

COUNCIL ASSESSMENT REPORT

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSHCC-207 – 2023/66
PROPOSAL	Battery Energy Storage System
ADDRESS	Lot 21 DP 731407, 105 Merriwa Road Denman
APPLICANT	Hunter Development Brokerage Pty Ltd
OWNER	Mr I H Burkill
DA LODGEMENT DATE	20 June 2023
APPLICATION TYPE	Development Application
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : Private infrastructure Development with capital investment value in excess of \$5-million.
CIV	\$16,900,000
CLAUSE 4.6 REQUESTS	NA
KEY SEPP/LEP	<ul style="list-style-type: none"> • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • Muswellbrook Local Environmental Plan 2009
TOTAL & UNIQUE SUBMISSIONS ISSUES KEY IN SUBMISSIONS	Two (2)
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Attachment A: Draft Conditions of consent • Attachment B: Proposed Plans Site Plan • Attachment C: Proposed Plans Detailed Compound Layout • Attachment D: Landscape Plans • Attachment E: Acoustic Assessment • Attachment F: Flood Impact Assessment • Attachment G: Risk Screening Assessment

	<ul style="list-style-type: none"> • Attachment H: Fire Incident Management Plan • Attachment I: Department of Housing, Planning Industry – Hazard Team Referral Advice • Attachment J Traffic Impact Assessment • Attachment K – Transport for NSW 4 April 2024 correspondence • Attachment L - Applicant Traffic Engineer Supplementary Advice 8 July 2024 • Attachment M – Department of Planning and Environment – Water General Terms of Approval • Attachment N – Public Submissions
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	Not Applicable
RECOMMENDATION	Approval subject to conditions
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	7 August 2024
PLAN VERSION	Select Date Version No
PREPARED BY	Hamish McTaggart
DATE OF REPORT	24 July 2024

EXECUTIVE SUMMARY

- The site subject to this development application is 21 DP 731407. The subject site is described in detail under Section 1 The Site and Locality heading of this report. Key site attributes relevant to the assessment of this application include:
 - The site has an area of 23.92ha
 - The site is zoned E4 General Industrial.
 - The land is vacant of any substantive development and is understood to have a long history of extensive agricultural use predating the establishment of the current land use zoning.
 - The land is identified as bushfire prone.
 - The land is identified as flood liable by the Muswellbrook Flood Risk Management Study and Plan. The part of the land on which the development is proposed is above the 1%AEP anticipated flood event and designed to be above the anticipated Probable Maximum Flood (PMF) Height identified by this plan
- The proposed development involves the construction and operation of a battery energy system at 105 Merriwa Road Denman (Lot 21 DP 731407). The full scope of works is described under the Section 2 'Proposal and Background' heading of this report. The scope of works being applied for does not extend to the underground high voltage line to connect the battery system to the grid. Approval for this grid connection has been sought separately through a Part 5 'development permitted without consent application through AUSGRID as the energy authority for the electricity network.

- The proposed development was amended on the 22 December 2023. The amendment to the application included submission of additional information and physical changes to the scope of the proposed development including the amendment of the battery location, changes to the site access arrangement, inclusion of additional earthworks to raise the finished ground level of the battery compound above the height of the probable maximum flood event relative to the site..
- The proposed development is Regionally Significant development under the provisions of the State Environmental Planning Policy (Planning Systems) 2021 as Private Infrastructure Development (a term which includes electricity generating works) with a capital investment value greater than \$5-million.
- The proposed development was notified on two occasions (the second notification period followed the amendment of the application and submission of additional information) in line with Council's Community Participation Plan.
 - The notification dates and outcomes of the initial notification period were - 5 July 2023 - 19 July 2023 – one (1) submission received.
 - The dates and outcomes of the second notification period were 8 January 2024 - 30 January 2024 – one (1) submission received – the submitter issued correspondence to formally withdraw their objection on the 5 July 2024 – the matters raised have still been referenced and commented on under the Community Consultation sub-heading of this assessment.

Matters raised by both submissions are considered and commented on under the Section 4.3 Community Consultation heading of this report.

- Council Officers have completed an assessment of the proposed development against the relevant heads of consideration of Section 4.15 of the *Environmental Planning Assessment Act 1979*. This assessment recommends that the development application be approved subject to recommended conditions of consent. Key findings of the Section 4.15 Assessment which informed this recommendation include:
 - The construction of the site access involves the carrying out of work on waterfront land. Accordingly, the proposed development is integrated development for the purposes of the Water Management Act 2000 for which Department of Planning and Environment – Water is an approval authority. The proposal was referred to this body who granted General Terms of Approval to the proposed development.
 - The proposed development is permissible with consent as development for the purpose of 'electricity generating works' under the provisions of Section 2.36 of the State Environmental Planning Policy (Transport and Infrastructure) 2021. Irrespective of conflicting provisions in the Muswellbrook LEP 2009 E4 General Industrial land use table.
 - The proposed development would be compatible with the requirements of relevant State Environmental Planning Policies (SEPPs), including, SEPP (Transport and Infrastructure) 2021, SEPP (Resilience and Hazards) 2021, & SEPP (Biodiversity and Conservation) 2021.
 - With the exception of the permissibility provisions of the Muswellbrook LEP 2009 E4 General Industrial land use table, to which the conflicting provisions of the SEPP (Transport and Infrastructure) 2021 take precedence, the proposal is compatible with all other relevant provisions contained in this environmental planning instrument.

- The proposed development is generally in accordance with the requirements of the Muswellbrook Development Control Plan 2009 (DCP) and conditions of consent have been recommended to ensure the development is carried out in accordance with certain DCP provisions.
- A Flood Impact Assessment has been prepared in relation to the proposed development. The proposed battery would be sited on part of the site that is outside the anticipated extent of the 1% AEP event, but remains within the extent of the Probable Maximum Flood (PMF). To manage related risks considered in the Flood Impact Assessment the application proposes that the battery compound be constructed at a height above the PMF flood event (this would see the battery pad constructed on an earthworks pad with a height of approximately 1m at its high point. Parts of the site vehicle access would be impacted by the 1% AEP event. Having regard to the limited operational access and maintenance requirements and the related outcomes of the Flood Impact Assessment this is not considered a limiting factor for the potential for the proposed development to be approved. The proposed development is in accordance of related flood impact considerations of both the Muswellbrook LEP 2009 and Muswellbrook DCP.
- A Risk Screening Assessment was prepared in relation to the proposed development to inform Council in the assessment of technological hazards related to the proposal and the application of SEPP (Resilience and Hazards) 2021 provisions related to potentially hazardous development. This assessment concluded that proposal would not comprise a form of potentially hazardous development and further examination of related considerations through a Preliminary Hazard Analysis was not required.
- The proposed development and Risk Screening documentation was referred to the Department of Planning, Housing and Infrastructure DPHI – Hazard Team. DPHI – Hazard Team provided Council with referral response which supported the progression of the proposed development without requirement for further hazard analysis and recommended conditions of consent to be included where development consent is granted to the proposal. These recommended conditions include a recommended condition requiring an updated Fire Safety Study (see draft condition 11). Their recommended conditions have informed the draft conditions put forward by Council.
- A Noise Impact Assessment was prepared in relation to the proposed development. The Noise Impact Assessment identified that the proposed battery system may be supported from an acoustic impact perspective subject to the installation of a 3m tall acoustic barrier and noise attenuation measures being installed into the battery shipping container modules.
- A landscape plan has been prepared in relation to the proposed development and has been informed by a related visual assessment. The landscaping proposed would provide a suitably dense visual screen within 5 years of its implementation where maintained. Where carried out in accordance with the landscaping proposed and having regard to the overall bulk and scale of the proposal Council Officers view that the proposal would not have a significant adverse visual impact on the locality.
- A review of potential ecological impacts of the proposed development is included under the 'likely environmental impacts' – flora and fauna subheading

of this report. The site proposed for development has a longstanding use for agricultural enterprise and is largely clear of substantive vegetation. The proposal would not involve the removal of any trees, clearing of land identified by the biodiversity values map or clearing of native vegetation to an extent that may cause for entry into the biodiversity offset scheme under the Biodiversity Conservation Act 2016. Accordingly, Council Officers support the progression of the proposed development from an ecological impact perspective.

- Site access is via a classified state road, the Golden Highway. Transport for NSW (TfNSW) is the road authority for the Golden Highway. Under the amended proposal vehicle access to the site would be via an existing vehicle access point, accordingly the proposal does not require concurrence from TfNSW. As TfNSW were referred the application prior to this amended they were re-referred the amended application. Advisory commentary was received by TfNSW. This commentary has been considered by both the applicant's and Council's Roads and Drainage Engineers.

Final advice from Council Roads and Drainage Engineers has informed traffic recommendations and final related conditions of consent including conditions requiring the preparation of a construction traffic management plan and undertaking improvements to the site access (recommended condition 19 and 20). Council Officers are satisfied that the proposed development may be supported from a traffic impact perspective.

- The following Government Agencies and Councils Officers/Sections were consulted through the assessment of this development application:
 - Department of Planning and Environment – Waster
 - Department of Planning, Housing and Infrastructure – Hazard Team
 - NSW Rural Fire Service
 - AUSGRID
 - Transport for NSW
 - Council Community Infrastructure Roads and Drainage Engineers
 - Council Environmental Planning Officer

No Government Agency or Officer referred the application raised an objection to the proposed development. As discussed above TfNSW raise matters for Council's consideration which are referenced through the report and inform final recommendations.

Referral responses are discussed under the referral heading of this report. Comments received from referrals have informed draft conditions.

- The proposed development is considered to be compatible with the public interest as a development that complies with other relevant provisions of the development assessment framework and Section 4.15 of the *Environmental Planning and Assessment Act 1979*, and as a development which would support the transition of the NSW energy grid to accommodate additional renewable power sources.

1. THE SITE AND LOCALITY

1.1 The Site

The development application relates to 105 Merriwa Road, Denman (Lot 21 DP 731407). Key site attributes related to the proposed development have been summarised in the dot points below:

- The land (Lot 21 DP 731407) has an area of approximately 23.29ha.
- The land is zoned E4 General Industrial under the Muswellbrook Local Environmental Plan (LEP) 2009.
- The land is vacant of any significant development. It is understood that the land is largely used for cattle grazing.
- A review of Council's electronic record keeping system in relation to the land identified that the industrial zoning of the land was established in 1999 through an amendment (amendment no.77) to the now repealed Muswellbrook LEP 1985, planning instrument. With the exception of this application, no development application has been lodged with Council in relation to the land following its rezoning.
- Details of land use zones and development adjoining the site have been referenced below:
 - RU1 Primary Production to the north.
 - RU1 Primary Production to the east.
 - The Denman Levee bank is located general east of the site
 - RU5 Village to the west. This land is not currently developed. The land is located in an urban release area and growth area for the Denman Township. A development application has recently been approved (DA 2022/92) which granted consent for the residential subdivision of this land. A narrow rail corridor is located between the site and this adjoining land zoned SP2 Infrastructure.
 - RU5 Village zoned land to the south – this adjoining land is the most northern extent of the Denman township. This land has previously been developed for residential use.
 - SP2 Infrastructure zoned land to the southeast. An electrical substation is located on this land which has an area of approximately 1ha and directly adjoins the site. This site also adjoins the Denman township and Golden Highway.
- An ephemeral stream is located on part of the land.
- The land is identified as flood liable by the Muswellbrook Flood Risk Management Study and Plan. The part of the land on which the development is proposed is above the 1%AEP anticipated flood event and designed to be above the anticipated Probable Maximum Flood (PMF) Height identified by this plan.

The image below identifies the subject site.



Figure 1 (Site Location Plan – Source: applicant SoEE)

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposed development involves the installation of a battery storage system (BESS) and associated structures.

