

Appendix GG

Detailed Review of all Statutory requirements applicable to Paling Yards Wind Farm

This Appendix should be read in conjunction with the Environmental Impact Statement (EIS) prepared by Tract Consultants as part of the Paling Yards Wind Farm project. In particular, this section follows on from the section 4 of the EIS, which contains a review of the relevant and applicable statutory requirements.

1 Commonwealth Legislation

1.1 Environmental Protection and Biodiversity Conservation Act 1999

The *Environment Protection and Biodiversity Act 1999* (EPBC Act) requires that the Commonwealth Government assess and approve any development proposal that may impact upon any of the following nine 'matters of national environmental significance' (MNES):

- World heritage properties.
- National heritage places.
- Wetlands of international importance (listed under the Ramsar Convention).
- Listed threatened species and ecological communities.
- Migratory species protected under international agreements.
- Commonwealth marine areas.
- Great Barrier Reef Marine Park.
- Nuclear actions (including uranium mines).
- A water resource, in relation to coal seam gas development and large coal mining development.

The Project is not within either a Commonwealth marine area or the Great Barrier Reef Marine Park; and the proposal does not involve a nuclear action, coal seam gas, or coal mining.

The MNES relevant to this project include:

- World Heritage Areas – The subject site is near the Greater Blue Mountains World Heritage Area. The bushland to the eastern side of the Site connects with listed national parks but is unlikely to be impacted by the proposal in any significant way.
- National Heritage Places – The subject site is near the Greater Blue Mountains Heritage Area. The bushland to the eastern side of the Site connects with listed national parks, but overall is unlikely to be impacted by the proposal in any significant way.

- Wetlands of International Importance – Four Wetlands of International Importance occur within 10km of the Site. However, the Project would have minor hydrological impacts and is not expected to impact on these wetlands.
- Listed Threatened Species and Ecological Communities – The Site contains one threatened ecological community listed under the EPBC Act and potential habitat for several threatened species. Impact assessments were undertaken, and it was concluded that the proposal would not have a significant impact on the assessed species.
- Listed Migratory Species – Six listed migratory species have the potential to occur within the Site. Impact assessment undertaken concluded that the proposal would not have a significant impact on the assessed species.

Therefore, the primary nationally environmental significant matters to be considered for this Project are any listed threatened species, ecological communities, and migratory species.

A desktop review of previous reports and existing databases was undertaken, which included the following:

- Review of the threatened species ecological data contained in NSW BioNet.
- Review of threatened and flora records within a 10 km radius of the subject site, contained in the NSW Energy and Science (EES) Atlas of NSW Wildlife (BioNet).
- Review of the MNES records within a 10 km radius of the subject site, using the Commonwealth Department of Agriculture, Water and the Environment (DAWE) EPBC Act Protected Matters Search Tool.
- Review of the NSW EES Threatened Species website¹.
- Review of the Commonwealth DAWE Species Profile and Threats Database².

Field assessments were undertaken during February 2021, October 2021 and 2022. No critically endangered plants, birds, mammals, herpetofauna or invertebrates have been recorded within 10km of the site.

The assessment done as part of the BDAR concluded that no additional matters of significance have been identified and that no MNES would be significantly impacted.

As of November 2013, the Commonwealth Government and the NSW Government (DPE) signed a bilateral agreement to allow the NSW planning system to undertake the singular environmental assessment process for projects that are to be considered under the EPBC Act.

A referral for a wind farm development across the Project Area was submitted to the Commonwealth Department of Environment and Heritage in February 2005. In March 2005, the Minister declared that the action was not a controlled action and approval under Part 9 of the EPBC Act was not required. It should be noted that since the original referral, the project has evolved with minor adjustments to of number of proposed WTGs, site footprint and turbine height. A previous decision issued by the Commonwealth Department of Environment in 2005 confirmed that the Proposal is “not a controlled action”.

The BDAR concludes that no MNES would be significantly impacted by the proposal and therefore referral to the Commonwealth Department of Environment is most likely not required. However, in accordance with Appendix H of the BDAR and if required, the Project could be referred to the Department of Agriculture, Fisheries and Forestry (DAFF) (previously Department of Agriculture, Water and Environment, DAWE) for comment and additional determination.

¹ NSW Government, *Threatened species*, NSW Environment and Heritage, Reviewed 5 August 2022, <https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species>

² Australia Government 2022, *Species Profiles (SPRAT)*, Department of Climate Change, Energy, the Environment and Water, Reviewed 5 August 2022, <http://www.environment.gov.au/cgi-bin/sprat/public/sprat.pl>

The Proponent is therefore prepared to lodge a new EPBC Referral to ascertain this and also in consideration of the dimensional envelope change for the proposed turbines. The new EPBC Referral is expected to be lodged with DAWE within the first quarter of 2023.

1.2 Native Title Act 1993

The *Native Title Act 1993* (NT Act) recognises the rights and interests for Aboriginal and Torres Strait Islander people in property matters relating to land and waters. Under this Act, a claim can be made to the Federal Court for a determination of native title.

A recent review of the NSW Sharing and Enabling Environmental Data (SEED) online mapping tool and the geospatial database of the National Native Title Tribunal indicated that there are no Native Title claims over the Project site at this time.

The Proponent has further engaged with Crown Land to initiate discussions around potential impacts of the wind farm on any land owned by Crown. These discussions are still at an early stage as the project is still in the concept design phase. Formal agreements with Crown will be made later on during the detailed design phase. It is however expected that the proposal would not negatively impact on any Crown Lands or Reserves.

