

COUNCIL ASSESSMENT REPORT

SOUTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSTH-461 Development Application DA240159
PROPOSAL	Electricity Generating Works (5 MW distribution battery energy storage system (BESS))
ADDRESS	Lot 23 DP 248413, 3 Turton Place, Murrumbateman
APPLICANT	ACEnergy
OWNER	Mr J Ghirardello & Ms B Collins
DA LODGEMENT DATE	6 June 2024
APPLICATION TYPE	Development Application Regionally Significant Development
REGIONALLY SIGNIFICANT CRITERIA	Clause 5, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i>
EDC	\$5,411,265 (excluding GST)
CLAUSE 4.6 REQUESTS	Nil.
KEY SEPP/LEP	State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 Yass Valley Local Environmental Plan 2013
TOTAL & SUBMISSIONS ISSUES SUBMISSIONS UNIQUE KEY IN	Initial Public Exhibition – 37 Submissions Additional Information #1 Public Exhibition – 6 Submissions Additional Information #2 Public Exhibition – 5 Submissions
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> Attachment A: Draft Conditions (Deferred Commencement) Attachment B: All Plans Attachment C: All Supporting Documents Attachment D: Agency and Referral Responses Attachment E: DCP Assessment Attachment F: All Submissions Attachment G: Submissions by Issue and Council Repose Table Attachment H: Applicant Response to Submissions Attachment I: Peer Review of Acoustic Report

	<ul style="list-style-type: none">Attachment J: Acoustic Barrier Revision Comparison Site Plan																																												
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A																																												
RECOMMENDATION	Deferred Commencement Development Consent																																												
DRAFT CONDITIONS TO APPLICANT	Yes																																												
SCHEDULED MEETING DATE	29 July 2025																																												
PLAN VERSION	<table><thead><tr><th>Plan Title</th><th>Plan No.</th><th>Revision No.</th><th>Date of Plan</th></tr></thead><tbody><tr><td>Site Plan 1 of 2</td><td>G-1.1_023118</td><td rowspan="4">D</td><td rowspan="4">11.4.2025</td></tr><tr><td>Site Plan 1 of 2</td><td>G-1.2_023118</td></tr><tr><td>Locality Diagram 1 of 2</td><td>G-2.1_023118</td></tr><tr><td>Locality Diagram 2 of 2</td><td>G-2.2_023118</td></tr><tr><td>Energy Storage Container Elevations*</td><td>G-3.0_23118</td><td rowspan="2">B</td><td rowspan="2">31.10.2024</td></tr><tr><td>MVPS Elevations*</td><td>G-4.0_23118</td></tr><tr><td>Acoustic Barrier General Details (Section And Elevations)*</td><td>G-5.0_023118</td><td>A</td><td>11.4.2025</td></tr><tr><td>Security Fence and Landscape Elevations</td><td>G-6.0_023118</td><td>B</td><td>20.11.2024</td></tr><tr><td>Landscape Plan – Overview/Context Plan</td><td>01</td><td>C</td><td rowspan="4">15.4.2024</td></tr><tr><td>Landscape Screening Plan</td><td>02</td><td>D</td></tr><tr><td>Landscape Screening Plan</td><td>03</td><td>D</td></tr><tr><td>Landscape Specification Notes</td><td>04</td><td>B</td></tr></tbody></table>				Plan Title	Plan No.	Revision No.	Date of Plan	Site Plan 1 of 2	G-1.1_023118	D	11.4.2025	Site Plan 1 of 2	G-1.2_023118	Locality Diagram 1 of 2	G-2.1_023118	Locality Diagram 2 of 2	G-2.2_023118	Energy Storage Container Elevations*	G-3.0_23118	B	31.10.2024	MVPS Elevations*	G-4.0_23118	Acoustic Barrier General Details (Section And Elevations)*	G-5.0_023118	A	11.4.2025	Security Fence and Landscape Elevations	G-6.0_023118	B	20.11.2024	Landscape Plan – Overview/Context Plan	01	C	15.4.2024	Landscape Screening Plan	02	D	Landscape Screening Plan	03	D	Landscape Specification Notes	04	B
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PREPARED BY	Jeremy Knox - Development Planner BURP (Hons), MEBM (Dist), GCES																																												
DATE OF REPORT	14 July 2025																																												

TABLE OF CONTENTS

Acronyms, Figures and Tables	4
Executive Summary	6
1. The Site and Locality	9
1.1 The Site	9
1.2 The Locality	11
2. The Proposal and Background	12
2.1 The Proposal	12
2.2 Background	16
2.2.1 Pre-Lodgement	16
2.2.1 Chronology of the DA	17
2.3 Site History	18
3. Statutory Considerations	18
3.1 Environmental Protection and Biodiversity Conservation Act 1999	18
3.2 Biodiversity Conservation Act 2016 & Biodiversity Conservation Regulation 2017	18
3.3 National Parks and Wildlife Act 1974	18
3.4 Water Management Act 2000	19
3.5 South East and Tablelands Regional Plan 2036	19
3.6 Yass Valley Settlement Strategy 2036 (Settlement Strategy)	20
3.7 Environmental Planning and Assessment Act 1979	21
3.7.1 Objects of the Act	21
3.7.2 Section 4.10 – Designated Development	24
3.7.3 Section 4.13 Consultation and Concurrence	24
3.7.4 Section 4.14 – Consultation and development consent— certain bush fire prone land	24
3.7.5 Section 4.46 – Crown Development	24
3.7.6 Section 4.46 – Integrated Development	24
3.7.7 Section 4.5 – Designation of consent authority	25
3.7.8 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations	25
3.7.9 Evaluation (Section 4.15 assessment)	25
4. Referrals and Submissions	50
4.1 Agency Referrals and Concurrence	50
4.2 Council Officer Referrals	52
4.3 Community Consultation	54
5. Key Issues	61
5.1 BESS Fire Risk and Management	61
5.2 Noise	64
5.3 Visual Impact	66
5.4 Acoustic Barrier	67
5.5 Supporting Level of Detail/Information with Application	68
5.6 Soil and Groundwater	69
5.7 Potential Conflict with Other Future Nearby Development (i.e. Development Rights)	70
5.8 End-of-Life and Decommissioning	71
6. Conclusion	71
7. Recommendations	72

Acronyms

ACHA	Aboriginal Cultural Heritage Assessment
ADG	Australia Dangerous Goods Code 2024
AEP	Annual Exceedance Probability (flood event)
AHIMS	Aboriginal Heritage Information Management Service
APZ	Asset Protection Zone
BAL	Bushfire Attack Level
BCA	Building Code Australia
BDAR	Biodiversity Development Assessment Report
BESS	Battery Energy Storage System
BFMERP	Bush Fire Management and Emergency Response Plan
BOS	Biodiversity Offset Scheme
CEF	Community Enhancement Fund
CEMP	Construction Environmental Management Plan
CIV	Capital Investment Value
DA	Development Application
dB(A)	Decibels, A weighted.
DCP	Yass Valley Development Control Plan 2024
EDC	Estimated Development Cost
EP&A Act 1979 (the Act)	Environmental Planning and Assessment Act 1979
EPA	(New South Wales) Environment Protection Authority
EPBC	Environmental Protection and Biodiversity Conservation Act 1999
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
FIMP	Fire Incident Management Plan
FSR	Floor Space Ratio
GFA	Gross Floor Area
LAeq	The A-weighted, equivalent continuous sound level.
LEP	Yass Valley Local Environmental Plan 2013
LGA	Local Government Area (the Yass Valley)
MVPS	Medium Voltage Power Station (Inverter Unit)
MW	Megawatt
NCC	National Construction Code
NGL	Natural Ground Level
NPfI	Noise Policy for Industry (New South Wales)
PHA	Preliminary Hazard Analysis
RFS	(New South Wales) Rural Fire Service
RSD	Regionally Significant Development
SEE	Statement of Environmental Effects
SEPP	State Environmental Planning Policy
SETRP	South East and Tablelands Regional Plan 2036
SRPP	Southern Regional Planning Panel
TGS	Traffic Guidance Scheme
TIA	Traffic Impact Assessment
VIA	Visual Impact Assessment

List of Figures

Figure 1: Aerial Image of the Site	9
Figure 2: General Site Photo	10
Figure 3: Turton Place Site Photo	10
Figure 4: Locality Plan	11
Figure 5: Zoning	12
Figure 6: Locality Site Plan	13
Figure 7: Site Plan	14
Figure 8: Typical Container Plan	14
Figure 9: Typical Multi Voltage Power Station (MVPS) Plan	15
Figure 10: Elevation	15
Figure 11: Murrumbateman Structure Plan 2031	21

List of Tables

Table 1: Development Data	16
Table 2: Chronology of the DA	17
Table 3: Summary of Applicable Environmental Planning Instruments	26
Table 4: Consideration of LEP Controls	33
Table 5: Consideration of DCP Controls	36
Table 6: Concurrence and Referrals to Agencies	50
Table 7: Consideration of Council Referrals	52
Table 8: Community Consultation Details	54
Table 9: Community Submissions	55

EXECUTIVE SUMMARY

Development application DA240159 seeks consent for ‘electricity generating works’, specifically the installation of a 5 megawatt (MW) distribution battery energy storage system (BESS) and ancillary works (including construction of an acoustic battery, security fencing, landscaping, unground cabling, new internal access road and access crossing, removal of two native trees, earthworks, and demolition/removal of existing shed) (the proposal) at 3 Turton Place, Murrumbateman (the site).

The proposal is regionally significant development (RSD) in accordance with Clause 5, Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021* (SEPP Planning Systems) as it involves private infrastructure with an estimated development cost of greater than \$5 million (although the application had initially been lodged as local development) and is therefore presented to the Southern Regional Planning Panel (SRPP) as the consent authority.

The site is located in an area characterised by small-scale rural, rural lifestyle and agritourism development, including dwelling houses, wineries, and the like. The site is 16ha in size with the development area occupying approximately 0.5ha towards the northwest corner. Access is from Turton Place, with a new internal access road and access crossing proposed. The site contains an existing dwelling house, and the site area is dominated by exotic grasses/pastures as a result of historical clearing and agricultural use. The land is identified as bushfire prone.

The site is zoned RU4 Primary Production Small Lots under the *Yass Valley Local Environmental Plan 2013* (the LEP), but it is generally located at the convergence of land use zones (RU4 Primary Production Small Lots, RU1 Primary Production, and R5 Large Lot Residential). The proposal is characterised as ‘electricity generating works’ which is a prohibited use of land in the RU4 zone. However, permissibility is enabled by Section 2.36 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* (SEPP Transport and Infrastructure), which prevails over the LEP.

The application was referred externally to the NSW Rural Fire Service (RFS) under the provisions of Section 4.14 of the Act who provided response comments which have now been addressed, primarily relating to increased size of asset protection zone to the western boundary. The application was also referred to Essential Energy under Section 2.48 of SEPP (Transport and Infrastructure) who raised no issues or concerns in response, subject to standard requirements (refer **Attachment D**).

The proposal has been assessed against relevant local, NSW, and Commonwealth legislation and in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act).

The principal planning controls relevant to the proposal include *State Environmental Planning Policy (Resilience and Hazards) 2021* (SEPP Resilience and Hazards), SEPP Transport and Infrastructure, the LEP, and the *Yass Valley Development Control Plan 2024* (the DCP). The proposal is generally consistent with the majority of the planning controls, with areas of non-compliance particularly relating to the LEP noting that the land use is ordinarily prohibited in the RU4 Primary Production Small Lots zone. The following comments are made in relation to compliance with key planning controls:

- The proposal is permissible with consent in accordance with the provisions of SEPP (Transport and Infrastructure) in the RU4 zone in accordance with Section 2.36(1)(b).
- The requirements of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* are addressed. The site does not support core habitat for koala and is unlikely to constitute important or occupied koala habitat in the future.

- The requirements of SEPP (Resilience and Hazards) are satisfied. The proposal is not 'hazardous and offensive development' for the purposes of Chapter 3 and a preliminary hazard analysis (PHA) is not required for lithium-ion batteries (under 30 MW). There are no known contamination issues, and the site is suitable for the proposed development for the purposes of Chapter 4, Section 3.6.
- The use of land for 'electricity generating works' is prohibited in the RU4 zone by the LEP with permissibility enabled by SEPP (Transport and Infrastructure). The proposal is consistent with some, but not all, of the zone objectives. On balance, it is considered the proposal is not antipathetic to the zone objectives. The proposal complies with all other LEP controls.
- There are issues identified with the applicability of controls under the DCP for a BESS, noting the land use matrix at A.12 determines that only some parts apply to 'electricity generating works'. The primary controls in Part L which are indicated to apply, are only then relevant to 'renewable energy development projects', which this proposal is not. A broad assessment has been undertaken of DCP and there is majority compliance, however, there are potential areas of non-compliance depending on which controls are considered. This includes, for example, setback distance from adjoining land with viticulture (E.1(c)), noise levels at adjoining property boundaries for intensive agriculture and rural industry (E3.1), and Part L6 in relation to renewable energy projects. Areas of potential non-compliance are not considered to represent basis for refusal due to uncertainty with applicability of controls.

There have been three periods of public exhibition, including an initial period and then two following receipt of additional information. There was a total of 48 submissions across the three periods. All submissions were either objections or raised matters of concern, except for one which provided conditional support with requested changes.

The application was subject to a site inspection and briefing with the SRPP on 21 January 2025. The issues identified as a result of the briefing included noise impact (and need for peer review), visual impact (colours and finishes), issues associated with management of firefighting water, and asset protection zones. The issues raised by the SRPP are now considered to be addressed, except for colours and finishes.

The key issues associated with the proposal, including those raised in submissions, are:

1. **BESS fire risk and management** – the risk of fire originating from the BESS, as well as fire incident management including for firefighting water.
2. **Bush fire** – the compatibility of the proposal with the bush fire risk of the land and the risk of the BESS starting a bush fire.
3. **Smoke** – as a result of a significant fire incident which was not able to be suppressed, including the impacts on health and adjoining land uses, particularly smoke taint to grapes.
4. **Noise** – impact on sensitive receivers (dwellings), as well as other uses of the adjoining land, and as assessment methodology and mitigation measures.
5. **Visual impact** – from the public domain and nearby properties, particularly in context of rural character of agritourism area.
6. **Acoustic barrier** (including extent and size) – concerns about the construction, required extent, effectiveness, and additional visual impacts.
7. **Supporting level of detail/information** – particularly in relation to colours, finishes, materials, and the acoustic barrier.
8. **Soil and groundwater contamination** – potential for soil and groundwater contamination as a result of major fire incident and noting only desktop assessment has been completed for soil type and groundwater level.
9. **Potential conflict with other future nearby development** – potential conflict with future nearby development, including vacant lot and lots with existing development.

10. **End-of-life and decommissioning** – requirements for end-of-life and decommissioning.
11. **Economic impact on agritourism uses** – as a result of other key issues.

The assessment has indicated that the majority of the key issues identified above have or can be addressed, subject to either mitigation measures or appropriate conditions. It is noted a peer review of the acoustic report was commissioned by Council, and the recommendations of the peer review were reflected in a revised version of the acoustic report (including for the acoustic barrier to be constructed as part of the development). The exceptions where there are still considered to be outstanding issues:

- Determination of colours, finishes and materials. White is not considered appropriate as it will still have presence in the landscape (especially whilst landscaping establishes) and the high need to preserve visual rural character due to the agritourism values of the area. The applicant remains uncommitted, indicating they will propose those which are compatible with the surrounding environment “where possible” subject to final designs and product selection.
- The Flood and Groundwater Assessment considers there is a low risk of soil or groundwater contamination due to a thick layer of clay under the site and the depth of the groundwater based on a desktop study. It further recommends need for a soil bore to validate these findings, which has not occurred. The soil bore should be undertaken to ensure the findings of the desktop study are accurate to ensure the proposal does not adversely impact soil or groundwater.

The assessment report summarises and evaluates the key issues associated with the development application and planning controls.

With consideration of matters required by s4.15 of the Act, it is recommended that the proposal be granted a deferred commencement development consent pursuant to Section 4.16(3) of the Act, subject to the draft conditions of consent attached to this report at **Attachment A**.

1. THE SITE AND LOCALITY

1.1 The Site

The site is part of Lot 23 DP 248413, 3 Turton Place, Murrumbateman (refer **Figure 1**). Turton Place is a cul-de-sac south of Murrumbateman Road, off Patemans Lane. The lot has direct frontage to Turton Place. The lot is 16ha in size, with the development area occupying approximately 0.5ha of the 16ha lot area towards the northwest corner.



Figure 1 – Aerial Image of the Site

There is an electricity transmission easement traversing the subject land which the proposal would connect into.

A windbreak row of eucalyptus trees runs north/south through the lot to the east of the development area, and additionally deciduous windbreak trees to the north and west of the development area. The site area is dominated by exotic grasses/pastures as a result of historical clearing and agricultural use. There is an existing dam and drainage line to the north of the site area.

The lot contains an existing dwelling house which is proposed to remain and continue to be serviced by the existing access.

Photos of the site are included in **Figure 2** and **Figure 3**.



Figure 2 – General Site Photo

(Looking generally northwest)



Figure 3 – Turton Place Site Photo

(Looking east towards now proposed access)

1.2 The Locality

The locality is an area characterised by small-scale rural, rural lifestyle, and agritourism development. There are several dwelling houses in the vicinity which are considered sensitive receivers. There are a number of cellar door premises in the general locality, including two cellar door premises with vineyards located in immediate proximity at the intersection of Patemans Lane and Murrumbateman Road. The land on the opposite side of Turton Place also contains vineyards and a truffle farm is also located on the adjoining land to the east, approximately 340m from the proposed development. The Murrumbateman village is located approximately 8km to the northwest via road or 3km in a direct line. A locality plan is included as **Figure 4**.



Figure 4 – Locality Plan

The site is zoned RU4 Primary Production Small Lots under the *Yass Valley Local Environmental Plan 2013* (the LEP), but it is generally located at the convergence of land use zones. The land to the eastern side of Patemans Lane is zoned RU1 Primary Production and has larger lots with associated land uses. The land to the north of Murrumbateman Road is zoned R5 Large Lot Residential with smaller lot sizes and predominantly residential land uses (refer **Figure 5**).

The site and area of the locality is identified as bushfire prone.

There are no similar developments in the general locality.

