

## COUNCIL ASSESSMENT REPORT

Doc No. #A2022/25175

<b>Panel Reference</b>	<b>PPSNTH-155</b>
<b>DA Number</b>	<b>10.2022.134.1</b>
<b>LGA</b>	<b>Byron Shire Council</b>
<b>Proposed Development</b>	Electricity Generating Works (5x Megawatt Solar Farm)
<b>Street Address</b>	Lot 15 DP 1178892 No.1 Dingo Lane, Myocum
<b>Applicant/Owner</b>	Byron Shire Council
<b>Date of DA lodgement</b>	31 March 2022
<b>Total number of Submissions</b>	<ul style="list-style-type: none"> <li>• 5</li> </ul>
<b>Number of Unique Objections</b>	<ul style="list-style-type: none"> <li>• 2</li> </ul>
<b>Recommendation</b>	<b>Approval</b>
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011</b>	<p>Section 2.19(1) and Clause 3 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as:</p> <ul style="list-style-type: none"> <li>• <i>Council related development over \$5 million</i></li> </ul> <p>(Council is the Applicant for the Development Application and is the owner of the land).</p>
<b>List of all relevant s4.15(1)(a) matters</b>	<p>Relevant Environmental Planning Instruments</p> <ul style="list-style-type: none"> <li>• State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>• State Environmental Planning Policy (Industry and Employment) 2021</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>• State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>• State Environmental Planning Policy (Planning Systems) 2021</li> <li>• State Environmental Planning Policy (Primary Production) 2021</li> <li>• SEPP (Exempt and Complying Development Codes) 2008</li> <li>• Byron Local Environmental Plan 2014</li> <li>• Byron Local Environmental Plan 1988</li> <li>• Byron Development Control Plan 2014</li> <li>• Byron Development Control Plan 2010</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Appendix A – Recommended Conditions</li> <li>• Appendix B – Plans</li> <li>• Appendix C – Statement of Landscape Intent</li> <li>• Appendix D – Statement of Environmental Effects</li> <li>• Appendix E – Landscape and Visual Impact Assessment</li> <li>• Appendix F – Glare Impact Assessment Report</li> <li>• Appendix G – Traffic Impact Assessment</li> <li>• Appendix H – Terrestrial Flora and Fauna Assessment</li> <li>• Appendix I – Civil Engineering Assessment Report</li> <li>• Appendix J - Geotechnical Site Investigation</li> <li>• Appendix K – Acid Sulfate Soil Investigation</li> <li>• Appendix L – AHIMS Search result</li> <li>• Appendix M – Agency submissions</li> <li>• Appendix N – RFI and Submissions Response</li> </ul>

<b>Clause 4.6 requests</b>	Not applicable
<b>Summary of key submissions</b>	<ul style="list-style-type: none"> <li>• Visual and glare impacts of the proposal particularly for the residents along the elevated areas to the west of the site (Coolamon Scenic Drive), users of Coolamon Scenic Drive and other public areas.</li> <li>• Consistency with zone objectives including loss of important farmland</li> <li>• Impact on property values and tourist economy</li> <li>• Precedent</li> </ul>
<b>Report prepared by</b>	<b>Kellie Shapland – Consultant Planner</b> BUrbRegPlan(Hons) RPIA
<b>Report date</b>	14 November 2022

#### Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised 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**

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

#### 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? **Not applicable**

#### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Not applicable**

*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? **Yes**

*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

## **EXECUTIVE SUMMARY**

### **Proposed Development**

Byron Shire Council is in receipt of a development application for an Electricity Generating Works (5x Megawatt Solar Farm) at Lot 15 DP 1178892 (No. 1) Dingo Lane, Myocum.

The application was received on 31 March 2022. Byron Shire Council is the owner of the land and the applicant for the proposal.

Key features of the development include:

- Installation of a panel array covering approximately 11 hectares of the 40 hectare site. The array will be either a 'fixed' or 'single axis tracking' format. Both mounting formats have been considered in the assessment. The fixed solar array would be mounted up to 2m above the finished ground level and the tracking panels up to 3m.
- The provision of a solar inverter located on the elevated land above the floodplain and integrated into the wider electricity network.
- Provision of a car parking area (5 Spaces + bus area + overflow area).
- Provision of a 15m x 5m roofed area viewing platform to accommodate school and other tour groups and interested day-trippers
- Access is via an existing driveway from a 2 lane unsealed section of Dingo Lane.
- Provision of a 2.7m high security fence
- Provision of buffer landscaping.
- No tree removal is required. Some pruning proposed to improve sight distance at the driveway.

The proposed development constitutes 'regional development', requiring referral to the Northern Regional Planning Panel (RPP) for determination as the proposal is Council related development with a capital investment value exceeding \$5 million (estimated cost \$12.2M).

### **The Site**

The subject site is located within the locality of Myocum, approximately 3.5km south- south-east of Mullumbimby. The property contains a dwelling and is also used for cattle agistment.

Adjacent to the eastern boundary of the site is a resource recovery centre and quarry.

The site has an area of 40 hectares, is an irregular shape and has an approximate frontage of 380m to Dingo Lane. Vehicular access is gained from an existing driveway in the northwest corner of the site.

The site is predominately open grassland with the exception of sporadic vegetation, located along its eastern boundary. The solar farm itself is located within an area of the property that is historically grazed pasture grassland.

First and second order streams run through the site which have been modified to form formalised flow paths which ultimately feed into Simpsons Creek on the eastern side of the Pacific Highway.

The northern half of the site is flat in nature, with the majority of the ground surface levels ranging from 1 – 6m AHD. The remainder of the site slopes up towards the southern boundary.

The site contains the following constraints:

- Flood prone land on the low-lying portion of the site where the solar array is proposed.
- Important Farmland within the North Coast Regional Plan 2036 and NSW Preliminary Draft State Significant Agricultural Land Map, prepared by NSW Department of Primary Industries.

