

APPENDIX C

Statutory Compliance



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Client: Burrendong Wind Farm Pty Ltd

Statutory Reference	Mandatory Consideration	Section addressed in EIS
Consideration under the EP&A Act and Regulation		
Section 1.3 Objects of the Act	(a) 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	Section 2 Section 5 Section 7
	(b) To facilitate ecologically sustainable development by integrating relevant economic, environmental, and social considerations in decision-making about EP&A	Section 6
	(c) To promote the orderly and economic use and development of land	Section 6.14
	(d) To promote the delivery and maintenance of affordable housing	N/A
	(e) To protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities, and their habitats	Section 6.5
	(f) To promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	Section 6.8 Section 6.9
	(g) to promote good design and amenity of the built environment,	Section 3 Section 6.3
	(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	N/A
	(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	N/A
	(j) to provide increased opportunity for community participation in environmental planning and assessment	Section 5
Relevant Environmental Planning Instruments		
Section 4.15 Evaluation	Primary Production SEPP 2021	Section 6.10
	Transport and Infrastructure 2021	Section 4
	Planning Systems SEPP	Section 1.4

Statutory Reference	Mandatory Consideration	Section addressed in EIS
	Dubbo Regional Local Environmental Plan (LEP) 2022	Section 3
	Mid-Western LEP 2012	Section 3
	Dubbo and Mid-Western Local Strategic Planning Statements	Section 2.3.3
	Central West and Orana Regional Plan 2036 and 2041	Section 2.3.2
	NSW Wind Energy Guidelines	Section 2.3.4
	Relevant proposed environmental planning instruments	
	N/A	N/A
	Development Control Plans (DCP)	
	The Project Site is subject to two DCPs, being within two LGAs. The following DCPs apply to the Project: <ul style="list-style-type: none"> Dubbo DCP 2013 Mid-Western DCP 2013 	Section 2.3
	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	
	A Voluntary Planning Agreement for the Project Site entered into between the Proponent and Dubbo Regional Council and Mid-Western Regional Council.	Section 6.14.2
	The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality	Section 6
	The suitability of the Project Site for the development	Section 3
	The public interest	Section 5
Mandatory Relevant Considerations under EPIs		
<i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> (Resilience and Hazards SEPP)	Section 3.10 Although Appendix 3 of the Applying SEPP 33 Guidelines (DPE, 2011) does not list wind farms and energy storage facilities as industries considered to fall within the Resilience and Hazards SEPP, the Project is likely to meet the definition of 'potentially hazardous industry'. An assessment of hazardous activities associated with the Project is provided in Section 6.7. As no battery storage facility is proposed as part of the Project, a PHA was not undertaken.	Section 6.7

Statutory Reference	Mandatory Consideration	Section addressed in EIS
<i>Note: As of 2021, SEPP 33 was repealed by the Resilience and Hazards SEPP.</i>		
<p><i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> (Biodiversity and Conservation SEPP)</p>	<p>Chapter 4 – Koala Habitat Protection 2021</p> <p>In accordance with schedule 2, this SEPP does not apply to the Dubbo Regional LGA. Chapter 4 does apply to the Mid-Western Regional LGA, which corresponds to the Northwest Slopes Koala Management Area (KMA). The potential for Koala habitat to occur, or for the project to impact on Koala, has been assessed in accordance with the BC Act through the preparation of a Biodiversity Development Assessment Report (BDAR) where koala habitat was defined by species polygons over associated vegetation communities. To mitigate potential impacts on Koala habitat, the Proponent is intending on retiring species credit species for this species.</p>	Section 6.5
<p><i>State Environmental Planning Policy (Primary Production) 2021</i> (Primary Production SEPP)</p>	<p>Section 2(8) and Schedule 1</p> <p>The Project Site is not identified as being State significant agricultural land. Nonetheless, an assessment of land use conflicts and the presence of Biophysical Strategic Agricultural Land (BSAL) has been undertaken. After the completion of construction, the Project Site will continue to be used for the purposes of agriculture.</p>	Section 6.10
<p><i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> (Transport and Infrastructure SEPP)</p>	<p>Part 2.3</p> <p>Part 2.3, Division 4 of the Transport, and Infrastructure SEPP applies to the Project as it is ‘electricity generating works’ which is defined as a building or place used for the purpose of making or generating electricity. However, pursuant to clause 2.36(1b) of the Transport and Infrastructure SEPP, 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. Given that the Project is partially located on prescribed rural land, and the proposed activity is to generate electricity from wind, the Project is partially permissible with consent.</p> <p>The Project Site is also partially zoned Environmental Management (C3) under both the Dubbo Regional Local LEP 2022 and Mid-Western Regional LEP 2012. In accordance with Clause 4.38(3) of the EP&A Act, development consent may be granted despite the development being partly prohibited by an environmental planning instrument. The EIS therefore provides a merit-based assessment, addressing the objectives of the C3 zoning and providing justification for the Project. This is further detailed in Section 4.2 of this EIS.</p> <p>Division 1</p> <p>Consultation with Dubbo Regional Council and Mid-Western Regional Council was undertaken.</p>	Section 4.2 Section 5.2
<p><i>State Environmental Planning Policy (Planning Systems) 2021</i> (Planning Systems SEPP)</p>	<p>Part 2, Clause 6 and Clause 20, Schedule 1</p> <p>Confirmation that the Project has a capital investment value or more than \$30 million.</p>	Section 1.4

