APPENDIX C
STATUTORY PLANNING AND APPROVALS – DETAILED DISCUSSION

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1. STATUTORY PLANNING AND APPROVAL PROCESS

1.1 Environmental planning framework

1.1.1 Environmental Planning and Assessment Act 1979

Permissibility
The EP&A Act and EP&A Regulation provide the framework for environmental planning and assessment in NSW.

Environmental planning instruments (EPIs) are established under the EP&A Act to regulate land use and development. EPIs determine the relevant part of the EP&A Act under which a development project must be assessed and therefore determine the need or otherwise for development consent. EPIs consist of SEPPs, regional environmental plans (REPs), and local environmental plans (LEPs).

The project is declared to be SSD by the provisions of the *State Environmental Planning Policy (Planning Systems) 2021* (Planning Systems SEPP). Development consent is required under Part 4 of the Act for any project that is considered to be SSD by a SEPP. The project is therefore subject to assessment under Part 4, Division 4.1 of the EP&A Act.

Development application process
The planning approval process for SSD under Division 4.1 of Part 4 of the EP&A Act is provided in **Figure 3-1** of the EIS.

Section 4.12(8) of the EP&A Act requires an SSD DA to be accompanied by an EIS prepared in accordance with the EP&A Regulation. Prior to preparation of an EIS, an applicant must make a written application to the SEARs which specify what must be addressed in an EIS for a project. The proponent made a request for SEARs application in May 2020 accompanied by a Scoping Report as required by Section 173 of the EP&A Regulation. The SEARs for the project were issued on 9 June 2020, and supplementary SEARs issued on 13th July 2020, and are provided in **Appendix A.**

The EIS will be placed on public exhibition for a minimum of 30 days by the Department of Planning, Industry and Environment and submissions will be sought from local and State government agencies and the community. Any submissions received by DPIE will be reviewed and forwarded to the proponent to consider and respond to via a response to submissions report.

Following receipt of the response to submissions report, the Department of Planning, Industry and Environment will prepare its assessment report considering this EIS, all submissions received during the exhibition process, and the responses provided by UPC\AC. The Department of Planning, Industry and Environment's assessment report is forwarded to the consent authority for consideration before determining the DA.

Evaluation

Under Section 4.38 of the EP&A Act, the NSW Minister for Planning is the consent authority for SSD. However, pursuant to Section 2.4 of the EP&A Act, the Minister may delegate the consent authority function to the Office of the Independent Planning Commission (OIPC), the Secretary or to any other public authority.

Additionally, in accordance with the Wind Guideline the OIPC is the consent authority for SSD in the following circumstances:

- 25 or more people have objected to the application;
- the local council has objected to the application; or
- the applicant has disclosed a reportable political donation in connection with the application or a previous related application.

When assessing a DA for SSD, the consent authority is required to take into consideration the matters outlined in Section 4.15 of the EP&A Act. **Table 1-1** lists the requirements under Section 4.15 and where each has been addressed in this EIS.

Table 1-1: Matters for consideration under Section 4.15 of the EP&A Act

Provision	Where addressed
the provisions of–	N/A
(i) any environmental planning instrument, and	**Section 3.1.4**
(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and	N/A
(iii) any development control plan, and	**Section 2.1.5**
(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and	N/A
(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),	**Section 3.2** and **Section 3.3**
(v) (Repealed)	N/A
that apply to the land to which the development application relates,	N/A
(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,	**Chapter 6 – Chapter 18**
(c) the suitability of the site for the development,	**Section 2.3**
(d) any submissions made in accordance with this Act or the regulations,	To be confirmed following public exhibition
(e) the public interest.	**Chapter 5 Chapter 15**

Determination and appeals

Pursuant to Division 4.16 of the EP&A Act, a consent authority is to determine a DA by either:

(a) granting consent to the application, either unconditionally or subject to conditions, or

(b) refusing consent to the application.

As provided by Clause 91 of the EP&A Regulation, the consent authority has 90 days to determine a DA for SSD. If the DA is refused, an applicant may appeal to the Land and Environment Court against the determination pursuant to Division 8.7 of the EP&A Act.

Exempt approvals for SSD

Under Section 4.41 of the EP&A Act, the following authorisations are not required for SSD:

(a) (repealed);

(b) a permit under Section 201, 205 or 219 of the NSW Fisheries Management Act 1994;

(c) an approval under Part 4, or an excavation permit under Section 139, of the NSW Heritage Act 1977;

(d) an Aboriginal heritage impact permit under Section 90 of the NSW National Parks and Wildlife Act 1974;

(e) (repealed);

(f) a bush fire safety authority under Section 100B of the NSW Rural Fires Act 1997; and

(g) a water use approval under Section 89, a water management work approval under Section 90 or an activity approval (other than an aquifer interference approval) under Section 91 of the NSW Water Management Act 2000.

1.1.2 State Environmental Planning Policy (Planning Systems) 2021

State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP) identifies development and infrastructure that is regionally and state significant. Schedule 1 identifies general criteria to be met for a project to be considered SSD. Clause 20 of Schedule 1 outlines the criteria for electricity generating works and heat or co-generation (emphasis added):

*(3) Development for the purpose of electricity generating works or heat or their co-generation (**using any energy source, including** gas, coal, biofuel, distillate, waste, hydro, wave, solar or **wind power**) that:*

(a) has a capital investment value of more than $30 million, or

(b) has a capital investment value of more than $10 million and is located in an environmentally sensitive area of State significance.

The project is a development for the purpose of electricity generation using a wind energy source and would have a capital investment value of more than $30 million and is therefore considered SSD for the purposes of the EP&A Act.

