

SOUTHERN REGIONAL PLANNING PANEL

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSTH-540
DA Number	26/0352 (PAN-564894)
LGA	Wingecarribee Shire Council
Proposed Development	Proposed Gas Power Generator and Construction of a Battery Energy Storage System and Associated Equipment and works
Street Address/ Lot Description	30 Douglas Road, Moss Vale NSW 2577 Lot 40 DP 1288692
Applicant/Owner	Applicant – The Trustee for Nakar Property Unit Trust Owner – The Trust for Nakar Property Trust
Date of DA lodgement	11 September 2025
Number of Submissions	Public Notification - Notification: 17 September 2025 to 17 October 2025. - Seven (7) submissions
Recommendation	Refusal
Regional Development Criteria (Schedule 6, Clause 2 of State Environmental Planning Policy (Planning Systems) 2021)	Section 5, Schedule 6 of the SEPP (Planning Systems) 2021 <i>In accordance with section 5 under Schedule 6 Regionally significant development of the SEPP, the proposed development has an estimated development cost of more than \$5 million for the purpose electricity generating works. Therefore, the consent authority is the Southern Regional Planning Panel.</i> The cost of the proposal is \$23,596,920.00 Ex. GST
List of all relevant s4.15(1)(a) matters	- Environmental Planning and Assessment Act 1979; - Protection of the Environment Operations Act, 1997; - Water Management Act 2000; - Biodiversity Conservation Act 2016; - Environmental Planning and Assessment Regulation 2021; - Biodiversity Conservation Regulation 2017; - State Environmental Planning Policy (Planning Systems) 2021; - State Environmental Planning Policy (Resilience and Hazards) 2021; - State Environmental Planning Policy (Transport and Infrastructure) 2021; - State Environmental Planning Policy (Biodiversity and Conservation) 2021; - State Environmental Planning Policy (Sustainable Buildings) 2022; - Wingecarribee Local Environmental Plan 2010; and - Moss Vale Enterprise Corridor Development Control Plan.
List all documents submitted with this report for the Panel's consideration	- Draft Reasons for Refusal - Architectural Plans - Civil Engineering Plan - NABERS Embodied Emissions Material Form - Statement of environmental effect - Stormwater Management Report

	7. Stormwater Drainage Plan 8. Cloud Carrier Gas inquiry – Jemena 9. Waste Management Plan
Report prepared by	Parin Kolbadi – Senior Development Assessment Planner
Report date	17 June 2026

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarized in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **N/A**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **No**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **N/A**

EXECUTIVE SUMMARY

Council is in receipt of a Development Application (DA) for the construction of a Gas Power Generator Plant comprising of Seven (7) Gas Generator Sets and Construction of a Battery Energy Storage System (BESS) comprising Forty (40) Containerised Battery Units and Associated Equipment and works at 30 Douglas Road, Moss Vale NSW 2577, legally described as Lot 40 DP 1288692.

The application was publicly notified from 17 September 2025 to 17 October 2025 (30 days). Seven (7) submissions were received during the notification period.

An assessment of the DA has been undertaken against the following relevant planning instruments:

- *Environmental Planning and Assessment Act 1979;*
- *Protection of the Environment Operations Act, 1997;*
- *Water Management Act 2000;*
- *Biodiversity Conservation Act 2016;*
- *Environmental Planning and Assessment Regulation 2021;*
- *Biodiversity Conservation Regulation 2017;*
- *State Environmental Planning Policy (Planning Systems) 2021;*
- *State Environmental Planning Policy (Resilience and Hazards) 2021;*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021;*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021;*
- *State Environmental Planning Policy (Sustainable Buildings) 2022;*
- *Wingecarribee Local Environmental Plan 2010; and*
- *Moss Vale Enterprise Corridor Development Control Plan.*

The proposed development has been assessed against the relevant matters for consideration pursuant to Section 4.15 of the *Environmental Planning and Assessment Act, 1979*, including likely impacts, the suitability of the site for the development, and the public interest.

The DA is recommended for refusal due to a number of significant unresolved planning, environmental and technical assessment issues. In particular, insufficient information has been provided to demonstrate that the proposal is suitable for development on flood-prone land, including the impacts of the proposed watercourse realignment, wetlands, and stormwater management measures on flood behaviour and downstream flooding.

The proposed Battery Energy Storage System has a total capacity of 80 MW and therefore exceeds the 30 MW threshold under Clause 7 of Schedule 3 of the *Environmental Planning and Assessment Regulation 2021*, meaning it is classified as designated development. Despite this, the application has not been lodged or assessed as designated development, and the required statutory process including preparation of an Environmental Impact Statement, public exhibition, and referral to the Planning Secretary does not appear to have been undertaken.

The proposal does not comply with key built form and design controls, including the maximum building height, visual impact assessment requirements, landscaping requirements, and sustainable building design provisions. In addition, insufficient information has been provided to demonstrate compliance with bushfire planning requirements, utility servicing requirements, and other environmental assessment matters.

Collectively, the identified deficiencies demonstrate that the proposed development is not suitable for the site and is inconsistent with the applicable planning policy & controls. Accordingly, refusal of the application is recommended. A detailed assessment of these matters, together with the specific recommended reasons for refusal, is provided in the body of this report and attachment 1.

BACKGROUND

Application Background

The following applications are relevant to the subject site:

- **DA16/0720** – On 19 December 2016, Wingecarribee Shire Council granted development consent for the subdivision of the land to create 11 industrial lots.
- **DA21/1042** – On 25 February 2021, Wingecarribee Shire Council granted development consent for the construction and operation of a Data Storage Centre.
- **DA21/1042.03** – On 25 February 2021, Wingecarribee Shire Council approved a Section 4.55(1A) modification application to DA21/1042. The modification included amendments to the approved development design, correction of a property description error, amendments to and removal of conditions arising from the modified design, and the surrender of Development Consent DA16/0720 relating to the approved subdivision.
- **DA24/0055** – On 19 April 2024, Land and Environment Court of New South Wales granted development consent for the construction of a natural gas-powered electricity generating plant to provide onsite power to the Southern Highlands Data Centre.
- **DA25/2158** – On 22 September 2025, Wingecarribee Shire Council granted development consent for the construction and operation of an additional Data Storage Centre.

SITE DESCRIPTION

General

The subject site is legally identified as Lot 40 DP 1288692, 30 Douglas Road, Moss Vale NSW 2577. The site slopes towards the south and east and contains several mapped hydrological flow lines. It has a total area of approximately 66.86 hectares. Figures 1 and 2 below show the site as described.

An existing data centre, approved on 25 February 2021 under DA 21/1042, is located on the northern side of Innovation Drive, with associated fire safety infrastructure situated towards Douglas Road. The remainder of the site predominantly consists of open fields with limited vegetation in the vicinity of the proposed works.

A small portion of the north-western part of the site is mapped as having biodiversity value under the *Biodiversity Conservation Act 2016*. The site boundaries are also identified as bushfire-prone land, specifically within a Vegetation Buffer area.

The locality is characterised by its location within the Moss Vale Enterprise Corridor and the site's E4 General Industrial zoning. The immediate surrounds consist of undulating open fields with scattered vegetation to the north, industrial development to the west and south, and rural residential dwellings on surrounding allotments.

The wider locality includes a range of built and natural features, including the Wingecarribee River to the east, rail infrastructure to the west (including a level crossing along Douglas Road), and the Boral Cement Manufacturing Plant further to the west.



Figure 1: Aerial Image of the site (Nearmap)- 30 Douglas Road, Moss Vale NSW 2577

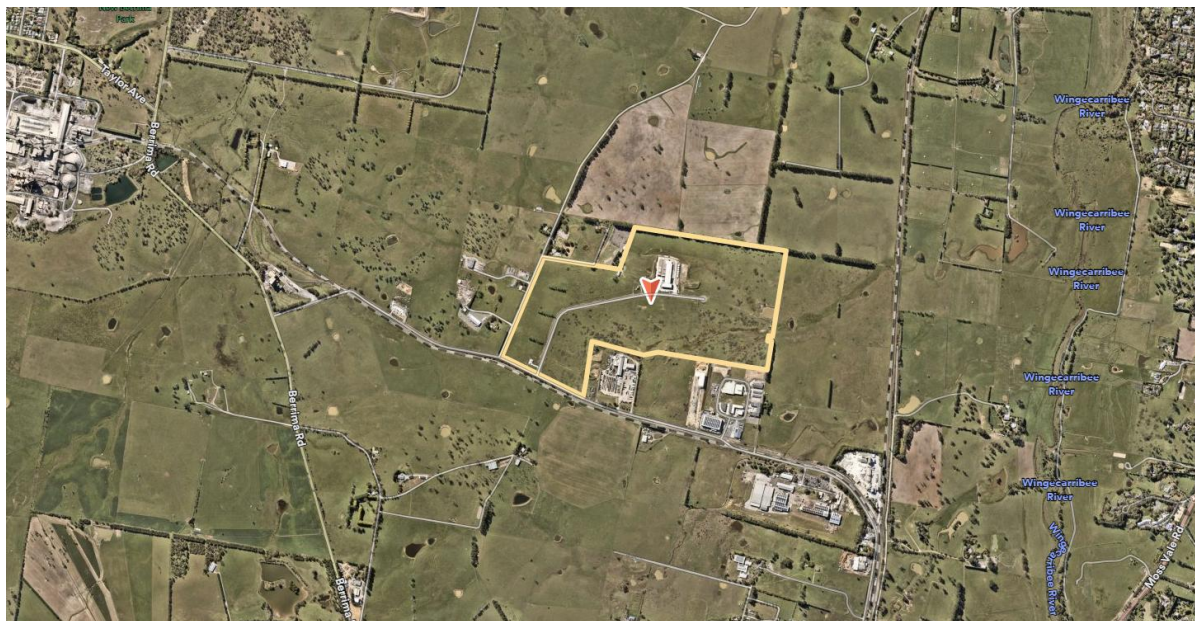


Figure 2: Aerial Image of the site (Nearmap) and surrounding area

DESCRIPTION OF THE DEVELOPMENT

The subject DA seeks consent for a natural gas powered electricity generating plant and storage battery comprising but not limited to the following:

- Construction of an underground gas line to the site from Douglas Road.
- Earthworks to create two building platforms with cut and fill depths ranges of between 2m and 4m.
- Construction of a generator hall building (SQ2) measuring 54.13m in length, 21.28m in width, 8m in height (to ridge line) with a gross floor area (GFA) of 1,152m² to house seven (7) gas generator engines five (5) 'continuous power' and two (2) 'standby' generators) of 3.3 MW.
- A gravel / pervious material pad to the north of the generator building containing the external generator exhaust ducts, external radiator units for the seven (7) generator units and additional ancillary equipment including lube oil tanks, earthing transformers, gas supply regulators with a maximum height of 23.5m.
- Construction of an 8m wide external service road circulation system designed to accommodate the largest vehicle servicing the facility, which is a 19m prime mover and semi-trailer used to transport the gas generators.
- Construction of separate 8m wide entry and exit driveways from the extended private access road.
- Battery Energy Storage System (BESS) compound comprises a level platform, with a series of concrete pads on ground to land the containerised battery storage modules and supporting electrical equipment including transformers and reticulated cabling to and from the generator hall and Southern Highlands Data Centre. This portion of the development consists of the installation of forty (40) containerised battery units and associated equipment, with a capacity of 2 MW each (which is therefore a total of 80MW).
- Integrated security systems designed around the campus security approach that the generator hall and BESS compound is located within. Security includes lighting & CCTV, intruder alarm and monitoring.
- Provision of stormwater system that drains to wetland areas on the site.

