

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

_____, Individually and on
behalf of all others similarly situated,

Plaintiff,

v.

ESS TECH INC., ERIC P. DRESSELHUYS,
and AMIR MOFTAKHAR,

Defendants.

Case No:

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS**

JURY TRIAL DEMANDED

Plaintiff _____ (“Plaintiff”), individually and on behalf of all other persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters, based upon, among other things, the investigation conducted by and through Plaintiff’s attorneys, which included, among other things, a review of the Defendants’ public documents, public filings, wire and press releases published by and regarding ESS Tech Inc. (“ESS” or the “Company”) and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a class action on behalf of persons or entities who purchased or otherwise acquired publicly traded ESS securities between August 11, 2022 and December 7, 2022, inclusive (the “Class Period”). Plaintiff seeks to recover compensable damages caused by Defendants’ violations of the federal securities laws under the Securities Exchange Act of 1934 (the “Exchange Act”).

JURISDICTION AND VENUE

2. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act, (15 U.S.C. §78j(b) and 78t(a)), and Rule 10b-5 promulgated thereunder (17 C.F.R. §240.10b-5).

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, and Section 27 of the Exchange Act (15 U.S.C. §78aa).

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)) as the alleged misstatements entered and the subsequent damages took place in this judicial district.

5. In connection with the acts, conduct and other wrongs alleged in this complaint, Defendants (defined below), directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

PARTIES

6. Plaintiff, as set forth in the accompanying certification, incorporated by reference herein, purchased ESS securities during the Class Period and was economically damaged thereby.

7. Defendant ESS provides energy storage systems. The Company designs, builds, and deploys iron flow batteries for long-duration commercial and utility-scale energy storage applications requiring from 4 to 12 hours of flexible energy capacity. ESS Tech serves customers worldwide.

8. ESS is headquartered at 26440 SW Parkway Ave., Bldg. 83 Wilsonville, Oregon and incorporated in Delaware. ESS shares are listed on the NYSE under ticker symbol GWH.

9. Defendant Eric P. Dresselhuys (“Dresselhuys”) is and was at all pertinent times the Company’s Chief Executive Officer and Director.

10. Defendant Amir Moftakhar (“Moftakhar”) is and was at all pertinent times the Company’s Chief Financial Officer.

11. Defendants Dresselhuys and Moftakhar are sometimes collectively referred to herein as the “Individual Defendants.”

12. The Individual Defendants:

(a) directly participated in the management of the Company;

(b) was directly involved in the day-to-day operations of the Company at the highest levels;

(c) was privy to confidential proprietary information concerning the Company and its business and operations;

(d) was directly or indirectly involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein;

(e) was directly or indirectly involved in the oversight or implementation of the Company’s internal controls;

(f) was aware of or recklessly disregarded the fact that the false and misleading statements were being issued concerning the Company; and/or

(g) approved or ratified these statements in violation of the federal securities laws.

13. The Company is liable for the acts of the Individual Defendants and their employees under the doctrine of *respondeat superior* and common law principles of agency because all of the wrongful acts complained of herein were carried out within the scope of their employment.

14. The scienter of the Individual Defendants and other employees and agents of the Company is similarly imputed to the Company under *respondeat superior* and agency principles.

15. The Company and the Individual Defendants are referred to herein, collectively, as the “Defendants.”

SUBSTANTIVE ALLEGATIONS

Materially False and Misleading Statements Issued During the Class Period

16. On August 11, 2022, in a Press Release entitled “ESS Announces Strategic Partnership to Deploy Long-Duration Energy Storage in Australia and Deliver an Expected 12 GWh of Iron Flow Batteries”, ESS stated, in pertinent part, as follows:

Under the terms of the agreement, ESS will initially supply 70 complete 75kW / 500kWh Energy Warehouse (EW) systems to ESI in 2022 and 2023. Concurrently, ESI will construct a manufacturing facility in Queensland, Australia, equipped to conduct final assembly of ESS systems from 2024 onward. Systems manufactured at the Queensland facility will utilize “core component kits” supplied by ESS including battery modules, proton pumps, and other unique components. Core component kits will continue to be manufactured in Wilsonville, Ore. The ESI manufacturing facility is designed to reach a production capacity of up to 400 MW of energy storage annually.

“We look forward to deploying ESS technology in Australia and the region to meet the needs of energy customers and build a sustainable, resilient energy future,” said Eric Dresselhuys, CEO of ESS. “ESI brings a wealth of experience and expertise in clean energy and energy storage and a keen understanding of the Australian energy market. We look forward to working with them to advance our shared mission to accelerate the clean energy transition by deploying long-duration energy storage solutions in the region.”

“ESS is an ideal technology partner to meet the extraordinary demand for long-duration energy storage in Australia and the region,” said Stuart Parry, Managing Director of ESI. “Safe and non-toxic ESS iron flow batteries are perfect in Australia’s harsh environment and the ability to locally source electrolyte provides insurance against supply chain risks and price escalation. The transition to clean energy requires new long-duration storage solutions and we look forward to working with ESS to meet the needs of an increasingly renewable energy grid.”

ESS iron flow technology provides cost-effective long-duration energy storage and is ideal for applications that require from 4-12 hours of flexible energy capacity. ESS systems provide resilient, sustainable energy storage well-suited for multiple use cases including utility-scale renewable energy installations, remote solar + storage microgrids, grid load-shifting and peak shaving, and other ancillary grid services. ESS technology is safe, non-toxic and has a 25-year lifespan without capacity fade. Demand for long-duration energy storage systems is expected to grow rapidly in Australia; New South Wales announced the procurement of 2 GW of LDES in its recent Electricity Infrastructure Roadmap.

ESS anticipates that Energy Warehouse deliveries to ESI will begin in 2022...

About Energy Storage Industries Asia Pacific

Energy Storage Industries Asia Pacific (ESI) is a Queensland-based, 100 percent Australian-owned company that provides reliable and environmentally friendly renewable energy storage solutions that are essential for Australia's transition to a renewable energy future.

We are investing up to \$70 million in Maryborough to manufacture and distribute low-cost, long-life iron flow batteries that allow large-scale energy storage for wholesale electricity generators, energy retailers, and commercial and industrial (C&I) customers. For more information visit <https://esiap.com.au>.

17. On August 11, 2022, ESS filed its Form 8-K with the SEC signed by Defendant Moftakhar, attaching a Press Release announcing financial results for the quarter ended June 30, 2022. The Press Release stated, in pertinent part, as follows:

“Q2 marked another quarter of meaningful achievements for ESS across product installations, customer wins and operational improvement. Importantly, we reached a significant milestone in recognizing \$686 thousand in revenue. Further underscoring the value proposition of our long-duration iron flow battery technology, ESS was chosen as the partner of Energy Storage Industries Asia Pacific, or ESI, an Australia-based renewables company, to supply local energy storage demand. ESI has already ordered more than 70 Energy Warehouses™ and we began shipping them in July. With backing from the local government, ESI plans to invest \$60 million to develop a manufacturing facility to deliver an expected 400 MW of annual capacity for that region, with the production ramp starting in 2024. In addition, I'm thrilled that we secured a key deal with Tampa Electric Company to deliver an Energy Center™ to help enable their transition to a decarbonized grid. Clearly, the trajectory of our business is stronger than ever,” said Eric Dresselhuis, CEO of ESS...

Recent Business Highlights

...Entered into a relationship with Energy Storage Industries Asia Pacific, or ESI, where ESS will supply Energy Warehouses™ and ESI will develop sales, manufacturing and on-site service of Energy Warehouses™ and Energy Centers™ in Queensland, Australia for Australia and neighboring countries. ESI has placed multiple orders for more than 70 Energy Warehouses™ and ESS began shipping in July. ESI will build the manufacturing infrastructure to deliver an expected 400 MW of annual production capacity with ESS delivering the core IP of our technology, assembled and shipped from Oregon...

