



STOP THE GAS PLANT

Southern Highlands

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TO: The General Manager, Wingecarribee Shire Council

AND TO: The Registrar, Land and Environment Court of New South Wales

PROCEEDINGS: LEC Proceedings No. 2025/448084 (Re-exhibited Development Application DA 26/0352)

DEVELOPMENT: Proposed 16.5 MW Gas Generation Expansion and 30 MW Battery Energy Storage System (SQE2 + BESS)

LOCATION: 30 Douglas Road, Moss Vale NSW 2577 (Lot 40 DP 1288692)

APPLICANT: Nakar Property Pty Ltd (also trading as Cloud Carrier / Square Energy)

LODGED BY: [REDACTED] on behalf of the Stop the Gas Plant – Southern Highlands

1. PRELIMINARY STATEMENT & EXECUTIVE SUMMARY

This formal objection is lodged on behalf of Stop the Gas Plant – Southern Highlands in respect of the re-exhibited plans for Development Application DA 26/0352.

On 7 July 2026, the Southern Regional Planning Panel issued a formal, unanimous determination to REFUSE DA 26/0352. The Panel identified fundamental statutory non-compliances, technical omissions, unmodelled flood and environmental risks, and concluded that the development was not in the public interest.

The applicant's revised documentation lodged in May and June 2026 fails to resolve the statutory and environmental defects identified by the Planning Panel and Council's assessment team. Instead, the revised filings rely on software dispatch limits to bypass pollution licensing thresholds and re-classifying utility-scale battery infrastructure as minor building additions.

We request that Council and the Land and Environment Court uphold statutory integrity and REFUSE DA 26/0352 in its entirety. A comprehensive statutory and technical audit of the revised application is set out below.

2. STATUTORY THRESHOLDS & OPERATIVE CAPACITY

A. Protection of the Environment Operations Act 1997 — Schedule 1, Clause 17

Under [Clause 17 of Schedule 1 of the Protection of the Environment Operations Act 1997](#) (POEO Act), electricity generation works with a total physical capacity exceeding 30 MW constitute a Scheduled Activity requiring an Environment Protection Licence from the NSW EPA.

The physical hardware detailed in DA 26/0352 comprises 5 continuous 3.3 MW reciprocating gas engines, generating 16.5 MW. When combined with the approved 14 MW Stage 1 facility (SQE1 under DA 24/0055), continuous physical generation on site reaches 30.5 MW. When standby generation units are included, total physical installed capacity reaches 41.1 MW, as confirmed in Council's Assessment Report.

The applicant proposes to manage this threshold via an automated Energy Management System (EMS) software cap designed to limit operational dispatch to 16.0 MW.

As a matter of statutory interpretation, this argument is invalid:

1. Licensing triggers under Schedule 1 of the POEO Act evaluate the installed physical "capacity to generate" inherent in the mechanical equipment, not operational software settings.
2. Software settings are subject to override, operational failure, or post-consent modification. The statutory framework does not permit a proponent to install 41.1 MW of physical combustion machinery and claim exemption from State pollution licensing based on software limits.

B. EP&A Regulation 2021 — Schedule 3, Clause 7 (Designated Development Evasion)

Under [Clause 7 of Schedule 3 of the Environmental Planning and Assessment Regulation 2021](#), energy storage facilities capable of supplying more than 30 MW are classified as Designated Development, requiring an Environmental Impact Statement (EIS).

Following the Planning Panel's observation that the originally proposed 80 MW Battery Energy Storage System (BESS) constituted Designated Development, the applicant downsized the battery array to exactly 30 MW (configured as three 10 MW groups) to sit directly on the statutory threshold.

The revised Statement of Environmental Effects (SoEE V2.0) re-labels this 30 MW battery compound as a "Site Load Management System" (SLMS) and characterises it as ancillary "alterations and additions" to Data Building 2 (DB2).

Categorising a 30 MW utility-scale lithium-ion battery storage array as an ancillary building alteration is a clear mischaracterisation. The Operational Environmental Management Plan for DA 26/0352 explicitly states that the battery's primary purpose is '*...local site-load management and generation support for the SQE2 electrical system (and existing SQE1).*' The Statement of Environmental Effects for SQE1 (approved DA 24/0055) includes an intent to ultimately supply energy to the grid. The battery cannot be characterised as 'ancillary' to DB2 since it explicitly supports a generator which is ultimately intended to export power to the grid.

Nor can the battery storage array be characterised as "alterations and additions" to DB2, since the proposed design is a standalone facility more than 50m away from the approved footprint of DB2. It is a standalone utility asset.

Characterising a 30 MW utility-scale battery storage compound as an ancillary building alteration lacks statutory basis. Under [Schedule 3 of the Environmental Planning and Assessment Regulation 2021](#), energy storage infrastructure operating at this physical capacity meets the threshold for Designated Development.

Treating this utility asset as a minor building extension has the direct effect of circumventing the mandatory Environmental Impact Statement (EIS) framework established under [Section 4.12\(8\) of the EP&A Act 1979](#), omitting integrated hazard screening under [Chapter 3 of SEPP \(Resilience and Hazards\) 2021](#), and depriving the public of statutory objector appeal rights under [Section 8.8 of the EP&A Act 1979](#).

3. CATCHMENT HYDROLOGY, UN-MODELLED FLOOD RISKS & DOWNSTREAM RECEPTORS

A. SEPP (Biodiversity and Conservation) 2021 — Chapter 6 (Sydney Drinking Water Catchment)

The property lies within **Drinking Water Sub-Catchment 16 (Wingecarribee River)**, forming part of Sydney's Drinking Water Catchment.

