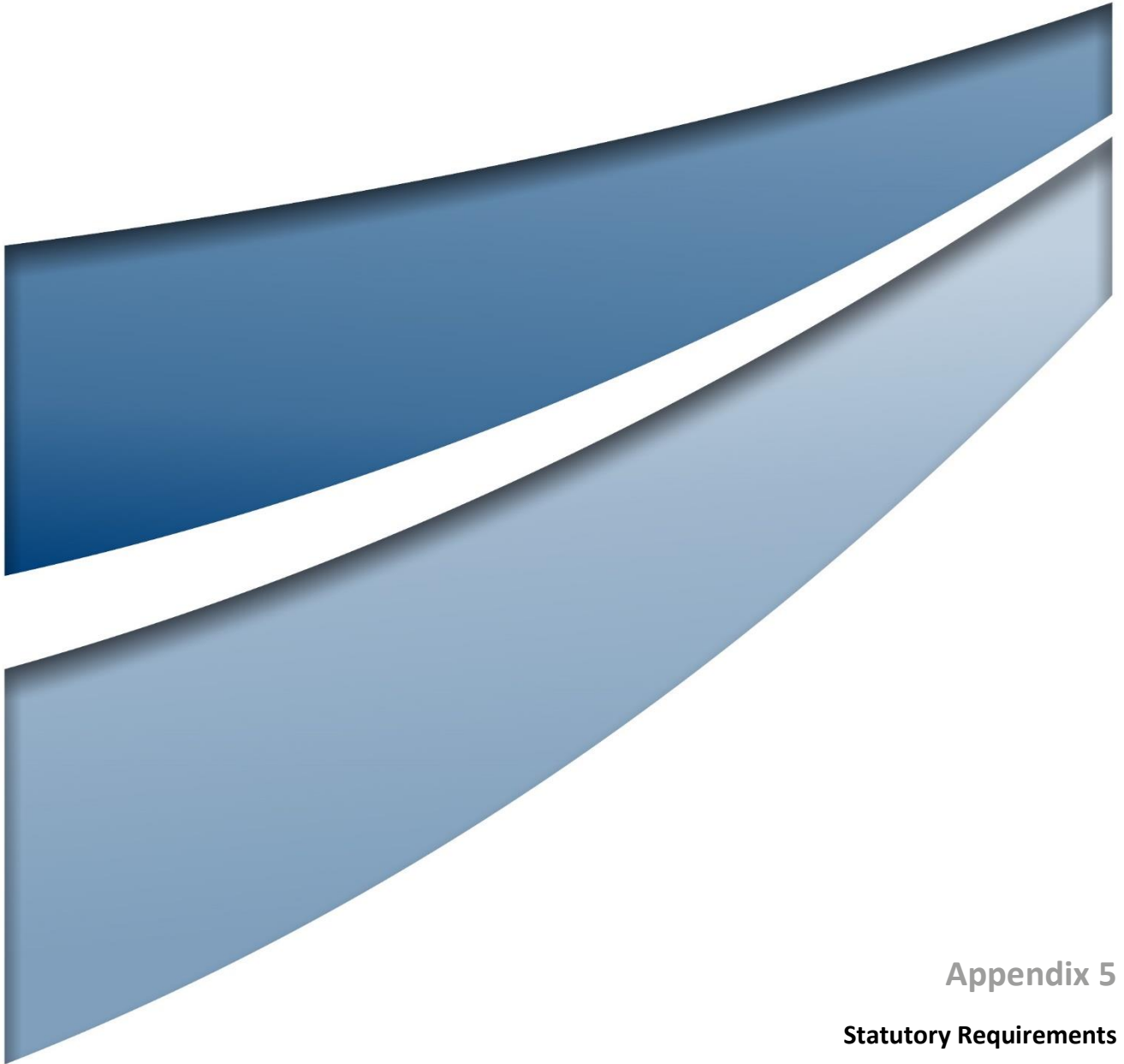




Appendix 5
Statutory Requirements

Appendix 5 – Statutory Requirements

Table 1 Pre-conditions Table

Statutory Reference	Pre-condition	Relevance	Section in EIS
NSW Legislation			
<i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> (Biodiversity and Conservation SEPP)	A consent authority is restricted from granting development consent for proposals on land identified as core koala habitat without the preparation of a plan of management.	The Project Area is located within an LGA to which the SEPP applies.	Section 6.4
Biodiversity and Conservation SEPP	Part 9.3(4) of the Biodiversity and Conservation SEPP states that consent is required when removing soil or other deposits from, or otherwise remediating, contaminated land.	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. WTGs and substations).	Section 6.8
<i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> (Resilience and Hazard SEPP)	The Resilience and Hazards SEPP requires a consent authority to consider whether an industrial development is a potentially hazardous industry or a potentially offensive industry. A preliminary hazard assessment (PHA) is to be completed for potentially hazardous developments to assist the consent authority to determine acceptability.	A PHA has been completed for the Project.	Section 6.11.5

Statutory Reference	Pre-condition	Relevance	Section in EIS
<i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> (Infrastructure SEPP)	Clause 2.36(1)(b) of the Transport and Infrastructure SEPP states 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. Under Clause 2.7(1) of the Infrastructure SEPP, the provisions prevail where there are inconsistencies with any other environmental planning instruments, including LEPs.	The Project Area is zoned RU1 Primary Production within the Wakool LEP 2013. Electricity generating works are not permitted within the RU1 zoning. Under the provisions of the Infrastructure SEPP, the Project is permissible with development consent.	Section 4.0
Infrastructure SEPP	The Infrastructure SEPP aims to facilitate the effective delivery of infrastructure across the State. Amongst a range of other provisions, it requires that for a development application which involves certain works related to or near electricity infrastructure, the consent authority must give written notice to the electricity supply authority for the area in which the development is carried out, inviting comments about potential safety risks.	Windlab is involved in ongoing consultation with Transgrid and Energy Corporation of NSW (EnergyCo) in relation to connection of the Project to electricity infrastructure. The final location of connection infrastructure and potential transfer to Energy Corporation assets will be determined through the detailed design and pre-construction phase, any approvals associated with that process (including any required subdivision of land) will be subject to a separate approvals process.	Section 5.0
<i>Biodiversity Conservation Act 2016</i> (BC Act)	Under the BC Act, biodiversity assessment in accordance with the Biodiversity Assessment Method (BAM) is required for any State significant development (SSD) project.	The Project is of a class of development considered an SSD project.	Section 6.4 Appendix 11