18. On August 12, 2022, ESS filed its Form 10-Q for the quarterly period ended June 30, 2022 signed by signed by Defendant Dresselhuys. Attached to the 10-Q were certifications pursuant to SOX signed by Defendants Dresselhuys and Moftakhar attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal control over financial reporting and the disclosure of all fraud. The 10-Q stated, in pertinent part as follows:

RELATED PARTY TRANSACTIONS

In April 2021, the Company signed a framework agreement with one of its investors, SB Energy Global Holdings One Ltd ("SBE"), to supply energy storage systems to SBE in support of its market activities. Under this agreement, the Company has made various commitments to meet SBE's potential need for energy storage systems and is obligated to reserve a certain percentage of manufacturing capacity to meet SBE's future needs, subject to periodic reviews of its firm and anticipated orders. To date, no orders have been placed under the framework agreement. Additionally, the Company entered into a preferred financing equity transaction with SBE and Breakthrough Energy Ventures, LLC as discussed in Note 12. These related parties were also issued 6,707,318 of the Earnout Shares discussed in Note 3. As of December 31, 2021, the Company had recorded accounts receivable of \$66 thousand and deferred revenue of \$171 thousand for sales of energy storage systems to related parties. During the three and six months ended June 30, 2022, the Company recognized revenue of \$282 thousand for sales of energy storage systems to related parties. As of June 30, 2022, the Company had recorded accounts receivable with related parties of \$57 thousand...

19. On August 18, 2022, a report by Energy Storage Pro entitled "ESS to Set-up Long Duration Energy Storage in Australia" quoted ESS executives as follows:

Eric Dresselhuys is the CEO of ESS. He stated that ESS looks forward to deploying ESS technology throughout Australia and the region in order to meet the energy

needs of customers and create a sustainable and resilient energy future. “ESI has a wealth and depth of expertise in clean energy, energy storage, and a deep understanding of the Australian market. We look forward to working with them in order to further our common mission to accelerate clean energy transition through long-term energy storage solutions in the region.” The CEO added.

Stuart Parry, Managing director of ESI, stated that ESS was an ideal technology partner to address the exceptional demand for long-duration storage energy in Australia and the region. “Safe, non-toxic ESS ironflow batteries are ideal for Australia’s harsh climate. The ability to source electrolyte locally provides insurance against price escalation and supply chain risks. We look forward to working closely with ESS in order to provide long-term storage solutions for clean energy transition.

20. On November 3, 2022, ESS filed its Form 10-Q for the quarterly period ended September 30, 2022 with the SEC, signed by Defendant Dresselhuys. Attached to the 10-Q were certifications pursuant to SOX signed by Defendants Dresselhuys and Moftakhar attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal control over financial reporting and the disclosure of all fraud. The 10-Q stated, in pertinent part as follows:

RELATED PARTY TRANSACTIONS

In April 2021, the Company signed a framework agreement with one of its investors, SB Energy Global Holdings One Ltd (“SBE”), to supply energy storage systems to SBE in support of its market activities. Under this agreement, the Company has made various commitments to meet SBE’s potential need for energy storage systems and is obligated to reserve a certain percentage of manufacturing capacity to meet SBE’s future needs, subject to periodic reviews of its firm and anticipated orders. To date, no orders have been placed under the framework agreement. Additionally, the Company entered into a preferred financing equity transaction with SBE and Breakthrough Energy Ventures, LLC as discussed in Note 12. These related parties were also issued 6,707,318 of the Earnout Shares discussed in Note 3. As of December 31, 2021, the Company had recorded accounts receivable of \$66 thousand and deferred revenue of \$171 thousand for sales of energy storage systems to related parties. During the three and nine months ended September 30, 2022, the Company recognized revenue of \$1 thousand and \$283 thousand, respectively, for sales of energy storage systems and extended warranty services to related parties. As of September 30, 2022, the

Company had recorded deferred revenue of \$6 thousand for sales of extended warranty services to related parties....

The execution of our strategy to expand into new markets through strategic partnerships, joint ventures and licensing arrangements is in a very early stage and is also subject to various risks which could adversely affect our business and future prospects.

We may enter into strategic partnerships, joint ventures and licensing arrangements to expand our business and enter into new markets. However, there is no assurance that we will be able to consummate any such arrangements as contemplated to commercialize our energy storage products. There is no assurance that we will be able to realize the benefits of any such arrangements even if we do enter into such strategic partnerships, joint ventures and licensing arrangements. For example, we entered into a strategic partnership with Energy Storage Industries Asia Pacific (“ESI”) in August 2022 and into a framework agreement with Sacramento Municipal Utility District (“SMUD”) in September 2022. Under the terms of our agreement with ESI, we are obligated to supply 70 complete 75kW / 500kWh Energy Warehouse systems to ESI in 2022 and 2023. Concurrently, ESI is expected to construct a manufacturing facility in Queensland, Australia, equipped to conduct final assembly of our systems from 2024 onward. However, beyond the initial order, ESI may reduce its future orders of our product, and SMUD is under no obligation to place any firm orders with us, which may result in a diminished potential value of these relationships to us.

21. The statements contained in ¶¶16-20 were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company’s business, operations and prospects, which were known to Defendants or recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) the purported agreement with ESI was in fact an undisclosed related party transaction because ESI was a de-facto subsidiary of ESS masquerading as third-party client; (2) ESS misled investors with their partnership announcement to signal business success to investors; and (3) as a result, Defendants’ statements about its business, operations, and prospects, were materially false and misleading and/or lacked a reasonable basis at all relevant times.

THE TRUTH EMERGES

22. On December 7, 2022, Grizzly Research stated, in a report entitled “Caught Red-Handed-We Present Evidence that ESS Tech’s Biggest Customer is Really an Undisclosed Related Party Without Operations”, in pertinent part, as follows:

- ESS Tech Inc. (“ESS”, NYSE: GWH) develops and produces utility-scale batteries for long-duration storage of electricity employing a “simple yet revolutionary technology: iron, salt and water”
- The market for long-duration battery storage is highly competitive and technically challenging. We argue ESS’s claims about its technology are overstated and targeted at creating investor hype for laypeople regarding the field of battery engineering.
- On August 11, 2022, ESS announced a “breakthrough partnership” under which ESS will initially supply 70 of its Energy Warehouse systems to an Australian company, Energy Storage Industries Asia Pacific (“ESI”). This breakthrough finally comes following a complete lack of revenue after over 10 years of ESS’s operations.
- The ESI partnership is the only relevant revenue generating agreement and the only major announcement ESS had since going public and seems to be the key aspect sell-side analysts are concentrating on.
- Our research uncovers ESI is a de-facto subsidiary of ESS masquerading as third-party client. ESI changed its name in February 2022 and shared a near-identical logo with ESS until this change. We found this supposedly massive strategic partner has no discernible activities outside of its work with ESS.
- We believe ESS took significant efforts to conceal its relationship with ESI before announcing their big agreement which makes us believe that management is trying to deliberately mislead investors.
- ESI announced a \$70m new flagship battery factory for their alleged collaboration with ESS with a groundbreaking ceremony in July 2022. We found evidence that the factory is not being built. ESI does not reveal an address for the company. In ESI’s presentation material they show a plot of land for the factory that is not owned by ESI and no construction takes place there. The construction company seemingly tasked for building the factory does not mention it in their project list, which includes much smaller projects.
- ESI has apparently not even an office for operations, and their headquarters is a post box in a local café.
- ESS has boasted about a “blue-chip customer base”. However, all these pre-agreements were later abandoned without any re-contracting or any recognized revenue for over ten years. A history of consistent failure when working with marquee potential customers leads us to disbelieve the company’s very bold claims about its differentiated technology.

- ESS’s engineering team has a personal history of grifting from failed projects. The two founders worked many years in leading engineering roles for ClearEdge Power, Inc, a fuel cell company that declared bankruptcy in a sudden announcement. ESS’s lead engineer was formerly the responsible engineering head for the famously dysfunctional Tesla solar tiles.
- In January 2022, the most powerful insiders, founder and president Craig Evans, CEO Eric Dresselhuys, as well as CFO Moftakhar Amir started selling their shares to the market, and already netted over \$1.7m in private gains...

...We believe we have caught ESS in an outright lie. ESS’s largest partner and key growth driver for the next few years is a related party without any relevant own business activity. The deal which remains to play out, is therefore, of questionable economic essence.

Our view is ESS management has consciously misled investors and sell-side analysts with their “breakthrough partnership” announcement to keep the growth story alive. We believe the company will continue to fail to generate meaningful revenue because its technology is not as cutting edge as claimed in an industry of increasing technological sophistication and competition. We caution investors against trusting the outrageous forecasts tied to dishonest partnership announcements. We conclude that ESS is dishonest, un-investible, and we believe the stock is a terminal zero....

