



APPENDIX D

Statutory Requirements

Appendix D – Statutory Requirements

Table 1 Pre-conditions Table

Statutory Reference	Pre-condition	Relevance	Section in EIS	Section in Amendment Report
NSW Legislation				
State Environmental Planning Policy (Biodiversity and Conservation) 2021 (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 not located within LGA to which the SEPP applies.	NA	NA
State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazard SEPP)	Chapter 4 – remediation of contaminated land – provides a State wide approach to the remediation of contaminated land for the purpose of reducing the risk of harm to human health of any other aspect of the environment and specifies when consent is required for remediation.	<p>A search of the EPA’s NSW Contaminated Lands Public Record Register undertaken for the Project Area did not identify any areas of reported contaminated land in the Project Area. No known areas of contaminated land will be impacted by the Project.</p> <p>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.</p>	Section 6.9.5 Section 6.8	NA

Statutory Reference	Pre-condition	Relevance	Section in EIS	Section in Amendment Report
	<p>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.</p> <p>A preliminary hazard assessment (PHA) is to be completed for potentially hazardous developments to assist the consent authority to determine acceptability.</p>	<p>Preliminary risk screening was undertaken for the Project to determine that a PHA is not required for the Project.</p>	<p>Section 6.9.1</p>	<p>NA</p>
<p>State Environmental Planning Policy (Transport and Infrastructure) 2021 (Infrastructure SEPP)</p>	<p>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.</p> <p>Clause 2.44(1) of the Infrastructure SEPP states that development for the purpose of an electricity transmission or distribution network may be carried out by or on behalf of an electricity supply authority without consent on any land.</p> <p>Under Clause 2.7(1) of the Infrastructure SEPP, the provisions prevail where there are inconsistencies with any other environmental planning instruments, including LEPS.</p>	<p>Under the Broken Hill LEP 2013, the proposed SCES facility is located on land zoned SP1 (mining). The transmission line traverses the SP1 (mining), RU2, RE2, SP2 (water supply systems) C2 and E4. A short portion of the line also extends into the Unincorporated Far West Region which does not have any applicable zoning. The SEPP is relevant to the permissibility of the Project.</p> <p>Due to the operation of clause 2.36(1)(b) of the Transport and Infrastructure SEPP and Clause 4.38(3) of the EP&A Act the Project is permissible with development consent.</p>	<p>Section 4.0</p>	<p>NA</p>
<p>Infrastructure SEPP</p>	<p>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.</p>	<p>Extensive consultation with relevant supply authorities has been ongoing through the RIT-T process (by Transgrid) and through the preparation of the EIS.</p> <p>The Project interacts with and connects to existing Transgrid electricity supply and connection infrastructure, Transgrid has designed the proposed transmission line and connection, once operational the transmission line will be owned and operated by Transgrid (the supply authority).</p>	<p>Sections 1.1 and 5.0</p>	<p>NA</p>

Statutory Reference	Pre-condition	Relevance	Section in EIS	Section in Amendment Report
<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 and a biodiversity assessment has been completed in accordance with the BAM.	Section 6.2 Appendix 6	Section 6.1 Appendix E
<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. Electricity works are a scheduled activity under the POEO Act and require an Environment Protection Licence (EPL).	As general electricity works, 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.	N/A	NA
<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) requires licensing under the WM Act.	The Project will require water for construction and ongoing operations. For construction water will be sourced from either Perilya or via commercial supply. Once the water pipeline connection is established, water supply via the pipeline will be used via a water supply agreement from the relevant water authority who holds relevant water licences. Groundwater will be managed via Perilya using its existing Water Access License. Therefore, no water access licences are expected by the required by A-CAES for the Project.	Section 6.8 Appendix 12 Appendix 13	Section 6.6 Appendix J
<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 to create temporary access points along the transmission line, as described in Section 3.6.3 .	Section 3.6.3 Section 6.7 Appendix 11	Section 6.5 Appendix I
<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 small areas of Crown land reserves and roads present within the Project Area. As discussed in Section 2.9 appropriate lease and easement arrangements are being sought from Crown Lands.	Section 2.9	NA

Statutory Reference	Pre-condition	Relevance	Section in EIS	Section in Amendment Report
<i>Contaminated Land Management Act 1997 (CLM Act)</i>	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 6.9.5	NA
Commonwealth Legislation				
<i>Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)</i>	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 (EPBC 2022/09387). On 20 June 2023, the Project was determined to Not be a Controlled Action.	Section 4	Section 4
<i>Native Title Act 1993 (NT Act)</i>	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 2.6.3	NA
<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 for the Project.	Section 6.9.7 Appendix 18	NA
<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 project components by OSOM vehicles.	The Project will require the use of OSOM vehicles to transport modular project components to the Project Area.	Section 6.7	Section 6.5 Appendix I

