

Appendix 3 – Statutory Requirements

Table 1 Pre-Conditions Table

Statutory Reference	Pre-Condition	Relevance	Section in EIS
NSW Legislation			
<i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> (Biodiversity and Conservation SEPP)	A consent authority is restricted from granting development consent for proposals on land identified as core Koala habitat without the preparation of a plan.	The Project Area is located within LGAs to which the SEPP applies, and a Biodiversity Assessment has been completed.	Section 6.2
<i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> (Resilience and Hazard SEPP)	The Resilience and Hazards SEPP requires a consent authority to consider whether an industrial development is potentially hazardous industry or a potentially offensive industry, A Preliminary Hazards Assessment (PHA) is to be completed for potentially hazardous developments to assist the consent authority to determine acceptability.	A PHA has been completed for the Project.	Section 6.10
Resilience and Hazards SEPP	Under the Resilience and Hazards SEPP, a consent authority must not consent to the carrying out of development on land unless it has considered any potential contamination issues.	The construction and operation of the Project will be appropriately managed to prevent contamination and any spills (e.g. hydrocarbons from mobile equipment during construction) will be cleaned up and the sites remediated. Decommissioning and rehabilitation following closure of the Project will be undertaken in accordance with relevant consent conditions and legislation/licence requirements and will include consideration of any contamination risks and remediation requirements associated with Project infrastructure (battery energy storage system and substation).	Section 6.5

Statutory Reference	Pre-Condition	Relevance	Section in EIS
State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP)	<p>Clause 2.36(1)(b) of the Transport and Infrastructure SEPP state that development for the purpose of electricity generating works that may be carried out by a person with consent on any land in a prescribed non residential zone. RU1 Primary Production is a prescribed non residential zone under Clause 2.35 of the Transport and Infrastructure SEPP.</p> <p>Under Clause 2.7(1) of the Infrastructure SEPP, the provision prevails where there are inconsistencies with any other environmental planning instruments, including LEPs.</p>	<p>The Project Area is located within land zoned as RU1 Primary Production. Electricity generating works are not expressly permitted in this zone however, under provisions of the Transport and Infrastructure SEPP, the Project is permissible with the development consent.</p>	<p>Section 4.0</p>
Transport and Infrastructure SEPP	<p>The Transport and Infrastructure SEPP aims to facilitate the effective delivery of infrastructure across the State. Amongst a range of other provisions it requires that for a development application which involves certain works related to or near electricity infrastructure, the consent authority must give written notice to the electricity supply authority for an area in which the development is carried out, inviting comments about potential safety risks.</p>	<p>Lightsource bp is involved in ongoing consultation with TransGrid in relation to a connection agreement for the Project.</p>	<p>Section 1.6</p>
<i>Biodiversity Conservation Act 2016</i> (BC Act)	<p>Under the BC Act, biodiversity assessment in accordance with the Biodiversity Assessment Method (BAM) is required for any State Significant Development (SSD) project.</p>	<p>The Project is of a class considered an SSD project.</p>	<p>Section 6.2 Appendix 6 and Appendix 7</p>

Statutory Reference	Pre-Condition	Relevance	Section in EIS
<p><i>Protection of the Environment Operations Act 1997</i> (POEO Act)</p>	<p>The POEO Act regulates pollution to the environment and requires licences for environmental protection including waste, air, water and noise pollution control. Solar farms are not a schedule activity under the POEO Act; thus, the Project does not require an Environmental Protection Licence (EPL).</p>	<p>The Project does not require an Environmental Protection Licence.</p>	<p>N/A</p>
<p><i>Water Management Act 2000</i> (WM Act)</p>	<p>Any water extractions (take) from water sources (surface and groundwater) regulated by a Water Sharing Plan (WSP) required for construction purposes requires licensing under the WM Act. A water use approval under section 89, a water management work approval under section 90 or an activity approval (other than an aquifer interference approval) under section 91 of the WM Act do not apply to approved SSD projects, in accordance with the provisions of Section 4.41 of the EP&A Act.</p>	<p>The Project will require water for construction and operational activities. This water may be sourced from the Project Area.</p>	<p>Section 6.9</p>
<p><i>Roads Act 1993</i> (Roads Act)</p>	<p>Under section 138 of the Roads Act, the consent of the appropriate roads' authority is required before a person can erect a structure, carry out work in, on or over a public road or dig up or disturb the surface of a public road.</p> <p>A consent under section 138 of the Roads Act cannot be refused and is to be substantially consistent with an approved SSD in accordance with the provisions of Section 4.42 of the EP&A Act.</p>	<p>The Project requires road works, including the upgrades of two culverts at Bow River and Killoe Creek and upgrades of the road along Ringwood Road. The relevant road authority for the road works described above is the Upper Hunter Shire Council.</p>	<p>Section 3.0 Appendix 7</p>