1.1.3 State Environmental Planning Policy (Transport and Infrastructure) 2021

The State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP) provides that development for the purpose of electricity generating works may be carried out by any person with consent on any land in a prescribed rural, industrial or special use zone (Clause 2.36). Under Clause 2.7(1) of the Infrastructure SEPP, the provisions of the SEPP prevail where there are inconsistencies with other environmental planning instruments, including local environmental plans.

The project site is on land zoned RU1 – Primary Production under the Warrumbungle LEP (refer to discussion in **Section 1.1.4**) and is permitted with consent through the provisions of SEPP Infrastructure.
While temporary direct access to classified roads may be supported for delivery of OSOM components to site, the provisions of Section 2.118 of the Transport and Infrastructure SEPP require access to be provided by a road other than a classified road, where practicable and safe. The impacts on traffic and logistics, including discussion on access requirements have been addressed in **Chapter 9** of the EIS.

1.1.4 Local environmental plans

Warrumbungle Shire Council Local Environmental Plan 2013

Land use zones and objectives
All the proposed wind turbines are located within the Warrumbungle LGA and are subject to the Warrumbungle LEP.

Aims of the Warrumbungle LEP include:

a) to encourage sustainable economic growth and development in Warrumbungle,
b) to encourage and provide opportunities for local employment growth and the retention of the population in Warrumbungle,
g) to provide for future tourist and visitor accommodation in a sustainable manner that is compatible with and will not compromise the natural resource and heritage values of the surrounding area.

The project is on land that is zoned RU1 – Primary Production under the Warrumbungle LEP. The objectives of this zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

The project is complementary to continued productive agricultural use of RU1 zoned land and represents economic use of land.

'*Electricity generating works*' is prohibited in the RU1 zone as it is not specified in item 2 or 3 of the land use table. The project is a prescribed rural zone under the Transport and Infrastructure SEPP as discussed in **Section 1.1.3** which prevails over the inconsistency and permits the land use for the project.

Subdivision
Clause 4.1 of the Warrumbungle LEP outlines the minimum subdivision lot requirements for land within the Warrumbungle LGA. The objectives of this clause are:

a) to ensure subdivision of land occurs in a manner that promotes suitable land uses and development,
b) to ensure subdivision occurs in a staged manner that minimises the cost to the community from the provision of public infrastructure and services,
c) to ensure rural lands are not fragmented in a manner that threatens their future use for agriculture or primary production,

d) *to ensure subdivision is not likely to result in inappropriate impacts on the natural environment, including native vegetation, natural watercourses and habitats for threatened species and populations and endangered ecological communities.*

The development footprint is located within zone 'AG' on the minimum lot size map. Clause 4.1 of the LEP states that the size of any lot resulting from a subdivision is not to be less than the size specified on the minimum lot size map. AG zone is associated with a 600 hectare minimum lots size.

The land on which the substations are constructed is likely to require subdivision. Following decommissioning of the project, the subdivided lots would be reconsolidated back into the original lot.

Consultation would be undertaken with Warrumbungle Shire Council, DPIE and the associated landholders once the final location of the substation was determined.

Despite the provisions of Clause 4.1 of the LEP, the proposed subdivision would be permissible under Section 4.38 of the EP&A Act subject to the approval of the Minister for Planning. Further discussion on the subdivision relating to land use is in **Section 4.8**.

Heritage Conservation

Clause 5.10 of the Warrumbungle LEP aims to:

a) *to conserve the environmental heritage of Warrumbungle,*
b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
c) *to conserve archaeological sites,*
d) *to conserve Aboriginal objects and Aboriginal places of heritage significance.*

An Aboriginal Cultural Heritage Assessment Report (ACHAR) and a Heritage Impact Statement (HIS) have been prepared for the project and are at **Appendix N** and **Appendix O**. The potential impacts and mitigation methods to Aboriginal and Historical heritage items as a result of the project is discussed in **Chapter 11** and **Chapter 12** of the EIS. Heritage items and conservation areas identified under the Warrumbungle LEP are shown on **Figure 4-3** of the EIS.

Flood planning

Clause 6.2 of the Warrumbungle LEP states development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

e) *is compatible with the flood hazard of the land, and*
f) *will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
g) *incorporates appropriate measures to manage risk to life from flood, and*
h) *will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
i) *is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

The project is not located within an identified flood planning area under the Warrumbungle LEP. Despite this, impacts on hydrology have been addressed in **Chapter 13** of the EIS.

Terrestrial biodiversity

Clause 6.3 of the Warrumbungle LEP states before determining a development application for development on land to which this clause applies, the consent authority must consider:

a) *whether the development is likely to have:*
    (i) *any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
    (ii) *any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
    (iii) *any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
    (iv) *any adverse impact on the habitat elements providing connectivity on the land, and*
b) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Development consent must not be granted unless the consent authority is satisfied that:

a) *the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
b) *if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Areas of the study area have been identified as terrestrial biodiversity areas under the Warrumbungle LEP (refer to **Figure 4-3** of the EIS). The requirements under Clause 6.3 have been considered in **Chapter 8** of the EIS.

The development has been designed to avoid, minimise and mitigate impacts to mapped areas of Biodiversity.

Groundwater vulnerability

Clause 6.4 of the Warrumbungle LEP states before determining a development application for development on land to which this clause applies, the consent authority must consider:

a) *the likelihood of groundwater contamination from the development (including from any on-site storage or disposal of solid or liquid waste and chemicals),*
b) *any adverse impacts the development may have on groundwater dependent ecosystems,*
c) *the cumulative impact the development may have on groundwater (including impacts on nearby groundwater extraction for a potable water supply or stock water supply),*
d) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Development consent must not be granted unless the consent authority is satisfied that:

a) *the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Areas of the study area have been identified as groundwater vulnerable under the Warrumbungle LEP (refer to **Figure 4-3** of the EIS). The requirements under Clause 6.4 have been considered in **Chapter 13** of the EIS.