The BESS proposed would be connected into the energy grid and have a capacity to store 4.98 Mega Watts of energy.

The proposed development was amended through the assessment of the development application. The development as described below is the application as amended. Key changes made to the proposal through its amendment related to the batteries proposed location, earthworks involved (to manage flood consideration) and site access.

Under the amended application the battery system would be located in the south western portion of the site. The proposed battery compound would be setback 84.2m from the southern property boundary, 50m from its western boundary and 174.4m from the eastern boundary. The image below identifies the battery compound location in context with adjoining properties.

Located adjacent the outside parameter of the battery compound shown on that plan below would be a 5m wide Asset Protection zone, which would include drainage and earthworks batters and a 10m wide landscaped area.

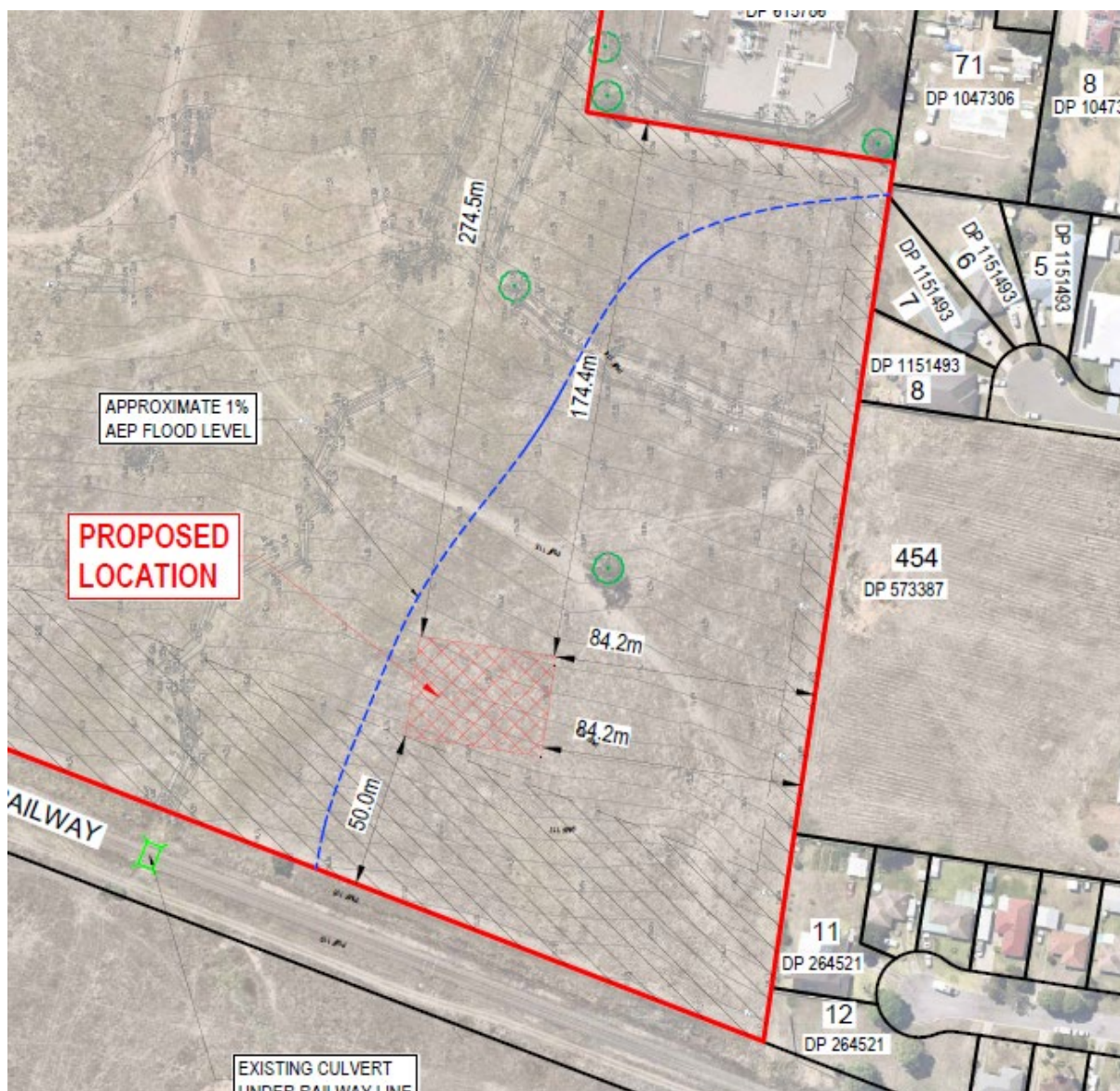


Figure 2 (Location Plan, source: applicant proposed plans)

To establish a pad for the proposed battery at a height above the anticipated PMF flood event the applicant has proposed to place fill beneath the proposed compound location. Batters attached to this fill would not extend beyond the proposed asset protection zone.

The table below references the existing contour heights from the submitted survey plans and the proposed compound RL heights from the proposed plans for each corner of the proposed compound.

Location	Existing height (approximate)	Proposed height	Difference (approximate)
North-eastern	115.0m	115.75m AHD	+0.75m
North-western	115.7m	116.50m AHD	+0.8m
South-eastern	114.8m	115.75m AHD	+0.95m
South-western	115.5m	116.50m AHD	+1.m

A description of the battery compound and an image of the compound layout design has been included below. The proposed compound would comprise:

- An area of 44.16m by 32.51m.
- Adjacent the compound perimeter would be a 5m wide Asset Protection Zone (APZ) with a 10m wide landscape area at the outside of the APZ
- Twelve (12) battery units, ten (10) of which would be installed on commissioning with an additional two (2) installed in 4 years to cover system degradation (See B1-B12 on related layout plan).
- Each battery unit would be comprised within a pre-fabricated container. Each unit would have dimensions of 9.34m by 1.73m and 2.52m height. The units would be a white colour. Battery containers would contain batteries, individual battery control systems, battery cooling and fire suppression systems.
- A power conversion system with dimensions of 14m by 3m and 2.52m height, white colour. The power conversion system would be used to control the flow of power (when charge is taken from the grid into the system and discharged into the grid) and the conversion of DC power from the battery to AC power to be discharged into the grid. The module would include power transformer, DC to AC inverter, AC to DC rectifier and switchboard (see PCS on related layout plan).
- A control room with dimensions of 2m by 6m and 2.52m height, white colour. The control room would be a prefabricated air conditioned building used for collection of transmission of data and the monitoring of system equipment (see CR on related layout plan).
- Auxiliary Services with dimensions of 2m by 3m, white colour. This compartment would be used to house main distribution board and equipment to power auxiliary equipment comprised into the battery system such as lighting, cooling system and the control room (see AS on related layout plan).
- Storage room 3m by 3m 2.52m high colorbond shed, evening haze colour sheeting. The storage shed would be used to store spare parts, support maintenance and operational activities (see SR on related layout plan).
- A 20,000 Litre water tank to provide static water supply for bushfire fighting located inside the compound.
- 20,000L water tank to provide static water supply for bushfire fighting located outside the compound.
- Fill is to be installed below the battery compound to establish the RL's referenced in the table above. The depth of the fill would vary through the compound to account for natural contours. The maximum depth of fill would be in the vicinity of 1metre.
- A compacted hardstand area within the compound comprised of compacted DGB20 base material to a depth of 0.15m.
- Compound fencing comprised of 3m tall Hush Panel acoustic fencing in Windspray grey colour.

- The Traffic Impact Assessment advised construction of this proposed facility will require a team of up to 10 workers working at the site over a period of 6 weeks with hours 7am – 5pm Monday – Friday and 8am – 1pm Saturdays.
- Operational the site will largely be managed remotely. The statement of environmental effects envisions 1-2 visits for general maintenance per month.

2.3 Background

A pre-lodgement meeting was not held prior to the lodgement of this development application.

The development application was lodged on **21 June 2023**. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

Table 1: Chronology of the DA

Date	Event
20 June 2023	Application lodged
7 July 2023 – 28 July 2023	The applicant was publicly notified and advertised (1 submission received)
9 August 2023	Request for Additional Information
30 August 2023	Panel Briefing
22 December 2023	Response to request for additional information and amendment of the development
8 January – 29 January 2024	Notification of the amended development application (1 submission received)
1 February 2024	Request for Additional Information 2 (land owner consent issue)
5 July 2024	Submission regarding land owner consent withdrawn

2.4 Site History

The site proposed development is located on a property with an area of approximately 23.29ha. The land is zoned E4 General Industrial under the Muswellbrook LEP 2009.

The sites industrial land use zone was established in 1999 under an amendment to the Muswellbrook LEP 1985. The land was zoned 4(b) Light Industry at the time before being updated to conform with the Department of Planning Housing and Infrastructure standardised land use zoning with the gazette of the Muswellbrook LEP 2009.

At present the subject site is vacant of any significant development. It is understood that the land is largely used for cattle grazing. A search of Council's electronic record keeping system did not identify any development application (with the exception of this application) for the development of the site following its 1999 rezoning.

3. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *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, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

It is noted that the proposal was considered to be:

- Integrated Development requiring General Terms of Approval from NSW Planning and Environment – Water (s4.46) pursuant to the Water Management Act 2000

3.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

(a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Biodiversity) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Muswellbrook Local Environmental Plan 2009;*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

Table 2: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Planning Systems) 2021	The development application is Regionally Significant Development as 'private infrastructure development with a CIV greater than \$5-million. The Hunter and Central Coast Regional Planning Panel is the consent authority for this development application.	Y
SEPP (Biodiversity and Conservation) 2021	Chapter 3 - requires consideration of the relationship of a development with koala habitat protection. The subject site does not contain any trees requiring removal. Council Officers are satisfied that the proposed development would not disturb a potential koala habitat thereby requiring further consideration against the SEPP.	Y
SEPP (Resilience & Hazards)	<p>Chapter 3: Potentially Hazardous and Offensive Development</p> <ul style="list-style-type: none"> • The proposed development does not comprise a potentially hazardous development. • A Risk Screening Analysis/Chapter 3 Assessment has been submitted in relation to the proposed development. • Informal/supplementary advice was provided to the applicant's team by the NSW Department of Planning and Environment (prior to title change to Planning, Housing and Infrastructure) related to the application of the SEPP to battery energy generating developments. This advice indicated that they did not consider battery energy systems with a threshold below 30MW to be potentially hazardous. • Council Officers referred the development application to the Department of Planning, Housing and Industry – Hazard Team who confirmed their advice and provided recommended conditions related to fire management which Council have incorporated into their recommended conditions of consent. <p>Chapter 4: Remediation of Land</p>	Y

	Section 4.6 – Council Officers are satisfied that the subject site is unlikely to be affected by any contamination requiring remediation for the development to progress in accordance with provisions related to contamination and remediation.	
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p>Chapter 2: Division 4 Infrastructure</p> <ul style="list-style-type: none"> Section 2.36 provisions identify the proposed development is permissible with consent as development for the purpose of electricity generating works on land zoned E4 General Industrial. The provisions of Section 2.7 establish that this instrument prevails in the event of any inconsistency with the Muswellbrook Local Environmental Plan 2009. <p>Chapter 2 Division 5</p> <ul style="list-style-type: none"> The application was referred to AUSGRID as the energy supply authority in accordance with the requirements of Section 2.48. AUSGRID comments have informed Council Officers recommendation and recommended conditions of consent. <p>Chapter 2 Division 17</p> <ul style="list-style-type: none"> The proposed development has frontage to a classified road (Golden Highway). The relationship of the proposal with this road has been considered against matters prescribed by Section 2.119. In considering these matters Council Officers have had regard to the Traffic Impact Assessment submitted, referral advice by Transport for NSW and Council Roads and Drainage Engineers. Council Officers are satisfied that the proposal may be supported subject to recommended conditions related to the improvement of the existing site access and the submission of a Construction Traffic Management Plan which includes traffic management measures. 	Y
LEP	<ul style="list-style-type: none"> Clause 2.3 – the proposed electricity generating works is not a permissible land use under the E4 General Industrial land use table. Notwithstanding this the proposal remains a type of development permissible with consent in that zone through the related provisions of SEPP (Transport and Infrastructure) 2021. Clause 5.21 Flood Planning – this Clause requires the consent authority to have regard to the flood planning area when determining development applications. A Flood Risk Assessment has been prepared in relation to the proposed development. The part of the site that the battery energy system is proposed is outside the mapped extent of the 1% flood event. The site access is within parts of the mapped 1% area Council Officers have considered the Clause provisions in context with the Flood Risk Assessment and are satisfied that the proposal may be supported as development compatible with this Clause 	Y

DCP	<p>Relevant Sections of the DCP have been reviewed in relation to the proposal. The proposed development is considered to be compatible with:</p> <ul style="list-style-type: none"> • Section 3 – Site Analysis • Section 10 – Industrial Development • Section 13 Floodplain Management • Section 16 Car Parking and Access • Section 20 Erosion and Sediment Control • Section 24 Waste Minimisation and Management • Section 25 Stormwater Management 	Y
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State Environmental Planning Policy (Planning Systems) 2021

Section 2.19 of the SEPP specifies that development identified by Schedule 6 is declared to be Regionally Significant Development for the purpose of the *Environmental Planning and Assessment Act 1979*.

