

# Development Consent

## Section 4.38 of the *Environmental Planning & Assessment Act 1979*

As Delegate of the Minister for Planning and Public Spaces I grant consent to the development application referred to in Schedule 1, subject to the conditions in Schedule 2.

These conditions are required to:

- prevent, minimise and/or offset any adverse environmental impacts of the development;
- set standards and performance measures for acceptable environmental performance; and
- provide for the ongoing environmental management of the development.



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**A/Executive Director**  
Energy, Resource and Industry Assessments

Sydney

8 November 2024

### SCHEDULE 1

**Application Number:** SSD 57107216  
**Applicant:** AGL Macquarie Pty Limited  
**Consent Authority:** Minister for Planning and Public Spaces  
**Land:** See Appendix 2  
**Development:** Tomago Battery Energy Storage System

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## DEFINITIONS

Aboriginal Stakeholders	Aboriginal stakeholders, registered for cultural heritage consultation for the development, including Registered Aboriginal Parties
Ancillary infrastructure	All project infrastructure with the exception of battery storage, including but not limited to switching rooms, control rooms, permanent offices, site compounds, maintenance buildings, laydown areas, carparking, lighting, electricity transmission lines and internal roads
Applicant	AGL MACQUARIE PTY LIMITED, or any person who seeks to carry out the development approved under this consent
Battery storage	Large scale energy storage system
BCS	Biodiversity, Conservation and Science Group within NSW DCCEEW
BESS site	Site identified as 'The BESS Site' in Figure 1 and Figure 2 of Appendix 1
Cessation of operations	Operation of the development has ceased for a continuous period of 12 months
Commissioning	The testing of the components, equipment and systems of the development following completion of construction, prior to operations commencing.
Conditions of this consent	Conditions contained in Schedules 1 and 2 inclusive
Consent authority	NSW Minister for Planning and Public Spaces, or delegate
Construction	The construction of the development, including but not limited to, the carrying out of any earthworks on site and the construction of battery storage and any ancillary infrastructure (but excludes road upgrades or maintenance works to the public road network, building/road dilapidation surveys, installation of fencing, artefact survey and/or salvage, overhead line safety marking and geotechnical drilling and/or surveying)
Council	Port Stephens Council
Decommissioning	The removal of battery storage infrastructure and ancillary infrastructure and/or rehabilitation of the site
Department	Department of Planning, Housing and Infrastructure
Development	The development as described in the EIS
Development footprint	The area within the site on which the components of the project will be constructed (shown in Appendix 1)
EIS	The Environmental Impact Statement for the Tomago Battery Energy Storage System dated 3 November 2023, the Submissions Report dated 28 March 2024, and the additional information provided to the Department by the Applicant dated 18 June, 8 August, 30 August, 3 October and 23 October 2024.
Electricity transmission line area	The area identified as 'Proposed Transmission Corridor Connection No. 1', 'Proposed Transmission Corridor Connection No. 2', 'Proposed Transmission Corridor Connection No. 1 and No. 2' and '330kV Line Easement Underground Section' in Figure 1 of Appendix 1
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2021</i>
EPA	NSW Environment Protection Authority
Feasible	Feasible relates to engineering considerations and what is practical to build or implement
FRNSW	Fire and Rescue NSW
Heavy vehicle	As defined by the Heavy Vehicle National Law (NSW), but excluding light and medium rigid trucks and buses not more than 8 tonnes and with not more than 2 axles
Heavy vehicle requiring escort	Any vehicle that requires a pilot vehicle and/or escort vehicle, as defined by the <i>National Heavy Vehicle Regulator's NSW Class 1 Load Carrying Vehicle Operator's Guide</i>
Heritage NSW	Heritage NSW Group within NSW DCCEEW
Heritage item	An item as defined under the <i>Heritage Act 1977</i> and/or an Aboriginal Object or Aboriginal Place as defined under the <i>National Parks and Wildlife Act 1974</i>
Incident	An occurrence or set of circumstances that causes or threatens to cause material harm to the environment, and as a consequence of that environmental harm, may cause harm to the health and safety of human beings, and which may or may not be or cause a non-compliance
Material harm	Is harm that: <ul style="list-style-type: none"> <li>involves actual harm to the environment that may include (but not be limited to) a leak, spill, emission other escape or deposit of a substance, and as a consequence of that environmental harm (pollution), may cause harm to the health or safety of people; or</li> <li>results in actual loss or property damage of an amount, or amounts in aggregate, exceeding \$10,000 (such loss includes</li> </ul>

the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent, mitigate or make good harm to the environment)

**Note:** This definition excludes “harm” that is either authorised under this consent or any other statutory approval.

**Note:** For the purposes of this definition, material harm excludes incidents captured by Work Health and Safety reporting requirements  
Implement all reasonable and feasible mitigation measures to reduce the impacts of the development

Minimise	
Minister	Minister for Planning and Public Spaces, or delegate
MW	Megawatt
MWh	Megawatt-hour
Laydown and Parking area	The area identified as ‘Laydown and Parking Area’ in Figure 1 of Appendix 1
NGSF Construction Laydown area	The area identified as ‘NGSF Construction Laydown Area’ in Figure 1 of Appendix 1
Non-compliance	An occurrence, set of circumstances or development that is a breach of this consent but is not an incident
NSW DCCEEW	NSW Department of Climate Change, Energy, the Environment and Water
Operation	The operation of the development, but does not include commissioning, trials of equipment or the use of temporary facilities
Planning Secretary	Secretary of the Department, or nominee
POEO Act	<i>Protection of the Environment Operations Act 1997</i>
Public infrastructure	Linear and related infrastructure that provides services to the general public, such as roads, railways, water supply, drainage, sewerage, gas supply, electricity, telephone, telecommunications, irrigation channels, drainage channels
Reasonable	Reasonable relates to the application of judgement in arriving at a decision, taking into account: mitigation benefits, cost of mitigation versus benefits provided, community views and the nature and extent of potential improvements
Rehabilitation	The restoration of land disturbed by the development to a good condition, to ensure it is safe, stable and non-polluting
RFS	NSW Rural Fire Service
Site	As shown in Appendix 1 and listed in Appendix 2
Temporary facilities	Temporary facilities used for the construction, upgrading and/or decommissioning of the development, including but not limited to temporary site offices and compounds, materials storage compounds, maintenance workshops, material stockpiles laydown areas and parking spaces
TfNSW	Transport for New South Wales
Upgrading	The replacement of battery storage and ancillary infrastructure on site (excluding maintenance) in accordance with the conditions of this consent
Vehicle movement	One vehicle entering and leaving the site
VPA	Voluntary Planning Agreement
Water Group	Water Group within NSW DCCEEW

## SCHEDULE 2

### PART A ADMINISTRATIVE CONDITIONS

#### OBLIGATION TO MINIMISE HARM TO THE ENVIRONMENT

- A1. In meeting the specific performance measures and criteria in this consent, all reasonable and feasible measures must be implemented to prevent, and if prevention is not reasonable and feasible, minimise, any material harm to the environment that may result from the construction, operation, commissioning, upgrading, rehabilitation or decommissioning of the development.

#### TERMS OF CONSENT

- A2. The development may only be carried out:
- (a) in compliance with the conditions of this consent;
  - (b) in accordance with all written directions of the Planning Secretary;
  - (c) generally in accordance with the EIS; and
  - (d) generally in accordance with the Development Layout in Appendix 1.
- A3. The Applicant must comply with any requirement/s of the Planning Secretary arising from the Department's assessment of:
- (a) any strategies, plans or correspondence that are submitted in accordance with this consent;
  - (b) any reports, reviews or audits commissioned by the Department regarding compliance with this consent; and
  - (c) the implementation of any actions or measures contained in these documents.
- A4. The conditions of this consent and written directions of the Planning Secretary prevail to the extent of any inconsistency, ambiguity or conflict between them and a document listed in condition A2(c) or A2(d). In the event of an inconsistency, ambiguity or conflict between any of the documents listed in condition A2(c) or A2(d), the most recent document prevails to the extent of the inconsistency, ambiguity or conflict.