Under [Chapter 6 of State Environmental Planning Policy \(Biodiversity and Conservation\) 2021](#), development within the catchment must demonstrate a Neutral or Beneficial Effect (NorBE) on water quality. The application fails to satisfy this baseline:

- Mandatory statutory concurrence from WaterNSW is not included in the application filings.
- The applicant's civil documentation declares potable water demand of 0.5 kL/day, calculated strictly for basic staff amenities. This omits operational water requirements for cooling, dust suppression, and emergency systems across the wider campus.
- Wingecarribee Shire Council's Water and Sewer Development Engineer formally objected to the proposal, as insufficient information was provided to evaluate impacts on municipal water and wastewater infrastructure.

B. Category 3 Waterfront Land Realignment & Omission of 2D Hydraulic Modelling

The proposed 30 MW BESS pad encroaches directly over mapped Category 3 waterfront land (as defined by the [Water Management Act 2000](#)), requiring earthworks to realign approximately 15 metres of natural watercourse into an artificial channel and expand upper wetland storage to 31,900 m². Despite undertaking significant physical modifications to a natural watercourse, the applicant has failed to supply:

1. **Two-dimensional (2D) hydraulic modelling** prepared in accordance with Australian Rainfall and Runoff (ARR) guidelines.
2. **DRAINS catchment modelling** to evaluate peak flow velocities, localised flooding, bank stability, and downstream scouring.

This omission is fatal when assessed against the downstream receiving environment. Contemporary, peer-reviewed engineering data from the [Geomorphological Study & Riparian Corridor Assessment - Wingecarribee River at Berrima Gaol](#) (Martens & Associates with Assoc. Prof. Tim Cohen, 2025), conducted directly downstream of the subject site, establishes that this reach of the Wingecarribee River is highly sensitive to changes in upstream hydrology:

- **A Delicate Alluvial System:** The river corridor downstream comprises a low-flow channel (30–35 m wide at ~639.8 mAHD) bounded by a highly sensitive, narrow inset left-bank alluvial floodplain/bench (20–35 m wide at 641–644 mAHD).
- **Active Geomorphological Erosion:** Field investigations by Martens & Associates confirm that the upstream extent of this reach already exhibits heavily eroded, near-vertical alluvial banks and unstable sandy substrates.
- **The Upstream-Downstream Hydro-Geomorphic Link:** In bedrock-confined, sinuous river channels like the Wingecarribee, un-modelled upstream watercourse realignments and stormwater bypass directly accelerate down-valley scour, bank collapse, and the physical destruction of downstream alluvial benches.

By failing to submit 2D hydraulic or DRAINS modelling, the applicant cannot demonstrate that its earthworks will not increase peak flow velocities and bankfull discharge

frequencies, posing an unmitigated threat to the physical stability of the river's bed and banks.

The proposed development constitutes 'controlled activity' requiring approval under [Section 91 of the Water Management Act 2000](#). Specifically, 'controlled activity' is defined as the erection of a building, the removal of material, and the deposition of material 'that affects the quantity or flow of water in a water source.' The location of the proposed battery storage directly on top of the current creek drainage line, the diversion of the creek, and the construction of an artificial wetland all meet these criteria. However, the applicant has not applied for controlled activity approval from WaterNSW, and incorrectly asserts in their Statement of Environmental Effects that 'the proposed development does not involve works on waterfront land.'

C. Downstream Impact on Matters of National Environmental Significance (EPBC Act)

Surface water flows and overland drainage lines from 30 Douglas Road drain directly into the Wingecarribee River corridor towards Berrima. The applicant's Statement of Environmental Effects (SoEE) asserts that a Commonwealth referral under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is not required because the immediate footprint contains minimal native vegetation. This is a critical planning omission that ignores downstream hydrological connectivity, catchment geomorphology, and direct exposure pathways.

Un-modelled stormwater surges, sediment runoff, petrochemical spills during construction/refuelling, or toxic firewater runoff containing heavy metals and corrosive chemicals from a lithium-ion battery fire pose catastrophic risks to downstream Matters of National Environmental Significance (MNES) and highly protected aquatic species:

The [Berrima Gaol Aquatic Ecology Assessment](#) (Eco Logical Australia, 2024) conducted directly downstream of the subject site, finding active populations of key native aquatic mammals in this reach of the Wingecarribee River:

- **Platypus (*Ornithorhynchus anatinus*):** Contemporary field surveys confirmed active foraging, with multiple Platypus individuals observed diving along the eastern banks, and a Platypus burrow documented above the watermark. Platypus are highly sensitive to bank erosion, sediment turbidity, and chemical spills which destroy macro-invertebrate food sources.
- **Rakali / Water Rat (*Hydromys chrysogaster*):** Field surveys confirmed active Rakali foraging and documented multiple active feeding platforms containing discarded bivalve shells and tracks along the river margins.

Because these key mammal species rely entirely on the stable alluvial banks of the river for digging their nesting and breeding burrows, the geomorphological bank-instability

hazards highlighted in the Martens & Cohen (2025) study represent a direct threat of habitat destruction. Increased turbidity and sedimentation from un-modelled upstream works will blanket benthic organisms and destroy the macro-invertebrate food sources these species require to survive.