<i>Protection of the Environment Operations Act 1997</i> (POEO Act)	The POEO Act regulates pollution to the environment and requires licences for environmental protection including waste, air, water and noise pollution control. Wind farms are a scheduled activity under the POEO Act and require an Environment Protection Licence (EPL).	As a wind farm development, the Project will require an EPL. Should the Project be approved an EPL would be sought in relation to the construction and operation of the Project.	Not applicable
<i>Water Management Act 2000</i> (WM Act)	Any water extractions (take) from water sources (surface and groundwater) regulated by a Water Sharing Plan (WSP) required for construction purposes requires licensing under the WM Act.	The Project will require water for construction and ongoing operations. This water take may come from the Project Area.	Section 6.8 Appendix 15

Statutory Reference	Pre-condition	Relevance	Section in EIS
<i>Roads Act 1993</i> (Roads Act)	A consent is required under section 138 to work on or above a road or to connect a road to a classified road.	The Project requires road works, including key intersections, as described in Section 3.4.13.1 .	Section 3.4.14.1 Section 6.7 Appendix 4 Appendix 14
<i>Crown Land Management Act 2016</i> (Crown Land Act)	The Crown Land Act 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.	There are some minor areas of Crown Land easements traversing the Project Area as roads and waterways. There is no proposed impact to Crown land (other than Crown roads) within the Project Area.	Section 2.3.2
<i>Contaminated Land Management Act 1997</i> (CLM Act)	The CLM Act establishes the process for investigating and if required, remediating land that the NSW Environment Protection Authority (EPA) considers to be contaminated significantly enough to require regulation under Division 2 of Part 3.	The Project Area does not contain land listed on the Contaminated Lands Register and is not known to contain any contaminated land.	Section 6.8
Commonwealth Legislation			
<i>Environment Protection and Biodiversity Conservation Act 1999</i> (EPBC Act)	Under the EPBC Act the approval of the Commonwealth Minister for the Environment is required for any action that may have a significant impact on a matter of national environmental significance (MNES). Approval under Part 9 of the EPBC Act is required for actions that may result in a significant impact on MNES.	The Project was referred to the Commonwealth Minister for the Environment and Water (EPBC 2023/09603). On 14 November 2023, the Project was determined to be a Controlled Action requiring approval under the EPBC Act from the Commonwealth Minister for the Environment due to its potential impact on the following MNES: - Commonwealth listed threatened species and communities. - Commonwealth listed migratory species. The assessment path for the Project is under the bilateral agreement between the Commonwealth and NSW Governments, and the Department of Climate Change, Energy, the Environment and Water (DCCEEW) has issued its assessment	Section 6.4 Appendix 11