Riparian lands and watercourses

Clause 6.5 of the Warrumbungle LEP states before determining a development application for development on land to which this clause applies, the consent authority must consider:

a) *whether or not the development is likely to have any adverse impact on the following:*
    (i) the water quality and flows within the watercourse,
    (ii) aquatic and riparian species, habitats and ecosystems of the watercourse,
    (iii) the stability of the bed and banks of the watercourse,
    (iv) the free passage of fish and other aquatic organisms within or along the watercourse,
    (v) any future rehabilitation of the watercourse and riparian areas, and
b) *whether or not the development is likely to increase water extraction from the watercourse, and*
c) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Development consent must not be granted unless the consent authority is satisfied that:

a) *the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

The Coolaburragundy River, Talbragar River and other higher order watercourses within the project have been identified as riparian lands and watercourses under the Warrumbungle LEP. The requirements under Clause 6.5 have been considered in **Chapter 8** (biodiversity) and **Chapter 13** (water and soils).

1.2 Other NSW legislation

1.2.1 Protection of the Environment Operations Act 1997

The NSW *Protection of the Environment Operations Act 1997* (POEO Act) is the principal NSW environmental protection legislation and is administered by the NSW Environment Protection Authority (EPA).

Section 48 of the POEO Act requires an environment protection licence (EPL) to undertake scheduled activities at a premise.

Scheduled activities are defined in Schedule 1 of the POEO Act and include the following premise-based activities that apply to the project:

> ***17 Electricity generation***
> *(1)…general electricity works, meaning the generation of electricity by means of electricity plant that, wherever situated, is based on, or uses, any energy source other than wind power or solar power.*
> *(2) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if it meets the criteria set out in Column 2 of that Table.*

An EPL is required for wind energy projects which are SSD or a designated development. The EPL is required to authorise the carrying out of scheduled activities, including ancillary activities, and may regulate forms of pollution (including water pollution and noise pollution) resulting from that work or those activities.

The project may require an EPL during the construction phase for crushing, grinding or separating concrete if the activity has the capacity to process more than 150 tonnes of materials per day or 30,000 tonnes of materials per year.

Part 5.7 of the POEO Act provides the duty to notify the relevant authority of pollution incidents, and under section 120 it is an offence to pollute waters. The project will be managed to ensure pollution risks to soil, waterways and air quality are avoided or minimised. In the event of a pollution incident that causes or threatens material harm to the environment, the NSW EPA would be notified.

The legal requirements for waste management are also established under the POEO Act. Under section 143 it is an offence to unlawfully transport and dispose of waste. Appropriate waste management controls will be introduced to classify, store, transport, and dispose of all construction and work-generated waste and satisfy the requirements of the POEO Act. Waste minimisation and management is discussed in **Chapter 14** of the EIS**.**

1.2.2 Biodiversity Conservation Act 2016

The NSW *Biodiversity Conservation Act 2016* (BC Act) establishes the regulatory framework for assessing and offsetting biodiversity impacts for proposed developments. The BC Act is also supported by the *Biodiversity Conservation Regulation 2017* (BC Regulation) and the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*, which outline the methods to be used in applying the Biodiversity Assessment Methodology (BAM).

The purpose of the BC Act is to maintain a healthy, productive and resilient environment for the wellbeing of the community, now and into the future, consistent with the principles of ecologically sustainable development, and in particular:

a) *To conserve biodiversity at bioregional and State scale*
b) *To maintain the diversity and quality of ecosystems and enhance their capacity to adapt to change and provide for the needs of future generations*
c) *To improve, share and use knowledge, including local and traditional Aboriginal ecological knowledge, about biodiversity conservation*
d) *To support biodiversity conservation in the context of a changing climate*
e) *To support collating and sharing data, and monitoring and reporting on the status of biodiversity and the effectiveness of conservation actions*
f) *To assess the extinction risk of species and ecological communities, and identify key threatening processes, through an independent and rigorous scientific process*
g) *To regulate human interactions with wildlife by applying a risk-based approach*
h) *To support conservation and threat abatement action to slow the rate of biodiversity loss and conserve threatened species and ecological communities in nature*
i) *To support and guide prioritised and strategic investment in biodiversity conservation*
j) *To encourage and enable landholders to enter into voluntary agreements over land for the conservation of biodiversity*
k) *To establish a framework to avoid, minimise and offset the impacts of proposed development and land use change on biodiversity*
l) *To establish a scientific method for assessing the likely impacts on biodiversity values of proposed development and land use change, for calculating measures to offset those impacts and for assessing improvements in biodiversity values*
m) *To establish market-based conservation mechanisms through which the biodiversity impacts of development and land use change can be offset at landscape and site scales*
n) *To support public consultation and participation in biodiversity conservation and decision-making about biodiversity conservation and,*
o) *To make expert advice and knowledge available to assist the Minister in the administration of this Act.*

Detailed ecological assessments of the study area have been undertaken by Eco Logical Australia (ELA) in accordance with the BAM and is included in **Appendix G**. A summary of the assessment is included in **Chapter 8**. The project has been located to avoid and minimises impacts to biodiversity values. The main impact of the project on biodiversity values would result from the removal of vegetation and subsequent loss of habitat and associated indirect impacts. These impacts require offsetting. A total of 8,966 ecosystem credits and 19,688 species credits are required to offset the above impacts of the project. A biodiversity credit report is provided in **Appendix G**.