The Wingecarribee River downstream of the development is formally mapped by DPI Fisheries as a Class 1 Perennial Waterway and Type 1 Highly Sensitive Key Fish Habitat. Chronic sediment discharge or chemical runoff from the BESS site would directly degrade these highly sensitive breeding, nesting, and foraging habitats:

The [EPBC Protected Matters Search Tool](#) and downstream environmental assessments from the Berrima Gaol SSD project confirm that the receiving reaches of the Wingecarribee River and its riparian buffers support habitats for highly threatened, EPBC-listed species:

- **Macquarie Perch (*Macquaria australasica*) — Endangered:** The Protected Matters report identifies Macquarie Perch habitat as "likely to occur within area". This species is bottom- or mid-water dwelling, relying heavily on deep pools, clean water, and instream gravel/rock beds for spawning. High turbidity (which already exceeds ANZ Guidelines in this reach during rain events) and chemical pollutants from un-modelled on-site stormwater bypass is an existential threat to this local population.
- **Southern Heath Frog / Watson's Tree Frog (*Litoria watsoni* / listed as *Rawlinsonia watsoni*) — Endangered:** Mapped by the Commonwealth as "may occur within area". This endangered frog relies on clean, slow-flowing watercourses and pristine riparian buffers, making it exceptionally vulnerable to hydrological alterations and toxic chemical contamination from BESS off-gassing or runoff.
- **Northern Heath Frog / Littlejohn's Tree Frog (*Litoria littlejohni*) — Endangered:** Mapped as "may occur within area". Extremely sensitive to changes in water quality and catchment hydrology.
- **Stuttering Frog / Southern Barred Frog (*Mixophyes balbus*) — Vulnerable:** Mapped as "may occur within the area". Relies heavily on pristine wet forest streams and unpolluted leaf litter zones.
- **Curlew Sandpiper (*Calidris ferruginea*) — Critically Endangered:** Mapped as a threatened migratory wetland bird that "may occur within the area".
- **Australian Painted Snipe (*Rostratula australis*) — Endangered:** Mapped as a wetland species "likely to occur within the area".
- **Australasian Bittern (*Botaurus poiciloptilus*) — Endangered:** Mapped as "may occur within the area".

These wetland-dependent avian and amphibian species are highly vulnerable to downstream chemical spills or hydraulic changes that alter the water levels and macroinvertebrate health of their receiving habitats.

- **Critically Endangered Ecological Communities (CEECs):** The downstream receiving environment supports mapped occurrences of **Southern Highlands Shale Forest and Woodland** and **White Box-Yellow Box-Blakely's Red Gum Grassy Woodland** (both Critically Endangered). Unmodelled bank scouring and erosion from the upstream creek realignment directly threaten the geomorphological stability of the banks supporting these communities.
- **Koala (*Phascolarctos cinereus*) — Endangered:** Mapped as likely to occur within the area. Heavily utilises the contiguous Wingecarribee River riparian corridor downstream for regional movement, hydration, and habitat refuge.
- **Regent Honeyeater (*Anthochaera phrygia*) & Swift Parrot (*Lathamus discolor*) — Critically Endangered:** Both highly mobile, critically endangered species are mapped as "likely/may occur in feature area". They rely on intact box-gum woodlands and riparian vegetation corridor connectivity across the Moss Vale tablelands.

D. Unassessed Hazardous Material Storage and Toxic Runoff Risks

The revised application fails to assess the cumulative hazards associated with on-site bulk chemical and fuel storage on bushfire-prone land within a protected drinking water catchment.

The applicant's Statement of Environmental Effects refers to the storage of up to 10,000L of lube oil (Page 8). The engineering specifications reveal the facility requires the on-site storage of 10,000 litres of diesel fuel (for the emergency backup generator and purging) plus lube oil (<10,000 L). The Operational Environmental Management Plan (OEMP) for the gas-fired generation facility goes on to list a need to provide and maintain a 'hazardous substances register' (Section 2.2.6) for hydrocarbons and other chemicals plus controls for 'hazardous liquids,' diesel, SCR reagents, oil, oily water, coolant, and waste liquid (Section 3.2.3). The OEMP also lists 'Spillage of hazardous chemicals' as a potential hazard, including flammable chemicals. The OEMP for the battery facility lists hazardous materials including coolant, transformer oil, cleaning chemicals, battery electrolytes, and lithium batteries.

The [guidelines for the Resilience and Hazards SEPP](#) define a hazardous material as substances falling within the classification of the [Australian Code for Transportation of Dangerous Goods by Road and Rail \(Dangerous Goods Code\)](#). Diesel, oil, liquid petroleum gas (LPG), ethylene glycol coolant, battery electrolytes, lithium, and lithium batteries are all listed in the dangerous goods code.

Additionally, Fire + Rescue NSW consider an emergency involving a large-scale Battery Energy Storage System to be a 'hazardous material incident' under the Fire and Rescue NSW Act 1989.

Despite this, the applicant's Statement of Environmental Effects incorrectly states that there will be no hazardous materials on the site and therefore no requirement for a Preliminary Hazard Analysis under the Section 3.11 of the [Resilience and Hazards SEPP](#).

Locating nearly 20,000 litres of combustible fuel and unspecified quantities of other hazardous liquids within a mapped Vegetation Category 3 Bushfire Prone Land buffer, immediately adjacent to a realigned natural watercourse that drains into the Sydney Drinking Water Catchment (Sub-Catchment 16), presents a high-risk environmental hazard.