#### BATTERY STORAGE RESTRICTION

- A5. Unless the Planning Secretary agrees otherwise, the total battery storage associated with the development must not exceed a total energy storage capacity of 2,000 MWh.

*Note: This condition does not prevent the Applicant from seeking to lodge a separate development application or modify this consent to increase the capacity of the battery storage in the future.*

#### UPGRADING OF BATTERY STORAGE AND ANCILLARY INFRASTRUCTURE

- A6. The Applicant may upgrade the battery storage and ancillary infrastructure on site provided these upgrades remain within the approved development footprint of the site. Prior to carrying out any such upgrades, the Applicant must provide revised layout plans and project details of the development to the Planning Secretary incorporating the proposed upgrades.

#### STRUCTURAL ADEQUACY

- A7. The Applicant must ensure that all new buildings and structures, and any alterations or additions to existing buildings and structures, are constructed in accordance with the relevant requirements of the *Building Code of Australia*.

*Notes:*

- Under Part 6 of the EP&A Act, the Applicant is required to obtain construction and occupation certificates for the development.
- Part 8 of the EP&A Regulation sets out the requirements for the certification of the development.

#### DEMOLITION

- A8. The Applicant must ensure that all demolition work on site is carried out in accordance with *Australian Standard AS 2601-2001: The Demolition of Structures*, or its latest version.

## PROTECTION OF PUBLIC INFRASTRUCTURE

- A9. Unless the Applicant and the applicable authority agree otherwise, the Applicant must:
- (a) repair, or pay the full costs associated with repairing, any public infrastructure that is damaged by the development; and
  - (b) relocate, or pay the full costs associated with relocating, any public infrastructure that needs to be relocated as a result of the development.

*Note: This condition does not apply to the upgrade and maintenance of the road network, which is expressly provided for in the conditions of this consent.*

## OPERATION OF PLANT AND EQUIPMENT

- A10. The Applicant must ensure that all plant and equipment used on site, or in connection with the development, is:
- (a) maintained in a proper and efficient condition; and
  - (b) operated in a proper and efficient manner.

## APPLICABILITY OF GUIDELINES

- A11. References in the conditions of this consent to any guideline, protocol, Australian Standard or policy are to such guidelines, protocols, Standards or policies in the form they are in as at the date of this consent.

However, consistent with the conditions of this consent and without altering any limits or criteria in this consent, the Planning Secretary may, when issuing directions under this consent in respect of ongoing monitoring and management obligations, require compliance with an updated or revised version of such a guideline, protocol, Standard or policy, or a replacement of them.

## COMPLIANCE

- A12. The Applicant must ensure that all of its employees, contractors (and their sub-contractors) are made aware of, and are instructed to comply with, the conditions of this consent relevant to activities they carry out in respect of the development.

## EVIDENCE OF CONSULTATION

- A13. Where conditions of this consent require consultation with an identified party, the Applicant must:
- (a) consult with the relevant party prior to submitting the subject document to the Planning Secretary for approval; and
  - (b) provide details of the consultation undertaken including:
    - (i) the outcome of that consultation, matters resolved and unresolved; and
    - (ii) details of any disagreement remaining between the party consulted and the Applicant and how the Applicant has addressed the matters not resolved.

## COMMUNITY ENHANCEMENT

- A14. Unless the Planning Secretary agrees otherwise, prior to the commencement of construction, the Applicant must enter into a Voluntary Planning Agreement (VPA) with Council in accordance with:
- (a) Division 7.1 of Part 7 of the EP&A Act; and
  - (b) the terms of the Applicant's VPA offer dated 30 August 2024, which are summarised in Part 1 of Appendix 3.
- A15. Unless the Planning Secretary agrees otherwise, if the Applicant and Council do not enter into a VPA or other agreement prior to the commencement of construction, then the Applicant must make Section 7.12 of the EP&A Act contributions to Council for the amount and, at the timeframes, specified in Part 2 of Appendix 3.

## PART B ENVIRONMENTAL CONDITIONS

### TRANSPORT

#### Heavy Vehicles Requiring Escort and Heavy Vehicle Restrictions

- B1. Unless the Planning Secretary agrees otherwise, the Applicant must ensure that the:
- (a) development does not generate more than:
    - (i) 50 heavy vehicle movements a day (a maximum of 33 heavy vehicle movements per hour) during construction, upgrading or decommissioning; and
    - (ii) 12 movements of heavy vehicles requiring escort during construction, upgrading and decommissioning; and
  - (b) length of any vehicles (excluding heavy vehicles requiring escort) used for the development does not exceed 26 metres.
- B2. The Applicant must keep accurate records of the number of heavy vehicles requiring escort and heavy vehicles entering or leaving the site each day for the duration of the project.

#### Access Route

- B3. Unless the Planning Secretary agrees otherwise, all heavy vehicles and heavy vehicles requiring escort associated with the development must travel to and from the:
- (a) BESS site via the Pacific Highway, Tomago Road and Old Punt Road (vehicles exiting the site must turn left onto the Pacific Highway only);
  - (b) NGSF Construction Laydown area via the Pacific Highway, Tomago Road, Old Punt Road and the NGSF private access road (vehicles exiting the site must turn left onto the Pacific Highway only); and
  - (c) electricity transmission line via the Pacific Highway, Tomago Road and Old Punt Road (vehicles exiting the site must turn left onto the Pacific Highway only),
- as identified in the figure in Appendix 4.

#### Site Access

- B4. Unless the Planning Secretary agrees otherwise, all vehicles associated with the development must enter and exit in the following manner:
- (a) the BESS site via the 'Primary Access Point' off Old Punt Road;
  - (b) the NGSF Construction Laydown area via the 'NGSF Laydown Area Access Point' off the NGSF private access road; and
  - (c) the electricity transmission line via the 'ETL Access Point' off Old Punt Road,
- as identified in Figure 1 of Appendix 1.

*Note: Other site access points may be used for emergency purposes.*

#### Road Upgrades

- B5. Unless the Planning Secretary agrees otherwise, prior to commencing construction, a new access point off Old Punt Road must be provided as shown in Appendix 5.

The upgrade must be designed and constructed in accordance with the Austroads Guide to Road Design Guidelines, unless the Secretary agrees otherwise.

#### Road Maintenance

- B6. The Applicant must:
- (a) undertake an independent dilapidation survey to assess the:
    - (i) condition of Old Punt Road from the Pacific Highway to the intersection of Old Punt Road and Tomago Road, and Tomago Road from the Pacific Highway to the intersection of Old Punt Road and Tomago Road, prior to construction, upgrading and decommissioning activities; and
    - (ii) condition of Old Punt Road from the Pacific Highway to the intersection of Old Punt Road and Tomago Road, and Tomago Road from the Pacific Highway to the intersection of Old

Punt Road and Tomago Road, following the completion of construction, upgrading and decommissioning activities;

- (b) on completion of the dilapidation reports undertaken in conditions B6(a)(i) and B6(a)(ii) provide a copy to the relevant roads' authorities; and
- (c) repair and/or make good any development-related damage to Tomago Road and Old Punt Road identified in dilapidation surveys during construction, upgrading or decommissioning works in consultation with the relevant roads authority.

If there is a dispute between the Applicant and the relevant roads authority about repairs required under this condition, then either party may refer the matter to the Planning Secretary for resolution.

### **Operating Conditions**

B7. The Applicant must ensure:

- (a) the internal roads are constructed as all-weather roads;
- (b) there is sufficient parking on site for all vehicles, and no parking occurs on the public road network in the vicinity of the site, unless required for emergency work to avoid the loss of life, property or prevent material harm to the environment;
- (c) the capacity of the existing roadside drainage network is not reduced;
- (d) all vehicles are loaded and unloaded on site, and enter and leave the site in a forward direction; and
- (e) development-related vehicles leaving the site are in a clean condition to minimise dirt being tracked onto the sealed public road network.