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	<p>Relevant objects of the Act</p> <ul style="list-style-type: none"> • 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 	<p>The Project fits within the current strategic direction of the NSW and Australian governments approaches to energy generation, being the transition to renewables and ensuring the reliability of the grid. The low emission dispatchable electricity from the Project will assist with improving the stability and reliability of the electrical grid within the Broken Hill Region, whilst replacing the existing diesel-fired turbine electricity back up system. The resultant increase in stability in turn provides increased reliable capacity which is encouraging for further renewables development within the region.</p> <p>The Project has been designed through a comprehensive process that incorporated the findings of environmental studies, community and stakeholder feedback and engineering design considerations. A-CAES NSW has engaged with stakeholders throughout the Project planning and assessment process and has designed the Project to minimise impacts whilst realising the benefits of the Project.</p> <p>A review of the application of ESD to the Project and the protection and conservation of biodiversity is also included in the EIS.</p>	<p>Section 1.0 Section 2.0 Section 6.0 Section 7.0</p>
Section 4.15	<p>(a) The provisions of: (i) Any environmental planning instrument that apply to the land to which the development application relates</p>	<p>The following Environmental Planning Instruments apply to the Project:</p> <ul style="list-style-type: none"> • <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> 	<p>This document Section 4.0 Section 6.0</p>

Statutory Reference	Mandatory Consideration	Relevance	Section in EIS
		<ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> • <i>Broken Hill Local Environmental Plan 2013.</i> 	
	(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	No planning agreement is proposed – the Proponent has committed to implement a Community Benefit Fund; the Proponent has consulted with Broken Hill Council in relation to the fund.	Section 2.9
	(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 as discussed in the EIS.	Section 2.0 Section 6.0 (including Section 6.13.1) Section 7.2
	(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 Section 6.10

Statutory Reference	Mandatory Consideration	Relevance	Section in EIS
	(e) The public interest	The EIS includes a detailed assessment of the Project including consideration of if the Project would result in a net benefit and to inform the consent authority regarding whether or not the Project is in the public interest.	EIS in entirety, including Section 7.0
Section 4.24	Relevant concept approval.	There are no relevant concept approvals for the Project.	Not applicable
Considerations Under EPIs			
State Environmental Planning Policy (Planning Systems) 2021	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— <ul style="list-style-type: none"> 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. Is classed as SSD.	The Project is for the purpose of electricity generating works and has a capital investment value of more than \$30 million and is therefore SSD.	Not applicable
State Environmental Planning Policy (Biodiversity and Conservation) 2021	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 Area is not located within an LGA identified in Schedule 1 of <i>State Environmental Planning Policy (Koala Habitat Protection) 2021</i> .	Not applicable
State Environmental Planning Policy (Resources and Energy) 2021	2.19 Compatibility of proposed development with mining, petroleum production or extractive industry (1) This section applies to an application for consent for development on land that is, immediately before the application is determined:	The Project Area includes part of the existing Potosi Mine operational area. The Potosi Mine will continue to operate concurrently with the Project and the Project will not have a significant impact on current or future extraction or the recovery of minerals and is considered compatible with the existing land use.	Section 1.6

Statutory Reference	Mandatory Consideration	Relevance	Section in EIS
	<p>(a) in the vicinity of an existing mine, petroleum production facility or extractive industry, or</p> <p>(b) identified on a map (being a map that is approved and signed by the Minister and copies of which are deposited in the head office of the Department and publicly available on the Department’s website) as being the location of State or regionally significant resources of minerals, petroleum or extractive materials, or</p> <p>(c) identified by an environmental planning instrument as being the location of significant resources of minerals, petroleum or extractive materials.</p> <p>(2) Before determining an application to which this section applies, the consent authority must</p> <p>(a) consider:</p> <ul style="list-style-type: none"> (i) the existing uses and approved uses of land in the vicinity of the development, and (ii) whether or not the development is likely to have a significant impact on current or future extraction or recovery of minerals, petroleum or extractive materials (including by limiting access to, or impeding assessment of, those resources), and (iii) any ways in which the development may be incompatible with any of those existing or approved uses or that current or future extraction or recovery, and <p>(b) evaluate and compare the respective public benefits of the development and the uses, extraction and recovery referred to in paragraph (a)(i) and (ii), and</p> <p>(c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a)(iii).</p>		

