

# 1.0 Statutory Compliance

# 1.1 Environmental Planning and Assessment Act 1979

When assessing a development application 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** lists the requirements under Section 4.15 and where these have been addressed in this EIS.

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

Matters for Consideration	Where Addressed in the EIS
Any environmental planning instrument	Section 4.0 of the EIS and this appendix
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)	There are no draft instruments relevant to the Project
Any development control plan	Section 2.10 of the Planning Systems SEPP states that development control plans do not apply to SSD, however Section 2.1.4 of the EIS provides a consideration of the Mid- Western Regional Council DCP in relation to the Project
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	Not applicable. Planning agreements not yet been entered into.
The regulations (to the extent that they prescribe matters for the purposes of this paragraph)	Section 4.0 of the EIS and this appendix
The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality	Section 6.0 of the EIS
The suitability of the site for the development	Section 9.0 of the EIS
Any submissions made in accordance with this Act or the regulations	Section 5.0 of the EIS
The public interest.	Sections 5.0 and 9.0 of the EIS

### 1.1.1 Secretary's Environmental Assessment Requirements (SEARs)

The EIS has addressed the SEARs provided for the Project which were issued by DPIE on 14 September 2021, and revised SEARs issued 26 November 2021 (refer to Appendix 1 of the EIS).

A checklist of the SEARs and where they have been addressed in the EIS is outlined in Appendix 1 of the EIS. The specific government agency requirements included as an attachment to the SEARs have been considered and addressed where relevant, throughout the EIS and the relevant technical studies.



# 1.2 Environmental Planning and Assessment Regulation 2000

The SEARs require that the EIS must meet the minimum requirements of clauses 6 and 7 of EP&A Regulation 2000. The requirements of Schedule 2 of the EP&A Regulation and where they are addressed in this EIS are set out in **Table 2**.

**Table 2 Schedule 2 EP&A Regulation Requirements** 

Regulation Clause	Requirement	Relevant EIS Section
Clause 6(1)(a)	The name, address and professional qualifications of the person by whom the statement is prepared	Appendix 3
Clause 6(1)(b)	The name and address of the responsible person	Chris Gosling RES Senior Project Development Manager Suite 6.01, Level 6, 165 Walker Street North Sydney, NSW, 2060
Clause 6(1)(c)	<ul> <li>The address of the land:</li> <li>(i) in respect of which the development application is to be made</li> <li>(ii) on which the activity or infrastructure to which the statement relates is to be carried out</li> </ul>	Appendix 4
Clause 6(1)(d)	A description of the development, activity or infrastructure to which the statement relates	Section 3.0 of the EIS
Clause 6(1)(e)	An assessment by the person by whom the statement is prepared of the environmental impact of the development, activity or infrastructure to which the statement relates, dealing with the matters referred to in this Schedule	Section 6.0 of the EIS
Clause 6(e)(f)	A declaration by the person by whom the statement is prepared to the effect that:  (i) the statement has been prepared in accordance with this Schedule  (ii) the statement contains all available information that is relevant to the environmental assessment of the development, activity or infrastructure to which the statement relates  (iii) that the information contained in the statement is neither false nor misleading.	Appendix 3
Clause 6(2)	The person preparing the statement must have regard to the following:  (a) for State significant development – State Significant Development Guidelines	Section 1.6 of this appendix
Clause 7(1)(a)	Summary of the EIS	Executive Summary and Section 9.0 of the EIS
Clause 7(1)(b)	A statement of the objectives of the development	Sections 1.5 and 2.5 of the EIS



Regulation Clause	Requirement	Relevant EIS Section
Clause 7(1)(c)	An analysis of any feasible alternatives to the carrying out of the development having regard to its objectives, including the consequences of not carrying out the development	Section 2.6 of the EIS
Clause 7(1)(d)(i)	A full description of the development, activity or infrastructure	Section 3.0 of the EIS
Clause 7(1)(d)(ii)	A general description of the environment likely to be affected by the development, activity or infrastructure, together with a detailed description of those aspects of the environment that are likely to be significantly affected	Section 2.2 and 6.0 of the EIS
Clause 7(1)(d)(iii)	The likely impact on the environment of the development	Section 6.0 of the EIS
Clause 7(1)(d)(iv)	A full description of the measures proposed to mitigate any adverse effects of the development, activity or infrastructure on the environment	Section 3.0, 6.0 of the EIS and Appendix 18
Clause 7(1)(v)	A list of any approvals that must be obtained under any other Act or law before the development may be lawfully carried out	Section 4.0 of the EIS
Clause 7(1)(e)	A compilation of the mitigation measures referred to in Clause $7(1)(d)(iv)$	Appendix 18
Clause 7(1)(f)	The reasons justifying the carrying out of the development in the manner proposed, having regard to biophysical, economic and social considerations, including the principles of ecologically sustainable development	Section 9.0 of the EIS

# 1.3 Environmental Planning Instruments

There are a number of Environmental Planning Instruments (EPIs) that are potentially applicable to the Project. These are discussed in the following section.