In the event of a bushfire or thermal runaway, toxic firewater runoff and chemical spills is a direct threat to downstream water quality and the endangered Macquarie Perch and other species. The absence of a Preliminary Hazard Analysis, an integrated hazardous materials management plan or formal WaterNSW concurrence renders the application unsatisfactory.

E. Atmospheric Exposure Pathway: Downwind Ecological, Heritage, and Public Receptors

Evaluation of environmental impacts under [Section 4.15\(1\)\(b\) of the EP&A Act 1979](#) requires the consent authority to consider not only hydrological pathways, but also atmospheric exposure pathways. The applicant's environmental studies fail to evaluate the impact of continuous, 24/7 combustion emissions and potential hazardous chemical plumes on highly sensitive, federally protected receptors located immediately downwind.

- **The Prevailing West-to-East Wind Vector:** Long-term meteorological data recorded at the Moss Vale AWS and utilised in the applicant's CALMET meteorological modelling finds that wind distribution in the Southern Highlands exhibits a dominant westerly vector, particularly during autumn, spring, and winter. The prevailing wind blows directly from west to east—establishing a continuous, direct atmospheric corridor from the proposed 23.5-metre exhaust stacks straight toward the highly valued conservation and residential zones of Burradoo and north-eastern Moss Vale.
- **Cecil Hoskins Nature Reserve & Migratory Bird Sanctuaries (EPBC Act):** Situated approximately 1.5 to 2 km directly east (downwind) of the site lies the Cecil Hoskins Nature Reserve. This reserve is a pristine wetland ecosystem of national ecological significance, serving as a vital sanctuary for over 90 native bird species. The reserve provides critical habitat for numerous migratory waterbirds protected under international treaties (including JAMBA, CAMBA, and ROKAMBA), which are legally classified as Matters of National Environmental Significance (MNES) under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The continuous deposit of Nitrogen Dioxide and fine particulate matter (PM2.5) from the 24/7 operation of heavy gas engines poses an un-assessed

chronic threat to the delicate aquatic chemistry of these wetlands and the protected avian species that rely on them.

- **Bong Bong Common and the Historic Floodplain:** Located approximately 1.3 km to 1.7 km east of the development boundary is Bong Bong Common, a historic public recreation reserve, walking track, and wetlands floodplain of high visual, cultural, and tourism value to the Southern Highlands. The applicant's Visual Impact photomontages (Viewpoints 12 and 13) show that the industrial generator halls and exhaust plumes will be visible from the Bong Bong Common walking track, occupying up to 19% of the scenic horizon.
- **Burradoo Landscape Conservation Area:** The Burradoo Landscape Conservation Area (Listing No. C1834, WLEP) sits 1.4 km east of the subject footprint. Dropping a heavy, fossil-fuel combustion plant with tall emissions stacks directly upwind of a protected heritage landscape is in direct conflict with local heritage planning objectives.
- **Downwind BESS Plume Dispersal Hazard:** In the event of a lithium battery thermal runaway incident at the 30 MW BESS compound, the dominant westerly winds would carry a highly concentrated, toxic plume of Hydrogen Fluoride (HF) gas directly over Bong Bong Common, the Cecil Hoskins Nature Reserve, and the residential estates of Burradoo. The absence of downwind plume dispersion modelling or public safety emergency plans for these highly trafficked recreation and conservation areas is a catastrophic failure of risk management.

4. EVIDENTIARY CONTRADICTIONS, AIR QUALITY FLAWS & CARBON OBLIGATIONS

A. EP&A Act Section 4.15(1)(b) — Social & Economic Impact

Under [Section 4.15\(1\)\(b\) of the Environmental Planning and Assessment Act 1979](#), the consent authority must evaluate the social and economic impacts of the development in the locality.

The Statement of Environmental Effects contains a contradiction:

- **Section 3.1** explicitly states that *"The site will not be occupied with any full-time employees" during operations.*
- **Section 4.11** claims that the proposal *"will generate significant capital investment and contribute to job creation through both its construction phase and operations. Importantly, it will play a catalytic role for future investment and development in the Moss Vale Enterprise Corridor ('MVEC')"*

A power plant operating with no full-time staff provides no ongoing local operational employment benefits. Placing a heavy-combustion generation facility on industrial land

acts as a disincentive for the clean, high-tech research and agricultural enterprises envisioned under the [Southern Highlands Innovation Park \(SHIP\) Masterplan](#).

B. Defective Air Quality Dispersion Modelling

The expert Air Quality Impact Assessment compiled by Todoroski Air Sciences models atmospheric dispersion based on an assumed 16.0 MW software cap, rather than the physical 16.5 MW continuous engine rating or the 41.1 MW total physical capacity on site.

Theoretical dispersion modelling in the application has not been validated against empirical stack monitoring data. Published Annual Environmental Management Reports (AEMR) from operating Australian natural gas/coalbed methane reciprocating engine facilities—such as the Wilga Park Power Station in Narrabri—demonstrate that real-world continuous emissions of nitrogen oxides and fine particulate matter can exceed baseline software projections.

C. Safeguard Mechanism & Section 4.15(1)(e) Public Interest

Section 6.5 of the Air Quality report states that greenhouse gas emissions from the proposed expansion will exceed 112,000 tonnes of CO₂ per annum.