The Development as described above is shown in Figure 3 to Figure 9 (inclusive)

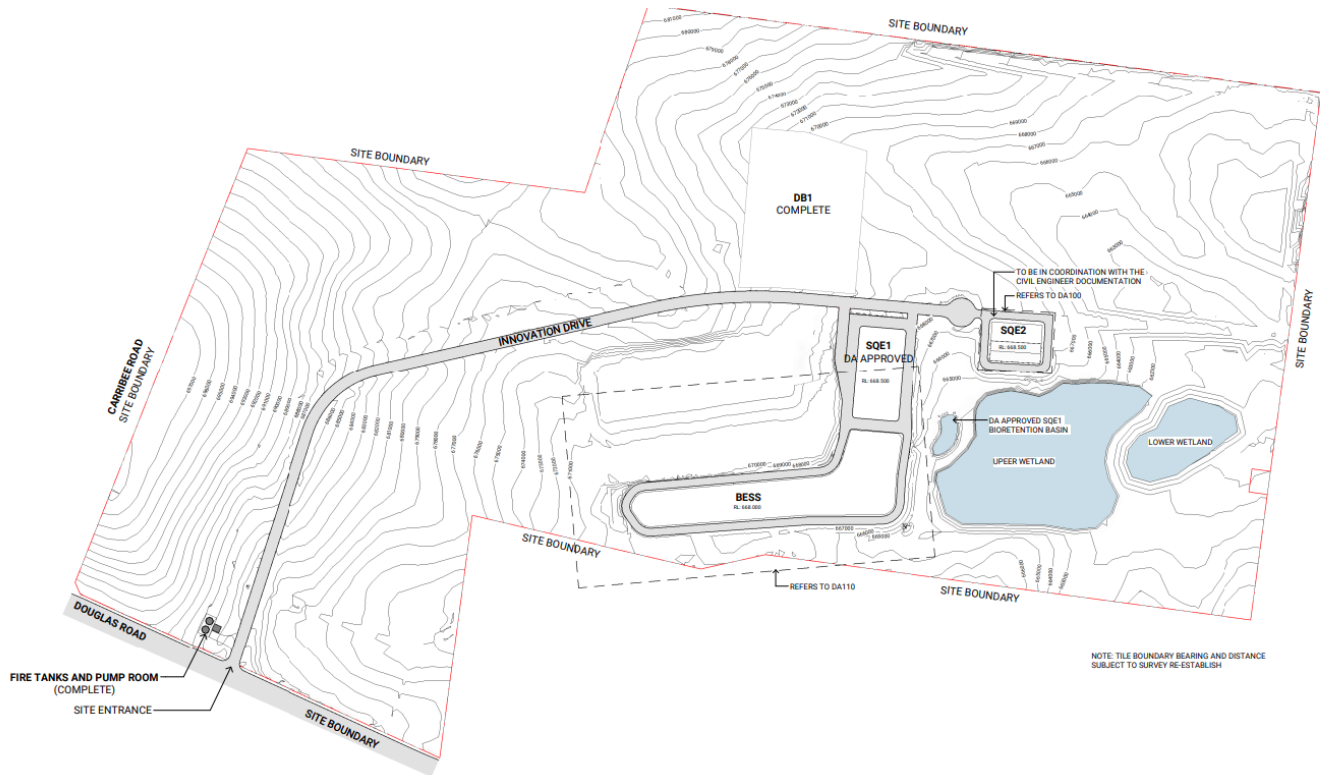


Figure 3: Site Plan

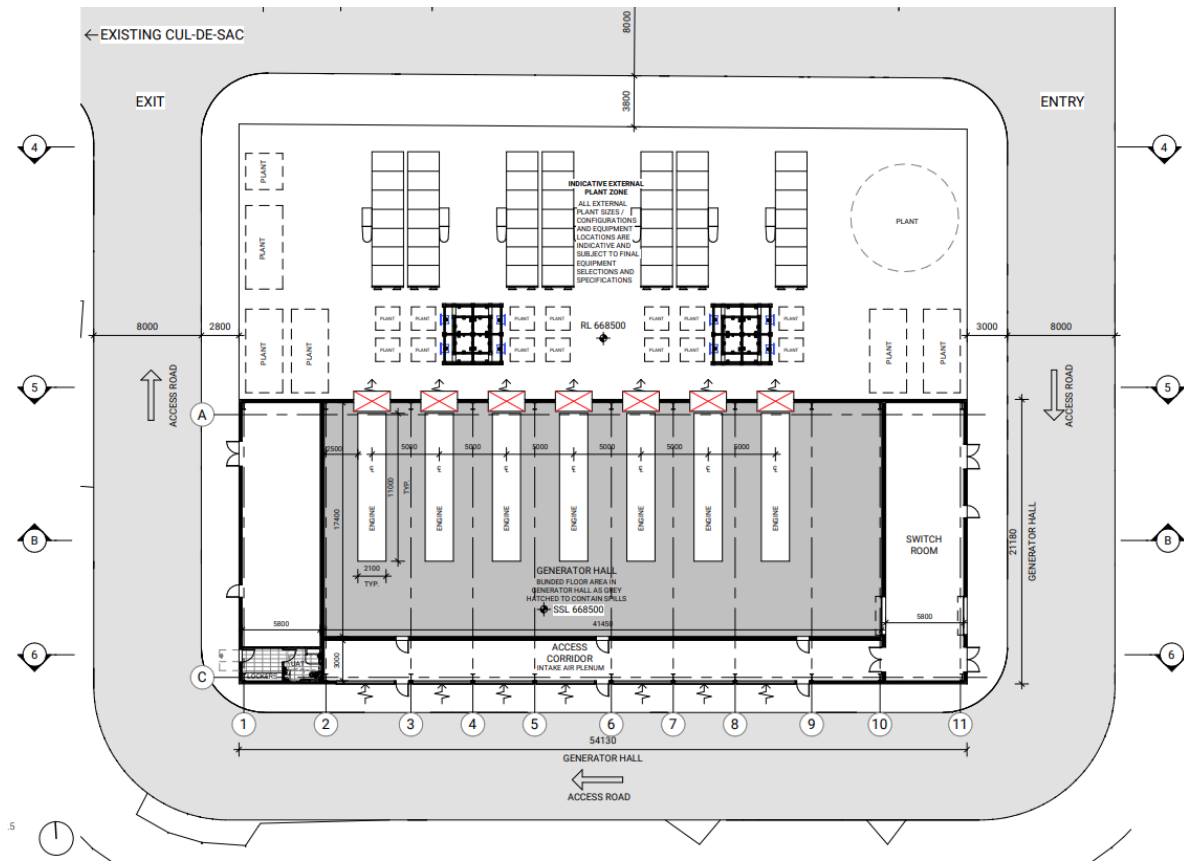


Figure 4: Proposed Gas Power Generator (SQE2) Floor Plan

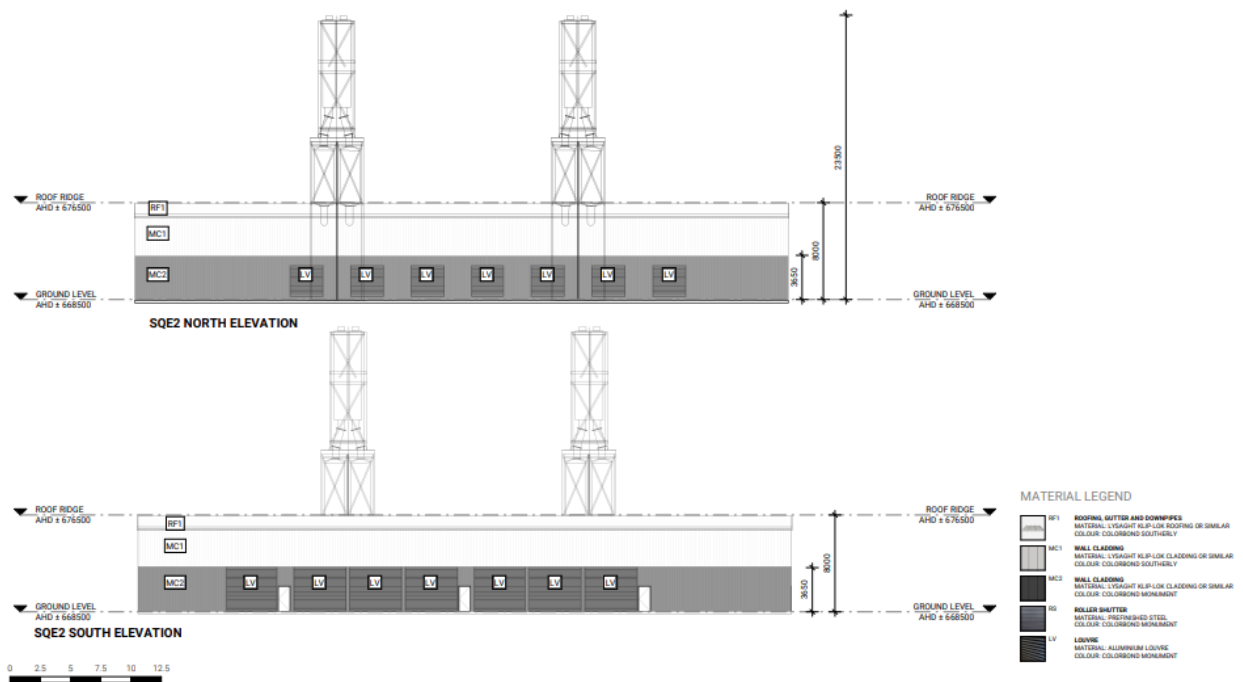


Figure 5: North and South Elevations of the proposed Gas Power Generator- SQE2

DA201
SQE2 ELEVATION - EAST, WEST

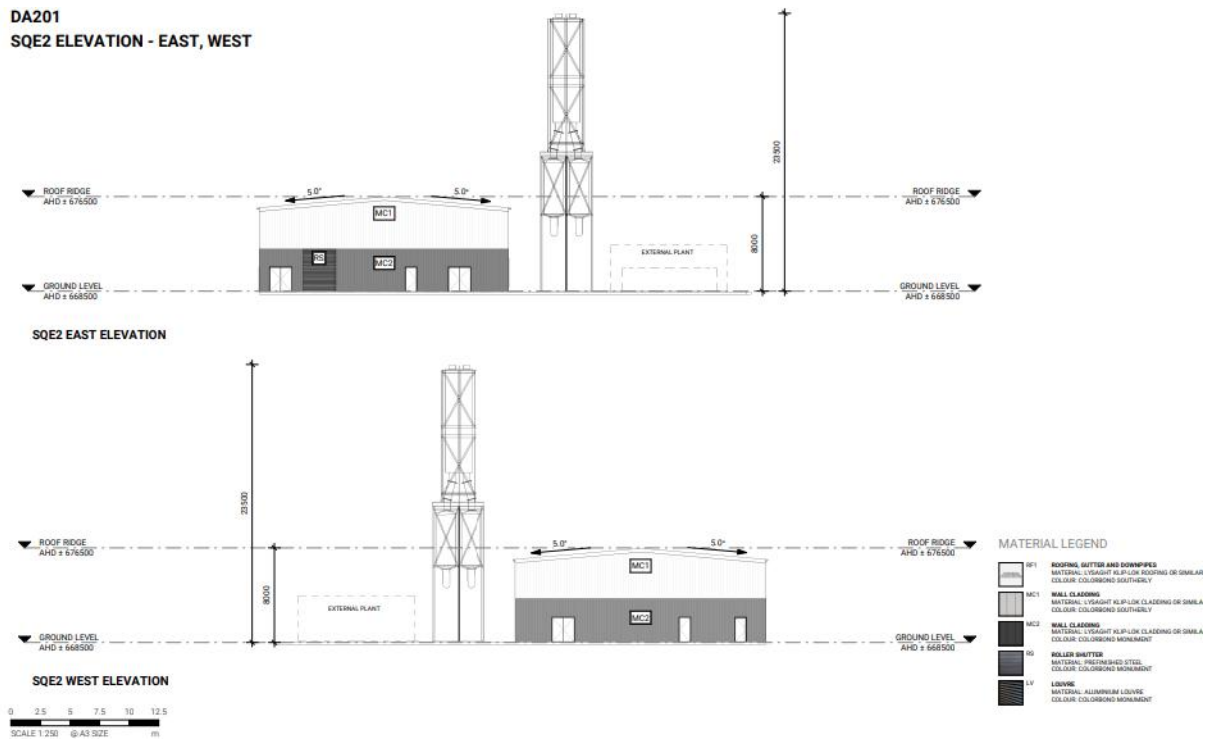


Figure 6: East and West Elevations of the proposed Gas Power Generator- SQE2

ECTIONS

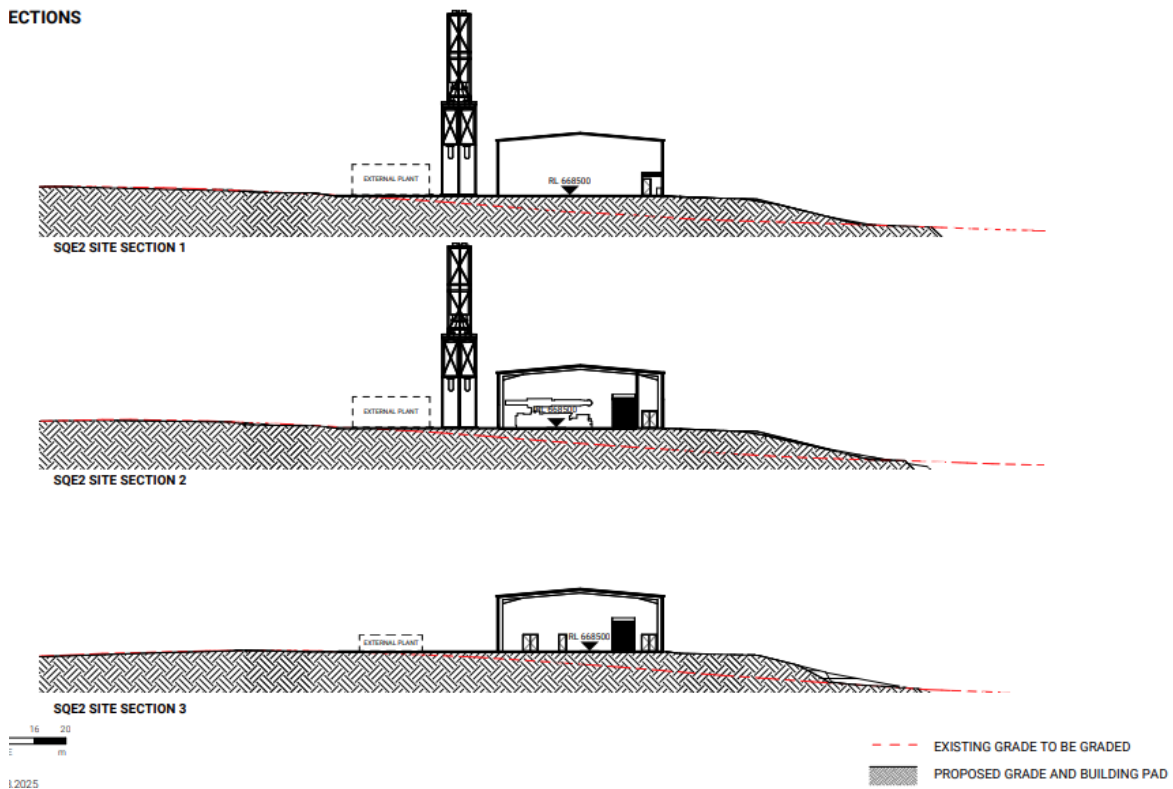


Figure 7: Sections of the proposed Gas Power Generator- SQE2

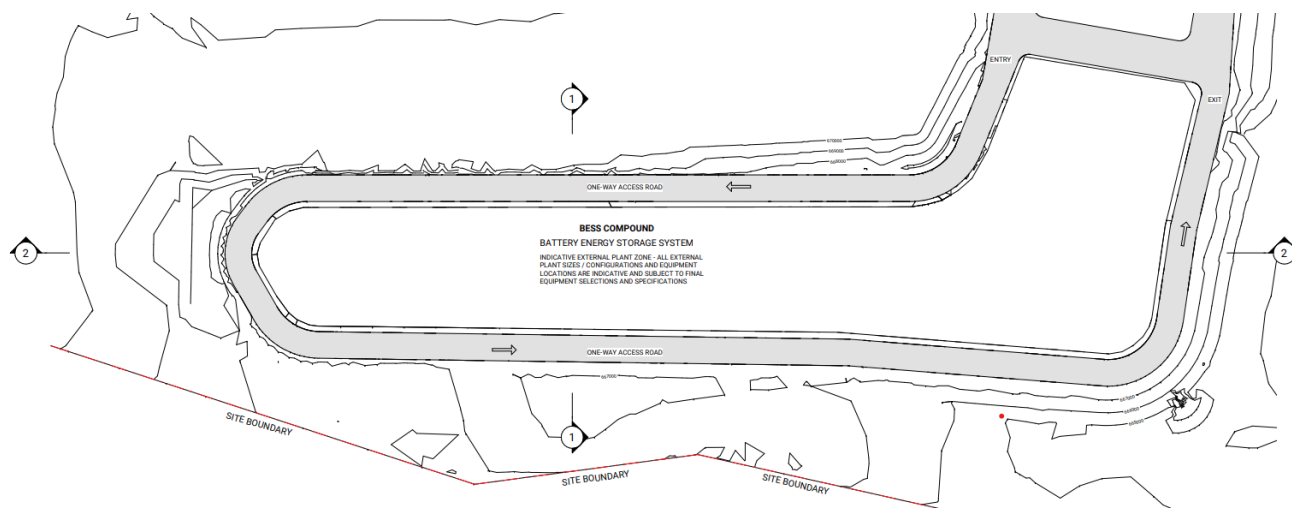


Figure 8: BESS Floor Plan

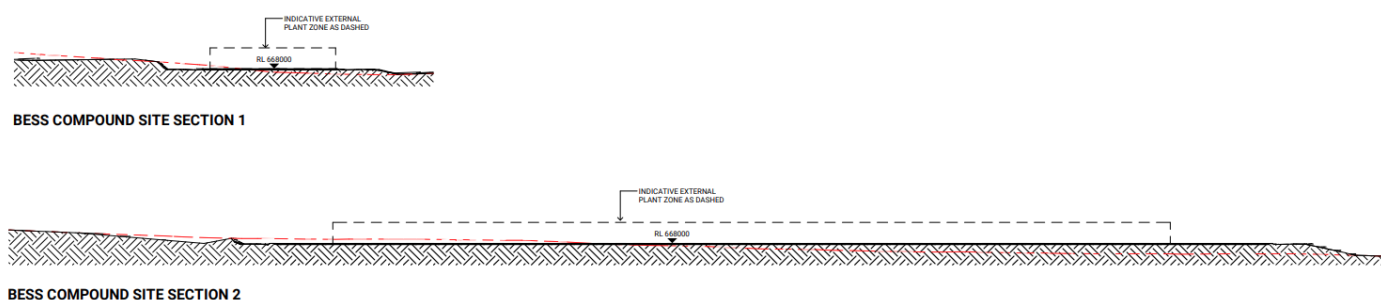


Figure 9: BESS Site Sections

Site inspections, of the site and surrounds, were undertaken on 28 January 2026, 22 May 2026 and 2 June 2026.

Referral Comments:

The development application was referred to internal and external technical experts and teams as follows:

Environmental Health Officer: Not Satisfactory

- 1- According to Clause 17 of Schedule 1 to the Protection of the Environment Operations Act 1997, general electricity works that have the capacity to generate more than 30 MW of electrical power require an EPA licence.

Calculating the capacity to generate electrical power

Continuous power generators only

- There are seven (7) existing 'continuous power' generators of 2 MW each (approved under Development application 24/0055 on 19 April 2024); and
- Five (5) additional 'continuous power' generators of 3.3 MW each are proposed under this DA. Accordingly, the capacity of 'continuous power' generators will be $7 \times 2 \text{ MW} + 5 \times 3.3 \text{ MW} = 30.5 \text{ MW}$

'Continuous power' and 'standby' generators

- There are nine (9) existing generators (seven (7) 'continuous power' and two (2) 'standby' generators) of 2 MW each; and
- Seven (7) additional generators (five (5) 'continuous power' and two (2) 'standby' generators) of 3.3 MW each are proposed under this DA. Accordingly, the capacity of 'continuous power' generators and 'standby' generators will be $9 \times 2 \text{ MW} + 7 \times 3.3 \text{ MW} = 41.1 \text{ MW}$

The electricity works generate more than 30 MW of electrical power and therefore the development requires an EPA licence.