Statutory Reference	Pre-Condition	Relevance	Section in EIS
<i>Crown Land Management Act 2016</i> (Crown Land Act)	The Crown Land Act provides for the administration and management of Crown Land in NSW. Crown land may not be occupied, used, sold, leased, licensed, dedicated, reserved or otherwise dealt with unless authorized by the Crown Land Act.	There are small parcels of Crown Land ('paper roads') throughout the Project Area. There are also small portions of Travelling Stock Reserve that intersect the Project Area. Landowner consent for these areas of Crown Lands has been obtained.	Section 1.7 Appendix 4
<i>Contaminated Land Management Act 1997</i> (CLM Act)	The CLM Act establishes the process for investigating and if required, remediating land that the NSW Environment Protection Authority (EPA) considers to be contaminated significantly enough to require regulation under Division 2 of Part 3.	The Project Area does not contain land listed on the Contaminated Lands Register and is not known to contain any contaminated land.	Section 6.5
<i>Dark Sky Guideline 2016</i>	This Guideline is a matter for consideration for all development under the EP&A Act before development consent is granted within the local government areas of Coonamble, Dubbo, Gilgandra and Warrumbungle and the assessment is within 200 km of the Observatory at siding Spring.	As the Project is a SSD within 200 km of the Siding Spring Observatory, the Dark Sky Planning Guideline must be considered before development consent can be granted.	Section 6.6
<i>Fisheries Management Act 1994</i> (FM Act)	The FM Act provides for the conservation, protection and management of fisheries, aquatic systems and habitats in NSW. The FM Act applies in relation to all waters that are within the limits of the State and regulates certain activities that have the potential to impact on aquatic habitats. Permits under section 201, 205 and 219 of the FM Act are not required in accordance with the provisions of Section 4.41 of the EP&A Act.	Potential aquatic ecological impacts have been addressed in the EIS.	Section 6.2
<i>Biosecurity Act 2015</i>	The <i>Biosecurity Act 2015</i> , Schedule 1 requires all private landowners, occupiers, public authorities and Councils to control weeds on their land.	A detailed protocol will be developed to confirm biosecurity is maintained and that grazing does not impact on the safe and efficient operation of the project or result in injury to farm workers or operational and maintenance staff.	Section 6.5

Statutory Reference	Pre-Condition	Relevance	Section in EIS
<p><i>National Parks and Wildlife Act 1974</i> (NPW Act)</p>	<p>The NPW Act sets out to protect and preserve Aboriginal heritage values. Part 6 of this Act refers to Aboriginal objects and places and prevents persons from impacting on an Aboriginal place or relic, without consent or a permit.</p> <p>An Aboriginal heritage impact permit (AHIP) under section 90 of the NPW Act is not required for approved SSD projects in accordance with the provisions of Section 4.41 of the EP&A Act.</p>	<p>An Aboriginal Cultural Heritage Assessment Report (ACHAR) has been completed for the Project.</p>	<p>Section 6.3 Appendix 8</p>
<p><i>Heritage Act 1977</i> (Heritage Act)</p>	<p>Under Section 4.41 of the EP&A Act, an approval under Part 4 or a permit under Section 139 of the Heritage Act 1977 would not be required for a State Significant Development. However, this does not exempt the Project from requiring heritage assessment, which may identify heritage/archaeological sites and provide recommendations for their management, and the consideration of the provisions of the relevant statutory controls.</p>	<p>A Historic Heritage Assessment has been completed for the Project.</p>	<p>Section 6.4 Appendix 9</p>
<p><i>Local Land Service Act 2013</i> (LLS Act)</p>	<p>Under the 2016 amendments to the Local Land Services Act 2013 (LLS Act), all rural land will be classified as either:</p> <ul style="list-style-type: none"> • Category 1 (exempt land): clearing of native vegetation without authorisation under the LLS Act is permitted; or • Category 2 (regulated land): clearing of native vegetation is regulated under the LLS Act and some authorisation is required. Vulnerable land under this category will also be provided additional protection (e.g. riparian land). 	<p>The Project Area contains areas classified as Category 1 land however these areas were identified as containing critically endangered ecological communities and/or plants, as such the Category 1 exemption does not apply.</p>	<p>Section 6.2 Appendix 6</p>