1.3 Civil Aviation Safety Regulations 1998

The *Civil Aviation Safety Regulations 1998* (made under the *Civil Aviation Act 1988 (Cth)*) require that the Civil Aviation Safety Authority (CASA) be informed of any proposal to build a structure greater than 110m above the Australian Height Datum (AHD). This allows CASA to assess the impact of any structure on aircraft movements and to identify any associated requirements including the need for markings or lighting.

The *Civil Aviation Safety Regulations 1998* contain mandatory requirements in relation to the airworthiness, operations, licensing of aircraft and associated enforcement matters.

Aviation impacts are assessed in more detail under in the EIS.

1.4 National Airports Safeguarding Framework 2012

The National Airports Safeguarding Advisory Group (NASAG) was established by the Commonwealth Department of Infrastructure and Transport to develop a national land use planning framework called the *National Airports Safeguarding Framework* (NASF).

NASF Guideline D: Managing the Risk to Aviation Safety of Wind Turbine Installations (Wind Farms)/Wind Monitoring Towers, provides guidance to state, territory and local government decision makers, airport operators and developers of wind farms to jointly address the risk to civil aviation arising from the development, presence and use of wind farms and meteorological monitoring masts.

The framework enhances the current and future safety, viability, and growth of aviation operations at Australian airports through:

- the implementation of best practice in relation to land use assessment and decision-making in the vicinity of airports;
- assurance of community safety and amenity near airports;
- better understanding and recognition of aviation safety requirements and aircraft noise impacts in land use and related planning decisions;
- the provision of greater certainty and clarity for developers and landowners;
- improvements to regulatory certainty and efficiency; and

- the publication and dissemination of information on best practice in land use and related planning that supports the safe and efficient operation of airports.

The assessment of potential aviation impacts arising from the Project have been assessed against the guidelines.

1.5 Renewable Energy (Electricity) Act 2000

The Commonwealth *Renewable Energy (Electricity)* (RE Act) aims to:

- encourage the additional generation of electricity from renewable sources
- reduce emissions of greenhouse gases in the electricity sector
- ensure that renewable energy sources are ecologically sustainable.

These objectives are achieved through the issue of 'large scale renewable energy certificates' for the generation of electricity using eligible renewable energy sources. The RE Act identifies wind amongst a number of other renewable energy sources as eligible under the Commonwealth Government's Renewable Energy Target (RET). Certain purchasers (called liable entities) are required to surrender a specified number of certificates for the electricity that they acquire during a year.

Where a liable entity does not have enough certificates to surrender, the liable entity will have to pay renewable energy shortfall charge.

The Project will need to be accredited as a Renewable Energy Generator to create Renewable Energy Certificates (large scale).

1.6 Radio Communications Act 1992

The Australian Communications and Media Authority (ACMA) issue apparatus licences under the *Radio Communications Act 1992 (Cth)*. The ACMA is the federal government authority responsible for regulation and management of the radio communications spectrum.

To conduct (and assess) an Electromagnetic Interference Assessment (EMI) assessment as part of a wind farm project, information regarding radiocommunications licences in the vicinity of the Project must be obtained from the ACMA Register of Radiocommunications License (RRL) database.

A full review of the database has been undertaken as part of the assessment.

2 State Legislation

2.1 Environmental Planning and Assessment Act 1979 (EP&A Act)

The principal environmental planning legislation within NSW is the EP&A Act. The EP&A Act serves as the planning framework when assessing the environmental and planning merits of any development proposal.

Under Division 4.7, Section 4.36 of the EP&A Act, the NSW Government identifies certain types of development that are of state significance ('State Significant Development' or SSD). This includes developments such as those proposed for large-scale renewable energy generating facilities.

The Project triggers the criteria in Clause 20 of Schedule 1 of the *State Environmental Planning Policy (State and Regional Development) 2011* as it is development for the purpose of electricity generating works with a CIV of more than \$30 million.

Under the provisions within Division 4.3, Section 4.15 of the EP&A Act, the consent authority must consider, among other things:

- How the Project will encourage the proper usage of natural resources;
- The promotion and coordination of the orderly and economic use of development land associated with the Project;
- How ecologically sustainable development is to be encouraged for the Project; and
- How the Project will comply with the necessary consultation requirements with respect to government agencies, local government, the community and other affected parties.

All SSD projects must comply with the relevant Plans and Policies as indicated by the associated SEARs. Each of these matters are expected to be identified and assessed in detail during the preparation of the EIS.

Section 4.41 of the EP&A Act lists the authorisations that are not required for SSD. This includes:

- A permit under sections 201, 205, and 219 of the Fisheries Management Act, 1994, which is not applicable for this application.
- Approval under Part 4 'Effect of interim heritage orders and listings on the State Heritage Register', or an excavation permit under section 139, of the Heritage Act 1997, which is not applicable for this application.
- An Aboriginal heritage impact permit under section 90 of the National Parks and Wildlife Act 1974, which means that the need for this permit is extinguished and not applicable.
- A bushfire safety authority under section 100b of the Rural Fires Act 1997, which is applicable to 'Integrated Development' only.
- A 'Water Use Approval' under section 89, a 'Water Management Work Approval' under section 90 or an 'Activity Approval' under section 81 of the Water Management Act 2000, is not applicable in this instance.
- Section 4.41 also states that Division 8 of Part 6 of the Heritage Act 1977 does not apply to prevent or interfere with the carrying out of an SSD that is authorised by a development consent granted after the commencement of the Division.
- An SSD is further authorised by a development consent that includes a reference to any investigative or other activities that are required to be carried out for the purpose of complying with any environmental assessment requirements under this part in connection with a development application for any such development.