2- Contaminated Land

The SEE (p.15) reads:

"A Phase 1 Environmental Due Diligence Assessment for the Tarcoola Park property was undertaken by Environmental Resources Management Australia (ERM) in 2006. The report identified the Site has previously been utilised for grazing, with the risk of on-site contamination to be low. ERM concluded the current potential sources of contamination are limited and well controlled. Consideration of the risk of contamination were undertaken in approving the subdivision development of the Site under DA 16/720, which is no longer proceeding. It is therefore considered that the subject site is suitable for the proposed development pursuant to clause 4.6 of the Resilience & Hazards SEPP".

The applicant has not submitted the abovementioned Phase 1 report with this DA.

Assessment Officer's Comment: The proposed development constitutes a scheduled activity under *Clause 17- Electricity generation* of Schedule 1 of the Protection of the Environment Operations Act 1997 and therefore requires an Environment Protection Authority (EPA) licence. It is noted that no EPA licence has been issued for the proposed development.

While this matter could be addressed by way of a condition of consent requiring the applicant to obtain the necessary EPA licence prior to the commencement of the activity, the application is recommended for refusal on separate planning grounds

In relation to contaminated land, insufficient information has been provided for Council to be satisfied that the land is suitable for the proposed development and use.

Development Engineer: Not Satisfactory.

- 1- During wet seasons/periods, it is expected that the proposed wetlands' maximum allowable detention storage volumes will not be utilised completely, given that wetlands have permanent pool volumes and sediment builds up over time. A suitable DRAINS model to show supporting calculations for the stormwater capacities of the wetlands during minor and major storms and that the post-development flows do not exceed the pre-development flows has not been provided. DRAINS model is requested because the proposed BESS building is encroaching and proposing significant earthworks over a flood-prone land. In addition, as per the approved Stormwater Management Plan & MUSIC Model Assessment (Rev: B by Lucas Consulting Engineers dated 02/02/2025) as part of the approved DA 25/2158, there seems to be a significant increase in the proposed Upper Wetland Area, from 23,900 m² to 31,900 m². This proposed wetland also requires significant works over a natural watercourse and flood-prone land.
- 2- The wetland sections and details have not been submitted with the application.

Assessment Officer's Comment: The DA should be refused as insufficient information has been submitted to demonstrate that the proposed development will not adversely impact the flood storage capacity, flood behaviour, drainage characteristics, and stormwater management performance of the site and surrounding land. In particular, the absence of a suitable DRAINS model, supporting hydraulic calculations, and detailed wetland design information prevents a proper assessment of whether post-development flows will be appropriately managed and whether the proposed encroachment and earthworks within flood-prone land and a natural watercourse can be accommodated without resulting in adverse environmental, flooding, or drainage impacts.

Flood Engineer: Not Satisfactory.

The site is affected by flooding and is identified as being partially affected by high, medium and low flood risk precincts. A flood assessment is required to address flood related controls of the DCP.

The proposed BESS is on the existing creek drainage line, and major works are proposed to realign the watercourse with a new 15m wide channel. The DA does not provide sufficient details about the design of this channel and the impacts on flood behaviour. The flood assessment should incorporate 2D modelling consistent with current ARR guidelines to identify the new flood behaviour resulting from the proposed channel realignment. Modelling files are to be provided to WSC for review.

The current proposal to "capture all development runoff" within the proposed wetlands is not satisfactory. During prolonged wet periods when the wetlands are full there will be no detention storage to mitigate the increased runoff from the proposed development, and the wetlands will accumulate deposited sediment over time. The flood assessment should detail a suitable OSD method consistent with Council's D09 Stormwater Drainage Design Specification, and include modelling covering a range of AEPs, durations and temporal patterns to demonstrate that the proposed OSD produces no increases in downstream flood affectation.

The DA should not be approved without the required additional information demonstrating compliance with flood-related development controls and the D09 Stormwater Drainage Design Specification.

Assessment Officer's Comment: The DA should be refused as insufficient information has been submitted to demonstrate that the proposed development does not result in adverse flood impacts.

Water / Sewer Development Engineer: Not Satisfactory.

- Council requires information regarding the expected Average Daily Water Usage, and the Peak daily water usage to assess the impact on councils' water and wastewater system.
- If water and wastewater will not require to be connected to the proposed structures, could the applicant clearly state in the site plan or the SoEE.

Assessment Officer's Comment: The DA should be refused as insufficient information has been provided to demonstrate how the development is to be serviced without adversely impacting on existing infrastructure and uses.

Accredited Certifier: Not Satisfactory.

- A detailed assessment report prepared by a suitably qualified person (i.e. Building Surveyor – with an applicable level of accreditation for the building) detailing the proposed development is capable of complying with the deemed to satisfy provisions of the NCC 2022 Volume One - Building Code of Australia is required.

Note: Should the building's floor area be more than 500sqm Council will require a Fire Hydrant Services Report demonstrating that Hydrants are available for the development and can comply with AS2419.1-2021.

- The development shall provide for people with disabilities in accordance with the requirements of the National Construction Code, relevant Australian Standards and with regard to the Disability Discrimination Act 1992. A report prepared by an Access Consultant shall be provided demonstrating the proposal is capable of achieving compliance.

Assessment Officer's Comment: As a matter of due diligence, a Building Code of Australia (BCA) compliance statement should be provided to demonstrate that the proposed building can be constructed in accordance with the requirements of the BCA without requiring significant redesign. This assists in mitigating the risk of a situation arising whereby a development consent is granted, but a subsequent Section 4.55 modification application is required to facilitate the issue of a Construction Certificate due to non-compliance with the BCA.

Notwithstanding the above, Clause 36(2) of the Environmental Planning and Assessment Regulation 2021 prevents a consent authority from requiring, at the development application stage, information that is otherwise required to accompany an application for a Construction Certificate. Accordingly, the absence of a BCA compliance statement cannot be relied upon as a reason for refusal of the application.

Having regard to the Fire Hydrant Services Report, in the absence of this documentation it cannot be confirmed that the proposed development achieves compliance with the relevant fire safety and servicing requirements. Accordingly, the adequacy of the proposed fire protection measures, and any associated impacts on the built environment, remain unresolved. On this basis, the development is recommended for refusal.

NSW Rural Fire Service (external referral): The referral was returned by the NSW RFS on 23 September 2025 as no Bushfire Assessment was submitted with the application.

Water NSW (external referral): A response from Water NSW remains outstanding.

NSW Environment Protection Authority (external referral): The referral was returned by the NSW EPA on 24 September 2025 advising that the development is not a scheduled activity.

Jemena (external referral): The referral was returned by the Jemena on 24 September 2025 advising that no impact on Jemena's high pressure gas pipeline assets is anticipated.

Endeavour Energy (external referral): A response from Endeavour Energy was received on 12 October 2025 and they advised as follows:

“Regarding the Gas Generator Sets and BESS:

- *If it is a 'stand alone / behind the meter' facility and not to be connected to the electricity distribution network / grid a detailed network study is not required. However if the Southern Highland Data Centre [11 kilovolt (kV) High Voltage Customer (HVC) 95151 site] which it serves is connected to the grid, then the cabling reticulation connecting to the GAS generator and BESS may be*

considered to be grid connected (ie. embedded generation), unless a break mechanism is provided to ensure there is no paralleling operation of the generating plants with the grid. For any guidance in this regard the applicant can contact Endeavour Energy's Customer Network Solutions Branch via the contact details provided below.

- *Irrespective of the class / division and the quantities, any dangerous goods whether combustible and / or flammable should not be stored near electricity infrastructure and increasing the separation distance as far as reasonably possible is recommended – noting that lithium-ion batteries present a significant fire risk with intense, difficult-to-extinguish fires that may damage nearby electricity distribution infrastructure. Conversely, some types of electricity distribution infrastructure may be a potential ignition source.*
- *From the copy of the Site Plan it appears the BESS is in a low risk location with sufficient distance so the radiant heat flux from the BESS enclosure (when fully involved in fire) does not create the potential for ignition or damage to Endeavour Energy's electricity distribution assets.*
- *The National Guidelines for Distribution Network Service Provider-owned Battery Energy Storage System ENA DOC 054-2025 provides additional information to guide the development of appropriate, fit for purpose and consistent design solutions for the BESS which should also be considered for privately owned and operated BESS.*

Based on and subject to the foregoing Endeavour Energy has no objection to the Development Application”.

ASSESSMENT UNDER SECTION 4.15 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

The provisions of any EPI, draft EPI; DCP; and the regulations [s4.15(1)(a)]

Environmental Planning and Assessment Act 1979

S4.10 Designated development

The proposed development is considered to constitute “designated development” pursuant to s 4.10 of the Environmental Planning and Assessment Act 1979 (EPA Act). Clause 7 of Schedule 3 of the Environmental Planning and Assessment Regulation 2021 (EPA Regulation) provides:

“7 – Battery storage facilities

Development for the purposes of a battery storage facility is designated development if the facility supplies or is capable of supplying more than 30 megawatts of electrical power.”

The proposed development includes the erection and use of a battery storage facility, referred to as a Battery Energy Storage System in the accompanying Statement of Environmental Effects. The development comprises forty (40) containerised battery units and associated infrastructure, each with a capacity of 2 MW.

On this basis, the facility has a total capacity of approximately 80 MW and is therefore capable of supplying more than 30 MW of electrical power. Accordingly, the proposal is classified as *designated development* under Clause 7 of Schedule 3 of the EPA Regulation.

Despite this classification, the development application has not been lodged as designated development, and the statutory assessment requirements applicable to such development under the EPA Act have not been undertaken. Section 4.16(9) of the EPA Act prevents a consent authority from determining a development application for designated development until the required public notification procedures have been completed and any submissions have been forwarded to the Planning Secretary.

This process includes public exhibition of an Environmental Impact Statement (EIS), which is required to accompany any application for *designated development* under s 4.12(8) of the EPA Act. No EIS has been submitted with the application.

Furthermore, s 173 of the EPA Regulation requires that a request be made to the Planning Secretary for environmental assessment requirements to inform the preparation of an EIS for designated development. No such request has been made in relation to the subject application.

S4.14 Consultation and development consent – certain bush fire prone land

Section 4.14 of the EP&A Act specifies –

- (1) *Development consent cannot be granted for the carrying out of development for any purpose (other than a subdivision of land that could lawfully be used for residential or rural residential purposes or development for a special fire protection purpose) on bush fire prone land (being land for the time being recorded as bush fire prone land on a relevant map certified under section 10.3(2)) unless the consent authority—*
 - (a) *is satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection prepared by the NSW Rural Fire Service in co-operation with the Department (or, if another document is prescribed by the regulations for the purposes of this paragraph, that document) that are relevant to the development (**the relevant specifications and requirements**), or*
 - (b) *has been provided with a certificate by a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment stating that the development conforms to the relevant specifications and requirements.*

The applicant has not submitted a Bush Fire Assessment Report in support of the development application against the required considerations. As a result, there is insufficient information to demonstrate that the proposed development has been designed in accordance with the relevant provisions and performance criteria of *Planning for Bush Fire Protection* prepared by the NSW Rural Fire Service. Furthermore, no certification has been provided by a suitably qualified bush fire consultant confirming compliance with those requirements.