Schedule 6(5) specifies the following as Regionally Significant Development:

Development that has an estimated development cost of more than \$5 million for any of the following purposes—

- (a) air transport facilities, electricity generating works, port facilities, rail infrastructure facilities, road infrastructure facilities, sewerage systems, telecommunications facilities, waste or resource management facilities, water supply systems, or wharf or boating facilities,*
- (b) affordable housing, child care centres, community facilities, correctional centres, educational establishments, group homes, health services facilities or places of public worship.*

The proposed development is a type of electricity generating works with a development cost of more than \$5-million. The total cost of the development is \$16.9-million. It is relevant to note that the total development cost is less than the value that might otherwise cause the development to be classified as State Significant Development.

Accordingly, the proposed development is classified as Regionally Significant Development per the *Environmental Planning and Assessment Act 1979* and the Hunter and Central Coast Regional Planning Panel is the consent Authority for the application. The development application has been processed according to provisions relevant to Regionally Significant Development.

State Environmental Planning Policy (Biodiversity) 2021

This SEPP establishes provisions related to the clearing of Koala Habitat. Chapter 3 of the SEPP applies to the Muswellbrook Local Government Area. In accordance with the SEPP, a consent authority is required to have regard to whether the land concerned is a potential or core koala habitat, and where land is identified as a core koala habitat a plan of management is to be prepared in relation to that habitat in accordance with provisions set out in the SEPP.

In considering whether land is a potential koala habitat a Council may be satisfied by information obtained by it, the applicant, from a person qualified and experienced in tree identification.

In relation to the proposed development Council Officers have reviewed the proposed plans and inspected the subject site and note that the:

- The subject property is presently used for agricultural grazing.
- The subject site is predominately clear of established vegetation including potential koala feed trees.
- The proposed development does not involve the removal of any trees. Accordingly, no koala feed trees would be impacted by the proposed development.

In view of the above Council Officers were satisfied that the land concerned would not comprise a potential koala habitat and thereby does not require further consideration against related SEPP provisions.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 3 Hazardous and Offensive Development

Chapter 3 of this SEPP establishes additional assessment criteria for the determination of development application identified as 'potentially hazardous' or 'potentially offensive development'.

A risk screening assessment was prepared by Riskcon and submitted in relation to the development application and the criteria for potentially hazardous development. This report advised that the proposed development did not meet the criteria for potentially hazardous development and thereby a Preliminary Hazard Analysis or further consideration under the SEPP provisions was not required for the development to proceed.

Significant to this finding was 'informal guidance' provided by Department of Planning and Environment around the application of their 'Applying SEPP 33' guideline. The guideline does not include thresholds of energy generation for battery energy systems as a criteria for classifying or not classifying such a system as potentially hazardous development. The report author advised that related advice had been sought from Department of Planning and Environment regarding the threshold which their hazard experts would view a battery system development to be potentially hazardous requiring a preliminary hazard analysis. Advice provided suggested that a battery system with a discharge capacity of 30MW or greater would be considered potentially hazardous, this proposed development falling below that threshold at 5MW. Correspondence between the applicant and the Department where this advice was received was provided to Council Officers.

Noting the outcomes of the Risk Screening Assessment were informed by informal Department advice Council Officers undertook to refer the application to the Department of Planning, Housing and Infrastructure – Hazards Team. The Department advised that they would assist Council in their assessment of the application and provided a referral response which confirmed their related advice and provided further assessment advice including recommended conditions of consent. The referral advice received is explored under the referrals heading and the advice is included as an Attachment for the Panel's information..

Council Officer's are satisfied that the proposed development would not comprise aa Potentially Hazardous Development pursuant to the SEPP and may be supported as

being compatible with the SEPP requirements, where carried out in accordance with related recommendations from the NSW Department of Planning, Housing and Infrastructure – Hazards Team. These recommendations include a requirement for the submission of a Fire Safety Study (an updated report from the Fire Incident Management Plan submitted with the application) prior to the commencement of work related to the battery installation.

Chapter 4: Remediation of Land

Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

In relation to the potential for the land to be subject to any contamination requiring remediation per the SEPP Council Officer's have noted that the part of the site subject to this development application is vacant of any prior development improvements. It is understood that historic use of the part of the site concerned has been for extensive agricultural grazing.

This development application involves the establishment of a battery facility on the site with periodic on-site operation and maintenance.

Noting the understood history of the site and the scope of the proposed development Council Officers are satisfied that the site is unlikely to be subject to any significant contamination requiring remediation in order for the proposed development to proceed in accordance with the requirements of the SEPP. Accordingly, Council Officers were satisfied that the proposed development may proceed as a development compatible with the SEPP.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 Division 4

Chapter 2 Division 4 includes provisions related to electricity generating works and solar systems.

The provisions of Section 2.36 contained in this Chapter are of particular relevance to this proposed development.

These provisions establish that development for the purpose of 'electricity generating works' may be carried out by any person on land in a 'prescribed non-residential zone'.

Definitions established for Chapter 2 Division 4 of the SEPP (S2.35) identifies the E4 General Industrial zone as a 'prescribed non-residential zone'. The land subject to this development application is zoned E4 General Industrial. It is also relevant to note that the S 2.35 definitions adopt the same definition of 'electricity generating works' as the Muswellbrook LEP 2009, which encompass energy storage. The proposed development is considered to be an 'electricity generating works' per the related SEPP definition.

The provisions of Section 2.36 of the SEPP establish the proposed development to be a type of development permissible on the land concerned.

Further provisions set-out in Section 2.7 of the SEPP make clear that the provisions of this SEPP prevail against inconsistencies with those provisions where they occur with the Muswellbrook Local Environmental Plan 2009 environmental planning instrument. This is relevant to observe as the land use provisions of the Muswellbrook LEP 2009 do not identify 'electricity generating works' as a type of permissible development in the E4 General Industrial land use zone.

Chapter 2 Division 5

Section 2.48 requires the referral of certain development within a proximity to electricity substations and electricity power lines to be referred to the electricity supply authority. The electricity supply authority for the Muswellbrook LGA is AUSGRID. The proposed development was referred to AUSGRID for comment in line with this requirement. Comments provided by AUSGRID are summarised under the referrals heading of this report and have informed Council's recommended determination.

Chapter 2 Division 14

Section 2.119 prescribes matters to be considered by a consent authority when considering a development with frontage to a classified road. The proposed development has frontage to and would derive access from the Golden Highway, a classified state road.

The relevant matters for consideration have been referenced and commented on below.

(2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and

Planning comment: the site subject to this development application does not have frontage to any alternate road that could provide vehicle access to the site.

(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—

(i) the design of the vehicular access to the land, or

(ii) the emission of smoke or dust from the development, or

(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and

Planning comment: A Traffic Impact assessment has been prepared in relation to the proposed development.

Related to traffic safety and management the Traffic Impact Assessment:

- Details construction traffic – construction would occur over 6 weeks. At its peak the total vehicles accessing the site would be 9 (4 light and 5 heavy vehicles). During the two (2) week site development and earthwork period peak traffic movements would not exceed 5x2 tipper with trailer movements (14 trips per hour).
- Operational traffic would not be more than 1 vehicle movement per fortnight.
- The applicant has proposed the upgrade of the site access with the Golden Highway in line with recommendations in the Traffic Impact Assessment.

- An expanded assessment of traffic assessment considerations is included under the likely environmental impacts – access and traffic sub-heading of this assessment.
- Council Officers are of the view that the proposal may be supported as not affecting the ongoing operation of the classified road where approved subject to conditions requiring the preparation and implementation of a traffic management plan through the construction of the proposed development and the improvement of the site access intersection with the Golden Highway.

(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Planning comment: the proposed development is not a type of development sensitive to traffic noise.

Summary comment: where the proposed development is carried out in accordance with recommended conditions of consent related to the improvement of the site intersection and the preparation and implementation of a Construction Traffic Management Plan (recommended conditions 19 and 20) Council Officers are satisfied the development would be in accordance with the requirements of S 2.119 of the SEPP (transport and Infrastructure) 2021.

Muswellbrook Local Environmental Plan 2009

The relevant local environmental plan applying to the site is the Muswellbrook *Local Environmental Plan 2009* (MLEP'). The aims of MLEP include:

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) to encourage the proper management of the natural and human-made resources of Muswellbrook by protecting, enhancing or conserving—*
 - (i) productive agricultural land, and*
 - (ii) timber, minerals, soils, water and other natural resources, and*
 - (iii) areas of significance for nature conservation, and*
 - (iv) areas of high scenic or recreational value, and*
 - (v) places and buildings of archaeological or heritage significance,*
- (b) to manage the urban areas of Muswellbrook by strengthening retail hierarchies and employment opportunities, promoting appropriate tourism development, guiding affordable urban form and providing for the protection of heritage items and precincts,*
- (c) to promote ecologically sustainable urban and rural development,*
- (d) to manage development in flood-prone areas by ensuring any obstruction, re-direction or pollution of flood waters will not have adverse consequences for the environment or increase the risk of endangering life or property,*
- (e) to enhance the urban amenity and habitat for flora and fauna,*
- (f) to protect and conserve—*
 - (i) soil stability by controlling development in accordance with land capability, and*
 - (ii) remnant native vegetation, and*
 - (iii) water resources, water quality and wetland areas, natural flow patterns and their catchments and buffer areas,*
- (g) to provide a secure future for agriculture by expanding Muswellbrook's economic base and minimising the loss or fragmentation of productive agricultural land,*
- (h) to allow flexibility in the planning framework so as to encourage orderly, economic and equitable development while safeguarding the community's interests and residential amenity, and to achieve the objectives of each zone mentioned in Part 2 of this Plan.*

The proposal is consistent with these aims as the proposal.

Zoning and Permissibility (Part 2)

Permissibility

The site is located within the E4 General Industrial zone pursuant to Clause 2.2 of MLEP 2009



Figure 4 (Source NSW Planning Portal Spatial Viewer, accessed 03/07/2024)

Section 2.3 of the LEP require a consent authority to have regard to the land use table for the zone to which the proposed development relates, including the types of development it specifies as being possible to carry out with or without development consent within the zone and development that is prohibited.

