

SSD-29704663 – Exhibition

Muswellbrook Battery Energy Storage System

Sandy Creek Road, Muswellbrook

Tindale Property



Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We acknowledge the Wanaruah people the Traditional Custodians of the land where this project takes place, and all peoples and nations from lands affected.

We pay our respects to their Elders past, present and emerging.

'Gura Bulga'

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.

By using the green and blue colours to represent NSW, this painting unites the contrasting landscapes. The use of green symbolises tranquillity and health. The colour cyan, a greenish-blue, sparks feelings of calmness and reminds us of the importance of nature, while various shades of blue hues denote emotions of new beginnings and growth. The use of emerald green in this image speaks of place as a fluid moving topography of rhythmical connection, echoed by densely layered patterning and symbolic shapes which project the hypnotic vibrations of the earth, waterways and skies.

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1.0 Introduction and Overview

This submission has been prepared by Ethos Urban on behalf of Tindale Property as owners of the residential lands immediately west of the site subject to this State Significant Development Application.

Tindale own the residual lands known as Northview Estate at 4 Sandy Creek Road Muswellbrook, legally recognised as Lot 98 of DP1181251. There are residual lands for future subdivision that have been subject to a pre-DA with Council prior to the lodgement of the Battery Storage EIS.

Tindale object to the proposal for the following reasons:

1. The submitted EIS has not adequately addressed the requirements of Division 5 of the Environmental Planning and Assessment Regulation 2021 which requires (at s192(1)(c)) *"an analysis of feasible alternatives to the carrying out of the development, activity or infrastructure, considering its objectives, including the consequences of not carrying out the development, activity or infrastructure"*.
2. The visual impacts of the proposed development have not been adequately assessed and the Visual Impact Assessment is deficient.
3. The visual impacts of the proposed development will have a detrimental impact on the land value of future land subdivisions.
4. Noise: analysis has been taken against the relevant – and applicable – standards of the NSW Noise Policy for Industry however this does not provide specific guidance for rural locations nor does it account for the 'quiet enjoyment' of lands – rather measuring only for sleep disturbance. Considering the rural residential nature of the lands, any noise impacts will have a deleterious impact on the value of future land sales.

The proponent recognises the strategic drivers for the project and broadly supports their intent however requests that the determining authority and the proponent recognise the impacts of the proposal on the existing and future residential uses at Northview Estate. The intended battery infrastructure is not consistent with the desired future character of the area and will therefore have an impact on the right to quiet enjoyment by existing and future residents.

The proposed infrastructure will have a deleterious impact on the value of future sales and therefore Tindale seek compensation from the proponent to offset this impact that is derived from an independent valuation to determine the impact on sale price considering the noise and visual impacts resulting from the development and compensation to offset this impact.

2.0 The Subject Site

The site is known as Northview Estate at North Muswellbrook at 4 Sandy Creek Road Muswellbrook, known as Lot 98 of DP1181251. It is located approximately 2.2km northeast of Muswellbrook town centre.

The site is irregular in shape and has an area of c.45.24 Ha, with road frontages to Queen Street, Northview Circuit, Sepoy Crescent and Sandy Creek Road.

The site is zoned a combination of both R5 Large Lot Residential and R1 General Residential under the Muswellbrook Local Environmental Plan 2009.

The proponent has met with Muswellbrook Council and tabled proposed subdivision plans for the residual lands that are intended to be submitted to Council in 2023 with sale of these land occurring later that year. This pre-DA occurred prior to the submission of the EIS for the Battery Storage project.

