

Oven Mountain Pumped Hydro Energy Storage

The Department of Planning and Environment – Crown Lands has reviewed the proposal.

The following terms have been used in this response:

- Proposal – The Oven Mountain Pumped Hydro Energy Storage proposal as outlined in the Environmental Impact Statement (August 2023).
- ALC – Aboriginal Land Claim as per the New South Wales *Aboriginal Land Rights Act 1983*.
- Crown Lands – The agency of Crown Lands within the Department of Planning and Environment.
- Crown land – Lands including reserves, roads, waterways and unreserved lands managed or administered under the *Crown Lands Management Act 2016*, including land managed under the Act by appointed Crown Land Managers, Local Land Services and Local Government.

Crown Lands notes that previous Crown roads within Lot 37 DP 756471 are now closed and are now freehold (being Lots 1 and 2 DP 128372). Crown Lands has no further interests in these previous Crown roads.

Crown Lands will need to be referenced, prior to any use or occupation of any Crown land, during the assessment phase.

Authority to use, traverse, access or build infrastructure on Crown land is required under the *Crown Land Management Act 2016* and/or the *Roads Act 1993*. It is recommended that the project contact Crown Lands as early as possible to discuss and initiate the processes required to authorise the use of and/or access to Crown land.

Crown Waterways (Macleay River) (Maps 1-5)

Macleay River Pump Facility – Macleay River. Initial investigation indicates Macleay River is a Crown Waterway. The pump site and pipeline will require a Crown Lands licence for purpose 'pump and pipeline'.

Macleay River Trail follows approximately a Council road/Shared Crown Council road corridor east of the Macleay River adjacent to or within Lot 37 DP 756471 (north of Broad Crossing). Two sections of this road between Broad Crossing and the junction of Georges Creek and Macleay River are within the proposed project area. While Crown Lands responsibility for this corridor is limited to non-formed sections of the shared road corridor, the project should be aware that the Macleay River Trail is a registered fire trail and forms part of the Bicentennial National Trail. Access to these users should not be impeded.

Access Road (Maps 6-9)

The construction envelope and disturbance footprint for the project access road impacts on Crown land at the following locations:

- Crown Reserve 1076 (Lot 7002 DP 1073887, purpose 'Travelling Stock', managed by Northern Tablelands Local Lands Services) also being overlaying Crown road – north of Lot 20 DP 756471, north of Lot 42 DP 756471. (Note that the road corridor running north south through Lot 42 DP 756471 is a Council managed road not Crown road). No ALC.
- Crown Reserve 1076 (Lot 7002 DP 756471, purpose 'Travelling Stock', managed by Northern Tablelands Local Lands Services) also being overlaying Crown road - within of Lot 1 DP 756471, within Lot 14 DP 756471, within Lot 15 DP 756471, north of and within Lot 28 DP 661938, within Lot 26 DP 756471, within Lot 25 DP 756471. No ALC.
- The construction envelop also includes the southern end of Crown road between Lots 15 and 27 DP 756471. No ALC.

The following Crown Reserves impacted by the access envelope and disturbance footprint have no overlaying Crown road:

- Crown Reserve 47151 (Lot 7005 DP 1060979, purpose 'Camping, Travelling Stock', managed by Northern Tablelands Local Lands Services). ALC 35355 lodged 3 May 2011 (undetermined), ALC 6632 lodged 27 November 2001 (undetermined).
- Crown Reserve 1076 (Lot 7302 DP 1131772, purpose 'Travelling Stock', managed by Northern Tablelands Local Lands Services). No ALC.
- Crown Reserve 1002997 (Lot 7301 and 7302 DP 1147062, Lot 101 DP 751451, Lot 7302 DP 1147062 purpose 'Environmental Protection', managed by Crown Lands). Licenced for grazing and access. ALC 35355 lodged 3 May 2011 (undetermined), ALC 6632 lodged 27 November 2001 (undetermined), ALC 30569 lodged 9 September 2010 (undetermined).
- Note that the Macleay River at this location is part of the above Crown reserves, not Crown waterway.

Shared Council/Crown Road being Kempsey to Armidale Road (east of Lot 101 DP 751451).