### 1.3.1 State Environmental Planning Policies

The following SEPPs are relevant to the consideration of the development application for the Project.

#### State Environmental Planning Policy (Resilience and Hazards) 2021

The State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP) commenced on 1 March 2022 and consolidated and repealed the following SEPPs that had relevance to the Project:

- State Environmental Planning Policy 33 Hazardous and Offensive Development (SEPP 33)
- State Environmental Planning Policy No 55 Remediation of Land (SEPP 55).

The Resilience and Hazards SEPP does not change the legal effect of the previous SEPPs nor did it amend any of the planning provisions.

Section 3.11 of the Resilience and Hazards SEPP require the preparation of a preliminary hazard analysis (PHA) by the proponent should a development application be made to carry out development for the purposes of a potentially hazardous industry. Hazardous industry is defined as -

'a development for the purposes of an industry which, when the development is in operation and when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for



example, measures to isolate the development from existing or likely future development on other land in the locality), would pose a significant risk in relation to the locality—

- (a) to human health, life or property, or
- (b) to the biophysical environment.'

A Preliminary Hazard Analysis (PHA) has been prepared in respect of the Project as required by the SEARs and SEPP 33. The outcomes from the PHA are summarised in Section 6.13 of the EIS.

Under the Resilience and Hazards SEPP, a consent authority must not consent to the carrying out of development on land unless it has considered any potential contamination issues.

The Project Area is not identified as contaminated land on the Environment Protection Authority Contaminated Land Register and based on the historic agricultural use of the land there are no known contaminated areas within the Project Area.

The construction and operational phases of the Project will be appropriately managed to prevent contamination and any spills (e.g. hydrocarbons from mobile equipment during construction) will be cleaned up and the sites remediated. Decommissioning and rehabilitation following closure of Project will be undertaken in accordance with relevant consent conditions and legislation/licence requirements and will include consideration of any contamination risks and remediation requirement associated with Project infrastructure (e.g. solar arrays, substation and associated infrastructure).

#### State Environmental Planning Policy (Biodiversity and Conservation) 2021

The State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP) commenced on 1 March 2022 and consolidated and repealed the following SEPPs that had relevance to the Project:

- State Environmental Planning Policy (Koala Habitat Protection) 2020 (Koala Habitat Protection 2020)
- State Environmental Planning Policy (Koala Habitat Protection) 2021.

The Biodiversity and Conservation SEPP must be considered when assessing impacts to the koala (*Phascolarctos cinereus*) in development applications to be considered by local councils. While the Project is being assessed as a State Significant Development, and the provisions of koala habitat protection in the SEPP do not apply, the intent of the SEPP has been considered in the identification of potential koala habitat and breeding habitat for assessment under State and Commonwealth legislation.

The Project Area is situated within Zone RU2 Rural Landscape, because of this Chapter 3 Koala Habitat Protection 2020 of the SEPP is applicable. Koala Habitat Protection 2020 describes:

- Potential habitat as areas of native vegetation where trees of the types listed in Schedule 2 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component.
- Core koala habitat as area of land with a resident population of koalas, evidenced by attributes such as breeding females, being females with young, and recent sightings of and historical records of a population.



This assessment of koala habitat has used the koala feed tree schedule itemised in both Schedule 1 and Schedule 3 of the Biodiversity and Conservation SEPP as the latter provides a comprehensive list of preferred feed trees based on recent studies (OEH 2018a).

Thirteen of the tree species listed in Schedule 3 of the Biodiversity and Conservation SEPP have been recorded within the Project Area. These tree species represent 15% or greater of the total number of trees within any Plant Community Type (PCT) in the Project Area and, as such, all PCTs across the Project Area represent potential koala habitat.