Statutory Reference	Pre-condition	Relevance	Section in EIS
		requirements which have been incorporated into the SEARs for the Project (refer to Appendix 1 of the EIS).	
<i>Native Title Act 1993</i> (NT Act)	The NT Act recognises the interests and rights Aboriginal people have to land and aims to provide recognition and protection of common law native title rights.	There are no currently known native title claims over the Project Area.	Section 2.3.3
<i>Civil Aviation Regulations 1988</i>	The <i>Civil Aviation Regulations 1998</i> require any potential aviation obstacles and hazards be assessed under the National Airports Safeguarding Framework Guideline D: Managing Wind Turbine Risk to Aircraft.	The Project may be considered an aviation obstacle. An Aviation Impact Assessment has been undertaken to support the Project.	Section 6.11.1
<i>Heavy Vehicle (Adoption of National Law) Act 2013</i>	Relevant approvals under the Heavy Vehicle (Adoption of National Law) Act 2013 will be required for the transport of wind turbines and associated infrastructure by OSOM vehicles.	The Project will require the use of OSOM vehicles to transport wind turbines and associated infrastructure to the Project Area.	Section 6.7
<i>Radio Communications Act 1992</i>	Under Part 4.1 of the <i>Radio Communications Act 1992</i> , a legislative framework has been established to regulate equipment that uses or is affected by radio emissions.	Radio communications can be impacted by proposed wind farms through electromagnetic interference (EMI) produced by the turbines.	Section 6.11.2

Table 2 Mandatory Considerations Table

Statutory Reference	Mandatory Consideration	Relevance	Section in EIS
Considerations under the EP&A Act and EP&A Regulation			
Section 1.3	Relevant objects of the Act - to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources - to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment - to promote the orderly and economic use and development of land - to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	The Project aims to provide a reliable and affordable source of energy for the people of NSW. The Project will also contribute to reducing greenhouse gas (GHG) emissions associated with energy generation and provide significant economic benefits to the region. The Project is strategically located in an area identified by the NSW Government as suitable for renewable energy projects and will assist the NSW government in delivering on the objectives for the Electricity Strategy and the SW REZ. The Project has been designed through a comprehensive process that incorporates community and stakeholder feedback and the findings of environmental and social studies to maximise positive social, economic and environmental outcomes while minimising adverse impacts.	Section 1.0 Section 2.0 Section 6.0 Section 7.0
Section 4.15	(a) The provisions of: (i) Any environmental planning instrument that apply to the land to which the development application relates	The following Environmental Planning Instruments apply to the Project: <i>State Environmental Planning Policy (Planning Systems) 2021</i> <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> <i>Wakool Local Environment Plan (LEP) 2013.</i>	This document Section 4.0