The land use definition relevant to the proposed development is 'electricity generating works', the land use definition has been included below:

electricity generating works means a building or place used for the purpose of—

- (a) making or generating electricity, or
- (b) electricity storage.

The land use table for the E4 General Industrial zone does not identify development for the purpose of energy generating works as a type of development permissible with consent or without consent. The effect of this is that development for this purpose is prohibited under the land the provisions of Section 2.3 of MLEP 2009.

While prohibited under the MLEP 2009 land use zone provisions the proposed development remains a development permissible with consent by virtue of *State Environmental Planning Policy (Transport and Infrastructure) 2021*. As referenced under the related heading above Section 2.36 of this environmental planning instrument includes provisions which identify electricity generating works as development permissible with consent in the E4 General Industrial zone. Provisions included in Section 2.7 of the SEPP make clear that the SEPP prevails in the instance of any inconsistency with the MLEP 2009.

Accordingly, and despite the inconsistency with the MLEP 2009 land use table, Council Officers are satisfied that the proposed development is a type of development permissible with consent through provisions of Section 2.36 State Environmental Planning Policy (Transport and Infrastructure) 2021.

Zone Objectives

Clause 2.3(2) of MLEP 2009 requires a consent authority to have regard to the land use zone objectives for the relevant land use zone, in this case E4 General Industrial, when determining a development application.

The land use zone objectives from the MLEP 2009 have been included below.

- *To provide a range of industrial, warehouse, logistics and related land uses.*
- *To ensure the efficient and viable use of land for industrial uses.*
- *To minimise any adverse effect of industry on other land uses.*
- *To encourage employment opportunities.*
- *To enable limited non-industrial land uses that provide facilities and services to meet the needs of businesses and workers.*

Council Officers have made the following observations related to the proposed development's relationship with the land use zone objectives:

- The bulk, scale and operation of the proposed development is not inconsistent with the scale and operating scope of industrial development encourage through the land use zone objectives.
- The proposed development would support the power storage requirements of the electricity grid. Given the proposed development attaches to a productive purpose it is considered to be complimentary to the General Industrial land use zone objectives.
- This development assessment has regard to the potential impact of the proposed development on other adjoining land uses and is supportive of the proposal from an environmental impact perspective.
- The proposed development would be support of employment opportunities.

Council Officers are satisfied that the proposed development would be compatible with the E4 General Industrial land use zone objectives and thereby is in accordance with the provisions of MLEP 2009 Clause 2.3(2).

a consent authority to have regard to the following when considering development with frontage to a classified road.

General Controls and Development Standards (Part 2, 4, 5 and 6)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 4** below.

Table 3: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Minimum subdivision Lot size (CI 4.1)	80ha	No subdivision proposed	NA

Height of buildings (CI 4.3(2))	12m	<p>The 3m high noise barrier is the tallest proposed structure. The maximum height of proposed fill related to the proposal would be approximately 1m. The maximum building height proposed from natural ground level would be approximately 4m</p> <p>When considered in context with the proposed earthworks the maximum building height would remain comfortably below the 12m maximum height requirement.</p>	Yes
FSR (CI 4.4(2))	1:1	<p>The Floor Space Ratio applicable to the subject site is 1:1.</p> <p>The subject site has an area of approximately 23ha.</p> <p>The total area of the proposed compound would be 1,500m², with proposed buildings having an even smaller footprint.</p> <p>The floor space ratio associated with the proposed development would be comfortably below the 1:1 ratio permitted by this clause.</p>	Yes
Flood planning (CI 5.21)	Specifies controls related to development within the flood planning area.	<p>this Clause requires the consent authority to have regard to the flood planning area when determining development applications.</p> <p>The extent of the flood planning area attaches to the identified parameters of the 1% flood event.</p> <p>The part of the site on which the battery compound is proposed is outside of the extent of the flood planning area.</p> <p>Parts of the site access would be within the identified extent of the 1% flood event and thereby the flood planning area.</p> <p>A Flood Risk Assessment has been prepared in relation to the proposed development to inform its assessment.</p> <p>Council Officers have made the following observations related to the proposals relationship with this clause:</p> <ul style="list-style-type: none"> ➤ The proposed works would have a negligible impact on flood behaviour within the flood planning area. ➤ Noting the proposed facility would not be permanently staffed site evacuation 	Y

		<p>is not viewed as an issue for this development.</p> <p>➤ The Flood Risk Assessment considers the implication of site access being affected by flooding and its impact on routine maintenance/inspections and recommends that maintenance is not undertaken when hazardous flood conditions are present.</p> <p>Council Officers are satisfied that the provisions of this Clause and the manner which they relate to the proposed development do not present any matters which limit the ability for development consent to be granted to the proposal.</p>	
Special Flood Considerations (CI 5.22)	Application of Clause	<p>The provisions of this Clause apply to development captured through the provision of sub-clause 5.22(2)(a) and (b) these provisions and the relationship with the proposed development are explored below.</p> <p><i>(a) sensitive and hazardous development—land between the flood planning area and the probable maximum flood</i></p> <p><u>Planning Comment:</u> The proposed development is located between the flood planning area and the probable maximum flood.</p> <p>The term sensitive development is defined under subclause 5.22(5) – the proposed development does not involve any of the types of sensitive or hazardous development defined in that sub-clause.</p> <p>Accordingly the proposed development is not viewed to be subject to the provisions of this Clause through CI 5.22(2)(a)</p> <p><i>(b) For development that is not sensitive and hazardous development—land the consent authority considers to be land that, in the event of a flood, may—</i></p> <p><i>(i) cause a particular risk to life, and</i></p> <p><i>(ii) require the evacuation of people or other safety considerations.</i></p> <p><u>Planning Comment:</u> The proposed development is located between the flood planning area and the probable maximum flood.</p> <p>Related to both items (b)(i) (ii) Council Officers note that the site is unmanned, has</p>	NA

		<p>low maintenance requirements and under the proposal the finished floor level of the development would be established above the height of the PMF event – negating the potential risk of flooding damaging the battery infrastructure and functionality.</p> <p>This being the case the proposal is not considered to present a particular risk to life, require evacuations or cause for other significant safety considerations as a result of flooding.</p>	
Terrestrial Biodiversity (CI 7.1)	NA	This Section applies to land identified as 'biodiversity' by the accompanying terrestrial biodiversity map layer. As the land subject to this development application is not identified as 'biodiversity' by that map the provisions of this Section do not prescribe additional matters requiring consideration in relation not this development application.	NA
Earthworks (CI 7.6)		Council Officers are satisfied that the proposed development would be compatible with the relevant assessment matters where carried out in accordance with recommended conditions of consent.	Yes
	<i>the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality.</i>	<p>The proposed fill would not have a significant adverse impact on drainage patterns.</p> <p>Drainage design is included in the civil plans submitted. The proposed development attaches to a large agricultural holding and would not significant alter drainage patterns or direct concentrated storm water volumes to any off-site discharge point.</p>	
	<i>the effect of the proposed development on the likely future use or redevelopment of the land</i>	<p>Where the proposed development is carried out in accordance with recommended conditions of consent the proposed fill is considered unlikely to have any substantive impact on the future development potential of the land.</p> <p>Where the development is approved it would be subject to a decommissioning plan. The current version of this plan specifies the pad is to be tested for any contaminants, excavated to 100mm below natural ground level, stockpiled and disposed of or-reused as informed by findings of the contamination investigation.</p>	

<i>the quality of the fill or of the soil to be excavated, or both</i>	Where approved a standard condition of consent would be recommended to ensure any fill imported is appropriately sourced clean fill.
<i>the effect of the proposed development on the existing and likely amenity of adjoining properties</i>	<p>The earthworks involved in the proposed development would raise the battery pad above natural ground level to a maximum height of 1m.</p> <p>When considered in context with the maximum height of the proposed battery compound, setbacks from adjoining property and having regard to earthworks related to the adjoining substation pad and drainage the bulk and scale of these earthworks are not considered likely to have a significant adverse impact on the amenity of adjoining properties.</p>
<i>the source of any fill material or the destination of any excavated material</i>	Where approved a standard condition of consent would be recommended to ensure any fill imported is appropriately sourced clean fill.
<i>the likelihood of disturbing relics</i>	<p>The site subject has previously been cleared and disturbed for agricultural use. The likelihood of relics is considered to be low.</p> <p>An AHIMS search has been carried out in relation to the site which identified no recorded artifacts in the vicinity.</p>
<i>the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area</i>	<p>The proposed battery pad is not located in close proximity to any waterbody.</p> <p>The establishment of the site access involves earthworks on waterfront land and across an ephemeral waterway.</p> <p>The proposed development was referred to Department of Planning, Environment And Industry – Water who issued General Terms of approval in relation to the proposal and the carrying out of work on water front land.</p> <p>Where the proposal is carried out in accordance with these General Terms of Approval the related Controlled Activity Permit and sediment and erosion controls implemented the proposed earthworks are</p>

		not anticipated to have any adverse impact on the watercourse or catchment.	
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The proposal is considered to be generally consistent with the Muswellbrook LEP 2009.

(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are no draft proposed planning instruments with provisions related to the assessment of the proposed development.

(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

- *Muswellbrook Development Control Plan 2009* ('the DCP')

A summary of the relevant Sections of the Muswellbrook Development Control Plan has been included below alongside an assessment of the proposed development against the related controls.

Section 3 Site Analysis

Council Officers are satisfied that the proponent has adequately considered the provisions of this Section and prepared the documentation accompanying the development application in accordance with the requirements of this Section.

Section 10 Industrial Development

The table below measures the proposed development against the relevant DCP controls specified by this Section of the DCP.

MUSWELLBROOK SHIRE COUNCIL DCP SECTION 8 RURAL AND ENVIRONMENTAL ZONE DEVELOPMENT		
<u>DCP REQUIREMENTS</u>	<u>COMPLIES</u>	<u>PLANNING COMMENT</u>
10.1.1 Setbacks (i) setback 10m from principle frontage	Yes	The proposed development would be setback in excess of 10m from all site boundaries.
10.1.2 Building Design Controls related to the use of	Yes (complies with objectives)	The proposed development involves buildings with a maximum height of 2.52m – while buildings would be visually screened by a

contrasting materials for buildings with a height greater than 2.5m		<p>combination of the 3m hush panel fence and landscaping.</p> <p>Having regard to the overall scale of the proposed development and the proposed visual screening Council Officers are satisfied that the proposal would be in accordance with related DCP objectives which attach to managing the visual impact of bulky developments. ad</p>
<p>10.1.3 Drainage and Stormwater</p> <p>(ii) submission of drainage plan</p> <p>(iii) compliance with S25 of DCP</p>	Yes	<p>Drainage information as been submitted as part of the proposed development.</p> <p>Stormwater from the proposal would be managed within the subject site. Council Officers have provided commentary regarding the proposals relationship with Section 25 of the DCP under a subsequenet heading and are satisfied that the proposal is consistent with related provisions.</p>
10.2.2 Landscaping	Yes	A landscaping plan has been prepared in relation to the proposed development. Council Officers are satisfied that this plan addresses related minimum landscaping requirements.
10.2.3 Visual Impact Related to Car Parking	NA	The proposed development does not involve the establishment of any formalised car park area.
10.2.4 Vehicle Movements and Access	NA	Parking requirements have been considered and commented under the sub-heading Section 16 Car Parking and Access. This assessment supports the progression of the proposed development without the requirement for the construction of any formal car park.
10.3 Services	NA	The proposed development does not have a permant on-site workforce and may be supported without the need for any additional utility services that require consideration under this sub-section.

Section 10 Summary comment

Having regard to the considerations and commentary in the above table Council Officers are satisfied that the proposed development would be consistent with Section 10 of the DCP – **Complies.**

Section 13 Floodplain Management

Flooding provisions established under this Section of the DCP related to industrial type development attach to considerations of the 1% AEP flood event in relation to that development.