### **Traffic Management Plan**

B8. Prior to commencing construction, the Applicant must prepare a Traffic Management Plan for the development in consultation with TfNSW and Port Stephens Council, and to the satisfaction of the Planning Secretary. Unless the Planning Secretary agrees otherwise, this plan must include:

- (a) details of the transport route to be used for development-related traffic;
- (b) a reconciliation table to demonstrate all traffic-related management measures and recommendations identified in the EIS have been included in the plan;
- (c) details of the measures that would be implemented to minimise traffic impacts during construction, upgrading or decommissioning works, including:
  - (i) details of the dilapidation surveys required by condition B6 of this consent;
  - (ii) temporary traffic controls, including detours and signage;
  - (iii) notifying the local community about project-related traffic impacts;
  - (iv) procedures for receiving and addressing complaints from the community about development related traffic;
  - (v) minimising potential for conflict with school buses and other road users as far as practicable, including preventing queuing on the public road network;
  - (vi) minimising potential cumulative traffic impacts with other projects in the area during construction, upgrading or decommissioning works;
  - (vii) minimising dirt tracked onto the public road network from development-related traffic;
  - (viii) measures for managing light vehicle peak numbers, including employee use of shuttle bus service, carpooling or ride sharing by employees;
  - (ix) details and volume of the employee shuttle bus service, including pick-up and drop-off points and associated parking arrangements for construction workers, and measures to ensure employee use of this service; scheduling of heavy vehicle movements to minimise convoy length or platoons, and to minimise conflict with light vehicles;
  - (x) SIDRA modelling of the turning lanes from the Pacific Highway onto Tomago Road, and mitigation measures to ensure that project traffic does not result in an exceedance of the capacity of the turning lanes, including prior, during or after any future intersection upgrades (including interactions with the M1 Extension Project (SSI-7319));
  - (xi) responding to local climate conditions that may affect road safety such as fog, dust, wet weather;
  - (xii) responding to any emergency repair or maintenance requirements; and
  - (xiii) a traffic management system for managing heavy vehicles requiring escort;
- (d) a driver's code of conduct that addresses:
  - (i) driver fatigue;
  - (ii) procedures to ensure that drivers adhere to the designated transport routes and speed



- limits; and
- (iii) procedures to ensure that drivers implement safe driving practices;
- (e) a program to ensure drivers working on the development receive suitable training on the code of conduct and any other relevant obligations under the Traffic Management Plan; and
- (f) a flood response plan detailing procedures and options for safe access to and from site in the event of flooding.

Following the Planning Secretary's approval, the Applicant must implement the Traffic Management Plan.

## BIODIVERSITY

### Vegetation Clearance

- B9. The Applicant must not clear any native vegetation or fauna habitat located outside the approved disturbance areas described in the EIS.

### Biodiversity Offsets

- B10. Prior to carrying out any development that could directly or indirectly impact the biodiversity values requiring offset, the Applicant must retire biodiversity credits of a number and class specified in Table 1 and Table 2 below, unless the Planning Secretary agrees otherwise.

The retirement of these credits must be carried out in accordance with the NSW *Biodiversity Offsets Scheme* and can be achieved by:

- (a) acquiring or retiring 'biodiversity credits' within the meaning of the *Biodiversity Conservation Act 2016*;
- (b) making payments into an offset fund that has been developed by the NSW Government; and/or
- (c) funding a biodiversity conservation action that benefits the entity impacted and is listed in the ancillary rules of the biodiversity offset scheme.

**Table 1 | Ecosystem Credit Requirements**

Plant Community Type	Credits Required	
	BESS with connection to Transgrid Tomago 132 kilovolts (kV) substation (on Lot 101 DP1125747)	BESS with connection to the Transgrid Tomago 330 kV substation (on Lot 3 DP808004, and Lots 102 and 103 DP1125747)
1590 - Spotted Gum - Broad-leaved Mahogany - Red Ironbark shrubby open forest	194	202

**Table 2 | Species Credit Requirements**

Common Name (Scientific Name)	Credits Required	
	BESS with connection to Transgrid Tomago 132 kilovolts (kV) substation (on Lot 101 DP1125747)	BESS with connection to the Transgrid Tomago 330 kV substation (on Lot 3 DP808004, and Lots 102 and 103 DP1125747)
Common Planigale (Planigale Maculata)	212	222
Southern Myotis (Myotis Macropus)	174	176
Pterostylis chaetophora	82	84
Brush-tailed Phascogale (Phascogale Tapoatafa)	136	150
Netted Bottlebrush (Callistemon Linearifolius)	3	3
Leaf-less Tongue Orchid (Cryptostylis Hunteriana)	61	61
Squirrel Glider (Petaurus Norfolcensis)	136	150
Eastern Cave Bat (Vespadelus Troughtoni)	319	334
Larg-eared Pied Bat (Chalinolobus Dwyeri)	319	334
Singleton Mint Bush (Prostanthera Cineolifera)	82	82

- B11. The Applicant may seek to review and update the species credit requirements in Table 2 above to reflect additional survey effort and the resulting extent and type of species to be impacted. Any additional survey effort should be conducted in accordance with the BAM and shown in a Credit Adjustment Report. Requests to amend the credit requirements must be prepared in consultation with BCS and NSW DCCEEW and be to the satisfaction of the Planning Secretary prior to the commencement of construction.

- B12. Prior to carrying out any development that could directly or indirectly impact the biodiversity values requiring offset, the Applicant must provide evidence to the Planning Secretary that biodiversity credits have been retired.

### **Biodiversity Management Plan**

- B13. Prior to carrying out any development that could directly or indirectly impact biodiversity values, the Applicant must prepare a Biodiversity Management Plan for the development in consultation with BCS, and to the satisfaction of the Planning Secretary. This plan must:

- (a) be prepared in accordance with the *Biodiversity Development Assessment Report* (dated 30 August 2024);
- (b) include a description of the measures that would be implemented for:
  - (i) protecting vegetation and fauna habitat outside the approved disturbance areas;
  - (ii) managing and enhancing the remnant vegetation and fauna habitat on site;
  - (iii) minimising clearing and avoiding unnecessary disturbance of vegetation that is associated with the construction and operation of the development;
  - (iv) minimising the impacts of the development on threatened flora and fauna species within the disturbance footprint and its surrounds;
  - (v) minimising the impacts to fauna on site and implementing fauna management protocols;
  - (vi) rehabilitating and revegetating temporary disturbance areas with native species that are appropriate to the site's ecology and conditions;
  - (vii) maximising the salvage of vegetative and soil resources within the approved disturbance area for beneficial reuse in the enhancement or the rehabilitation of the site; and
  - (viii) controlling weeds, feral pests and pathogens;
- (c) include a program to monitor and report on the effectiveness of mitigation measures and report to BCS;
- (d) include an incidental threatened species finds protocol to identify the avoid and/or minimise and/or offset options to be implemented if additional threatened species are discovered on site; and
- (e) include details of who would be responsible for monitoring, reviewing and implementing the plan.

Following the Planning Secretary's approval, the Applicant must implement the Biodiversity Management Plan.

### **AMENITY**

#### **Construction, Upgrading and Decommissioning Hours**

- B14. Unless the Planning Secretary agrees otherwise, the Applicant may only undertake construction, commissioning, upgrading or decommissioning activities on site between:
- (a) 7 am to 6 pm Monday to Friday;
  - (b) 8 am to 1 pm Saturdays; and
  - (c) at no time on Sundays and NSW public holidays.

