

Modification of Development Consent

Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*

As delegate of the Minister for Planning and Public Spaces, I approve the modification of the development consent referred to in Schedule 1, subject to the conditions in Schedule 2.



David Kitto
Executive Director
Special Projects

Sydney 9 JANUARY 2020

SCHEDULE 1

The Development for the Biala Wind Farm Project (SSD 6039) grant by the then Planning Assessment Commission, as delegate of the then Minister of Planning, on 12 April 2017.

SCHEDULE 2

1. In Schedule 1, delete name of the Applicant and replace with 'Newtricity Developments Biala Pty Ltd'.
2. In the Table of Contents:
 - (a) after '**ADMINISTRATIVE CONDITIONS**' insert 'Deferred Commencement';
 - (b) delete 'Reporting' and replace with 'Compliance';
 - (c) delete 'Auditing' and replace with 'Independent Environmental Audit';
 - (d) delete '**APPENDIX 2: GENERAL LAYOUT OF DEVELOPMENT**' and replace with '**APPENDIX 2: DEVELOPMENT LAYOUT**'; and
 - (e) update all page numbers accordingly
3. In the table of Definitions, delete the definitions for 'Applicant', 'EIS', 'Material harm to the environment' and 'OEH' and insert the following in alphabetical order:

Applicant	Newtricity Developments Biala Pty Ltd, or any person who seeks to carry out the development approved under this consent
BC Act	<i>Biodiversity and Conservation Act 2016</i>
BCD	Biodiversity and Conservation Division within the Department
EIS	The environmental assessment for the <i>Biala Wind Farm</i> (dated 31 July 2015), prepared by Environmental Resources Management Pty Ltd (ERM) as modified by: <ul style="list-style-type: none">• <i>Biala Wind Farm Response to Submissions</i>, prepared by ERM and dated February 2016, and additional information, prepared by ERM and dated 15 June 2016, 13 July 2016, 16 March 2017 and 27 March 2017;• <i>Request for Minor Modification</i> submitted by the Applicant and dated 07 September 2018 and environmental assessment letter (ref 0178462) prepared by ERM and dated 7 September 2018; and• Statement of Environmental Effects prepared by Umwelt (Australia) Pty Ltd and dated November 2019, additional information prepared by Umwelt, dated December 2019 and additional information prepared by Newtricity, dated December 2019.
Material harm to the environment	Is harm that: <ul style="list-style-type: none">• involves actual or potential harm to the health or safety of human beings or to ecosystems that is not trivial; or• results in actual or potential loss of property damage or amounts in aggregate, exceeding \$10,000 (such loss includes 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)
4. In the definition of 'Department', after Planning, insert ', Industry'.
5. In the definition of 'Minister', after 'Minister of Planning' insert 'and Public Spaces,'.

6. Delete all references to 'OEH' or 'the OEH' and replace with 'BCD'.
7. Insert the following footer throughout the document:
*NSW Government
Department of Planning, Industry and Environment*
8. In condition 18 of Schedule 3, delete '1.05' and replace with '1.23'.
9. Delete condition 19 of Schedule 3, and replace with the following:
 19. Within 2 years of the commencement of construction, the Applicant must retire biodiversity credits of a number and class specified in Table 3 below, to the satisfaction of BCD, unless the Secretary agrees otherwise.

The retirement of the 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 definition of the BC Act;
- (b) making payments into an offset fund that has been established by the NSW Government; or
- (c) providing suitable supplementary measures.

Table 3: Ecosystem credit requirements

Biometric Vegetation Type	Biometric Condition	Impact Area (ha)	Credits Required
PCT ID 351: Brittle Gum – Board-leaved Peppermint – Red Stringy open forest in the north-western part (Yass to Orange) of South Eastern Highlands Bioregion	Moderate_Good_Moderate	0.86	48
	Moderate_Good_Sparse	0.29	
	Moderate_Good_Derived Native Grassland	1.31	
PCT ID 1097: Ribbon Gum – Narrow-leaved Peppermint grassy open forest on basalt plateaux, Sydney Basin Bioregion and South Eastern Highlands Bioregion	Moderate_Good_Moderate	1.23	47

Note: Following repeal of the TSC Act on 25 August 2017, credits created under that Act are taken to be "biodiversity credits" under the BC Act by virtue of clause 22 of the Biodiversity Conservation (Savings and Transitional) Regulation 2017.

10. Delete condition 4 and 5 of Schedule 4, including the heading 'Reporting' and subheadings 'Incident Reporting' and 'Regular Report' and replace with the following:

COMPLIANCE

Incident Notification

4. The Department must be notified in writing immediately via the Major Project Portal after the Applicant becomes aware of an incident. The notification must identify the development (including the development application number and the name of the development if it has one) and set out the location and nature of the incident.