Statutory Reference	Mandatory Consideration	Section addressed in EIS
Dubbo Regional Local Environmental Plan 2022 (Dubbo Regional LEP)	<p>Objectives and land use for land use zoning, Part 4 (Principal Development Standards), Section 6.1 Salinity, Section 6.4 Groundwater Vulnerability and Section 6.5 Terrestrial Biodiversity have been considered.</p> <p>In accordance with the Dubbo Regional LEP, the Project Site is within the following land zones:</p> <ul style="list-style-type: none"> • C3 (Environmental Management) - Prohibited • RE2 (Private Recreation) – Prohibited • RU1 (Primary Production) – Prohibited • W1 (Natural Waterways) – Prohibited. <p>Development for electricity generating works may be carried out by any person with consent on any land in a prescribed rural, industrial or special use zone under the Transport and Infrastructure SEPP. The objectives and consistency with C3, RE2 and W1 zoning has been addressed in Section 4.2 of this EIS.</p>	<p>Section 4.2</p> <p>Section 6.5</p> <p>Section 6.10</p> <p>Section 6.11</p>
Mid-Western Local Environmental Plan 2012 (Mid-Western LEP)	<p>Objectives and land use for land use zoning, Part 4 (Principal Development Standards), Section 7.1 Terrestrial Biodiversity, Section 7.3 Natural resource – riparian land and waterways, Section 7.5 Groundwater vulnerability and Section 7.7 Airspace operations have been considered.</p> <p>In accordance with the Mid-Western LEP, the Project Site is within the following land zones:</p> <ul style="list-style-type: none"> • C3 (Environmental Management) – Prohibited • RU1 (Primary Production) – Permitted with Consent <p>Development for electricity generating works may be carried out by any person with consent on any land in a prescribed rural, industrial or special use zone under the Transport and Infrastructure SEPP. The objectives and consistency with C3 zoning has been addressed in Section 4.2 of this EIS.</p>	<p>Section 4.2</p> <p>Section 6.5</p> <p>Section 6.7</p> <p>Section 6.11</p>
Central West and Orana Regional Plan Regional Plan 2041	An assessment of the strategic benefits of the Project found that it supports the directions of the Plans.	Section 2.3.1 and 2.3.2
Dubbo Local Strategic Planning Statement (LSPS)	An assessment of the strategic benefits of the Project found that it supports the directions of the Dubbo LSPS.	Section 2.3.3
Mid-Western LSPS	An assessment of the strategic benefits of the Project found that it supports the directions of the Mid-Western LSPS.	Section 2.3.3
Considerations under other legislation		
<i>Civil Aviation Safety Regulation 1998</i> (CAS Regulation)	<p>Section 139(e) and National Airports Safeguarding Framework 2012</p> <p>Consultation with CASA due to the construction of structures greater than 110 m above ground level and assessment of potential hazard impacts to aircraft. Consultation with the Department of Infrastructure, Transport, Regional</p>	Section 6.7