In the absence of a Bush Fire Assessment Report or supporting certification, the application has not adequately addressed bush fire risk and does not satisfy the requirements of section 4.14 of the Environmental Planning and Assessment Act 1979.

SEPPs

State Environmental Planning Policy (Planning Systems) 2021

In accordance with Section 5 under Schedule 6 Regionally significant development of the SEPP, the proposed development has an estimated development cost of more than \$5 million for the purpose of electricity generating works. The cost of the proposal is \$23,596,920.00 Ex. GST, Therefore, the consent authority is the Southern Regional Planning Panel.

Under the Environmental Planning and Assessment Act 1979 and the transitional provisions as outlined in the Department of Planning guidance on the first commencement of the EP&A planning system reforms, December 2025, the Southern Regional Planning Panel remains the relevant consent authority for the subject application. This is because a deemed refusal appeal was lodged with the Land and Environment Court on 20 November 2025, which is prior to the 16 January 2026 commencement date for the new determination arrangements. As a result, the transitional provisions preserve the existing regional planning panel pathway for the application, and the matter is not subject to determination by a local planning panel acting on behalf of the regional panel. Accordingly, the Southern Regional Planning Panel continues to be the determining authority for the application under the current statutory framework.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 Remediation of land

Chapter 4 of SEPP (Resilience and Hazards) 2021 (section 4.6) requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land, and to be satisfied that the land is suitable for the proposed use.

The Statement of Environmental Effects (p.15) states:

“A Phase 1 Environmental Due Diligence Assessment for the Tarcoola Park property was undertaken by Environmental Resources Management Australia (ERM) in 2006. The report identified the Site has previously been utilised for grazing, with the risk of on-site contamination to be low. ERM concluded the current potential sources of contamination are limited and well controlled. Consideration of the risk of contamination were undertaken in approving the subdivision development of the Site under DA 16/720, which is no longer proceeding. It is therefore considered that the subject site is suitable for the proposed development pursuant to clause 4.6 of the Resilience & Hazards SEPP”.

The applicant has not submitted the referenced Phase 1 (Preliminary Site Investigation) report with the development application. In the absence of this information, there is insufficient evidence to demonstrate that the site is suitable for the proposed use or that potential contamination risks have been appropriately identified and assessed.

Accordingly, the proposal has not adequately addressed the requirements of Chapter 4 (Remediation of Land) of the SEPP, which requires that land be suitable, or capable of being made suitable through remediation, for the intended use.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 6 Water catchments

The site is located within the Sydney Drinking Water Catchment. Pursuant to clause 6.5 of the SEPP a consent authority must not grant consent to the carrying out of development under Part 4 of the Act on land in the Sydney drinking water catchment unless it is satisfied that the carrying out of the proposed development would have a neutral or beneficial effect on water quality and that the impact on water flow in a natural waterbody will be minimised. The application is a Module 5 development for the purposes of the Neutral or Beneficial Effect (NorBE) on Water Quality Assessment Guideline.

Water NSW has not provided a response to date; In the absence of concurrence or confirmation from Water NSW, it has not been demonstrated that the proposal will achieve a Neutral or Beneficial Effect on water quality or adequately minimise impacts on water flow within the Sydney Drinking Water Catchment. Accordingly, the application is not supported and is recommended for refusal on this basis.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 – Infrastructure – Part 2.3 – Division 4 – Section 2.36

Section 2.36 of the SEPP outlines the circumstances in which development for the purpose of electricity generating works may be carried out with consent.

“Section 2.36 - Development permitted with consent

(1) Development for the purpose of electricity generating works may be carried out by any person with consent on the following land:

(a) in the case of electricity generating works comprising a building or place used for the purpose of generating electricity using waves, tides, or aquatic thermal energy as the fuel

*source—on any land; or
(b) in any other case—on land within a prescribed non-residential zone.”*

The subject land is zoned E4 General Industrial which is a prescribed non-residential zone under the SEPP. Accordingly, development for the purpose of electricity generating works is permissible with development consent on the site.

Chapter 2 – Infrastructure – Part 2.3 – Division 12A – Pipelines and pipeline corridors

The site is adjacent to a pipeline corridor and therefore Section 2.77 of the SEPP is applicable to the proposed development.

“2.77- Determination of development applications

*(1) Before determining a development application for development adjacent to land in a pipeline corridor, the consent authority must—
(a) be satisfied that the potential safety risks or risks to the integrity of the pipeline that are associated with the development to which the application relates have been identified, and
(b) take those risks into consideration, and
(c) give written notice of the application to the pipeline operator concerned within 7 days after the application is made, and
(d) take into consideration any response to the notice that is received from the pipeline operator within 21 days after the notice is given.”*

The application is accompanied by correspondence from Jemena dated 31/05/2023 (the gas pipeline operator) confirming that natural gas services are available to the proposed development at 30 Douglas Road, Moss Vale. Jemena states:

“Our mains are installed in the allocated space within the footpath adjacent to the proposed development. Jemena has completed a preliminary assessment of the gas requirements for the proposed development and can provide a gas connection to the site. The natural gas network is dynamic and no capacity is guaranteed until an application is received from an Energy Retailer, typically after Council DA approval has been received.”

However, aside from this correspondence, no supporting information has been provided to demonstrate that the potential safety impacts of the proposed development, including any risks to the integrity and operation of the gas infrastructure, have been assessed. As such, there is insufficient information to confirm that the proposal satisfies the requirements of this section.

Chapter 2 – Infrastructure – Part 2.3 – Division 15 – Railways-Section 2.98 – Development adjacent to rail corridors

The development is adjacent to rail corridor and therefore s 2.98 of the SEPP is applicable to the development.

“2.98 Development adjacent to rail corridors

*(1) This section applies to development on land that is in or adjacent to a rail corridor, if the development—
(a) is likely to have an adverse effect on rail safety, or
(b) involves the placing of a metal finish on a structure and the rail corridor concerned is used by electric trains, or
(c) involves the use of a crane in air space above any rail corridor, or
(d) is located within 5 metres of an exposed overhead electricity power line that is used for the purpose of railways or rail infrastructure facilities.*

- (2) Before determining a development application for development to which this section applies, the consent authority must—
- (a) within 7 days after the application is made, give written notice of the application to the rail authority for the rail corridor, and
- (b) take into consideration—
- (i) any response to the notice that is received within 21 days after the notice is given, and
- (ii) any guidelines that are issued by the Planning Secretary for the purposes of this section and published in the Gazette.
- (3) Despite subsection (2), the consent authority is not required to comply with subsection (2)(a) and (b)(i) if the development application is for development on land that is in or adjacent to a rail corridor vested in or owned by ARTC or the subject of an ARTC arrangement.
- (4) Land is adjacent to a rail corridor for the purpose of this section even if it is separated from the rail corridor by a road or road related area within the meaning of the Road Transport Act 2013”.

The application does not include any assessment addressing the interface between the proposed development and the adjoining rail corridor, including potential operational or traffic-related impacts associated with the development’s proximity to rail infrastructure.

A Plan of Management should have been provided to address these interface matters, including (but not limited to) traffic management during construction and operation, safety considerations, and measures to ensure that rail corridor operations are not adversely affected. Such matters could potentially be addressed through appropriate conditions of consent and consultation with the relevant rail authority. However, in the absence of the required supporting information, it has not been demonstrated that sufficient consideration has been given to the requirements of section 2.98 of the SEPP.

State Environmental Planning Policy (Sustainable Buildings) 2022 (Sustainable Buildings SEPP)

Chapter 3 – Standards for non-residential development

An assessment of the proposed development against the relevant provisions of the SEPP is provided in the table below.

Sustainable Building SEPP Compliance Table		
SEPP Sections	Requirement	Comment
3.1 Application of chapter	This Chapter applies to development, other than development for the purposes of residential accommodation, that involves— (a) the erection of a new building, if the development has an estimated development cost of \$5 million or more, or	The application consists of the construction of a non-residential development that exceeds \$5 Million.

Sustainable Building SEPP Compliance Table		
SEPP Sections	Requirement	Comment
3.2 Development consent for non-residential development	In deciding whether to grant development consent to non-residential development, the consent authority must consider whether the development is designed to enable the following—	
	(a) the minimisation of waste from associated demolition and construction, including by the choice and reuse of building materials,	(a) The application is accompanied by a Waste Management Plan prepared by Square Energy. The Plan outlines estimated waste volumes during construction, waste reduction measures, opportunities for beneficial reuse, and waste classification and disposal arrangements. The submitted information is considered satisfactory to meet the requirements of this section.
	(b) a reduction in peak demand for electricity, including through the use of energy efficient technology,	(b)The application is accompanied by a building sustainability statement. The applicant states that peak electricity demand would be reduced through energy efficiency measures including design of electrical systems to minimise unnecessary energy use, use of ultra-high efficiency LED lighting to meet only minimum required lux levels for safe operations, and installation of automated lighting controls that switch off lighting when no motion is detected and reactivate only when required. The submitted information is considered satisfactory to meet the requirements of this section. If the application was not recommended for refusal, suitable conditions could be provided to address this matter
	(c) a reduction in the reliance on artificial lighting and mechanical heating and cooling through passive design,	(c) The applicant states that passive design measures have been incorporated, including building insulation for both acoustic and thermal performance and the provision of large louvres on two façades of the Generator Hall to facilitate passive ventilation and reduce reliance on mechanical ventilation systems. The applicant also notes that opportunities for passive solar design are limited due to the building's function, and that the use of natural light is restricted to meet acoustic and thermal performance requirements. No details have been provided to demonstrate the extent to which these measures reduce reliance on artificial lighting or mechanical heating and cooling.

Sustainable Building SEPP Compliance Table		
SEPP Sections	Requirement	Comment
	(d) the generation and storage of renewable energy,	(d) The application states that the development includes the use of solar hot water systems; however, no detailed information has been provided regarding on-site renewable energy generation.
	(e) the metering and monitoring of energy consumption,	(e) No specific information has been provided regarding energy metering or monitoring systems.
	(f) the minimisation of the consumption of potable water.	(f) The applicant proposes rainwater harvesting with a storage capacity of at least 100,000 litres, with harvested water to be used for toilet flushing, cleaning of external surfaces and plant areas, and landscaping purposes. This is stated to result in an estimated saving of over 500,000 litres of potable water per annum. While these measures indicate an intention to reduce potable water consumption, no supporting water balance assessment has been provided to substantiate the extent of the savings.
	Development consent must not be granted to non-residential development unless the consent authority is satisfied the embodied emissions attributable to the development have been quantified.	