#### **Exceptions to Construction Hours**

- B15. The following activities may be carried out outside the hours specified in condition B14 above:
- (a) commissioning activities that are inaudible at non-associated receivers;
  - (b) the delivery or dispatch of materials, plant or equipment as requested by the NSW Police Force or other public authorities for safety reasons; or
  - (c) emergency work to avoid the loss of life, property or prevent material harm to the environment.

#### **Variation of Construction Hours**

- B16. The hours of construction activities specified in condition B14 of this approval may be varied with the prior written approval of the Planning Secretary. Any request to alter the hours of construction must be:
- (a) considered on a case-by-case or activity-specific basis;
  - (b) accompanied by details of the nature and justification for activities to be conducted during the varied construction hours;
  - (c) accompanied by written evidence that appropriate consultation with potentially affected sensitive receivers and notification of Councils (and other relevant agencies) has been and will be undertaken;
  - (d) accompanied by evidence that all feasible and reasonable noise mitigation measures have been

- put in place; and
- (e) accompanied by a noise impact assessment consistent with the requirements of the *Interim Construction Noise Guideline* (DECC, 2009), or latest version.

## Noise

B17. The Applicant must:

- (a) minimise the noise generated by any construction, upgrading or decommissioning activities on site in accordance with best practice requirements outlined in the *Interim Construction Noise Guideline* (DECC, 2009) or its latest version; and
- (b) take all reasonable and feasible steps to minimise operational noise and ensure that the noise generated by the operation of the development does not exceed the noise limits in Table 3 below to be determined in accordance with the procedures in the *NSW Noise Policy for Industry* (EPA, 2017) at any non-associated residences or places of worship, unless the Planning Secretary agrees otherwise.

**Table 3 | Operational Noise Limit Requirements**

Location	Noise Limits in dB(A)			
	Day	Evening	Night	Night
	L <sub>Aeq</sub> (15min)	L <sub>Aeq</sub> (15min)	L <sub>Aeq</sub> (15min)	L <sub>Afmax</sub>
R1	45	45	45	56
R2	42	42	42	56
All Other Residential Receivers Outside of Sweetwater Grove	40	35	35	52
Educational Premises	40			
Places of Worship	40			
Active Recreation Receivers	55			
Commercial Receivers	65			
Industrial Receivers	70			

B18. Unless the Planning Secretary agrees otherwise, within 3 months of the commencement of operation, the Applicant must prepare and submit a Noise Monitoring Report for the development to the satisfaction of the Planning Secretary. The Noise Monitoring Report must:

- (a) be prepared by a suitably qualified, experienced and independent acoustic consultant;
- (b) demonstrate that noise monitoring:
  - (i) has been carried out in accordance with the procedures in the *NSW Noise Policy for Industry* (EPA, 2017); and
  - (ii) includes monitoring during the day, evening and night periods during operational, temperature and meteorological conditions that would represent typical worst-case scenarios where reasonable and feasible; and
- (c) include:
  - (i) 1/3 octave data and calculated sound power levels along with a discussion of any excessive annoying characteristics and directionality;
  - (ii) an analysis of compliance with the noise limits specified in condition B17 at R1 and R2;
  - (iii) an outline of implemented at-source and transmission pathway mitigation measures and their effectiveness at reducing operational noise; and
  - (iv) a description of contingency measures in the event implemented mitigation measures are not effective at reducing noise levels to comply with limits specified in condition B17 at all times; and
- (d) The Applicant must undertake further noise monitoring of the development if required by the Planning Secretary.

## Dust

B19. The Applicant must minimise the dust generated by the development.

## Visual

B20. The Applicant must:

- (a) minimise the off-site visual impacts of the development, including the potential for any glare or reflection;
- (b) ensure the visual appearance of all ancillary infrastructure (including paint colours) blends in as far as possible with the surrounding landscape; and
- (c) not mount any advertising signs or logos on site, except where this is required for identification or safety purposes.

## Lighting

B21. The Applicant must:

- (a) minimise the off-site lighting impacts of the development; and
- (b) ensure that any external lighting associated with the development:
  - (i) is installed as low intensity lighting (except where required for safety or emergency purposes);
  - (ii) does not shine above the horizontal; and
  - (iii) complies with *Australian Standard/New Zealand Standard AS/NZS 4282:2019 – Control of Obtrusive Effects of Outdoor Lighting*, or the latest version.

## HERITAGE

### Protection of Heritage Items

B22. The Applicant must ensure the development does not cause any direct or indirect impacts to Aboriginal heritage items identified in Table 1 of Appendix 6 or any heritage items located outside the approved development footprint.

### Heritage Management Plan

B23. Prior to commencing construction, the Applicant must prepare a Heritage Management Plan for the development to the satisfaction of the Planning Secretary. This plan must:

- (a) be prepared by suitably qualified and experienced persons whose appointment has been endorsed by the Planning Secretary in writing;
- (b) be prepared in consultation with Aboriginal stakeholders;
- (c) be reviewed by Heritage NSW;
- (d) be prepared in accordance with the *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW* (DECC, 2010), or its latest version;
- (e) include a description of the measures that would be implemented for:
  - (i) protecting and avoiding the Aboriginal heritage items identified in Table 1 of Appendix 6, including fencing off the Aboriginal heritage items prior to carrying out any development that could directly or indirectly impact the heritage items;
  - (ii) salvaging and relocating the Aboriginal heritage items located within the approved development footprint, as identified in Table 2 of Appendix 6;
  - (iii) undertaking additional subsurface investigation within the disturbance footprint of the transmission line connection, including salvage excavation if required;
  - (iv) a contingency plan and reporting procedure if:
    - heritage items outside the approved development footprint are damaged
    - previously unidentified heritage items are found; or
    - Aboriginal skeletal material is discovered;
  - (v) ensuring workers on site receive suitable heritage inductions prior to carrying out any development on site, and that records are kept of these inductions; and
  - (vi) ongoing consultation with Aboriginal stakeholders during the implementation of the plan;
- (f) include a program to monitor and report on the effectiveness of these measures and any heritage impacts of the project.

Following the Planning Secretary's approval, the Applicant must implement the Heritage Management Plan.

## SOIL AND WATER

### Water Supply

B24. The Applicant must ensure that it has sufficient water for all stages of the development, and if necessary, adjust the scale of the development to match its available water supply.

*Note: Under the Water Act 1912 and/or the Water Management Act 2000, the Applicant is required to obtain the necessary water licences for the development.*

## **Water Pollution**

B25. The Applicant must ensure that the development does not cause any water pollution, as defined under Section 120 of the POEO Act.

## **Operating Conditions**

B26. The Applicant must:

- (a) minimise any soil erosion and control sediment generation;
- (b) ensure that battery storage and ancillary infrastructure and any other land disturbance associated with the construction, upgrading or decommissioning of the development has appropriate drainage and erosion and sediment controls designed, installed and maintained in accordance with *Managing Urban Stormwater: Soils and Construction* (Landcom, 2004) and the *Managing Urban Stormwater: Soils and construction - Volume 2A* manual (Landcom, 2008), or their latest versions;
- (c) ensure the battery storage and ancillary infrastructure (including security fencing) are designed, constructed and maintained to reduce impacts on surface water, localised flooding and groundwater at the site;
- (d) ensure the battery storage and ancillary infrastructure do not cause any increased water being diverted off the site or alter hydrology off site;
- (e) ensure all works within waterfront land is undertaken in accordance with *Guidelines for Controlled Activities on Waterfront Land* (DPE, 2022); and
- (f) incorporate a staged throttle outlet above the permanent water level on the stormwater basin to provide a detention and retention function, to allow contaminants to be intercepted and removed from the basin in the event of fire damage to the battery cells.

## **Soil and Water Management Plan**

B27. Prior to commencing construction, the Applicant must prepare a Soil and Water Management Plan for the development in consultation with the Water Group. This plan must:

- (a) be prepared by suitably qualified and experienced persons;
- (b) include a description of the measures that would be implemented to ensure that the objectives of condition B26 (a) – (f) above are achieved;
- (c) include a program to monitor and report on the effectiveness of these measures; and
- (d) include details of who would be responsible for monitoring, reviewing and implementing the plan, and timeframes for completion of actions.