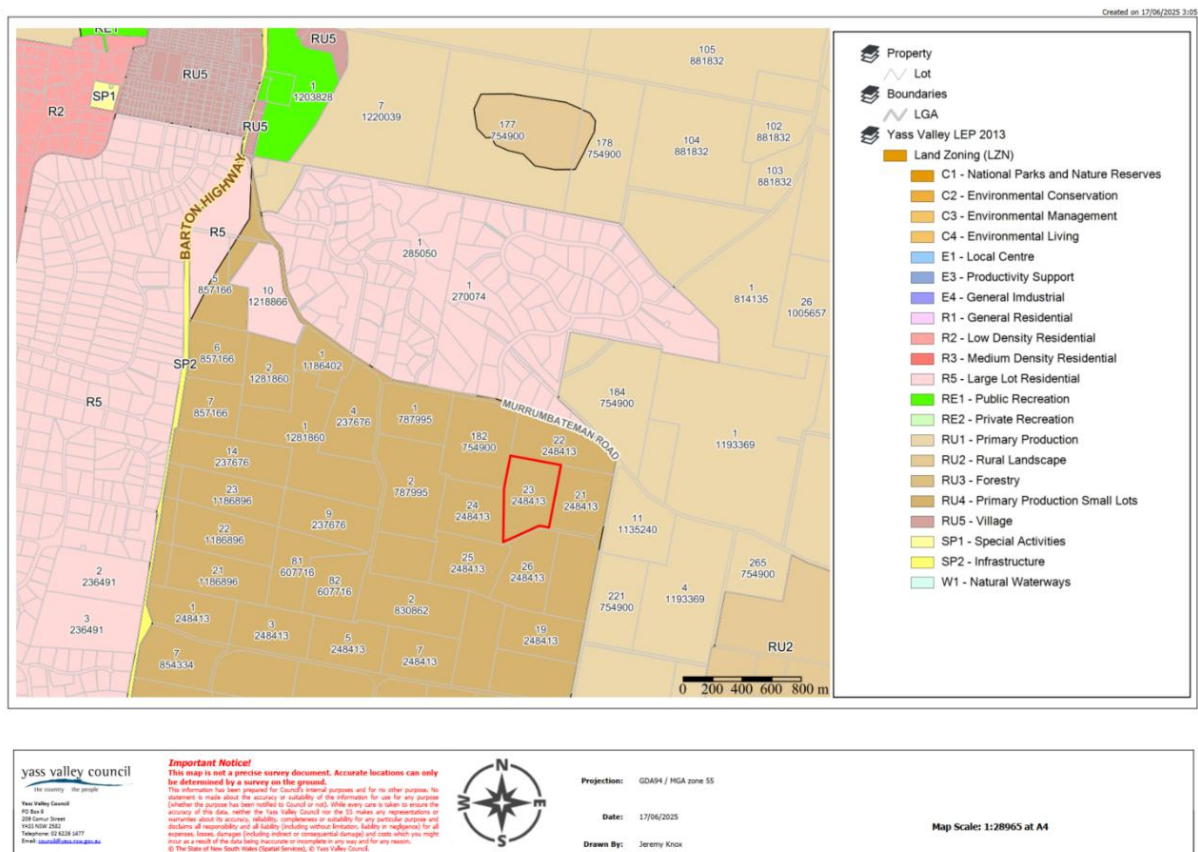


Figure 5 – Zoning

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent for 'electricity generating works', specifically the installation of a 5 megawatt (MW) distribution battery energy storage system (BESS), including:

- 10 battery storage containers. Each battery storage container is approximately 6m in length and 2.4m in width. The maximum height is approximately 2.65m above natural ground level.
- Inverter or medium voltage power station (MVPS) unit
- Construction of an acoustic barrier (approximately maximum 3m high and 25m x 37m in length), security fencing, and landscaping around the development complex
- Underground electrical sub transmission lines
- New vehicle access from Turton Place and internal access road
- Removal of two (2) native trees
- Associated earthworks
- Demolition/removal of existing shed
- Establishment of asset protection zones

The area of the development compound area (including landscaping) is approximately 88m x 57m and occupies approximately 0.5ha of the 16ha lot area towards the northwest corner of the subject lot. The setback of the development compound is 13m to the western boundary

and between approximately 138m and 370m to all other boundaries. There will be no permanent staff located or based at the site.

The proposal has been subject to minor amendments by the applicant through the assessment process following public exhibition periods and Council's additional information requests. These changes have been accepted by Council under Clause 38(1) of the *Environmental Planning and Assessment Regulation 2021* (the Regulation) and included:

- Reduction in the extent of acoustic barrier from around most of the compound to just the southeast corner
- Reduction in the maximum height of the proposed acoustic barrier from approximately 4.5m to approximately 3m
- Minor increase of the setback of the compound to the western boundary to accommodate asset protection zone.

Extracts of the current versions of plans are included in **Figure 6** to **Figure 10**. All current versions of supporting plans are included as **Attachment B** and supporting documents as **Attachment C**.

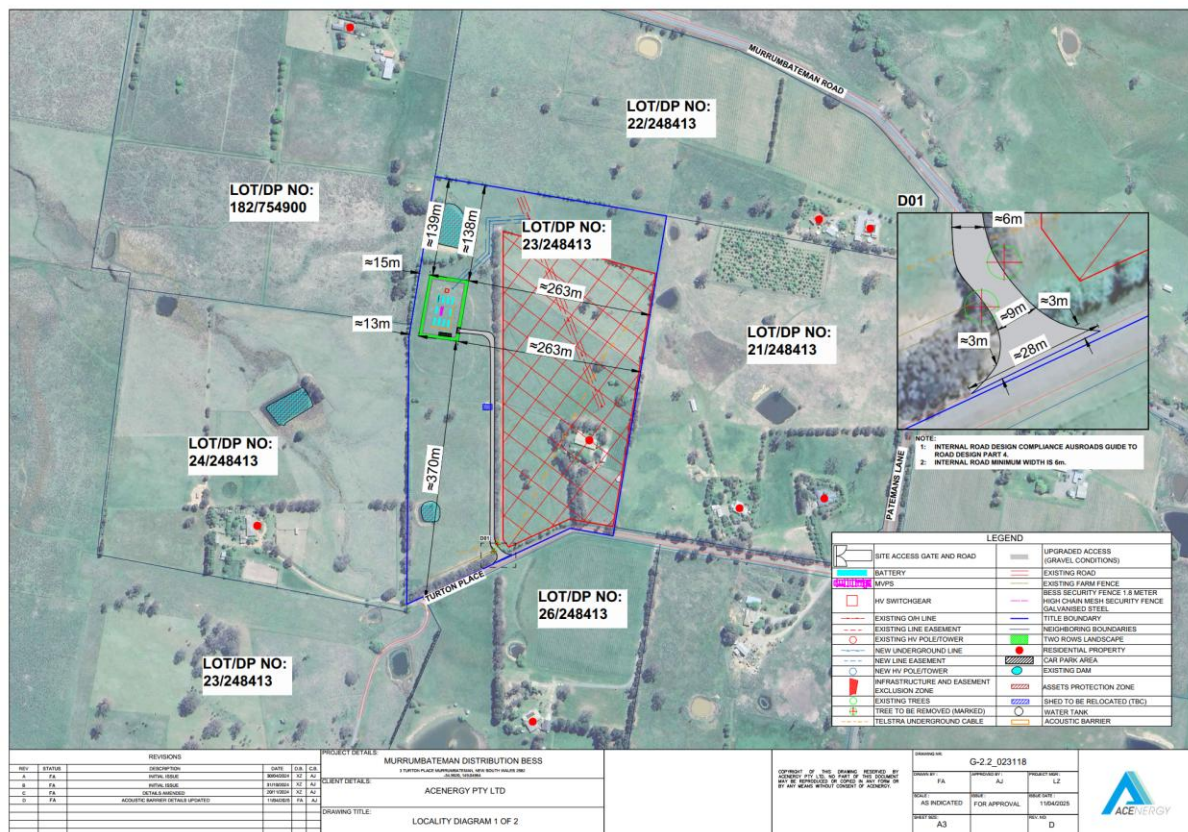


Figure 6 –Locality Site Plan

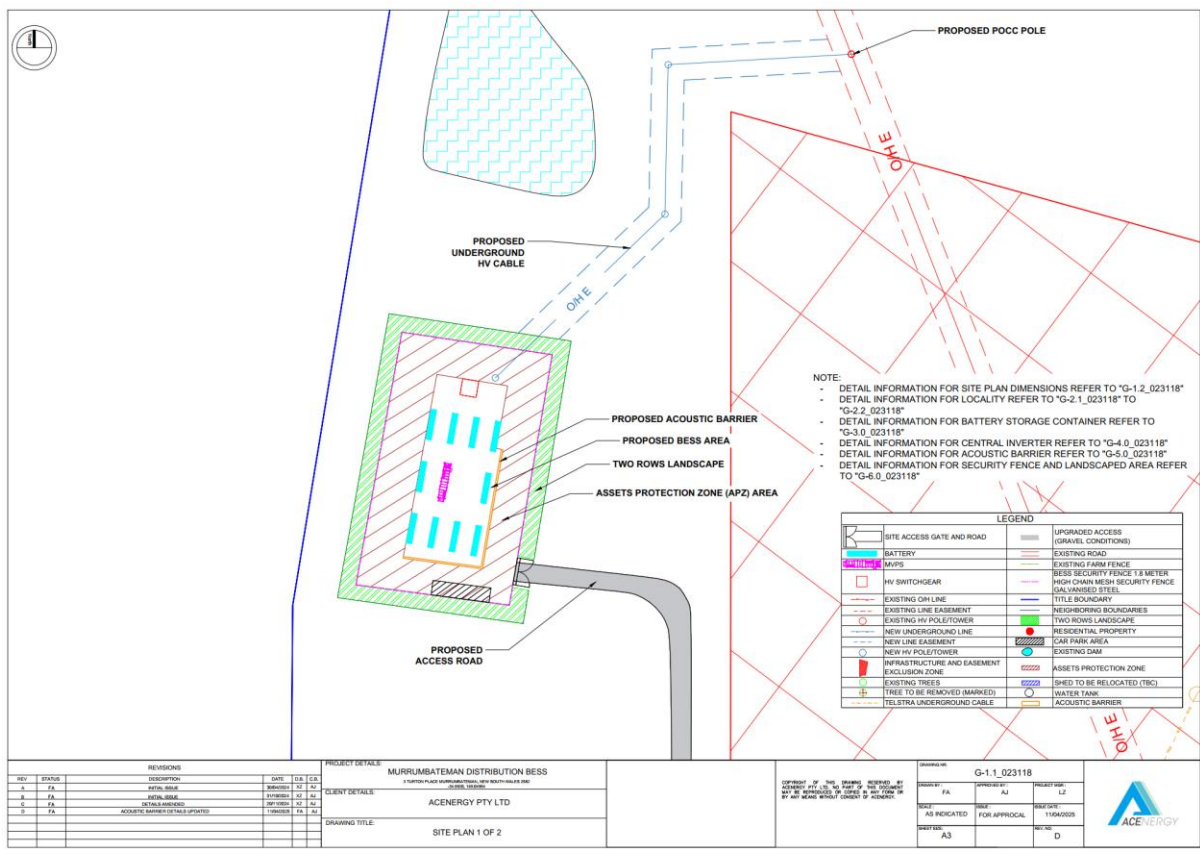


Figure 7 –Site Plan

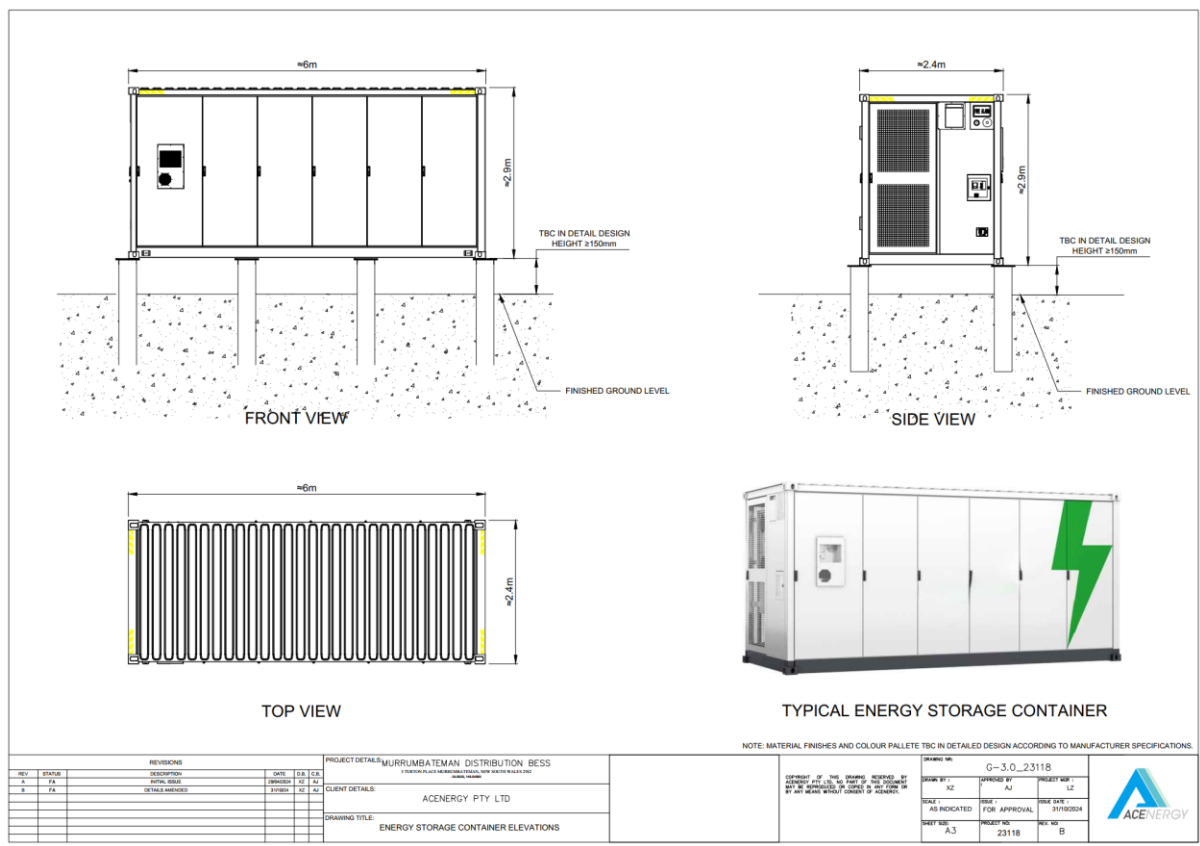


Figure 8 – Typical Battery Container Plan

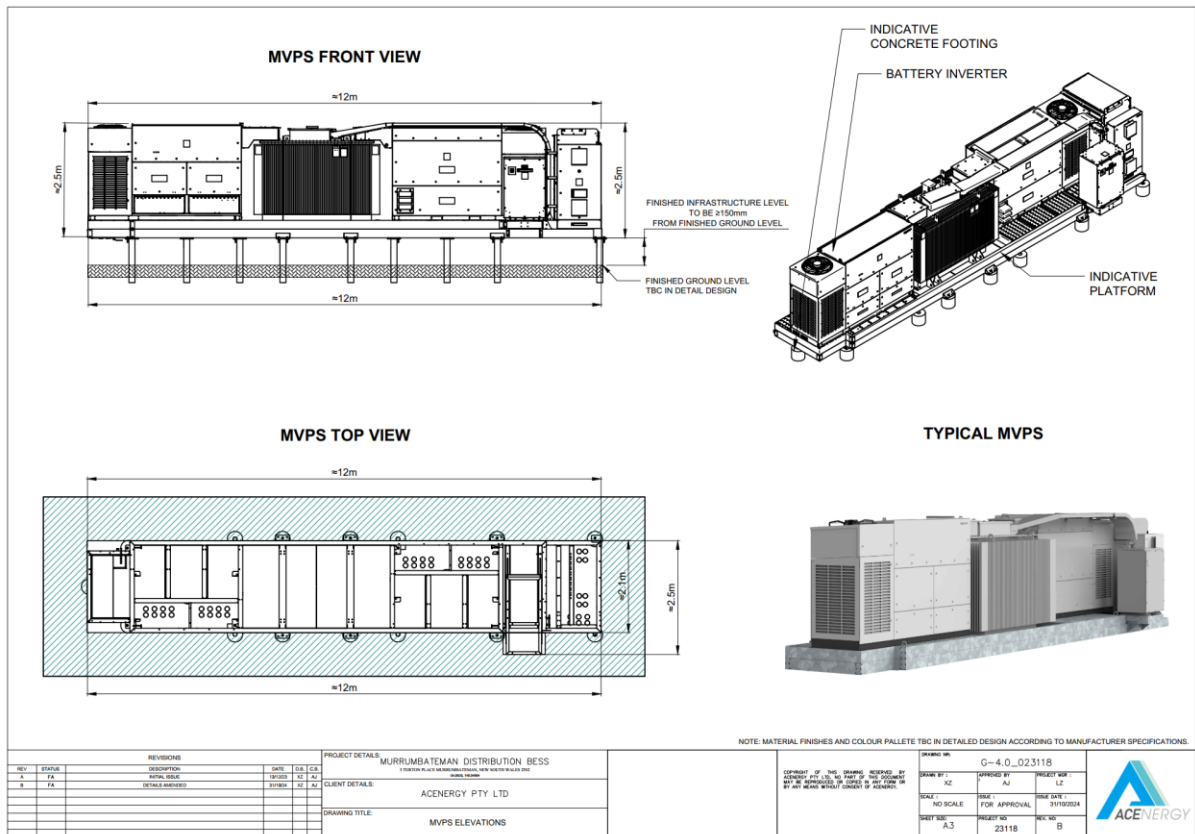


Figure 9 – Typical Multi Voltage Power Station (MVPS) Plan

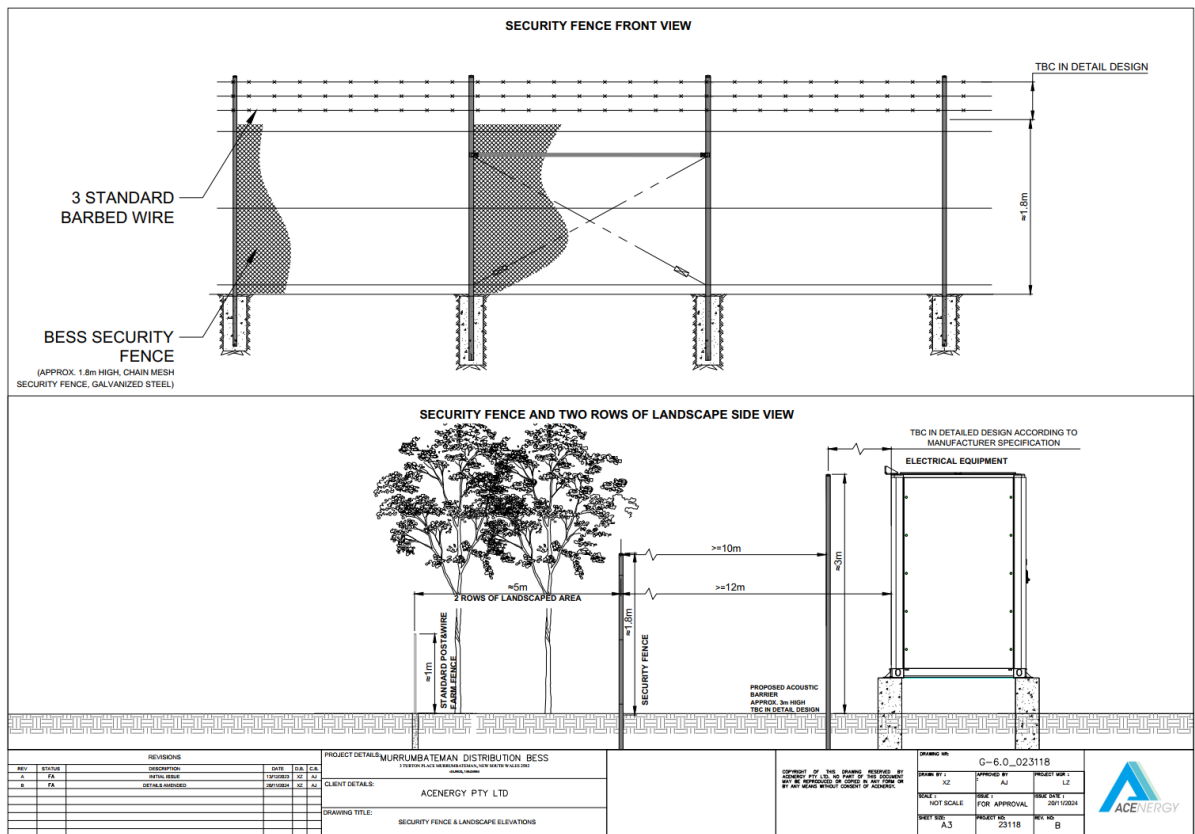


Figure 10 – Elevation

Table 1: Development Data

Control	Proposal
Site area	The site is 16.19ha. The compound area of the proposed development occupies approximately 0.5ha or 3% of the site area.
GFA	N/A
Clause 4.6 Requests	No
Max Height	Battery containers and MPVS – max. 2.65m above NGL Acoustic barrier – approx. max. 3m
Landscaped area	Two rows of proposed landscaping for screening are proposed around the perimeter of the compound area.
Car Parking spaces	No requirement, however adequate area exists onsite.
Setbacks	The setback of the development compound is 13m to the western boundary and between approximately 138m and 370m to all other boundaries.
Length of Internal Access Driveway	Approximately 350m from Turton place to compound area.