- High Environmental Values Vegetation (HEV) and Key Fish Habitat. The HEV vegetation is outside of the development envelope with a 50m buffer.
- Koala Habitat – located within the HEV community. Detailed site survey did not record the presence of koala.
- Bushfire Prone Land – part of the development envelope is within a buffer area to Category 1 vegetation).
- Acid Sulfate Soils – Class 4

## **Zoning and Permissibility**

The subject site is zoned part RU2 Rural Landscape, part RU1 Primary Production and part Deferred Matter pursuant to Clause 2.3 of the Byron LEP 2014. The Deferred Matter is land zoned 1(a) General Rural Zone under Byron LEP 1988. The proposal is located entirely within the RU2 Rural Landscape zone.

Byron LEP 2014 does not specifically permit use of the land for the proposed development. However, SEPP (Transport and Infrastructure) 2021 permits the development. Therefore, as the SEPP prevails, the proposal is permitted with consent.

## **Assessment**

There are a number of environmental planning instruments applicable to the site which the consent authority must consider. A detailed assessment against the relevant parts of each instrument is included in the body of this report.

A summary of the applicable provisions where the consent authority must be satisfied of particular matters is noted below:

- **Section 3.9 of SEPP (Biodiversity and Conservation) 2021**

Section 3.9 requires that: *a council must take the guidelines into consideration in determining an application for consent to carry out development on land to which this Part applies.* The site is within the Koala Planning Area of the Byron Coast Comprehensive Koala Plan of Management (CKPoM). Koala surveys were undertaken and no evidence of koalas was recorded on the site.

- **Section 4.6 of Clause 7 of SEPP (Resilience and Hazards) 2021**

Section 4.6 requires the consent authority consider whether the land is contaminated. The information provided in the application indicates that the land is not known on any contaminated land registers and the proposal does not involve existing land uses likely to result in site contamination of concern. The proposal does not involve extensive ground disturbance and earthworks, likewise, does not involve specifically sensitive land uses. It concludes that the proposal satisfies Chapter 4 of the SEPP. Councils Environmental Health Officer has raised no objections in this regard.

- **Clause 2.3 Byron Local Environmental Plan 2014 – Zone objectives and land use table**

Clause 2.3 requires the consent authority to have regard for the relevant zone objectives when determining a development application. The proposal is permissible with consent pursuant to the provisions of SEPP (Transport and Infrastructure) 2021 and will not compromise the relevant zone objectives.

- **Clause 5.21 Byron Local Environmental Plan 2014 Flood planning**

This clause requires that development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development is compatible with the flood function and behaviour on the land, not adversely affect flooding on other properties, will not adversely affect the safe occupation and efficient evacuation of people, incorporates appropriate measures to manage risk to and will not adversely affect the environment.

Assessing officers are satisfied that the proposal meets the requirements of clause 5.21.

- **Clause 6.1 Byron Local Environmental Plan 2014 - Acid sulfate soils**

This clause requires that, where applicable, development consent must not be granted for the carrying out of works unless an acid sulfate soils management plan (ASSMP) has been prepared in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.

Acid sulfate soil investigations have been undertaken and a management plan prepared. Council officers are satisfied with the plan subject to conditions.

- **Clause 6.2 Byron Local Environmental Plan 2014 – Earthworks**

Clause 6.2(3) requires the consent authority to consider effects and potential impacts on the site and surrounding locality as a result of the proposed earthworks. Subject to conditions of consent, Council officers and the assessing planner are satisfied that the proposed development meets the provisions of clause 6.2(3) of the Byron LEP 2014.

- **Clause 6.6 Byron Local Environmental Plan 2014 – Essential Services**

The clause requires that, prior to granting consent to development, the consent authority must be satisfied that the nominated essential services are available or that adequate arrangements have been made to make them available.

Assessing officers are satisfied that the site meets the requirements of clause 6.6.

### **Public Exhibition and Authority referrals**

The development application was advertised from 8 April 2022 until 5 May 2022. There were 5 submissions received objecting to the proposal.

The application was referred to:

- Essential Energy – general comments provided
- Department of Primary Industries (Agriculture) – Advised that the land on which the proposal is to be located is identified as Important Farmland under the North Coast Regional Plan 2036 and mapped as State Significant Agricultural Land (SSAL) under the draft SSAL mapping recently exhibited. Such land is a highly important resource for agricultural production and should be prioritised for agricultural purposes. The strategic location of the proposal adjacent to Council's existing waste facility is however noted. Recommended conditions provided.
- Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) – Proposal will be in an area that Aboriginal Cultural Heritage is at high risk for uncovering or disturbing Cultural Heritage. Request that two Arakwal Traditional Owners are engaged as Cultural Site Monitors during ground disturbing works.
- Tweed Byron Land Council – no response received.

### **Key Issues**

The Section 4.15 assessment has identified the following key issues:

Visual impact – Following a detailed Landscape and Visual Impact Assessment the proposal has been assessed as being satisfactory subject to the implementation of landscape screen planting. A condition of any consent will require the preparation and implementation of a Landscaping and Maintenance Plan.

It is important that the buffer is planted and established early and in this regard, the applicant has indicated that this can be done before other physical construction work commences.

#### Glare impact

A detailed Glare and Glint Impact Assessment has been prepared. No particular concerns are raised if the single axis tracking system is used. However, until the buffer planting is sufficiently established, there is potential glare impacts to 8 dwellings and to users of Dingo Lane, and to a lesser extent Myocum Road and Coolamon Scenic Drive if the fixed system is used.

If the fixed system is used, a condition is recommended requiring the buffer to be sufficiently established before the panels are installed.

#### Loss of Agricultural Land

The nature of the proposal is that the land could be returned to farming in the long term if the solar farm is decommissioned. A decommissioning plan is recommended as a condition of consent.