Despite the Project Area representing potential habitat for the koala, the koala was not recorded in the Subject Land despite extensive ecological survey. In addition, a review of the BioNet Atlas of NSW Wildlife reveals no records of this species within 5 km of the Subject Land, with three records within 20 km of the Project Area. These records range from 2002 to 2015.

As a result, the Project Area does not represent core koala habitat as the koala was not recorded in the Project Area and koalas have not been recorded nearby (within 5km) within the last 18 years. No further provisions of koala habitat protection in the Biodiversity and Conservation SEPP apply. Notwithstanding this, the koala is a dual ecosystem and species credit species under the BAM and has been further considered in the BDAR, as summarised in Section 6.7 of the EIS.

# 1.4 Other NSW Legislation

In addition to requiring development consent under the EP&A Act, the Project will require a number of separate regulatory planning and environmental approvals. Other NSW legislation that is applicable to the Project is outlined in **Table 3**. This table includes legislation that has been addressed in the EIS.

Table 3 - NSW Legislation relevant to the Project

Applicable Legislation	
Biodiversity Conservation Act 2016 (BC ACT)	The general purpose of the <i>Biodiversity Conservation Act 2016</i> (BC Act) is to maintain a healthy, productive, and resilient environment for the greatest well-being of the community, now and into the future, consistent with the principles of ecologically sustainable development (ESD).
	Under the BC Act, biodiversity assessment in accordance with the Biodiversity Assessment Method (BAM) is required for any SSD project. A Biodiversity Development and Assessment Report (BDAR) has been undertaken consistent with the requirements of the BC Act, given the proximity of the Project Area to locally and regionally sensitive areas of vegetation and potential wildlife habitat. The BDAR is provided in full in Appendix 10, with the findings summarised in Section 6.7 of the EIS.
Biosecurity Act 2015	The objective of the <i>Biosecurity Act 2015</i> (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.  Mid-Western Regional Council is the Local Control Authority responsible for administering the BSA Act in the region that applies to the Project area.
	A weed assessment was undertaken as part of the BDAR included in Appendix 10. The assessment identified that some weeds are present within the Project area however, with



Applicable Legislation	
	the appropriate mitigation measures in place, the risk of spreading of these weeds is considered low.  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.
National Parks and Wildlife Act 1974	The NPW Act sets out to protect and preserve Aboriginal heritage values. Part 6 of this Act refers to Aboriginal objects and places and prevents persons from impacting on an Aboriginal place or relic, without consent or a permit. An Aboriginal Cultural Heritage Assessment (ACHA) has been completed for the Project, as provided in full in Appendix 12 and discussed in Section 6.9 of the EIS and ensures compliance with the NPW Act.  The Warrabinga Native Title Claimants Aboriginal Corporation was consulted as part of the ACHA process as detailed in Sections 5.0 and 6.9 of the EIS.
Heritage Act 1977 (Heritage Act)	The Heritage Act aims to conserve heritage values. The Act defines 'environmental heritage' as those places, buildings, works, relics, moveable objects, and precincts listed in the Local or State Heritage Significance. A property is a heritage item if it is listed in the heritage schedule of the local Council's LEP or on the State Heritage Register, a register of places and items of particular importance to the people of NSW. Under Section 4.41 of the EP&A Act, an approval under Part 4 or a permit under Section 139 of the Heritage Act 1977 would not be required for a State Significant Development. However, this does not exempt the Project from requiring heritage assessment, which may identify heritage/archaeological sites and provide recommendations for their management, and the consideration of the provisions of the relevant statutory controls.  An assessment of heritage issues has been completed for the Project. The heritage assessment is provided in Appendix 13 and a summary of the findings of the assessment is
Protection of the	provided in Section 6.10 of the EIS.  The POEO Act regulates pollution to the environment and requires licences for
Environment Operations Act 1997 (POEO Act)	environmental protection including waste, air, water, and noise pollution control.  Solar farms are not a scheduled activity under the POEO Act; thus, the Project does not require an Environment Protection Licence (EPL).
Water Management Act 2000 (WM Act)	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 Area is subject to the Macquarie-Bogan Unregulated Rivers Water Sources 2012 and NSW Murray-Darling Basin Fractured Rock Groundwater Sources 2020 Water Sharing Plans (WSPs). It is also potentially subject to the NSW Murray-Darling Basin Porous Rock Groundwater Sources 2020 WSP. These WSPs deal with Sections 20 and 21 of the NSW WM Act, namely the establishment of water sharing provisions for particular water source). A water use approval under Section 89 of the WM Act is not required for the Project by virtue of Section 4.41 of the EP&A Act (refer to Section 4.0 of the EIS).
	Water for construction would be sourced from commercial suppliers in the nearby region (via water trucks), farm dams or licensed groundwater bores located within the Project Area or nearby. Water sources would be determined prior to the commencement of construction in consultation with suppliers and landholders. Town water supplies will be generally avoided for use in construction, but may be used where appropriate and available. Town supply (potable water) is anticipated for use in ablutions and canteen facilities. 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.