The proposed battery compound is located outside of the flood planning area and the extent of the 1% flood event.

This notwithstanding and while not directly required by this Section of the DCP a Flood Risk Assessment has been prepared in relation to the development application. This Flood Risk Assessment has regard to the relationship of the proposed development with both the 1% AEP event and the probable maximum flood (PMF) event. To manage any safety/functional considerations of the facility infrastructure being impacted during the PMF event the proposal has been designed so that the finished floor level would be raised by earthworks to be above the anticipated PMF height while limitations on the use of the site access during flood events was considered to be of minor consequence noting the facilities limited staffing and maintenance requirement.

Council Officers are satisfied that the provisions of this Section of the DCP do not present any impediment to consent being granted to the proposed development.

Complies

Section 16 Car Parking and Access

This Section of the DCP does not prescribe a rate of off-street car parking relevant directly applicable to the battery systems proposed.

A Traffic Impact Assessment has been prepared in relation to the proposed development which references the DCP provisions for general industrial development and undertakes a merit assessment of off-street car parking requirements. This merit assessment is informed by the limited operational staffing requirements of the proposed battery facility which is anticipated to require 1-2 staff visits per month. This assessment notes that there is ample opportunity on-site, both within and outside of the battery Council for staff to park vehicles when undertaking this maintenance. Council Officers have accepted this and given the facilities limited staff visits are supportive of the proposed development progressing as a development compatible with the requirements of this Section of the DCP without the requirement of any off-street parking.

Complies

Section 20 Erosion and Sediment Control

This Section of the DCP requires specifies requirements related to the preparation of erosion and sediment control plans and their implementation through the carrying out of development.

The proposed development involves the importation of fill and earthworks to establish the raised pad below the battery compound. The site subject to the proposal does not adjoin

any areas with recognised sensitive environmental qualities. As there are no high risk factors that present an uncertainty to the ability for appropriate erosion and sediment control measures to be implemented through the carrying out of the development Council Officers are satisfied that the compliance with this Section of the DCP and the preparation of an erosion and sediment control plan in accordance with its requirements can be administered through standard related conditions of consent.

This strategy is consistent with Council's general approach to administering compliance with the DCP provisions set out under this part and related conditions of consent are included as draft conditions of consent (see draft condition 15).

Complies – to be administered through conditions.

Section 24 Waste Minimisation and Management

This Section of the DCP requires site waste minimisation management plans to be prepared for the carrying out and implementation of development.

Given the proposed development largely relies on pre-fabricated technical components and having regard to its limited operating scope minimal waste streams are anticipated. A waste minimisation management plan has been submitted in relation to the proposed development which promotes recycling where possible.

Complies

Section 25 Stormwater Management

The preamble of this Section of the DCP references that its application is structured toward approaches to manage stormwater in the urban areas of the Shire. While the site is not located in the urban area principles and objectives of this DCP section are of some relevance to considering the management of stormwater associated with the development, particularly the overflow disposal controls of sub-section 25.2.4 which reference requirements for developments to be designed so as to not adversely affect neighbouring properties by way of intensification, concentration or inappropriate disposal of stormwater across property boundaries.

Related to this Section of the DCP and the method of stormwater management and disposal Council Officers note:

- The proposed development is situated in a rural locality.
- A swale drain with surface spreader would be located adjacent the western pad boundary to capture overland stormwater flows from the west divert from the battery pad and disperse flows along the land contours.
- The proposed battery would be established on a gravel compound. The RL's at the eastern elevation of the pad would be 0.75m below the western elevation RL's. Stormwater from the hardstand area would discharge at the battery pad eastern elevation. At this location the property contour gradient falls gradually toward the Golden Highway. Stormwater leaving the battery pad would disperse into the 23ha properties natural drainage paths and gradually toward the Golden Highway away from adjoining residential properties. An existing contour bund protects the existing electrical sub-station to the east of the site from overland stormwater sheeting flows.
- Having regard to the scale, design and operation of the proposed development Council Officers are satisfied that there would not be a need to consider

stormwater quality improvement devices as part of the proposal and stormwater management system.

In view of the above considerations related to the stormwater management system proposed Council Officers are satisfied that the proposed development would remain compatible with this Section of the DCP.

Development Contributions Plan

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *Muswellbrook Section 94A Development Contributions Plan (2010)*

Muswellbrook Section 94A Contribution Plan (2010) requires the payment of a Section 7.12 Contribution (former Section 94A) at a rate of 1% of the total estimated cost of the development.

The total estimated cost of the development is \$ 16,900,000

Under the provisions of Council's Section 94A Plan a Section 7.12 Contribution of \$169,000 would be applicable to the proposed development.

Where approved Council Officer's would recommend a condition of consent requiring payment of the related contribution prior to the issue of a Construction Certificate.

(d) Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

(e) Section 4.15(1)(a)(iv) - Provisions of Regulations

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

- **Section 61(3) The Dark Sky Planning Guideline if applicable** - The proposed development is not located within the Local Government Areas referenced by this Clause. Through the provisions of the Dark Sky Planning Guideline a Council is still required to have regard to the Guideline when determining a Regionally Significant Development which is 'likely to affect the night sky' within in 200km of the Siding Springs Observatory. While the Guideline does not provide a comprehensive description of what types of development should be considered 'likely to affect the night sky'. In relation to the proposed development and the application of the Guideline to the proposal Council Officers note the following:

- The proposed development would be situated on or at the absolute periphery of the 200km radius. Related information has not been provided by the applicant, however using Six Maps Spatial Viewer Council Officers have measured the distance between the subject site and Siding Springs Observatory at approximately 197km.
- The proposed development would be lit with low level illuminating lights installed at the top height of the battery (below 3m compound fence height) and facing downward.
- Council Officers are of the view that illumination levels would not conceivably be any more intensive than various types of residential, commercial development or industrial development that would typically not be 'Regionally Significant' or Designated and as such may proceed in the locality of Denman and Muswellbrook, within the 200km radius without regard to the Dark Sky Planning Guideline.

Having regard to the scope of the proposal and its location on the periphery of the 200km radius Council Officers are satisfied that the proposal is not a type of development 'likely to affect the night sky' in context with their impression of the intended application of the Guideline and thereby are satisfied that the proposal may proceed without further consideration of the Guideline or Section 61(3) of the Regulation.

The provisions of the 2021 EP&A Regulation do not present any other matters requiring considered evaluation as part of the assessment of this application. The proposal may proceed as a development compatible with the matters for consideration prescribe through the EP&A Regulation 2021.

3.2 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- **Context and setting** – The proposal is considered to be generally consistent with the context of the site.

Related to the proposals siting and the consideration of its impacts on the rural locality Council Officers note:

- Council Officers are satisfied that the proposal as amended has been designed in a manner compatible with the provisions of Section 3 – site analysis of Council's DCP.
- The land proposed for development is zoned E4 General Industry. The bulk and scale of the proposed development is not inconsistent with the scale of development that may be reasonably expected to be established within that land use zone.
- An existing electrical sub-stations is located between the subject site and the Golden Highway. Visually the proposed development would be comparable in bulk and scale to this existing infrastructure. This plan proposes Council Officers are satisfied that the updated plans suitable consider and put forward screening treatments through the combination of compound fencing and landscape treatment. The consideration of the updated landscaping is touched on further under the points below.

- The proposed development would be setback 84m from adjoining residential zoned land.
- A considered landscaping plan has been prepared in relation to the proposed development. Where implemented the proposed compound fencing surrounding the facility would be largely obscured from public view once the landscaping is established and matured (which is anticipated to take 5 years). Where carried out in accordance with the landscape plan Council Officers are of the view that the development wouldn't negatively impact on the landscape setting where viewed from a public space or adjoining residence.
- Council Officers have recommended conditions of consent to ensure the landscaping is appropriately maintained and that considered reviews are undertaken of the landscape establishment and any landscaping adjustment within the 5 year landscape establishment horizon , and thereafter where required at the direction of Council (see draft condition 44).

In view of the above considerations Council Officers are satisfied that the proposed development would not have a significant adverse impact on the pre-existing local context and setting.

- **Access and traffic** – The proposed development as amended would be accessed via an existing access point from the Golden Highway. The Golden Highway is a classified State Road.

In considering the site access arrangement and traffic generation Council Officers have had regard to:

- The Traffic Impact Assessment submitted with the application.
- Referral advice provided by Council Roads and Drainage Engineers.
- Referral advice provided by Transport for NSW dated 4 April 2024 – (note: this referral commentary has been viewed as advisory comments only – an expanded discussion of the referral context is included under the referrals section of this report).
- Supplementary advice provided by the applicants Traffic Engineer dated 8 July 2024.

Key findings from the Traffic Impact Assessment have been referenced below:

- *The development during construction of the Project will generate up to an additional 14 vehicle movements to and from the site during the weekday AM and PM peak periods but only 2 vtpd during the operation of the Project. Construction of the BESS site is expected to take a total of 6 weeks.*
- *The existing peak hour traffic volumes on the state road network (Golden Highway) are below the minimum two-way mid-block capacity threshold of 1,270 vtpd for the Golden Highway. Traffic volumes on the Golden Highway will remain below these thresholds during the construction and operation of the Project therefore the Project will not adversely impact on mid-block traffic flows on the Golden Highway.*
- *Sidra Intersection modelling has demonstrated the site access off the Golden Highway will operate satisfactorily during construction and operation of the Project therefore will not adversely impact on the local and state road network.*
- *The existing access to be used as the construction access will need to be widened and upgraded as per **Figure 3 (included below)** of this report to comply with Australian Standard requirements. The access will need to be sealed from the edge of the road to the property boundary and provide suitable splays for use by heavy vehicles. Internal site roads may be gravel however will need to be 6 metres wide to comply with Australian Standard and NSW Rural Fire Service requirements.*
- *There is sufficient area on-site to accommodate the expected peak parking demand generated by the Project during both construction and operation with the provision of temporary car park within the site adjacent to the BESS site for a minimum 5 car spaces.*

- *The Project will not generate any increase in public transport demand therefore no nexus exists for the provision of new services or improved infrastructure resulting from the Project. Similarly, the Project will not generate any additional pedestrian or bicycle traffic therefore no nexus exists for the provision of additional pedestrian paths or cycle ways near the site.*

Having reviewed the Traffic Impact Assessment submitted Council Engineers provided referral advice that was supportive of the development application being approved subject to related recommendations and conditions.

Referral commentary received from TfNSW has been included as an attachment to this assessment. This commentary appears to have been prepared as advice for Council and lists various matters requiring consideration and information inputs.

Following the receipt of this advice supplementary commentary was provided by the applicants traffic Engineer and additional consideration given to the matters raised by Council Officers. Having regard to all Traffic Assessment information and referral advice provided it is the view of Council Officers that the proposed development may be supported from a Traffic Impact Assessment. To inform the consent authority on how this view has been arrived at commentary related to the traffic movements attached to the proposed development has been included below along with summary assessment commentary.

- Access to the subject site would be via an existing site access. Accordingly, TfNSW concurrence is not required to establish the site access.
- An image has been included of the existing sit access below.