#### Flood prone land

The top of the solar panels would be located above the 2100 flood planning level and flood compatible building materials would need to be used for the areas below the flood planning level. A condition is recommended in this regard.

The solar inverter is proposed to be located on elevated land not affected by flooding.

#### **Conclusion**

In summary, the proposed development is considered satisfactory, subject to the imposition of suitable conditions of consent to address and mitigate key issues relating to potential impacts arising from the proposed development. The application has been assessed in detail against the relevant matters for consideration pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979 and is considered satisfactory.

As such, it is recommended that the proposed development be approved, subject to conditions documented in the recommendation in Appendix A.

## 1. THE SITE AND LOCALITY

### 1.1 The Site

The subject site is located within the locality of Myocum, approximately 3.5km south- south-east of Mullumbimby. The general location of the site is illustrated on **Figure 1**. An aerial photograph of the site is provided in **Figure 2**.

The site has an area of 40 hectares, is of irregular shape and has an approximate frontage of 380m to Dingo Lane. Vehicular access is gained from an existing driveway in the northwest corner of the site.

Dingo Lane is an unsealed dead end road and comes from Myocum Road, approximately 1.1km to the west.

An existing dwelling house is located at the southern end of the site.

The site is currently utilised for cattle agistment. It is predominately open grassland with the exception of sporadic vegetation, located along its eastern boundary. The solar farm itself is located within an area of the property that is historically grazed pasture grassland.

First and second order streams run through the site which have been modified, likely from agricultural practices, to form formalised flow paths which ultimately feed into Simpsons Creek on the eastern side of the Pacific Highway.

The northern half of the site is flat in nature, with the majority of the ground surface levels ranging from 1 – 6m AHD. The remainder of the site slopes up towards the southern boundary.



**Figure 1 – Location**



**Figure 2 – Subject Site**

Land is legally described	LOT: 15 DP: 1178892
Property address	1 Dingo Lane MYOCUM
Land is zoned:	Part RU2 Rural Landscape, part RU1 Primary Production and part Deferred Matter. The Deferred Matter is land zoned 1(a) General Rural Zone under Byron LEP 1988. The proposal is located entirely within the RU2 Rural Landscape
Property is constrained by:	<ul style="list-style-type: none"> <li>• Flood prone land on the low-lying portion of the site where the solar array is proposed – refer <b>Figure 3</b>.</li> <li>• Important Farmland within the North Coast Regional Plan 2036 and NSW Preliminary Draft State Significant Agricultural Land Map, prepared by NSW Department of Primary Industries.</li> <li>• High Environmental Values Vegetation and Key Fish Habitat – refer <b>Figure 4</b>.</li> </ul>

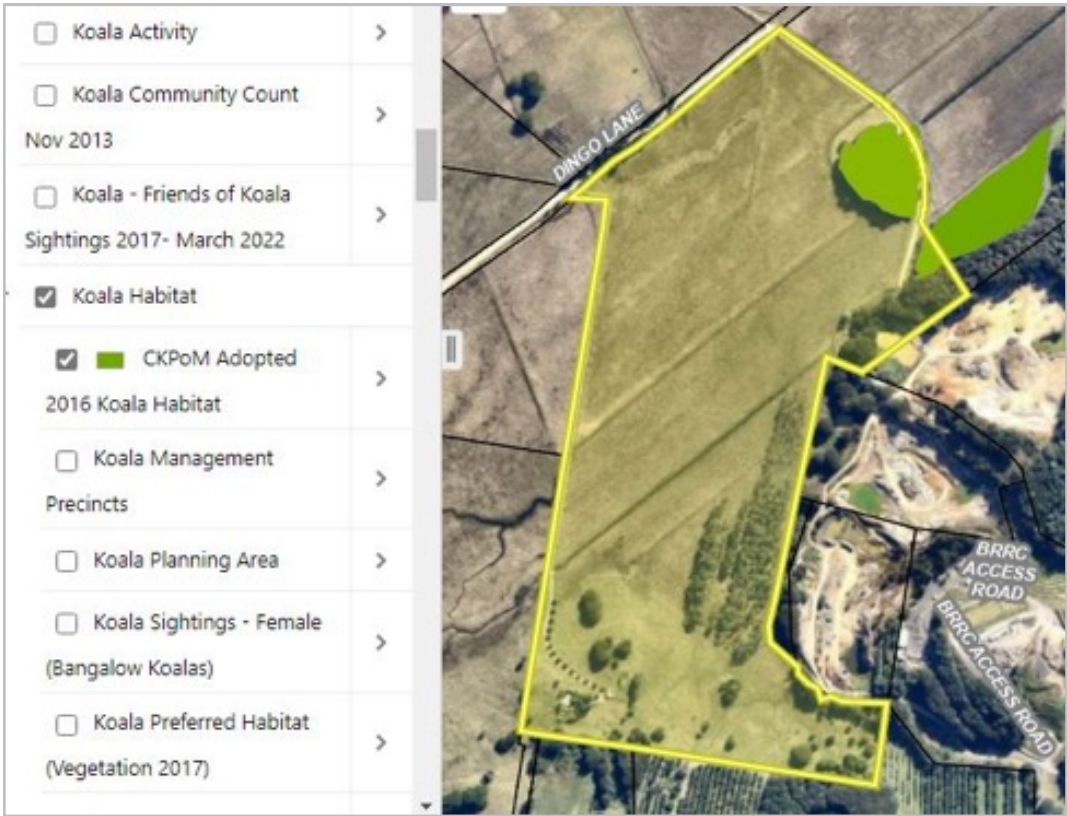
	<ul style="list-style-type: none"> <li>• Koala Habitat – refer <b>Figure 5</b>.</li> <li>• Bushfire Prone Land – refer <b>Figure 6</b>.</li> <li>• Acid Sulfate Soils – Class 4</li> </ul>	
	Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Are there any easements affecting the site? The site is burdened by a 20m wide right of carriageway which benefits the adjacent Lot 17 DP1178892 – refer <b>Figure 7</b> .	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No