Section 4.42 of the EP&A Act lists the authorisations that cannot be refused if it is necessary for the carrying out of SSD that is authorised by a development consent and must be applied consistently. Authorisations of the following kind cannot be refused if they are necessary for carrying out an SSD that is authorised by a development consent under this Division and is substantially consistent with the consent:

- An aquaculture permit under section 144 of the Fisheries Management Act 1994, not applicable in this instance.
- An approval under section 15 of the Mine Subsidence Compensation Act 1961, not applicable in this instance.
- A mining lease under the Mining Act 1992, not applicable in this instance.
- A production lease under the Petroleum (Onshore) Act 1991, not applicable.
- An environment protection licence under Chapter 3 of the Protection of the Environment Operations Act 1997 (for any of the purposes referred to in section 43 of that Act).
- A consent under section 138 of the Roads Act 1993, which will be required prior to construction commencing.

- A licence under the Pipelines Act 1967, not applicable.

2.2 Environmental Planning and Assessment Regulation 2021 (EP&A Regulation)

The EP&A Regulations provides the overarching framework for regulating the NSW planning systems. The regulations provide key operational provisions which guide and outline planning and development applications. Specifically, Part 8 Division 2 of the regulations applies to this development and the application must comply with the State Significant Guidelines.

Appendix B of the EIS package consists of a table that assesses the general requirements of the SEARs and the regulation on the compliance off the EIS with the regulations.

2.3 State Environmental Planning Policy (Planning Systems) 2021

The Planning Systems SEPP incorporates provisions of state and regional development, Aboriginal land and concurrences and consents.

Part 2.2 of the Planning Systems SEPP identifies development which can be classified as SSD. Section 2.6 Declaration of state significant development, subsection (1)(b) states that development is declared to be state significant development for the purposes of the Act if—

(b) the development is specified in Schedule 1 or 2.

Schedule 1 Subclause 20 of the Planning Systems SEPP states:

*20 Electricity generating works and heat or co-generation
Development for the purpose of electricity generating works or heat or their co-generation (using any energy source, including gas, coal, biofuel, distillate, waste, hydro, wave, solar or wind power) that—*

(a) has a capital investment value of more than \$30 million, or

(b) has a capital investment value of more than \$10 million and is located in an environmentally sensitive area of State significance.

As the Project is for the purpose of electricity generating works and will have a capital investment value of more than \$30 million, it is classified as SSD.

The Planning Systems SEPP also clearly sets out at Clause 2.10(a) that Development Control Plans do not apply to SSD, regardless of the timing of commencement. Refer to the EIS for more information.

2.4 State Environmental Planning Policy (Transport and Infrastructure) 2021

The Transport and Infrastructure SEPP incorporates provisions for development related to infrastructure, educational establishments and childcare facilities, major infrastructure corridors, and the three NSW Ports. It further identifies certain electricity generating works that are permissible in rural, industrial, or special use zones with consent.

The Project is located on land currently zoned as RU1 Primary Production which is defined as a 'prescribed rural zone' according to the SEPP. Section 2.36 (1)(b) of the SEPP prescribes that 'electricity generating works on any land prescribed as rural, may be undertaken with consent.

In accordance with the Oberon LEP 2013, land zoned for RU1 Primary Production is a prescribed rural zone pursuant to the Transport and Infrastructure SEPP, therefore the Project is deemed permissible with consent.

Section 2.41 (3) of the SEPP prescribes that development for the purpose of a wind monitoring tower used in connection with the investigation or determination of the feasibility of a wind farm that has a generation capacity of more than 1 MW is exempt development, provided it complies with the provisions of section 2.41 (3)(a-d).

The SEPP further provides guidelines on development works relating to transmission equipment and substations that are deemed exempt development or permitted without consent. All transmission infrastructure, including transmission lines, the collector substation and switching station, will form part of this SSD application.

2.5 State Environmental Planning Policy (Resilience and Hazards) 2021

The *State Environmental Planning Policy (Resilience and Hazards) 2021* replaced the following SEPPs on 1 March 2022, which were consolidated and repealed on the same day:

- State Environmental Planning Policy (Coastal Management) 2018;
- State Environmental Planning Policy No 33—Hazardous and Offensive Development; and
- State Environmental Planning Policy No 55—Remediation of Land.

This Resilience and Hazards SEPP contains state-wide planning provisions to:

- guide land use planning within the coastal zone, in a manner consistent with the objects of the Coastal Management Act 2016;
- manage hazardous and offensive development; and
- guide the remediation of contaminated land and to minimise the risk of harm.

The *Resilience and Hazards SEPP* (Chapter 3) provides a legislative framework for the assessment of proposals that are identified as being 'potentially hazardous' and 'potentially offensive development' for the purpose of industry or storage. The policy requires the assessment of the proposals safety and pollution control performance.