Statutory Reference	Pre-Condition	Relevance	Section in EIS
<i>Waste Avoidance and Resource Recovery Act 2001 (WARR Act)</i>	The WARR Act includes resource management hierarchy principles to encourage the most efficient use of resources and to reduce environmental harm.	Waste impacts from the Project have been considered in the EIS.	Section 6.13 Appendix 20
Commonwealth Legislation			
<i>Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)</i>	Under the EPBC Act the approval of the Commonwealth Minister for the Environment is required for any action that may have a significant impact on a matter of national environmental significance (MNES). Approval under Part 9 of the EPBC Act is required for actions that may result in a significant impact on MNES.	<p>The Project was referred to the Commonwealth Minister for the Environment (2021/9102).</p> <p>On 4 February 2021, the Project was determined to be a Controlled Action requiring approval under the EPBC Act from the Commonwealth Minister for the Environment due to its potential impact on the following MNES:</p> <ul style="list-style-type: none"> • Commonwealth listed threatened species and communities <p>The assessment path for the Project is under the bilateral agreement between the Commonwealth and NSW Governments, and the Department of Climate Change, Energy, the Environment and Water (DCCEEW) has issued its assessment requirements which have been incorporated into the SEARs for the Project (refer to Appendix 1 of the EIS).</p>	Section 6.2 Appendix 6
<i>Native Title Act 1993 (NT Act)</i>	The NT Act recognises the interests and rights Aboriginal people have to land and aims to provide recognition and protection of common law native title rights.	There are no currently known native title claims over the Project Area.	Section 4.0 and Section 6.3

Table 2 Mandatory Considerations Table

Statutory Reference	Mandatory Consideration	Relevance	Section in EIS
Considerations under the EP&A Act EP&A Regulation			
Section 1.3	<p>Relevant objects of the Act</p> <ul style="list-style-type: none"> • 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 • to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment • to promote the orderly and economic use and development of land • to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats. 	<p>The Project aims to provide a reliable and affordable source of energy for the people of NSW. The Project will also contribute to reducing greenhouse gas (GHG) emissions associated with energy generation and provide significant economic benefits to the region.</p> <p>The Project has been designed through a comprehensive process that incorporates community and stakeholder feedback and the findings of environmental and social studies to maximise positive social, economic and environmental outcomes while minimising adverse impacts.</p>	<p>Section 1.0 Section 2.0 Section 6.0 Section 7.0</p>
Section 4.15	<p>(a) The provisions of:</p> <p>(i) Any environmental planning instrument that apply to the land to which the development application relates.</p>	<p>The following Environmental Planning Instruments apply to the Project:</p> <ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Planning Systems) 2021</i> • <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> • <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> • <i>Upper Hunter Local Environmental Plan (LEP) 2013.</i> 	<p>This document</p> <p>Section 2.0 Section 4.0</p>

Statutory Reference	Mandatory Consideration	Relevance	Section in EIS
	(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 Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved) that apply to the land to which the development application relates	There are no proposed environmental planning instruments that are relevant to the application at the time of preparation.	Not applicable
	(iii) Any development control plan that apply to the land to which the development application relates	Section 2.8 of the Planning Systems SEPP excludes the application of development control plans (whether made before or after the commencement of the SEPP) to SSD projects.	Not applicable
	(iii) (a) 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 that apply to the land to which the development application relates	Lightsource bp is committed to entering a Planning Agreement for the Project with the Upper Hunter Shire Council.	Section 2.5.2
	(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	The EP&A Act is the primary instrument which regulates the environmental impact assessment and approval process for development in NSW.	Section 4.0
	(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	Environmental impacts on both the natural and built environments, and social and economic impacts in the locality are addressed within the EIS.	Section 6.0
	(c) The suitability of the site for the development	The Project Area is deemed suitable for the development.	Section 2.0 Section 6.0 Section 9.0