2.2 Background

2.2.1 Pre-Lodgement

A pre-lodgement meeting was held on 29 November 2023 prior to the lodgement of the development application where various matters were discussed. A summary of the issues discussed (from follow up correspondence) is provided below:

- Council's (now repealed) *Building Line – Rural and Rural Residential Land Policy DA-POL-8* required a minimum 50m setback for class 10 structures from property boundaries. The purpose of the policy was to ensure separation between development on adjoining lots and minimise potential land-use conflicts. Council in process of drafting a new comprehensive DCP which is likely to be presented to Council for adoption in December. The draft controls in the DCP appeared to be less prescriptive for this type of development.
- Application of development contributions plan.
- Additional access point onto Turton Place should be shown on the site plan submitted. Conditions of any development consent would require approval pursuant to s138 Roads Act 1993 to be obtained for works in road reserve prior to that work commencing.

- Council expressed that proponent engagement with neighbours would be important, with the applicant agreeing that was also important to them.

The development application was lodged on 7 June 2024.

2.2.2 Chronology of the DA

The application was received in the Planning Portal on 4 June 2024 and formally lodged on 7 June 2024. The chronology of the application is outlined in **Table 2**.

Table 2: Chronology of the DA

Date	Event
4 to 7 June 2024	DA received (Planning Portal) and lodged (as Local Development)
2 July 2024 to 21 July 2024	Exhibition of the application (including extension of public exhibition period beyond minimum 14 days due to level of interest in the application)
23 August 2024	Request to applicant to provide clarification on estimated development cost (EDC) to determine assessment pathway
23 August 2024	DA referred to external agencies
30 September 2024	Revised quantity surveyor report for EDC submitted
14 October 2024	External peer review (commissioned by Council) of quantity surveyor report for EDC
15 October 2024	Referred to the Panel as Regionally Significant Development (RSD)
25 October 2024	Additional information request 1
1 November	Meeting with Applicant (additional information request 1)
28 November 2024	Report to Council meeting advising Councillors receipt of development application as RSD
4 December 2024	Receipt of additional information 1. Minor amendments to plans and documents lodged, including to acoustic barrier and acoustic assessment. Accepted by Council under CI 38(1) of the Regulation.
12 December 2024 to 20 January 2025	Exhibition of additional information 1
22 January 2025	Panel site inspection and briefing
3 February 2025	External peer review (commissioned by Council) of acoustic report received
18 February 2025	Additional information request 2
6 March 2025	Meeting with Applicant (additional information request 2)
22 April 2025	Receipt of additional information 2
2 May 2025 to 16 May 2025	Exhibition of additional information 2. Further minor amendments to plans and documents lodged, including to acoustic barrier and

	acoustic assessment. Accepted by Council under CI 38(1) of the Regulation.
8 July 2025	Draft conditions to applicant for review
29 July 2025	Public hearing and Panel determination meeting

2.3 Site History

The subject lot was created through a subdivision in the 1970s and has generally been utilised for small scale primary production and rural lifestyle purposes since then. There are no other development proposals, outstanding approvals, or the like for the site.

3. STATUTORY CONSIDERATIONS

3.1 Environmental Protection and Biodiversity Conservation Act 1999

The *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act 1999) aims to ensure that actions likely to cause a significant impact on Matters of National Environmental Significance have an assessment and approval process. A flora and fauna assessment was submitted with the application. There was no threatened flora or fauna listed under the EPBC Act identified in the study area. There are no other EPBC Act protected matters associated with the site or proposal.

3.2 Biodiversity Conservation Act 2016 & Biodiversity Conservation Regulation 2017

The *Biodiversity Conservation Act 2016* and *Biodiversity Conservation Regulation 2017*, as well as the Biodiversity Offset Scheme created under it, apply.

A flora and fauna assessment was submitted with the application. The site area is dominated by exotic grasses/pastures as a result of historical clearing and agricultural use. There are two native eucalyptus trees (young and non-hollow bearing) proposed to be removed at the southern boundary where the new access is proposed from Turton Place. The proposal does not trigger entry into the Biodiversity Offset Scheme and therefore a Biodiversity Development Assessment Report (BDAR) is not required as:

- The proposal does not involve clearing on land identified on the Biodiversity Values Map
- The proposal does not involve clearing of native vegetation in excess of the area threshold of 0.5ha
- The proposal is unlikely to have an impact which exceeds the test of significance on species listed under the BC Act

The recommendations made in the flora and fauna assessment have been incorporated into the draft recommended conditions, including for construction management and tree protection.

3.3 National Parks and Wildlife Act 1974

An Aboriginal Heritage Information Management Service (AHIMS) Report was generated for the development on 21 November 2024 by the applicant's consultants. The search confirmed that there are no registered Aboriginal places or sites of significance identified near the site.

There are no site features which would indicate an increased likelihood of the presence of Aboriginal places or sites of significance. In accordance with the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*, further assessment is not required. Draft recommended conditions include for the management of any unexpected finds in accordance with the requirements of the *National Parks and Wildlife Act 1974*.

3.4 Water Management Act 2000

There is a minor drainage line (second order) which flows into the dam to the immediate north of the proposed development compound. The proposal involves underground cabling which crosses this drainage line before connecting into the existing electricity line. The NSW Department of Climate Change, Energy, the Environment and Water advised that this work did not require a controlled activity approval for the purposes of section 91(2) of the *Water Management Act 2000*. A copy of the advice was included with the development application submitted (refer **Attachment D**). In this regard, it has not been subject to an integrated development referral.

3.5 South East and Tablelands Regional Plan 2036

The South East and Tablelands Regional Plan 2036 (SETRP) is the NSW Government's strategy for guiding land use planning decisions for the South East and Tablelands Region. The SETRP is primarily a strategic planning land use strategy to inform preparation of strategic land use controls (e.g. the LEP) rather than for individual development applications.

It sets the vision for the South East and Tablelands focusing on four key goals:

- A connected and prosperous economy
- A diverse environment interconnected by biodiversity corridors
- Healthy and connected communities
- Environmentally sustainable housing choices.

The SETRP then sets directions and actions under each goal. Those that may be relevant consideration in relation to the proposal are included. The proposal is not considered to have any significant implications for the purposes of the SETRP.

Goal 1: *A connected and prosperous economy*

Direction 8: *Protect important agricultural land*

Action 8.2 *Protect identified important agricultural land from land use conflict and fragmentation and manage the interface between important agricultural land and other land uses through local environmental plans*

In this instance the LEP prohibits the use of land for the purposes of 'electricity generating works'; however, permissibility is then enabled by NSW Government's own SEPP (Transport and Infrastructure). The potential for land use conflict has been considered and discussed in this assessment report.

Goal 1: *A connected and prosperous economy*

Direction 9: *Grow tourism in the region*

There are no specific relevant actions in this instance, but the direction recognises the importance of tourism in the region. The impact on tourism has been considered and discussed in this assessment report.

Goal 4: *Environmentally sustainable housing choices*

Direction 28: Manage rural lifestyles

Action 28.3: Manage land use conflict that can result from cumulative impacts of successive development decisions.

Whilst this is in the context of housing decisions, the direction and action highlight the importance of managing land use conflict, particularly as a result of successive development decisions. It also recognises the impact and potential conflict rural residential development itself has on the environment and agriculture. Potential land use conflict and the relationship of the proposal with rural residential and agricultural land uses have been considered and discussed in this assessment report.

3.6 Yass Valley Settlement Strategy 2036

The Yass Valley Settlement Strategy 2036 (the Settlement Strategy) provides the direction for long term growth and development of the Yass Valley. The Settlement Strategy includes recommendations as to how current and future urban growth pressures can be approached to deliver environmentally, economically and socially sustainable settlements for the period 2016-36 and beyond.

The Settlement Strategy also includes the (high-level) Murrumbateman Structure Plan (Master Plan) 2031 within it (refer **Figure 11**). The area surrounding and including the site (generally the area currently zoned RU4 Primary Production Small Lots to Euroka Avenue in the south) is identified as a 'winery precinct' and described as:

"Smaller rural lots in productive use such as grape growing and boutique wineries, the majority of which are located east of the Barton Highway and south of Murrumbateman Road."

The Settlement Strategy is useful for understanding the desired long-term character of the area. However, it does not provide detailed development controls relating to individual land uses and development applications.

Council has previously obtained legal advice in relation to the weight to give the Settlement Strategy in the assessment of individual development applications. This was in the context of considering an inconsistency between the Settlement Strategy and the LEP in relation to permissible land uses. The legal advice noted that, in principle, to the extent of any inconsistency between the Settlement Strategy and the LEP, greater weight should generally be given to the LEP in determining development applications. This is consistent with the understanding of Council planning staff that the Settlement Strategy largely guides strategic planning decisions and future changes to planning controls, but that the LEP is the current environment planning instrument and holds the greatest weight for individual development applications. In the circumstances of the subject proposal, the SEPP also then prevails over the LEP and the Settlement Strategy.

The proposed development is not considered to have a significant impact in the realisation of the aims of the Settlement Strategy for the reasons detailed in this assessment report, including:

- The site is located in the RU4 Primary Production Small Lots area, but towards the eastern (outer) edge of that zone. Whilst the area may be subject to more intense large lot residential development in the future, this is likely to be on a long-term timescale beyond the life of the proposed BESS. The Settlement Strategy directs future urban growth for Murrumbateman to be centred to the north of Murrumbateman.
- The proposal does not have a significant impact on, and is not incompatible with the 'winery precinct', for the reasons detailed in this assessment report, noting:

- The visual impact and presence from the public domain (including winery trail) can be mitigated subject to ensuring appropriate colours, finishes, and landscaping to protect the rural character. This is in conjunction with it being well setback from public roads.
- The size and scale of the BESS is relatively small at 5MW. Small scale 'electricity generating development' can be compatible with the desired land uses. It is not considered to present a significant land use conflict.
- The proposal does not fundamentally or significantly alter the character of the winery precinct area overall. This represents use of 0.5ha of land area of the approximately 570ha in that area.

Figure 4: Murrumbateman Master Plan 2031



Figure 11 – Murrumbateman Structure Plan 2031

(‘Winery Precinct’ is item 16 shaded brown)

3.7 Environmental Planning and Assessment Act 1979

3.7.1 Objects of the Act

The objects of the *Environmental Planning and Assessment Act 1979* (the Act) are principles which guide planning decisions and should be considered to the extent that they are relevant to the proposal. Consideration of the objects of the Act is provide below.

- (a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,*

The proposal is not necessarily considered to *promote* the social and economic welfare of the community, noting that most of the economic benefit is derived by the proponent and land owner as discussed under economic impacts in this assessment, and it not being associated with a renewable energy project.

The proposal does however contribute in a minor way to the ongoing stabilisation of the electricity grid which will be important function in transition to renewable energy sources and has some benefit to the community more broadly. There are also minor benefits in the construction phase through generation of economic activity.

The proposal is not considered to have any significant impact on the State's natural and other resources.

- (b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

The development application has been considered in accordance with the framework provided by s4.15 of the Act which has included the relevant economic, environmental and social considerations.

The Act adopts the definition of ecologically sustainable development (ESD) contained in the *Environment Administration Act 1991*. ESD can be achieved through the implementation of:

- the precautionary principle,
- inter-generational equity,
- conservation of biological diversity and ecological integrity, and
- improved valuation, pricing and incentive mechanisms.

The proposal is generally considered to be consistent with the principles of ESD, with the following comments made:

- Whilst the technology is reasonably new, the impacts of the proposal are generally understood (although a soil bore validation is required in the case of soil and groundwater impacts).
- The proposal is not considered to cause or have threat of serious or irreversible damage to the environment, subject to proposed mitigation measures and those included through draft recommended conditions.
- There is minimal impact on biodiversity values, noting that whilst there are two non-hollowing bearing trees to removed, most of the site is highly modified.
- Appropriate plans can be put in place for end-of-life decommissioning and site rehabilitation for future use. The life expectancy of the BESS is compatible with the projected time scale for when more intense large lot residential development in this area may occur.
- The proposal will contribute minor role for ongoing stabilisation of the electricity grid which will be important for the transition to renewable energy sources.

- (c) *to promote the orderly and economic use and development of land,*

The proposal may not necessarily be considered orderly in the context of the LEP as 'electricity generating works' as a land use is prohibited in the RU4 Primary Production Small Lots. However, permissibility is enabled by the NSW *State Environmental Planning Policy (Transport and Infrastructure) 2021* (SEPP Transport and Infrastructure) signalling intention for such development to be potentially orderly development type within the zone.

For the reasons detailed in this assessment report, the development can be considered orderly through the appropriate mitigation of impacts and potential land use conflicts, and through appropriate management in operation. It is not considered to be prevent orderly future development, noting that any potential for more intense large lot residential development in this area is likely to be on a long-term time scale beyond the life of the proposed BESS. Appropriate plans can put in place for end-of-life decommissioning and site rehabilitation.

- (d) *to promote the delivery and maintenance of affordable housing,*

The land is zoned RU4 Primary Production Small Lots, but towards the eastern (outer) edge. Whilst the land may be subject to more intense large lot residential development in the future, this would be on a long-term time scale. The proposal therefore does not impact the delivery and maintenance of affordable housing.

- (e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*

The proposal and ongoing operation will not have any significant impact on native animals and plants, ecological communities and their habitats. The proposal involves the removal of two non-hollow bearing eucalyptus trees only, otherwise the development area is within is dominated by exotic grasses/pastures as a result of historical clearing and agricultural use.

- (f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*

The site does not contain a heritage item, is not within a heritage conservation area, and there are no heritage items in the vicinity for the purposes of Clause 5.10 of the LEP. There are no registered Aboriginal places or sites of significance identified near the site. There are no site features which would indicate an increased likelihood of the presence of Aboriginal objects or sites of significance. The proposal is not considered to have an adverse impact on the built and cultural heritage of the Yass Valley.

- (g) *to promote good design and amenity of the built environment,*

The likely impacts to the built development have been considered in this assessment report. The primary issue relates to the visual impact and visual presence of the built elements of the proposal within the landscape. It is considered that this impact can be minimised through the use of appropriate landscaping and colours and finishes.

- (h) *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*

The proposal includes non-habitable buildings and structures only which can meet the requirements of the National Construction Code (NCC)/Building Code of Australia (BCA).

- (i) *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*

The SRPP is the consent authority in accordance with the requirements of *State Environmental Planning Policy (Planning Systems) 2021* (SEPP Planning Systems). The assessment has been completed by Council.

- (j) *to provide increased opportunity for community participation in environmental planning and assessment*

The application was subject to public exhibition in accordance with Council's DCP and *Community Engagement Strategy*. A public hearing is to be held by the SRPP prior to any determination.

3.7.2 Section 4.10 – Designated development

The proposal is not identified as being designated development. Schedule 3 of the Regulation prescribes that 'electricity generating stations' that supply or can supply more than 30 megawatts of electrical power from energy sources are designated development. The proposed development is not an 'electricity generating station'.

3.7.3 Section 4.13 – Consultation and concurrence

The application required a referral to Essential Energy under Section 2.48(2) of SEPP (Transport and Infrastructure) and is discussed there in this report.

3.7.4 Section 4.14 – Consultation and development consent— certain bush fire prone land

The site is identified as bushfire prone land. The application was accompanied by a bush fire management and emergency response plan prepared by an accredited bush fire practitioner detailing compliance with *Planning for Bushfire Protection 2019*. The application does not require a 'bush fire safety authority' for the purposes of s100B of the *Rural Fires Act 1997*, however was referred to the NSW Rural Fire Services for advice under s4.14 of the EP&A Act 1979. The RFS provided a response with recommendations which have been addressed (refer **Attachment D**).

3.7.5 Section 4.46 – Crown Development

The proposal is not Crown development.

3.7.6 Section 4.46 – Integrated Development

The proposal is not identified as being integrated development as there are no other approvals that are required to be issued under Section 4.46 of the Act. Refer to further discussion under *Water Management Act 2000*.

3.7.7 Section 4.5 – Designation of consent authority

Private infrastructure which constitutes electricity generating works that has an estimated development cost (EDC) of greater than \$5 million is regionally significant development in accordance with Schedule 6, Clause 5 of SEPP (Planning Systems). The SRPP is the consent authority.

3.7.8 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.

3.7.9 Section 4.15 - Evaluation

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the 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), that apply to the land to which the development application relates,*
- (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.

(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 and Conservation) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Yass Valley Local Environmental Plan 2013*

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 3: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
SEPP (Biodiversity & Conservation) 2021	Chapter 4: Koala Habitat Protection 2021 <ul style="list-style-type: none"> The site does not support core habitat for koala and is unlikely to constitute important or occupied koala habitat in the future. 	Yes
SEPP (Planning Systems) 2021	Chapter 2: State and Regional Development <ul style="list-style-type: none"> Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 5 of Schedule 6 as it comprises of private infrastructure with an estimated development cost of greater than \$5 million. The SRPP is the consent authority. 	Yes
SEPP (Resilience & Hazards)	Chapter 3: Hazardous and offensive development <ul style="list-style-type: none"> Section 3.7 – Hazardous and Offensive Development Application Guidelines – Applying SEPP 33 2011 considered as required. A ‘preliminary hazards analysis’ determined not to be required by the guideline. Chapter 4: Remediation of Land <ul style="list-style-type: none"> Section 4.6 – There are no known contamination issues with the site is suitable for the proposed development. 	Yes
SEPP (Transport and Infrastructure) 2021	Chapter 2: Infrastructure <ul style="list-style-type: none"> Section 2.36 (1)(b) (Development permitted with consent) – ‘electricity generating works’ permissible with consent in the RU4 Primary Production Small Lots zone as a ‘prescribed non-residential zone’. Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions. 	Yes
Yass Valley Local Environmental Plan 2013	Clause 2.3 – Permissibility and zone objectives The proposed development is characterised ‘electricity generating works’ which is defined under the LEP as follows <i>electricity generating works means a building or place used for the purpose of—</i> <i>(a) Making or generating electricity, or</i> <i>(b) Electricity generating</i>	No

	<p>'Electricity generating works' is <u>prohibited</u> in the RU4 Primary Production Small Lots zone. However, permissibility is enabled by Section 2.36 of SEPP (Transport and Infrastructure) as the RU4 Primary Production Small Lots zone is a 'prescribed non-residential zone'.</p> <p>Clause 1.9 of the LEP states that a SEPP prevails over the LEP. The proposal is therefore permitted with consent at the site as enabled by the SEPP.</p> <p>The proposal is consistent with some, but not all, of the objectives of the zone. On balance overall, it is considered that it is not antipathetic to the objectives.</p>	
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Consideration of the relevant SEPPs is outlined below:

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2: Vegetation in Non-Rural Areas

The site is zoned RU4 Primary Production Small Lots. In accordance with Section 2.3(1)(b), this chapter does not apply to the RU4 zone in the Yass Valley.