A screening assessment of the hazards associated with the storage of dangerous goods on the site in accordance with the *Resilience and Hazards SEPP* has been prepared and is attached to the EIS packages as Appendix H. The report evaluated the construction and operations phases of the Project. The report has investigated the permissible quantities of dangerous goods and materials as stipulated in the SEPP. As the thresholds are not exceeded, the risks associated with storage and transportation of hazardous materials are unlikely to be significant or pose any risk to public safety. Consequently, the Project is not considered to be of a hazardous category. The guidelines also state that wind farms are not considered to be a potentially hazardous industry.

Considering the results of environmental impact statement report, type of the material stored, proposed mitigation measures for the Project, distance from nearby land users, there will be no potentially offensive impacts associated with the Project. Accordingly, a Preliminary Hazard Analysis is not required for this project.

The *Resilience and Hazards SEPP* (Chapter 4) provides a legislative framework for the assessment of proposals that are identified as involving remediation of land. It contains planning provisions from SEPP 55, which provides a state-wide planning framework for the remediation of contaminated land to minimise the risk of harm.

In particular, Chapter 4 aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment:

- by specifying when consent is required, and when it is not required, for a remediation work,
- by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work, and
- by requiring that a remediation work meet certain standards and notification requirements.

A review of the site did not reveal any areas of contamination within the Project Area.

2.6 State Environmental Planning Policy (Biodiversity and Conservation) 2021

The *State Environmental Planning Policy (Biodiversity and Conservation) 2021* (Biodiversity and Conservation SEPP), consolidated the following 11 SEPPs:

- SEPP (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)
- SEPP (Koala Habitat Protection) 2020 (Koala SEPP 2020)
- SEPP (Koala Habitat Protection) 2021 (Koala SEPP 2021)
- Murray Regional Environmental Plan No 2—Riverine Land (Murray REP)
- SEPP No 19—Bushland in Urban Areas (SEPP 19)
- SEPP No 50—Canal Estate Development (SEPP 50)
- SEPP (Sydney Drinking Water Catchment) 2011 (Sydney Drinking Water SEPP)
- Sydney Regional Environmental Plan No 20 – Hawkesbury – Nepean River (No 2 – 1997) (Hawkesbury–Nepean River SREP)
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Sydney Harbour Catchment SREP)
- Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment (Georges River REP)
- Willandra Lake Regional Environmental Plan No 1 – World Heritage Property (Willandra Lakes REP).

The *Biodiversity Conservation SEPP* incorporates provisions relating to vegetation in non-rural areas. It contains planning rules and controls from the Vegetation SEPP relating to the clearing of native vegetation in NSW on land zoned for urban and environmental purposes that is not linked to a development application.

The provisions of this SEPP do not apply to the Project Area or the proposed development and does not need to be further considered as part of the EIS.

2.7 Biodiversity Conservation Act 2016

The *Biodiversity Conservation Act 2016* (NSW) (BC Act) and the *Biodiversity Conservation Regulations 2018* provide greater protection for biodiversity, particularly threatened species and threatened ecological communities. Consistent with the issued SEARs, the relevant biodiversity impacts of the project are to be assessed in accordance with the BC Act, the BAM and the BDAR. This includes a detailed description of the proposed regime for avoiding, minimising, managing and reporting on the biodiversity impacts of the development over time, and a strategy to offset any residual impacts of the development in accordance with the BC Act.

The proposal requires an assessment in accordance with the BC Act to identify and describe biodiversity values within the Project Area. It requires preliminary recommendations in terms of avoidance, mitigation and/or additional assessment for biodiversity values.

The BDAR provides a summary on the threatened species, as listed in the BC Act, which have either been recorded within 10km of the survey area or are predicted to occur within the 10km of the site. Several endangered and vulnerable listed threatened species have been recorded within 10km of the site. The BDAR focusses on the portion of land affected by the proposal, a 50-metre buffer around the site's transmission lines and 100m buffer around the proposed WTGs. The purpose of the report was to assess biodiversity values and determine likely impacts related to the Proposal and associated works. Refer to the BDAR – Section 4 attached to the EIS package as Appendix N.

The project has assessed key areas of concern and considered the following:

- Site and landscape features
- Assessment of native vegetation, exotic vegetation and threatened species
- Impacts on threatened and protected species
- Avoidance and minimisations of impacts
- Recommendations and identification of mitigation measures.

2.8 Water Management Act 2000

The object of the *Water Management Act 2000* (NSW) (WM Act) is the sustainable and integrated management of the State's water for the benefit of both present and future generations. A controlled activity approval under the WM Act is required for certain types of developments and activities that are conducted in or near a river, lake or estuary.

Under section 4.41 of the EP&A Act, approved SSDs are exempt from the approval requirements of sections 89 (water use), 90 (water management work) or 91(2) (controlled activity of the WM Act).

SSDs are not exempt from the approval requirements for aquifer interference under section 91(3) of the WM Act.

The Project, as an SSD, is exempt from a controlled activity approval and does not require the application of the *Guidelines for controlled activities on waterfront land*.

Two Water Sharing Plans (WSPs) intersect with the Site:

- Water Sharing Plan for the Lachlan Unregulated and Alluvial Water Sources 2012; and
- NSW Murray Darling Basin Fractured Rock Groundwater Sources 2020.

The site is within a harvestable rights area established under Part 1 (section 53) of the WM Act. The Project Area comprises over 4,600 hectares resulting in a harvestable right for rainfall runoff of 368ML per year without requiring a licence.