23. The Report revealed that ESS misrepresented its revenue:

ESS still does not report any meaningful revenue today. The company remains at a pre-production stage, despite having reported their first “commercial deployment” and “product line launch” in 2015 and 2017. ESS faced allegations of inflated revenue promises in October 2021 which continue to underpin its current valuation. ESS’ response to this scrutiny has been the announcement of a new key customer, which we claim is even more misleading and points to an even more dire situation for the company.

24. The Report goes on to say that ESI is not a real third party and has no business:

ESS did not recognize any revenue from 2011 to 2021, despite multiple installations of their batteries to partners, which include blue chips and international corporations. In the chapter after this one, we elaborate on how these partners cut ties to ESS. That is why ESS currently needs to desperately signal some meaningful business success to their investors. The discontinuance of all third-party investor and client relations until 2022 are major red flags for all observing investors.

Only in 2022 Q2, ESS started to recognize \$686 thousand in revenue, which they present as a “significant milestone”. ESS attributed revenue to “three Energy

Warehouses™ in the second quarter” without further detail on the client. (Red flag!) In the same report, they announced the new relationship with a company called “Energy Storage Industries Asia Pacific” (“ESI”), who “has placed multiple orders for more than 70 Energy Warehouses™” and towards which “ESS began shipping in July”. “ESI plans to invest \$60 million to develop a manufacturing facility to deliver an expected 400 MW of annual capacity for that region [Australia]”. In their Q3 release in November 2022, ESS announced only one other small revenue-recognized delivery of \$189k.

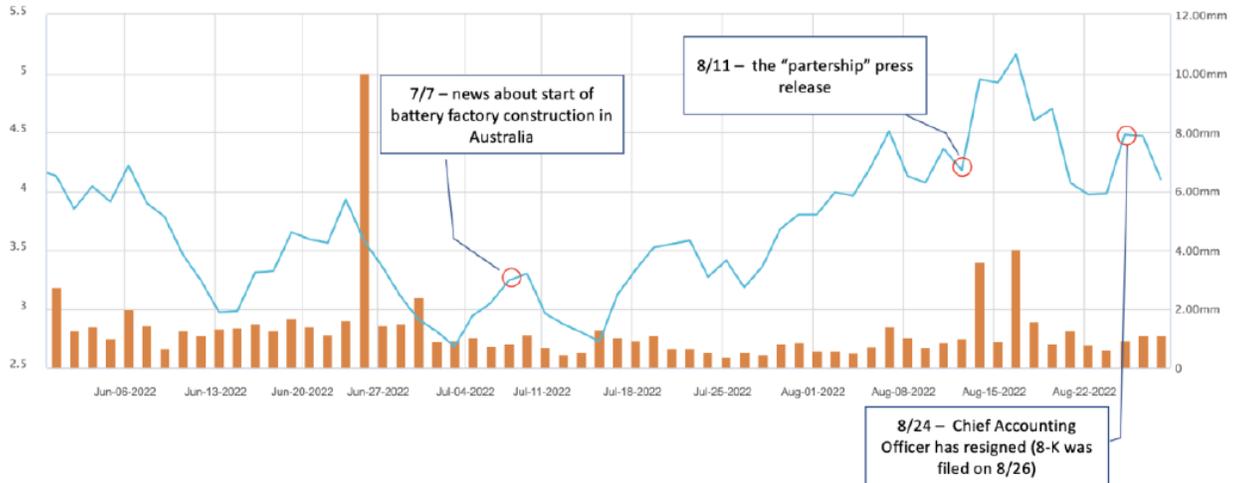
This, at first sight, indeed looks like the milestone achievement the company has been waiting for. The new agreement was praised without question by sell-side analysts and retail investors alike. **The problem with the transaction is that ESI is not actually a third party but an entity completely reliant on ESS without a real office, staff, or current business.**

On August 11, 2022, ESS released its Q2/H1 earnings. ESS reported losses of \$24m. ESS announced verbatim a “**strategic partnership**” to deploy long-duration energy storage in Australia and deliver an “expected 12 GWh” of iron flow batteries. In the dedicated press release, that same day, ESS further detailed a deal to initially supply ESI with 70 complete 75kW / 500kWh Energy Warehouse systems in 2022 and 2023. Concurrently, ESI will construct a manufacturing facility in Queensland, Australia equipped to conduct final assembly of ESS systems from 2024 onward. In the earnings call, CEO Eric Dresselhuys referred to the agreement as a “**landmark partnership**” and added:

*“ESI conducted an exhaustive evaluation of technologies to address the need for long duration energy storage in Australia, and we are thrilled to be **working with them as partners**. This agreement provides further validation of ESS’s technology and the global market opportunity in front of us.”*

ESI mirrors the wording in their LinkedIn feed by also announcing the agreement as a “strategic partnership” with ESS, who the present as the “ideal technology partner”.

In the days following the announcement, the share price jumped 25% on the “partnership” news (and ESS was up 62% since July 7, when the first news about the project in Australia has appeared – “Iron flow battery factory under construction in Queensland, Australia”).



On August 24, 2022, ESS’s Chief Accounting Officer announced his resignation from his position. The timing of his departure makes us question whether it was motivated by fear of being held responsible for the recent false and misleading announcements.

Here is the problem with this business relation: Energy Storage Industries Asia Pacific is not an unrelated third party but instead, basically, fully controlled by ESS themselves. That is why ESS’s and Dresselhuys’ announcements on the “partnership” are deliberately misleading.

ESI is embedded in a complex net of corporate structures, which includes the names “ESI ASIA PACIFIC HOLDINGS PTY LTD”, “ESS ASIA PACIFIC PROPERTIES PTY LTD”, “ESS NTH AUSTRALIAN AND PACIFIC EXPORTS PTY LTD”, and a list of Investment firms and private investors. In the following we show a clear trace how ESI is closely tied to ESS for years.

An older, undated presentation by the company Sword+Stone (S+S) Pty Ltd, on an Australian government server, describes the company ESS Asia Pacific as a joint venture between ESS, Inc. and S+S.

The company logos indicate a close relationship between ESS, Inc., and ESS Asia Pacific.



CATALYZING A CLEAN FUTURE. EVERY DAY.

(ESS Asia Pacific’s logo used in the old presentation, and ESS, Inc.’s logo from their current website)

Australia filings... corroborate that ESI Asia Pacific is indeed ESS Asia Pacific after a simple renaming of the business entity.

Name: ESI ASIA PACIFIC PTY LTD

ACN: 644 628 660

ABN: [17 644 628 660](#)

Registration date: 25/09/2020

Next review date: 25/09/2022

Former name(s): ESS ASIA PACIFIC PTY LTD, SWORD AND STONE ASSEMBLY PTY LTD

The renaming to “ESI Asia Pacific” was filed on February 2022.

ABN details		
Entity name	From	To
ESI ASIA PACIFIC PTY LTD	08 Feb 2022	(current)
ESS ASIA PACIFIC PTY LTD	16 Apr 2021	08 Feb 2022
SWORD AND STONE ASSEMBLY PTY LTD	25 Sep 2020	16 Apr 2021

To further conceal the close relation between ESS and ESI not only the name, but also the logo was changed.