Wingecarribee Local Environmental Plan (WLEP) 2010

The subject site is mapped as E4 General Industrial under WLEP 2010. The proposed development involves the construction and operation of a Gas Power Generator and Battery Energy Storage System, including associated infrastructure and equipment.

Under the WLEP2010, **electricity generating works** means a building or place used for the purpose of—

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

Electricity generating works are not listed as a prohibited use within the E4 zone and therefore fall within the category of “any other development not specified in Item 2 (permitted without consent) or Item 4 (prohibited)”.

Zone Objectives -E4 General Industrial

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

- *To allow non-industrial land uses, including certain commercial activities, that, because of the type, scale or nature of the use, are appropriately located in the zone and will not impact the viability of business and commercial centres in Wingecarribee.*
- *To ensure new development and land uses incorporate measures that take into account the spatial context and mitigate potential impacts on neighbourhood amenity and character and the efficient operation of the local and regional road system.*

The proposed development does not satisfy the following objectives of the E4 General Industrial zone under the WLEP:

- *To minimise any adverse effect of industry on other land uses.*
- *To ensure new development and land uses incorporate measures that take into account the spatial context and mitigate potential impacts on neighbourhood amenity and character and the efficient operation of the local and regional road system.*

Comments

- The development is located in a visually prominent position, with a maximum built form height of 23.5 metres. The scale and excessive height of the development contribute to its visual prominence and bulk within the surrounding rural landscape and result in direct visual impacts on nearby rural residential development and land zoned C4 Environmental Living, RU2 Rural Landscape and RU4 Primary Production Small Lots.
- The built form is inconsistent with the open rural character and scenic qualities of the locality and lacks articulation and visual interest, resulting in a visually dominant industrial form that is not considered compatible with the surrounding landscape or nearby rural residential areas.
- The application is not supported by a comprehensive visual impact assessment demonstrating that the development will not result in significant or unreasonable adverse visual impacts on the surrounding area or identifying appropriate mitigation measures to minimise those impacts.
- The submitted landscape design is inadequate to soften and mitigate the visual impacts of the development or protect the scenic amenity of the locality. The proposal does not provide sufficient landscaped areas or appropriate landscape buffers associated with the BESS compound to effectively screen the development from surrounding land uses and public viewpoints. In addition, the landscape plan does not adequately demonstrate the effectiveness of the proposed planting, as it fails to identify the mature height and density of plant species and inappropriately nominates the mechanical plant area as deep soil landscaping.

Consequently, the proposal does not adequately mitigate impacts on neighbourhood amenity, rural character or the scenic qualities of the locality and is therefore inconsistent with the objectives of the E4 General Industrial zone.

An assessment of the relevant clauses within the Wingecarribee Local Environmental Plan 2010 is provided below.

Table 3: Wingecarribee Local Environmental Plan (LEP) 2010			
Clause	Control	Discussion	Compliance
5.21 Flood Planning	To minimise the flood risk to life and property associated with the use of land. (2) Development consent must not be granted to	The site is affected by flooding and is identified as being partially within high, medium and low flood risk precincts. The application has not been accompanied by a flood assessment. Council's Development Engineer and Flood Engineer reviewed the	No

	development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development— (a) is compatible with the flood function and behaviour on the land, and (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and (d) incorporates appropriate measures to manage risk to life in the event of a flood, and (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses. (3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the	application and considered the provided information unsatisfactory in this regard for the following reasons: - Insufficient hydraulic modelling (including 2D ARR-based modelling) has been provided to assess changes in flood behaviour resulting from the development, including the proposed realignment of the watercourse and channel works. - The impacts of the proposed development on flood risk precincts (high, medium and low) have not been adequately assessed or quantified. - No detailed stormwater and overland flow (OSD) assessment consistent with Council's drainage requirements has been provided to demonstrate that post-development flows will not worsen downstream flood impacts. - Insufficient information has been provided regarding the performance and capacity of the proposed wetlands, particularly during prolonged wet periods when storage capacity may be reduced. - The absence of detailed design information (including wetland sections and supporting hydraulic design details) limits the ability to assess flood storage, flow paths and flood conveyance impacts. Accordingly, insufficient information has been provided to demonstrate that the development complies with flood-related development controls. As such, the proposal does not demonstrate compliance with Clause 5.21 of the WLEP.	
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	following matters— (a) the impact of the development on projected changes to flood behaviour as a result of climate change, (b) the intended design and scale of buildings resulting from the development, (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood, (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.		
7.3 Earthworks	(3) Before granting development consent for earthworks, the consent authority must consider the following matters – (a) The likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality, (b) The effect of the proposed development on the likely future use or redevelopment of the land, (c) The quality of the fill or of the soil to be	The proposed development involves earthworks to create two building platforms with cut and fill depths range of between 2m and 4m. The following requirements of the clause have not meet: (a &b) earthworks within flood-prone land, and insufficient hydraulic modelling to demonstrate no adverse impacts on drainage behaviour or flood function. (d) Insufficient information has been provided creates uncertainty regarding potential downstream flooding impacts on surrounding land. (f) Not met due to the direct encroachment of the BESS and associated earthworks on an existing creek drainage line, lack of detailed design for the proposed channel realignment, and insufficient information regarding wetland expansion (from 23,900 m² to 31,900 m²) and its impact on a natural	No

	excavated, or both, (d) The effect of the proposed development on the existing and likely amenity of adjoining properties, (e) The source of any fill material or the destination of any excavated material, (f) The likelihood of disturbing Aboriginal objects or other relics, Proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.	watercourse and floodplain environment. Accordingly, the application is considered unsatisfactory with respect to Clause 7.3.	
7.5 Natural resource sensitivity - water	This clause applies to riparian land or land identified as “Natural Waterbodies” on the Natural Resources Sensitivity Map. (1) The objective of this clause is to maintain the hydrological functions of riparian land waterways and aquifers, including— (a) protecting water quality, and (b) protecting natural water flows, and (c) protecting stability of the bed and banks of waterways, and (d) protecting groundwater systems.	The site is mapped as containing Category 3 riparian land. The proposed BESS is located on an existing creek drainage line, with associated earthworks proposed to realign the watercourse into a new 15m wide channel. These works may constitute a “controlled activity” requiring approval from the NSW Department of Planning and Environment – Water under the <i>Water Management Act 2000</i>. However, the applicant has not sought to obtain Section 91 approval under the Act as part of this application. Notwithstanding this, there is no legal requirement for an applicant to seek integrated development approval (see <i>Maule v Liporoni & Anor</i> [2002] NSWLEC 25). The proposal has been reviewed by Council's Development Engineers, who have raised concerns that during wet seasons or prolonged rainfall events, the proposed wetlands may not fully utilise their maximum detention storage capacity due to the presence of permanent pool volumes and the potential for sediment accumulation over time. It is also noted that a suitable DRAINS model for both minor and	No

		major storm events and demonstrating that post-development flows do not exceed pre-development flows, has not been provided. It is also noted that a 10-metre buffer from the top of bank of Category 3 streams is required under clause (5)(c). No watercourse/riparian assessment has been provided by a suitably qualified hydrologist or ecologist to confirm stream classification, bank stability, erosion risk, or potential ecological impacts. Accordingly, there is insufficient information to demonstrate that the proposal satisfies the relevant objectives of the clause.	
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Section 4.15 (1) (a) (ii)—The provisions of any proposed instrument that apply to the land

No other draft instrument is relevant to the proposed development.

Section 4.15 (1) (a) (iii)—The provisions of any development control plan that apply to the land

Moss Vale Enterprise Corridor Development Control Plan

Assessment against the applicable provisions of this DCP is made in the following table:

Table 4: DCP Compliance Table			
Section	Control	Assessment	Compliance
3. Development Controls			
3.1 Land Use	- To achieve a balanced outcome between industrial development and the conservation of land within the Enterprise Corridor based on legitimate development and constraint data. - To encourage development and the conservation of designated precincts while	- Not Satisfactory – The application has not been supported by sufficient technical information to adequately assess key environmental constraints affecting the site, including flooding, watercourse impacts, biodiversity considerations, bushfire risk and utility servicing. As a result, it has not been demonstrated that an appropriate balance has been achieved between industrial development and the conservation of environmentally constrained land. - Not Satisfactory – Insufficient information has been provided regarding the environmental and physical constraints affecting the site, including flooding, watercourse realignment and biodiversity impacts.	No

	minimising land use conflict within and between development sites. - Externalities generated by existing heavy industrial uses are recognised as potential constraints to future development. - Land use and development is consistent with the Development Concept Plan. - The land proposed for development is suitable for the intended use	Consequently, it has not been demonstrated that the proposed development can occur without creating adverse impacts or conflicts within the surrounding precinct. - Satisfactory – The proposal is located within an established enterprise corridor intended to accommodate industrial development. No concerns have been identified regarding impacts arising from surrounding industrial land uses that would constrain the proposed development. - Not Satisfactory – The proposal is inconsistent with several provisions and objectives of the Development Concept Plan, including those relating to building height, visual impact assessment, landscaping, biodiversity conservation, flood-prone land and stormwater management. - Not Satisfactory – The application has not satisfactorily demonstrated that the site is suitable for the proposed development. Significant information gaps remain in relation to flooding, watercourse impacts, biodiversity, bushfire protection, fire safety, utility servicing and environmental constraints. Accordingly, the suitability of the site for the proposed development has not been established.	
3.3 Access and movement	<i>1. The major road network shall be developed in accordance with the Section 94 Development Contributions Plan.</i> <i>2. New internal access roads must be designed with a minimum road reserve of 20 metres and must</i>	1. Noted. 2. Satisfied- on Merit. This application involves the construction of an 8m wide external service road circulation system designed to accommodate the largest vehicle servicing the facility, which is a 19m prime mover and semi-trailer used to	Yes