Extraction from a surface water supply outside of the harvestable rights capacity or from an unregulated water source would require a water access licence (WAL) under Section 56 of the WM Act.

If one or more new groundwater production bores are to be installed, a WAL would also be required in accordance with the annual extraction limits and access rules of the relevant WSP.

Impacts on aquifers are not anticipated in this proposal because the construction activities are defined as having minimal impact on water dependent assets (in accordance with the NSW Aquifer Interference Policy 2012).

2.9 Fisheries Management Act, 1994

The Department of Primary Industries – Fisheries provided advice for consideration in the SEARs. They requested that an assessment and mitigation measures for key fish habitats, waterway crossings and riparian zones be included in accordance with the *Fisheries Management Act, 1994*

The objects of this Act are to conserve, develop and share the fishery resources of the State for the benefit of present and future generations. In particular, the objects of this Act include:

- to conserve fish stocks and key fish habitats
- to conserve threatened species, populations and ecological communities of fish and marine vegetation
- promote ecologically sustainable development, including the conservation of biological diversity and, consistently with those objects
- to promote viable commercial fishing and aquaculture industries
- to promote quality recreational fishing opportunities
- to appropriately share fisheries resources between the users of those resources
- to provide social and economic benefits for the wider community of New South Wales
- to recognise the spiritual, social and customary significance to Aboriginal persons of fisheries resources and to protect, and promote the continuation of, Aboriginal cultural fishing.

The BDAR considered impacts that affect water quality, water bodies and hydrological processes that sustain threatened entities. It confirmed that several ephemeral drainage lines, semi-permanent creeks and farm dams occur in the assessment area and Survey Area. Abercrombie River also occurs within the assessment area.

The Hydrology Assessment notes a number of ephemeral watercourses present within the Site, characteristic of its ridgeline location. Site drainage is to the south and west, toward the Abercrombie River which flows into the Lachlan River.

There is therefore the potential for impacts on water quality, water bodies and hydrological processes during both the construction phase and operational phase. Construction phase impacts can include erosion and sedimentation. Operational phase impacts can include an increased runoff from non-permeable surfaces. However, there are no confirmed ecosystem or species credit amphibian species confirmed for the Survey Area, but water quality may have generalised impacts on any threatened entity, not just pollution sensitive amphibians.

All WTG construction works are proposed to be greater than 40 metres from the high banks of any river, lake or wetlands. Similarly, access tracks or cabling are not required to cross any significant watercourses.

While not impacting on any aquatic species, the following was concluded:

- Ensure appropriate runoff management and mitigation measures are in place.
- There is a very low risk of run-on or run-off of concentrated stormwater flows.
- Construction sites within the Project Area generally present low erosion hazard.
- Sustainable water supply options will be pursued through consultation with landowners and relevant Government agencies, and appropriate licenses required as required.
- A detailed Soil and Water Management Plan (SWMP) must be prepared by a suitable qualified person.
- Impacts on water flows are not anticipated during the construction phase, with any potential impacts able to be managed by an Erosion and Sediment Control Plan (ESCP).

- A Construction Environmental Management Plan (CEMP) would be prepared post-approval.
- Ensure appropriate hazardous substance procedures are in place.

Section 4.41 of the EP&A Act lists the authorisations that are not required for SSD. This includes a permit under sections 201, 205, and 219 of the *Fisheries Management Act, 1994*, which is not applicable for this application.

Refer to section 6.17 of the EIS for more information regarding the site hydrology.

2.10 Local Land Services Act 2013

The *Local Land Services Act 2013* (NSW) facilitates the establishment of better management and delivery of local land services in the social, economic and environmental interests of the State in accordance with any State priorities for local land services.

This SSD application, including potential required vegetation clearing, is being assessed under Part 4 of the EP&A Act.

2.11 National Parks and Wildlife Act 1974

The *National Parks and Wildlife Act 1974* (NSW) (NPW Act) governs the establishment, preservation and management of national parks, historic sites, and other specified areas. The NPW Act also provides the basis for the legal protection and management of threatened native flora and fauna and Aboriginal sites within NSW.

Part 6 of the NPW Act provides protection for Aboriginal objects and places by making it an offence to destroy, deface, damage, or move them from the land. All Aboriginal objects within NSW are protected.

In most instances an Aboriginal Heritage Impact Permit is required to be obtained for any impact to an Aboriginal object or place. However, after assessing the Project as an SSD, the need for a permit under section 90 of the NPW Act is extinguished. All cultural heritage matters should still be managed according to the relevant statutory provisions and requirements, as captured in the SEARs.

To ensure accordance with the relevant parts of the NPW Act, the Proponent has conducted Biodiversity Assessment included under Appendix N of the EIS package, with an overview provided in section 6.5 of the EIS. The Proponent has further conducted an Aboriginal Cultural Heritage Assessment and Historic Heritage Due Diligence report included under Appendix Q and discussed in more detail in section 6.16 of the EIS.

2.12 Heritage Act 1977

The *Heritage Act 1977* (NSW) aims to protect and preserve items of non-Indigenous heritage significance. The Act provides for the protection of items of local, regional and state heritage significance, such as historic relics, buildings, structures and features. The Heritage Act defines 'environmental heritage' as those places, buildings, works, relics, moveable objects and precincts of Local or State significance.

The Act also requires onsite personnel to be aware of the archaeological provisions of the Act through preparing environmental management plans, such as an Environmental Management Strategy and Environmental Work Method Statement.