This exceeds the 100,000-tonne statutory threshold under the Commonwealth *National Greenhouse and Energy Reporting Act 2007*, triggering obligations under the Safeguard Mechanism. Constructing an off-grid fossil-fuel facility that creates a Safeguard Mechanism liability to power private data servers conflicts with [Section 4.15\(1\)\(e\) of the EP&A Act 1979](#), which requires development to align with the public interest and principles of Ecologically Sustainable Development (ESD).

D. Formal Local Policy Baseline & Public Interest Alignment

On 27 August 2026, the elected Council of Wingecarribee Shire voted **unanimously** to adopt formal strategic policy positions regarding data centre developments, explicitly resolving to:

1. Mandate a strict Public Benefit Test requiring proponents to demonstrate substantial local alignment and community benefit;
2. Prohibit new or expanded fossil-fuel generation for data centre developments; and
3. Advocate for a Commonwealth-legislated moratorium on new data centre approvals.

While this resolution forms part of Council's strategic advocacy, it establishes an unequivocal local planning baseline under [Section 4.15\(1\)\(e\) of the EP&A Act 1979](#). Approving an off-grid 16.5 MW fossil-fuel combustion plant for a private data building

directly violates the explicit public interest determination and strategic planning directions established by the host municipality.

On 9 August 2026, over 400 Southern Highlands residents attended a public community forum titled *"Data Centres and Gas Plants: Our Fight for the Highlands' Future"*. The forum demonstrated unified, multi-tiered institutional, cultural, and medical opposition to the developments at 30 Douglas Road, featuring formal addresses from:

- **Federal Legislative Representation:** Carol Berry MP (Federal Member for Whitlam), publicly recording opposition to establishing one of Australia's largest standalone gas-powered data centre precincts in the region, alongside Senator David Shoebridge addressing the necessity for national regulatory intervention.
- **Local Government & First Nations Leadership:** Facilitated by Cr Heather Champion (Wingecarribee Shire Council) and opening with cultural heritage commentary from Gundungurra elder Aunty Trish Levett regarding the environmental sensitivity of the underlying drinking water catchment.
- **Public Health & Environmental Expertise:** Expert testimonies from Dr Jacqui Duc (Doctors for the Environment Australia) and Dr Simon Bradshaw (Greenpeace Australia Pacific) detailing the localised atmospheric toxicity, public health hazards, and regional emissions impacts associated with heavy fossil-fuel generation.

Combined with 789 signatures recorded via stopthegasplant.com, this clear mobilisation shows that the proposal possesses no social licence. For a private, off-grid facility that delivers no operational full-time employment to the township and no power to the municipal grid, this unequivocal, multi-jurisdictional opposition provides proof that the approval of DA 26/0352 is fundamentally contrary to the public interest under [Section 4.15\(1\)\(e\) of the EP&A Act 1979](#).

E. Outdated Gas Supply Verification

To demonstrate fuel availability, the application relies on a Jemena correspondence letter dated 31 May 2023. This document predates the current application by over three years and explicitly notes that *"no capacity is guaranteed"*.

5. BUSHFIRE HAZARDS, INFRASTRUCTURE CONFLICTS & LOCAL AMENITY

A. Bushfire Prone Land & Thermal Runaway Risks

The applicant's original filing incorrectly claimed the site contained no bushfire-prone land and therefore included no bushfire assessment. On 23 September 2025, Council planners and the NSW Rural Fire Service (RFS) returned the referral, confirming the development

footprint interfaces with mapped Vegetation Category 3 Bushfire Prone Land and an associated Vegetation Buffer overlay covering parts of the block.

As discussed above, the proposal includes storage of hazardous materials including flammable gases, flammable liquids, and flammable solids, requiring a Preliminary Hazard Assessment under Section 3.11 of the [Resilience and Hazards SEPP](#). In addition to this, Endeavour Energy submitted advice to Council warning against locating combustible materials near electrical infrastructure. Fire and Rescue NSW also provide [Technical Information for Battery Energy Storage Systems](#) requiring preparation of a Fire Safety Study covering battery fires, the spread of fire to or from bushfire-prone land, gas-fired generation halls, on-site storage of hazardous materials, etc.) This Technical Information also requires consideration of toxic plumes, management of contaminated water, implementation of fire safety systems, fire brigade access, fire hydrants etc as part of any development application.

[Planning for Bushfire Protection 2019](#) similarly requires gas and electricity to be located so as not to contribute to the risk of fire to a building (a difficult prospect when the building in question is a gas-powered electricity generator!) It likewise requires hazardous materials to be stored away from the hazard wherever possible.

Despite these requirements, recommendations, and guidelines, the application does not include a bushfire assessment, fire safety study, or preliminary hazard analysis. The architectural plans show no fire suppression infrastructure aside from a 'fire tank and pump room' located more than 600m away from the proposed buildings, no asset protection zones, and no locations for the proposed diesel and oil storage tanks referred to in the Statement of Environmental Effects and Operational Environmental Management Plans. The only fire suppression equipment mentioned are fire extinguishers to be located at 'designated hydrocarbon storage areas.' A fire extinguisher is unlikely to be sufficient to extinguish 20,000L of diesel. There is similarly no analysis or summary of local fire-fighting capacity or response times.

The Operational Environmental Management Plans do include a brief risk assessment covering fire, but fails to list bushfire as a hazard contributing to the risk of a fire in the facility. Incredibly, the 'controls' listed for fire include 'no smoking in the vehicle maintenance area,' and training staff to use fire suppression equipment. A prohibition on smoking in the vicinity of gas infrastructure is not mentioned. In a final catastrophic error, the risk matrix is incorrectly applied and the consequences of a fire are labelled as 'moderate,' implying injury and temporary reversible illness rather than death. The application is catastrophically inadequate regarding the significant fire risks inherent to the development.