**Figure 3 – Flooding – The blue shaded area is the Future Flood Planning Level (1:100ARI + 0.5m freeboard + climate change to 2100)**



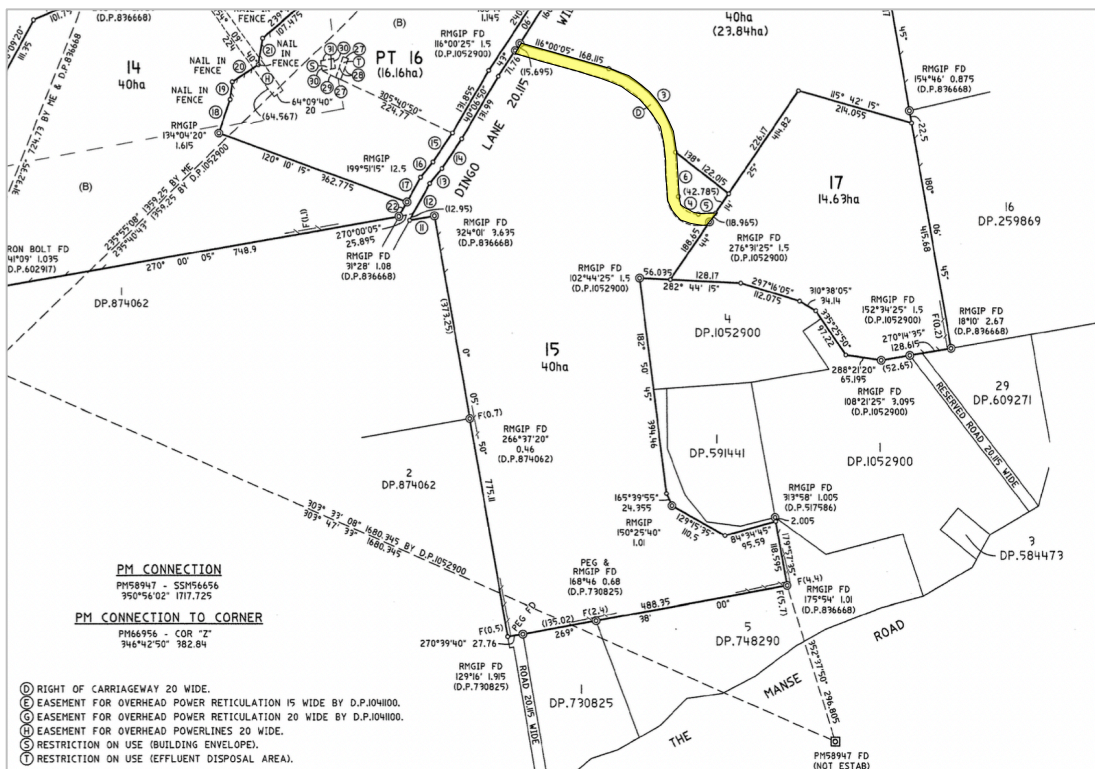
**Figure 4 - High Environmental Values Vegetation and Key Fish Habitat**



**Figure 5 – Koala Habitat - CKPoM**



**Figure 6** – Bushfire prone land (red shaded area is Category 1 vegetation and green shaded area is buffer land).



**Figure 7** – DP1178892 – extract showing right of carriageway

## 1.2 The Locality

The locality is characterised by rolling rural landscapes, accommodating a mix of land uses including rural living and agricultural uses and immediately to the east and south-east of the property, a quarry and Resource Recovery Facility.

Built form comprises a mixture of dwellings and farm buildings which are located in a variety of settings including elevated paddocks and within interspersed vegetation.

## 2. THE PROPOSAL AND BACKGROUND

### 2.1 The Proposal

The proposal seeks consent for the provision of a 5x megawatt (MW) solar farm and associated works, a parking area, viewing platform and landscaping. The proposal forms part of Council's Net Zero Emissions and Renewable Energy Strategy.

Specifically, the proposal involves:

- Installation of a panel array covering approximately 11 hectares of the site.
- The provision of a solar inverter located on the elevated land above the floodplain and integrated into the wider electricity network.
- The application proposes two (2) options for solar array types. The array will be either a fixed or 'single axis tracking' format. The application indicates that both mounting formats have been considered in the assessment. The fixed solar array would be mounted up to 2m above the finished ground level and the tracking array up to 3m.
- Provision of a car parking area (5 Spaces + bus area + overflow area for another 5 vehicles and another bus).
- Provision of a 15m x 5m roofed area viewing platform to accommodate school and other tour groups and interested day-trippers.
- Access is via an existing 2 lane unsealed section of Dingo Lane.
- Provision of a 2.7m high security fence.
- Provision of buffer landscape screening. The Statement of Landscape Intent indicates that the buffer will be approximately 5m wide, with trees reaching 8-10m high within 3-5 years of planting and up to 20m for some species within 10-15 years.

Setbacks of the proposal are:

- 80m (approx. by scale) to Dingo Lane (from car parking area)
- 150m (approx. by scale) to Dingo Lane (from solar array)
- 50m (approx.) to south-eastern boundary
- 20m (approx. by scale) to western boundary

Tree removal is not required, however some vegetation pruning adjacent to Dingo Lane is proposed to ensure adequate sight distance is provided.

The proposed project finished surface levels are to remain generally consistent with the existing topography.

The application indicates that the proposed Solar Farm will generate enough electricity to reduce Council's carbon emissions, offset Council's power usage and send additional renewable power back into the grid.