The implications of this Act on the Project have been assessed as part of the EIS in section 6.19.

2.13 Roads Act 1993

Section 138 of the Roads Act 1993 (NSW) (Roads Act) prohibits a number of activities, such as conducting work in, on or over a public road unless consent has been obtained from the appropriate roads authority.

Under section 138(1) a person must not, without consent of the appropriate roads authority:

- Erect a structure or carry out a work in, on or over a public road;
- Dig up or disturb the surface of a public road;
- Remove or interfere with a structure, work or tree on a public road;
- Pump water into a public road from any land adjoining the road; and/or
- Connect a road (whether public or private) to a classified road.

The site will primarily be accessed from Abercrombie Road, and approval will be required to connect to this public road. It is therefore likely that consent will be needed under this Act for the temporary closure of roads in order to construct and formalise the new access points. Road upgrades might also be required.

Formal applications for road upgrades under section 138 will be undertaken following post approval of this EIS.

The traffic and access assessment, including the transport route analysis, is discussed in more detail under section 6.8 and section 6.9 of the EIS report.

2.14 Rural Fires Act 1997

The *Rural Fires Act 1997* (NSW) (RF Act) provides for the preparation and mitigation of bush and other fires in local government areas and the protection of infrastructure and environmental assets (including economic, cultural, agricultural and community assets) from damage.

The main objectives of the RF Act are to:

- prevent, mitigate and suppress bush and other fires in NSW;
- co-ordinate bushfire fighting and bushfire prevention throughout the State;
- protect people from injury or death and property from damage as a result of bushfires; and
- protect the environment.

The need for an assessment of bushfire risk was identified within the SEARs. The RF Act imposes obligations on land occupiers to take all practicable steps to prevent the occurrence and spread of wildfire to adjoining lands from lands under their care and management. The Bushfire Risk Assessment identifies potential bushfire hazards associated with the use of bushfire prone land and demonstrates that the proposed wind farm can be designed, constructed and operated to provide for asset protection consistent with *NSW Rural Fire Service's guideline Planning for Bush Fire Protection 2019*.

The Site contains pockets of Bushfire Prone Land. However, the Project is not a subdivision for residential or rural residential purposes nor is it for a special fire protection purpose, hence issue of a bush fire safety authority under section 100B of the RF Act is not required.

The Bushfire Risk Assessment which is included as Appendix P considers the potential risks of associated with the spread of bushfires from the Project to the surrounds and provides measures to minimise the risk. Refer to section 6.14 of the EIS for more information.

2.15 Planning for Bushfires Protection 2019

NSW Rural Fire Service (RFS) *Planning for Bush Fire Protection 2019* is a planning document to link responsible planning and development control with the protection of life, property and the environment. It is the culmination of significant investment in scientific research and policy development to provide appropriate bushfire protection whilst still having due consideration for development potential and economic sustainability. *Planning for Bush Fire Protection 2019* applies to all development applications on land that is classified as bushfire prone land, which includes the Project site.

Consideration has been given to the following overall aims and objectives of *Planning for Bush Fire Protection 2019*:

- afford buildings and their occupants protection from exposure to a bushfire;
- provide for a defensible space to be located around buildings;
- provide appropriate separation between a hazard and buildings which, in combination with other measures, minimises material ignition;
- ensure that appropriate operational access and egress for emergency service personnel and residents is available;
- provide for ongoing management and maintenance of bushfire protection measures; and
- ensure that utility services are adequate to meet the needs of firefighters.
- Further controls are discussed as part of Appendix P.

2.16 Coastal Management Act 2016

The *Coastal Management Act 2016* provides a framework for the long-term strategy for the co-ordinated management of land within coastal zones. Part 3 Coastal management programs and manual provides specific requirements and applies to land identified as being within a coastal zone.

In particular, the *Coastal Management Act 2016* objectives are to manage the coastal environment of New South Wales in a manner which is consistent with the principles of ecologically sustainable development for the social, cultural and economic wellbeing of the people of the State. In particular the objectives of this Act are as follows:

- to protect and enhance natural coastal processes and coastal environmental values including natural character, scenic value, biological diversity and ecosystem integrity and resilience, and
- to support the social and cultural values of the coastal zone and maintain public access, amenity, use and safety, and
- to acknowledge Aboriginal peoples' spiritual, social, customary and economic use of the coastal zone, and
- to recognise the coastal zone as a vital economic zone and to support sustainable coastal economies, and
- to facilitate ecologically sustainable development in the coastal zone and promote sustainable land use planning decision-making, and
- to mitigate current and future risks from coastal hazards, considering the effects of climate change, and
- to recognise that the local and regional scale effects of coastal processes, and the inherently ambulatory and dynamic nature of the shoreline, may result in the loss of coastal land to the sea (including estuaries and other arms of the sea), and to manage coastal use and development accordingly, and
- to promote integrated and co-ordinated coastal planning, management and reporting, and
- to encourage and promote plans and strategies to improve the resilience of coastal assets to the impacts of an uncertain climate future including impacts of extreme storm events, and
- to ensure co-ordination of the policies and activities of government and public authorities relating to the coastal zone and to facilitate the proper integration of their management activities, and

- to support public participation in coastal management and planning and greater public awareness, education and understanding of coastal processes and management actions, and
- to facilitate the identification of land in the coastal zone for acquisition by public or local authorities in order to promote the protection, enhancement, maintenance and restoration of the environment of the coastal zone, and
- to support the objects of the Marine Estate Management Act 2014.