Chapter 4: Koala Habitat Protection

This chapter applies to land zoned RU4 Primary Production Small Lots in the Yass Valley LGA. The subject site does not support core habitat for koala and is unlikely to constitute important or occupied koala habitat in the future. There are two native eucalyptus trees (young and non-hollow bearing) proposed to be removed at the southern boundary where the new access is proposed from Turton Place. A flora and fauna assessment has been submitted with the application. It notes that whilst scattered suitable native feed trees are present and there is one recorded sighting of a koala in the last 20 years within 5km of the site, there is a low likelihood of occurrence. The area of the compound and internal access road is otherwise dominated by exotic grasses/pastures as a result of historical clearing and agricultural use.

State Environmental Planning Policy (Planning Systems) 2021

Chapter 2: State and Regional Development

The proposal is RSD pursuant to Section 2.19(1) as it satisfies the criteria in Clause 5 of Schedule 6 of the SEPP Planning Systems as the proposal is development for private infrastructure with an EDC of over \$5 million. Accordingly, the SRPP is the consent authority for the application.

Note: The original application was submitted as local development with an EDC of less than \$5 million (but referring to capital investment value (CIV)). Following preliminary assessment, concerns were identified with how the EDC had been calculated, noting changes that had come into effect in NSW in March 2024. In this regard, the applicant was requested to provide a revised quantity surveyor report in accordance with the requirements outlined in NSW Planning Circular PS 24-002. The applicant's revised

quantity surveyor report indicated that the EDC was greater than \$5 million and therefore would make the application RSD.

As the revised EDC was within 10% of the \$5 million threshold for RSD, an independent quantity surveyor was engaged by Council to conduct a peer review (as recommended by NSW Planning Circular PS 24-002). The peer review indicated an EDC of approximately \$5.8 million in comparison to the applicant's \$5.4 million. The peer-reviewing quantity surveyor noted that both figures were reasonably close for a development of this nature and therefore can be considered accurate.

In this regard, the application was not referred to the Panel until partway through the assessment process when it was identified as being RSD.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 3: Hazardous and offensive development

The provisions of Chapter 3 apply to hazardous and offensive, or potentially hazardous and offensive, development. Section 3.7 requires the consideration of current circulars or guidelines prepared by the Department of Planning (or equivalent) in determining whether a development is potentially within these definitions.

The current and most recent guidelines prepared by the Department of Planning is still the *Hazardous and Offensive Development Application Guidelines – Applying SEPP 33* (2011) (SEPP 33 Application Guidelines). Figure 2 in the Applying SEPP 33 Guideline sets out procedural requirements for determining whether it is hazardous, indicating to consider factors such as dangerous goods quantity/distance thresholds and other factors. Where the screening test indicates hazardous development, then a preliminary hazard analysis (PHA) is required to be submitted.

It is noted that the proposal involves installation of lithium-ion batteries, specifically newer lithium iron phosphate batteries. The applicant in their Statement of Environmental Effects (SEE) has determined the screening test to be used based on the class of the goods, which they have determined using the *Dangerous Goods Code 2024* (the ADG Code) prepared by the National Transport Commission of Dangerous Goods. The ADG Code classifies lithium-ion batteries as Class 9 (miscellaneous dangerous goods and articles). As outlined by the applicant, the SEPP 33 Application Guidelines state in relation to Class 9 that they “*are miscellaneous dangerous goods, which pose little threat to people or property. They may be substances which pose an environmental hazard, and the consent authority should consider whether or not a potential for environmental harm exists.*”

Furthermore, the Department of Planning, Housing and Infrastructure's *Large-Scale Solar Energy Guideline* states that:

“If the project includes battery energy storage that has a capacity of more than 30 MW, the applicant must do a preliminary hazard analysis in accordance with Hazardous Industry Planning Advisory Paper No 4 – Risk Criteria for Land Use Safety Planning, Hazardous Industry Planning Advisory Paper No 6 – Hazard Analysis and Assessment Guideline – Multilevel Risk Assessment.”

This is supported by the NSW Planning Secretary's *Environmental Assessment Requirements for Large-scale Solar Energy* states that PHAs are not required for BESS with lithium-ion batteries less than 30MW in size.

This therefore does not require a further PHA to be prepared for the purposes of the SEPP (Resilience and Hazards).

It is also noted that several submissions received question the approach for SEPP (Resilience and Hazards), including suggestion that the SEPP 33 Application Guidelines is out of date. The approach outlined above appears to be consistent with a number of other BESS proposals reviewed which have been reported to Planning Panels (including for example, [PPSNTH-301](#), [PPSNTH-360](#), [PPSSTH-469](#), and [PPSHCC-233](#)), with none of these applications having required a PHA for purposes of SEPP (Resilience and Hazards) in relation to lithium-ion batteries less than 30MW. It is also noted that hazards generally still remain a consideration under s4.15 of the Act, but just not further specifically for the purposes of SEPP (Resilience and Hazards).

There may also be a requirement for a NSW Workcover Notification due to the threshold quantity of batteries, but this is outside of the development application assessment framework.

Chapter 4: Remediation of Land

The provisions of Chapter 4 apply to the development and has been considered. Section 4.6 of SEPP (Resilience and Hazards) requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, if 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.

The site is not identified on Council's contaminated land register and there are no known former uses of the land which would suggest a contamination risk.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2: Infrastructure

Section 2.36: Development permitted with consent

Section 2.36(1)(b) determines that 'electricity generating works' is permissible with consent in the RU4 Primary Production Small Lots zone as a 'prescribed non-residential zone'. As 'electricity generating works' is prohibited in the RU4 Primary Production Small Lots zone by the LEP, the permissibility is enabled through this section of SEPP (Transport and Infrastructure) as it prevails in the instance of inconsistency (in accordance with Section 1.9 of the LEP).

Section 2.48: Determination of development applications—other development

The proposal involves works connecting into the existing electricity infrastructure and easement. In accordance with the Section 2.48(2) of SEPP (Transport and Infrastructure), the application was referred to Essential Energy who responded on 1 November 2024 and raised no objections, subject to standard requirements which are included as notes in the draft recommended conditions (refer **Attachment D**).

Yass Valley Local Environmental Plan 2013

The relevant local environmental plan applying to the site is the *Yass Valley Local Environmental Plan 2013* (the LEP) and is considered below.

Clause 1.2: Aims of Plan

The aims of the LEP 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 establish planning controls that promote sustainable development,*
- (b) *to protect high quality agricultural land and encourage emerging agricultural industries,*
- (c) *to encourage housing diversity,*
- (d) *to promote employment-generating tourism,*
- (e) *to provide for commercial and industrial development,*
- (f) *to encourage the establishment of retail and professional services in urban locations,*
- (g) *to protect and enhance the character of each of the villages in Yass Valley,*
- (h) *to enhance service provision in each of the villages in Yass Valley,*
- (i) *to protect and conserve the cultural heritage and history of Yass Valley,*
- (j) *to protect and enhance the environmental and biodiversity values of Yass Valley,*
- (k) *to minimise land use conflicts.*

The aims of the LEP are not called up as a direct consideration for an individual development application, rather are relevant in making of the LEP per clause 1.2(1) of the LEP. However, broad consideration has been given to the aims for the purposes of this assessment.

It is noted that the proposal is consistent with some, but not all, of the aims of the LEP, reflective of the fact that the land use is prohibited in the zone. In particular, the proposal is not consistent with *encouraging* emerging agricultural industries or *promoting* employment-generating tourism. There remains some potential for land use conflict as discussed elsewhere in this assessment report.

Clause 1.9: Application of SEPPs

Clause 1.9 of the LEP states that a SEPP prevails over the LEP. 'Electricity generating works' is prohibited in the RU4 Primary Production Small Lots zone by the LEP. However, permissibility is enabled by Section 2.36 of SEPP (Transport and Infrastructure) as the RU4 Primary Production Small Lots zone is a 'prescribed non-residential zone'. The proposed development is therefore permitted with consent at the site as enabled by the SEPP.

Clause 2.3: Zone Objectives and Land Use Table

The site is zoned RU4 Primary Production Small Lots under the LEP. As shown earlier in **Figure 3**, the site is generally located at the convergence of the RU4 Primary Production Small Lots, RU1 Primary Production, and R5 Large Lot Residential zones.

The proposal is characterised as 'electricity generating works' which is defined under the LEP as:

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

- (a) Making or generating electricity, or*
- (b) Electricity generating"*

'Electricity generating works' is prohibited in the RU4 Primary Production Small Lots zone by the LEP. However, permissibility is enabled by Section 2.36 of SEPP (Transport and Infrastructure). As identified above, Clause 1.9 of the LEP states that a SEPP prevails over the LEP. The proposed development is therefore permitted with consent at the site as enabled by the SEPP

It is noted that the applicant has indicated in their SEE that the proposal is not “antipathetic to the objectives”. The SEE has not however provided consideration of the individual zone objectives, other than noting that appropriate mitigation measures as part of design, construction, have or will be put in place to “minimise significant impacts to the objectives of the land zone and surrounding land uses”.

The proposed development is consistent with some, but not all, of the objectives of the zone. Clause 2.3(2) requires the consent authority to “have regard” to the objectives of the zone in determining a development application. It is important to note that the proposed development does not need to be consistent with all objectives, but they must be taken into consideration with a genuine regard. It is also noted that development which is classified as permissible in the zone should generally be presumed as being consistent with the objectives of the zone, but then must be considered in the context of the circumstances and merits of the proposal. The difficulty in the circumstances here is that ordinarily the proposal as ‘electricity generating works’ is prohibited in the zone, with permissibility only enabled through SEPP which prevails. Whilst the specific zone objectives of each LEP in NSW are slightly different, the permissibility enabled by SEPP (Transport and Infrastructure) would suggest that, in some form, ‘electricity generating works’ are broadly consistent and compatible with the RU4 Primary Production Small Lots zone.

In this regard, a key issue here is whether the proposal presents a land use conflict with the existing uses in the locality which are primarily rural lifestyle and small-scale primary production, agritourism and other similar uses (i.e. viticulture, cellar door premises, etc.), and whether the location, type and intensity of the development is appropriate.

Consideration of the RU4 Primary Production Small Lots zone objectives are presented below:

- *To enable sustainable primary industry and other compatible land uses.*

The proposal is not for a primary industry, nor does it directly contribute to or support primary industry. However, for the reasons details in this assessment report and through the use of mitigation and management measures, it is generally considered that it is *compatible* with primary industry land uses, subject to mitigation and management measures.

- *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*

The proposal does not *promote* diversity and employment opportunity in relation to primary industry enterprises. The proposal is for a BESS which is largely unrelated to primary industry enterprises. However, the proposal is not considered to diminish the opportunity for diversity and employment opportunity in relation to primary industry enterprises within the broader zone.

- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

The proposal has some potential to present land use conflict within this zone, including, for example, by way of noise to sensitive residential receivers. Generally, however, the assessment has indicated that these conflicts have or can be minimised through mitigation and management measures including the construction of the acoustic barrier to achieve noise levels within acceptable criteria, noise monitoring and validation, proposed

landscaping, appropriate selection of colours and finishes, and operational management plan.

The potential for land use conflict associated with the adjoining viticulture land use is discussed in further detail under the DCP (i.e. which include more specific controls relating to land use conflict) as well as under the key issues in Section 5 of this assessment report.

- *To enable residential development if it supports viable primary production on the land.*

Not applicable – the proposal is not for residential development.

- *To ensure that the location, type and intensity of development is appropriate, having regard to the characteristics of the land, the rural environment and the need to protect significant natural resources, including ground and surface water.*

The location and the type of the development is not considered to be preferred, reflected by the fact the use of land is prohibited in the zone by the LEP. The intensity or scale of the proposal is however relatively small.

Noting permissibility is enabled by SEPP (Transport and Infrastructure), the location for this proposal may be considered appropriate based on the scale with the potential for impacts to be mitigated and managed.

The proposal is considered to have a low risk to groundwater due to the batteries being self-contained units, a thick clay layer under the site, and the depth of the groundwater. However, the Flood and Groundwater Assessment Report desktop study requires validation through a soil bore to ensure conditions are as expected and is recommended as a deferred commencement condition. Measures can be put in place to manage contamination risk to surface waters a result of any firefighting water including in relation to existing dam/nearby dam. However, there needs to be a detailed and a specific incident management plan of exactly how this will be done operationally. These issues are discussed in detail under key issues in Section 5 of this assessment report.

- *To prevent premature and sporadic subdivision of land on the fringe of urban areas into small lots that may prejudice the proper layout of these areas in the future.*

Not applicable – the proposal is not for subdivision.

Whilst the above assessment identifies that the proposal is consistent with some, but not all, of the objectives of the zone, overall, the applicant's statement that it is "not antipathetic to the objectives" is a reasonable conclusion, but subject to addressing the matters included as part of the recommended deferred commencement. In 'having regard' to the objectives of the zone, the areas of inconsistency are not such that would be considered to warrant refusal of the application, particularly noting generally that the provisions of the SEPP prevail over the LEP.

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 4: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Height of buildings (CI 4.3(2))	No maximum height of building specified	Battery containers and MPVS – maximum 2.65m above NGL Acoustic barrier – approximately maximum 3m	N/A
FSR (CI 4.4(2))	No maximum floor space ratio specified	N/A	N/A
Flood planning (CI 5.21)	Requires considerations and preconditions to ensure that development in the flood planning area is suitable.	The site is within the flood planning area of the 1% AEP event. A flood assessment report has been submitted with the application and concludes that the maximum depth of the 1% AEP event is 80mm with shallow sheet flow and ponding around the dam area. It recommends that the components of the development have a finished level of +150mm above the flood level and can be achieved through the footing design. Suitable vehicle and pedestrian egress are available to Turton Place away from the flood risk due to the shallow depth and low velocity. The proposal is compatible with the flood risk and the requirements of the clause are satisfied.	Yes
Heritage (CI 5.10)	Requires consent for certain development involving heritage items, Aboriginal objects, or in heritage conservation areas. Requires assessment and consideration of heritage impacts.	The site does not contain a heritage item, is not within a heritage conservation area, and there are no heritage items in the vicinity.	N/A
Earthworks (CI 6.1)	Requires considerations and preconditions to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring	The requirements of the clause are satisfied. Appropriate sediment and erosion controls can be installed during construction works.	Yes

	uses, cultural or heritage items or features of the surrounding land.		
Terrestrial Biodiversity (CI 6.3)	<p>Applies to land identified as “Biodiversity” on the Natural Resources Biodiversity Map.</p> <p>Requires considerations relating to terrestrial biodiversity protection and conservation, and sets out preconditions before which consent can be granted.</p>	<p>Only a small part of the land is identified as “biodiversity”, primarily near the dam immediately north of the development compound area and trees on the neighbouring property to the west. It is noted the map is based on modelling only in this location. A flora and fauna assessment has been submitted with the application which has been based on field survey. The area of the development is proximity to the area mapped “biodiversity” was found to be dominated by exotic grasses/pastures as a result of historical clearing and agricultural use. The development is designed, sited and can be managed to avoid any significant adverse impact on terrestrial biodiversity. The requirements of the clause are satisfied.</p>	Yes
Essential Services (CI 6.8)	Requires consent authority to be satisfied that essential services are available or that adequate arrangements have been made to make them available when required.	Adequate arrangements have been made for all essential services. The requirements of the clause are satisfied.	Yes
	(a) The supply of water	Water supply is available through 20,000L tank. A tank nozzle suitable for firefighting will be required.	Yes
	(b) The supply of electricity	Electricity supply is available. Referral to Essential Energy during assessment with no objections raised, subject to standard requirements	Yes

	(c) The disposal and management of sewage	Not required.	Yes
	(d) Stormwater drainage or on-site conservation	Adequate arrangements for stormwater can be made on site due to the large lot size.	Yes
	(e) Suitable vehicle access	Legal and physical access exists from Turton Place. A new vehicle access crossing is proposed and will require approval under Section 138 of the <i>Roads Act 1993</i> . It has the potential to comply with Council's <i>Road Standards Policy RD-POL-9</i> requirements. A new internal access driveway is proposed to the development site compound and can be constructed to a suitable standard.	Yes
	(f) Connection to a communications network with voice or data capability (or both).	Wireless communication networks for voice and data are available.	Yes

The proposal is generally consistent with the LEP, with the exception of the land use table and some zone objectives, noting the 'electricity generating works' is ordinarily not permissible in the zone.

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

There are no proposed instruments which have been the subject of public consultation under the Act that are relevant to the proposal.

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

Yass Valley Development Control Plan 2024

Commencement

The DCP commenced on 1 August 2024, having been previously adopted in draft form on 22 February 2024. The development application was received on 4 June 2024. Council sought legal advice in relation to the applicability of the DCP for development applications which were lodged but remained undetermined as of 1 August 2024. The legal advice indicated that the DCP does not contain a savings provision and therefore is applicable with a full weight for the purposes of consideration under section 4.15(1)(a)(iii). The application has therefore been assessed against the DCP.

The DCP repealed the previous *Yass Valley Council Development Control Plan (Fairley Commercial Centre, Murrumbateman)* and the *Yass Shire Development Control Plan - Multi-*

unit Residential Development 2003 which were in force at the time of the application lodgement, however neither were applicable to the proposal.

Compliance Summary

It is noted that the proposal for 'electricity generating works' is included in the land use matrix provided upfront in Part A (A.12) of the DCP for the purposes of determining the parts/controls that are applicable. However, it has been identified that the proposal as a BESS does not clearly align with all controls under the applicable parts and has presented difficulty for assessment including for the applicant in their supporting documentation and the comments in community submissions received. This centres on two issues:

- Part E of the DCP is for Rural, Large Lot and Environmental Zone Development. However, the land use matrix in A.12 indicates that this part is not applicable to 'electricity generating works'. This is likely due to the DCPs drafting corresponding with LEP land use table for determining which parts of the DCP are applicable – i.e. the permissibility for 'electricity generating works' in rural zones is only enabled by the SEPP, so therefore in drafting the land use matrix in the DCP, 'electricity generating works' has not been cross-referenced as applicable to the rural zones. The applicant has provided assessment against Part E.
- Part L of the DCP is for miscellaneous land uses. The land use matrix in A.12 indicates that it applicable to 'electricity generating works', however, Part L6 is then in relation to 'renewable energy development projects', which the proposal is not. It is noted the controls appear to have been written for particularly wind and solar generating projects. The applicant has not provided assessment against Part L stating that their proposal is not for a renewable energy project.

The controls in the following chapters have however been broadly considered as potentially relevant to the development:

Table 5: Consideration of the DCP Controls

Part	Comment	Comply
Part A - Introduction	Application placed on public exhibition due in accordance with the Part. The application to be determined by SRPP as it is RSD. Report presented to Report to Council meeting advising Councillors receipt of application as RSD.	Yes
Part B – Principles for All Development	<p>The proposal is generally consistent with the principles for all development of this part including for:</p> <ul style="list-style-type: none"> • Sustainability • Site suitability • Site analysis • Crime prevention and safety • Neighbourhood character <p>The exception is in relation to colours, finishes and materials within the landscape, which is covered elsewhere in this assessment including under key issues in Section 5.</p>	Yes

Part E – Rural, Large Lot and Environmental Zone Development	The land use matrix in A.12 indicates that this part is not applicable to ‘electricity generating works’. The part has however been still considered noting the development is located in a rural zone. The proposal generally complies with this part, with the exception of the setback distance to ‘intensive plant agriculture’ on adjoining land which is approximately 140m instead of minimum 250m and a noise level impact requirement if it was a rural industry or intensive agricultural (which the proposal is not). Applicant has provided details suggesting that the development still achieves the objectives of the controls.	If applied: Numerical – No Objectives - Yes
Part H – Development in Hazard Affected Areas	<ul style="list-style-type: none"> A flood assessment report has been submitted with the application and concludes that the maximum depth of the 1% AEP event is 80mm with shallow sheet flow and ponding around the dam area. It recommends that the components of the development have a finished level of +150mm above the flood level and can be achieved through the footing design. Suitable vehicle and pedestrian egress are available to Turton Place away from the flood risk due to the shallow depth and low velocity. The proposal is compatible with the flood risk. The application was accompanied by a bush fire management and emergency response plan prepared by an accredited bush fire practitioner detailing compliance with <i>Planning for Bushfire Protection 2019</i>. The application does not require a bush fire safety authority for the purposes of s100B of the <i>Rural Fires Act 1997</i>, however was referred to the NSW Rural Fire Services for advice under s4.14 of the EP&A Act 1979. The RFS provided a response with recommendations which have been addressed. APZ can be provided wholly within the site boundaries. The risks associated with bushfire can be appropriately and effectively managed. 	Yes
Part I – Carparking and Access	<ul style="list-style-type: none"> Legal and physical access exists from Turton Place. A new vehicle access crossing is proposed to Turton Place and will require approval. It has the potential to comply with Council’s required standards. There is adequate space within the site to accommodate required parking during both construction and ongoing operation. 	Yes
Part K – Natural Resources	The proposal satisfied the requirements of Part K in relation to natural resources and the two (2) young non-hollowing bearing trees for removal.	Yes
Part L – Miscellaneous Land Uses	There is inconsistency identified with the structure of this control and part. It is noted the land use matrix in A.12 indicates that this part is applicable to ‘electricity generating works’, however, Part L6 is then in relation to ‘renewable energy development projects’, which the proposal is not. It is noted the controls appear to have been	If applied: No

	written for particular wind and solar generating projects. Consideration of the controls has however been provided.	
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A detailed assessment against the controls of the DCP is included as **Attachment E** and key area of potential non-compliance or uncertainty of applicability are presented below.