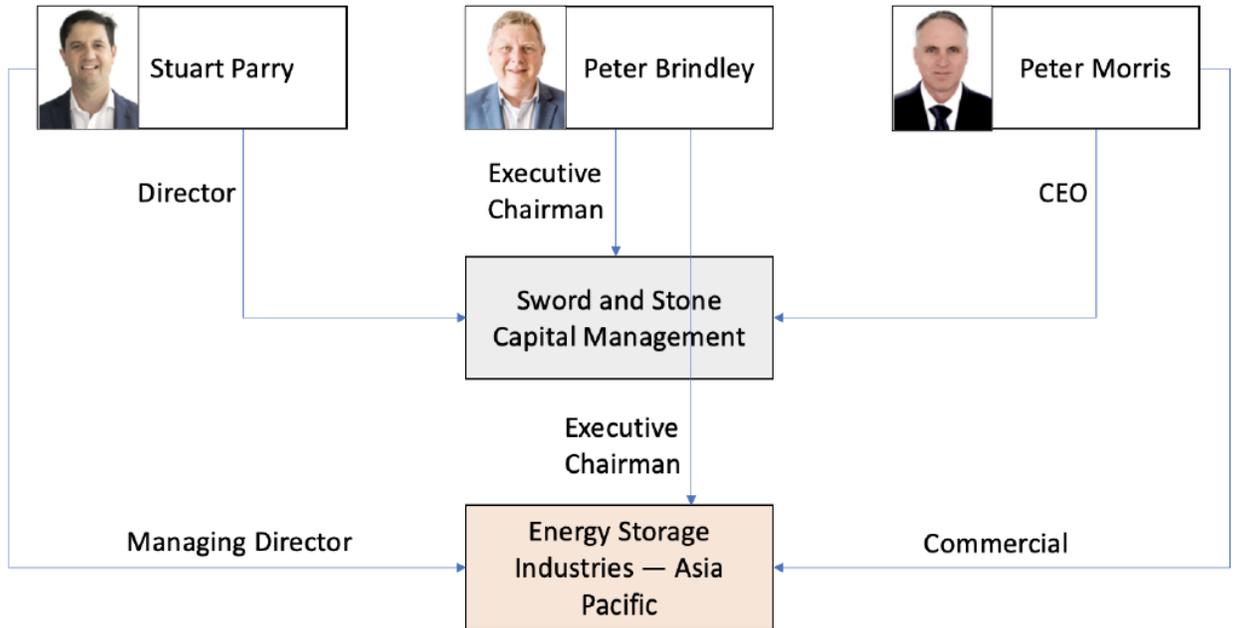


(ESI's current logo from their company website esiap.com.au)

The company domain was only registered on January 27, 2022 (WhoIs database, Wayback Machine), further indicating that ESI is not the experienced company that ESS' management claim it to be.

Giving ESS the benefit of the doubt and assuming their joint venture partner acts independently, how meaningful is the vote of trust by S+S for ESS' products?

In an article from April 2021, S+S founder Peter Brindley admits that S+S "is working on its first project, a large-scale battery farm in Queensland." In other words, S+S has no business other than their joint venture with ESS. That is why the ESI executives are the same people than the S+S executives:



(sources: <https://www.swordandstone.com.au>, <https://esiap.com.au>)

LinkedIn lists a staff of only two members for ESI, both with anonymous LinkedIn profiles, indicating that operational activity at ESI must be very low.

3 results

- 
Stuart Parry • 3rd+
 Managing Director at Energy Storage Industries Asia Pacific
 Brisbane, QLD
 Message
- 
LinkedIn Member
 Financial Controller at Energy Storage Industries Asia Pacific
 Greater Brisbane Area
- 
LinkedIn Member
 Project Officer at Energy Storage Industries Asia Pacific.
 Greater Brisbane Area

ESI's employee list on LinkedIn

S+S is also already mentioned in ESS' May 2021 presentation.



This information makes us believe that S+S was, and ESI still is just a strawman entity for ESS. ESI's current website corroborates this impression. Under "Products & Services" in their main navigation we find a description of ESS's batteries without mentioning ESS. The description is a direct paraphrase from ESS's wording in their company material about the product. Most importantly, no other business offers than the manufacturing, distribution, supply, installation, and on-going maintenance of the iron-flow batteries are mentioned. **ESI is the de facto Australian branch of ESS.**

Why does ESS target the Australian market? PV Magazine reports the ESI project is "among plans for 13 large-scale battery systems outlined by the Queensland government in the most recent state budget" for a particular plan. "Queensland is becoming a renewable energy superpower." In other words, the regional politics are particularly gullibly to stories about new technology in the long-duration battery sphere, and are likely willing to cut short on proper due diligence...

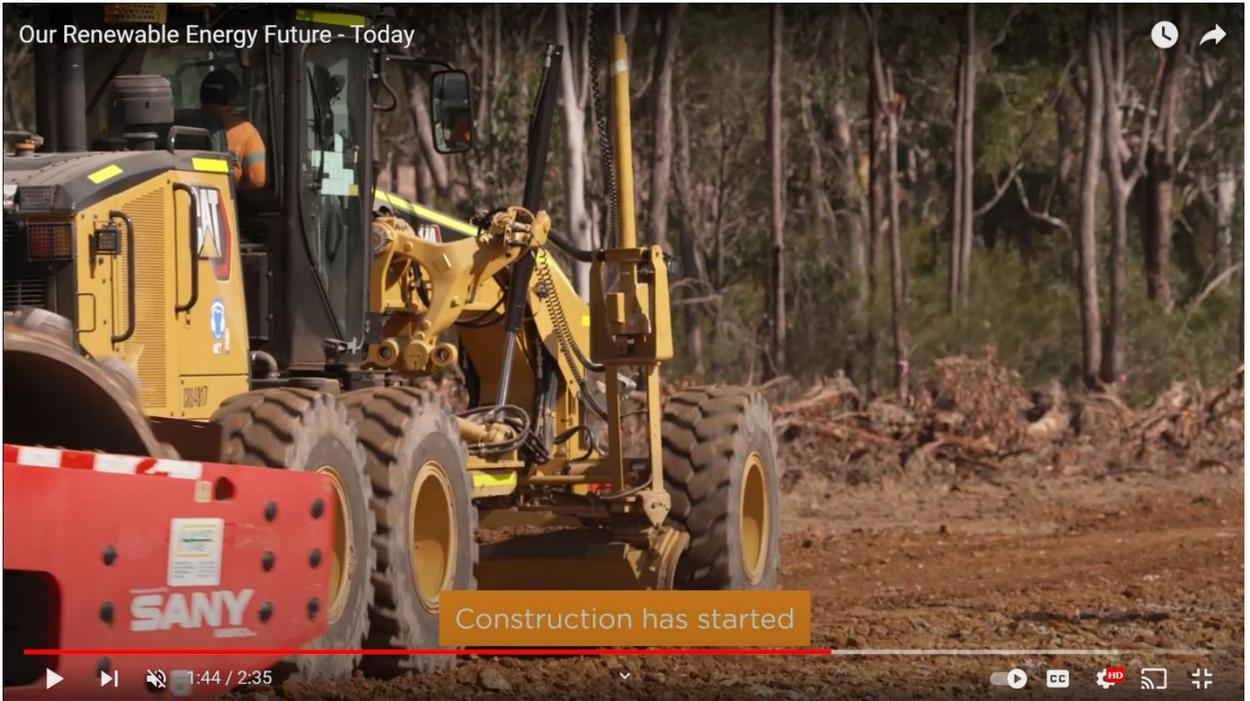
25. The Report goes on to question whether the ESI Project even exists:

In ESI's official July 2022 announcement of the new production facility, ESI claims the "work on our \$70 million Maryborough facility officially started on Wednesday, 6 July 2022." Neither the company announcements, nor any other company material provides an address for the facility or any other clear indication on the exact location. We were not able to find any marked location on Google maps or the regional White Pages under any version of ESI's company name.



Concept image of the facility (final design is subject to change).