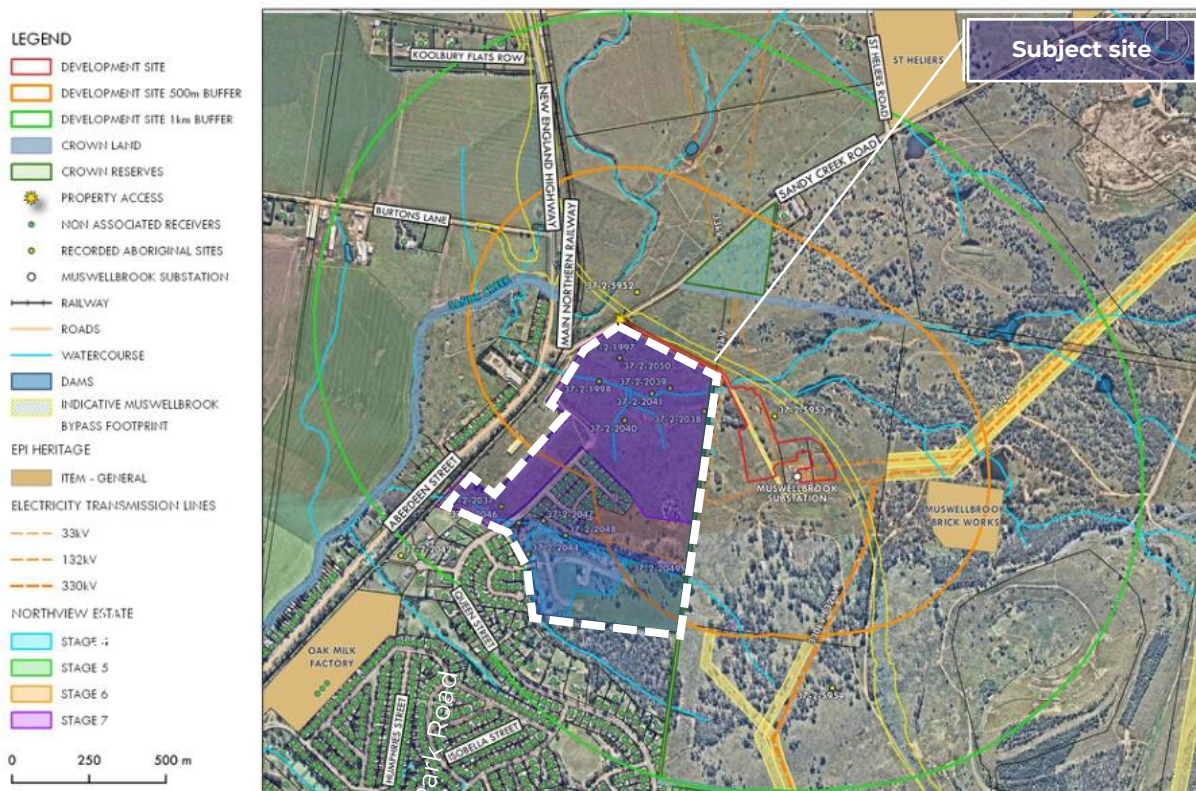


Figure 1 Site Context to the SSDA

Source: Ethos Urban & Premise EIS (August 2022)



Figure 2 **Subject Site**

Source: Ethos Urban & Nearmap

2.1 Site History

The site has as long history of planning approvals for residential uses as per the below.

2.1.1 DA 358/2004

- 50 lot subdivision of Part Lot 1 & 2 DP798186
 - Stage 1: 25 lots
 - Stager 2: 25 lots

2.1.2 DA 390/2006

- Application for Subdivision of Lot 50 DP1112082
- Consent granted 18 June 2007
- The consent was subject to a total of 63 conditions.

2.1.3 DA 232/2013

- Subdivision of 98 new residential lots over two stages
 - Stage 4 numbered 401 – 445
 - Stage 5 numbered 501 – 553
- Included in the subdivision is a drainage reserve and a residual lot for future subdivision
- Lots 411 – 417 and 501 – 508 include a restriction / easement for stormwater and vegetation
- The consent was issued 12 May 2014 and subject to a total of 47 conditions.
- The CC was issued 10 November 2008 as per correspondence from Council

3.0 Key Issues

3.1 Alternatives Considered

Division 5 of the *Environmental Planning and Assessment Regulation 2021* requires (at s192(1)(c)) “an analysis of feasible alternatives to the carrying out of the development, activity or infrastructure, considering its objectives, including the consequences of not carrying out the development, activity or infrastructure” (emphasis added).

Section 2.4 of the EIS refers to Analysis of Feasible Alternatives to the Project.

The EIS states that “option of proceeding with the project in another location was considered, however the availability of the existing Muswellbrook Substation and the nature of the site presented a feasible opportunity for the project”. It goes on to discuss two other BESS sites that are being developed however provides scant analysis of any feasible alternative locations.

3.1.1 Recommendation

Tindale seek a more detailed analysis of alternative locations for the proposed BESS.

3.2 Visual Impact Analysis

The key aspect of any Visual Impact Analysis is the ability to accurately identify, describe and assess the impact of the development. This is confirmed in two key Land and Environment Court cases – *Tenacity Consulting v Warringah [2004] NSWLEC 140* and *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor [2013] NSWLEC 1046* that are relevant to the Visual Impact Analysis process.