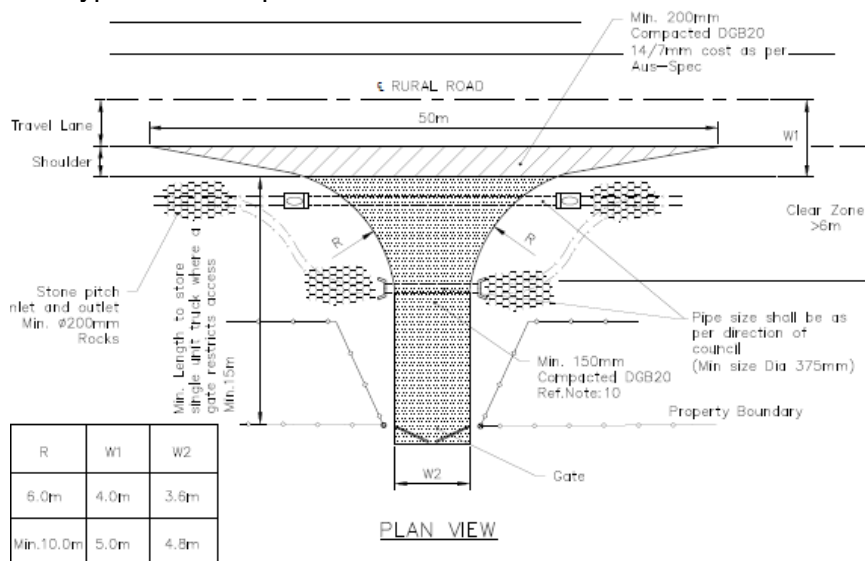
- The traffic impact assessment includes an analysis of existing road conditions, construction traffic attached to the proposed development and operational traffic. The Traffic Impact Assessment should be viewed for a complete analysis of traffic generation. Supplementary advice from the applicants Traffic Consultant asserts that the traffic analysis completed as adequate for the determination of the application. Council Engineers were supportive of the application informed by the analysis provided.

- The table below taken from the Traffic Impact Assessment shows anticipated vehicle numbers and types accessing the site during the construction stage.

Stage Description	Construction Period (weeks)	Heavy Rigid Tipper with trailer	Heavy Rigid Vehicles	19 metre Articulated Vehicles	Franna Crane	Light Vehicle Utilities per day	Maximum Heavy vehicles per day	Total Vehicles per day
Site development, earthworks, Pad construction, fencing and driveway	2	5				4	5	9
BESS installation, Plant work, site facilities & auxiliary equipment	2			16 (over 2 weeks)	12 (over 2 weeks)	5	3	8
Trade Connections	1		2			4	2	6
Commissioning	1					4		4

The Traffic Impact Assessment also references peak inbound and outbound movements during the 6 week construction phase would occur at a maximum of 14 vehicle trips per hour in the week 1-2 earthworks and site establishment stage.

- Operational traffic attached to the proposed development would be no more than 1 vehicle every 2 weeks.
- The Traffic Impact Assessment includes an 'intersection capacity assessment' – which recommends that a traffic control plan is put in place during the construction period to manage safety at the site access.
- The Traffic Impact Assessment includes an 'Access Assessment' which supports the site access as being suitable located for use by construction traffic
- The Traffic Impact Assessment proposes the upgrade and sealing of the existing site access . Council Officers have required the final access design to be prepared in accordance with Council's standard Rural Access Drawing. An image showing this typical access plan has been included below.



- TfNSW raised queries related potential oversized vehicle movements – supplementary traffic advice advises oversized vehicle movements are not presently proposed.

Summary commentary

Noting the limited duration and volume of construction traffic, the limited volume of operational traffic, the pre-existing site access and the proposed upgrade concept plan Council Officers are satisfied that the development application may be supported subject to related conditions requiring

- The upgrade of the site access (draft recommended condition 20 and 43).

- The preparation of a Construction Traffic Management plan (draft recommended condition 19)
 - The management of heavy vehicles through the construction period (draft recommended condition 19).
- **Utilities** – the applicant has submitted that the proposed development does not require any utility service connections outside of a connection to the electricity grid. Council has consulted with AUSGRID (energy supply authority) through the assessment of the application – additional related commentary is included under the referrals heading of this report.

The grid connection infrastructure has not been put forward as part of the scope of this project. The applicant has advised that the underground grid connection is to be constructed as development permitted without consent under Section 2.44 of the State Environmental Planning Policy (Transport and Infrastructure) 2021.

Related to other potential servicing needs the applicant has not proposed a water supply or on-site toilet to support operation staff. Noting that the facility once operational would require no more than 1-2 staff visits a month Council Officers have not raised objection to the progression of the development without service amenities.

Water would be required at the site to fill the on-site firefighting detention and likely for periodic plant watering. With no connection point to reticulated water would need to be sourced (most likely by being carted to the site). Where water is supplied through this method the periodic carting of water is not anticipated to significantly alter traffic attached to the proposed development and have an impact outside of that anticipated by the Traffic Impact Assessment.

Council Officers are satisfied that proposed development has access to suitable utility services to support its operation.

- **Heritage** – the subject site does not comprise a heritage item and is not located within a heritage conservation area.

The subject site is considered unlikely to contain items of aboriginal cultural significance not previously identified and which may be disturbed through the carrying out of works. Related to this point Council Officers note:

- An Aboriginal Heritage Information Management System (AHIMS) database search was carried out in relation to the subject site which recorded the results of which indicated no aboriginal sites or declared places on or near the subject site.
- The site has been previously disturbed and cleared of established vegetation related to previous agricultural use of the land.
- A Notice of the development application was issued to the Wanaruah Local Aboriginal Land Council in line with Council notification practices who did not write to Council in relation to the proposal or its potential to affect significant local aboriginal sites.

In view of the above Council Officers are satisfied that the proposed development would not have an impact on items of heritage significance, would not affect any known aboriginal site and that there is a low likelihood that previously unidentified relics are located within the subject site and may proceed from a heritage impact perspective. A standard condition of consent is recommended to remind the applicant of their legislated obligations in the event of an archaeology finds during the carrying out of works.

- **Flora and fauna impacts** – Council Officers are satisfied that the proposed development would not have a substantive impact on any significant ecological communities. Information informing Council's view in this consideration have been summarised below:
 - The site proposed for development has been extensively disturbed through its longstanding use for extensive agricultural pursuits.
 - The proposed development does not involve the removal of any trees.
 - The site has been inspected by Council Officers. No notable ecological communities were observed through the inspection of the site. Ground cover on the site was observed to comprised non-distinct pastoral fodder.
 - A review of the online biodiversity values map tool identified that the site subject to this development application is not identified as being within the biodiversity values map area which would cause the proposed development to require a Biodiversity Development Assessment Report under the – related values map threshold of the Biodiversity Conservation Act 2016.
 - The site subject to this development application is located on land with a minimum lot size of 1,000m² – under the related provisions of the Biodiversity Conservation Act 2016 the proposed development would not require the preparation of a Biodiversity Development Assessment Report where clearing of native vegetation attached to the proposed development not exceed 0.25ha (2,500m²). Informed by the scope of the proposed development and visual inspection of the site Council Officers are satisfied that clearing attached to the proposed development would not exceed this threshold and thereby require further consideration.

Having regard to the above considerations Council Officers were satisfied that the proposed development was unlikely to have any significant impact on flora or fauna, was unlikely to exceed any threshold under the Biodiversity Conservation Act 2016 under which further investigation of ecological standing would be required and thereby were supportive of the proposed development proceeding without requirement for further ecological investigations.

- **Noise and vibration** – A Noise Impact Assessment was prepared in relation to the proposed development by Mott McDonald in relation to the project.

The modelling undertaken with the Noise Impact Assessment identified that the project required acoustic treatments to mitigate noise and ensure the project did not exceed noise trigger levels identified for the project applying the NSW EPA's Noise Policy for Industry guideline. It should also be noted that the noise assessment gave the project a 5db(A) penalty in its modelling to factor in an additional degree safeguarding related to the tonality (rather than the actual noise volume) of the system and perception that the low tonal mechanical noise to have 'annoying' characteristics.

The Assessment modelled two further scenarios:

1. A scenario where acoustic fencing was applied to the development, and
2. A scenario where acoustic fencing was applied in addition to acoustic treatments to BESS battery containers.

The modelling undertaken suggested scenario 2 was required to achieve compliance with Noise Policy for Industry guideline. In response to these findings the applicant has proposed an acoustic barrier fence in line with the related Noise Impact Assessment recommendations. The acoustic consultant put forward a range of possible solutions to alter the acoustic plant in a manner that would achieve compliance with the modelled

scenario and noise guideline in Section 5.3 of that report. The report is included as an Attachment to this Section 4.15 assessment.

While a number of possible measures to alter the plant to manage noise were put forward a final related design was not provided to Council. Reasoning as to why that detailed information was not prepared at a DA stage is discussed in Section 5.5 of the acoustic assessment. The reasoning largely relates to the need to consider other technical design aspects of the plant including fire safety when finalising alterations. The report also acknowledges that there may be alternate design measures to those put forward in Section 5.3 that could also achieve a suitable noise control outcome for the development.

Having regard to this report and its conclusions Council Officers are of the view that the proposed development may progress from a noise impact perspective where a combination of acoustic fencing and acoustic treatments to the plant are incorporated into the proposed development.

After having regard to the plant acoustic treatment options and recognising that other technical matters will inform the final design implemented Council Officers have not objected to the finalisation of the detail design of the acoustic treatments at a Construction Stage in line with the report's conclusions. Council Officers have drafted related conditions of consent for the Panel's consideration and possible implementation where the application is determined by approval (draft condition 13 and 40).

- **Lighting/illumination** – the applicant has advised that the battery system is proposed to be lit permanently for security and monitoring reasons. Lighting proposed for installation is described in additional information correspondence to Council dated 15 December 2023 and advises that the battery will be lit permanently during the night by low-level lighting with additional soft white lights for security and maintenance which can be switched off. A lighting report was submitted related to the proposed lighting arrangement.

In discussions related to the determination of a battery application by the same proponent (DA 2023/57) the applicant advised that the night time illumination lighting installed at that facility would in fact be motion sensor lighting Council Officers would recommend that the installation of the night time lighting proposed with this application is also managed to be motion sensor lighting, a related condition has been recommended (draft condition 16).

The colour and temperature of lights is proposed to be 4000K with all lights installed below the top height of battery equipment (and thereby acoustic fence) facing downward. Where lighting is installed in such a manner light spill would be minimised and unlikely to be at nuisance levels.

Council Officers are satisfied that the proposed development may proceed from a lighting perspective subject to related recommended conditions of consent to ensure lighting it is installed in accordance with appropriate Australian Standards and industry best practice.

- **Natural hazards** – natural hazards have been considered through the assessment of the proposed development. The subject site is identified as bushfire prone and flood liable by Council land use mapping information. The consideration of these hazards has been detailed below. Council Officers are satisfied that these natural hazards

would be suitably managed and that these site constraints would not inhibit the development proposed.

Flood hazard -

The property proposed for development is identified as being affected by the 1% AEP flood event and the PMF flood event.

A Flood Risk Assessment has been prepared in relation to the proposed development.

1% AEP event – Related to the consideration of the 1% AEP event it is observed that:

- The part of the site on which the proposed battery compound would be located is outside the identified extent of this event. See the image below (the green represents the flood extent)



Figure 5 (source: BMT Flood Risk Assessment page 11)

- Safe use of parts of the site access would be limited during the 1% AEP event. This limitation is considered through the related Flood Risk Assessment. Noting that the facility would remain flood free during such events, that the site does not require regularly staffing or maintenance the temporary obstruction of site access during 1% flood events was not viewed as an impediment to the proposed development.
- The proposed development is consistent with both the requirements of the Muswellbrook LEP 2009 and Muswellbrook DCP related to the assessment of flood impacted development. See the related sections of this report for further commentary.

Having regard to the above Council Officers are satisfied that hazard considerations attached to the 1% AEP have been adequately considered related to the proposal and do not present any reason that would inform a recommendation to refuse consent to the proposed development.

PMF events – Related to the consideration of the 1% AEP flood event it is observed that:

- The part of the site on which the development is proposed is identified as being affected by the PMF flood event.
- While the Muswellbrook LEP 2009 and Muswellbrook DCP do not prescribe specific measures applicable to the assessment of this type of development where

it is impacted by the PMF flood event Council Officers have required specific consideration of this issue noting the proposals relationship with the energy grid and unknowns (to Council Officers) related to potential hazardous associated with the electrification of the infrastructure where affected by flooding.