Post construction phase, the facility will not be staffed. Tours and maintenance will be undertaken on an as needs basis.

It is estimated that traffic generation would be:

- Maximum of 13 peak hour trips for operational requirements
- Maximum of 45 peak hour trips for construction requirement
- Maximum of 27 Average Daily Trips (13 peak hour + 7 hours @ 2 trips)

Plan extracts are provided on **Figures 8 – 10**.

A timeline of projected buffer plant growth is provided in **Figure 11**.

The application notes:

*Of note, simultaneous to the preparation of the Development Application package, a Design and Construct process is being conducted by Byron Shire Council. This process remains ongoing and may result in future modifications to the solar farms particulars as the final scale and capacity of the proposal is optimised based on a combination of the most suitable technology at the time of procurement, along with detailed grid connection considerations. Notwithstanding, this report considers the merits of the application and has adopted a precautionary approach to testing its impacts. Accordingly, once the final tender is awarded, any modification considered necessary is anticipated to result in a less-intensive outcome for the site.*

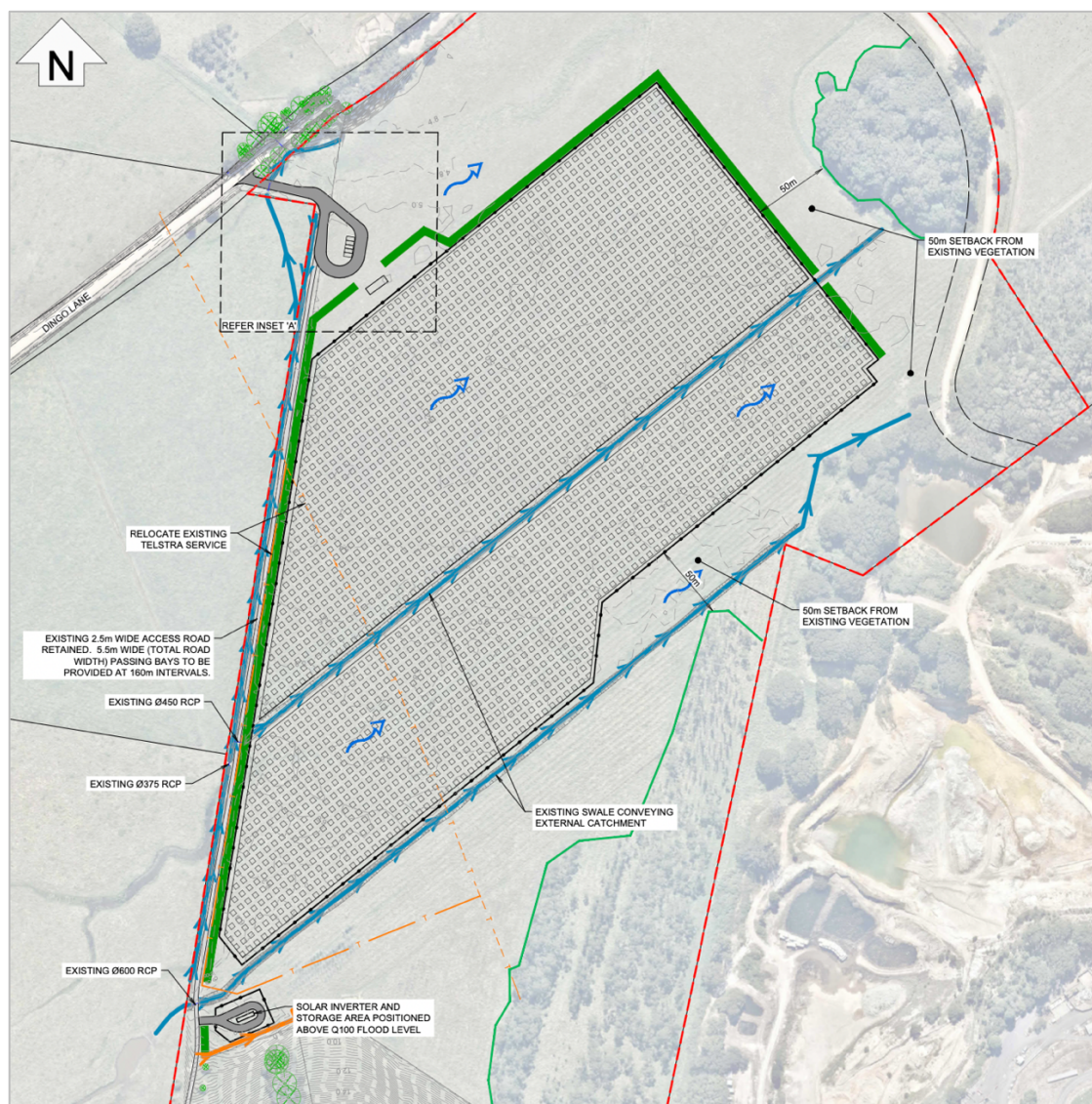


Figure 8 – Site Plan



Figure 9 – Perimeter Section

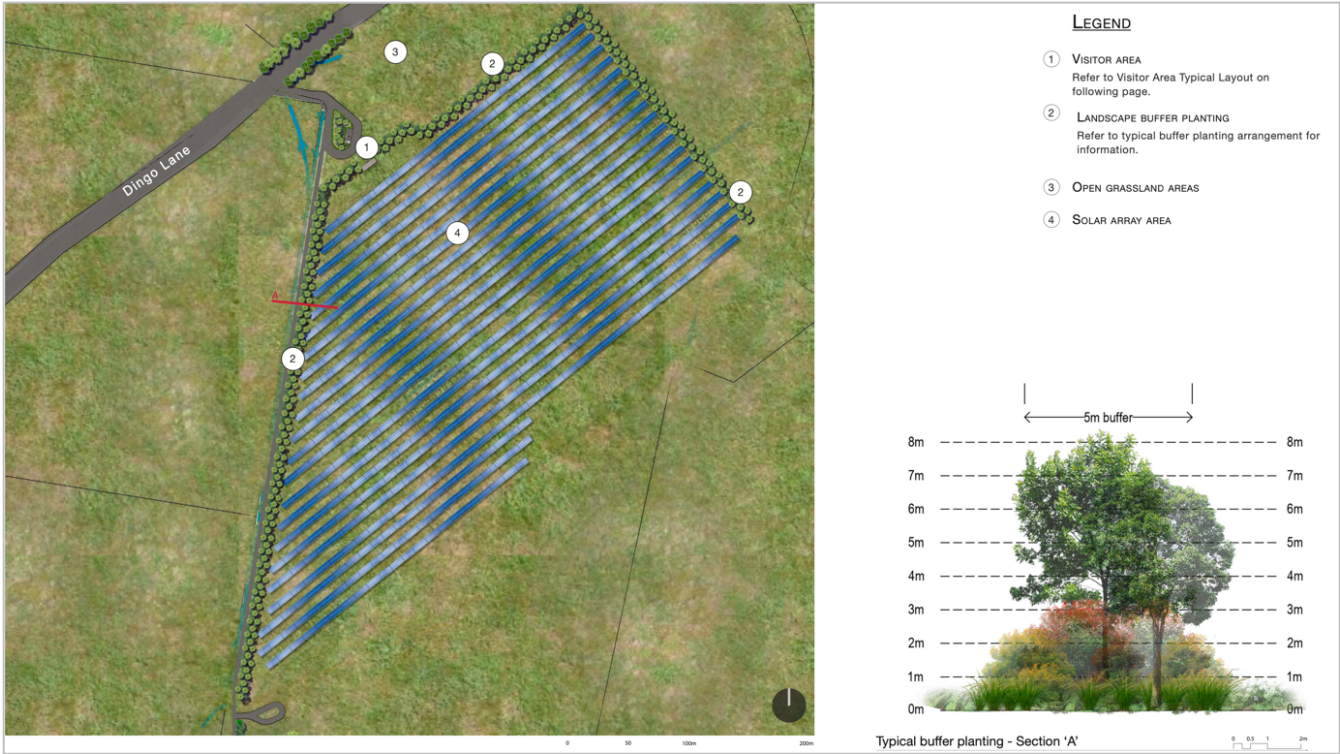


Figure 10 – Landscape buffer



Figure 11 – Timeline of projected plant growth

## 2.2 Background

The development application was lodged on 31 March 2022. A chronology of the development application since lodgement is outlined in on the Table below.

**Table: Chronology of the DA**

Date	Event
31 March 2022	Referral to Bundjalung of Byron Bay Aboriginal Corp (Arakwal) and Tweed Byron Aboriginal Land Council
5 April 2022	DA referred to external agencies (Essential Energy)
8 April 2022	Exhibition of the application
21 June 2022	DA referred to external agency – DPI - Agriculture
23 June 2022	Additional information requested.
23 August 2022	Panel briefing

There are no previous approvals over the site relevant to the application.

## 3. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer*	No objections subject to conditions. Refer to Doc #A2022/11146. Also see comments below at the end of this table.
Development Engineer*	No objections subject to conditions. Refer to Doc #A2022/19370. Also see comments below at the end of this table.
Natural Resource Planner	No objections subject to conditions. Refer to Doc # A2022/11148. Also see comments below at the end of this table.
Essential Energy	<p>Essential Energy advised that they have no comments to make as to potential safety risks arising from the proposed development.</p> <p>Essential Energy made the following general comments:</p> <ul style="list-style-type: none"><li>• If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment.</li><li>• Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above property should be complied with; and</li><li>• In addition, Essential Energy's records indicate there is electricity infrastructure located within the property. Any activities within this location must be undertaken in accordance with the latest industry guideline currently known as ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure.</li><li>• Prior to carrying out any works, a "Dial Before You Dig" enquiry should be undertaken in accordance with the requirements of <i>Part 5E</i></li></ul>