	<i>accommodate pedestrian and cycle facilities.</i> 3. <i>Intersection treatments are to be designed in accordance with the relevant Austroads guidelines based on a traffic generation determined through a traffic impact assessment for the development.</i> 4. <i>Direct vehicular access onto the main roads will not be permitted. All development must have access to internal roads. Refer to Road Classification System and Access Rules in Appendix One.</i> 5. <i>No additional road connections will be permitted to Berrima Road or the Moss Vale Bypass. Refer to Road Classification System and Access Rules in Appendix One.</i> 6. <i>Access points and connections to the Main Southern Railway must be designed to meet Australian Rail Track Corporation and/or other</i>	transport the gas generators. The objective of the control is to ensure internal access roads are appropriately designed to accommodate vehicle movements and provide safe, integrated access for users of the site, including pedestrians and cyclists. In this instance, the service road is not intended to function as a general internal access street network but rather as a dedicated circulation route within an industrial context. Given the nature of the development, the absence of pedestrian and cycle facilities is reasonable. 3. Not applicable. 4. Satisfied- In accordance with the Road Classification System and Access Rules, access is permitted via Douglas Road (a Collector Road) between the western and eastern rail level crossings, consistent with Council's endorsed policy (formerly DCP 41, prior to 16 June 2010). The application was referred to Council's Traffic Engineer and Development Engineer, who considered the proposal satisfactory in this regard. 5. Not applicable. 6. Not applicable.	
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	<i>relevant rail authority's requirements.</i> <i>7. Vehicle access arrangements must comply with minimum standards set by applicable Australian Standards in addition to Council's Endorsed Technical Specifications (to be endorsed); Design (Vol 1) and Construction (Vol 2) and must be adequate to meet the needs of the development and associated vehicular traffic.</i>	7. Satisfied- The application was referred to Council's Traffic Engineer and Development Engineer, who considered the proposal satisfactory in this regard.	
3.4 Building sitting and design	Objectives - The bulk and scale of new development is appropriate to the area. - The size and siting of buildings within lots maintains the open rural character of the area. - The bulk and scale of new development does not compromise the scenic amenity of the area. - Development is not visible from public viewpoints along Berrima Road and from surrounding townships. <i>1. The height of buildings and other structures located</i>	The proposed structures exceed the maximum building height of 20m, with portions extending to 23.5m, representing an approximate exceedance of 3.5m (17.5%) above the height limit. The development has not been sited or designed to ensure the open rural character and scenic amenity of the area is maintained or enhanced. The built form does not include sufficient articulation or visual interest to ensure that the bulk and scale is appropriate to the area, or that the visual impacts on the surrounding landscape are adequately minimised or mitigated. 1. Not applicable.	No

	<i>within 50m of Berrima Road must not exceed 15 metres above ground level.</i> <i>2. The height of buildings and other structures must otherwise not exceed 20 metres above ground level.</i> <i>3. The minimum building setback from any property boundary adjacent to Berrima Road, the Moss Vale Bypass and Arterial Roads is 15 metres.</i> <i>4. The minimum building setback from other roads is 10 metres.</i> <i>5. The minimum building setback required to side and rear lot boundaries next to rural zoned land is 15 metres.</i> <i>6. Front building setback areas must be used for landscaping or staff and visitor car parking. Open storage is not permitted.</i> <i>7. Building footprints must not exceed 65% of the total site area.</i> <i>8. Development proposed within the Scenic Protection Constraint Area must be accompanied by a</i>	2. Not Satisfactory - The proposed development has a maximum height of 23.5m. The proposed structures exceed the maximum building of 20m and have not been sited or designed to ensure the open rural character and scenic amenity of the area is maintained or enhanced. The built form does not include any articulation or visual interest to ensure that the bulk and scale is appropriate to the area or that the visual impacts on the surrounding area are adequately minimised or mitigated. 3. Not applicable. 4. Satisfactory – The proposed buildings are positioned toward the eastern portion of the site and provide a front setback exceeding 10 metres. 5. Satisfactory – The site adjoins land zoned E4 to the south, west, and east. The adjoining land to the north is zoned C3. The building is setback over 15m from the northern boundary. 6. Satisfactory – No staff or visitor car parking have been proposed with the front setback. Front building setback areas must be used for landscaping 7. Satisfactory –The building footprint of all existing and proposed footprints will not exceed 65%. 8. Not Satisfactory -The application is not supported by any assessment of the potential visual impacts of the proposed built form on the surrounding land to demonstrate consistency with the following	
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	<i>visual impact statement prepared by a suitably qualified person. The visual impact statement must demonstrate that the development will not result in a significant adverse visual impact on the surrounding area.</i> <i>9. Building materials should be non-reflective and external colours are to be muted earth and bush vegetation tones. Dark colours and large areas of white or vibrant colours are to be avoided.</i> <i>10. Building design is to include measures to reduce water and energy use. These measures (including the energy efficiency measures set out in section 3.5 and water conservation measures such as recycling and reuse of treated waste water) are to be documented in a building sustainability statement prepared by a suitably qualified person submitted with the development application.</i> <i>11. The siting of buildings and other structures should consider the mature size and height of existing vegetation and proposed landscape</i>	objectives of Section 3.4 of the MVECDCP. 9. Satisfactory - Elevations plans in the Architectural Plan set nominate roofing, gutters, downpipes finishes as Colorbond Southerly, wall cladding as a finished combination of Colorbond Southerly and Colorbond Monument, roller shutters finish as Colorbond Southerly and louvres finish as Colorbond Monument. The finishes are non-reflective with muted tones and consistent with the finishes for the approved and under construction Southern Highlands Data Centre on the same property. 10. Not Satisfactory- As outlined under the assessment of Sustainable Building SEPP Compliance Table, section 3.2 Development consent for non-residential development insufficient information has been provided in the building sustainability statement in this regard. 11. Not Satisfactory - In regard to landscaping, the landscape plan submitted with the application does not include sufficient detail or information to demonstrate the suitability of the proposed landscape design. Please refer to the assessment under Section 3.10.	
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	<i>treatments to protect assets and occupants.</i> <i>12. The siting and design of buildings within bushfire prone land must demonstrate compliance with the requirements of Planning for Bushfire Protection 2006 published by the NSW Rural Fire Service.</i>	12. Insufficient information has been provided in this regard. No bushfire assessment report was submitted with the application.	
3.5 Energy Efficiency	<i>1. Building design demonstrates an appropriate response to local climate and to the site and its context.</i> <i>2. Passive solar and passive ventilation is incorporated into the design of buildings to minimise reliance on electrical and mechanical systems.</i> <i>3. New development must consider building design and operation measures that reduce energy consumption relative to conventional buildings. These measures could include:</i> <i>• use of renewable energy sources such as solar or heat pump water systems</i> <i>• use of renewable or recyclable building materials</i> <i>• insulation of roof and walls to comply with relevant</i>	1- Satisfactory -The provided sustainability statement references insulation (thermal/acoustic), passive ventilation louvres, and consideration of climate conditions. 2- Not Satisfactory - Passive ventilation is proposed through the inclusion of louvres. For passive solar, the applicant has stated that the design is not heavily reliant on passive solar measures. Insufficient detail has been provided to demonstrate that adequate consideration has been given to passive solar principles. 3- Not Satisfactory - As outlined under the assessment of Sustainable Building SEPP Compliance Table, section 3.2 Development consent for non-residential development no detailed information has been provided regarding on-site renewable energy generation.	No

	<i>Australian Standards</i> <i>• use of sustainable energy technologies such as photovoltaic cells and cogeneration where appropriate</i> <i>4. Maximise the use of natural light to internal spaces through window type and location and insulated roof windows.</i> <i>5. Use energy efficient (low energy demand) fittings and switches.</i>	4- Not Satisfactory – The applicant states that natural light is restricted due to acoustic and thermal requirements. Insufficient detail has been provided to demonstrate how the design maximises the use of natural light to internal spaces, or whether any alternative daylighting strategies have been considered to satisfy this requirement. 5- Satisfactory – Requirements of this section is supported by providing ultra-high efficiency LED lighting, automated motion sensor lighting controls and low energy demand fittings.	
3.6 On-site parking and loading facilities	<i>1. The number of car parking spaces to be provided on site shall be determined in accordance with the Car Parking Schedule. The number of car parking spaces required shall be rounded up or down in accordance with normal mathematical practise.</i> <i>2. Council will require the provision of adequate on site turning facilities for commercial vehicles.</i> <i>3. Under no circumstances will Council permit the reversing of vehicles onto main or arterial road or future by-pass route.</i>	1- Satisfactory - The DCP does not provide specific parking rates for the proposed generator and battery storage. The SoEE states that the Parking demand is restricted to 2 operational and 4 occasional maintenance personnel. and onsite parking demand will be easily met by kerbside parking along the internal private access road in front of the development. This is considered satisfactory. Council's development engineer and traffic engineer also reviewed the proposal and raised no objection in this regard. 2- Satisfactory- Onsite turning and manoeuvring is provided by the private access road and the Service Road around the perimeter of the Generator and BESS 'pad' 3- Satisfactory- Swept paths analysis provided has demonstrated that the largest service vehicle (19m semi-trailer) can enter and exit the site in a forward direction.	Yes

	4. <i>For the design of off-street commercial vehicle facilities refer to AS 2890.2: 2004 for guidelines.</i> 5. <i>Loading and unloading of materials and goods must take place within the site.</i> 6. <i>Loading bays are not to be used for the storage of goods or waste storage other than during the loading/unloading process.</i> 7. <i>Open parking areas should be designed to incorporate a 2.5 metre wide landscape bay for tree planting every 6 to 8 car bays.</i> 8. <i>Other open hardstand areas should be screened from public view with appropriate landscape treatments.</i>	4- This matter can be addressed by a condition of consent; however, refusal of the application is recommended. 5- This matter can be addressed by a condition of consent; however, refusal of the application is recommended. 6. This matter can be addressed by a condition of consent; however, refusal of the application is recommended. 7- Not applicable 8- Not applicable – No large hardstand areas associated with parking or loading areas are proposed.	
3.7 Signage	Signage shall comply with Appendix 2.	No signage is proposed as part of the development application.	N/A
3.8 Fencing	Transparent or open style fencing along street frontages is encouraged and should not be located forward of the building line.	No Fencing is proposed as part of the development application.	N/A
3.9 External lighting	An external lighting strategy must be submitted with development applications and must indicate the	The application is not accompanied by an External Lighting Layout Drawing. While this matter could be addressed by an appropriate condition of consent, refusal of the application is recommended.	No

	location and design of lighting and the proposed hours of use. A light spill impact assessment prepared by a suitably qualified person must be submitted with development applications for land located next to rural or residential zones and land within the Scenic Protection Constraint Area.		
3.10 Landscaping	A landscape concept plan prepared by a suitably qualified person is to be submitted with a development application. The landscape concept plan must indicate the location and nature of proposed landscape treatments within the development site including identification of species and mature heights. A minimum 15-metre-wide landscaped area is to be established along lot frontages to internal access roads and along boundaries with rural zoned land outside the Enterprise Corridor. A minimum 3-metre-wide landscaped area is to be established along the side and rear boundaries of a site unless otherwise specified above.	The landscape plan submitted with the application does not include sufficient detail or information to demonstrate the suitability of the landscape design to reduce the visual impacts or integrate the development into the surrounding area. The landscape design does not detail the mature height of the proposed plant species and nominates the mechanical plant area as a deep soil area. The proposed landscape design is not considered to be adequate and does not include sufficient landscaped area or landscaping to appropriately soften and mitigate the visual impacts of the proposed development. The landscape design does not include landscaping associated with the BESS site or the required landscape buffers to the internal access road.	No