Where a Crown road underlays proposed infrastructure or access roads, the landholder enclosing each section of Crown road may apply to close and purchase the Crown road. See <https://www.crownland.nsw.gov.au/licences-leases-and-permits/information-about-crown-roads/purchase-crown-road> The surrounding landholder will need to undertake the application for closing and purchasing as, if the application is successful, the Crown road will become part of the freehold and the project will be able to negotiate arrangements directly with the landholder. This process may take some years to complete, however Crown Lands can issue a licence for the works to proceed as an interim measure until the applications are assessed and if successful, the Crown road is closed and sold. Alternatively, if no application to close and purchase the Crown roads is made, Crown Lands may licence the proposed works for the lifespan of the project.

For works that are proposed on Crown Reserves (including the Macleay River crossing), underdetermined ALCs exists over these Reserves. Should the project and Armidale Regional Council wish to create the corridor as a public road, the project will either need to obtain a deed of agreement from the Thungutti Local Aboriginal Land Council (LALC) to purchase the construction corridor once the ALC has been determined and if the land is transferred to the LALC. This will need to be surveyed as a lot/DP. This will allow the proponent to potentially gift the lot to Council to undertake a road opening over the existing formation creating a public road. If there is no intent to form the access as a public road (Council), a deed of agreement from the Thungutti LALC will be needed to allow the works to proceed under a Crown Lands licence until such time as the ALC is determined. Alternatively the ALC may be determined as a priority (in which case if successful the Crown land may be transferred in freehold title to the LALC and the

project then deals directly with the LALC). Note that once the land is transferred to the LALC, Council will no longer have the option of acquisition for a road opening in future.

Where Native Title is not extinguished over these Crown Reserves, the project will be required to seek Non-claimant 24FA protection under the *Native Title Act 1993* to allow the works to proceed. This application is to the Federal Court (who represents the interests of future Native Title holders in locations where a Native Title claim has not yet been made. For further information see <http://www.nntt.gov.au/nativetitleapplications/Pages/Non-claimant-applications.aspx> . In order for the project to make a Non-claimant 24FA application to the Federal Court, the Federal Court requires that the applicant holds a legal interest in the land under application. To provide the applicant (the project) a legal interest in the land, the deed of agreement with the LALC or a Crown Lands licence for 'investigation' will be the instrument.

Where proposed works include Crown Reserves managed as 'Travelling Stock' Reserves by Northern Tablelands Local Land Services (LLS), concurrence from the LLS will be required.

Freehold Lots Affected by Section 77A Crown Lands Act 1989 Restrictions on Land Use

Past Crown leases that were converted to freehold land may be burdened on title by restrictions placed under the Crown Lands Act 1989 restricting either land use (Section 77A) or subdivision (77B). Section 77B restrictions on subdivision are less likely to affect the Oven Mountain Pumped Hydro project provided the proposal does not intend to facilitate subdivision of any affected lots. Section 77A restrictions on the use of land may affect the project proposal where vegetation for clearing (access roads, infrastructure) is proposed and coincides with restricted areas on title. The proponent needs to confirm any freehold lots that have Section 77a or 77B restrictions applied to determine if the restrictions impact the project proposal (through investigation of the associated dealings).

If the restrictions on land use or subdivision affect the project, the landholder will need to apply to Crown Lands to have the relevant restriction lifted from the title. Note that if the lot adjoins a reserve gazetted under the *National Parks and Wildlife Act 1974*, permission to lift or alter the restriction will need to be obtained from National Parks and Wildlife Service.

The proponent will need to confirm if the acquisition of an easement for powerlines under the *Land Acquisition (Just Terms Compensation) Act 1991* affects the restrictions on title.

Further information on lifting restrictions on titles can be found on the attached information sheet and at [Application for removal of s77A restrictions on use of a former perpetual lease | Crown Lands \(nsw.gov.au\)](#) and [Application for removal of s77B subdivision/separate dealing restrictions on a former perpetual lease | Crown Lands \(nsw.gov.au\)](#)

The following freehold lots within the project area have been identified as having restrictions on title on initial investigation, however the proponent should undertake an exhaustive investigation:

- Lot 41 DP 751466 (77A and 77B)
- Lot 44 DP 751466 (77B)

Transmission Lines and Towers

The following Crown lands have been confirmed as being impacted by transmission lines and transmission towers by the proposal to connect to Transgrid Line 965 as outlined in the EIS:

- Crown Reserve 1076 (Lot 7002 DP 1073887, purpose 'Travelling Stock' under management of Northern Tablelands Local Land Services) and Crown road. No ALC.