- To manage potential related impacts the applicant has proposed to raise the finished floor level of the compound pad above the height of the PMF flood event, maintaining the infrastructure as flood free up to and including the largest anticipated event at the subject site.
- The Flood Risk Assessment submitted has regard to the PMF conditions and has informed recommendations related to the compound pad height.
- The proposed development is consistent with both the requirements of the Muswellbrook LEP 2009 and Muswellbrook DCP related to development of land affected by the probable maximum probable maximum flood event. See the related sections of this report for further related commentary.
- Recommended conditions of consent (condition 19 and 28) have been put forward to ensure that the proposed compound is constructed at the relevant AHD heights of 115.75m AHD (east compound boundary) 116.50m (west compound boundary) to be flood free during the PMF event.

Having regard to the above, and where the proposal is carried out in accordance with related recommended conditions, Council Officers are satisfied that hazard considerations attached to PMF flood event have been adequately considered related to the proposal and do not present any reason that would inform a recommendation to refuse consent to the proposed development.

Bushfire hazard - the site is also located in an area identified as Bushfire Prone. A Bushfire Threat Assessment was prepared in relation to the proposed development and Council provided an advisory referral to NSW Rural Fire Service to provide any contextual information owing to the sensitive nature of the development. This referral advised that the application may be supported from a bushfire safety perspective and provided recommended conditions of consent.

- **Technological Hazards –**

Hazardous Materials & Fire Safety

Potential technological hazards attached to the operation of the proposed facility have been considered in hazard assessment documentation prepared by Riskon Engineering. A risk screening document prepared in relation to the proposed development identified that the proposed development did not comprise a type of potentially hazardous development requiring further consideration of technological hazards in line with related provisions within the SEPP (Resilience and Hazards).

While the proposal was not identified to comprise a potentially hazardous development a Fire Incident Management Plan was prepared in relation to the proposal in line with provisions of Hazardous Industry Planning Advisory Papers owing to specific risk issues attached to battery fires. The conclusions of this report are included below:

A Fire Incident Management Plan per the HIPAP No. 2 guidelines was prepared for the site. The analysis performed in the FIMP was based on credible fire scenarios to assess whether the protection measures at the site were adequate to combat the hazards associated with the quantities and types of commodities being stored. Based on the assessment, it was concluded that the proposed designs in conjunction with existing fire protection adequately manage the risks.

The report information related to fire responses advises that it has been assumed that the facility would be staffed during business hours. This is inconsistent with other

operational information and requires revisiting alongside the fire management response outcomes informed by this assumption.

To assist Council in forming a final view on these hazard analysis documents, particularly as the risk screening document conclusions relied on informal advice provided by the Department of Planning, Housing and Infrastructure Council referred the application to the Department of Planning Housing and Infrastructure (DPHI) - Hazard Team.

These recommendations include a requirement for a Fire Safety Study as a condition of consent (condition 11), which would require the update of the Riskon Fire Incident Management Plan prior to work commencing on the battery installation. While the condition does not prescriptively reference the reports inaccuracy around the facility staffing it is considered that the broad requirements contained in the prescriptive condition were sufficient to ensure the final report was updated to capture this discrepancy. While Council has sought to make minimal alterations to the draft condition recommended by the Department the Panel may seek to be more prescriptive in required updates to the document to achieve the requirements of HIPAP Paper No.2.

Electromagnetic Emissions

Related to the potential for electromagnetic emissions attached to the proposed development. Documentation including a Certificate of Conformity has been submitted advising that the battery products comply with standards related to electromagnetic emissions and thus should not have an adverse impact on other electrical or other technological infrastructure operating in the locality.

- **Social and Economic Impact** – Owing to the limited operation workforce it is perceived that there would be limited local economic opportunity related to the siting of the development in Muswellbrook Shire LGA. While Council's Assessing Officer perceives the proposal wouldn't have significant local social or economic outcomes it is recognised that the proposed facility would contribute in a modest way to modernising and decarbonising of the energy grid which is an undertaking of significant social and economic importance at a State and National level.
- **Decommissioning** – a decommissioning plan has been put forward which indicates works involved to decommission the facility and restore the site at the conclusion of the project. This plan provides a general overview of decommissioning and the return of the site to an open grassed area.

No objection is raised to the direction of the decommissioning strategy. It is also acknowledged that the strategies and technologies currently in place around site decommissioning and likely battery recycling may significantly change between now and the date of the projects conclusion. This being the case, Council Officers have had an interest ensuring the decommissioning strategy remains in line with industry best practice and promotes material recycling wherever possible. A related condition of consent has been put forward informed by positions Council has put to the State Government related to State Significant battery projects and requirements imposed by the Hunter and Central Coast Regional Planning Panel in the determination of a previous battery project (DA 2023/57) (draft condition 48).

- **Construction** – construction of the proposed facility is not anticipated to have significant environmental impacts. Construction would be subject to conditions requiring works to occur over conventional day time construction hours.

While the construction of these facility would occur over an expected 6 week period. Anticipated workforce for the construction would be 10 individuals. Construction traffic estimates has been included in the Traffic Impact Assessment. This modelling anticipates light vehicle inbound and outbound movements at between 4-5 per day through the construction period with maximum heavy vehicle inbound and outbound movements as:

week 1-2 – 5 per day,
week 2-4 – 3 per day,
week 5 – 2 per day,
week 6 – 0 per day.

Accordingly, it is considered that the proposal will not result in any significant adverse impacts in the locality as outlined above.

3.3 Section 4.15(1)(c) - Suitability of the site

Council Officers are satisfied that the site characteristics are conducive to the proposed development. In forming this view Council Officers have observed:

- The proposed development is permissible with consent at the subject site and E4 General Industrial land use zone through the provisions of the SEPP (Transport and Infrastructure) 2021.
- The subject site is identified as bushfire prone. The provisions of Planning for Bushfire Protection 2019 have been considered through this assessment and related comments provided by NSW RFS confirming that the proposed development may proceed from a bushfire safety perspective.
- The subject property is identified as flood liable by the Muswellbrook Flood Risk Management Study and Plan 2019. The part of the site on which the development is proposed is located outside of the flood planning area, 1% AEP event extents and the earthworks proposed would ensure the finished floor level of the premises would be established above the maximum PMF flood height. A related Flood Risk Assessment has been prepared in relation to the proposed development and the consideration of this issue. Council Officers are satisfied that this constraint has been adequately addressed and does limit the site suitability for the proposed development.
- A Noise Impact Assessment was carried out in relation to the proposed development which was supportive of the proposal progressing from acoustic impact perspective subject to related noise attenuation measures.
- AUSGRID have been consulted through the assessment of the development application and related design details are advanced related to the connection of the proposal to the energy grid.
- Landscaping has been incorporated into the proposed development to enhance the appearance of the proposed development and manage its visual impact on the existing landscape.

3.4 Section 4.15(1)(d) - Public Submissions

The proposed development was publicly notified on two (2) occasions in line with the requirements of Council's Community Participation Plan. The application was first notified following the lodgement of the development application and in a second period after the amendment of the application and submission of additional information.

The dates and outcomes of both notification periods are included below.

Notification Period 1

Public notification through Council's website, Facebook and the written notification of adjoining land owners between 5 July 2023 and 19 July 2023.

One (1) submission was received through this notification period.

Notification Period 2

Public notification through Council's website, Facebook and the written notification of adjoining landowners between 8 January 2024 to 30 January 2024.

One (1) submission was received through this notification period – this submission was made by a person who had not previously made a submission to Council related to the application. This submission was later withdrawn by the submitter.

Summary

The matters raised by the submissions are considered and commented on under the S 4.3 Community Consultation heading of this report.

It is considered that the matters raised by the submissions have been adequately considered through the assessment of the development application and the proposal may proceed to be determined.

3.5 Section 4.15(1)(e) - Public interest

The proposed development is compatible with the public interest. The proposed development would:

- Support the energy grid and the renewable energy transition.
- Comply with the relevant local assessment provisions established by the Muswellbrook LEP 2009 and Muswellbrook DCP 2009.
- Be carried out in a manner that is unlikely to result in any significant adverse environmental impacts.
- Create economic activity related to the battery storage offered to the energy grid, the construction of the development and its operational maintenance.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in Table 5.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 4: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
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Concurrence Requirements (s4.13 of EP&A Act)			NA
Referral/Consultation Agencies			
NSW Rural Fire Service	S4.14 – EP&A Act Development on bushfire prone land	<p>An advisory referral was provided to NSW RFS to provide Council with advice related to the consideration of bush fire management risks related to the proposed development and the application of Planning for Bushfire Protection 2019.</p> <p>NSW RFS provided comments to the application as amended dated 11 January 2024. These comments raise no objection to the proposed development and include recommended conditions of consent which have informed the draft conditions put forward by Council.</p>	Y
Electricity supply authority	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	<p>The proposed development was referred to AUSGRID as the electricity supply authority relevant to the Muswellbrook LGA.</p> <p>In correspondence dated 24 July 2023 AUSGRID provided correspondence which raised no objection to the application and advised of information related to the construction of the proposed development.</p> <p>This correspondence was provided to the applicant with Council's request for additional information to consider and advance. In their response to additional information the applicant provided details advising that detailed electrical network plans had been prepared for construction in line with related AUSGRID advice and that these had been endorsed by AUSGRID.</p> <p>AUSGRID has also provided the applicant a letter of support to the project which references the importance of the batteries proposed to the energy grid. This letter was included the applicant's response to Council's request for additional information.</p>	Y
Department of Planning Housing and Infrastructure – Hazards Team	The Risk Screening Assessment prepared in relation to the proposed development relied on informal advice from the Department of Planning Housing and	<p>A response to this referral was received 6 February 2024. This response is included as an attachment to this report.</p> <p>The response advises that the Department would support the proposed development without further requirement for a Preliminary Hazard Analysis, assess the risk to surrounding</p>	Y

	<p>Infrastructure related to the energy generation threshold at which the proposed battery may be viewed to comprise a potentially hazardous development (The HIPAP papers do not provide a risk screening threshold for energy generation).</p> <p>To inform Council's view on the informal advice and hazard considerations attached to the proposed development more generally an advisory referral was issued to DPHI's – Hazard Team.</p>	<p>land uses as allow and puts forward recommended conditions of consent where the application is approved. These recommended conditions include a requirement for a Fire Safety Study in line with the provisions of HIPAP Paper No 2 'Fire Safety Study Guidelines'.</p> <p>The recommendations of the DPHI – Hazard Team have informed related conditions in the draft conditions document that Council has prepared for the Panel's consideration.</p>	
Transport for NSW	Advisory	<p>The original development design involved the establishment of a new site access to the Golden Highway. This required referral to and concurrence from Transport for NSW. This referral was responded to with a request for information dated 19 July 2023.</p> <p>This request for information was actioned by the applicant. When the application was amended on the 22 December 2023 the application included a Traffic Impact Assessment and proposed the use of an existing site access.</p> <p>As the amended proposal involved the use of the existing site access the referral of the development to Transport for NSW is not a legislative requirement for this assessment. Given the application was initially referred to Transport for NSW and advisory referral was provided to TfNSW to update them on the proposal and provide them with the opportunity to provide any further comment.</p> <p>Transport for NSW provided an additional response dated 4 April 2024. Informed by the language in the cover letter and the closure of the related Planning Portal CNR case by TfNSW</p>	NA

		<p>Council Officers are of the view that this correspondence has been issued as advice.</p> <p>While the correspondence does not support or oppose the development a number of matters are listed in Attachment A of the letter as matters requiring consideration or further consideration in the development assessment. The letter correspondence has been included for the Panel's information alongside the related Traffic Impact Assessment.</p> <p>In attempt to confirm TfNSW view on the standing of this advice letter Council issued related correspondence dated 19 April 2024 and 2 July 2024. TfNSW did not provide a written response to this correspondence and the queries raised.</p> <p>To inform Council in considering the TfNSW advice through this assessment Council Officers have given consideration to:</p> <ul style="list-style-type: none"> ➤ The Traffic Impact Assessment submitted with the application ➤ Referral advice provided by Council Roads and Drainage Engineers ➤ Supplementary correspondence provided by the applicant's Traffic Consultant dated 8 July 2024. <p>Council Officers are satisfied that suitable traffic assessment information has been provided to inform the determination of the development application and the proposal may be determined subject to related conditions regarding:</p> <ul style="list-style-type: none"> ➤ The upgrade of the site access. ➤ The preparation of a Construction Traffic Management plan ➤ The management of heavy vehicles through the construction period. <p>An expanded discussion of traffic assessment considerations is included under the likely environmental impacts – access and transport sub-heading of this report.</p>	
Integrated Development (S 4.46 of the EP&A Act)			
Department of Planning and Environment – Water	S89-91 – Water Management Act 2000 Controlled Activity Permit	The site access for the amended proposal intersects an ephemeral waterway. The proposal thereby involves construction on waterfront land and a Controlled Activity Permit is required form DPE – Water.	Y

		The proposal was referred to DPE – Water as integrated development who issued general Terms of Approval for the proposed development to proceed dated 9 April 2024.	
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4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 6**.