Further discussion of the potential impacts of the project on native vegetation and threatened species listed under the BC Act is provided in **Chapter 8** and **Appendix G**.

1.2.3 Biosecurity Act 2015

The objective of the *Biosecurity Act 2015* (BSA Act) is to provide a framework for the prevention, elimination and minimisation of biosecurity risks within NSW. The BSA Act outlines priority weeds that pose a risk to reducing the diversity of native plant and animal species. Under Schedule 1 of the Act all private landowners, occupiers, public authorities and councils are required to control weeds on their land. The Warrumbungle Shire Council is the Local Control Authority responsible for administering the BSA Act in the region that applies to the study area.

Some weeds are present within the wind farm site however, with the appropriate mitigation measures in place, the risk of spreading of these weeds is considered low. Weed management measures are included in **Section 17.1** of the EIS.

UPC\AC is currently in discussions with a number of the landholders to enable cattle grazing to resume on portions of the project area following the completion of construction. A detailed protocol will be developed to confirm biosecurity is maintained and that grazing does not impact on the safe and efficient operation of the project or result in injury to farm workers or operational and maintenance staff.

1.2.4 Noxious Weeds Act 1993

The *Noxious Weeds Act 1993* aims to prevent the establishment, reduce the risk of spread and minimise the extent of noxious weeds. The Act guides the management of declared noxious weeds in LGAs.

Construction activities and transport of goods to the project may cause the importation and spread of noxious weeds which would need to be managed. Appropriate project management to minimise the risk of spreading noxious weeds should be considered and addressed in the Construction Environmental Management Plan.

1.2.5 Local Land Services Act 2013

The NSW *Local Land Services Act 2013* (LLS Act) provides framework for the management of local land services and includes the requirement to obtain approval under Part 5A of the LLS Act to remove native vegetation in a regulated rural area.

Pursuant to Section 60O of the LLS Act, clearing of native vegetation in a regulated rural area is authorised under Part 4 of the EP&A Act and an authorisation for clearing of native vegetation is not required for the project under the LLS Act.

The vegetation associated with most of the watercourses within the project are classified as 'Category 2 – vulnerable regulated land' under the LLS Act, which is land designated as steep or highly erodible lands, protected riparian land or special category land. Clearing of vegetation is restricted in these areas under the LLS Act. The project is, for the most part, sited on the ridgelines and therefore aims to avoid clearing or ground disturbance within the vulnerable regulated areas.

60 percent of the study area is consistent with exempt land under s60H of the LLS Act. ELA have developed a mapping approach to provide a completed Native Vegetation Regulatory map (NVR) Map, to be applied to the assessment of the projects impacts on biodiversity values. Further detail of the completion of the NSW Native Vegetation regulatory map is provided in **Chapter 8**Error! Reference source not found. and **Appendix G**

Assessment of the impacts the project has on native vegetation is provided in **Chapter 8** and **Appendix G**

1.2.6 National Parks and Wildlife Act 1974

The NSW *National Parks and Wildlife Act 1974* (NP&W Act) governs the management of national parks, historic sites, nature reserves, reserves, Aboriginal areas and state game reserves in NSW. The NP&W Act also provides for the protection of native flora and fauna.

The project is situated between the following national parks:

- Coolah Tops National Park – approximately 30 kilometres to the northeast
- Warrumbungle National Park – approximately 70 kilometres to the north / northwest
- Goulburn River National Park – approximately 20 kilometres southeast

The project avoids designated NSW National Parks and Wildlife Service Estates (as outlined in **Section 6.1** of the EIS).

Under Section 90 of the Act, a person must not harm or desecrate an Aboriginal object or place without an Aboriginal heritage impact permit. However, a Section 90 permit is not required for SSD approvals by virtue of Section 4.41 of the EP&A Act (refer to discussion on exempt approvals for SSD in **Section 1.1.1**). Additionally, under Section 89A of the Act, it is a requirement to notify the Secretary of the Department of Premier and Cabinet of the location of an Aboriginal object. Identified Aboriginal items and sites are registered on Aboriginal Heritage Information Management System (AHIMS) that is administered by Heritage NSW.

An Aboriginal Cultural Heritage Assessment Report was undertaken by OzArk for the study area and is included in **Appendix N**. A summary of the assessment is included in **Chapter 11** of the EIS. The assessment found that there are 78 registered Aboriginal sites within a 10 kilometre radius of the project including six within the project boundary, one within the potential impact area. A field survey conducted by OzArk resulted in an additional four sites being found and assessed within the development footprint. Of the five sites within the potential impact area, three have been determined to be directly impacted by the project. These sites (Orana OS-1, Kensington OS-1 and Cainbil Creek OS-1) will be salvaged via surface collection and registered on AHIMS. The possible impacts to the known sites as well as unexpected finds will be managed through the mitigation measures outlined in **Section 11.4** and implemented through an ACHMP**.** Further discussion of the potential impacts to Aboriginal heritage sites resulting from the project and management measures are detailed in **Chapter 11** and **Appendix N**.

1.2.7 Heritage Act 1977

The NSW *Heritage Act 1977* (Heritage Act) aims to protect and conserve the natural and cultural history of NSW, including scheduled heritage items, sites and relics. The Act defines 'environmental heritage' as those places, buildings, works, relics, moveable objects and precincts listed in the Local or State Heritage Significance register. A property is a heritage item if it is listed in the heritage schedule of the local Council's LEP or listed on the State Heritage Register (SHR), a register of places and items of particular importance to the people of NSW.

