech in its capacity as trustee for the Enertech Executives Superannuation Fund is the registered holder of 913,793 Target Shares; and
 - (vi) Enertech in its capacity as trustee for the Enertech Executives Superannuation Fund is an Associate of DW.
- (f) DW does not have any voting power in any Target Shares except for the shares specified in clause 6.1(e).

6.2 Bidder warranties

Bidder represents and warrants to the Relevant Parties that each of the following statements is true and correct in all material respects as at the date of this deed:

- (a) Bidder has full power, capacity and authority to enter into and perform this deed.

- (b) This deed constitutes a valid and binding obligation of Bidder, enforceable against Bidder in accordance with its terms.
- (c) The entry into and performance of this deed by Bidder will not put Bidder in breach of any obligation or agreement to which the Relevant Parties are bound.
- (d) Insolvency:
 - (i) no meeting has been convened, resolution proposed, petition presented or order made for the winding up of the Bidder;
 - (ii) no receiver, receiver and manager, provisional liquidator, liquidator or other officer of the Court has been appointed in relation to all or any material assets of the Bidder;
 - (iii) no mortgagee has taken, attempted or indicated an intention to exercise its rights under any security of which the Bidder is the mortgagor or chargor;
 - (iv) the Bidder is not insolvent within the meaning of section 95A of the Corporations Act;
 - (v) the Bidder is paying its debts as and when they fall due;
 - (vi) the Bidder is not subject to voluntary administration under Part 5.3A of the Corporations Act;
 - (vii) the Bidder has not proposed or taken any steps to implement a scheme of arrangement or other compromise or arrangement with any of its creditors;
 - (viii) the Bidder has not received any written notice stating that ASIC has cancelled, or proposes to cancel, the registration of the Bidder; and
 - (ix) no event has occurred under any law which is analogous to, or which has a substantially similar effect to, any of the events referred to in paragraphs (i) to (viii) above.
- (e) None of the Bidder, or any of its Related Bodies Corporate, or any of its Affiliates has a Relevant Interest in any Target Shares other than, upon execution of this deed, the DW Target Shares.

7. Termination

7.1 Automatic termination

Subject to clause 7.2, this deed automatically terminates, with no need for any action by any party, on the first to occur of:

- (a) implementation of the Scheme;
- (b) the Scheme Implementation Deed is terminated:
 - (i) by operation of clause 13.2 of the Scheme Implementation Deed;
 - (ii) by either the Bidder or Target in accordance with clause 13.1(b) of the Scheme Implementation Deed; or
 - (iii) by the Target in accordance with clause 13.1(a) of the Scheme Implementation Deed;
- (c) the Bidder (or any permitted assignee of or successor to the Bidder under clause 9.5(b)) ceases to be Controlled by entities managed or advised by PEP Secure Assets Advisory Pty Limited (ACN 624 470 882), PEP Secure Assets Fund Co-Investment GP II Limited or any of their respective Related Bodies Corporate; and
- (d) the date that is 6 months after the date of this deed.

7.2 Automatic extension

If prior to the date that is 6 months after the date of this deed the Bidder makes a Counter Proposal under clause 9.7(b) of the Scheme Implementation Deed and the Target Directors determine in good faith under clause 9.7(c) of the Scheme Implementation Deed that:

- (a) the Counter Proposal would provide an equivalent or superior outcome for the Target Shareholders than the applicable Competing Proposal; and
- (b) the other terms and conditions of the Counter Proposal taken as a whole are not less favourable than those in the applicable Competing Proposal,

clause 7.1(d) is automatically amended for the purpose of clause 9.5 to read *"the date that is 12 months after the date of this deed"*.

7.3 Effect of Termination

If this deed is terminated, all further obligations of the parties under this deed will immediately cease to be of further force and effect without further liability of any party to the other, provided that nothing in this clause 7.3 releases any party from liability for any pre-termination breach of this deed.

8. Notices and other communications

Any communication under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as shown on the Details page (or as otherwise notified by that party to the other party from time to time);
- (c) must be signed by the party making the communication or by a person duly authorised by that party;
- (d) must be delivered or posted by prepaid post or sent by email to the address in accordance with clause 8(b); and
- (e) will be deemed to be received by the addressee:
 - (i) (in the case of prepaid post): on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting to an address outside Australia;
 - (ii) (in the case of delivery by hand): on delivery at the address of the addressee as provided in clause 8(b), unless that delivery is not made on a Business Day, or after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day; and
 - (iii) (in the case of email): at the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been delivered.