Applicable Legislation	
Roads Act 1993 (Roads Act)	The Roads Act 1993 (Roads Act) regulates the carrying out of various activities on public roads and provides for the declaration of Transport for NSW and other public authorities, including councils, as a roads authority for different types of roads (classified and unclassified).
	Under section 138 of the Roads Act, the consent of the appropriate roads' authority is required before a person can erect a structure, carry out work in, on or over a public road or dig up or disturb the surface of a public road.
	Construction of the Project within public road reserves will therefore require works consent of the appropriate roads authority under Section 138 of the Roads Act.  This was examined in the Traffic Impact Assessment undertaken for the Project, as provided
	in full in Appendix 9 and summarised in Section 6.6 of the EIS.
Crown Land Management Act 2016 (Crowns Land	The <i>Crown Land Act, 2016</i> provides for the administration and management of Crown land in NSW. Crown land may not be occupied, used, sold, leased, licensed, dedicated, reserved, or otherwise dealt with unless authorised by the Crown Land Act.
Act)	The Project Area contains some small parcels of Crown land ('paper roads'). 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. Consultation with Crown Land has been undertaken during the EIS development, as detailed further in Section 5.0 of the EIS.
Contaminated Land Management Act 1997 (CLM Act)	The CLM Act 1997 establishes the process for investigating and if required, remediating land that the NSW Environment Protection Authority (EPA) considers to be sufficiently contaminated to require regulation under Part 3, Division 2.
	The Project Area does not contain land listed on the Contaminated Lands Register. Relevant mitigation and management measures have been incorporated into the EIS to address any potential contamination issues (see Section 6.5 and 6.8 of the EIS).
Mining Act 1992	The main objective of the <i>Mining Act 1992</i> (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
	Approximately 612 ha of the Project Area is subject to a mineral exploration licence (EL8160). No part of the Project Area is subject to a mining/production lease. Consultation with the holder of mining exploration licences EL8160 and EL8405 has been undertaken and is included in the EIS under Section 5.0 of the EIS.
Fisheries Management Act 1994 (FM Act)	The Fisheries Management Act 1994 (FM Act) provides for the conservation, protection and management of fisheries, aquatic systems and habitats in NSW. The Department of Primary Industry (DPI) manages the majority of the FM Act, although DPIE has some responsibilities relating to endangered species and habitats. The FM Act applies in relation to all waters that are within the limits of the State and regulates certain activities that have the potential to impact on aquatic habitats.
	The objectives of the FM Act include:  To conserve fish stocks and key fish habitats.
	To conserve threatened species, populations and ecological communities of fish and marine vegetation.
	To promote ecologically sustainable development, including the conservation of biological diversity.
	Under the FM Act, development proponents are required to provide notification of proposals to DPI. Permits issued under the Act are required for:
	Works that would block the passage of fish in a bay, inlet, river or creek.