Aboriginal cultural and historic heritage assessments were undertaken by OzArk for the project and are included in **Appendix N and Appendix O**. A summary of the assessment is included in **Chapter 11** and **Chapter 12** of the EIS. The site is not listed on the State Heritage Register (SHR), nor is it in the immediate vicinity of any SHR items. The field survey undertaken by OzArk for the project identified four new historic items, however, they were assessed as having no historic heritage significance under the current Heritage NSW guidelines and the Burra Charter as they do not meet the assessment criteria to demonstrate collective, aesthetic, technological and/or natural significance. No referral to the Heritage Council of NSW is required.

Approvals under Part 4 or an excavation permit under section 139 of the Heritage Act are not required for SSD by virtue of Section 4.41 of the EP&A Act (refer to discussion on exempt approvals for SSD in **Section 1.1.1**).

1.2.8 Water Management Act 2000

The NSW *Water Management Act 2000* (WM Act) regulates the use and interference of surface and groundwater in NSW where a water sharing plan has been implemented. The WM Act is progressively being implemented throughout NSW to manage water resources, superseding the *Water Act 1912.*

The project is within the footprint of the following water sharing plans:

- NSW Murray Darling Basin Fractured Rock Groundwater Sources 2011
- NSW Murray Darling Basin Porous Rock Groundwater Sources 2011
- Macquarie Bogan Unregulated and Alluvial Water Sources 2012

The Coolaburragundy River is located within the project, between the Mt Hope and the Girragulang Road clusters. The Talbragar River is located immediately south of the southernmost extent of the disturbance footprint, in the location of the project transmission line. The Coolaburragundy River and Talbragar River are the highest order watercourses within the project boundary. There are other lower order creeks within the project, many are ephemeral and only flow after significant rainfall.

The major project components (turbines) are confined to ridgelines and crests. Other components, such as the reticulation lines and access tracks, cross some minor waterways, while the project transmission line is near the Talbragar River, although this would be designed to span the water course and not interfere with the floodplain or hydrology. Ancillary infrastructure such as substations by virtue would be designed to minimise flood impacts (to and by the infrastructure).

The following approvals are generally required under the WM Act:

- a water use approval under section 89 to authorise the use of water for a particular purpose at a particular location
- a water management work approval under section 90 for the construction and use of a water supply work, drainage work or flood work
- a Water Access Licence (WAL) under section 60A to allow water to be taken from a water source
- a controlled activity approval under section 91 for certain activities which are carried out on waterfront land
- an aquifer interference activity approval under section 91.

A water use approval under Section 89 of the WM Act, a water management work approval under section 90, or a controlled activity approval (other than an aquifer interference approval) under section 91 of the WM Act is not required for the project by virtue of Section 4.41 of the EP&A Act (refer to discussion on exempt approvals for SSD in **Section 1.1.1**).

Water demands for the project during construction, operation and decommissioning would be sourced from suppliers in the region and brought to site via water trucks, opportunistically from farm dams located on the site or from treated wastewater or town water if available in the nearby region (Refer to **Chapter 14** of the EIS). Therefore, approvals are unlikely to be required under the WM Act for the project.

The WM Act contains provisions relating to harvestable rights. Harvestable rights allow landholders to collect a proportion of the runoff from their property. Any runoff harvested from the development footprint would be within the volume permitted under harvestable rights. An assessment of groundwater is in **Chapter 13**. It is unlikely the project would impact ground water.

1.2.9 Fisheries Management Act 1994

The NSW *Fisheries Management Act 1994* (FM Act) governs the management of fish and their habitat within NSW and is administered by the Department of Primary Industries (DPI). The FM Act aims to conserve 'key fish habitats' (KFH) which includes aquatic habitats that are important to the maintenance of fish populations, the survival and recovery of threatened aquatic species and the sustainability of the recreational and commercial fishing industries.

A permit under sections 201, 205 or 219 of the FM Act is not required for SSD under the provisions of Section 4.41 of the EP&A Act (refer to discussion on exempt approvals for SSD in **Section 1.1.1**).

Direct impacts to aquatic habitats is associated primarily with the transmission line crossings of the Coolaburragundy Creek and Talbragar River which have been assessed as both of these waterways are identified as Key Fish Habitat (KFH) for Eel-tailed Catfish and Purple Spotted Gudgeon.

Given the degraded nature of the aquatic habitat present and mitigation measures proposed for the project, the direct impacts to aquatic habitat are unlikely to be significant.

Further discussion of the potential impacts to KFH and aquatic species is in **Chapter 8** and **Appendix G.**

1.2.10 Rural Fires Act 1997

The NSW *Rural Fires Act 1997* (RF Act) aims to prevent, mitigate, and suppress bush and other fires. Section 63(2) of the RF Act requires the owners of land to prevent the ignition and spread of bushfires on their land. Under Section 4.41 of the EP&A Act, a bush fire safety authority under Section 100B of the RF Act is not required for SSD that is authorised by a development consent (refer to discussion on exempt approvals for SSD in **Section 1.1.1**).

Bushfires are a known hazard with most of the project located in Vegetation 1 and 2 category bushfire prone land. Bushfire risk would be considered in the context of the RF Act at all levels of the development process, from project design through to decommissioning. A Bushfire Hazard Assessment has been completed for the project. The hazard and protection methods relevant to the project are discussed in **Chapter 10**.

1.2.11 Forestry Act 2012

The NSW *Forestry Act 2012* sets out the establishment of the Forestry Corporation of New South Wales as a statutory State-owned corporation and land manager of forestry areas. The project does not incorporate land zoned as RU3, managed by NSW Forestry Corporation. Therefore, further consideration of the objectives of the *Forestry Act 2012* and consultation with the NSW Forestry Corporation is not required.