B. Failure to Satisfy Pipeline and Rail Corridor Safety (SEPP Transport & Infrastructure 2021)

The site directly interfaces with a high-pressure gas pipeline corridor, triggering mandatory safety referrals under Section 2.15 of [State Environmental Planning Policy \(Transport and Infrastructure\) 2021](#).

The applicant's legal representatives have argued that Section 2.77 (covering pipeline corridors) does not apply because they are not seeking development consent for the physical gas pipeline in this DA. This argument is a statutory dodge. As formally upheld by Council's assessing planners, because high-hazard electricity generation and lithium storage are co-located directly adjacent to a pipeline corridor, a comprehensive pipeline safety risk study is mandatory to demonstrate that the operation of the plant does not present a catastrophic hazard to regional energy infrastructure.

The site is also directly adjacent to the Berrima railway corridor, triggering assessment under Section 2.98 of [State Environmental Planning Policy \(Transport and Infrastructure\) 2021](#), which requires consideration of the Development Near Rail Corridors and Busy Roads – Interim Guideline published by the department in 2008.

However, the applicant has failed to submit a report addressing the geotechnical, construction, dilapidation or other issues required by the guidelines to demonstrate that the installation of heavy utility infrastructure immediately next to active rail lines does not compromise public transport safety.

Council's Assessment Report states the applicant failed to supply a Rail Corridor Interface Assessment or pipeline safety risk study to demonstrate that high-pressure gas infrastructure and lithium-ion storage do not present operational hazards to rail infrastructure.

C. Exhaust Stack Height Non-Compliance

The proposed industrial exhaust stacks reach 23.5 metres in height (extending 15.5 metres above the building ridge line).

This exceeds the 20-metre maximum building height limit under the *Moss Vale Enterprise Corridor Development Control Plan* (DCP) and the 12-metre maximum height ceiling under the *Southern Highlands Innovation Park (SHIP) Masterplan*.

The Visual Impact Assessment submitted by Urbaine Design Group treats this breach as acceptable. Low-level vegetative screening cannot mitigate the visual impact of 23.5-metre industrial steel stacks across a rural landscape.

D. Omission of Acoustic Impacts on National Research Infrastructure (Garvan Institute)

Heavy gas reciprocating engines generate persistent, low-frequency mechanical noise and airborne low-frequency rumble. The applicant's *Day Design Environmental Noise Impact Assessment* applies a mandatory 5 dB penalty for low-frequency noise at nearby boundaries.

A review of Table 9 of the proponent's acoustic report reveals that cumulative night-time noise levels at residential receptors—specifically R1 (45 dBA), R2 (43 dBA), and R3 (49 dBA)—rely on an industrial compliance criterion of 68 dBA, which ignores the quiet rural-residential character of the area where the standard EPA night-time amenity limit is 38 dBA.

The site sits less than 1 km from the Garvan Institute's \$20M Australian BioResources (ABR) facility. Low-frequency airborne rumble and mechanical noise penetrate standard building envelopes and cause severe physiological stress and breeding disruption in sensitive laboratory animals. The failure of the applicant to model or assess the acoustic and vibratory impacts of 24/7 heavy gas engines on this nationally funded medical research facility is a fatal omission and a massive threat to the public interest.

E. Light Spill Non-Compliance

The facility requires continuous 24-hour security lighting. However, the applicant's compliance tables list external lighting as "N/A" while also stating that the site requires integrated lighting and CCTV. The application omits an External Lighting Layout Drawing and Light Spill Impact Assessment, breaching Section 3.9 of the *Moss Vale Enterprise Corridor DCP*.

6. PROJECT SEGREGATION & CUMULATIVE FOOTPRINT

The local appeal for DA 26/0352 cannot be evaluated in isolation from the masterplan proposed for 30 Douglas Road:

- **DA 16/720:** Initial subdivision establishing site access and trunk infrastructure.
- **DA 21/1042 (DB1):** Data Building 1 (approved and operating via grid connection).
- **DA 24/0055 (SQE1):** 14 MW Gas Plant (approved via LEC Sec 34 agreement; unbuilt).
- **DA 25/2158 (DB2):** 3-storey Data Building 2 (approved 22 Sept 2025; unbuilt).
- **DA 26/0352 (SQE2):** 16.5 MW Gas Plant + 30 MW BESS (refused by Planning Panel; subject of active court appeal).
- **SSD-102795459:** 673.2 MW State Significant Development gas generation precinct (SEARs issued 22 Dec 2025; currently in "Prepare EIS" phase).

Prosecuting a local court appeal for a 16.5 MW facility while concurrently seeking State approval for a 673.2 MW power station on the exact same allotment prevents consent authorities from evaluating the cumulative environmental, acoustic, traffic, and public health impacts of a 703.2 MW fossil-fuel generation precinct. This incremental application strategy prevents comprehensive assessment of the site.

7. SOCIAL IMPACTS, PUBLIC HEALTH & DISTRIBUTIVE INJUSTICE

Under [Section 4.15\(1\)\(b\) of the Environmental Planning and Assessment Act 1979](#), the consent authority is statutory bound to evaluate the social and public health impacts of the proposed development in the locality. The applicant has failed to supply a comprehensive Social Impact Assessment (SIA) and has failed to account for the immediate public health hazards, neuro-acoustic distress risks, and socio-economic burdens imposed on the surrounding community.