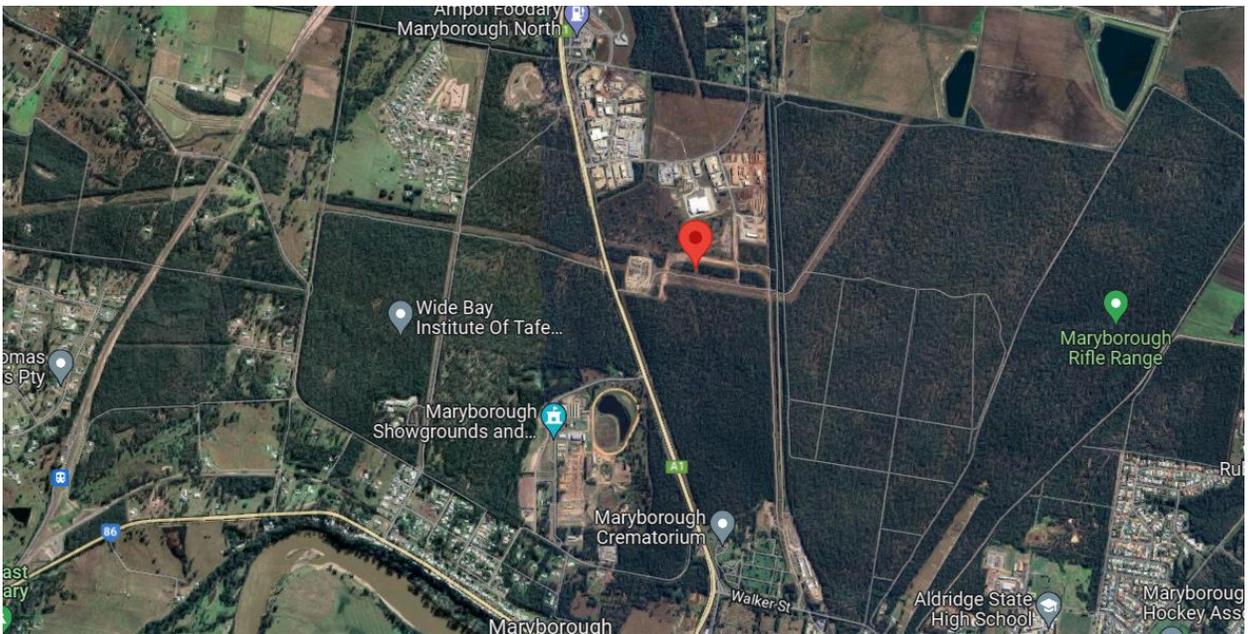
However, we were able to geolocate ESI's alleged new factory in Maryborough at 25°29'53"S 152°40'13"E based on a presentation on YouTube by ESI Asia Pacific's own YouTube channel. The Maryborough transformer station in the picture make us unambiguously conclude that this is in fact the location. The pictures by ESI below show a clear indications of construction activity in an early stage at that site. The area is seemingly being levelled. Note the construction vehicles in both shots from the video below. Google Earth provides a satellite picture for July 9, 2022, which corroborates ESI's claim of conducting basic levelling work during this time.



(source: ESI's own presentation on Youtube)

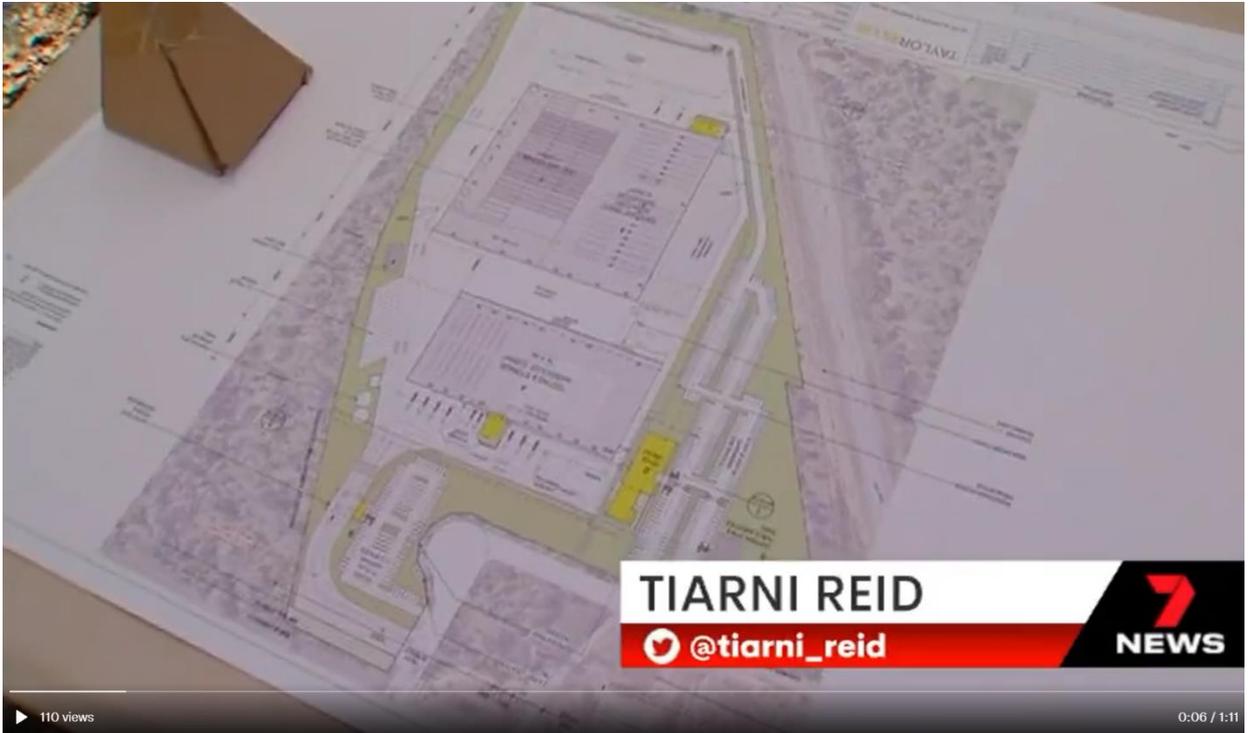


(source: Google Earth/Google Maps)



(source: Google Maps)

A screenshot from a News report on the project reveals a blurry construction plan.



We fitted the construction plan into the actual land to unambiguously locate the exact spot of the factory.



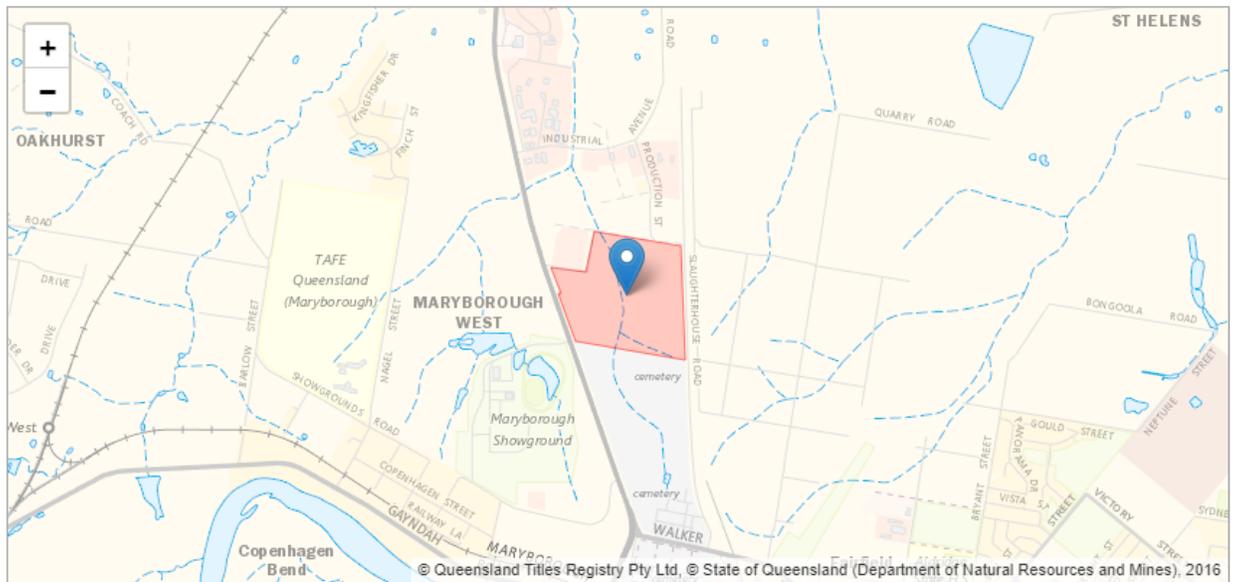
The following animation shows public satellite images from mid-June to December 5 in 5-day succession from surveillance satellites. The images reveal that barely any work was conducted on the site until now...

We looked into Queensland's title register and found that the shown plot of land is owned by the local government and in use by the government's energy company, Ergon Energy Corporation Limited and not ESI. The latest entry for an easement is dated in June 2007, indicating that neither ESI nor anyone else has registered for purchase or use of the land in the last 15 years. The latest available high-resolution image is dated from November 1st, and also corroborates a lack of construction activity on the site.