9. General

9.1 Trustee capacity

- (a) The parties that enter into and perform this deed as trustee of a trust (Trustee Parties) do so in that, and in no other, capacity.
- (b) Any liability of a Trustee Party arising under or in connection with this deed is limited to the extent to which the Trustee Party is entitled to be indemnified for that liability out of the assets of the relevant trust.
- (c) No person will be entitled to:
 - (i) claim from or commence proceedings against a Trustee Party in respect of any loss under this deed in any capacity other than as trustee of the relevant trust;

- (ii) seek the appointment of an administrator, a controller or a liquidator (all as defined in section 9 of the Corporations Act) or any similar officer under the laws of any relevant jurisdiction to any assets of the relevant trust, or prove in any liquidation, administration or arrangement of or affecting the Trustee Party, except in relation to the assets of the relevant trust; or
- (iii) enforce or seek to enforce any judgement in respect of a loss or liability under this deed against a Trustee Party in any capacity other than as trustee of the relevant trust.
- (d) The provisions of this clause 9.1 will not apply to any obligation or liability of a Trustee Party to the extent that it is not satisfied because under the trust deed or constitution establishing or otherwise governing the trust or by operation of Law there is a reduction in the extent of the Trustee Party's indemnification out of the assets of the trust, as a result of the Trustee Party's fraud, negligence or breach of trust.
- (e) This clause 9.1 applies despite any other provision of this deed.

9.2 Further acts

Each party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this deed.

9.3 Consents or approvals

A party may:

- (a) give conditionally or unconditionally; or
- (b) withhold,

its approval or consent in its absolute discretion unless this deed expressly provides otherwise.

9.4 Costs and expenses

Each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this deed.

9.5 Amendments

This deed may only be varied by a document signed by or on behalf of each of the parties.

9.6 Assignment

- (a) Except as provided in clause 9.5(b) a party may not assign or otherwise deal with its rights under this document or allow any interest in them to arise or be varied without the consent of the other party.
- (b) Notwithstanding any other provision of this deed, the benefit of this deed may be assigned by Bidder to a Related Body Corporate of Bidder or any Affiliate of the Bidder.

9.7 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this deed.
- (b) Any waiver or consent given by any party under this deed will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this deed will operate as a waiver of another breach of that term or of a breach of any other term of this deed.
- (d) Nothing in this deed obliges a party to exercise a right to waive any conditional term of this deed that may be in its power.

9.8 Counterparts

- (a) This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. Each counterpart is an original but the counterparts together are one and the same deed.
- (b) This deed is binding on the parties on the exchange of duly executed counterparts.
- (c) The parties agree that a copy of an original executed counterpart sent by email to the email address (as the case may be) of the other party specified in the Details page (or as otherwise notified by that party to the other party from time to time), instead of the original, is sufficient evidence of the execution of the original and may be produced in evidence for all purposes in place of the original.

9.9 Entire agreement

This deed:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed on between the parties; and
- (b) supersedes any prior agreement (whether or not in writing) between the parties.

9.10 Governing law

- (a) This deed is governed by and will be construed according to the laws of Western Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia and of the courts competent to determine appeals from those courts.

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Signing page

EXECUTED as a deed.

Executed by Elemental Infrastructure BidCo Pty Ltd in accordance with Section 127 of the *Corporations Act 2001*



Signature of director

Andrew Charrier

Name of director (print)



Signature of director/company secretary

(Please delete as applicable)

Matthew Robinson

Name of director/company secretary (print)

Executed by Zanea Pty Limited in accordance with Section 127 of the *Corporations Act 2001*



Signature of director



Name of director (print)



Signature of director/company secretary

(Please delete as applicable)



Name of director/company secretary (print)

Executed by Enertech Pty Ltd in its capacity as trustee for the Enertech Executives Superannuation Fund in accordance with Section 127 of the *Corporations Act 2001*



Signature of director



Name of director (print)



Signature of director/company secretary

(Please delete as applicable)



Name of director/company secretary (print)

Signing page

EXECUTED as a deed.

Executed by Elemental Infrastructure BidCo Pty Ltd in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Name of director (print)

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

Name of director/company secretary (print)

Executed by Zanea Pty Limited in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Name of director (print)

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

Name of director/company secretary (print)

Executed by Enertech Pty Ltd in its capacity as trustee for the Enertech Executives Superannuation Fund in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Name of director (print)

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

Name of director/company secretary (print)

Signed sealed and delivered by William (Doug)
Walker in the presence of



Signature of witness



Signature of William (Doug) Walker



Name of witness (print)