Potential Non-Compliance/Uncertainty of Applicability

(i) Part E: E.1(c) - Siting of Buildings.

E.1 Siting of Buildings

Objective: *To ensure that developments are sited in a manner to not dominant the rural landscape and minimise landuse conflict potential*

Control:

c. All buildings shall have a setback of no less than 250 metres from the boundary of a property where the following activities exist:

- *forestry;*
- *intensive plant agriculture (including vineyards and orchards);*
- *mines and extractive industries;*
- *railway lines.*
- *A reduced setback will be permitted where measures are implemented to mitigate noise, light intrusion, dust and spray drift.*

In this instance, the site of the proposal is located approximately 140m to the boundary of a property adjoining to the immediate north which is used for the purposes of viticulture. It is however noted that it located greater than 250m away from the area of the adjoining property which currently has vines. The property on the opposite side of Turton Place to the south is also used for purposes of viticulture, however, the proposed development is located greater than 250m away from the boundary of that property. The adjoining property to the east has a truffle farm but the boundary is also greater than 250m away.

The applicant in their SEE suggests that the non-compliance is capable of being addressed through mitigation measures to achieve the objective. In their detailed assessment against the DCP controls, the applicant indicates this is for the following reasons:

- *The location of the BESS has been considered in the context of physical constraints, topography and drainage, adjoining landuses, access arrangements, servicing, restrictions on land use and setbacks. The proposed location therefore is not solely informed by the setbacks of the DCP and*
- *Represents a broader set of constraints to minimise the potential for adverse impacts*
- *Section 4.15 (3A) of the EP&A Act provides that if a development application does not comply with the standard of a DCP, the consent authority is to be flexible in applying provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development.*
- *A review of satellite imagery for the adjacent intensive agricultural activities to the north indicates that these activities are predominantly contained within the northeastern extent of Lot 22 DP248413. The extent of vineyards is situated approximately 270m further northwest from the northern boundary of the host lot where it is closest to the BESS footprint.*
- *The proposed development is accompanied by a suite of mitigation measures, including landscaping maintained for the duration of the project lifespan and noise walls. The implementation of mitigation measures responds to the objective of the DCP control,*

ensuring the development does not dominant the rural landscape while further minimising the potential for land use conflicts

It is considered that the underlying purpose of this control is lifted from the Department of Primary Industries *Buffer Zones to Reduce Land Use Conflict with Agriculture [Interim Guideline 2018]*. This guideline suggests that a 250m buffer should be provided to sensitive land uses where possible. The sensitive land uses referred to in the guidelines include private dwellings, schools, places of worship, etc. For sensitive land uses, a land use conflict may exist with viticulture, particularly through the viticulture activities which may present incompatible noise, light, dust and spray issues. The control in the DCP recognises this and has essentially a built in a reduced setback pathway. The last point in the control specifically states: *“a reduced setback will be permitted where measures are implemented to mitigate noise, light intrusion, dust and spray drift.”*

The nature of the proposal as a BESS is not a sensitive land use. It is unlikely that there are incompatible issues by way of noise, light intrusion and spray drift that would adversely affect the BESS. Conversely, it is unlikely that the nature of the BESS would have any adverse impact on the viticulture operations at the proposed setback of 140m to the property boundary instead of 250m. The exception to this is in relation to the potential for smoke in a major fire incident, however, again the difference between the proposed 140m and required 250m is unlikely to make any significance difference (smoke is discussed further under key issues in Section 5 of this assessment report).

To this end, it is considered that the proposed development does meet the objective of the control contained in E.1(c) - Siting of Buildings and the proposed setback can be supported.

Furthermore, the numerical non-compliance with this control is unlikely to be a sound basis for refusal noting that Part K of the DCP may not strictly apply to ‘electricity generating works’, the reduced setback pathway built into the control, and generally the requirement to provide flexibility in the implementation of DCP control where it achieves the objective of the standard (per Section 4.15(3A) of the Act).

(ii) Part E: E1.1 Siting of Dwellings and Setbacks

Within the submissions received it is suggested that the proposal does not comply with the 50m setback from boundaries for rural areas on lots >5ha. It is noted that this control applies only to proposals dwellings and outbuildings and therefore does not apply to the proposal as ‘electricity generating works’.

(iii) Part E: E3.1 Intensive Agriculture and Rural Industry

Part E3 of the DCP is for ‘rural based activities’, with control E3.1 being for ‘intensive agriculture and rural industry’. Within the submissions received it is suggested that the proposal does not comply with the following controls in this part:

E3.1 Intensive agriculture and rural industry

Objective: *To ensure that agricultural activities limit off site nuisance as much as practicable*

Controls:

- a. All potential stationary noise, odour, dust or spray drift sources are to be sited as far away as possible from common property boundaries and sensitive uses such as dwellings (not in the same ownership) and having regard to prevailing winds;*
- b. Development applications should detail what noise attenuation or abatement measures are proposed to ensure that constant noise does not exceed 5dB(A) above background noise levels when measured at the boundary with any adjoining property or public road.*

It is noted that these controls apply to intensive agricultural and rural industries, and the objective is in relation to ensuring that agricultural activities limit off site nuisance etc. in this regard, the control is not considered to be intended to apply to the proposal for the proposal as 'electricity generating works'. It is noted however:

- The relationship between sensitive uses is discussed generally in this assessment report, including under DCP control *E.1 Siting of Buildings* above.
- An acoustic report has been submitted with the application and has demonstrated that the proposal can comply with the requirements of Noise Policy for Industry (NPfI), subject to attenuation measures in form of an acoustic barrier. However, noise levels at the boundary of adjoining property would exceed 5dB(A) above existing background due to the low background levels. Noise is discussed under key issues in Section 5 of this assessment report.

(iv) Part L: L6 Renewable Energy Projects

L6 Renewable Energy Development Projects

It is recognised that renewable energy is an important sustainability measure to address the negative impacts of climate change and reduce reliance on fossil fuel energy generation. Renewable energy projects do consume large portions of land and Council considers that the maximum number of industrial turbines within the Yass Valley Local Government Area has been reached. However, additional renewable energy projects will be considered on individual merits.

Objective: *To provide guidance to developers of renewable energy projects on the local matters to be taken into consideration in addition to those in any state or national guidelines*

Controls:

- a. The location of any renewable energy development project shall be consistent with the Yass Valley Settlement Strategy (or subsequent document);*
- b. The 5km buffer area along the NSW/ACT border identified in the Yass Valley Settlement Strategy is designed to protect and retain the existing environmental values and rural character of the area and is not suitable for renewable energy infrastructure;*
- c. The infrastructure (e.g. turbines, panels, substations) not being within view lines of villages and towns or clusters of rural dwellings;*
- d. The infrastructure not having an adverse impact on the amenity of any dwellings;*
- e. The impact of infrastructure (e.g. turbines, panels) on the rural landscape and tourism values of the Yass Valley is to be minimised;*
- f. A sharing the benefits scheme(s) with the host landowners, immediate neighbours and a Community Enhancement Fund (as per Council policy) shall be identified in any development application;*
- g. Noise impacts at adjoining dwellings is to not exceed with the applicable standards;*
- h. The project to commence within 5 years of a Consent being issued and completed within 5 years of commencement;*
- i. The proposal and associated infrastructure (e.g. panels, turbines) shall not have a negative impact on the heritage values of the site and Yass Valley;*
- j. The economic and social impacts on local communities and Yass Valley shall be clearly articulated in the proposal;*
- k. Any community and Rural Fire Service concerns in relation to the bushfire risks and any impediments to firefighting operations shall be examined, minimized and achievable mitigation measures clearly explained;*
- l. An assessment is to be included of any impacts in regards to potential land contamination as a consequence of a grass or bushfire and appropriate mitigation and rehabilitation measures outlines; m. The project to include the development of housing solutions for their workforce*

As mentioned earlier, there is an inconsistency identified with the structure of this control and part. It is noted the land use matrix in A.12 indicates that this part is applicable to 'electricity generating works', however, Part L6 is then in relation to 'renewable energy development projects', which the proposal is not. It is noted the controls appear to have been written for

particularly wind and solar generating projects. Consideration of the controls has however been made.

The key areas of potential non-compliances would be in relation to (a), (c), (d), (e) and (f).

- (a) The proposal is not directly consistent with the Settlement Strategy noting this area is identified as 'winery precinct'. However, it is not considered to have a significant impact in the realisation of the aims of the Settlement Strategy. Refer to discussion under Settlement Strategy in Section 3.6 of this Assessment Report.
- (c) The proposal is not located in area where it is visible by town and villages, however, is visible by several rural dwellings nearby.
- (d) The proposal is considered to have *some* adverse impact on the amenity of nearby dwellings in by way of noise, however the controls are contradictory in that it is then consistent with (g) having been demonstrated that the noise impacts are within acceptable standards of NPfI.
- (e) The impact of infrastructure ("e.g. turbines, panels") on the rural landscape and tourism values of the Yass Valley is to be minimised. There is considered to be *some* impact on the rural landscape, noting it is partially visible from public domain and from neighbouring properties, although this can be reduced through the use of appropriate screening landscaping and colours and finishes. Thoughtful implementation of these measures could significantly reduce any tourism-related concerns. It is also noted that the BESS proposal is not the same scale or nature as a solar or wind renewable energy project.
- (f) The proponent has not proposed a 'sharing the benefits scheme' or 'community enhancement fund, however a s7.12 development contribution will be collected. Refer to further discussion under economic impacts in this assessment report.

Yass Valley Development Contribution Plans

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

Section 7.11 Yass Valley Heavy Haulage Contributions Plan 2021

Not applicable. The proposal does not involve heavy haulage associated importation and exporting of fill material, extractive industry, or the like.

Section 7.12 Yass Valley Development Contributions Plan 2018

Applicable as the cost of undertaking the development exceeds \$100,000. The recommended draft conditions include for payment of the contribution prior to the issue of any construction certificate.

(ii) Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the Act

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

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

Section 61: Additional Matters

Section 61 of the Regulation contains matters that must be taken into consideration by a consent authority in determining a development application. There are no matters relevant under this section.

Schedule 3: Designated Development

Prescribes that 'electricity generating stations' that supply or can supply more than 30 megawatts of electrical power from energy sources is designated development. The proposed development is not an 'electricity generating station'.

(d) 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 in Section 5 below.

The consideration of impacts includes the following:

Context and Setting

The proposal is not particularly consistent with the context and the setting of the site, noting that the use of land for 'electricity generating works' is prohibited by the LEP. The surrounding land uses are primarily rural lifestyle, small scale agricultural (e.g. viticulture, truffle farm), and other agritourism (e.g. cellar door premises), with the area being identified as 'winery precinct' for the purposes of the Settlement Strategy. The potential impact on context and setting is particularly in relation to the impact on rural character, including visual impact and noise impact as discussed elsewhere in this assessment report in detail.

It has been demonstrated that noise levels can meet requirements in accordance with NPfI, subject to mitigation measures through installation of an acoustic barrier. Noise impact is discussed in detail under key issues.

There is considered to be *some* impact on the rural landscape, noting it is partially visible from public domain and from neighbouring properties, and utilitarian appear of this infrastructure. It is noted that the site is at a distance from the main public domain and vantage points and is partially softened by existing vegetation to the western boundary and to the north near the dam (although this vegetation is deciduous). Impacts can be reduced further through the use of appropriate screening landscaping and colours and finishes. It is noted that the scale of the BESS infrastructure is relatively small, consisting of 10 shipping container sizes battery containers and the slightly larger MVPS, plus the acoustic barrier. Visual impact is discussed in detail under key issues.

Impacts on surrounding land uses are discussed throughout this assessment report in relation to individual issues, particularly in key issues, LEP zone objectives, Settlement Strategy, and DCP. In summary, there is considered to be some adverse impact on adjoining land uses, however, these can either reduced through measures such as use of screening landscaping or are within acceptable criteria with mitigation measures in the case of noise and the acoustic barrier. It is not considered to present a significant land use conflict.

The proposal does not fundamentally or significantly alter the character of the winery precinct area overall. This represents use of 0.5ha of land area of the approximately 570ha in that area.

Access, Traffic and Parking

Legal and physical access exists from Turton Place. A new vehicle access crossing is proposed to Turton Place and will require approval under Section 138 of the *Roads Act 1993*. It has the potential to comply with Council's *Road Standards Policy RD-POL-9* requirements, including for sight distance. A new internal access driveway is proposed to the development site compound and can be constructed to a suitable standard.

The traffic generation associated with the proposal will primarily be during the construction phase and would consist of a mix of light and heavy vehicles. Due to the relatively small scale of the proposal, the traffic generation is not considered to be high, suggested as three light vehicles and one heavy vehicle per hour on average in the submitted traffic impact assessment. Construction is anticipated to take in the vicinity of four weeks to complete and impacts can be managed through a Construction Environmental Management Plan (CEMP) and Traffic Guidance Scheme (TGS). The route of construction traffic can be restricted to via Murrumbateman Road (being a regional road), onto Patemans Lane, and then Turton Place (which is total distance of approximately 1.1km from Murrumbateman Road). This minimises the traffic generation along the local road network.

Traffic generation during the ongoing operation is minor as there are no permanent staff on site. There is adequate space within the site to accommodate required parking during both construction and ongoing operation.

Recommended conditions have been included for a CEMP to be prepared and implemented, dilapidation assessment of Turton Place and Patemans Lane, and standard of construction of access, and for obtaining an approval under s138 of the *Roads Act 1993*.

Visual Impact

The visual impact of the proposal is considered to be a key issue. However, subject to careful attention to the landscape buffer and appropriate colour and finishes, it is considered that the visual impact can be appropriately mitigated and will not have a significant adverse impact. This is discussed in detailed under key issues in Section 5 of this assessment report.

Utilities

The proposal is not considered to have any significant impact on the provision of utilities.

The site and the proposal are not connected to reticulated water and sewer services. Permanent toilet facilities are not required as there are no staff based at the site, however recommended conditions of consent can require a temporary portable toilet(s) to be available during construction.

The BESS will be connected into the electricity infrastructure. The proposal was referred to Essential Energy who raised no objections, subject to standard requirements (refer **Attachment D**).

The nature of the BESS allows for storage of electricity during peak electricity generation (i.e. during the day) or periods of low demand, and for discharge back into the grid during periods of low generation or high demand. This, generally and albeit it a small scale, contributes minor positive benefit for the ongoing stabilisation of the electricity grid. It is noted that the proponent receives the financial benefit in this exchange and that the benefit to the grid is as a whole and not necessarily to the immediate community or Yass Valley.

Heritage

The site does not contain a heritage item, is not within a heritage conservation area, and there are no heritage items in the vicinity for the purposes of clause 5.10 of the LEP. There are no registered Aboriginal places or sites of significance identified near the site. There are no site features which would indicate an increased likelihood of the presence of Aboriginal objects or sites of significance. The proposal is not considered to have an adverse impact on the built and cultural heritage of the Yass Valley.

Water – Surface

A Flood and Groundwater Assessment Report prepared by Water Technology/IGS has been submitted with the application. This concludes that the site is flood affected by the 1% AEP event with a maximum depth of 80mm with shallow sheet flow and ponding around the dam area. It recommends that the critical components of the development have a finished level of +150mm above the flood level and can be achieved through the footing design. The proposal is unlikely to have any significant changes to overland flow or impacts to adjoining properties, however, consistent with the recommendation in the Flood and Groundwater Assessment Report, the hydraulic model should be tested again prior to a construction certificate, including with consideration of the acoustic barrier of. This is included in the draft recommend conditions.

Measures can be put in place to manage contamination risk to surface waters a result of any firefighting water including in relation to existing dam/nearby dam. However, there needs to be a detailed and a specific incident management plan of exactly how this will be done operationally. This is included in the draft recommend conditions. Firefighting water is discussed in detail under key issues in Section 5 of this assessment report.

Water - Groundwater

A Flood and Groundwater Assessment Report prepared by Water Technology/IGS has been submitted with the application. The proposal is considered to have a low risk to groundwater contamination due to the batteries being self-contained units, a thick clay layer under the site, and the depth of the groundwater. However, this desktop study requires validation through a soil bore to ensure conditions are as expected and is recommended as a deferred commencement condition. This is discussed in detail under key issues in Section 5 of this assessment report.

Soils

As above, the proposal is considered a low risk to soils due to the batteries being self-contained units, and a thick clay layer under the site which would limit downward migration. It is also noted that the lithium iron phosphate batteries do not use heavy metals (i.e. nickel and cobalt) This is discussed under key issues in Section 5 of this assessment report.

Air – Smoke

It is noted that the batteries contain a number of fire suppression safety measures. However, a significant battery fire could still result in smoke being produced, particularly in a catastrophic event where it would require a 'controlled burn' approach. This is discussed in detail under key issues in Section 5 of this assessment report.

Flora and Fauna Impacts

A flora and fauna assessment was submitted with the application. The site area is dominated by exotic grasses/pastures as a result of historical clearing and agricultural use. There are two native eucalyptus trees (young and non-hollow bearing) proposed to be removed at the southern boundary where the new access is proposed from Turton Place. The proposed development is not considered to have any significant impact on flora and fauna.

Natural Environment - Other

The proposal involves minor earthworks at the site compound site and for the construction of the internal access, as well as underground cabling. The site is relatively flat and there will be no significant changes to natural site contours. There is opportunity for temporary appropriate sediment and erosion controls to put in place during construction works, and this is supported by draft recommended conditions.

Noise and Vibration

(i) Operational

Noise impacts associated with the operation of the BESS has been identified as a potential concern during the assessment. An Acoustic Report (Environmental Noise Impact Assessment) (v1) prepared by WatsonMossGrowcott was submitted with the application. The electrical infrastructure associated with the proposed development will generate noise, including from the inverters, transformers, and cooling units. The Acoustic Report indicated that noise levels are within the noise project trigger levels, subject to construction of the acoustic barrier. This is discussed in detail under key issues in Section 5 of this assessment report.

(ii) Construction

The Acoustic Report has considered construction noise impacts and has determined project noise management levels. The noise impacts associated with construction will include use of equipment, tools, and vehicles. It is noted that transient sources such as vehicles may travel within the site boundaries, however the assessment has focused on the assumption that the construction will occur primarily at the site of the compound and internal access road.