1.2.12 Roads Act 1993

The NSW *Roads Act 1993* (Roads Act) is administered by Transport for NSW (previously Roads and Maritime Services (RMS)), local government or the Minister as delegated under the NSW *Crown Land Management Act 2016* (CL Act). Transport for NSW has jurisdiction over major roads, local government over minor roads and the Minister over Crown roads. The Roads Act sets out the rights of the public in regard to access to public roads.

Under Section 138 or Part 9, Division 3 of the Roads Act, a person must not undertake any works that impact on a road, including connecting a road (whether public or private) to a classified road, without

approval of the relevant authority, being either Transport for NSW or local council, depending upon classification of the road. Consent of the appropriate road authority is required to:

(a) erect a structure or carry out a work in, on or over a public road
(b) dig up or disturb the surface of a public road
(c) remove or interfere with a structure, work or tree on a public road
(d) pump water into a public road from any land adjoining the road
(e) *connect a road (whether public or private) to a classified road.*

A Traffic and Transport Impact Assessment was undertaken by SCT Consulting for the project and is included in **Appendix H** and summarised in **Chapter 9** of the EIS.

The project necessitates road upgrades as described in **Chapter 9**. and **Appendix H**. Section 138 approval would be needed for approval of physical works on public roads.

Pursuant to Section 4.42 of the EP&A Act, a consent under section 138 of the Roads Act cannot be refused for SSD that is authorised by a development consent (refer to discussion on exempt approvals for SSD in **Section 1.1.1**).

1.2.13 Crowns Land Management Act 2016

The CL Act sets out how Crown land is to be managed. Specific use of Crown land generally needs to be authorised by a lease, licence or permit. Under Part 3 of the Act, the Minister for Lands must be satisfied that the land has been assessed in accordance with the principles of Crown land management by (amongst other matters) including an assessment of the capabilities of Crown land and the identification of suitable land uses.

The project includes multiple landholdings associated with Crown Land including existing Crown Enclosure Permits, Crown Licences, Crown leases and Crown reserves. These are discussed in **Section 17.1**

Consent from the Land Division, Department of Primary Industries is required for the construction of the access roadway over Crown Land to provide permanent vehicular access to wind turbine infrastructure will be required. All relevant tenure arrangements with Crown lands will be obtained prior to the commencement of relevant construction activities.

1.2.14 Conveyancing Act 1919

The development footprint extends over many adjoining properties, each of which require a separate lease from the owners of the affected land. Lease of a wind farm site is treated as a lease of premises, regardless of whether the lease will be for more or less than 25 years.

As the plan defines 'premises' (being the development foot print) it will not constitute a 'current plan' within the meaning of Section 7A *Conveyancing Act 1919* (Conveyancing Act) and therefore will not require subdivision consent under Section 23G Conveyancing Act.

Section 23G of the Conveyancing Act may apply if the relevant Authorised Network Operator for this project (likely to be TransGrid) requires subdivision for the purpose of construction, operation and maintenance of the substation.

1.2.15 Mining Act 1992

The main objective of the *Mining Act 1992* (Mining Act) is to encourage and facilitate the discovery and development of mineral resources in NSW, having regard to the need to encourage ecologically sustainable development.

The study area is subject of the following authorities under the Mining Act:

- Authorisation (AUTH) 0286 held by the Secretary of Regional NSW for the exploration of coal and oil shale
- Exploration Licence (EL) 8665 held by Bacchus Resources Pty Ltd for the purpose of mineral exploration
- Petroleum Exploration Licence (PEL) 0433 held by Hunter Gas Pty Ltd and Santos QNT Pty Ltd
- Exploration Licence Application (ELA) 6274 held by Gilmore Metal for the purpose of mineral exploration.

No activities authorised by the exploration licenses have been carried out on land within the study area.

1.2.16 Contaminated Land Management Act 1997

The NSW *Contaminated Land Management Act 1997* (CLM Act) establishes a process for investigating and where appropriate, remediating land that the NSW EPA considers to be contaminated significantly enough to require regulation under Division 2 of Part 3. Furthermore, under Section 60 a person whose activities have contaminated land or a landowner whose land has been contaminated is required to notify the NSW EPA when they become aware of the contamination.

The project does not contain land listed on the Contaminated Lands Register. Relevant processes would be recommended within the Construction Environmental Management Plan for the ongoing operation of the project which would require notification of pollution incidents to the NSW EPA.

1.2.17 Soil Conservation Act 1938

The NSW *Soil Conservation Act 1938* allows for conservation of soil resources and erosion management. Notices can be issued under Section 15A to control erosion or degradation. **Chapter 13** of the EIS provides an assessment on the impact on soils.

The construction of the wind farm would be required to follow best practice methods and a Construction Environmental Management Plan will be in place to guide soil management during construction to minimise sedimentation of downstream waterways.

1.2.18 Dangerous Goods (Road and Rail Transport Act) 2008

The aim of the *Dangerous Goods (Road and Rail Transport Act) 2008* is to regulate the transport of dangerous goods by road and rail, in order to promote public safety and protect property and the environment. Dangerous goods transportation licences for vehicles and drivers (if more than 500 litres or 500 kilograms of dangerous goods are required to be delivered to the site). **Chapter 10** of the EIS provides controls relating to transportation of dangerous goods.