Once prepared, the Applicant must implement the Soil and Water Management Plan.

## **HAZARDS**

### **Fire Safety Study**

B28. At least one month prior to the commencement of construction of the battery storage facility and associated footings/foundations (except for construction of those preliminary works that are outside the scope of the hazard studies), or within such further period as the Planning Secretary may agree, the Applicant must prepare and submit to the satisfaction of the Planning Secretary, and send to FRNSW, a Fire Safety Study.

Construction of the battery storage facility and associated footings/foundations (except for construction of those preliminary works that are outside the scope of the hazard studies) must not commence until the Fire Safety Study meets the requirements of FRNSW and approval has been given by the Planning Secretary. The study must:

- (a) be consistent with the Department's *Hazardous Industry Planning Advisory Paper No. 2 'Fire Safety Study' guideline* and FRNSW *Fire Safety Guideline Technical Information – Large scale external lithium-ion battery energy storage systems – Fire safety study considerations*;
- (b) describe the final design of the battery storage;
- (c) include reasonable worst-case fire scenario to and from the battery storage and the associated fire management; and
- (d) identify measures to eliminate the expansion of any fire incident including:
  - (i) adequate fire safety systems and appropriate water supply;
  - (ii) separation and / or compartmentalisation of battery units; and
  - (iii) strategies and incident control measures specific to the battery storage design.

Following approval by the Planning Secretary, the Applicant must implement the measures described in the Fire Safety Study.

*Note: to satisfy 'meet the requirements of Fire & Rescue NSW' above, the Applicant should provide confirmation in writing from Fire & Rescue NSW that the Study meets the requirements of Fire & Rescue NSW as required by the Department's Hazardous Industry Planning Advisory Paper No. 2 Fire Safety Study' guideline.*

### Storage and Handling of Dangerous Materials

B29. The Applicant must store and handle all chemicals, fuels and oils used on-site in accordance with:

- (a) the requirements of all relevant Australian Standards; and
- (b) the NSW EPA's *Storing and Handling of Liquids: Environmental Protection – Participants Handbook* if the chemicals are liquids.

In the event of an inconsistency between the requirements listed from (a) and (b) above, the most stringent requirement must prevail to the extent of the inconsistency.

### Operating Conditions

B30. The Applicant must:

- (a) minimise the fire risks of the development, including managing vegetation fuel loads on-site;
- (b) ensure that the development:
  - (i) complies with the relevant asset protection requirements in the RFS's *Planning for Bushfire Protection 2019* (or equivalent) and *Standards for Asset Protection Zones*; and
  - (ii) is suitably equipped to respond to any fires on site including provision of a 20,000 litre water supply tank(s), fitted with a 65 mm Storz fitting and a FRNSW compatible suction connection;
- (c) ensure that the battery storage area and infrastructure:
  - (i) includes a 10 metre defendable space around the perimeter, with up to a 4 metre trafficable surface (unless the Planning Secretary agrees otherwise), that permits unobstructed vehicle access to assist the RFS and emergency services as much as practicable if there is a fire in the vicinity of the site; and
  - (ii) is managed as an asset protection zone (including the defendable space);
- (d) assist the RFS and emergency services as much as practicable if there is a fire in the vicinity of the site; and
- (e) notify the relevant local emergency management committee following construction of the development, and prior to commencing operations.

### Emergency Plan

B31. Prior to commencing construction, the Applicant must develop and implement a comprehensive Emergency Plan (including an emergency responders induction plan) and detailed emergency procedures for the development, and provide a copy of the plan to the NSW RFS Lower Hunter Fire Control Centre and FRNSW. The plan must:

- (a) be prepared in accordance with the findings of the Fire Safety Study required under condition B28 of Schedule 2;
- (b) be consistent with Department's Hazardous Industry Planning Advisory Paper No. 1, *'Emergency Planning'* and RFS's *Planning for Bushfire Protection 2019* (or equivalent);
- (c) be consistent with the NSW RFS document: *A Guide to Developing a Bush Fire Emergency Management and Evacuation Plan*;
- (d) include details on how the battery storage and sub-systems can be safely isolated in an emergency;
- (e) include bushfire emergency management planning, including:
  - (i) details of the location, management and maintenance of the Asset Protection Zone;
  - (ii) a list of works that must not be carried out during a total fire ban;
  - (iii) details of how RFS would be notified, and procedures that would be implemented in the event that:
    - there is a fire on-site or in the vicinity of the site;
    - there are any activities on site that would have the potential to ignite surrounding vegetation; or
    - there are any proposed activities to be carried out during a bushfire danger period;
- (e) a flood response plan detailing options for safe access to and from the site in the event of flooding, including emergency management and evacuation procedures; and
- (f) include an Emergency Services Information Package in accordance with *Emergency services*

*information package and tactical fire plan* (FRNSW, 2019), to the satisfaction of FRNSW.

B32. The Applicant must:

- (a) implement the approved Emergency Plan and Emergency Services Information Package for the duration of the development; and
- (b) following commencement of commissioning of the battery storage, keep two copies of the Emergency Plan and Emergency Services Information Package on-site in a prominent position adjacent to the site entry points at all times.

## WASTE

B33. The Applicant must:

- (a) minimise the waste generated by the development;
- (b) classify all waste generated on site in accordance with the EPA's *Waste Classification Guidelines 2014* (or its latest version);
- (c) store and handle all waste on site in accordance with its classification;
- (d) not receive or dispose of any waste on site; and
- (e) remove all waste from the site as soon as practicable, and ensure it is reused, recycled or sent to an appropriately licensed waste facility for disposal.

## DECOMMISSIONING AND REHABILITATION

B34. Within 18 months of the cessation of operations, unless the Planning Secretary agrees otherwise, the Applicant must rehabilitate the site to the satisfaction of the Planning Secretary. This rehabilitation must comply with the objectives in Table 4.

**Table 4 | Rehabilitation Objectives**

Feature	Objective
Site	<ul style="list-style-type: none"><li>• Safe, stable and non-polluting</li></ul>
Battery Storage and ancillary infrastructure	<ul style="list-style-type: none"><li>• To be decommissioned and removed where buried to depths of less than 500mm, unless the Planning Secretary agrees otherwise, with exception of the assets held by the Network Provider</li></ul>
Community	<ul style="list-style-type: none"><li>• Ensure public safety at all times</li></ul>

## **PART C**

### **ENVIRONMENTAL MANAGEMENT AND REPORTING**

#### **ENVIRONMENTAL MANAGEMENT**

##### **Environmental Management Strategy**

- C1. Prior to commencing construction, the Applicant must prepare an Environmental Management Strategy for the development to the satisfaction of the Planning Secretary. This strategy must:
- (a) provide the strategic framework for environmental management of the development;
  - (b) identify the statutory approvals that apply to the development;
  - (c) describe the role, responsibility, authority and accountability of all key personnel involved in the environmental management of the development;
  - (d) describe the procedures that would be implemented to:
    - (i) keep the local community and relevant agencies informed about the operation and environmental performance of the development;
    - (ii) receive, handle, respond to, and record complaints;
    - (iii) resolve any disputes that may arise;
    - (iv) respond to any non-compliance;
    - (v) respond to emergencies; and
  - (e) include:
    - (i) references to any strategies, plans and programs approved under the conditions of this consent; and
    - (ii) a clear plan depicting all the monitoring to be carried out in relation to the development.

Following the Planning Secretary's approval of the Environmental Management Strategy, the Applicant must implement the Environmental Management Strategy.