Atmospheric Inversions and Regional Public Health Burden

The development site is situated within the Wingecarribee River valley basin, a topographical structure subject to frequent nighttime atmospheric temperature inversions. The proposed continuous combustion of fossil fuels from 7 heavy reciprocating gas engines (5 continuous and 2 standby) will release massive cumulative volumes of Nitrogen Dioxide (NO_x) and fine particulate matter (PM 2.5) into a stable, non-dispersing atmospheric boundary layer.

Under temperature inversion conditions, standard atmospheric dispersion fails, trapping combustion pollutants at ground level and exposing surrounding residential zones. Prolonged exposure to these localised air toxics is medically established to cause acute public health risks:

Respiratory & Cardiovascular Harm: Long-term exposure to nitrous oxides (NO_x) and PM_{2.5} is linked to paediatric asthma exacerbations, chronic respiratory illness, and adverse cardiovascular events, particularly in children and elderly cohorts. Factual epidemiological reviews compiled by the [American Lung Association](#) (2022) confirm that elevated levels of NO_x and particulate matter are strongly associated with severe heart and lung harm, as well as adverse pregnancy and birth outcomes.

Elderly Hospitalisation Risk: Peer-reviewed medical literature has established a direct correlation between residential proximity to gas-fired power stations and increased emergency hospital presentations among vulnerable populations, particularly the elderly ([Di Ciaula, 2012](#)).

Accelerated Cognitive Decline: Recent neurological research has established that residential exposure to combustion-derived PM2.5 is a major driver of early-onset cognitive decline ([Di Gessa et al., 2025](#)) and incident dementia ([Zhang et al., 2023](#)).

The applicant's failure to model air toxic dispersion under specific valley inversion parameters is an unmitigated and unacceptable public health risk to the residents of northern Moss Vale and Burradoo.

Chronic Low-Frequency Vibro-Acoustic Stress & National Research Infrastructure

Heavy reciprocating gas engines and high-capacity HVAC systems generate persistent, low-frequency noise (LFN) and sub-audible infrasound (<200 Hz). Unlike high-frequency noise, LFN easily penetrates standard residential building envelopes, causing structural resonance and secondary low-frequency rumble inside nearby homes.

Human Health Impacts: Medical literature confirms that chronic, unmitigated exposure to low-frequency industrial noise induces severe sleep disruption, elevated systemic cortisol levels, chronic hypertension, and neuro-acoustic distress ([Leventhall, G. 2003](#) and [Berglund et al., 1999](#)).

Rural-Residential Discrepancy: The developer's acoustic report (Day Design Assessment) relies on a generic industrial compliance criterion of 68 dBA at the boundary, which disregards the quiet rural-residential character of the immediate locality where the standard EPA night-time amenity limit is 38 dBA.

Threat to National Medical Research: The site sits less than 1 km from the Garvan Institute's \$20M Australian BioResources (ABR) facility, a nationally funded medical research centre housing highly sensitive genetic research lines for cancer, Alzheimer's, and immunology. Continuous, low-frequency airborne rumble and ground-borne vibration from 24/7 heavy engines penetrate standard building envelopes, causing severe physiological stress and catastrophic breeding disruption in sensitive laboratory animals. The failure of the applicant to model or assess the acoustic and vibratory impacts of this 24/7 combustion plant on this vital medical infrastructure is a fatal planning omission.

Hazardous Off-Gassing and Community Evacuation Risk

The proposed co-location of a 30 MW lithium-ion Battery Energy Storage System (BESS) within mapped Vegetation Category 3 Bushfire Prone Land introduces an un-assessed chemical and evacuation hazard.

In the event of physical impact, electrical fault, or bushfire exposure, lithium-ion battery arrays are highly susceptible to thermal runaway—a violent, self-sustaining exothermic

reaction that cannot be extinguished by standard gaseous fire suppression agents. During a thermal runaway event, the BESS will release highly toxic, corrosive, and flammable off-gases, including Hydrogen Fluoride, Hydrogen Cyanide and Carbon Monoxide.

Hydrogen Fluoride is an extremely corrosive air toxic capable of causing immediate, severe chemical burns to human respiratory tracts. The applicant has submitted no plume dispersion modelling, no toxic firewater runoff containment plans, and no emergency evacuation protocols to demonstrate how surrounding residents, local schools, daycare centres, and nearby aged-care facilities would be protected or evacuated during a catastrophic chemical fire event.

Distributive Injustice and Asymmetric Community Risk

Social impact evaluation under the *EP&A Act 1979* requires an assessment of distributive justice—specifically, whether the burdens and benefits of a development are equitably shared.

DA 26/O352 imposes a stark, unmitigated spatial injustice upon the Southern Highlands:

- **100% of the Risk:** The local Moss Vale community is expected to absorb 100% of the long-term public health degradation, atmospheric pollution, chronic acoustic disturbance, and toxic chemical hazards.
- **No Local Benefit:** In return, the developer's court-filed documentation admits that SQE2 will *not be occupied by any full-time operational employees* (utilising existing skeleton crews from SQE1), supplies no electricity to the local energy grid, and offers no community benefit agreements.

Imposing acute, unmitigated industrial hazards on a regional township for the exclusive commercial benefit of a private off-grid data operator is directly contrary to the public interest under [Section 4.15\(1\)\(e\) of the EP&A Act 1979](#).