Non-Compliance Notification

5. The Department must be notified in writing via the Major Project Portal within 7 days after the Applicant becomes aware of any non-compliance. The notification must identify the development and the application number for it, set out the condition of consent that the development is non-compliant with, the way in which it does not comply and the reasons for the non-compliance (if known) and what actions have been done, or will be undertaken, to address the non-compliance.

11. Delete condition 6 to 8 of Schedule 4, including the heading 'Auditing', and replace with the following:

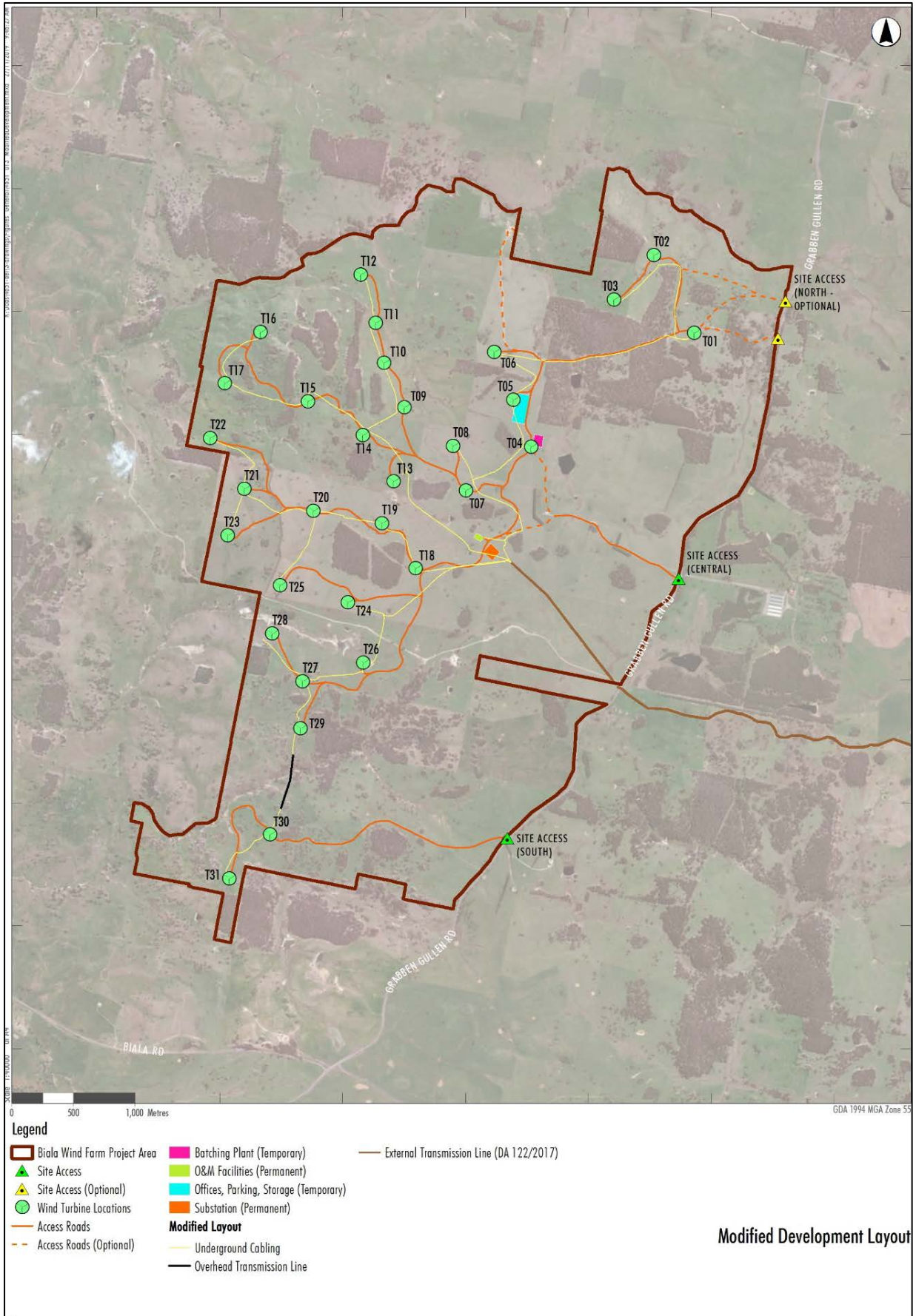
INDEPENDENT ENVIRONMENTAL AUDIT

6. Within 1 year of the commencement of construction, and every 3 years thereafter, unless the Secretary directs otherwise, the Applicant shall commission and pay the full cost of an Independent Environmental Audit of the development. The audits must:
 - (a) be prepared in accordance with the relevant *Independent Audit Post Approval* requirements (DPE 2018);
 - (b) be led and conducted by a suitably qualified, experienced and independent team of experts whose appointment has been endorsed by the Secretary;
 - (c) be carried out in consultation with the relevant agencies;
 - (d) assess whether the development complies with the relevant requirements in this consent, and any strategy, plan or program required under this consent; and
 - (e) recommend appropriate measures or actions to improve the environmental performance of the development and any strategy, plan or program required under this consent.