Statutory Reference	Mandatory Consideration	Relevance	Section in EIS
	(d) Any submissions made in accordance with this Act or the regulations	Comments to be received on the EIS during the public exhibition period will be addressed in the submissions process. Consultation has been undertaken with the community and other stakeholders to inform the EIS.	Section 5.0
	(e) The public interest	The Project is deemed beneficial to the public interest.	Section 9.0
Section 4.24	Relevant concept approval.	There are no relevant concept approvals for the Project.	Not applicable
Considerations under EPIs			
<i>State Environmental Planning Policy (Planning Systems) 2021</i>	Development for the purpose of electricity generating works or heat or their co-generation (using any energy source, including gas, coal, biofuel, distillate, waste, hydro, wave, solar or wind power) that— a. has a capital investment value of more than \$30 million, or b. has a capital investment value of more than \$10 million and is located in an environmentally sensitive area of State significance.	The Project is for the purpose of electricity generating works and has a capital investment value of more than \$30 million.	Not applicable
<i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>	Chapter 3 Koala habitat protection 2020 3.3 Land to which Chapter applies (1) This Chapter applies to land in the following land use ones, or an equivalent land use zone, in a local government area specified in Schedule 1 of State Environmental Planning Policy (Koala Habitat Protection) 2021, but not if the local government area is marked with an * in that Schedule— (a) Zone RU1 Primary Production, (b) Zone RU2 Rural Landscape, (c) Zone RU3 Forestry. ...	The Project is located in the Upper Hunter Local Government Area. As the Project Area is located on the land zone RU1 – Primary Production, this SEPP is applicable.	Section 6.2 and Appendix 6

Statutory Reference	Mandatory Consideration	Relevance	Section in EIS
	<p>8.8 Development consent cannot be granted unless neutral or beneficial effect on water quality</p> <p>(1) 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.</p> <p>(2) For the purposes of determining whether the carrying out of the proposed development on land in the Sydney drinking water catchment would have a neutral or beneficial effect on water quality, the consent authority must, if the proposed development is one to which the NorBE Tool applies, undertake an assessment using that Tool.</p>	<p>The Project is not located within the Sydney Drinking Water Catchment.</p>	<p>Not applicable</p>
<p><i>State Environmental Planning Policy (Resilience and Hazards) 2021</i></p>	<p>3.12 Matters for consideration by consent authorities</p> <p>In determining an application to carry out development to which this Part applies, the consent authority must consider (in addition to any other matters specified in the Act or in an environmental planning instrument applying to the development)—</p>		

Statutory Reference	Mandatory Consideration	Relevance	Section in EIS
	(a) current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development, and	<p>The publications regarded as relevant for hazardous and offensive development are:</p> <ul style="list-style-type: none"> • Hazardous Industry Planning Advisory Paper (HIPAP) series. • LPG Automotive Retail Outlets – Locational Guidelines. • Managing Land Contamination – Planning Guidelines. • Resilience and Hazards SEPP. • Hazardous and Offensive Development Application Guidelines. • Multi-Level Risk Assessment. <p>The relevant components have been considered in the PHA.</p>	Section 6.10
	(b) whether any public authority should be consulted concerning any environmental and land use safety requirements with which the development should comply, and	All relevant stakeholders have been consulted with during the preparation of the EIS.	Section 5.0
	(c) in the case of development for the purpose of a potentially hazardous industry—a preliminary hazard analysis prepared by or on behalf of the applicant, and	A PHA has been completed and is included as a component of the EIS.	Section 6.10
	(d) any feasible alternatives to the carrying out of the development and the reasons for choosing the development the subject of the application (including any feasible alternatives for the location of the development and the reasons for choosing the location the subject of the application), and	Feasible alternatives (including for the location of the development) have been considered in the EIS and the reasons for choosing the development are described.	Section 2.6
	(e) any likely future use of the land surrounding the development.	The Project is surrounded by the Goulburn River National Park, the Project will not change this land use.	Section 6.5