Referral	Issue
	<p>(Protection of Underground Electricity Power Lines) of the Electricity Supply Act 1995 (NSW).</p> <ul style="list-style-type: none"> <li>Given there is electricity infrastructure in the area, it is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW (<a href="http://www.safework.nsw.gov.au">www.safework.nsw.gov.au</a>) has publications that provide guidance when working close to electricity infrastructure. These include the Code of Practice – Work near Overhead Power Lines and Code of Practice – Work near Underground Assets.</li> </ul> <p>These comments will be placed as 'Notes' on any consent.</p>
Department of Primary Industries – Agriculture	See comments following this Table.
Bundjalung (Arakwal)	<p>Advised that proposal will be in an area that Aboriginal Cultural Heritage is at high risk of uncovering or disturbing Cultural Heritage.</p> <p>Wherever ground disturbing works are being undertaken, it is Bundjalung of Byron Bay Aboriginal Corporations expectation that two Arakwal Traditional Owners are engaged as Cultural Site Monitors for the duration of works to oversee and assess the potential for harm to our Aboriginal Cultural Heritage.</p> <p>A condition of any consent will require the engagement of Cultural Site Monitors for the most significant excavation work (car parking and turn around area) and consultation with Bundjalung of Byron Bay Aboriginal Corporation with respect to all other areas.</p>
Tweed Byron Land Council	No comments provided

\* Conditions provided in the above referral are included in the Recommendation of this Report below

## Issues:

### Environmental Health Officer

- Acid sulfate soils: In support of the application, the applicant has submitted an Acid Sulfate Soil investigation prepared by Australian Soil and Concrete Testing dated 10 January 2020 (reference: H19-1331-ASS-R). Report concludes that the soils pose an environmental hazard and require management. Report recommends a liming rate of 12kg CaCo3(lime)/t of soil. Report assessed, deemed satisfactory and referred to within recommended conditions of approval.
- Land use conflicts: In support of the application, the applicant has submitted a Glare Impact Assessment prepared by Environmental Ethos dated 8 October (reference: 19010). Report utilises Solar Glare Hazard Analysis Tool (SGHAT) modelling software. Report considers two mounting systems for the panels, fixed frame of max height of two (2) metres and a tracking system of a max height of three (3) metres. Report predicts no glare impacts for tracking system mountings. Modelling found potential glare hazard may occur as a result of the project when utilising a fixed frame system, to both roads and dwellings.