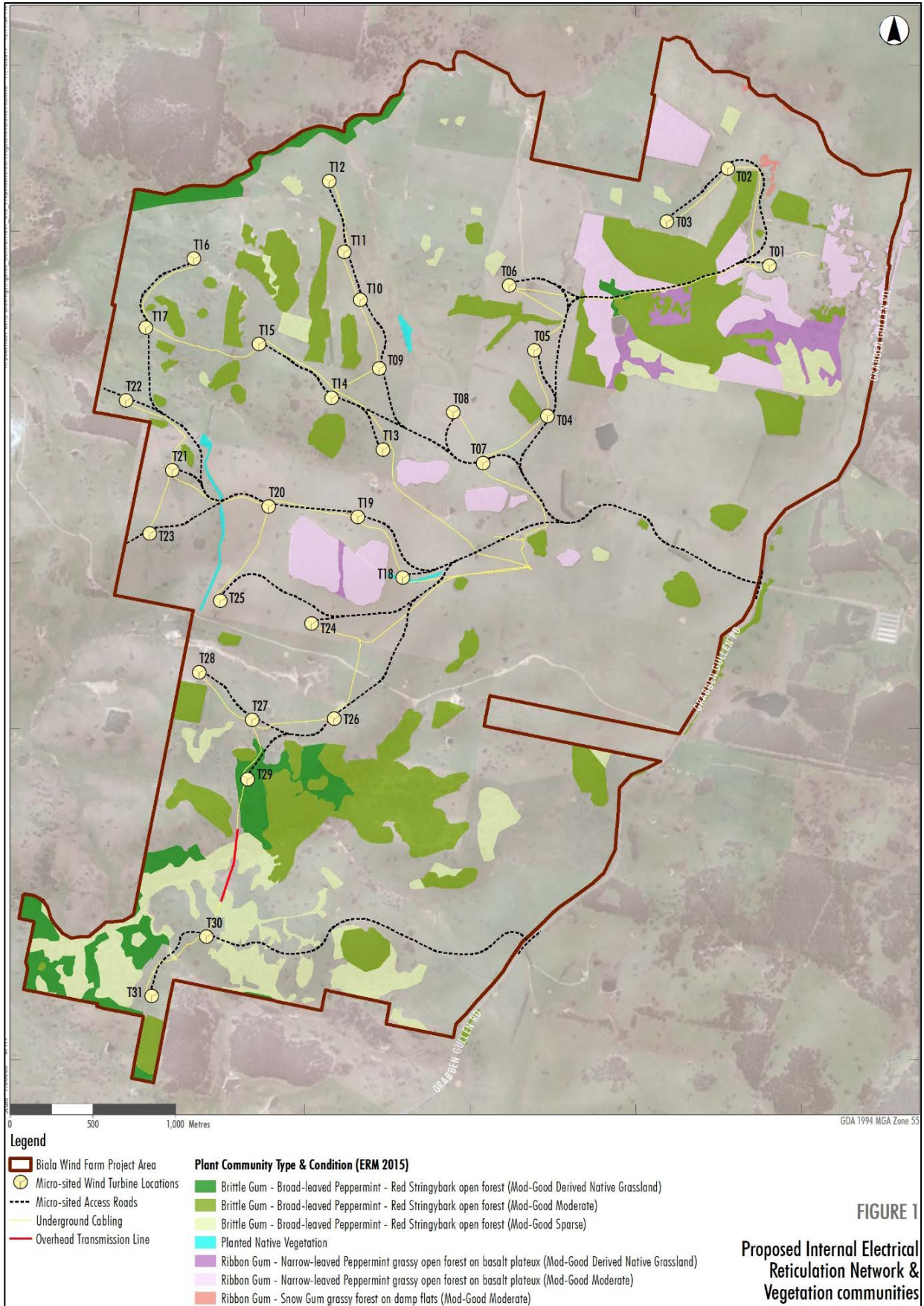
Within 3 months of commencing an Independent Environmental Audit, or unless otherwise agreed by the Secretary, a copy of the audit report must be submitted to the Secretary, and any other NSW agency that requests it, together with a response to any recommendations contained in the audit report, and a timetable for the implementation of the recommendations.