Statutory Reference	Mandatory Consideration	Section addressed in EIS
	Development and Communications (DITRDC) on the issue of obstacle lighting. Consultation with aviation stakeholders and the preparation of a risk assessment using a suitably qualified aviation consultant in accordance with <i>Guideline D: Managing the Risk of Wind Turbine Farms as Physical Obstacles to Air Navigation 2021</i> (National Airports Safeguarding Advisory Group (NASAG), 2021).	
<i>Environment Protection and Biodiversity Conservation Act 1999</i> (EPBC Act)	The likely impact of the Project on MNES as assessed in the BDAR (ELA, 2023a)	Section 6.5
<i>Hazardous Waste (Regulation of Exports and Imports) Act 1989</i> (Hazardous Waste Act)	Section 40 The likely impact of the use of hazardous waste (lithium-ion batteries) and the application for an export permit to export spent batteries has been addressed.	Section 6.7
<i>Radiocommunications Act 1992</i> (Radiocommunications Act)	WTGs and associated ancillary structures produce electromagnetic fields. The Project therefore has the potential to interfere with radiocommunications and an assessment of telecommunications interference was undertaken.	Section 6.7
<i>Renewable Energy (Electricity) Act 2000</i> (RE Act)	Objectives of the Act: <ul style="list-style-type: none"> • <i>To encourage the additional generation of electricity from renewable sources</i> • <i>To reduce emissions of greenhouse gases in the electricity sector</i> • <i>To ensure that renewable energy sources are ecologically sustainable</i> 	Section 2
<i>Biodiversity Conservation Act 2016</i> (BC Act)	Section 7.14 The likely impact of the Project on biodiversity values as assessed in the BDAR (ELA, 2023a). The Minister for Planning may (but is not required to) further consider under that Act the likely impact of the Project on biodiversity values.	Section 6.5.2
<i>Biosecurity Act 2015</i> (Biosecurity Act)	Part 3 Section 23 To prevent, eliminate or minimise any biosecurity risk the Project may pose. This EIS includes consideration of weeds and weed management, and biosecurity in relation to agricultural lands.	Section 6.5 Section 6.10
<i>Environmental Protection and Assessment Act 1979</i> (EP&A Act)	Section 4.12, Clause 8 This EIS has been prepared to support the SSD application for the Project, to be assessed under Part 4 of the EP&A Act in accordance with 4.12(8).	Entire Document
<i>Fisheries Management Act 1994</i> (FM Act)	The likely impacts of the Project on aquatic habitat values have been assessed in this EIS. Consideration of appropriate waterway crossings for access roads throughout the Project Site has been applied to the Project design, however a Part 7 permit for impacts to Key Fish Habitat (KFH) due to the nature of the Project being SSD.	Section 6.11.2

Statutory Reference	Mandatory Consideration	Section addressed in EIS
<i>Heritage Act 1977</i> (Heritage Act)	The likely impacts of the Project on historic relics, buildings, structures, and features have been assessed in the Historic Heritage Assessment.	Section 6.9.2
<i>Mining Act 1992</i> (Mining Act)	The Project Site includes land identified within exploration licences and applications.	Section 6.10
<i>National Parks and Wildlife Act 1974</i> (NPW Act)	The likely impacts of the Project on Aboriginal objects have been assessed in the ACHA.	Section 6.8.2
<i>Protection of the Environment Operations Act 1997</i> (POEO Act)	Section 48 An EPL for the regulation of noise pollution during both the construction and operational phases of the Project is required, and potentially for the construction phase for crushing, grinding, or separating if the activity has the capacity to process more than 150 tonnes of materials per day or 30,000 tonnes of materials per year.	Section 6.4.2
<i>Roads Act 1993</i> (Roads Act)	Section 138 The likely impacts of the Project on public roads and transport routes as assessed in the Traffic and Transport Impact Assessment (TTIA). An approval to undertake upgrade works in, on or over a public road to allow for the transportation of WTG infrastructure.	Section 6.6.2
<i>Rural Fires Act 1997</i> (RF Act)	The likely impacts of the Project on bushfire risk as assessed in the Bushfire Hazard Assessment. If the proposed bushfire mitigation measures for the Project are implemented, there is a low residual risk of bushfire ignition to and from the Project construction and operational stages.	Section 6.7.2.5
<i>Waste Avoidance and Resource Recovery Act 2001</i> (WARR Act)	The consideration of efficient use of resources, reduction of environmental harm and waste generation has been addressed in this EIS.	Section 6.12.2
<i>Water Management Act 2000</i> (WM Act)	The likely impacts of the Project on waterfront land (defined as land within 40 m from the highest bank of a river, lake, or estuary) have been considered. The Project does not require a Controlled Activity Approval under the WM Act due to the nature of it being SSD, however best practice <i>Guidelines for watercourse crossings on waterfront land</i> (DPE 2022) have been adhered to where waterway crossings are required for access, and an assessment of impacts to water quality and hydrology is contained in this EIS.	Section 6.11.2
Development Control Plans (DCPs)		
Dubbo DCP 2013	Relevant provisions: <ul style="list-style-type: none"> Section 5.4 Environmental Controls Part 6 Development in Rural Areas - Section 6.3 Wind Farms 	Section 3 & Section 6

Statutory Reference	Mandatory Consideration	Section addressed in EIS
Mid-Western DCP 2013	Relevant provisions: <ul style="list-style-type: none"> • Section 2.4 Rural Development and Subdivisions • Chapter 3 Development Considerations 	Section 3, Section 4, and Section 6

Guidelines

National Airports Safeguarding Framework 2012	The guideline encourages consultation with aviation stakeholders and the preparation of a risk assessment using a suitably qualified aviation consultant. Accordingly, consultation has been undertaken with CASA, Airservices Australia (AsA), Aerial Agricultural Association of Australia (AAAA), DoD and the Royal Australian Air Force (RAAF).	Section 6.7
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