Table 5: Consideration of Council Referrals

Officer	Comments	Resolved
Community Infrastructure (Roads and Drainage)	<p>Council's Engineering Officer reviewed stormwater, flooding and traffic considerations related to the proposed development.</p> <p>Referral comments made no objection to the proposal and put forward recommendations considered below and related comments regarding their consideration:</p> <ol style="list-style-type: none"> 1. The driveway is to be constructed in concrete to suit heavy duty vehicles for a minimum distance of 5m x 4m including construction joints past the site boundary, with drainage upgrades to the frontage of the road and gate positioning to be in accordance with Council's Standard Rural Property crossing drawing <p><u>Planning Comment</u></p> <ol style="list-style-type: none"> 2. All driveways to be covered by an easement for access for all beneficiaries, and to be maintained at all times <p><u>Planning comment:</u> all driveways will be located on the same property as the proposed battery. The part of the site containing the battery will not be subdivided into separate ownership and thereby no easements are required to maintain the facilities use of the site access.</p> <ol style="list-style-type: none"> 3. Driveway access to be a minimum of 4m wide constructed in a minimum of 200mm of DGB20 or similar <p><u>Planning Comment:</u> related conditions of consent have been put forward to require a higher construction standard with the vehicle access to be fully constructed and sealed.</p> <ol style="list-style-type: none"> 4. Stormwater table drains to be provided to prevent erosion of the gravel driveway, but should be fully grassed to prevent erosion 	Y

	<p><u>Planning comment:</u> a related condition of consent has been included in the draft conditions of consent for the Panels consideration.</p> <p>5. Overland flow which may erode the driveway is to be controlled by table-drain arrangements, but sealed crossings (similar to causeways) to be implemented where flows become problematic during wet weather.</p> <p><u>Planning comment:</u> conditions have been put forward to require the entirety of the driveway to be sealed.</p> <p>6. All upgrade information is to be provided to Council for written approval as part of CC</p> <p><u>Planning Comment:</u> a condition of consent has been put forward to require detailed site access design prior to CC and related road work permits.</p> <p>7. Prior to construction, applicant is to adhere to ROL and Section 138 Permits</p> <p><u>Planning comment:</u> a related condition of consent has been put forward to require relevant approvals to be obtained prior to obtaining a Construction Certificate and carrying out related work.</p> <p>Further to the above advice Council Roads and Drainage Engineers have undertaken a review of Transport for NSW referral commentary informed recommended conditions of consent related to access upgrade and the preparation of a construction traffic management plan.</p>	
Environmental Planning Officer	<p>The proposed development was referred to Council's Environmental Planning Officer, a key aspect of the role of this position is to review and provide advice from Council to State Significant Development Projects and ongoing mining and energy generating projects within the Muswellbrook Shire LGA.</p> <p>Council's Environmental Planning Officer did not raise any objection to the project as amended advice which assisted in the drafting of conditions of consent.</p>	Y

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

4.3 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan. The application was notified on two occasions.

The application was initially notified between the 5 July and 19 July 2023. One (1) submission was received through this notification period.

Following the amendment of the proposed development and submission of significant additional information the application was renotified between 8 January 2024 to 30 January 2024. One (1) submission was received through this notification period – this submission was later withdrawn.

The submissions received through each notification period were lodged by different individuals – thereby a combined total of two (2) submissions were received through the combined notification periods.

Table 7.1 and 7.2 have been included below that detail the matters raised by the submissions received through either notification period along with commentary regarding how they have been addressed/considered in this assessment.

Table 6.1: Community Submissions – notification period 1 (5 July - 19 July 2023)

Issue	Council Comments
Impact of potential stormwater runoff to adjoining properties	<p>The proposed development has been amended following the receipt of this submission.</p> <p>Amendments to the proposal mean that the proposed battery compound will be located at a different part of the site and off-set further from adjoining properties.</p> <p>In amending the proposed battery compound location consideration has been given to potential flooding and stormwater considerations.</p> <p>Under the proposal as amended the proposed battery would be:</p> <ul style="list-style-type: none"> ➤ Setback 84m from adjoining properties. ➤ Constructed with a pad level above the height of the PMF flood height. ➤ To manage general water redirection related to these earthworks a diversion drain with surface spreader would be installed around the compound. ➤ The compound pad would be constructed with a gradient that slopes to the east (this aligns with the existing property gradient) and would discharge general surface water from the compound area in a manner consistent with existing overland flows and not toward adjoining properties.
Potential visual impact	<p>The proposed development has been amended following the receipt of this submission.</p>

	<p>Amendments to the proposal related to visual impact include:</p> <ul style="list-style-type: none"> ➤ Increase the setback between the proposed battery compound and adjoining residential land from 22m to 84m. ➤ Inclusion of earthworks which raise the height of the compound and overall visual impact. ➤ Inclusion of screening/noise insulation hush panel fencing around the compound. ➤ Submission of a considered landscape plan related to the proposal. <p>Considered commentary on the potential visual impact of the proposed development as amended has been included under the likely environmental impacts – context and setting sub-heading of this report.</p> <p>Overall Council Officers are of the view that the built form of visual intrusion of the proposed development would not be incompatible with the sites general industrial land use zoning and would not substantiate a decision to refuse consent to the proposed development.</p>
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Table 7.2 : Community Submissions – notification period 2 (8 January – 30 January 2024)

Issue	Council Comments
Withdrawal of land owners consent	<p>This submission represented that the amendment of the proposed development and changes to the proposed battery location were undertaken without the consent of the land holder.</p> <p>For context in considering this issue it should be noted that the person listed as the owner of the land in Council records passed away prior to the submission and while the application was under assessment. The land had not (and has not yet) formally transferred ownership from the estate of the deceased.</p> <p>In considering the submission formal documentation was not provided to Council from the Estate of the deceased confirming that the submitter was the new or future owner of the property concerned. This was conveyed to the applicant by Council Officers when preparing a related RFI. It was apparent from the applicant's approach to the related RFI that they accepted or considered the submitter either the future land owner or a person with suitable authority to make representations on behalf of the Estate or that person.</p> <p>In relation to addressing the submission and the representation that land owners consent was no longer current Council Officers offer the following comments:</p>

	<ul style="list-style-type: none"> ➤ Land owners consent was submitted with the lodgement of the development application. ➤ The 22 December amendment of the application adjusted the location of the proposed battery at the site. Council Officers are not aware of any requirement for land owners consent to be confirmed or re-issued to support the amendment of a development application which was lodged with land owners consent – this is understood to be an at the time of lodgement requirement. ➤ While more considered thought would be required to form a view as to whether this submission alongside any later representations from the estate trustees could in fact withdraw land owners consent to the proposed development the applicant was requested to provide additional information confirming that land owners consent remained current. Following a joint meeting between Council, applicant team and submitter team Council Officers understand that the applicant and submitter teams entered private negotiations to resolve on a new lease arrangement. ➤ On the 5 July 2024 the submitter provided correspondence to Council withdrawing their submission in relation to the development application. <p>Having regard to the above, particularly that the development application was lodged with land owners consent and that the submitter has withdrawn their objection to the development application Council Officers consider the related matter to be resolved and view the application as an application having land owners consent for its lodgement.</p>
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Summary comment

Having regard to the submissions and commentary provided in relation to their consideration in the tables above Council Officers are satisfied that the matters raised by the submissions do not present any reason which would substantiate a decision to refuse development consent to the proposed development.

5. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

In forming this view Council Officers note:

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- General Terms of Approval have been provided by Department of Planning and Environment – Water related to the carrying out of the proposed development and carrying out of work on waterfront land.
- The proposed development is permissible with consent under the provisions of the State Environmental Planning Policy (Transport and Infrastructure) 2021, which take precedence over related conflicting provisions in the Muswellbrook LEP 2009 land use table.
- The proposed development would be in accordance with all other relevant provisions of the Muswellbrook LEP 2009.
- The proposed development would be compatible with the requirements of relevant SEPPs.
- The proposed development would be compatible with the provisions of the Muswellbrook DCP.
- An Acoustic Impact Assessment has been prepared in relation to the proposed development which identifies that the proposal may be supported from an acoustic impact perspective subject to recommended mitigation measures including acoustic fencing.
- A Traffic Impact Assessment has been submitted with the application and correspondence received from TfNSW considered in the assessment of this application. Council Officers are satisfied that the proposed development may be supported from a traffic impact perspective subject to conditions requiring a construction traffic management plan and the upgrade of the site access.
- A landscape plan has been prepared to screen the proposed development. This landscape plan has been informed by a visual impact analysis. Council Officers are satisfied that the landscaping proposed would provide suitable visual relief and that the proposal may be supported from a visual impact perspective.
- A risk screening analysis has been undertaken in relation to the proposed development to consider potential hazards related to the proposal. Council Officers have reviewed potential hazards in consultation with the Department of Housing, Planning and Infrastructure – Hazard Team and are satisfied that the proposal may be supported from a safety management perspective subject to related recommended conditions.
- A Flood Impact Assessment has been prepared in relation to the proposed development. The site of the proposed battery compound would be outside the extent of the 1% AEP flood event and suitable protection measures have been incorporated to prevent the facility from being impacted by the PMF flood event.

6. RECOMMENDATION

That the Development Application DA No 2023/66 for a battery energy storage system (electricity generating works) at Lot 21 DP 731407, 105 Merriwa Road, Denman be approved pursuant to Section 4.16(1)(a) or (b) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent included as Attachment A.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Proposed Plans Site Plan
- Attachment C: Proposed Plans Detailed Compound Layout
- Attachment D: Landscape Plans
- Attachment E: Acoustic Assessment
- Attachment F: Flood Impact Assessment

- Attachment G: Risk Screening Assessment
- Attachment H: Fire Incident Management Plan
- Attachment I: Department of Housing, Planning Industry – Hazard Team Referral Advice
- Attachment J Traffic Impact Assessment
- Attachment K – Transport for NSW 4 April 2024 correspondence
- Attachment L - Applicant Traffic Engineer Supplementary Advice 8 July 2024
- Attachment M – Department of Planning and Environment – Water General Terms of Approval
- Attachment N – Public Submissions (under separate cover/not for publication)