Statutory Reference	Mandatory Consideration	Relevance	Section in EIS
	<p>4.6 Contamination and remediation to be considered in determining development application (1) A consent authority must not consent to the carrying out of any development on land unless—</p> <p>(a) it has considered whether the land is contaminated, and</p> <p>(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and</p> <p>(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.</p>	<p>The Project Area is not listed in the Contaminated Land Register or Environmental Management Register. An initial inspection of the Development Footprint did not identify any potential contaminated land.</p>	<p>Section 6.5</p>
	<p>(2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.</p>	<p>There is no proposed change to the primary land use within the Project Area. The Project Area is not listed in the Contaminated Land Register or Environmental Management Register. An initial inspection of the Development Footprint did not identify any potential contaminated land. Soil sampling was also undertaken across the Project Area.</p>	<p>Section 6.5</p>
	<p>(3) The applicant for development consent must carry out the investigation required by subsection (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.</p>	<p>As above.</p>	<p>Not applicable</p>

Statutory Reference	Mandatory Consideration	Relevance	Section in EIS
	<p>(4) The land concerned is—</p> <p>(a) land that is within an investigation area,</p> <p>(b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,</p> <p>(c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes, or for the purposes of a hospital— land— (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and</p> <p>(ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).</p>	<p>The Project Area is not identified as contaminated land on the NSW EPA Contaminated Land Register or Environmental Management Register.</p>	<p>Not applicable</p>
<p>State Environmental Planning Policy (Transport and Infrastructure) 2021</p>	<p>Clause 2.36(1) of the Transport and Infrastructure SEPP states that development for the purpose of electivity works may be carried out by any person with consent on the following land</p> <p>(a) in the case of electricity generating works comprising a building or place used for the purpose of making or generating electricity using waves, tides or aquatic thermal as the relevant fuel source-on any land,</p> <p>(b) in any other case-any land in a prescribed non-residential zone.</p>	<p>The Project is for the purpose of electricity generating works and is located on land zoned as RU1 – Primary Production.</p>	<p>Section 6.5</p>
<p>Upper Hunter Environmental Plan</p>	<p>The Project is located in the Upper Hunter Local Government Area and is zoned and RU1- Primary Production.</p>	<p>Electricity generating works are not expressly permitted in this zone however the provisions of the Transport and Infrastructure SEPP prevail over the LEP in this instance.</p>	<p>Section 4.0</p>

Statutory Reference	Mandatory Consideration	Relevance	Section in EIS
Considerations under other legislation			
<i>Biodiversity Conservation Act 2016</i>	Under the BC Act, biodiversity assessment in accordance with the Biodiversity Assessment Method (BAM) is required for any SSD project. The likely impact of the proposed development on biodiversity values as assessed in the biodiversity development assessment report. The Minister for Planning may (but is not required to) further consider under that Act the likely impact of the proposed development on biodiversity values.	A Biodiversity Development Assessment Report (BDAR) in accordance with the BAM has been completed for the Project. Consultation with the NSW Biodiversity, Conservation and Science Division (BCS) has also been undertaken during the preparation of the EIS and has been considered in the BDAR.	Section 5.0 Section 6.2 Appendix 6 and Appendix 7
<i>Environment Protection and Biodiversity Conservation Act 1999</i>	Under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), a referral is required to be submitted to the Department of Climate Change, Energy, the Environment and Water (DCCEEW) for any 'action' that is considered likely to have a significant impact on any Matter of National Environmental Significance (MNES).	The Project was referred to the Commonwealth Minister for the Environment (2021/9102). On 4 February 2021, the Project was determined to be a Controlled Action requiring approval under the EPBC Act from the Commonwealth Minister for the Environment due to its potential impact on the following MNES: <ul style="list-style-type: none"> Commonwealth listed threatened species and communities. The assessment path for the Project is under the bilateral agreement between the Commonwealth and NSW Governments, and the Department of Climate Change, Energy, the Environment and Water (DCCEEW) has issued its assessment requirements which have been incorporated into the SEARs for the Project (refer to Appendix 1 of the EIS).	Section 6.2 Appendix 6