8. JURISDICTIONAL ERROR: COST OF WORKS TRIGGERING STATE SIGNIFICANT DEVELOPMENT PATHWAY

[Section 56 of the Environmental Planning & Assessment Regulation 2021](#) requires development applications and accompanying documents to be made available on the consent authority's website. The required accompanying documents are set out in the 'approved form' on the NSW Planning Portal and include an Estimated Cost of Development report prepared by a suitably qualified person. While the applicant's Statement of Environmental Effects refers to a cost estimate prepared by Hanna Newman,

the document has not been made available on either the [Council DA Tracker](#) or the [Southern Regional Planning Panel project page](#). The application has therefore not been validly exhibited under Section 56 of the Regulation, and the public are not able to review the calculations and assumptions behind the Estimated Cost of Development.

While the submitted Estimated Cost of Development (EDC) is revealed in Council's assessment report to be \$23,596,920.00 Ex. GST, there is no publicly available evidence to support this. [Section 6 of the EP&A Regulation 2021](#) requires an EDC to include the cost of design, erection of buildings and infrastructure, and fixed and mobile plant. The Department of Planning's example cost summary table expands this to include excavation, site preparation, building components, special equipment, building services including gas supply and electrical systems, landscaping, etc. Given that the proposed development includes construction of 1152m² generator hall floor area; seven gas turbines costing \$1.25-1.48m USD (equipment only); 15 2MW containerised lithium iron phosphate batteries costing between \$300,000-\$1.3m USD each; electrical equipment including transformers, inverters, and cabling, over 20,000m² of building pad requiring fill up to 4m deep, construction of over 40,000m² of artificial wetland, several hundred metres of new 8m wide industrial quality concrete roadways, the total capital investment value is likely to be significantly over the submitted estimated cost of development.

The true cost of the development is incredibly likely to be over the \$30,000,000 threshold triggering the State Significant Development pathway under [Schedule 1 Section 20 of the Planning Systems SEPP 2021](#). An independent, third-party assessment of the Estimated Cost of Development must be undertaken by the consent authority to determine whether the Southern Regional Planning Panel and Wingecarribee Shire Council have jurisdiction to assess the development. If the independent EDC confirms the application to have been improperly made, then it must be returned and resubmitted via the State Significant Development pathway.

9. JURISDICTIONAL THRESHOLD: CONTAMINATED LAND PRECONDITIONS

Non-Compliance with Chapter 4, State Environmental Planning Policy (Resilience and Hazards) 2021

Under [Section 4.6 of State Environmental Planning Policy \(Resilience and Hazards\) 2021](#) (formerly Clause 7 of SEPP 55), the consent authority is subject to a strict statutory prohibition. It must not grant development consent to any application unless it has formally considered whether the land is contaminated, and if contaminated, is satisfied that the land is suitable (or can and will be remediated to be made suitable) for the proposed purpose *prior* to the determination of the application.

The applicant's Statement of Environmental Effects (SoEE) seeks to dismiss this statutory requirement by stating:

"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... It is therefore considered that the subject site is suitable for the proposed development..."

This approach is legally and procedurally invalid on two primary grounds:

1. **Failure to Submit the Report:** As stated on Page 15 of Council's Final Planning Assessment Report, *"The applicant has not submitted the referenced Phase 1 (Preliminary Site Investigation) report with the development application"*. In the absence of this document, there is no empirical evidence before the consent authority or the Court to verify the land's contamination profile or suitability.
2. **Obsolescence and Historical Land-Use Gaps:** Relying on a highly generalised "due diligence" report from 2006—now two decades old—is a gross failure of environmental assessment. This 2006 report entirely predates a subsequent approved subdivision (DA 16/720) and the associated major earthworks. Crucially, a 2006 grazing-land assessment cannot account for the contemporary contamination risks introduced by the now-operational Data Building 1 (DB1), a facility that houses extensive industrial infrastructure, including the operational storage, pumping, and potential leakage of chemical coolants (such as ethylene glycol) required for its high-density liquid and immersion cooling systems.

Jurisdictional Error and Deferral Prohibition

The NSW Land and Environment Court has repeatedly held that the requirements of Section 4.6 of the *Resilience and Hazards SEPP* cannot be deferred to a post-consent condition (such as requiring a Preliminary Site Investigation prior to the issue of a Construction Certificate).

As Council's Senior Assessing Officer correctly determined: *"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..."*

Because the applicant has failed to satisfy this mandatory threshold precondition, the consent authority lacks the statutory power to grant approval. Any purported consent granted in the absence of a certified, contemporary Preliminary Site Investigation (PSI) would constitute an immediate jurisdictional error invalidating the consent.

10. CONCLUSION & REQUESTED DETERMINATION

DA 26/0352 is fundamentally defective. It relies on software throttling arguments to bypass State pollution licensing, reclassifies a 30 MW battery as a building alteration to dodge Designated Development assessment, realigns natural watercourses without 2D hydraulic flood modelling, and positions high-hazard utility infrastructure within bushfire buffers and Sydney's Drinking Water Catchment.

The Southern Regional Planning Panel arrived at the correct statutory conclusion when it unanimously determined to refuse this application on 7 July 2026.

We formally request that the Land and Environment Court of New South Wales and Wingecarribee Shire Council uphold planning integrity and **REFUSE DA 26/0352 in its entirety**.

[Signatories redacted for online publication]

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