

## **APPENDIX B: STATUTORY CONSIDERATIONS**

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Section 79C(1) of the EP&A Act outlines the matters that a consent authority must take into consideration when determining development applications. These matters could be summarised as:

- the provisions of environmental planning instruments (including draft instruments), development control plans, planning agreements, and the EP&A Regulations;
- the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality;
- the suitability of the site;
- any submissions; and
- the public interest.

Section 5 of the EP&A Act also outlines a range of objects that must be considered when making decisions under the EP&A Act, and Sections 5A to 5D further outline provisions to be considered with regard to threatened species (including species, populations and ecological communities) and their habitats. The Department has given consideration to the requirements of other provisions of Sections 5A to 5D. In particular, these matters include the:

- factors in Section 5A(2), known as the '7 part test of significance';
- threatened species assessment guidelines<sup>‡</sup> identified in Section 5A(1); and
- register of critical habitat as identified in Section 5B.

The Department considered the 7 part tests presented in the EIS and also the threatened species assessment guidelines, in deciding whether there is likely to be a significant effect on threatened species, populations, ecological communities, or their habitats.

The Department's consideration has been prepared having regard to Newtricity's ecological assessment and the 7 part tests of significance in the EIS for the project, along with the threatened species assessment guidelines which assist in the interpretation and application of the 7 factors (or tests) of significance.

The Department's assessment (see Section 5.5) has considered the direct and indirect impacts of the project on threatened species, populations or ecological communities, or their habitats – both on the subject site and the broader study area, as defined under the threatened species assessment guidelines.

The Department has considered all of these matters in its assessment of the project. In summary, the Department believes that:

- the project can be undertaken in a manner that is consistent with the aims, objectives and provisions of the applicable environmental planning instruments, other applicable planning documents and the EP&A Regulations (see below);
- the project could be undertaken in a manner that is generally consistent with the objects of the EP&A Act (see below);
- the potential impacts of the project on the site and surrounds has been carefully considered in the assessment of the project, and the Department is satisfied that the impacts of the project on the environment and the local community could be adequately minimised, managed, or at least compensated for, to an acceptable standard;
- the site is suitable for the project, as it is within a region recognised as having some of the best wind resources in NSW, and has access to existing electricity distribution networks. The operation of the project would also not compromise the long-term use of the land for agricultural purposes.; and
- whilst there is some opposition to the project from local landowners and special interest groups, the project is in the wider public interest, particularly as it would:
  - be consistent with the NSW Government's vision for a secure, reliable, affordable and clean energy future for the state;

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<sup>‡</sup> *Threatened Species Assessment Guidelines – The Assessment of Significance*, prepared by the then Department of Environment and Climate Change, dated August 2007.

- assist in meeting Australia's renewable energy targets as well as future electricity demands without the production of additional greenhouse gases; and
- facilitate employment for up to 74 personnel during construction and 7 personnel during operations.

### Objects of the EP&A Act

The Minister must consider the objects of the EP&A Act when making decisions under the Act. The objects of most relevance to the Minister's decision on whether or not to approve the project are found in Section 5(a)(i),(ii),(vi) and (vii). They are:

*To encourage:*

- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;*
- (ii) *the promotion and co-ordination of the orderly and economic use and development of land;*
- (vi) *the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats; and*
- (vii) *ecologically sustainable development.*

The Department is satisfied that the project encourages the proper development of natural resources (Object 5(a)(i)) and the promotion of orderly and economic use of land (Object 5(a)(ii)), particularly as the project is:

- a permissible land use on the subject land;
- located in a suitable location for efficient wind energy development;
- able to be managed such that the impacts of the project could be adequately minimised, managed, or at least compensated for, to an acceptable standard; and
- consistent with the goals of the *Renewable Energy Action Plan*, and would assist in meeting Australia's renewable energy targets whilst reducing greenhouse gas emissions.

Consideration of environmental protection (Object 5(a)(vi)) is provided in Section 5 of this report. Following its consideration, the Department considers that the project is able to be undertaken in a manner that would improve or at least maintain the biodiversity values of the locality over the medium to long term, and would not significantly impact threatened species and ecological communities of the locality. The Department is also satisfied that any residual biodiversity impacts can be managed and/or mitigated by imposing appropriate conditions and a biodiversity offset strategy.

The Department has considered the encouragement of ecologically sustainable development (ESD) (Object 5(a)(vii)) in its assessment of the project. This assessment integrates all significant socio-economic and environmental considerations and seeks to avoid any potential serious or irreversible environmental damage, based on an assessment of risk-weighted consequences. Newtricity has also considered the project against the principles of ESD. Following its consideration, the Department considers that the project can be carried out in a manner that is consistent with the principles of ESD.

### Environmental Planning Instruments

#### *SEPP (State and Regional Development) 2011*

As outlined in Section 3.1, the project meets the criteria for State Significant Development under the *State Environmental Planning Policy (State and Regional Development) 2011*.

#### *State Environmental Planning Policy (Rural Lands) 2008*

The Rural Lands SEPP aims to facilitate the orderly and economic use and development of rural lands for rural and related purposes whilst ensuring the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State.

The Department is satisfied that the proposed development is consistent with the Rural Lands SEPP as the operation of the project would not compromise the long term use of the land for agricultural purposes and would provide an additional source of income for the landowners of the associated properties, whose land would be directly affected by the project.

*SEPP No.44 – Koala Habitat Protection*

The Department is satisfied that the project site does not contain any areas of core Koala habitat, and that the project is generally consistent with the aims, objectives, and requirements of SEPP 44.

*SEPP No.55 – Remediation of Land*

The Department is satisfied that the project site is not located on land identified as contaminated land, nor is it adjacent to land identified as contaminated land. Also, construction activities would not significantly disturb soil or groundwater resources on the project site.

*SEPP (Infrastructure) 2007*

In accordance with clause 104 of the Infrastructure SEPP, the application was referred to RMS. The matters raised in RMS's submission on the project were considered by the Department, and the Department has recommended conditions of approval in relation to the classified road network.

*Upper Lachlan Local Environmental Plan 2012*

The zoning and permissibility of the development under the Upper Lachlan Shire Council LEP is addressed in Section 3.2 of this report.

There are no other provisions of the LEP that substantially govern the development, and the Department is satisfied that the project can be managed in a manner that is generally consistent with the aims, objectives and provisions of the LEP.