The recommendations of the Independent Environmental Audit must be implemented to the satisfaction of the Secretary.

12. Delete the two figures from Appendix 2, and replace with:



13. Delete the figure from Appendix 5, and replace with:



14. In the table in Appendix 6, after 'BWF21', insert ', BWF22, BWF23, BWF24, BWF25, BWF26'
15. Delete the two figures from Appendix 6, and replace with:

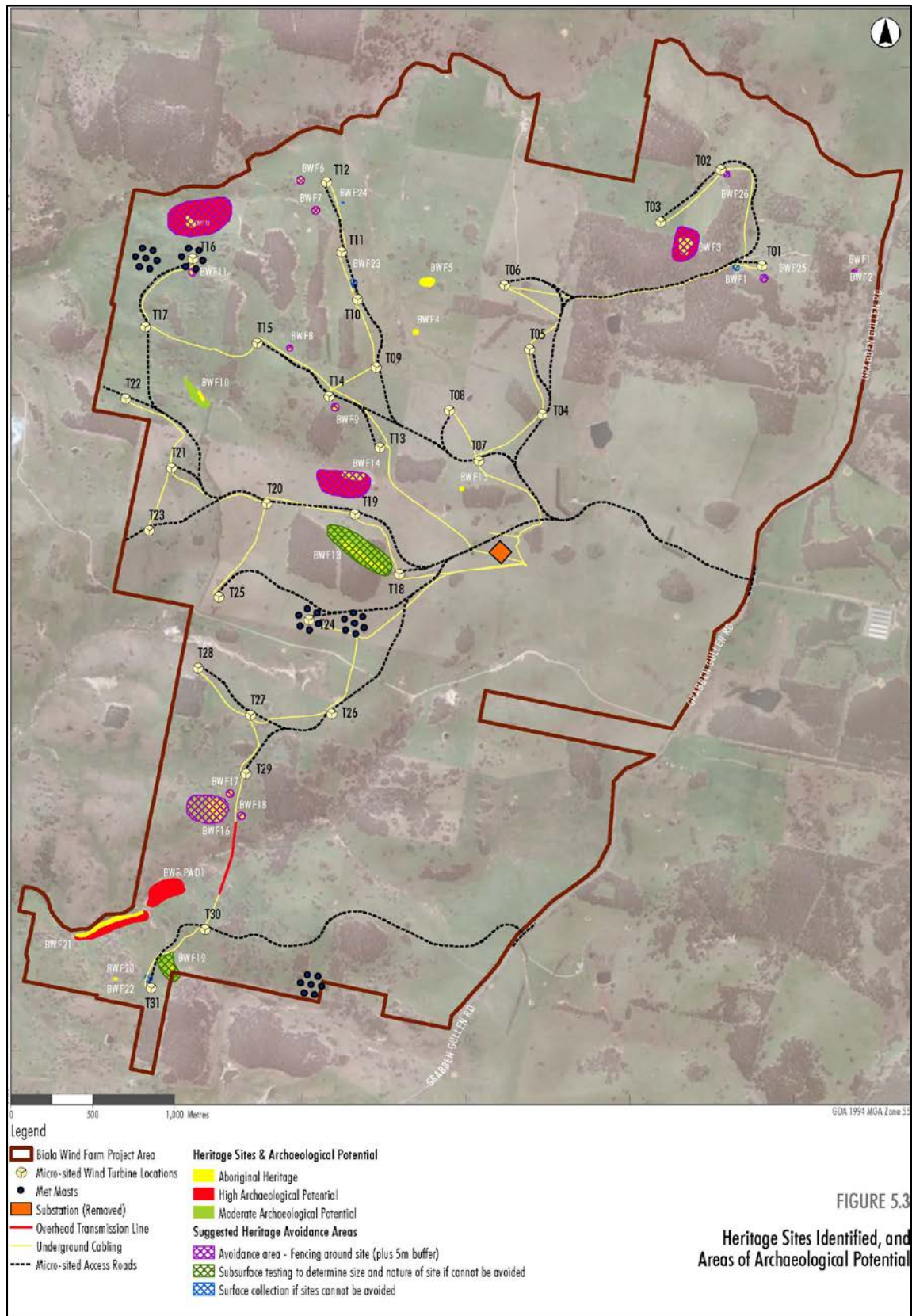


FIGURE 5.3
Heritage Sites Identified, and
Areas of Archaeological Potential

End of modification
(SSD 6039 MOD 1)