1.2.19 Environmentally Hazardous Chemicals Act 1985

The NSW *Environmentally Hazardous Chemicals Act 1985* regulates the use and storage of environmentally hazardous chemicals or declared chemical waste. It provides the Department of Planning, Industry and Environment with assessment and control mechanisms for chemicals and

chemical wastes. **Chapter 10** and **Chapter 14** provide management measures for hazardous materials

1.2.20 Waste Avoidance and Resource Recovery Act 2001

The *Waste Avoidance and Resource Recovery Act 2001* (WARR Act) includes resource management hierarchy principles to encourage the most efficient use of resources and to reduce environmental harm. Waste impacts from the project have been considered in **Chapter 14**, including details of the types of waste, expected volumes (where known) and how the waste would be transported and disposed.

The project's resource management options would be considered against a hierarchy of the following order:

- avoidance of unnecessary resource consumption
- resource recovery (including reuse, reprocessing, recycling and energy recovery)
- disposal.

1.2.21 Other State Environmental Planning Policies

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 3 – Hazardous and offensive development

State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP) requires that a preliminary hazard assessment (PHA) be prepared in accordance with the current circulars or guidelines for potentially hazardous or offensive development. The SEPP defines 'potentially hazardous industry' as:

> *"…development for the purposes of any industry which, if the development were to operate without employing any measures (including, for example, isolation from existing or likely future development on other land) to reduce or minimise its impact in the locality or on the existing or likely future development on other land, would pose a significant risk in relation to the locality:*
> *(a) to human health, life or property, or*
> *(b) to the biophysical environment,*
> *and includes a hazardous industry and a hazardous storage establishment.*

The guideline *Applying SEPP 33* (DoP 2011) includes a checklist and a risk screening procedure to determine whether a development is potentially hazardous or offensive. The *Applying SEPP 33* guideline lists industries that may fall within Resilience and Hazards SEPP as hazardous or offensive development. Wind farms and energy storage facilities are not listed in Appendix 3, however an assessment of hazardous activities associated with the project is provided in **Chapter 10** of the EIS.

The PHA was undertaken for the project in accordance with *Hazard Industry Planning Advisory Paper No.6 – Guidelines for Hazard Analysis* (DoP, 2011) and *Multi-Level Risk Assessment* (DoP, 2011) and is included in **Chapter 10** and **Appendix M** of the EIS. The PHA shows the materials and chemicals used in the BESS infrastructure do not exceed the threshold for the preliminary risk screening, and therefore the BESS infrastructure would not be a potentially hazardous development. **Chapter 10** identifies the management measures to be implemented to further minimise the potential impacts from these materials.

Chapter 4 – Remediation of land

Chapter 4 of the *Resilience and Hazards SEPP* provides a State-wide planning approach to the remediation of contaminated land and aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human and environmental health. Clause 4.6 of Resilience and Hazards SEPP requires that a consent authority take into consideration whether the land is contaminated prior to issuing development consent.

The contaminated land planning guidelines *Managing Land Contamination Planning Guidelines: SEPP 55 – Remediation of Land* (Department of Urban Affairs and Planning 1998) identifies 'agricultural/horticultural activities' as an activity which potentially causes contamination. Agricultural activities have occurred on and in the vicinity of the development footprint. Further discussion on the contamination risks associated with the project is in **Chapter 13**.

State Environmental Planning Policy (Primary Production) 2021

The *State Environmental Planning Policy (Primary Production) 2021* (Primary Production SEPP) aims to facilitate the orderly and economic use and development of rural lands for primary production related purposes and reduce land use conflict and sterilisation of rural lands. As the study area is zoned as RU1 Primary Production, the Primary Production SEPP has been considered.

The objectives of the Primary Production SEPP are as follows:

(a) to facilitate the orderly economic use and development of lands for primary production,
(b) to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources,
(c) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,
(d) to simplify the regulatory process for smaller-scale low risk artificial waterbodies, and routine maintenance of artificial water supply or drainage, in irrigation areas and districts, and for routine and emergency work in irrigation areas and districts,
(e) to encourage sustainable agriculture, including sustainable aquaculture,
(f) to require consideration of the effects of all proposed development in the State on oyster aquaculture,
(g) to identify aquaculture that is to be treated as designated development using a well-defined and concise development assessment regime based on environment risks associated with site and operational factors.

Part 2.2 of Primary Production SEPP identifies land that is considered State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land if it is listed in Schedule 1. Schedule 1 does not currently identify any land. Further discussion of the potential impacts to rural and agricultural lands associated with the project is provided in **Chapter 15** and **Section 17.1** of the EIS to address the objectives of Primary Production SEPP.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 4 – Koala habitat protection 2021

Chapter 4 of the *State Environmental Planning Policy (Biodiversity and Conservation) 2021* (Biodiversity and conservation SEPP) aims to encourage the proper conservation and management of

areas of natural vegetation that provide habitat for koalas. It applies to land to LGAs listed in Schedule 1 of SEPP Koala Habitat.

The development footprint is in the Warrumbungle Shire Council LGA which is listed in Schedule 1 of SEPP Koala Habitat. However, the Chapter 4 of the Biodiversity and conservation SEPP does not apply to land zoned RU1 Primary Production.

State Environmental Planning Policy 44 (Koala Habitat Protection)
The State Environmental Planning Policy 44 (Koala Habitat Protection) (SEPP44) was repealed in 2019 but has been specifically identified as requiring consideration in the SEARs for the project.

Generally, this policy only applies to local development, where a Council is the consent authority and wouldn't apply to a State Significant Development. Regardless, an assessment under the SEPP44 has been undertaken in **Appendix G** to consider impacts to potential or core Koala habitat.

The assessment concluded that the study area does not contain core Koala habitat, and as such a Koala plan of management is not required for the project.