Statutory Reference	Mandatory Consideration	Relevance	Section in EIS
	(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 Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved) that apply to the land to which the development application relates	There are no proposed environmental planning instruments that are relevant to the application at the time of preparation.	Not applicable
	(iii) Any development control plan that apply to the land to which the development application relates	Section 2.8 of the Planning Systems SEPP excludes the application of development control plans (whether made before or after the commencement of the SEPP) to SSD projects.	Not applicable
	(iii) (a) 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 that apply to the land to which the development application relates	Windlab is committed to delivering a Community Benefit Fund for the Project for both Murray River Council and Balranald Shire Council.	Section 2.5.3
	(iv) The regulations (to the extent that they prescribe matters for the purposes of this paragraph) that apply to the land to which the development application relates	The EP&A Act is the primary instrument which regulates the environmental impact assessment and approval process for development in NSW.	Section 4.0
	(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	Environmental impacts on both the natural and built environments, and social and economic impacts in the locality are addressed within the EIS.	Section 6.0
	(c) The suitability of the site for the development	The Project Area is deemed suitable for the development.	Section 2.0 Section 6.0 Section 7.0
	(d) Any submissions made in accordance with this Act or the regulations	Comments to be received on the EIS during the public exhibition period will be addressed in the submissions process. Consultation has been undertaken with the community and other stakeholders to inform this EIS.	Section 5.0
	(e) The public interest	The Project is deemed beneficial to the public interest.	Section 7.0

Statutory Reference	Mandatory Consideration	Relevance	Section in EIS
Section 4.24	Relevant concept approval.	There are no relevant concept approvals for the Project.	Not applicable
Considerations Under EPIs			
<i>State Environmental Planning Policy (Planning Systems) 2021</i>	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 for the purpose of electricity generating works and has a capital investment value of more than \$30 million.	Not applicable
<i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>	Chapter 3 Koala habitat protection 2020 3.3 Land to which Chapter applies (1) This Chapter applies to land in the following land use zones, or an equivalent land use zone, in a local government area specified in Schedule 1 of <i>State Environmental Planning Policy (Koala Habitat Protection) 2021</i>, but not if the local government area is marked with an * in that Schedule— (a) Zone RU1 Primary Production, (b) Zone RU2 Rural Landscape, (c) Zone RU3 Forestry. ...	The Project is located within the Murray River Council Local Government Area. Murray River Council is specified in Schedule 1 of <i>State Environmental Planning Policy (Koala Habitat Protection) 2021</i>. The Project however is SSD and the consent authority is not Council. The Project Area is not considered core koala habitat.	Section 6.4
	8.8 Development consent cannot be granted unless neutral or beneficial effect on water quality (1) A consent authority must not grant consent to the carrying out of development under Part 4 of the Act on land in the Sydney drinking water catchment unless it is satisfied that the carrying out of the proposed development would have a neutral or beneficial effect on water quality.	The Project is not located within the Sydney drinking water catchment.	Not applicable

Statutory Reference	Mandatory Consideration	Relevance	Section in EIS
	(2) For the purposes of determining whether the carrying out of the proposed development on land in the Sydney drinking water catchment would have a neutral or beneficial effect on water quality, the consent authority must, if the proposed development is one to which the NorBE Tool applies, undertake an assessment using that Tool.		
<i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>	3.12 Matters for consideration by consent authorities In determining an application to carry out development to which this Part applies, the consent authority must consider (in addition to any other matters specified in the Act or in an environmental planning instrument applying to the development)—		
	(a) current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development, and	The publications regarded as relevant for hazardous and offensive development are: • Hazardous Industry Planning Advisory Paper (HIPAP) series. • Resilience and Hazards SEPP. • Multi-Level Risk Assessment. The relevant components have been considered in the PHA.	Section 6.11.5
	(b) whether any public authority should be consulted concerning any environmental and land use safety requirements with which the development should comply, and	All relevant stakeholders have been consulted with during the preparation of the EIS.	Section 5.0
	(c) in the case of development for the purpose of a potentially hazardous industry—a preliminary hazard analysis prepared by or on behalf of the applicant, and	A PHA has been completed and is included as a component of the EIS.	Section 6.11.5
	(d) any feasible alternatives to the carrying out of the development and the reasons for choosing the development the subject of the application (including any feasible alternatives for the location of the development and the	Feasible alternatives (including for the location of the development) have been considered in the EIS and the reasons for choosing the development are described.	Section 2.6