The Acoustic Report has found that the noise model indicates that during initial stages of construction for certain activities, noise emissions will be above desired noise management levels, however, are well below that which is considered 'highly affected' (75 dB(A)). Due to the exceeded in desired noise management levels, the Acoustic Report provides recommendations for noise mitigation strategies which include:

- General work practices
- Hours of operation for construction works and heavy vehicle movements (7am and 6pm Monday to Friday, and 7am to 1pm Saturday)
- Engagement with sensitive receivers (including particularly prior to concrete pouring works)
- Use of equipment fitted with broadband reverse alarms which vary their noise output according to the ambient noise level in the surrounding environment.

Due to the relatively short construction period (approximately four weeks) and subject to implementation of the noise mitigation strategies, the proposal is not considered to have a significant or unacceptable impact by way of construction noise. The recommendations made

in the Acoustic Report can be incorporated into a CEMP prior to commencement of any construction. This is included in the draft recommended conditions.

(iii) Vibration

The nature of the proposed development during operation and construction is unlikely to have any adverse impacts by way of vibration. There are no vibration intensive activities associated with the construction works.

Natural Hazards

The site is affected by natural hazards, including flooding and bush fire.

(i) Flooding

The site is within the flood planning area of the 1% AEP event. A flood assessment report has been submitted with the application and concludes that the maximum depth of the 1% AEP event is 80mm with shallow sheet flow and ponding around the dam area. It recommends that the components of the development have a finished level of +150mm above the flood level and can be achieved through the footing design. Suitable vehicle and pedestrian egress are available to Turton Place away from the flood risk due to the shallow depth and low velocity. The proposal is compatible with the flood risk and will not result in an adverse flood risk to neighbouring properties.

(ii) Bush Fire

The site is identified as bushfire prone land. The application was accompanied by a Bush Fire Management and Emergency Response plan (BFMERP) prepared by an accredited bush fire practitioner detailing compliance with *Planning for Bushfire Protection 2019*. The application does not require a bush fire safety authority for the purposes of s100B of the *Rural Fires Act 1997*, however was referred to the NSW Rural Fire Services for advice under s4.14 of the EP&A Act 1979 who provided recommendations (refer **Attachment D**) which have been addressed. The impacts of the proposal are considered to have been suitably addressed and the bush fire risks can be appropriately managed, consistent with the requirements and principles of *Planning for Bushfire Protection 2019*. This is discussed in detail under key issues in Section 5 of this assessment report.

Safety, Security and Crime Prevention

The site compound area proposes to include a wire mesh security fence around it. The site is well setback from roads and public spaces and therefore unlikely to result in any impacts or issues associated with safety, security and crime prevention.

Social Impact

The proposal is not considered to have any significant adverse social impact, including by way of sense of place, provision of community facilities, or interaction between the new development and the community. Potential impacts to human health by way of noise and smoke as a result of a fire event are discussed further under key issues in Section 5 of this assessment report.

Economic Impact

There is anticipated to be minimal economic impact.

There will be minor positive economic impact during the construction of the development with the employment of trades and construction workers. There is unlikely to be any significant ongoing positive economic benefit during operation from employment as there are no staff on site and it will be infrequently attended. The land owner will receive some positive economic benefit through diversification of their rural land use, noting the relatively small lot size and nature of existing use is unlikely to currently generate any significant income by way of primary production or similar.

There is likely to be minor positive economic benefit to the broader community in the small ongoing stabilisation function the BESS has for the electricity grid (noting it is only 5MW). It is noted that the proponent receives the financial benefit in this exchange and that the benefit to the grid is as a whole and not necessarily to the immediate community.

It is noted that, albeit unlikely, a catastrophic fire event which produced prolonged smoke *could* have adverse economic impact to the nearby vineyards if there was damage to grapes through smoke taint. Smoke is further discussed under key issues in Section 5 of this assessment report.

The application was referred to Council's Manager Community and Economic Development who provided advice for several points of consideration as outlined under Council referrals in Section 4.1 of this assessment report. The summary of this advice was that while there are some valid concerns raised about potential visual and character impacts, particularly in relation to Murrumbateman's tourism identity, these appear to be manageable with appropriate design and mitigation. The project could also contribute positively to regional infrastructure and investment. Particular attention is therefore required to ensure that the visual impact is mitigated, and visual rural character is retained. In this regard, the proposal is not considered to have broader adverse economic impacts on the tourism values of the Murrumbateman locality and the Yass Valley.

Council's DCP and *Community Enhancement Fund Policy DA-POL-20* (CEF Policy) contains controls and a framework for RSD or State Significant Development to provide a 'sharing the benefits scheme' with the host landowners, immediate neighbours and through a Community Enhancement Fund (CEF). These controls are intended to apply for large scale development such as solar farms and windfarms or the like. There was no offer by the proponent to implement the CEF Policy and to establish a CEF.

The CEF Policy requires the fund to be based on 1% of the estimated capital cost of the proposal and for the fund to be administrated by Council through a committee established under Section 355 of the *Local Government Act 1993*. It is also noted that the policy stipulates that Council's Section 7.12 *Yass Valley Development Contribution Plan 2018* (the Contribution Plan) will not be implemented where a CEF is established. Under either option of applying the CEF or the development contribution plan, the contribution amount is 1%. The capital cost of the development is approximately \$5.4 million, so if the CEF was applied, \$54,000 would be paid into the CEF (with the CEF Policy allowing either a single payment or for this to be divided over 20 years). It is considered the costs associated with establishment and implementation Section 355 committee, and processes associated with then spending the remaining money of the fund, is likely to consume a significant portion of the return when considered overall (i.e. including Council staff time, establishing the fund/committee, administrative functions, procurement processes, etc.). In this regard, it is considered more appropriate that the Contribution Plan is applied instead of the CEF.

Site Design and Internal Design

There is not considered to be any significant adverse impact as a result of the site design, noting in particular that noise impacts and visual impacts can be suitably mitigated as detailed elsewhere in this assessment report.

However, it is recognised that it *may* have been possible for impacts to have been further mitigated by increasing the setback distance from the western boundary. This was queried with the applicant in additional information request 1 with their response indicating they had demonstrated the site design was suitable for the development and it had considered various factors including physical constraints, topography and drainage, adjoining land uses, access arrangements, servicing, restrictions on land use and setbacks. The applicant requested that the site proposed be assessed. It is noted that increasing this setback distance *may* have also just resulted in the residue impacts being redirected between different properties or needing a greater acoustic barrier, particularly given the findings of the noise impact assessment. It may have also reduced separation distance to adjoining viticulture and truffle farm land uses.

The site design of the internal access road is suitable, generally following an existing fence line and established windbreak, and the new access driveway to Turton Place has been located so that it can comply with engineering standards including for sight distance.

Construction Impacts

The proposal is not considered to have any significant construction impacts. Construction is anticipated to take in the vicinity of four weeks to complete. Minor impacts associated with construction noise and traffic generation can be managed through the preparation of a CEMP and TGS, which are included with the draft recommended conditions. Traffic generation and noise impacts from construction are discussed previously above in this section of the assessment report.

Cumulative Impacts

The proposal is not considered to result in any significant cumulative impacts, noting this is the first BESS in the Yass Valley. Is it generally consistent with the planning controls, except for the LEP relating to permissibility. In advice received during the assessment, Council's Manager Community and Economic Development has however cautioned the proliferation of this type of development in the locality as that may result in adverse cumulative impacts on tourism and economic development values of the area.

The assessment has also highlighted inconsistencies with Council's DCP in relation to BESS development and the development controls that apply, which should be revisited in due course to prevent the potential for cumulative impacts in the future.

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

The site is considered to be suitable for the proposal with mitigation and management measures, although it is not considered to be the preferred use of the land or the preferred site for a BESS. It is noted that for the purposes of development application assessment under s4.15 of the Act, the site proposed must be assessed and not another alternative site.

The following comments are made in relation to the suitability of the site:

- The surrounding land uses are primarily rural lifestyle, small scale agriculture (e.g. viticulture, truffle farm), and agritourism (e.g. cellar door premises). The proposal is clearly *inconsistent* with these existing uses, reflective of the fact it prohibited by the LEP in the RU4 Primary Production Small Lots zone and its permissibility it only enabled by SEPP

(Transport and Infrastructure). However, subject to mitigation and management measures, it can be *compatible* with the surrounding land uses.

- The permissibility enabled by SEPP (Transport and Infrastructure) broadly signals intention for land in this zone to be potentially suitable for 'electricity generating works', subject to considerations of the specific site and proposal.
- There are potential concerns about the suitability of the site in relation to Murrumbateman's tourism identity and this area envisaged as a 'winery precinct', particularly rural character and visual impact as discussed elsewhere in this assessment report. This can be appropriately addressed through careful attention to landscaping and colours, finishes and materials. It is also noted that the site is well setback from view lines of the public domain and in part existing vegetation nearby assist in screening (albeit deciduous).
- The proposal is compatible with the natural hazards affecting the land, including flooding and bush fire, which are discussed elsewhere in this assessment report.
- The site is relatively flat, does not present any significant biodiversity constraints as it is primarily highly modified, and it located near major electricity line connection.
- Suitable vehicle access arrangements are available from Turton Place.
- The site is not in an area identified for more intense urban or rural residential development in the near future. Any more intense development may be in the long-term and after the life of the BESS.

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

These submissions received are considered in Section 4.3 of this assessment report.

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

The public interest is a multi-faceted consideration.

The impacts of the proposal have been discussed throughout this assessment report and it is considered that the development will not have a significant adverse impact. The key potential adverse impacts, including fire risk, noise, and visual, can be managed or have been minimised to within acceptable limits through mitigation measures including the proposed acoustic barrier and landscaping.

A number of submissions received raising an objection or concern could suggest that the proposal is not within the public interest of the immediate surrounding community. However, it is also noted that a complete diversity of views may not have been captured in these submissions.

The proposal may be within the public interest when taken at a larger perspective across the state and region noting the minor role BESS in will play in the ongoing stabilisation of the electricity grid in a transition to renewable energy (and the shift away from non-renewable sources for climate change objectives, which is in the public interest).

There are limited economic benefits to the immediate community, as discussed under economic impacts. There are some broader economic benefits however due to generating economic activity and the minor contribution it plays to electricity grid stabilisation.

The public interest can also be served with the consistent application of planning controls across the planning framework hierarchy and legislation. Whilst the LEP at a local level prohibits the proposal, the NSW SEPP (Transport and Infrastructure) prevails to enable permissibility and signals intention for such development to be potentially approved in the RU4 Primary Production Small Lots zone, unless there are reasons to the contrary relevant to the specific proposal or site. The proposal generally complies with the planning controls, with the exception of LEP land use table and some of the zone objectives. The proposal generally complies with the provisions of the DCP, although recognising issues with clarity on how these apply to a BESS proposal. The proposal has potential to comply with all relevant construction standards, including *Planning for Bushfire Protection 2019* and the NCC/BCA.

The proposal is not considered to have a significant adverse effect by way health and safety to the community. Noise impacts have been mitigated to acceptable project trigger levels in accordance with the NPfI, subject to the acoustic barrier. A catastrophic fire event producing significant smoke could have an adverse effect on human health. This is considered an unlikely occurrence however and emergency management approaches can be put in place for the protection of human health.

The proposal is consistent with the principles of ecologically sustainable development. The BESS can be appropriately decommissioned at the end of life, subject to appropriate plans continuing to be refined in time as technology and other requirements (such as legislation) change.

On balance the proposal is consistent with the public interest.

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 Act and outlined below in **Table 6**. A copy of all agency and referral responses are included in **Attachment D**.

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

Table 6: Concurrence and Referrals to Agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Nil.			
Referral/Consultation Agencies			
NSW Rural Fire Service (RFS)	S4.14 – EP&A Act Development on bushfire prone land	The site is identified as bushfire prone land. The application was accompanied by a BFMERP prepared by an accredited bush fire practitioner detailing compliance with <i>Planning for</i>	Yes

		<i>Bushfire Protection 2019</i> . The application does not require a bush fire safety authority for the purposes of s100B of the <i>Rural Fires Act 1997</i> , however was referred to the NSW Rural Fire Services for advice under s4.14 of the EP&A Act 1979. The RFS provided a response with recommendations which have been addressed.	
Electricity supply authority	Section 2.48 – <i>SEPP (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	The application was referred to Essential Energy who responded on 1 November 2024 and raised no objections, subject to standard requirements.	Yes
Integrated Development (S 4.46 of the EP&A Act)			
NSW Rural Fire Service (RFS)	S100B – <i>Rural Fires Act 1997</i> bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes	N/A – referred under s4.14 of the EP&A Act 1979	Yes
Natural Resources Access Regulator	S89-91 – <i>Water Management Act 2000</i> water use approval, water management work approval or activity approval under Part 3 of Chapter 3	There is a minor drainage line (second order) which flows into the dam to the immediate north of the proposed development compound. The proposal involves underground cabling which crosses this drainage line before connecting into the existing electricity line. The NSW Department of Climate Change, Energy, the Environment and Water advised that this work did not require a controlled activity approval for the purposes of section 91(2) of the <i>Water Management Act 2000</i> . The copy of the advice was included with the development application submitted. In this regard, it has not been subject to an integrated development referral.	N/A

4.2 Council Officer Referrals

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

Table 7: Consideration of Council Referrals

Officer	Comments	Resolved
Building Surveyor	Council's Building Surveyor reviewed the submitted plans and had no objections, indicating that the proposal appeared to generally have opportunity to comply with the National Construction Code. Standard conditions required demonstrating compliance prior to construction certificate are required.	Yes
Economic Development and Tourism	<p>Council's Manager Community and Economic Development reviewed the submitted proposal and noted several points of relevant consideration:</p> <p><u><i>"Tourism Impact Considerations:</i></u></p> <ul style="list-style-type: none"> <i>Visual Character and Rural Amenity: While the site is not located within the immediate viewshed of the main tourist attractions in Murrumbateman, including wineries and cellar doors, the site may be partially visible from Murrumbateman Road and possibly from the broader Murrumbateman winery trail. Given that much of the region's tourism economy is built on perceptions of rural character, natural landscapes, and a "village" feel, any industrial or utilitarian infrastructure—even when modest in scale—can be perceived by some visitors or operators as detracting from that appeal.</i> <i>Perception and Branding: The long-term branding of Murrumbateman as a boutique wine and food destination could potentially be affected if the locality is increasingly associated with utility-scale infrastructure. While this particular development may not pose a significant intrusion, cumulative impacts (if other similar proposals arise) could become more relevant over time.</i> <i>Mitigation Measures: The SRPP position following the briefing that visual impacts can be appropriately mitigated through materials, colours, and landscaping is noted and welcome. Thoughtful implementation of these measures—particularly screening vegetation consistent with the local character—could significantly reduce any tourism-related concerns.</i> <p><u><i>Economic Development Considerations:</i></u></p>	<p>Yes</p> <p>(Subject to ensuring landscaping and appropriate colours and finishes)</p>

	<ul style="list-style-type: none"> <i>Investment and Local Economic Activity: Positively, the proposed BESS could support regional energy resilience and attract further investment into energy infrastructure. Whilst direct job creation from this development may be limited post-construction, the project could have indirect economic benefits through local contracting, construction supply chains, and service provision during the build phase.</i> <i>Coexistence with Tourism Economy: Provided that visual and land use compatibility issues are adequately managed, the proposal may be able to coexist with the area's existing tourism-based economic activities. Ensuring that there is no significant disruption to the visitor experience, particularly in high-traffic periods or through noise or access issues, will be important.</i> <p><i>In summary, while there are some valid concerns raised about potential visual and character impacts, particularly in relation to Murrumbateman's tourism identity, these appear to be manageable with appropriate design and mitigation. The project could also contribute positively to regional infrastructure and investment."</i></p> <p>Particular attention is therefore required to ensure that the visual impact is mitigated, and visual rural character is retained.</p>	
Engineering	Council's Development and Standards Engineer reviewed the submitted plans and had no objections, subject to conditions in relation to access construction, dilapidation assessment of the road network, and for required approval under s138 <i>Roads Act 1993</i> .	Yes (Subject to conditions)
Environmental Health	<p>Council's Senior Environmental Health Officer reviewed the submitted proposal. There was no objection, however, they indicated that a comprehensive/consolidated incident management plan, including for both bushfire and BESS self-originating fire, is necessary. Whilst the assessment has indicated that measures can be put in place to manage contamination risk of any firefighting water and in relation to existing dam/nearby dam, there needs to be a detailed and specific incident management plan of exactly how this will be done operationally. The referral indicated this could be submitted prior to issue of a construction certificate.</p> <p>The referral also recommended a number of other conditions of consent, including in relation to compliance with the acoustic report and noise, maintaining water levels in the 20kL tank, and for dust management etc. during construction.</p>	Yes (Subject to conditions)
Strategic Planning	Council's Manager Strategic Planning reviewed the proposal and noted that the site is located in the RU4 Primary	Yes

	Production Small Lots area, however it is towards the eastern (outer) edge of that zone. The referral response outlined that whilst the area <i>may</i> be subject to more intense large lot residential development in the future, this is likely to be on a long-term timescale. There was no objection provided from a strategic planning perspective and no specific conditions required.	
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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 DCP and Council's Community Engagement Strategy as follows:

Table 8: Community Consultation Details

Public Exhibition	Dates	Details	# of Sub.
Initial public exhibition period	2 July 2024 to 21 July 2024	<ul style="list-style-type: none"> Written notice via letter to adjoining and nearby land owners Notification on Council's website Included extension of public exhibition period beyond minimum 14 days due to level of interest in the application 	37
Additional information 1 public exhibition period	12 December 2024 to 20 January 2025	<ul style="list-style-type: none"> Written notice via email to all persons who had previously made a submission Notification on Council's website 	6
Additional information 2 public exhibition period	2 May 2025 to 16 May 2025	<ul style="list-style-type: none"> Written notice via email to all persons who had previously made a submission Notification on NSW Planning Portal 	5

Council received a total of 48 unique submissions across the three public exhibition periods. All submissions were either objections or raised matters of concern, except for one which provided conditional support with requested changes for battery type.

A copy of all submissions is included as **Attachment F** and a detailed assessment key issues break down and response table as **Attachment G**. The applicant's responses to submissions are included as **Attachment H**.

Updates were provided periodically via email to all persons who made a submission, including advising when the report was presented to meeting of Council for noting.

The proponent held their own community session on 12 and 13 August 2024 following the

initial public exhibition. At request of the proponent, invitations to this were forwarded by Council staff to all persons who had made a submission. Council staff did not attend this session as it was proponent-led and outside of the community engagement framework for the application assessment.

It is noted that if this was 'local development' where Council was the consent authority, the DCP would have required a 'planning forum' to be held (due to >10 submission) as an opportunity for all interested parties to address/make representations to Councillors prior to completion of the assessment and a determination at a meeting of Council. As this is RSD with the SRPP the consent authority, a 'planning forum' was not held as the SRPP is the decision maker and holds its own 'public hearing' prior to a determination.

The key issues raised in these submissions are outlined in **Table 9**, noting number of submissions received raising the issue for each of the public exhibition periods (where there is more than one submission raising the issue).