Applicable Legislation	
	Dredging or reclamation works.
	<ul> <li>The construction of structures within aquatic habitats (e.g. bridges, roads, causeways, pipelines).</li> </ul>
	Works that would cause harm to marine vegetation.
	Permits for the Project under section 201, 205 and 219 of the FM Act are not required. Potential impacts on aquatic ecology have been assessed in Sections 6.7 and 6.8 of the EIS.
Local Land Service Act 2013 (LLS Act)	Under the 2016 amendments to the <i>Local Land Services Act 2013</i> (LLS Act), all rural land will be classified as either:
	<ul> <li>Category 1 (exempt land): clearing of native vegetation without authorisation under the LLS Act is permitted; or</li> </ul>
	<ul> <li>Category 2 (regulated land): clearing of native vegetation is regulated under the LLS Act and some authorisation is required. Vulnerable land under this category will also be provided additional protection (e.g. riparian land).</li> </ul>
	The Project is located on Category 1 – exempt land under the LLS Act. Therefore, under section 600 and Schedule 5A of the LLS Act, clearing of native vegetation in regulated rural areas for allowable activities that is authorised without any approval or other authority under this Part for the clearing.
Aboriginal Land Rights Act 1983	The Aboriginal Land Rights Act 1983 (Aboriginal Land Rights Act) was established to return land in NSW to Aboriginal peoples through a process of lodging claim for certain Crown lands. Should it be identified that the Project crosses any areas of Aboriginal land under the Aboriginal Land Rights Act, or any areas currently the subject of claims under that Act, steps will be taken, including seeking to reach an agreement with the relevant land council, so that the grant of an easement can take place.
Rural Fires Act 1997	The Rural Fires Act 1997 facilitates the prevention, mitigation and suppression of bush and other fires in local government areas and parts of the State considered to be rural fire districts. The Project Area is not located in land identified as bushfire prone.
	A Bushfire Threat Assessment has been undertaken as part of the EIS in accordance with the requirements of the RFS <i>Planning for Bush Fire Protection</i> (2019) (see Section 6.13 of the EIS).
Dark Sky Planning Guideline 2016	The Dark Sky Planning Guideline (2016) is a matter for consideration for all development under the EP&A Act before development consent is granted within the local government areas of Coonamble, Dubbo, Gilgandra and Warrumbungle and the assessment of significant development within 200 kilometres of the Observatory at Siding Spring, also referred to as the Dark Sky Region. The Project falls within the Dark Sky Region. A Visual Impact Assessment has been undertaken for the Project and is provided in full in Appendix 14 with key findings summarised in Section 6.11 of the EIS. The VIA has considered night lighting in regard to the Dark Sky Planning Guideline.
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 Section 6.14 of the EIS, 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)



Applicable Legislation	
	• disposal.

## 1.5 Local Government Legislation

### 1.5.1 Mid-Western Regional LEP 2021

The Project is located within the Mid-Western Regional LGA and is subject to the *Mid-Western Regional Local Environmental Plan 2012 (LEP)*. The Project Area is zoned as RU1 Primary Production under the LEP. Electricity generating works are permitted with consent in this zone.

The objectives of RU1 Primary Production 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.
- To maintain the visual amenity and landscape quality of Mid-Western Regional by preserving the area's open rural landscapes and environmental and cultural heritage values.
- To promote the unique rural character of Mid-Western Regional and facilitate a variety of tourist land

The Project generally aligns with these objectives as it would:

- diversify the current land use by allow for ongoing agricultural activity through continued use of the Project Are for sheep grazing, preventing fragmentation of agricultural land in the region (refer to Section 6.5 of the EIS)
- is highly reversible and will not impact the future productivity of the land (see Section 6.5 of the EIS).
- is complementary to surrounding land uses (see Section 6.5 of the EIS)
- is an ecologically sustainable rural land use which provides socio-economic benefits to the region and generates renewable energy (see Section 6.3 and 6.4 of the EIS).

### 1.5.1.1 Subdivision of Land

The Mid-Western Regional LEP designates the Project Area as 'AD' on the Lot Size Map Sheet LSZ\_005 where the minimum lot size is 100 ha. Subdivision would be permissible under Section 4.38 of the EP&A Act subject to the approval of the Minister for Planning as the development application is not wholly prohibited by an environmental planning instrument.

However, there is no subdivision proposed as part of the Project.



### 1.6 Relevant Guidelines and Policies

The following key guidelines and policies have been considered during the preparation of the EIS and the associated technical assessments:

- State significant development quidelines preparing an environmental impact statement (DPIE, 2021)
- Large-scale Solar Energy Guideline (DPE, 2018)
- Cumulative Impact Assessment Guidelines for State Significant Projects (DPIE, 2021)
- NSW DPIE Social Impact Assessment Guideline for State Significant Projects (2021)
- Undertaking Engagement Guidelines for State Significant Projects (DPIE, 2021)
- Dark Sky Planning Guideline (DPE, 2016)
- Interim Construction Noise Guideline (DECC, 2009)
- NSW Noise Policy for Industry (EPA, 2017)
- Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW (OEH, 2011)
- The Code of Practice for the Archaeological Investigation of Aboriginal Objects in NSW (DECCW, 2010)
- Aboriginal Cultural Heritage Consultation Requirements for Proponents (DECCW, 2010)
- NSW Heritage Manual (NSW Heritage Office, 1996)
- Land Use Conflict Risk Assessment Guide (DPI, 2011)
- Australian Guide to Agrisolar for Large-scale Solar (CEC, 2021).