- Crown Waterway (Macleay River).
- Crown Reserve 751439 (Lot 7300 DP 1162941, purpose 'Future Public Requirements', managed by Crown Lands, ALC 30501 lodged 9 September 2010 (undetermined), ALC 35354 lodged 3 May 2011 (undetermined)).
- The construction envelope for the transmission tower north of the Macleay River impacts the western end of Crown road north of Lot 38 DP 751439.
- The transmission tower construction envelope and disturbance foot print of the most northerly tower impacts the road between Lot 43 DP 753466 and Lot 41 DP 751466 which is Crown road.

For the location of overhead powerlines and transmission towers (or their disturbance footprint) that occur on or above Crown land, the project will need to acquire an easement. An organisation registered under the *Electricity Supply Act 1995* may use acquisition powers under the *Land Acquisition (Just Terms Compensation) Act 1991* and can acquire the necessary easement. This includes organisations including Essential Energy, Transgrid and EnergyCo (Energy Corporation of NSW). Acquisition of a private easement is not possible without dealing with Native title interests and as yet undetermined ALCs as organisations not registered under the *Electricity Supply Act 1995* cannot use the *Land Acquisition (Just Terms Compensation) Act 1991*.

Once an acquisition process commences and a Proposed Acquisition Notice (PAN) is issued to Crown Lands, Crown Lands is able to issue a licence (for 'powerline infrastructure') that allows works to commence as an interim measure ahead of the easement being finalised. Once the easement is acquired, this licence terminates.

To discuss easement requirements, please contact the Acquisitions team at the earliest opportunity at: cl.acquisitions@crownland.nsw.gov.au. Information regarding the easement process is available at: <https://www.crownland.nsw.gov.au/protection-and-management/easements>

Powerline Access Road (Map 10-14)

The following Crown lands have been confirmed as being impacted by the proposed access roads for transmission lines and towers:

- The construction envelope and access road from Kempsey – Armidale Road to the transmission tower at the junction of Lots 82 and 35 DP 751439 and Lot 7300 DP 1162941 impacts upon Crown Reserve 751439 (Lot 7300 DP 1162941 purpose 'Future Public Requirements'). ALC 30501 lodged 9 September 2010 undetermined, ALC 35354 lodged 3 May 2012 undetermined. (Map 10)
- The powerline access road and construction envelope accessing the transmission tower within Lot 35 DP 751439 passes within Crown Reserve 751439 (Lot 7305 DP 1162963 purpose 'Future Public Requirements'). ALC 35353 lodged 3 May 2011 undetermined, ALC 47036 lodged 24 January 2019 undetermined. (Map 11 and 13)
- The road between Lot 43 DP 753466 and Lot 41 DP 751466 appears to be Crown road. This should be confirmed through a status investigation. The road is impacted by access track, power line and transmission tower.

For these works proposed on Crown road, it is preferable that the surrounding land holder applies to close and purchase the Crown road. The Crown road then becomes freehold and Crown Lands is no longer involved. Alternatively, or as an interim measure until the road is closed, Crown Lands can licence the works.

For these works proposed on Crown Reserves, unless they are included in the acquisition for the transmission line easement, the project will need to develop a deed of agreement with the Local Aboriginal Land Council (LALC) (where an undetermined ALC exists) or the LALC may request the ALC be determined, and if upheld and transferred to the LALC the project may negotiate directly with the LALC as freehold land. Where Native Title is not extinguished over these lots (for both options above), the project will be required to seek Non-claimant 24FA protection under the *Native Title Act 1993* to allow the works to proceed. This application is to the Federal Court (who represents the interests of future Native Title holders in locations where a Native Title claim has not yet been made. <http://www.nntt.gov.au/native-title-applications/Pages/Non-claimant-applications.aspx>). In order for the proponent to make a Non-claimant 24FA application to the Federal Court, the Federal Court requires that the applicant holds a legal interest in the land under application. To provide the applicant (the project) a legal interest in the land, either the deed of agreement with the LALC or a licence for 'investigation' with Crown Lands will be this instrument.

If the proponent requires further information, or has any questions, please contact Warren Martin, Natural Resources Management Project Officer in Crown Lands, on 02 67703118 or at warren.martin@crownland.nsw.gov.au.

Yours sincerely



Rodney O'Brien
Group Leader Armidale/Moree
T 02 67703101 | E rodney.obrien@crownland.nsw.gov.au