##### **Revision of Strategies, Plans and Programs**

- C2. The Applicant must:
- (a) update the strategies, plans or programs required under this consent to the satisfaction of the Planning Secretary prior to carrying out any upgrading or decommissioning activities on site; and
  - (b) review and, if necessary, revise the strategies, plans or programs required under this consent to the satisfaction of the Planning Secretary within 1 month of the:
    - (i) submission of an incident report under condition C10 of Schedule 2;
    - (i) submission of an audit report under condition C13 of Schedule 2; or
    - (ii) any modification to the conditions of this consent.

##### **Staging, Combining and Updating Strategies, Plans or Programs**

- C3. With the approval of the Planning Secretary, the Applicant may stage the development may:
- (a) prepare and submit any strategy, plan or program required by this consent on a staged basis (if a clear description is provided as to the specific stage and scope of the development to which the strategy, plan or program applies, the relationship of the stage to any future stages and the trigger for updating the strategy, plan or program);
  - (b) combine any strategy, plan or program required by this consent (if a clear relationship is demonstrated between the strategies, plans or programs that are proposed to be combined); and
  - (c) update any strategy, plan or program required by this consent (to ensure the strategies, plans and programs required under this consent are updated on a regular basis and incorporate additional measures or amendments to improve the environmental performance of the development).
- C4. If the Planning Secretary agrees, a strategy, plan or program may be staged or updated without consultation being undertaken with all parties required to be consulted in the relevant condition in this consent.
- C5. If approved by the Planning Secretary, updated strategies, plans or programs supersede the previous versions of them and must be implemented in accordance with the condition that requires the strategy, plan or program.
- C6. If the Planning Secretary agrees, a strategy, plan or program may be staged without addressing particular requirements of the relevant condition of this consent if those requirements are not applicable to the particular stage.



## NOTIFICATIONS

### Notification of Department

- C7. Prior to commencing the construction, operations, upgrading or decommissioning of the development or the cessation of operations, the Applicant must notify the Department in writing via the NSW planning portal (Major Projects) of the date of commencement, or cessation, of the relevant phase.

If any of these phases of the development are to be staged, then the Applicant must notify the Department in writing prior to commencing the relevant stage, and clearly identify the development that would be carried out during the relevant stage.

### Final Layout Plans

- C8. Prior to commencing construction, the Applicant must submit detailed plans of the final layout of the development to the Department via the Major Projects website, showing comparison to the approved layout and including details on the siting of battery storage or ancillary infrastructure.

The Applicant must ensure that the development is constructed in accordance with the Final Layout Plans.

### Work as Executed Plans

- C9. Prior to commencing operations or following the upgrades of any battery storage or ancillary infrastructure, the Applicant must submit work as executed plans of the development showing comparison to the approved layout to the Department via the Major Projects website.

## COMPLIANCE

### Incident Notification

- C10. The Applicant must notify the Department within 24 hours of becoming aware of an incident. The notification must be made via the NSW planning portal (Major Projects) and address details of the incident including:
- (c) date, time and location;
  - (d) a brief description of what occurred and why it has been classified as an incident;
  - (e) a description of what immediate steps were taken in relation to the incident; and
  - (f) identifying a contact person for further communication regarding the incident.
- C11. The Applicant must provide the Department with a subsequent incident report in accordance with Appendix 7 (Incident Notification and Reporting Requirements).

### Non-Compliance Notification

- C12. Within seven days of becoming aware of a non-compliance, the Applicant must notify the Department of the non-compliance. The notification must be in writing and must be submitted via the NSW planning portal (Major Projects). The notification must identify the development (including the development application number and name), set out the condition of this consent that the development is non-compliant with, why it does not comply, the reasons for the non-compliance (if known), and what actions have been undertaken, or will be undertaken, and when, to address the non-compliance.

**Note:** A non-compliance which has been notified as an incident does not need to also be notified as a non-compliance.

## INDEPENDENT ENVIRONMENTAL AUDIT

- C13. Independent Environmental Audits of the development must be conducted and carried out in accordance with the Independent Audit Post Approval Requirements (2020) or as updated from time to time and published on the Department's website.

## ACCESS TO INFORMATION

- C14. The Applicant must:
- (a) make the following information publicly available on its website as relevant to the stage of the development:
    - (i) the EIS;
    - (ii) the final layout plans for the development;
    - (iii) current statutory approvals for the development;
    - (iv) approved strategies, plans or programs required under the conditions of this consent (other

- than the Fire Safety Study and Emergency Plan);
- (v) the proposed staging plans for the development if the construction, operation or decommissioning of the development is to be staged;
- (vi) how complaints about the development can be made;
- (vii) a complaints register;
- (viii) compliance reports;
- (ix) any independent environmental audit prepared in accordance with condition C13, and the Applicant's response to the recommendations in any audit; and
- (x) any other matter required by the Planning Secretary; and
- (b) keep this information up to date.