In order to mitigate potential glare impacts when using fixed frame mountings, a vegetated landscape buffer along the projects site's northern and western boundaries is recommended. The report predicts that there is negligible risk of glare hazard to roads and dwellings subject to screen planning established when using fixed frame mountings. Note – These recommendations rely on the landscaping to be fully established.

The report has been assessed and deemed satisfactory.

Councils EHO recommends that the tracking system mounting system be implemented as there will be no reliance on the recommended landscaping to become fully established to ensure that there is negligible risk of glare hazard to roads and dwellings.

- Electromagnetic radiation - Minimal electromagnetic radiation (EMR) associated with a solar farm of this scale. Insignificant risk re EMR on human health.

#### Engineer

- Traffic: The intersection of Dingo Lane and Myocum Road is satisfactory. The traffic generation and the existing traffic utilising Dingo Lane can be catered by the existing geometric road requirements of Dingo Lane
- Access & Parking: Access and parking supply is satisfactory.
- Stormwater: The proposal doesn't trigger the need to provide stormwater quantity measures in accordance with section B3.2.3.6 of the DCP.

The soil characteristics including rainfall runoff of the pervious area under the solar panels remain the same therefore no changes to the quality of stormwater leaving the site.

- Flooding: The site is outside the flood study area of Council. BMT was engaged to complete flood mapping for the site, which is the best information of the flood extents on site. Standard conditions are to apply including a condition allowing solar panels constructed at a height of 1 in 100 AEP + 0.5m freeboard.

#### Natural Resource Planner

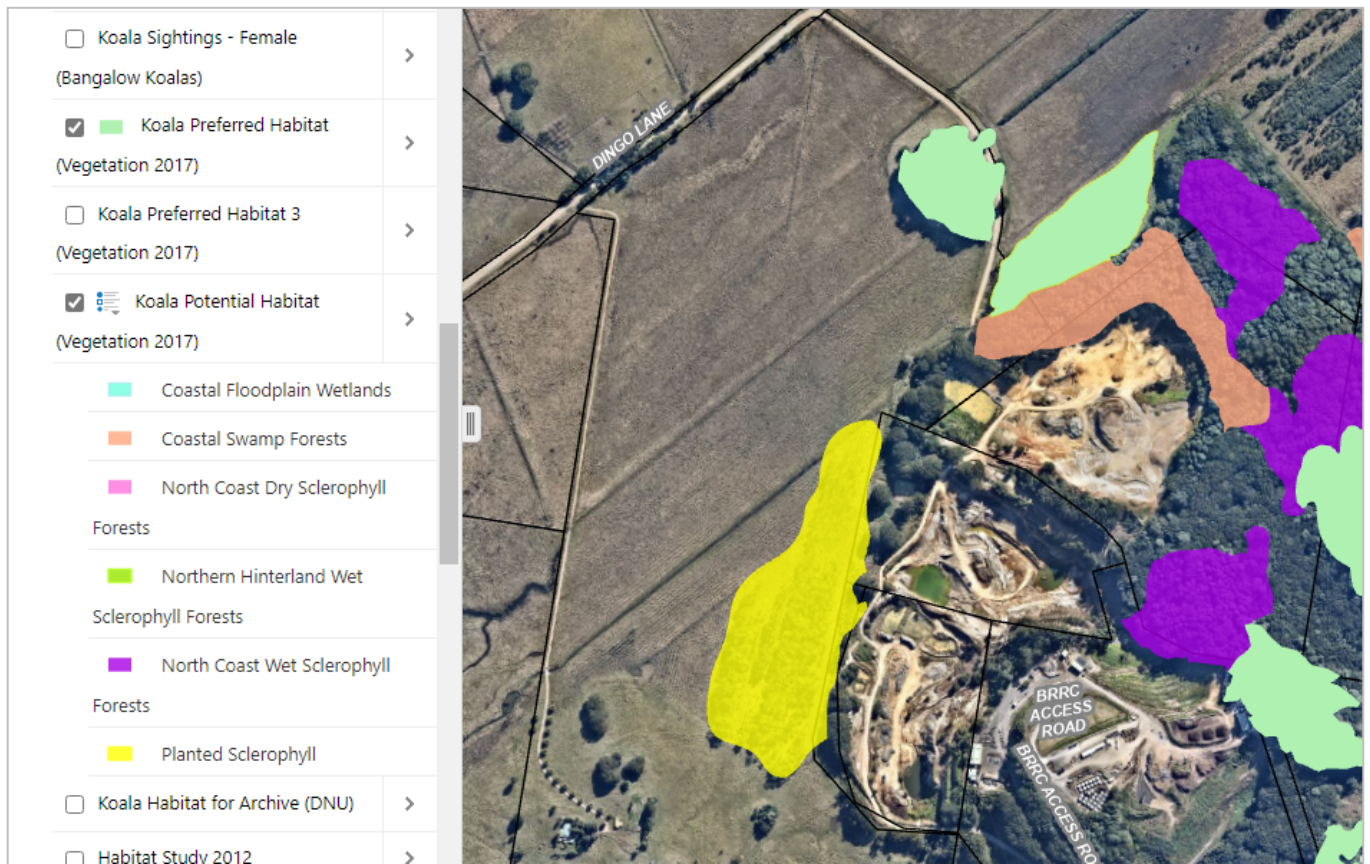
- Biodiversity Conservation Act 2016 - The proposal will not exceed the area clearing threshold or the Biodiversity Values Map threshold.
- Byron Coast Comprehensive Koala Plan of Management (CKPoM) -The CKPoM applies to the proposal. Additionally, the site contains *potential koala habitat* mapped under the CKPoM. The flora and fauna assessment included SAT surveys, spotlight surveys and amplified call playback. No koala activity was recorded on the land. Notwithstanding, the report also included an assessment of the proposal against the Prescriptive Measure for koala habitat in Section B1.2.3 of the DCP, determining that the proposal complies.
- Byron DCP 2014 Chapter B1 Biodiversity - The flora and fauna assessment report included an assessment against the Prescriptive Measures in Chapter B1, finding the proposal complies with all Prescriptive Measures. No variation requests were made.