Statutory Reference	Mandatory Consideration	Relevance	Section in EIS
State Environmental Planning Policy (Resilience and Hazards) 2021	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: <ul style="list-style-type: none"> • Hazardous Industry Planning Advisory Paper (HIPAP) series • LPG Automotive Retail Outlets – Locational Guidelines • Managing Land Contamination – Planning Guidelines • Resilience and Hazards SEPP • Hazardous and Offensive Development Application Guidelines • Multi-Level Risk Assessment. The relevant components have been considered in the PHA.	Section 6.9.1
	(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	Preliminary risk screening was undertaken for the Project to determine that a PHA is not required for the Project.	Section 6.9.1
	(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 reasons for choosing the location the subject of the application), and	Feasible alternatives have been considered in the EIS and the reasons for choosing the development are described.	Section 2.8
	(e) any likely future use of the land surrounding the development.	The Project is compatible with the existing and likely ongoing use of surrounding development.	Section 2.0 Section 6.0 including Section 6.13

Statutory Reference	Mandatory Consideration	Relevance	Section in EIS
	<p>4.6 Contamination and remediation to be considered in determining development application</p> <p>(1) A consent authority must not consent to the carrying out of any development on land unless—</p> <p>(a) it has considered whether the land is contaminated, and</p> <p>(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</p> <p>(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.</p>	<p>The Project Area is not listed in the Contaminated Land Register or Environmental Management Register.</p>	<p>Section 6.9.5</p>
	<p>(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.</p>	<p>The Project Area is not listed in the Contaminated Land Register or Environmental Management Register and no areas of material contamination are known to occur in the Project Area. The existing zoning in the Project Area is not proposed to change.</p>	<p>Section 6.9.5</p>
	<p>(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 land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.</p>	<p>As above</p>	<p>Not applicable</p>
	<p>(4) The land concerned is—</p> <p>(a) land that is within an investigation area,</p> <p>(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,</p>	<p>The Project Area is not identified as contaminated land on the NSW EPA Contaminated Land Register or Environmental Management Register.</p>	<p>Not applicable</p>

Statutory Reference	Mandatory Consideration	Relevance	Section in EIS
	<p>(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—</p> <p>(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</p> <p>(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).</p>		
<p>State Environmental Planning Policy (Transport and Infrastructure) 2021</p>	<p>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.</p> <p>Under Clause 2.7(1) of the Infrastructure SEPP, the provisions prevail where there are inconsistencies with any other environmental planning instruments, including LEPs.</p>	<p>The Project is for the purpose of electricity generating works and is located on SP1 (mining), RU2, RE2, SP2 (water supply systems), C2 and E4 zones. A short portion of the line also extends into the Unincorporated Far West Region which does not have any applicable zoning. The Project is permissible subject to the provisions of the Infrastructure SEPP.</p>	<p>Section 4.0</p>
<p>Local Environmental Plans</p>	<p>The Project is for the purpose of electricity generating works and is located on SP1 (mining), RU2, IN1, RE2, SP2 (water supply systems) and E2 zones. A short portion of the line also extends into the Unincorporated Far West Region which does not have any applicable zoning. The Project is permissible subject to the provisions of the Infrastructure SEPP.</p>	<p>Due to Clause 2.36(1)(b) of the Infrastructure SEPP and Clause 4.38(3) of the EP&A Act the Project is permissible with Development Consent.</p>	<p>Section 4.0</p>
<p>Considerations under other Legislation</p>			
<p>Biodiversity Conservation Act 2016</p>	<p>Under the BC Act, biodiversity assessment in accordance with the Biodiversity Assessment Method (BAM) is required for any SSD project.</p> <p>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.</p>	<p>A Biodiversity Development Assessment Report (BDAR) in accordance with the BAM has been completed for the Project.</p> <p>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.</p>	<p>Section 5.0 Section 6.2 Appendix 6 of EIS</p>

Statutory Reference	Mandatory Consideration	Relevance	Section in EIS
<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 2022/09387). On 20 June 2023, the Project was determined to Not be a Controlled Action.	Section 4.0
Civil Aviation Regulations 1988	Reporting of tall structures to the Royal Australian Air Force (RAAF) is required under the <i>Civil Aviation Regulations 1988</i> .	The Project will not require the require installation of tall structures.	Section 6.9.7 Appendix 18