## APPENDIX 1: GENERAL LAYOUT OF DEVELOPMENT

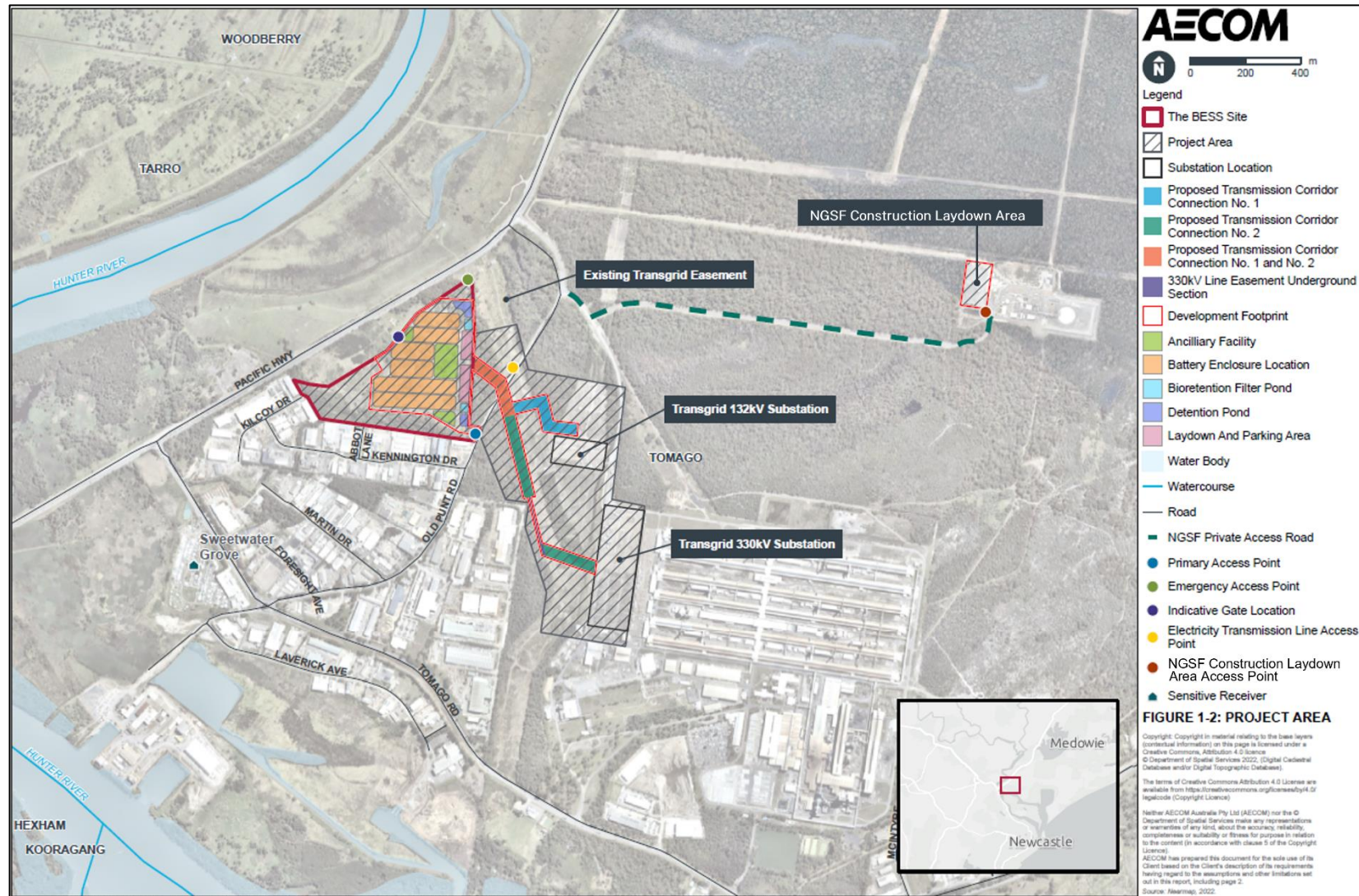
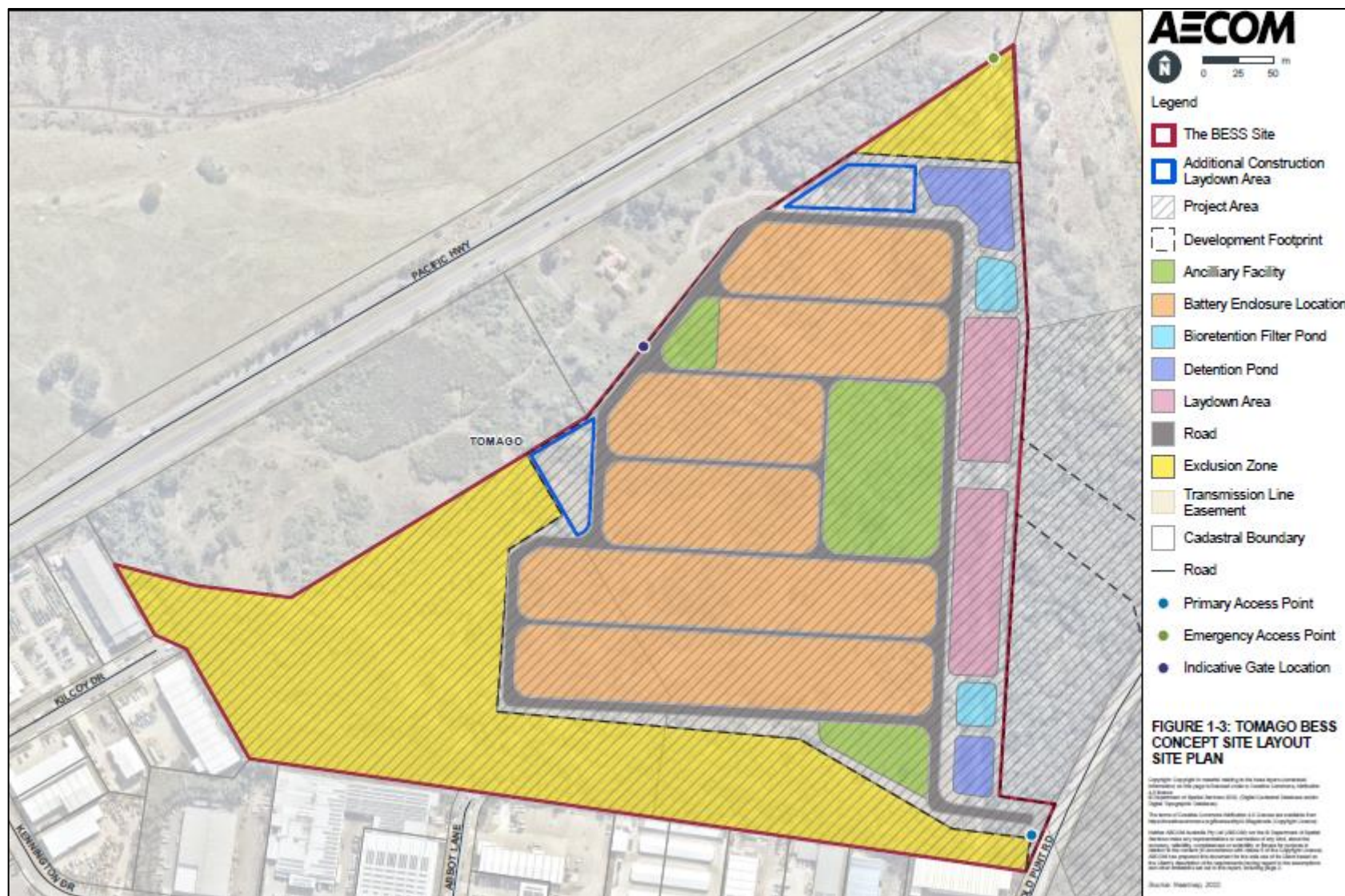


Figure 1 | Project Site





**Figure 2 | The BESS Site**

**APPENDIX 2:  
SCHEDULE OF LANDS**

Lot Number	Deposited Plan (DP)
5	1286735
6	
7	
8	
9	
24	
25	
28	
101	1125747
102	1125747
103	
104	
3	808004
1201	1229590

Note: 132 kV substation | 330kV substation

Note: The project site will also be taken to include any Crown land and road reserves contained within the site.

**APPENDIX 3:**  
**PART 1 - GENERAL TERMS OF APPLICANT'S VPA OFFER**

The VPA must include provisions for the payment, collection, management and distribution of the contributions under the agreement, with a focus on funding community enhancement in the area surrounding the project site.

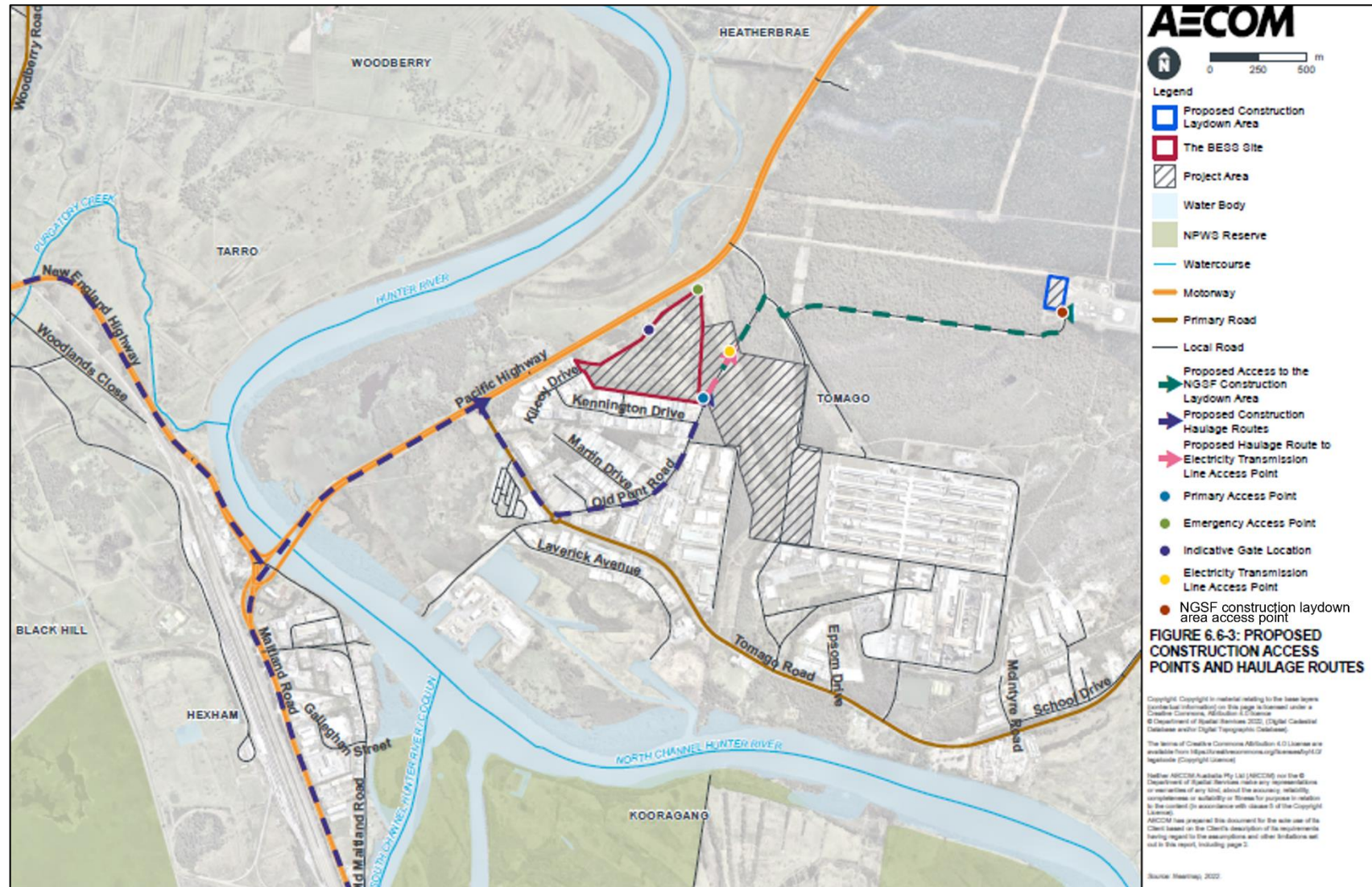
<b><i>Council</i></b>	<b><i>Payment Details</i></b>
Port Stephens Council	<p>Monetary contribution of \$200,000 to be paid as a lump sum upon registration on the National Energy Market.</p> <p>A further payment annually of \$200 per MW per annum of installed capacity commencing on the commencement of operations and ending on the cessation of operations of the BESS Project or the 20th anniversary of the commencement of Operations (whichever is earlier).</p>