	The height and density of vegetation within building setback areas must be sufficient to provide effective visual softening to buildings and other structures and open hardstand areas. Landscaping should be integrated with existing native vegetation and should use compatible local native species selected from the council native species list.		
3.11 Utility Services	<i>1. A servicing strategy prepared by a suitably qualified person must accompany development applications for the subdivision of land and must be consistent with the Development Concept Plan.</i> <i>2. Lots must be connected to essential utility services before development can proceed.</i> <i>3. Utility services must be adequate to meet the demands generated by the proposed development.</i> <i>4. A water storage reservoir site may need to be set aside as indicated on the Development Concept Plan. The need for the site will be confirmed by a water modelling</i>	The site plan and civil design plan submitted with the DA do not detail how the existing water and wastewater supply pipes inside the property would be connected to the proposed generator hall and BESS pads. It is understood that water and wastewater pipe connection will be required for the operation of the development however no details on the daily water usage, peak daily water usage have been submitted with the DA. Insufficient information has therefore been submitted to assess the impact on Council's water and wastewater system. The DA does not demonstrate that there are adequate services provided to meet the demands of the development without adverse impacts on existing infrastructure.	No

	<i>exercise and could require an area in the order of 1000 to 2000 square metres.</i> <i>5. Six 1000 square metre sewerage pump station sites are to be set aside as indicated on the Development Concept Plan.</i> <i>6. Three 5000 sq m electricity zone substation sites are to be set aside as indicated on the Development Concept Plan.</i>		
3.12 Biodiversity Conservation	The requirements of relevant biodiversity conservation legislation must be met. Development proposals within the Biodiversity Conservation and Riparian Constraint Area identified on the Development Concept Plan (Figure 3) must consider the biodiversity conservation value of these areas. Watercourses should be retained as natural drainage corridors with suitable buffers where significant.	The proposed BESS is on the existing creek drainage line, and major works are proposed to realign the watercourse with a new 15m wide channel. The DA does not provide sufficient details about the design of this channel and the potential impacts. It is noted that the works may constitute a “controlled activity” requiring approval from the NSW Department of Planning and Environment – Water under the <i>Water Management Act 2000</i>. However, the applicant has not sought to obtain section 91 approval under the Act as part of this application. It is also noted that a 10-metre buffer from the top of bank of Category 3 streams is required under clause (5)(c). No watercourse/riparian assessment has been provided by a suitably qualified hydrologist or ecologist to confirm stream classification, bank stability, erosion risk, or potential ecological impacts.	No
3.14 Noise	Development must comply with the requirements of the NSW Industrial Noise Policy and Environmental Protection Authority (EPA) requirements. A noise impact statement (NIA) prepared by a	The application has been reviewed by Council EHO who raised no objections subject to conditions to ensure compliance with the NIA if any consent was granted.	Yes

	suitably qualified person must be prepared for development proposals within 500 metres of a rural or residential zone boundary		
3.15 Air Quality	An air quality impact statement prepared by a suitably qualified person must be submitted with a development application for development proposals with the potential to generate significant air pollutants such as odour or particulates.	An Air Quality Assessment has been provided and includes emissions estimates and operational assumptions for the proposed generators. The assessment appears to form part of an Air Quality Impact Statement prepared for the proposal, including consideration of key operational emissions and modelling outputs. At the time of writing this report, the air quality modelling results are under review. Accordingly, the extent to which the assessment fully demonstrates compliance with relevant air quality impact assessment criteria, is yet to be fully confirmed.	Yet to be confirmed
3.16 Flood-prone land and stormwater management	Development proposals on land within the Water Inundation Constraint Area as identified on the Development Concept Plan must be accompanied by a flood assessment. The assessment must demonstrate the land is suitable for development and that development will not increase the potential for downstream flooding. A stormwater management plan prepared by a suitably qualified person must be submitted with development applications. An erosion and sediment control plan must	Not Satisfactory- The application has been reviewed by Council Stormwater and Flooding Engineer who both raised concerns and objected to the development. The site is affected by flooding and is identified as being partially affected by high, medium and low flood risk precincts. A flood assessment is required to address flood related controls of the DCP. The proposed BESS is on the existing creek drainage line, and major works are proposed to realign the watercourse with a new 15m wide channel. The DA does not provide sufficient details about the design of this channel and the impacts on flood behaviour. The flood assessment should incorporate 2D modelling consistent with current Australian Rainfall and Runoff (ARR) guidelines to identify the new flood behaviour resulting from the proposed channel realignment. The current proposal to "capture all development runoff" within the proposed wetlands is not satisfactory. During prolonged wet periods when the wetlands are full there will be no detention storage to mitigate the increased runoff from the proposed development, and the wetlands will accumulate deposited sediment over time. The flood assessment should detail a suitable OSD method consistent with Council's D09 Stormwater Drainage	No

	accompany development applications. This must detail measures proposed to prevent soil erosion and sediment transport.	Design Specification and include modelling covering a range of annual exceedance probabilities (AEPs), durations and temporal patterns to demonstrate that the proposed OSD produces no increase in downstream flood affectation	
3.17 Waste Management	A Waste Management Plan is required for all demolition works and /or construction works (with a value greater than \$50,000)	The application is accompanied by a satisfactory Waste Management Plan.	Yes

Provision of any Planning Agreement or draft Planning Agreement [s4.15(1)(a)(iia)]

There are no draft Environmental Planning Instruments relevant to the site or proposed development.

The regulations [s 4.15(1)(a)(iv)]

Clause 7 of Schedule 3 of the Environmental Planning and Assessment Regulation 2021 (EPA Regulation) provides:

“7 – Battery storage facilities

Development for the purposes of a battery storage facility is designated development if the facility supplies or is capable of supplying more than 30 megawatts of electrical power.”

As discussed earlier in this report, the facility has a total capacity of approximately 80 MW and is therefore capable of supplying more than 30 MW of electrical power. Accordingly, the proposal is classified as designated development under Clause 7 of Schedule 3 of the EPA Regulation. Despite this classification, the development application has not been lodged as designated development, and the statutory assessment requirements applicable to such development under the EPA Act have not been undertaken. This process includes public exhibition of an Environmental Impact Statement (EIS), which is required to accompany any application for designated development under s 4.12(8) of the EPA Act. No EIS has been submitted with the application.

Furthermore, s 173 of the EPA Regulation requires that a request be made to the Planning Secretary for environmental assessment requirements to inform the preparation of an EIS for designated development. No such request has been made in relation to the subject application.

CONTRIBUTIONS

Developer contributions are payable on the proposed development under Council adopted Policies; However, the application is recommended for refusal and they have therefore not been detailed within the report.

Impacts of the Development [s4.15(1)(b)]

The environmental impacts of the proposed development on the natural and built environment have been addressed in this report. However, the likely impacts on the local context and setting remain

undetermined due to insufficient information provided by the applicant, as discussed in detail throughout this report.

It is also noted that a Fire Hydrant Services Report has not been submitted to demonstrate that adequate fire hydrant infrastructure is available to service the development in accordance with AS 2419.1–2021. In the absence of this information, it cannot be confirmed that the proposed development will achieve compliance with relevant fire safety and servicing requirements. Accordingly, the adequacy of fire protection measures and their associated impacts on the built environment remain unresolved. In addition, there is no assessment of the cumulative impacts of the development on the surrounding area. The proposed development comprises the construction and operation of a gas-powered electricity generating plant on a site with existing approvals for a separate gas-powered electricity generating plant and two data centres. The documentation submitted with the development application does not include adequate assessment of the cumulative impacts arising from the interaction of the proposed development with the construction and operation of the other approved developments on the site.

The built form, amenity, servicing and environmental impacts must be considered in the context of the existing approvals on the site to ensure that the development does not result in unacceptable adverse impacts on the surrounding area.

Suitability of the Site [S4.15(1)(c)]

The application has not satisfactorily demonstrated that the site is suitable for the proposed development, as discussed in this detail through report. Subsequently this DA is recommended for refusal.

Submissions [S4.15(1)(d)]

The application was notified between 17 September 2025 to 17 October 2025, during which time Seven (7) submissions objecting to the proposed development were received.

Concerns	Assessment officer comments
Visual Amenity & Character • Visual blight • Tower height • Bulk and scale • Industrial appearance incompatible with semi-rural landscape • Inadequate landscaping/screening • Light spill and visual pollution Environmental & Health Concerns • Environmental degradation • Impacts on wildlife and livestock	Insufficient information has been provided in relation to the concerns raised, as discussed throughout this report.
Noise & Amenity Impacts • Operational noise • Construction noise • After-hours activity impacts • Air pollution	The applicant submitted Noise Impact Assessment and Air Quality Assessment reports in support of the application. At the time of writing this report, the air quality report is under review. Accordingly, the extent to which the assessment fully demonstrates compliance with relevant air quality impact assessment criteria, is yet to be fully confirmed. Submitted Noise Impact Assessment were reviewed by Council's Environmental Health Officer, who considered the information provided to be satisfactory. Potential construction noise impacts could be appropriately managed through the implementation of a Construction Management Plan, secured as a condition of consent.

	Notwithstanding this, refusal of the application is recommended on other planning grounds.
Energy Source & Sustainability - Type of gas proposed - Long-term sustainability impacts	Insufficient information has been provided in relation to the concerns raised, as discussed throughout this report.
Planning & Zoning Permissibility of gas power generation in the E4 zone and Hazardous/offensive industry concerns	The proposed development is permissible within the zone. The Statement of Environmental Effects submitted with the application indicates that no hazardous materials are proposed to be stored on site. Although this matter could be managed through appropriate conditions of consent, refusal of the application is recommended.
Traffic, Roads & Transport - Increased heavy vehicle traffic - Poor road condition/capacity - Road safety concerns - Transport impacts	Council's traffic engineer and development engineer have reviewed the application and raised no concerns in relation to increased heavy vehicle traffic or capacity impacts. However, as discussed under section 2.77 (Determination of development applications adjacent to land in a pipeline corridor) and section 2.98 (Development adjacent to rail corridors) of Chapter 2 of the State Environmental Planning Policy (Transport and Infrastructure) 2021, the application does not include an assessment addressing the interface between the proposed development and the adjoining rail corridor, including potential operational or traffic-related impacts associated with the development's proximity to rail infrastructure.

The Public Interest [S4.15(1)(e)]

Due to the reasons outlined in this report the proposal has not demonstrated that it is in the public interest.

Conclusion and Recommendation

The development application has been assessed in accordance with the matters for consideration under section 4.15 of the *Environmental Planning & Assessment Act 1979*, and all relevant environmental planning instruments and Council policies, and is considered unsatisfactory based on unsatisfactory and insufficient information being provided to support the proposal.

It is recommended that the Southern Regional Planning Panel determine the development application pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979* by way of refusal in line with the Recommended Reasons outlined in the Attachment 1.