We note that the proposed works of the Wind farm are not being undertaken on land which is identified as a prescribed coastal zone as per the Lachlan Shire Council. As such, the provision and objectives of the *Coastal Management Act 2016* are not relevant to the proposed development and windfarm.

2.17 Protection of the Environment Operations Act 1997

The *Protection of the Environment Operations Act 1997* (NSW) (POEO Act) is the principal environmental protection legislation for NSW. The POEO Act establishes the NSW environmental regulatory framework and includes a licensing requirement for certain activities.

Environment protection licences are a central means to control the localised, cumulative and acute impacts of pollution in NSW³.

In particular they aim to:

- protect, restore and enhance the quality of the environment
- provide increased opportunities for public involvement and participation in environment protection
- ensure that the community has access to relevant and meaningful information about pollution
- rationalise, simplify and strengthen the regulatory framework for environmental protection
- improve the efficiency of administration of the environment protection legislation
- reduce risks to human health and prevent the degradation of the environment

In terms of waste, the POEO Act:

- Defines waste for regulatory purposes;
- Establishes management and licencing requirements for waste; and
- Defines offences relating to waste and sets associated penalties.

The POEO Act also establishes other instruments to guide environmental management, such as the *Protection of the Environment Policies*, and the *Protection of the Environment Operations (Waste) Regulation 2014*.

The operation of the PYWF will require an environment protection licence under the POEO Act. Section 48 *Licensing requirement – scheduled activities (premises-based)*, states that an activity that is declared to be a scheduled activity within in Schedule 1 of the POEO Act requires a license for the activity to be undertaken on the specified premises. Schedule 1 of the POEO Act confirms that electricity works (e.g., a wind farm) is

³ Licensing under the POEO Act: <https://www.epa.nsw.gov.au/licensing-and-regulation/licensing/environment-protection-licences/licensing-under-poeo-act-1997>

declared to be a scheduled activity if approval is required under the EP&A Act and when application is made as SSD.

2.18 Protection of the Environment Operations (Waste) Regulation 2014

The *Protection of the Environment Operations (Waste) Regulation 2014* (Waste Regulation) provides a platform to allow the NSW Environment Protection Authority (EPA) to protect human health and the environment from waste related impacts. The Waste Regulation also:

- Outlines the NSW Waste Levy Disposal System;
- Provides for certain reporting and record-keeping requirements in relation to scheduled waste facilities and scheduled landfill sites;
- Exempts certain waste streams from the full waste requirements;
- Makes requirements relating to the transport of waste to interstate destinations;
- Imposes requirements on brand owners and retailers to recover, re-use and recycle packaging; and
- Makes it an offence for residue waste to be applied to land that is used for the purpose of growing vegetation.
- The protection of human health and the environment from waste related impacts has been considered as part of this proposal.

2.19 Waste Avoidance and Resource Recovery Act 2001

The *Waste Avoidance and Resource Recovery Act 2001* (NSW) (WARR Act) promotes waste reduction and better use of resources in NSW. It includes provisions for waste strategies and programs, and for industry actions to reduce waste.

The WARR Act provides for the development of state-wide Waste Strategies to encourage the most efficient use of resources and to reduce environmental harm in accordance with the principles of ecological sustainable development and waste management.

The key objectives of the WARR Act are:

- to encourage the most efficient use of resources and to reduce environmental harm in accordance with the principles of ecologically sustainable development;
- to ensure that resource management options are considered against a hierarchy of the following order:
 - avoidance of unnecessary resource consumption
 - resource recovery (including reuse, reprocessing, recycling and energy recovery)
 - disposal.
- to provide for the continual reduction in waste generation;
- to minimise the consumption of natural resources and the final disposal of waste by encouraging the avoidance of waste and the reuse and recycling of waste;
- to ensure that industry shares responsibility for reducing and managing waste;
- to ensure the efficient funding of waste and resource management planning, programs and service delivery;
- to achieve integrated waste and resource management planning, programs and service delivery on a State-wide basis; and
- to assist in the achievement of the objectives of the POEO Act.

Waste minimisation and management is considered in more detail in section 6.18 of the EIS. Refer to Appendix X of the EIS package for a full copy of the Waste Management Plan.

2.20 Crown Land Management Act 2016

The *Crown Land Management Act 2016* (NSW) (Crown Land Management Act) governs how Crown land is used and managed for the benefit of the community in NSW. Crown land includes Crown reserves, state parks, land that is leased or licensed, minor ports, river entrances, caravan parks, places of cultural and community significance, certain submerged land of public waterways and Crown roads.

The objectives of the Crown Land Management Act are to:

- provide for the ownership, use and management of NSW Crown land;
- make the laws that apply to Crown land clear;
- ensure the department and Crown land managers consider environmental, social, cultural heritage and economic factors when making decisions about Crown land;
- ensure the people of NSW benefit from the consistent, efficient, fair and transparent management of Crown land;
- facilitate the use of Crown land by the Aboriginal people of NSW, recognising its spiritual, social, cultural and economic importance to them;
- allow the co-management of dedicated or reserved Crown land, where appropriate; and
- provide for the management of Crown land, following the principles of Crown land management.