Statutory Reference	Mandatory Consideration	Relevance	Section in EIS
	reasons for choosing the location the subject of the application), and		
	(e) any likely future use of the land surrounding the development.	The Project is compatible with the existing and ongoing uses (i.e. ongoing agricultural production) for land surrounding the development.	Section 2.0 Section 6.10
	4.6 Contamination and remediation to be considered in determining development application (1) A consent authority must not consent to the carrying out of any development on land unless— (a) it has considered whether the land is contaminated, and (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.	The Project Area is not listed in the Contaminated Land Register or Environmental Management Register.	Section 2.3
	(2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.	There is no proposed change to the primary land use within the Project Area. The Project Area is not listed in the Contaminated Land Register or Environmental Management Register. Soil sampling was also undertaken across the Project Area.	Section 2.3 Section 6.10
	(3) The applicant for development consent must carry out the investigation required by subsection (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated	As above	Not applicable

Statutory Reference	Mandatory Consideration	Relevance	Section in EIS
	land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.		
	(4) The land concerned is— (a) land that is within an investigation area, (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out, (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes, or for the purposes of a hospital—land— (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).	The Project Area is not identified as contaminated land on the NSW EPA Contaminated Land Register or Environmental Management Register.	Not applicable
<i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	Clause 2.36(1)(b) of the Infrastructure SEPP states 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. Under Clause 2.7(1) of the Infrastructure SEPP, the provisions prevail where there are inconsistencies with any other environmental planning instruments, including LEPs.	The Project is for the purpose of electricity generating works and is located on land zoned as rural.	Section 4.0
Local Environmental Plans	The Project Area falls within the Murray River Council LGA and is zoned RU1 – Primary Production under the Wakool LEP 2013. Electricity generating works are permitted with consent within RU1 zones. Therefore, the proposed wind farm is permissible.	Due to the operation of Clause 2.36(1)(b) of the Infrastructure SEPP, the Project is permissible with development consent.	Section 4.0

Statutory Reference	Mandatory Consideration	Relevance	Section in EIS
Considerations under other Legislation			
<i>Biodiversity Conservation Act 2016</i>	Under the BC Act, biodiversity assessment in accordance with the Biodiversity Assessment Method (BAM) is required for any SSD project. The likely impact of the proposed development on biodiversity values as assessed in the biodiversity development assessment report. The Minister for Planning may (but is not required to) further consider under that Act the likely impact of the proposed development on biodiversity values.	A Biodiversity Development Assessment Report (BDAR) in accordance with the BAM has been completed for the Project. Consultation with the NSW Biodiversity, Conservation and Science Division (BCS) has also been undertaken during the preparation of the EIS and has been considered in the BDAR.	Section 5.0 Section 6.4 Appendix 11
<i>Environment Protection and Biodiversity Conservation Act 1999</i>	Under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (EPBC Act), a referral is required to be submitted to the Department of Climate Change, Energy, the Environment and Water (DCCEEW) for any 'action' that is considered likely to have a significant impact on any Matter of National Environmental Significance (MNES).	The Project was referred to the Commonwealth Minister for the Environment (EPBC 2023/09603). On 14 November 2023, the Project was determined to be a Controlled Action requiring approval under the EPBC Act from the Commonwealth Minister for the Environment due to its potential impact on the following MNES: - Commonwealth listed threatened species and communities. - Commonwealth listed migratory species. The assessment path for the Project is under the bilateral agreement between the Commonwealth and NSW Governments, and the Commonwealth DCCEEW has issued its assessment requirements which have been incorporated into the SEARs for the Project (refer to Appendix 1 of the EIS).	Section 6.4 Appendix 11
<i>Civil Aviation Regulations 1988</i>	Reporting of tall structures to the Royal Australian Air Force (RAAF) is required under the <i>Civil Aviation Regulations 1988</i>.	Development of the Project will require installation of tall structures. A detailed assessment in accordance with the regulations and consultation with the relevant agencies has been undertaken as part of the preparation of the EIS.	Section 5.0 Section 6.11.1 Appendix 18

Table 3 **Wakool LEP 2013 Provisions related to subdivision**

LEP Provision	Objectives	Relevance	Section in EIS
Dubbo Regional LEP			
Clause 2.6 Subdivision – consent requirements	Confirms that land to which the LEP applies may be subdivided, but only with development consent.	The Project will require the subdivision of potentially four new lots to enable ownership of the substations/switching stations to be transferred to the network operator.	Not applicable