Site on November 1st, via Airbus SPOT satellite imagery

Your selected property



Property details

Lot/Plan	Lot 291 on SP170657
Property address	Lot 291 BRUCE HWY, MARYBOROUGH WEST QLD 4650
Title reference number(s)	50556003

Source: <https://search.titlesqld.com.au/product-search>

Queensland Titles Registry Pty Ltd
 ABN 23 648 568 101

Title Reference:	50556003	Search Date:	06/10/2022 06:44
Date Title Created:	31/05/2005	Request No:	42449243
Previous Title:	40047353		

ESTATE AND LAND

Estate in Fee Simple
 LOT 291 SURVEY PLAN 170657
 Local Government: FRASER COAST

REGISTERED OWNER

Dealing No: 708697713 30/05/2005
 FRASER COAST REGIONAL COUNCIL

EASEMENTS, ENCUMBRANCES AND INTERESTS

1. Rights and interests reserved to the Crown by Deed of Grant No. 40047353 (Lot 291 on SP 170657)
2. EASEMENT IN GROSS No 708794909 04/07/2005 at 14:54
 burdening the land
 ERGON ENERGY CORPORATION LIMITED A.C.N. 087 646 062
 over
 EASEMENT A ON CP MCH4161
3. EASEMENT IN GROSS No 710663689 08/06/2007 at 11:11
 burdening the land
 ERGON ENERGY CORPORATION LIMITED A.C.N. 087 646 062
 over
 EASEMENT B ON SP189789

ADMINISTRATIVE ADVICES

NIL

UNREGISTERED DEALINGS

NIL

Caution - Charges do not necessarily appear in order of priority

** End of Current Title Search **

Another screenshot from a News Channel's report on the project shows a construction sign by the regional construction company SGQ.



SGQ proudly lists their construction projects on their website. The list includes much smaller projects than a \$70 million cutting-edge battery factory, which is currently not shown in the list. The absence of such a large project makes us conclude that the sign is not one from the ESI construction site but a mock-up for the news report.

Another very important question for the facility’s realization is the source of the funding. Investing \$70 million usually requires some sophisticated investors. ESI does not publish any information in these investors or any government participation in concrete terms. We were not able to identify the main source of funding for ESI’s expensive high-risk venture...

26. The Report then says that ESI doesn’t even have a proper office address:

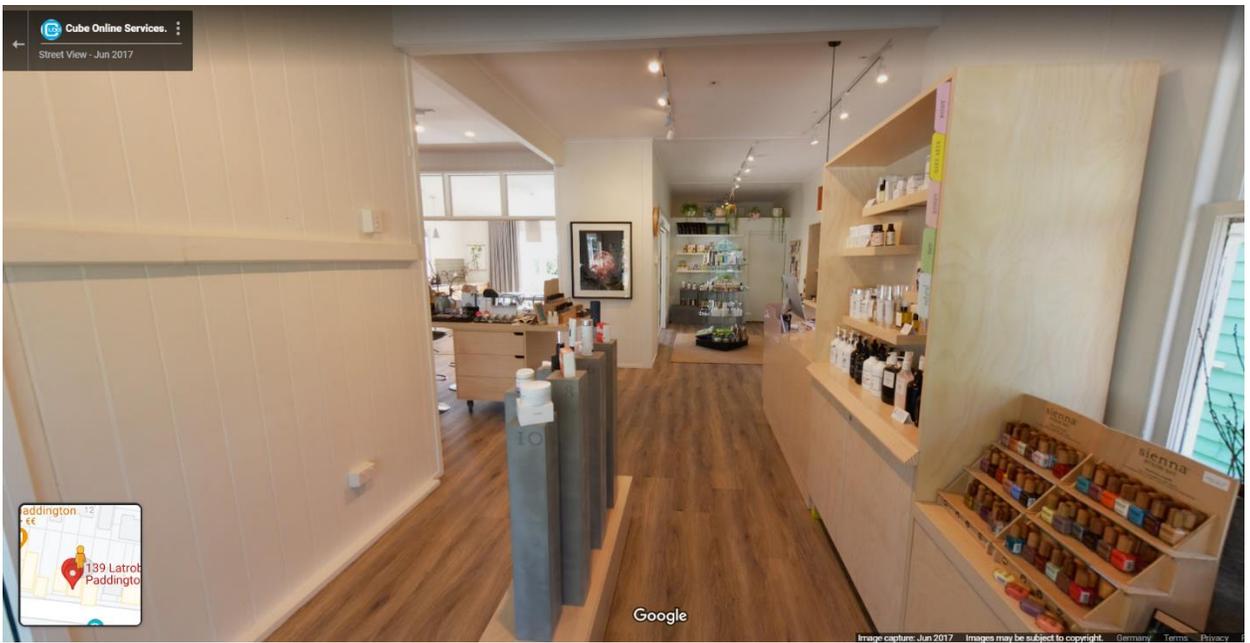
A company that currently builds a \$70 million facility for “up to 500 highly skilled employees” to build “20 per cent of Australia’s renewable energy storage needs” would certainly have a somewhat useable office headquarter, right? According to regulatory filings the address is “139 Latrobe Terrace, Paddington, QLD, 4064.

CURRENT COMPANY ADDRESS(ES):

Type:	Address:	Start date:	Document number:
Registered Office	139B LATROBE TERRACE, PADDINGTON, QLD, 4064	11-Feb-2022	7EBO75948
Principal Place of Business	'LOWER FLOOR', 139 LATROBE TERRACE, PADDINGTON, QLD, 4064	04-May-2022	7EBS17846

Source: ESI company filings summary via kyckr.com

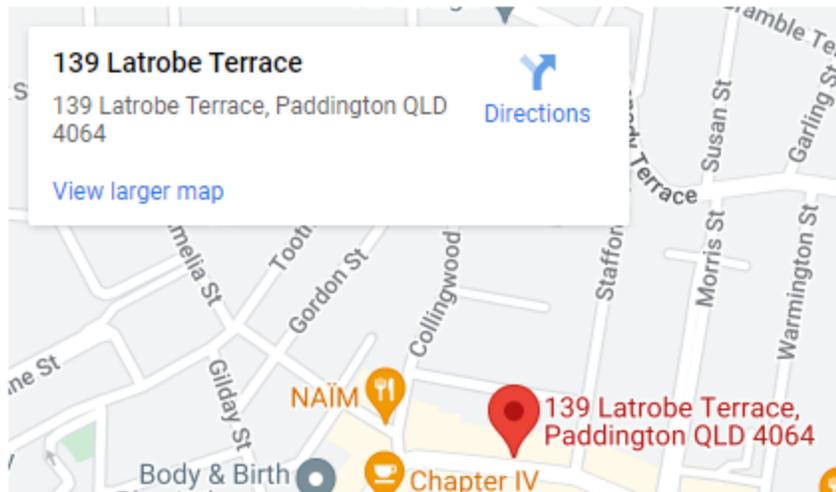
In reality, the address is just a small café with a homewares and linen store.





STORE hours are:
MONDAY-SATURDAY
9am - 4pm
SUNDAY
8am - 1pm
Closed Public Holidays

CAFE hours are:
7 DAYS
6:30am - 1pm-ish
Closed Public Holidays



Legally, ESI ASIA PACIFIC PTY LTD is owned by ESI ASIA PACIFIC HOLDINGS PTY LTD, which—of course—is also headquartered in the café shop.

Share Structure

Share class code:	Share class title:	Shares issued:	Total amount paid / taken to be paid:	Total amount due & payable:	Document number:
ORD	ORDINARY SHARES	11824	\$3,199,240.00 AUD	\$0.00 AUD	7EBR79541

SHARE HOLDINGS

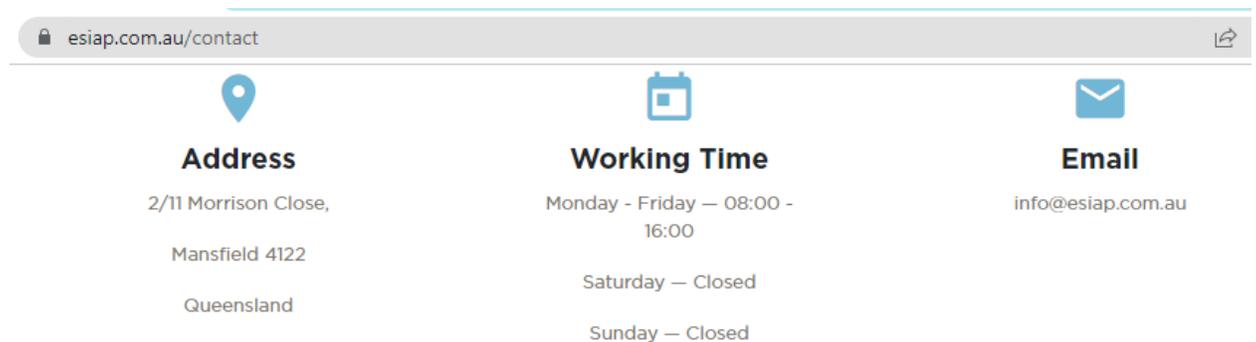
Status:	Share class code:	Shares:	Beneficially Held:	Paid:	Document number:
Current	ORD	11824	True	True	7EBW71526