State Environmental Planning Policy (Resources and Energy)
The *State Environmental Planning Policy (Resources and Energy) 2021* (Resources and Energy SEPP) is designed to provide for the proper management and development of mineral, petroleum and extractive material resources and establish appropriate planning controls to encourage ecologically sustainable development through environmental assessment and management.

Relevant to the project, the SEPP outlines land that has been classed as Biophysical Strategic Agricultural Land (BSAL) and Critical Industry Clusters (CIC). BSAL occurs within the study area around Coolaburragundy River between the Mount Hope and Girragulang Road cluster. A small area of BSAL also occurs within the Leadville cluster associated with Cainbil Creek. No land within the study area is mapped as CIC land. These areas are shown in **Figure 1-1**. Further discussion on BSAL is provided in **Section 17.1**. No further legislated process is required as the project is not a mining or petroleum project.

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Figure 1-1: BSAL areas mapped under SEPP Mining

1.3 Commonwealth legislation

1.3.1 Environment Protection and Biodiversity Conservation Act 1999

The EPBC Act is the core piece of legislation protecting Matters of National Environmental Significance (MNES) and Commonwealth land. There are nine MNES identified under the EPBC Act:

- World Heritage Properties
- National Heritage Places
- Wetlands of international importance
- Listed threatened species and ecological communities
- Migratory species
- Commonwealth marine areas
- The Great Barrier Reef Marine Park
- Nuclear actions
- A water resource, in relation to coal seam gas development and large coal mining development.

Under the EPBC Act, a referral is required to be submitted to the Department of Agriculture, Water and the Environment for any 'action' that is considered likely to have a significant impact on any MNES. If the Department of Agriculture, Water and the Environment determines the action to be a 'controlled activity' approval is required from the Minister of the Environment.

The project was referred to the Department of Agriculture, Water and the Environment in June 2020 (EPBC 2020/8668). On 13 July 2020, a delegate of the Federal Minister for the Department of Agriculture, Water and the Environment determined that the project was a controlled action under section 75 of the EPBC Act. The EPBC Act controlling provisions for the proposed actions are:

i. listed threatened species and communities (sections 18 and 18A); and
ii. listed migratory species (sections 20 and 20A).

The proposed action is being assessed in accordance with the bilateral assessment agreement Amending Agreement No. 1 which took effect on 24 March 2020. The bilateral agreement allows the Commonwealth Minister for the Environment to rely on specified environmental impact assessment processes of the State of New South Wales in assessing actions under the EPBC Act.

Further discussion on MNES is provided in **Chapter 8** of the EIS and a full assessment of impacts at **Appendix G**.

1.3.2 Native Title Act 1993

The *Native Title Act 1993* (Native Title Act) was enacted to formally recognise and protect native title rights in Australia. The Native Title Act establishes processes to determine where native title exists, how future activity affecting upon native title may be undertaken, and to provide compensation where native title is impaired or extinguished. Where a native title claimant application is made with the National Native Title Tribunal (NNTT), the Federal Court or High Court of Australia make a determination of whether native title does or does not exist in relation to the claim.

The project includes land currently subject to Native Title Claim by the Gomeroi People (Tribunal File No. NC2011/006, Federal Court No. NSD2308/2011).

Claim applicants were invited to participate in the Aboriginal community consultation undertaken for the EIS and were consulted as part of the ACHAR prepared by OzArk for the project. A summary on the consultation undertaken for the project is in **Chapter 5** of the EIS.

1.3.3 Aboriginal and Torres Strait Islander Heritage Protection Act 1984

The aim of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (ATSIHP Act) is to preserve and protect from injury or desecration areas and objects in Australia and in Australian waters that are of significance to Aboriginals, in accordance with Aboriginal tradition. **Chapter 11** provides a discussion of relevant matters protected under the ATSIHP Act.

1.3.4 Civil Aviation Regulations 1988

Reporting of tall structures to the Royal Australian Air Force (RAAF) is required under the *Civil Aviation Regulations 1988*. The Project is located within Danger Area D538B and a Restricted Area R559B associated with Military Flying Training operated by No 453 Squadron at RAAF Base Williamtown.

A detailed assessment has been undertaken as part of the EIS by Aviation Projects. The assessment is included as **Appendix I** and summarised in **Chapter 10** of the EIS**.**

The EIS may be referred to Civil Aviation Safety Authority (CASA) to assess potential impacts of the project and to address the lowest safe altitude (LSALT) impact of air route W627 which will need to be raised.

1.3.5 Heavy Vehicle National Law

Approvals would be required for the transport of wind turbines and associated infrastructure by over size and over mass (OSOM) vehicles. Relevant permits under the Heavy Vehicle National Law (NSW) for the use of OSOM vehicles will be sought by the construction contractor.

1.4 Summary of licences, approvals and permits

Table 1-2 contains a summary of the licences, approvals and permits that are likely to be required for the project.

Table 1-2: Summary of licences, approvals and permits required for the project

Legal instrument	Licence or approval requirement	Consent or approval authority
EP&A Act	Approval under Part 4 of the Act for SSD	Minister for Planning or delegate
EPBC Act	Controlled activity approval in accordance with the Amended Biateral Agreement No 1	Federal Minister for the Department of Agriculture, Water and the Environment
Crown Land Management Act 2016	Part 5 Division 5.6 – Licences over Crown Land	Land Division, Department of Primary Industries
Protection of the Environment Operations Act 1997	Section 48 Environment Protection Licence	NSW Environment Protection Authority

Roads Act 1993	Section 138 permits for works involving a public road	Warrumbungle Shire Council
Civil Aviation Regulations 1988	Approval to address the LSALT impact of air route W627	CASA