**PART 2 - GENERAL TERMS FOR CONTRIBUTIONS TO COUNCIL**

<b><i>Council</i></b>	<b><i>Payment Details</i></b>
Port Stephens Council	<p>A payment annually of \$200 per MW per annum of installed capacity commencing on the commencement of operations and ending on the cessation of operations of the BESS Project or the 20th anniversary of the commencement of Operations (whichever is earlier).</p>



## APPENDIX 4: SITE ACCESS



## APPENDIX 5: SITE ACCESS UPGRADE





## APPENDIX 6: HERITAGE ITEMS

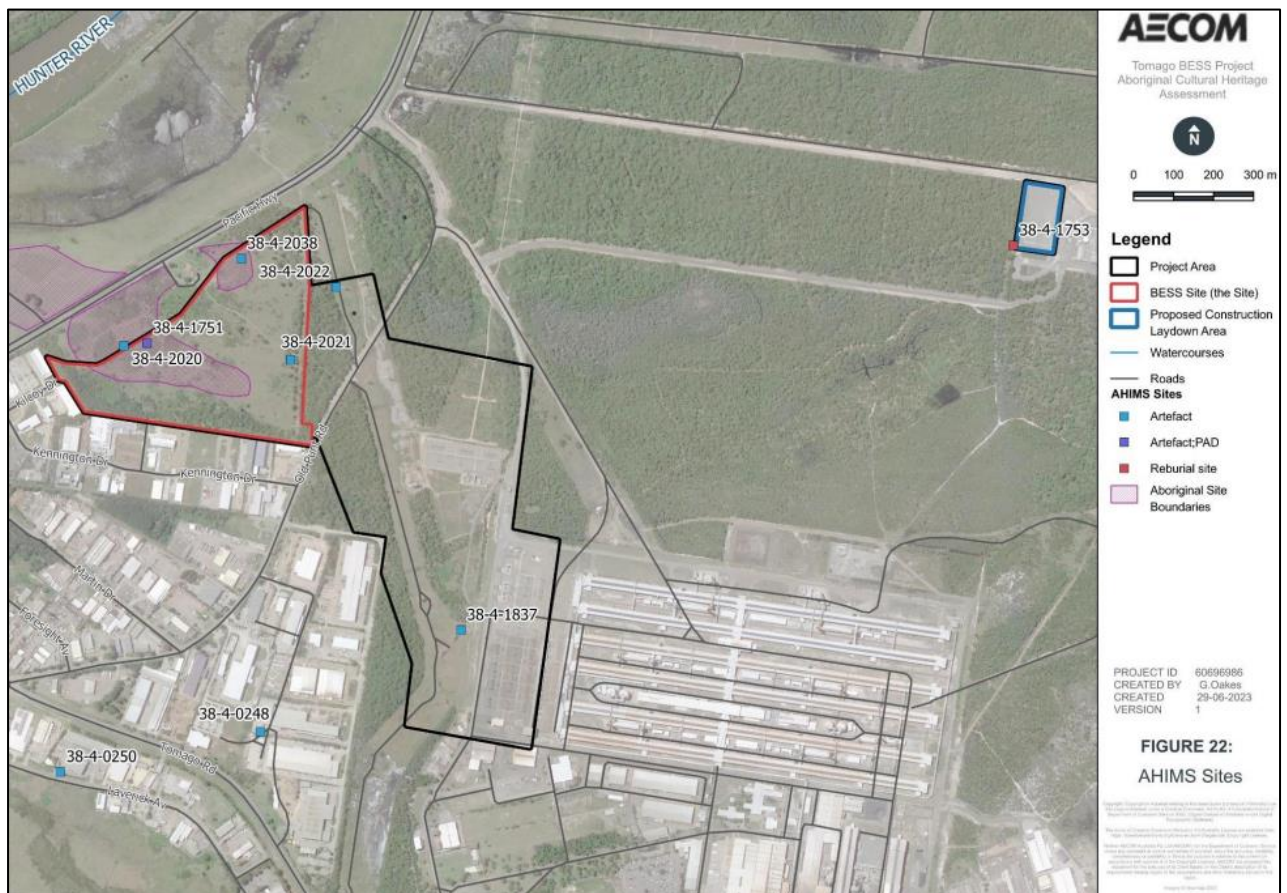
**Table 1** / Aboriginal heritage items – avoid impacts

Item Name
38-4-1753

**Table 2** / Aboriginal heritage items – surface collection and salvage

Item Name	Degree of Impact	Action
38-4-1751	Partial	Surface collection and salvage
38-4-1837	Whole	Surface collection (if proposed Transmission Connection Corridor No. 2 is constructed)
38-4-2020	Whole	Surface collection
38-4-2021	Whole	Surface collection
38-4-2022	Whole	Surface collection
38-4-2038	Partial	Surface collection and salvage

\*Refer to the Figure in this Appendix to identify items



## **APPENDIX 7: INCIDENT NOTIFICATION AND REPORTING REQUIREMENTS**

### **INCIDENT NOTIFICATION REQUIREMENTS**

1. All incident notifications and reports must be submitted via the NSW planning portal (Major Projects).
2. The Applicant must provide notification as required under these requirements, even if the Applicant fails to give the notification required under condition C10 or, having given such notification, subsequently forms the view that an incident has not occurred.
3. Within 7 days (or as otherwise agreed by the Planning Secretary) of the Applicant making the immediate incident notification (in accordance with condition C10), the Applicant is required to submit a subsequent incident report that:
  - (a) identifies how the incident was detected;
  - (b) identifies when the Applicant became aware of the incident;
  - (c) identifies any actual or potential non-compliance with conditions of consent;
  - (d) identifies further action(s) that will be taken in relation to the incident; and
  - (a) a summary of the incident;
  - (b) outcomes of an incident investigation, including identification of the cause of the incident;
  - (c) details of the corrective and preventative actions that have been, or will be, implemented to address the incident and prevent recurrence, including the period for implementing any corrective and/or preventative actions; and
  - (d) details of any communication with other stakeholders regarding the incident.
4. The Applicant must submit any further reports as directed by the Planning Secretary.