Table 9: Community Submissions

Issue	No of submissions	Assessment Response Comments
Noise	Initial: 30 Add Info 2: 3	The most common issue raised was in relation to noise and associated impacts (including on nearby residential, commercial, and agricultural uses, as well as to human and animal health, and the methodology for assessment). Response: Discussed under key issues in Section 5 of this assessment report.
Fire (BESS)	Initial: 28 Add Info 1: 3 Add Info 2: 3	A consistent issue raised was in relation to the risk associated with a self-originating BESS fire, including the potential for this to occur, to spread, suppression, and control measures and management. A number of submissions raise examples of BESS fires from Australia and internationally. Response: Discussed under key issues in Section 5 of this assessment report.
Bush fire	Initial: 24 Add Info 1: 3 Add Info 2: 4	A consistent issue raised was in relation to bush fire, including the risk a bush fire may have to the BESS, the risk the BESS may have in starting a bush fire, and the appropriateness of the proposed bush fire management measures. Response: Discussed under key issues in Section 5 of this assessment report.
Context and setting	Initial: 17 Add Info 1: 3	Issues associated with context and setting, including within an area with high agritourism (i.e. 'winery precinct') and rural style values are raised generally across the submissions received, including that the proposal is inconsistent and incompatible with, and the impact that it will have on, context and setting.

		<p>Response: Discussed generally throughout this assessment report under specific impacts and planning controls, and for visual impacts under key issues in Section 5.</p>
<p>Economic impact (including tourism)</p>	<p>Initial: 17 Add Info 1: 4</p>	<p>The issue of economic impact was raised. This included in relation to distribution of benefits (i.e. private interests) and particularly with concern for adverse</p> <p>Response: Discussed under economic impacts in this assessment report, Section 3.7.9. The referral response from Council's Manager Community and Economic Development is included in Section 4.2. Particular attention is required to ensure that the visual impact is mitigated, and visual rural character is retained.</p>
<p>Site suitability (or alternate sites)</p>	<p>Initial: 13 Add Info 1: 2 Add Info 2: 2</p>	<p>The issue of site suitability has been raised in conjunction with a number of other issues, including context and setting separately above. There is also suggestion that there are more suitable sites that should be considered.</p> <p>Response: Discussed generally throughout this assessment report and specifically under suitability of the site in Section 3.7.9 of this assessment report. It is noted that for the purposes of development application assessment under s4.15 of the Act, the site proposed must be assessed and not another alternative site.</p>
<p>Community consultation</p>	<p>Initial: 12 Add Info 1: 2 Add Info 2: 2</p>	<p>Concern is raised in relation to the level of community consultation that has been undertaken by both Council and the proponent, as well as the duration of the public exhibition period. Furthermore, there is concern raised that the supporting documentation is highly technical in nature and difficult to understand in simple terms.</p> <p>Response: The development application has been subject to three periods of public exhibition in accordance with Council's DCP and Community Engagement Strategy. Also refer to discussion above in this section outlining the community consultation that was undertaken.</p> <p>It is noted that the applicant's documentation could be considered highly technical in nature. This has been flagged with the applicant and their planning consultant by Council staff. However, it is not considered to fundamentally change the assessment or the nature of the key issues that have been raised</p>

		in submissions received, noting the consistent themes throughout.
Toxicity	Initial: 11	<p>A number of submissions received raise concerns about toxicity, generally in the context of smoke as a result of a fire, or to groundwater, surface water or soil.</p> <p>Response: Individual issues are discussed primarily under key issues in Section 5 of this assessment report. It is noted that the lithium iron phosphate batteries do not use heavy metals (i.e. nickel and cobalt).</p>
Zoning (including objectives and permissibility)	Initial: 11 Add Info 1: 3	<p>There are a number of concerns and questions raised in relation to the zoning of the land, including consistency with the zone objectives and how the proposal is permissible noting it is a prohibited use under the LEP.</p> <p>Response: Discussed under LEP in this assessment report, Section 3.7.9.</p>
Land use conflict	Initial: 10	<p>The issue of potential land use conflict is raised generally in a number of submissions for various existing and potential land uses, including residential, agricultural (viticulture and truffle farm), agritourism, and animal breeding and training. Where raised, the submissions are generally suggesting that the proposal is not compatible with surrounding and desired land uses and presents a land use conflict.</p> <p>Response: Discussed generally throughout this assessment report under specific impacts and planning controls. The proposal is not considered to result in a significant land use conflict.</p>
Smoke (from BESS fire)	Initial: 9	<p>Concern was raised in relation to the potential for smoke to be generated as a result of a fire incident, and the potential impact this may have on human health and on adjoining vineyards.</p> <p>Response: Discussed under key issues in Section 5 of this assessment report.</p>
Visual impact	Initial: 9 Add Info 1: 2	<p>Concern was raised in relation to the visual impact of the development, including the impact this may have on the values of the locality as an agritourism area.</p> <p>Response: Discussed under key issues in Section 5 of this assessment report.</p>
Human health (impact)	Initial: 8	<p>Concern was raised in relation to the potential impact on human health, particularly as a result a fire event that caused smoke, but also from noise, such as sleep disturbance or mental health impact.</p>

		Response: Discussed under key issues in Section 5 of this assessment report.
Amenity	Initial: 7	<p>Concern was raised in relation to the potential impact the proposal may have on the amenity of the area.</p> <p>Response: There are multiple elements that make up 'amenity'. In the context of the proposal, it is considered that noise is likely the factor which contributes most significantly to amenity impacts and is discussed under key issues in in Section 5 of this assessment report.</p>
Supporting documentation	Initial: 7	<p>Concern was raised in relation to the level of supporting documentation and detail, including particularly for the acoustic barrier. There was also concern raised that the reports are prepared consultants on behalf of proponents, and therefore may have inherent bias.</p> <p>Response: Level of documentation discussed under key issues in Section 5 of this assessment report. Assessment of the supporting documentation has been completed, including peer review and external referral (RFS) in relation to the key issues of noise and bushfire.</p>
Insurance	Initial: 6	<p>Concern and questions are raised in relation to whether the proposal may result in increased insurance premiums to nearby properties (i.e. due to the potential risks of the BESS).</p> <p>Response: Not a planning consideration.</p>
Surface water	Initial: 6	<p>Concern is raised in relation to the potential contamination of surface water.</p> <p>Response: There is considered very limited potential for contamination of surface water during construction or operation, noting the batteries are self-contained units. In relation to firefighting water, refer to discussion under key issues in Section 5 of this assessment report.</p>
Value - property	Initial: 6	<p>Concern is raised that the proposal would adversely impact individual property values. The impact on individual property values is not a planning consideration, however planning impacts (such as noise, visual, etc.) which may in turn affect property values, have been considered in this assessment.</p> <p>Response: Not a planning consideration.</p>
Acoustic barrier	Initial: 6 Add Info 2: 2	Concern is raised in relation to the acoustic barrier, including the extent, the visual impacts, and the level of detail provided.

		Response: Discussed under key issues in Section 5 of this assessment report.
Groundwater	Initial: 5 Add Info 2: 2	<p>Concern is raised in relation to the potential contamination of surface water.</p> <p>Response: Discussed under key issues in Section 5 of this assessment report.</p>
Animal health (impact)	Initial: 5	<p>Concern is raised in relation to the potential impact that the proposal may have on animal health, including particularly as a result of noise.</p> <p>Response: Discussed as part of noise under key issues in Section 5 of this assessment report.</p>
Firefighting water	Initial: 4 Add Info 2: 2	<p>Concern has been raised in relation to the management of firefighting water which may be deployed on the BESS in a fire incident, including whether this may run off and cause ground and surface water pollution.</p> <p>Response: Discussed under key issues in Section 5 of this assessment report.</p>
Landscaping	Initial: 4	<p>Concern is raised in relation to the landscaping proposed, including inconsistencies between plans for the number of rows and the size of plantings.</p> <p>Response: Two rows are proposed and plans updated so that they show this consistently. Discussed as part of visual impact under key issues in Section 5 of this assessment report.</p>
Development Control Plan	Initial: 3	<p>Concern is raised that the original application did sufficiently not address detailed consideration of the DCP. It is also suggested that the proposal does not comply with the DCP, including the following controls particular contained in Part K (Rural, Large Lot and Environmental Zone Development) and Part L6 - Renewable Energy Development Project.</p> <p>Response: Discussed under DCP in this assessment report, Section 3.7.9. It is also noted that the applicant provided detailed consideration of the DCP as part of additional information 1.</p>
Explosion	Initial: 2	<p>Concern is raised that there may be a significant explosion.</p> <p>Response: A significant explosion is considered to have a very low likelihood of occurrence. Considered within scope of fire under key issues in Section 5 of this assessment report.</p>

Vibration	Initial: 2	<p>Concern is raised in relation to the potential for vibration impacts associated with the BESS and noting that there has been no specific consideration of vibration in the supporting documentation with the application.</p> <p>Response: Discussed under vibration impacts in this assessment report.</p>
Yass Valley Settlement Strategy 2036 (including Murrumbateman Structure Plan)	Initial: 2	<p>Concern is raised that the proposal is inconsistent with the requirements of the Settlement Strategy and the Murrumbateman Structure Plan (Master Plan) 2031 which is adopted within, particularly in relation to this area being identified as 'winery precinct'.</p> <p>Response: Discussed under Settlement Strategy in Section 3.6 of this assessment report.</p>
Strategic planning	Initial: 2	<p>Concern is raised that the proposal will jeopardise the strategic planning for the area, specifically in relation to the opportunity increased residential density and subdivision.</p> <p>Response: As outlined in Section 4.2 of this assessment report with referral from Council's Manager Strategic Planning, the site is located in the RU4 Primary Production Small Lots area, but towards the eastern (outer) edge of that zone. Whilst the area may be subject to more intense large lot residential development in the future, this is likely to be on a long-term timescale beyond the life of the proposed BESS. The Settlement Strategy directs future urban growth for Murrumbateman to be centred around north Murrumbateman.</p>
Soil contamination	Initial: 2 Add Info 2: 2	<p>Concern is raised that the proposal may result in soil contamination, including because of a fire incident.</p> <p>Response: Discussed under key issues in Section 5 of this assessment report.</p>
State Environmental Planning Policy (Resilience and Hazards) 2021	Initial: 2 Add Info 1: 2	<p>Concern is raised in the submissions received in relation to the assessment of the proposal under Chapter 3: Hazardous and offensive development and the screening thresholds of batteries as dangerous goods, suggesting that the thresholds may be exceeded, or that the guideline (2011) may be outdated, or has been taken out of context.</p> <p>Response: Discussed under SEPPs in this assessment report, Section 3.7.9.</p>

Concern is also raised generally across the submissions received in relation to the track record and credibility of the proponent, being ACenergy. The submissions suggest that ACenergy do not have a demonstrated track record of developing and operating a BESS. It is noted that

an assessment of the individual proponent and their track record is not a planning consideration given the consent runs with the land and not the individual person or entity. The assessment is whether the development can reasonably be undertaken in accordance with the plans, details, and any measures proposed.

5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

5.1 BESS Fire Risk and Management

(i) BESS Self-Originating Fire

The risk of fire associated with the BESS is a key issue, including through the submissions received.

The proposed BESS will use lithium-ion batteries, specifically newer lithium iron phosphate batteries. Whilst lithium-ion batteries generally, and particularly newer lithium iron phosphate batteries, experience low rates of failure, they can present unique hazards when the battery cell is compromised and enters thermal runaway. It is noted that the lithium iron phosphate batteries do not use heavy metals (i.e. nickel and cobalt) and have high thermal stability.

Additional information was requested during the assessment in relation to fire risk and management and further detail was provided. It is noted that battery fires are anticipated to be contained within the individual units. The battery containers will include automatic fire suppression systems in accordance with the relevant standards. This includes fire detection and suppression systems with aerosol extinguishing mechanisms and gas/thermal sensors. Remote 24/7 monitoring is proposed with the ability to shut down batteries. In this regard, it is considered that the risks associated with a small individual fire is considered to be low.

There is considered to be a low likelihood a larger fire incident. However, the applicant has advised that in such an event, this would require a defensive 'controlled burn' firefighting strategy. Under this approach, the battery units affected would need to essentially burn out by consuming themselves. The defensive approach would centre on prevention of the fire spreading to the next adjoining equipment.

It is understood that applying water to large battery fires is unlikely to extinguish the fire. With the controlled burn approach (whilst having its own drawbacks) this limits the amount of firefighting water that would be used. Due to the limited amount of water used and the nature of composition of the newer lithium iron phosphate batteries, firefighting water runoff is considered to have a low risk to both ground and surface water, subject to appropriate management in the event of an incident.

The applicant has indicated that they have no objections to conditions of any consent issued which require the provisions of final detailed management plans, including for emergency management and response.

A number of similar proposals involving BESS (either standalone or as part of a renewable energy development) which have been presented to NSW Planning Panels have been reviewed in the course of the assessment. A similar proposal ([Planning Panel Reference PPSHCC-233](#)) at 103 Cabbage Tree Road, Williamstown, was considered and approved in 2024 for a 4.98MW BESS on a 10ha lot in a similar zone and lot size setting. A detailed Fire Incident Management Plan (FIMP) was provided as part of that development application. The FIMP was more detailed than the information provided by the application for 3 Turton Place

(noting the fire management plan primarily centred on bushfire risk and management). However, it is noted that the statements and information that have been provided across the application are generally consistent with the conclusions and recommendations made in relation to the BESS at Williamtown.

Resolution: Subject to detailed and consolidated management plan, including for emergency management and response, it is considered that there is ability to sufficiently manage the risks associated with the origination of a fire from the BESS, and the associated management of any firefighting water. There is considered to be a low likelihood of a major fire incident or resultant contamination as a result of firefighting water.

(ii) Bush Fire

The site is identified as bushfire prone land. The application was accompanied by a BFMERP prepared by an accredited bush fire practitioner (Harris Environmental Consulting) detailing compliance with *Planning for Bushfire Protection 2019*. This BFMERP made a number of recommends including for:

- Establishment of an asset protection zone around the development compound within the grassland hazard and a fuel-free area under and surrounding critical assets.
- Construction standards including external services to be shielded or designed to withstand BAL 40kWm² and ember protection to openings.
- Construction of the access in accordance with the requirements of PBP 2019 (Table 7.4a).
- Minimum 20,000L static water supply (tank). Above ground tanks are to be concrete or metal with suitable connection for firefighting purposes.
- Safe work procedures and restrictions during total fire ban to be implemented in accordance with RFS requirements.
- Emergency response, including establishment of an Emergency Planning Committee and Emergency Control Organisation.

The application does not require a 'bush fire safety' authority for the purposes of s100B of the *Rural Fires Act 1997*, however was referred to the NSW Rural Fire Services for advice under s4.14 of the EP&A Act 1979. The RFS provided a response with recommendations which included:

- Increasing the distance of the APZ to the western boundary from 10m to minimum 12m.
- Minor amendments to the BFMERP, such as contact phone numbers being for central RFS call centre rather than mobile numbers to local RFS.

The recommendations have been addressed through provision of updated BFMERP and slight shift of the proposed development compound to ensure minimum 12m APZ is available within the legal property boundaries (revised plans have been submitted to show this).

Clarification has been sought from the accredited bushfire practitioner who indicated the acoustic barrier will also need to be constructed to BAL 40, and that the landscaping can coexist with the APZ and meet the required distances.

(iii) Smoke

It is noted that the batteries contain several fire suppression safety measures. However, a significant battery fire could still result in smoke being produced, particularly in a catastrophic event where a 'controlled burn' approach may be required.

Within the Battery Energy Storage Systems Guidance Report 2024 (p.16) prepared by the Australian Energy Council it is noted:

“[A]ir emissions cannot be contained to the site, and can extend to a distance downwind of the site. Thus, is the potential for people in the vicinity of a BESS facility fire to be exposed to hazardous gases such as asphyxiants and irritants.”

It is noted that the likelihood of a catastrophic fire event is low, and the size of this BESS is relatively small, however, the risk of fire and associated smoke cannot be eliminated. Where a fire has taken hold, potential management strategies are limited to control smoke, however, could include water being sprayed into the air downwind (although it is noted there is limited water available on site) or evacuation of the area. It is noted there are a number of sensitive residential receivers (i.e. dwellings) in proximity to the site.

There are other BESSs now in NSW and the region in proximity to more dense urban areas, including at Queanbeyan Transgrid Substation (10MW) (constructed), approximately 350m from residential Queanbeyan. It is also noted that the ‘Big Canberra Battery’ (250MW) (approved) is planned on Stockdill Drive west of Belconnen and south of Ginninderry in the ACT. Both of these examples are co-located though at existing electricity distribution infrastructure and have access to mains water supplies.

A catastrophic fire event which produced prolonged smoke during certain times *may* have adverse impact to the nearby vineyards if there was damage to grapes through smoke taint (with grapes susceptible to smoke taint between approximately veraison until harvest). It is noted that there are vineyards in immediate proximity, including on the opposite side of Turton Place, at the corner of Patemans Lane and Murrumbateman Road, and on the western side of Crips Lane. The Australian Wine Research Institute (2024) states:

“Studies have shown that grapes only need to be exposed to a single smoke event, irrespective of the source, to become ‘tainted’. Repeated exposure to smoke has an additive effect on the overall levels of smoke taint in grapes and wine. Bushfires, forest fires, planned burns, grass fires and agricultural burns can all cause smoke taint if smoke from those fires is present in a vineyard in at a high enough level for a period of time. Current research suggests fresh smoke presents the greatest risk for smoke taint, but smoke that has drifted hundreds of kilometres has also resulted in smoke taint.”

The risk of a catastrophic fire event which causes a large amount of smoke is low due to the built in safety measures in conjunction with appropriate management strategies. It is the considered smoke taint to grapes is more likely to occur as a result of a bush fire than a BESS fire.

Fundamentally the question the SRPP will need to form their view on is whether BESSs are appropriate in general in proximity to sensitive residential and viticulture receivers given the risk cannot be eliminated entirely. It is noted that under the precautionary principle of ecologically sustainable development, generally a ‘zero risk’ standard is not the appropriate test to apply. However, precautionary measures need to be implemented depending on the seriousness and level of irreversibility, and the degree of uncertainty, of the threat. Precautionary measures are considered to be provided reflective of the risk through the built in safety measures.

Resolution: Draft recommended conditions include for a detailed and consolidated management plan, including incident management plan for fire and associated smoke.

5.2 Noise

An Acoustic Report (Environmental Noise Impact Assessment) (v1) prepared by WatsonMossGrowcott was submitted with the application. The Acoustic Report (v1) identified that there was potential for residual operational noise levels at two sensitive receptors that are higher than the project trigger noise levels (although one of the receptors is the dwelling located on the subject land). It therefore recommended construction of an acoustic barrier around the outside of the equipment area of 3.4m high to the eastern and southern edge and 4.5m high to the northern and western edge so that it complied with the project trigger noise levels.

The Acoustic Report was revised as part of additional information 1. Acoustic Report (v3) adopted a lower sound source level from the inverter and the cooling systems, and in turn, the recommendations therefore were able to reduce the extent of the acoustic barrier originally proposed. It further suggested that the acoustic barrier may not actually be necessary and would only be installed if later determined to be. No justification relating to this was provided in Acoustic Report (v3), with the applicant then advising the SRPP at the briefing that it was due to improvements in technology (i.e. which have lower sound levels) which have occurred since the original report.

Council commissioned an independent peer review of Acoustic Report (v3) by Dr Rob Bullen of Rob Bullen Consulting (**Attachment I**). The peer review indicated:

- The noise criteria used to determine project trigger noise levels are formulated based on the NSW Environment Protection Authority's (EPA) NPfI and are appropriate, with the exception of receiver R07 which should have been considered residential rather than commercial.
- The calculation procedures used in the Acoustic Report are standard and appropriate.
- The input sound power levels used changed significant between the two versions of report, suggesting there is considerable variation in the sound power output from plant performing a similar function. It would therefore be prudent to ensure that noise monitoring checks are undertaken after commissioning of the plant (even if the acoustic barriers are constructed) to ensure compliance with criteria, including those concerned with the presence of tonal noise. If compliance is not found, then remedial works would be required.
- The proposed acoustic barrier would reduce predicted noise levels at receivers R01 and R03 to within recommended criteria, however the construction details provided are questionable. It is likely that an acoustic barrier could be constructed though which achieved the appropriate results.
- Key question of whether the acoustic barrier should be constructed as part of the development or only after completion if the high-frequency tone appears in practice. Dr Bullen recommended:
 - Measurements of existing ambient noise should be conducted before approval, both to confirm A-weighted background sound levels and to confirm the spectrum of the background noise. This may result in adjusted criteria and/or the presence of enough high-frequency ambient noise to mask the tone; OR

- The proposed barrier should be constructed as part of the development.