SHARE HOLDER(S)

Name:	ESI ASIA PACIFIC HOLDINGS PTY LTD
ACN:	625504476
ABN:	91625504476
Address:	139B LATROBE TERRACE, PADDINGTON, QLD, 4064
Joint holding?:	False

Source: ESI company filings summary via kyckr.com

However, on their website, ESI reveals yet another company address. This one is in an actual industrial area.



esiap.com.au/contact

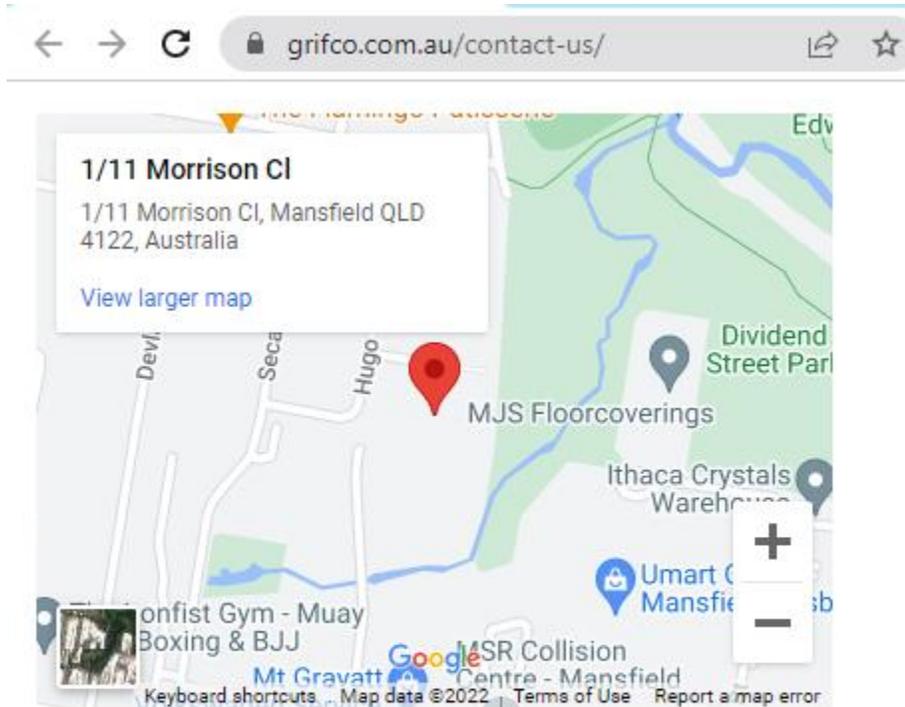
Address
2/11 Morrison Close,
Mansfield 4122
Queensland

Working Time
Monday - Friday – 08:00 - 16:00
Saturday – Closed
Sunday – Closed

Email
info@esiap.com.au

The latest online photographs from May 2022 indicate other companies using office space in the property, and no prominent signs of ESI can be found. As the pictures indicate, the U.S. doors and gates company, The Chamberlain Group LLC, with their Australian subsidy Grifco, seem to be the building's main user.





Brisbane

1/11 Morrison Close
Mansfield QLD 4122

(retrieved: November 11, 2022)

Fully consistent with the lack of construction activity and missing employees count on LinkedIn, our investigation into the alleged office spaces of the company clearly corroborates that there is actually not much operational work conducted at ESI.

27. The Report also reveals that several investors left in July 2022 indicates a lack of trust in ESS:

ESI is a private company but is held by a group of shareholders. However, a regulatory filing from July 21, 2022 reveals that the following investors sold all of their ESI shares back to the company, formally “ESI ASIA PACIFIC HOLDINGS PTY LTD”. The following investors left ESI:

- GRANDKI INVESTMENTS PTY LTD sold all its ESI shares (833)
- PROJECT LOUNGE AUSTRALIA PTY LTD sold all its ESI shares (541)

- BATTERY INVESTMENT GROUP PTY LTD sold all its ESI shares (208)
- A.C.N. 643 264 386 PTY LTD sold all its ESI shares (192)
- A.C.N. 625 185 033 PTY. LTD. sold all its ESI shares (178)
- BRINDLEY INVESTMENTS PTY LTD sold all its ESI shares (48)
- TE & P JONES PTY LTD sold all its ESI shares (25)
- MR JOSEPH ANTHONY CATALNO & MRS IRENE MURADA sold all their ESI shares (25)
- MR KEVIN JAMES sold all his ESI shares (8)

We interpret this leaving of investors as a severe vote of mistrust into ESI.

We believe the misleading reframing of the initial joint venture between ESS and S+S into a deal with an allegedly unrelated third-party is clearly misleading to lull investors into vain hopes.

In summary, the ESI deal is not the crucial savior project that ESS presented. Our revelations rather make us believe that ESI's big industrial endeavor is ill-planned and will likely never come to fruition. In this case, ESS is left without any industrial partner or client, as we show in the next chapter.

28. The Report notes that big former customers have walked away from doing business with ESS:

Of the six different ESS battery installations deployed from 2015 to 2020 to customers, five were later abandoned. An earlier short report by Bonitas Research already pointed this out in October 2021. We refer to this publication for further details on the list below.

ESS' May 2021 presentation, p. 45

- Stone Edge Farms is a winery, famous for using its own microgrid for electricity. According to ESS, the ESS battery was installed and working in May 2016. However, ESS' battery is neither mentioned in a November 2017 extensive journalist reportage about the grid, nor on Stone Edge Farms own presentation website. Competitor's batteries from Tesla, Sony, Simpliphi and Redflow are mentioned.
- The U.S. Army Corps of Engineers deployed an ESS battery in 2016, according to ESS. The US government contractor database reveals that the contract amount was \$0. ESS gave the battery as a present without any follow-up payment or order.
- The University of California San Diego ("UCSD") deployed an ESS battery in 2017. However, UCSD mentions current energy storage systems in their

reporting. An ESS battery is not mentioned in recent reporting or by a full website search.

- The Camp Pendleton U.S. Military Base received a delivery from ESS through the subcontractor CleanSpark, Inc. for \$53,000, as the US government contractor database and filings reveal. Neither CleanSpark, nor the military had any additional business with ESS after these reports in 2018.
- The San Diego Gas & Electric Company opted for a vanadium battery by ESS' competitor Sumitomo Electric Industries, Ltd.
- The multinational chemical giant BASF is an ESS investor since 2017. Despite being an investor, BASF has yet to pay ESS any revenues for its product and decided to forego both Series-C rounds.
- InoBat and Naturgy had partner relations to ESS but ultimately decided to opt for competitors' batteries, namely lithium-ion batteries, and flow batteries from E22.

We interpret this clear rejection of any continuing business or association with ESS as a clear sign of distrust in ESS' technology and business.

We believe that severe technical issues, or performance problems became apparent to clients who tested the battery. Why else would they all shy away?...