These objectives and principles are applied to all aspects of the management and use of Crown land, including every tenure dealing and activity, and by all decision-makers.⁴

It is an offence to erect a structure, clear, dig up or enclose public land without lawful authority. The land must be assessed to consider capacities and suitable uses prior to any allocation action of Crown land including lease, sale, reservation, dedication, licence or permit.

There is a network of public roads in the area that are located on Crown land. In the event that the final cable network requires electrical cables to be installed under or over Crown public road(s) to connect the turbines to the substations, the Department of Lands would be consulted in order to determine the best means of gaining consent to install such underground cable crossings.

The Proponent will obtain the necessary licences for these works as required under Part 5 of the Crown Land Management Act.

3 Local Planning Legislation

3.1 Oberon Local Environmental Plan 2013

The subject site is located within the Oberon LGA and the site is subject to the *Oberon Local Environmental Plan 2013* (OLEP). The OLEP sets the provisions for land-use planning and development permissibility within the Oberon LGA.

The Project site is zoned as RU1 Primary Production under the OLEP. The objectives of the RU1 Primary Production zone are as follow:

⁴ Investment NSW 2022, *Welcome to Investment NSW: Working Together to Grow*, NSW Government, Reviewed 22 July 2022 (<https://invest.nsw.gov.au/sector-opportunities/renewable-energy/>)

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To enable other forms of development associated with primary production activities, which may require an isolated location or which support tourism or recreational activities.

Energy generating works are not listed as uses permitted or permitted with consent on the land and as such are prohibited. However, the proposal complies with the objectives of the RU1 zone as it will:

- enhance primary industry through the generation of clean renewable energy and therefore maintaining and enhancing the natural resource base
- enhance the diversity in the primary industry in the area by establishing a new compatible land use (wind farm) on the land that will not interfere or be in conflict with the existing use of the land (agriculture)
- not result in the fragmentation and alienation of resources lands as the proposed wind farm will be operated in conjunction with the existing land uses
- not be in conflict with the existing agricultural land uses, which will continue to operate in conjunction with the wind farm
- contribute significantly to the local economic growth through job creation, upskilling of workers and directly contributing to the regional economy.

Located to the north-west, west and south-west of the Project Area, the Abercrombie River National Park, is zoned C1 National Parks and Nature Reserves. To the north of the proposed transmission line are several lots which are also zoned for RU3 Forestry, and other southern located lots that are zoned RU2 Rural Landscape. The Proposal will not negatively impact these lands.

The proposed PYWF Project, classified as 'electricity generating works;' under the State and Regional Development SEPP 2011 and Infrastructure SEPP 2007, is permissible within the zone subject to development consent.

3.2 Oberon Shire Council Development Control Plan – Part O Wind Power Generation 2005

The Oberon Council's *Development Control Plan (ODCP) – Part O 'Wind Power Generation' 2005* (Part O) has been prepared and adopted by Oberon Shire Council to provide the community and developers with guidelines for future wind farm developments. This ODCP sits alongside the Council's existing ODCPs and applies to development relating to commercial wind power generation in the Oberon LGA.

Part O was adopted by Council on 13 September 2005 and was further amended on 11 September 2007. The objectives include to:

- Provide development controls that align with the LEP
- Provide development that will relate well to its surroundings
- Promote and encourage high quality of design and amenity
- Restrict power generation facilities to the Rural 1(a) (or RU1) zone only
- Provide for well-considered development that is environmentally and economically sustainable
- Minimise the likelihood of added costs to local ratepayers as a result of the development

- Promote sustainable energy.

The *SEPP (Planning Systems) 2021* clearly sets out at Clause 2.10(a) that Development Control Plans do not apply to SSD, regardless of the timing of commencement. As such, the ODCP does not apply to the PYWF. However, for completeness, the ODCP – Part O has been considered below.

Council policy seeks to ensure that wind power generation facilities and development in the Rural 1 (a) zone is carried out in a way that protects and promotes agricultural activities and meets the objectives of the *Oberon Local Environmental Plan*. A further Council objective is to ensure development achieves maximum benefit for both the developer and the community. While there will be new land use introduced within the Project Area, the primary use will remain “primary production” for grazing and associated agricultural activities. As such, the PYWF will continue to promote agricultural activities on this land. In addition, the PYWF will facilitate various community benefit initiatives, including neighbouring property benefit schemes and community grants. It will prioritise the employment of regional residents (where they have the required skills and experience) and will locally source non-labour inputs wherever possible.

Part O provides general policies to ensure appropriate planning and environmental outcomes are considered. These include:

- Locate development to minimise the adverse impacts on agricultural land
- Site development so that it minimises any adverse effects on adjoining land
- Development should not result in any added costs to ratepayers within the Shire
- The development must result in local employment opportunities
- Development should not be located on land characterised as having high scenic value and should not negatively impact on vistas.

The PYWF has been carefully designed to minimise any potential adverse impact on agricultural land and adjoining land, and as set out above, the primary use of the Project land will remain for grazing and associated agricultural activities. The Project will not result in any added costs to ratepayers of the Shire. As set out above, the Project will take a preferential approach to employing regional residents (subject to relevant skills and experience), and in addition, will focus on sourcing non-labour inputs locally. The PYWF is not located on land characterised as having high scenic value, and as detailed within the LVIA, the Project, including recommended mitigation measures will not negatively impact on any vistas.

For the reasons outlined above, the Project is expected to fully comply with the requirements of the ODCP – Part O.