It is a long-established legal principle in Australia that no one has the right to a view. However, the legal system has acknowledged that views from a person's home can have considerable value.

To encourage a consistent approach to the address of the impact on private views through development, in 2004 the NSW Land and Environment Court established a planning principle in *Tenacity Consulting v Warringah [2004] NSWLEC 140* (Tenacity). While this principle was formulated in particular response to a clause in the relevant LEP (the Warringah Local Environmental Plan 2000) requiring reasonable sharing of views, this principle has been widely adopted by consent authorities even in the absence of such statements due to the public interest test of the EP&A Act.

The purpose of the visual impact analysis is to identify the nature and extent of impact based on an evidence base of visualisations. To do this, a photo showing the existing situation and a photomontage showing the future situation are prepared. This enables a good ‘side by side’ comparison and without it, there is no possible way upon which to judge impact.

The Visual Impact Assessment prepared in support of the proposal has not undertaken any montages and, therefore, cannot adequately assess the impact of the proposal on the visual catchment to key residential receivers at Northview Estate.

Visual catchment

The area in which the proposal may be visible, in totality or in part, is called the “Zone of Theoretical Visibility” (ZTV).

The ZTV is influenced by the interplay of a number of factors. These include physical factors such as landform, the alignment of streets, the nature of open space and vegetation (in particular that in parks or that is otherwise afforded some level of protection) and other factors such as distance, direction of view, angle of view and scale of the development.

Given the elevated position of the Northview site (on the ridgeline followed by Aberdeen Street), and the relatively steep elevation change to the east, the proposal will be visible from the west for a significant distance. Given the C3 Environmental Management zoning of the land surrounding the SP2 zoned Road Reserve, the desired future character expected for incoming residents to Northview Estate would have been for a rural setting.

The proposed battery storage facility is not consistent with the desired future character of the area and will have a detrimental effect on the land value of future housing lot sales.

3.2.1 Recommendation

Tindale seek photomontages prepared in accordance with the LEC policy:

<https://www.lec.nsw.gov.au/content/dam/dcj/ctsd/lec/documents/other/use%20of%20photomontages%20-%20final.doc>

Following this, Tindale request mediation to discuss possible mitigation measures to minimise visual impacts and / or consideration of financial compensation for loss of future revenues based on an independent valuation of land sales considering visual impacts of the proposed development.

3.3 Noise

The Noise Impact Analysis has been taken against the relevant – and applicable – standards of the NSW Noise Policy for Industry and deems that the proposal *“confirms that compliance with the assessment criteria established in accordance with the NPfI can be achieved for all receptors during the daytime, evening, and night-time periods under noise-enhancing meteorological conditions”*.

There are two points of conjecture however that have not been considered.

Firstly, the Amenity Criteria listed in the reports speaks to the project amenity noise level which seeks to protect against cumulative noise impacts from industry and maintain amenity for particular land uses. The Report's review of the surrounding area has identified *“that there are other industrial noise sources in the area, and that future industrial development in the area is likely”*. This assumption is disputed as the area is predominantly residential in nature, despite some land adjacent the highway that is likely to only contain highway-related uses (service stations etc are permitted in the zone).

Finally, whilst we accept that the applicable criteria is established by the NSW EPA for residential development and sleep disturbance, it is a 'once size fits all' approach that applies in central Sydney as it does to the rural fringes of Muswellbrook. The report does not take into account the fact that future purchasers at this development are moving to this location for the rural residential nature of the site (as determined by the R5 Large Lot Residential zoning) and the quiet enjoyment of these lands.

There will likely be an impact to the end sale of future residential lots at the Northview Estate.

4.0 Summary

The landowner of the adjoining lands to the Battery Storage System, Tindale Developments, has met with Council to progress the future subdivision of the residual lands at the site. From a review of the submitted documents, we are of the opinion that there will be an impact on these lands. The proposed development is not anticipated in the desired future character of the zone.

Whilst the impacts may be within 'recognised criteria' established by the relevant authorities, these do not account for potential impacts on the sale value of the future residential lots.

Tindale seek the following:

- Proper consideration of alternative sites for the battery storage system.
- Photomontages prepared to LEC requirements and proper assessment of visual impact.
- Independent valuation of impact to sale price considering the noise and visual impacts resulting from the development and compensation to offset this impact.

We welcome the opportunity to meet with the proponent to discuss further. Please contact the undersigned at your convenience to discuss this matter further.

Yours sincerely,



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