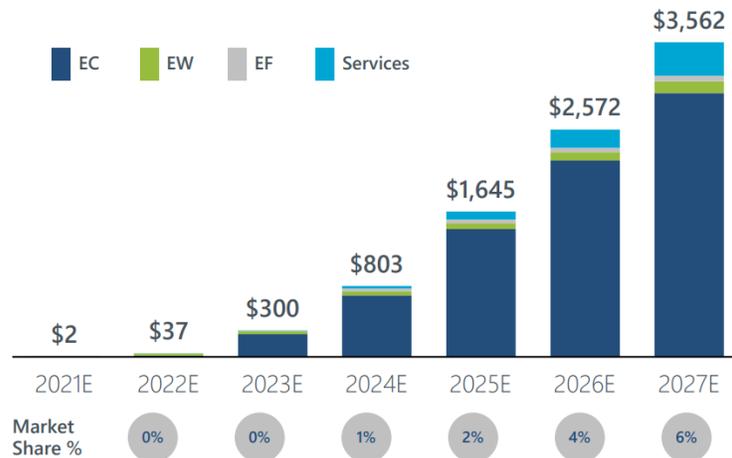
29. Grizzly reported that ESS aggressive' projections of growth were based on non-existent customer demand:

ESS' aggressively promised growth based on non-existing customer demand. We see these baseless projections as an abuse of the SPAC merger process which allows companies to make projections they would not be allowed to make if they went through a traditional IPO process. These are some slides from the May 2021 presentation:

ESS' Robust Revenue Growth



Projected Revenue by Product Offering (\$in millions)



- Growth accelerates as Energy Center deployments start in 2023
- Forecast driven by identified pipeline of near-term opportunities
- ESS expansion into Australia (2023) and Europe (2024) supports continued growth
- Energy Franchise lease and Services revenue streams become bigger contributors as ESS expands

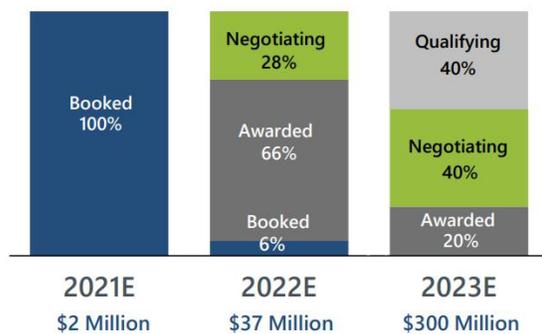
Note: Total addressable market value for the microgrid, distributed energy and utility industries from Guidehouse Insights.

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High Quality Pipeline



Projected Pipeline for Energy Center™ and Energy Warehouse™



Global Identified Opportunities



- Energy Center™ Opportunities
- Energy Warehouse™ Opportunities

\$7+ Billion Pipeline for Continued Growth in Outer Years

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ESS' past economic performance is summarized as follows.

	2018	2019	2020	2021	2022 Q1-Q3
Revenue	\$0	\$0	\$0	\$0	\$878k
Net income/loss	NA	-\$11.5M	-\$30.4M	-\$477.1M	-\$52.9M
Operating Expenses	NA	\$9.9M	\$17.4M	\$60.6M	\$75.0M
Common Stock Equity	NA	\$15.6M	-\$27.9M	\$205.Mm	\$158.2M
R&D expenses	NA	\$6.7M	\$12.9M	\$30.3M	\$49.2M

From a valuation perspective, ESS' business is only worth more than nothing if their battery design is economically viable. However, despite 11 years of trying to convince customers, we have not seen any reliable signal that make us believe ESS' wunder battery performs as promised.

The Report notes that in 2022, ESS' executives started to sell their shares:

Until January 2022, no insider of ESS sold any shares to the open market. However, since then president and founder Craig Evans, CEO Eric Dresselhuys, and CFO Amir Moftakhar sold shares in several tranches amounting to \$1.7M in private gains.

30. The Grizzly Report concluded that the alleged partnership with ESI was a misrepresentation:

We believe we have caught ESS in an outright lie. ESS's largest partner and key growth driver for the next few years is a related party without any relevant own business activity. The deal which remains to play out, is therefore, of questionable economic essence.

Our view is ESS management has consciously misled investors and sell-side analysts with their "breakthrough partnership" announcement to keep the growth story alive. We believe the company will continue to fail to generate meaningful revenue because its technology is not as cutting edge as claimed in an industry of increasing technological sophistication and competition. We caution investors against trusting the outrageous forecasts tied to dishonest partnership announcements. We conclude that ESS is dishonest, un-investible, and we believe the stock is a terminal zero. (Emphasis supplied.)

31. On this news, the price of ESS's stock fell 7.7% to close at \$2.64 on December 7, 2022, damaging investors.

32. As a result of Defendants' wrongful acts and omissions and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

33. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class consisting of all persons other than Defendants who acquired ESS securities publicly traded on the NYSE during the Class Period, and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of ESS, members of the Individual Defendants' immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

34. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, ESS securities were actively traded on the NYSE. While the exact number of Class members is unknown to Plaintiff at this time and can be

ascertained only through appropriate discovery, Plaintiff believes that there are hundreds, if not thousands of members in the proposed Class.

35. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

36. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

37. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- whether the Exchange Act was violated by Defendants' acts as alleged herein;
- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business and financial condition of ESS;
- whether Defendants' public statements to the investing public during the Class Period omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- whether the Defendants caused ESS to issue false and misleading filings during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false filings;

- whether the prices of ESS securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

38. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- ESS securities met the requirements for listing, and were listed and actively traded on the NASDAQ, an efficient market;
- As a public issuer, ESS filed periodic public reports;
- ESS regularly communicated with public investors via established market communication mechanisms, including through the regular dissemination of press releases via major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services;
- ESS securities were liquid and traded with moderate to heavy volume during the Class Period; and

- ESS was followed by securities analysts employed by major brokerage firms who wrote reports that were widely distributed and publicly available.

39. Based on the foregoing, the market for ESS securities promptly digested current information regarding ESS from all publicly available sources and reflected such information in the prices of the securities, and Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

40. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information as detailed above.

COUNT I
For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder
Against All Defendants

41. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

42. This Count asserted against Defendants is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

43. During the Class Period, Defendants, individually and in concert, directly or indirectly, disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

44. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

- employed devices, schemes and artifices to defraud;
- made untrue statements of material facts or omitted to state material facts

necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

- engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of ESS securities during the Class Period.

44. Defendants acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of ESS were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated, or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the securities laws. These Defendants by virtue of their receipt of information reflecting the true facts of ESS, their control over, and/or receipt and/or modification of ESS's allegedly materially misleading statements, and/or their associations with the Company which made them privy to confidential proprietary information concerning ESS, participated in the fraudulent scheme alleged herein.

45. The Individual Defendants, who are or were senior officers and/or director of the Company, had actual knowledge of the material omissions and/or the falsity of the material statements set forth above, and intended to deceive Plaintiff and the other members of the Class, or, in the alternative, acted with reckless disregard for the truth when he failed to ascertain and disclose the true facts in the statements made by them or other ESS personnel to members of the investing public, including Plaintiff and the Class.

46. As a result of the foregoing, the market price of ESS securities was artificially inflated during the Class Period. In ignorance of the falsity of Defendants' statements, Plaintiff and the other members of the Class relied on the statements described above and/or the integrity of the market price of ESS securities during the Class Period in purchasing ESS securities at prices that were artificially inflated as a result of Defendants' false and misleading statements.

47. Had Plaintiff and the other members of the Class been aware that the market price of ESS securities had been artificially and falsely inflated by Defendants' misleading statements and by the material adverse information which Defendants did not disclose, they would not have purchased ESS securities at the artificially inflated prices that they did, or at all.

48. As a result of the wrongful conduct alleged herein, Plaintiff and other members of the Class have suffered damages in an amount to be established at trial.

49. By reason of the foregoing, Defendants have violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the plaintiff and the other members of the Class for substantial damages which they suffered in connection with their purchase of ESS securities during the Class Period.

COUNT II
Violations of Section 20(a) of the Exchange Act
Against the Individual Defendants

50. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

51. During the Class Period, the Individual Defendants participated in the operation and management of ESS, and conducted and participated, directly and indirectly, in the conduct of ESS's business affairs. Because of their senior positions, they knew the adverse non-public information about ESS's false financial statements.

52. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to ESS's financial condition and results of operations, and to correct promptly any public statements issued by ESS which had become materially false or misleading.

53. Because of their positions of control and authority as senior officers and/or directors, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which ESS disseminated in the marketplace during the Class Period concerning ESS's results of operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause ESS to engage in the wrongful acts complained of herein. The Individual Defendants, therefore, were "controlling persons" of ESS within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of ESS securities.

54. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by ESS.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for judgment and relief as follows:

(a) declaring this action to be a proper class action, designating Plaintiff as Lead Plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and designating plaintiff's counsel as Lead Counsel;

(b) awarding damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, together with interest thereon;

(c) awarding Plaintiff and the Class reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) awarding Plaintiff and other members of the Class such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: _____, 2023

THE ROSEN LAW FIRM, P.A.

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