In either case, post-construction monitoring would be necessary to ensure the noise criteria are met.

The peer review was provided to the applicant, and they were requested to provide a response to the peer review comments and recommendations. A further Acoustic Report (v5) was submitted which:

- Assessed receptor R07 as residential, concluding that it remains within project trigger noise levels.
- Noise monitoring was conducted at the site. A low level of ambient background 'masking' noise was evident, and therefore a tonal adjustment applied at receptors where predicted values indicate it may be present.
- Amended recommendation for the acoustic barrier to be constructed as part of the development (only generally to the southern and western edges and not around the whole compound).
- Assessed potential for future receptor at land known as 4 Crisps Lane Receptor R08 which currently does not have a dwelling. This indicated that predicated predicted noise levels would be within the project trigger noise levels, consistent with the expected result indicated by Dr Bullen in the peer review.

It is however recognised, as raised in submissions received, that the acoustic reports and assessment have focussed on the noise impacts to the dwellings as the sensitive receivers. The rural lifestyle nature of these properties means noise impacts will be experienced outside of dwellings. Council's DCP has controls under *E3.1 Intensive agriculture and rural industry* which requires that constant noise associated with these does not exceed 5dB(A) above background noise levels when measured at the boundary with any adjoining property or public road. It is noted the DCP control does not strictly apply to BESS proposal for the reasons outlined in Section 3.7.9 of this assessment report. If the control was applied however, the proposal would not meet it due to the proximity to the boundary and the noise level emitted by the BESS.

Further clarification was sought from Dr Bullen in relation to the potential inconsistency of DCP control compared to NPfI. He indicated that in his experience, most development controls follow NPfI by requiring residential criteria to be met within 30m of a dwelling. He further indicated that in circumstances that noise would affect other uses of a neighbouring property outside of the immediate residential dwelling area, then this would become a separate consideration; for example, NPfI provides an amenity criterion for 'passive recreation areas' of 50 dBA LAeq, which may be relevant. This would then require discussion around the extent to which the non-residential part of the property may fall under this classification. He also indicated that from his experience, the explicit advice of NPfI is likely to carry the significant weight compared to the DCP if considered by the courts. This is also consistent with the NSW *Large-Scale Solar Energy Guideline* (although this is not a solar project), which requires consideration of proposals against NPfI.

It is noted that there was no specific assessment information presented in the submitted acoustic report which considered immediate non-residential/non-commercial uses of the broader adjoining properties. If the 'passive recreation area' amenity criterion above was applied, it is likely that part of the adjoining sites in proximity to the BESS would be subject to more than 50 dBA LAeq, however the exact extent is not known. The difficulty here is

determining the extent of neighbouring properties which should be considered being used for 'passive recreation' when arguably all properties with dwellings are likely to be used, to some extent, for this purpose. It is noted that the adjoining existing dwellings are generally towards the furthest boundaries away from the location of the BESS if considering a diminishing frequency of use of the property with distance away from the dwelling. It is also noted that there are land uses in the surrounding locality including the cellar door premises which from time to time hold functions or events including amplified music, or through activities associated with agriculture including viticulture, would also likely subject part of their neighbouring properties to noise levels beyond the "passive recreation area" amenity criterion, although these activities are not a constant noise indefinitely.

Concern is also raised in the submission in relation to the impact noise may have on animal health due to the constant nature, and on dogs that may be used as part of the adjoining truffle farm. It is noted that the noise assessment has been completed in accordance with NPfI. Whilst there is not specifically provisions for assessment of noise impact on animals in NPfI, it is noted that its application is used for a wide range of uses, including rural industry activities which may occur in proximity to other agricultural land uses which have animals.

Resolution: The issue of noise impact to the sensitive residential receivers has been resolved through the peer review commissioned by Council and completed by Dr Rob Bullen of Rob Bullen Consulting, and the subsequent further revised acoustic Report (v5), as well as recommended conditions of consent as outlined in **Attachment A**. It has been demonstrated that with mitigation measure of the acoustic barrier, noise levels comply with NfPI and the adopted project trigger noise levels.

It is recommended for the acoustic barrier to be constructed as detailed in the revised acoustic report (v5) and for final details of construction to be submitted to Council for approval as part of a deferred commencement (addressing the element of uncertainty Dr Bullen identified in the peer review in relation to the exact acoustic material to be utilised).

The recommended draft conditions include for post-construction monitoring to be completed prior to commissioning and on ongoing annual basis (12 monthly) thereafter.

If the SRPP had outstanding concerns associated with noise impact on adjoining properties for the non-residential use component (i.e. for 'passive recreation' use), then the applicant would need to provide further noise assessment.

5.3 Visual Impact

The visual impact of the proposal is a key issue. The site is in a rural lifestyle context and setting which is known for its agritourism values (identified as 'winery precinct' area for the purposes of the Settlement Strategy). Concern was raised in the submissions and during the assessment in relation to visual impact and the visual presence of the development this landscape, particularly from public domain of Murrumbateman Road and Crisps Lane (including from the Murrumbateman winery trail). Concern has also been raised that the proposed vegetation to be planted will take considerable time to grow with only small pot sizes proposed.

Visual impacts would be primarily as a result of the installation of the battery containers, MVPS, and the acoustic barrier, which visually could be described as industrial or utilitarian in nature. It is noted that the proposal is visible from the public domain from some vantage points, although this is from a distance and is partially softened by existing vegetation to the western boundary and to the north near the dam (although this vegetation is deciduous). The gently undulating terrain also does assist in limiting the view lines to the site.

The applicant proposed two rows of landscaping around the BESS compound area to mitigate visual impacts. In additional information request 1, the applicant was requested to prepare a visual impact assessment (VIA). This was prepared and submitted (refer **Attachment C**), however was considered to be quite basic with limited details for analysis of view lines or details of exactly where photographs had been taken.

Visual impacts were discussed at the SRPP briefing on 22 January 2025 following a site inspection with the Panel members (and Council staff) which included various vantage points from the public domain. The Panel briefing notes indicated that they considered that visual impacts could be reduced through the use of appropriate materials and colours, and through additional landscaping. In this regard, a revised VIA was not considered necessary, but the applicant was requested in additional information 2 to provide details of colours and finishes for the BESS and acoustic barrier.

The applicant's response remains largely uncommitted to specific colours and finishes, indicating that these can be submitted for approval (through use of conditions) once the final vendors for products are determined. They have stated that *"[w]here possible suitable materials and finishes would be implemented to minimise the potential for perceived visual effect, and the longevity of materials and durability of the same."* There has also been no clear commitment to colours and finishes provided for the acoustic barrier.

It is noted that majority of BESS infrastructure tends to be white due to the benefits this has to thermal regulation (i.e. reducing the heat of the batteries). They are however available in other colours or can be painted. White is not considered to be preferred from a landscape perspective, and visual impact would be more appropriately mitigated through colours which are darker than white or blend more sympathetically with the background environment.

A submission received notes that the security fencing is galvanised and therefore considered 'reflective' contrary to Council's DCP requirements. This control is intended for walls, roofs and other major structural elements. Use of galvanised finishes for security fencing is acceptable and not inconsistent with the surrounding environment. It is also noted that galvanised finish tends to dull over time.

Resolution: It is considered that visual impacts *can* be appropriately mitigated through the use of appropriate landscaping and colours and finishes for both the BESS components and the acoustic barrier. The importance of this is recognised in context of site within an area with high values for agritourism and reflected in referral comments provided by Council's Manager Community and Economic Development. However, the level of commitment to detail in this instance by the applicant is currently insufficient to ensure.

A deferred commencement approach has been recommended which requires the applicant to provide satisfactory details of the proposed colours and finishes for the BESS and acoustic barrier prior to any consent becoming operational. White will not be considered acceptable in this instance. Draft recommended conditions also propose for further revised final landscape plan to be submitted as part of the deferred commencement. This should include for the planting of larger pot sizes rather than just 'hiko' or 'tube' sized to assist with speed of establishment.

5.4 Acoustic Barrier

(i) Extent and Size

The acoustic barrier with the original proposal extended around the outside of the battery containers area on all sides, with a gap in the southwest corner. The height of the acoustic barrier was approximately 3.4m high on the eastern and southern sides, and 4.5m on the

northern and western sides. Concerns were raised in the submissions received and by Council during the assessment in relation to the visual presence of such a significant acoustic barrier.

The extent and size of the proposed acoustic barrier have been reduced during the assessment following changes to the underlying acoustic report (**Attachment J** shows changes on site plans). The acoustic barrier is now proposed around the southeast corner only, extending 25m on the southern side and 37m on the eastern side. The height has also been reduced to maximum 3m. Although subjective, this is generally considered to be an improvement in that it reduces the extent and visual presence of the acoustic fence in the landscape.

Within a submission received from an adjoining landowner, they request that if the SRPP are of the mind to issue consent, that it be with a requirement to include the acoustic barrier around all sides in order to further reduce potential noise impacts. This is not considered to be necessary as the proposal has demonstrated that it can meet noise project trigger levels without it. These noise levels must be validated prior to commissioning.

There will be a gate with acoustic panelling within the eastern side of the acoustic barrier.

(ii) Permissibility

Within a submission received it is suggested that the acoustic barrier is not part of the BESS and are only required due to it otherwise exceeding project trigger noise levels, and therefore it cannot rely on the provisions of SEPP (Transport and Infrastructure), instead requiring separate approval. It is further suggested that the acoustic barrier is then not permissible in the RU4 zone under the LEP.

Resolution: The assessment has indicated that it is clear that the acoustic barrier is ancillary development to the BESS. It serves the dominant purpose, being the BESS, and does not serve a purpose on its own. It therefore falls within the ‘electricity generating works’.

5.5 Supporting Level of Detail/Information with Application

Concern was raised within the submissions received and by Council during the assessment in relation to the level of detail presented with the application. This was particularly in relation to the acoustic barrier (including specific dimensions on height, extent, material, and colours and finishes), as well as the colours and finishes on the battery containers and the MPVS. Further information was requested to address these deficiencies. The information received was placed on public exhibition each time as outlined in Section 4.3 of this assessment report.

(i) Acoustic Barrier – Construction Type

The applicant has provided a section detail/elevation of the acoustic barrier and examples of the type of panels that will be used for the acoustic barrier. They have noted however that the final panels used, and the exact construction is contingent on the selection of product vendor as part of the final design. The information provided for the acoustic wall is now considered to be sufficient to understand the proposal and to enable the assessment for the purposes of s4.15 of the Act.

However, recommended draft conditions under a deferred commencement recommend that final colours, finishes and acoustic construction materials details are submitted to Council for approval to ensure they have minimised visual impact and presence in the landscape, and to ensure the acoustic wall can be constructed per recommendations of the Acoustic Report. The acoustic wall should also present with a ‘finished’ surface on both sides.

Draft recommended conditions have for construction details for BAL 40 and structural engineering details to be submitted to the principal certifier prior to construction certificate.

Resolution: Draft recommended conditions under deferred commencement and prior to construction certificate.

(ii) Colours and Finishes

Concern was raised in the submissions and during the assessment in relation to the level of detail for proposed colours and finishes. This is considered above in this section under visual impact.

(iii) Batteries

Within the submissions received there is also concern raised that the specific batteries and equipment (i.e. brands and models), particularly for the purposes of noise assessment. This is not considered to be a necessary or expected level of detail at development application stage. These are details which can, and are appropriate to be, refined at the construction stage, consistent with similar matters with other development types. The chosen equipment will need to meet the project trigger noise levels and be validated. The battery type will need to be the newer lithium iron phosphate as proposed. These matters are addressed within the draft recommended conditions.

Resolution: Draft recommended conditions for details to be provided at construction certificate and for noise level validation at commissioning.

5.6 Soil and Groundwater

Within a number of submissions there is concern in relation to the potential for soil and groundwater contamination. It is noted that the batteries are self-contained (bunded) units and during construction and regular operation there is considered to be very limited potential for soil or groundwater contamination, as detailed in the Flood and Groundwater Assessment Report prepared by Water Technology/IGS.

The Flood and Groundwater Assessment further considers the potential impact in major fire event, suggesting that there remains a low risk to groundwater from the infiltration of firefighting liquids to the shallow aquifer, indicating that there is a thick clay layer beneath the site which would reduce downward migration to the groundwater system and therefore the risk of contamination to groundwater is considered minimal. It recommends that in such an event though that groundwater monitoring wells be located up and down-gradient of the site and down-gradient to determine any impacts to groundwater.

However, this has been based on a desktop study only. The Flood and Groundwater Assessment (at Section 3.2.1, p.27) recommends that this needs to be validated through a soil bore to ensure that the thick clays and the expected depth of groundwater are as anticipated. It further suggests in circumstances where the soil and groundwater are found to be other than expected, this may change the risk assessment, and this could require permanent monitoring measures to be in place.

This assessment report has been completed based on the Flood and Groundwater Assessment and the desktop findings being correct, and therefore the proposal having a low likelihood for soil or groundwater contamination. However, with consideration of the local context and surrounding land uses, the findings need to be validated with a soil bore as

outlined in the Flood and Groundwater Assessment. It is also noted a submission received has suggested that their dam on an adjoining appears to be spring fed, which could indicate groundwater may be higher than anticipated in the desktop assessment. It is recommended that this be required through a deferred commencement condition.

Resolution: Deferred commencement condition requiring a soil bore to validate the desktop findings of the Flood and Groundwater Assessment Report to ensure it is accurate and as expected in relation to the site being underlain by thick clays and the expected depth of groundwater.

5.7 Potential Conflict with Other Future Nearby Development (i.e. Development Rights)

Within a number of submissions received there is concern raised from neighbouring properties that the proposal will reduce their ability to undertake permissible development, including, for example, dual occupancy, farm stay accommodation, animal breeding and training establishment, etc. There are limited details provided of these potential developments and no development applications currently lodged for consideration.

Although this is not a solar proposal, the NSW *Large-Scale Solar Energy Guideline* indicates that the impact of proposal on the right for neighbouring landholders to develop their land for residential accommodation, tourist and visitor accommodation or eco-tourist facilities may need to be considered. It further states that *“applicants and consent authorities should only assess impacts on vacant land. That is, land in which there is a development right that has not been acted upon and is vacant of buildings and structures.”*

None of the immediately adjoining properties are vacant land. However, it is noted that nearby 4 Crisps Lane is (one lot over to the west). The potential for a dwelling nearby 4 Crisps Lane was specifically considered in noise assessment, noting that it is a vacant lot with a dwelling entitlement, and it is foreseeable that a dwelling is likely to be proposed there in the future (as indicated by the owner), although there is no development application lodged or development consent at this time. This is discussed under noise in this section.

More broadly, any development, including dwellings and agricultural uses such as vineyards, have the potential to influence (including either enhancing or constraining), the opportunity for development on adjoining lots. It is noted:

- The noise impact assessment findings would suggest that there would remain opportunity for additional dwellings (i.e. that do not already have dual occupancies) and tourist accommodation to be located on surrounding properties. It is noted however that the BESS may clearly result in limitations to where they could be located due to noise and potential view considerations.
- The neighbouring property owner at 270 Murrumbateman Road has recently indicated that they wish to seek approval for another dwelling to create a dual occupancy in the south east corner of their lot in proximity to the location of the BESS. There is no application lodged or approval at this time. It would appear that there is opportunity to locate a second dwelling elsewhere on the site in greater distance to the BESS. This is therefore not considered to prevent their opportunity to have a dual occupancy on their lot but may restrict where on the site. However, this would need to be considered if a development application were lodged for this proposed development.
- An animal boarding and training establishment, whilst permissible with consent in the zone, would require further detailed assessment, noting it has potential to present other

land use conflict. The BESS is however not considered to prevent their opportunity to have an animal boarding and training establishment.

Resolution: The assessment has been undertaken based on the existing surrounding land uses, as well as the likely potential for a dwelling on 4 Crisps Lane. It is not possible to consider all other development options for adjoining properties, however land use conflict and context and setting more generally have been considered in this assessment report.

5.8 End-of-Life and Decommissioning

Concern is raised within the submissions in relation to the end-of-life and decommissioning. It is also noted that this was particular area of concern for the Hunter and Central Coast Regional Planning Panel in considering a similar proposal ([PPSHCC-233](#)) at 103 Cabbage Tree Road, Williamtown, in 2024 for a 4.98MW BESS on a 10ha lot in a similar zone and lot size setting.

The applicant was requested to provide clarification in additional information request 1 on how end-of-life and decommissioning would be managed. The applicant indicated (refer **Attachment C**) that the development is expected to have a life of approximately 40 years. This will be subject to a decommissioning plan which will be prepared prior to the BESS being decommissioned, and it will occur in accordance with the applicable regulations at the time. The applicant acknowledges the research and opportunities for recycling BESS components is in its infancy. They have indicated a condition of consent requiring the preparation of a decommissioning plan prepared prior to the cessation of the project.

In the Williamtown example, the Hunter and Central Coast Regional Planning Panel in their determination required a decommissioning strategy to be prepared from the point of three years of operation, and this to be revised on periodic basis after that. The basis of this was to ensure that decommissioning strategies are continuing to be considered and refined over time as technology and other requirements (such as legislation) change. This is considered a much better approach and better reflects the principles of ecological sustainable development.

Resolution: Draft recommended conditions included for end-of-life and decommissioning.

6. CONCLUSION

This development application has been considered in accordance with the requirements of the Act and the Regulations as outlined in this assessment report. Following a detailed assessment of the relevant planning controls, issues raised in submissions and the key issues identified, it is considered that the application can be supported, but subject to a deferred commencement.

The key issues included zoning and permissibility, fire (including smoke) and bush fire risk and management, noise, visual impact, the acoustic barrier, level of detail/information with application, soil and groundwater impact, potential conflict with other future nearby development, and end-of-life decommissioning. It is considered that these key issues have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**, except for those as deferred which require further attention to ensure they are resolved, i.e.:

- Colours, finishes and acoustic construction materials are appropriate to minimise visual impact and presence in the landscape, and to ensure the acoustic wall can be constructed per recommendations of the Acoustic Report.

- A final revised landscaping plan which includes plantings that not just 'hiko' or 'tube' to ensure the screening vegetation establishes in a timely manner.
- A soil bore be undertaken to validate the desktop findings of the Flood and Groundwater Assessment Report to ensure it is accurate and as expected in relation to the site being underlain by thick clays and the expected depth of groundwater.

The draft conditions include for a consolidated and detailed operational and incident management plan, including for fire and emergency response, and bush fire (i.e. per the BFMERP submitted with the application)

7. RECOMMENDATION

That the Development Application DA240159 for a 5MW battery energy storage system at 3 Turton Place, Murrumbateman, be granted a deferred commencement development consent pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at **Attachment A**.

The following attachments are provided:

- Attachment A: Draft Conditions (Deferred Commencement)
- Attachment B: All Plans
- Attachment C: All Supporting Documents
- Attachment D: Agency and Referral Responses
- Attachment E: DCP Assessment
- Attachment F: All Submissions
- Attachment G: Submissions by Issue and Council Repose Table
- Attachment H: Applicant Response to Submissions
- Attachment I: Peer Review of Acoustic Report
- Attachment J: Acoustic Barrier Revision Comparison Site Plan