Councils Natural Resource Planner recommended a condition requiring the preparation of a Vegetation Management Plan as a condition of consent as some conceptual rehabilitation work along the eastern boundary was foreshadowed in the flora and fauna assessment.

Upon review of this assessment and it is evident that there is no nexus between the proposed development and the requirement for the preparation of a Vegetation Management Plan as a condition of consent as the assessment identifies that:

- The solar farm has been designed to avoid native vegetation communities/habitat and includes a 50m buffer.
- No offsets are triggered in accordance with the Biodiversity Offsets Scheme
- No compensatory plantings are required in accordance with Byron Shire Development Control Plan (2014).
- The proposal does not impact on or remove the Preferred Koala Habitat or the Potential Koala Habitat (which is shown as planted eucalypts) – refer **Figure 12**

A conceptual rehabilitation strategy was included in the flora and fauna assessment at the request of Council as the landowner. This was for consideration for future land management opportunities at the site, rather than as rehabilitation strategy as a direct consequence of the proposal. Therefore, it is considered that it is not necessary to require the preparation of a Vegetation Management Plan as a condition of consent.



**Figure 12 – Koala Preferred Habitat**

#### Department of Primary Industries – Agriculture

Advised that :As indicated within the SEE, the land on which the proposal is to be located is identified as Important Farmland under the North Coast Regional Plan 2036 and mapped as State Significant Agricultural Land (SSAL) under the draft SSAL mapping recently exhibited. Such land is a highly important resource for agricultural production and should be prioritised for agricultural purposes. The strategic location of the proposal adjacent to council's existing waste facility is however noted.

If the consent authority determines that, on balance, this project should be supported at this location, it is requested that conditions are included requiring:

1. Decommissioning - decommissioning is to include the complete removal of all infrastructure, including underground cabling and piping. While the SEE acknowledges the removal of solar arrays, to enable the return of the land to horticulture, all underground cabling and footings etc will also need to be removed.
2. To ensure that decommissioning achieves the goal of returning the land to its current or improved condition, it is suggested that a soil survey be undertaken for the site prior to construction. The soil survey should:
  - (i) identify the soil type, fertility and land and soil capability.
  - (ii) describe the current and potential agricultural productivity including the use of the land over the last 10 years of the site, and information on nearby agricultural land uses.

(iii) use the following references to inform the survey:

- Australian Soil and Land Survey Handbook (CSIRO, 2009)
- Guidelines for Surveying Soil and Land Resources (CSIRO, 2008)
- The land and soil capability assessment scheme: second approximation (OEH, 2012).

3. To ensure any risk to surrounding agriculture from the increase in visitors to the area is appropriately mitigated, a Land Use Conflict Risk Assessment (LUCRA) should be undertaken and recommendations also included within the project design.

4. An undertaking that some multifunctional use of the land under solar panels is undertaken. Studies into the possibility of agri-voltaics should be undertaken prior to issue of the construction certificate to enable the design to be modified as necessary, to accommodate the multifunctional use.

5. Consideration to be given to any agricultural activities that may still occur on the residue section of the land to ensure disruption to operations is minimised.

In relation to these suggested conditions, it is commented that:

- It is proposed that a condition be placed on any consent requiring the preparation of a decommissioning plan with a goal of returning the land to its current or improved condition. This decommissioning plan would be informed by soil survey. However, as any decommissioning is long term, the proposal does not include bulk earthworks and the limited ground disturbance enables collection of existing soil attributes from a high number of undisturbed locations post construction, it is not considered necessary to require the decommissioning plan to be prepared or the soil survey undertaken before construction commences. This could occur prior to decommissioning occurring.

- As the proposal does not involve any permanent occupation of the site, anticipated visitor patronage is minimal, it is not likely to create noise or dust issues and the ongoing use of the land would be limited to general site maintenance, it is not considered necessary to prepare a LUCRA at this stage. Instead, it is proposed to impose the following condition:

*Upon receipt of a complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Land Use Conflict Risk Assessment (LUCRA) carried out by a suitably qualified and practicing consultant. The LUCRA is to be submitted to the satisfaction of the General Manager or their delegate. It is to include recommendations for noise, dust, air quality mitigation, or the like to ensure the operation of the Solar Farm is compatible with the agricultural pursuits of the locality. The operator/owner is to implement the recommendations of the LUCRA within a timeframe specified by Council's authorised officer.*

- Points 4 and 5 have been considered by the applicant who has advised: *We note that requested conditions 4 and 5 are effectively recommendations of relevance to Council as a landowner and manager, as opposed to conditions appropriate to the DA itself. Notwithstanding, the solar farm does not sever or otherwise comprise a barrier to agriculture on the surrounding lands. It is not proposed to impose these matters as conditions of consent.*

#### **4. SECTION 4.14 – BUSH FIRE PRONE LAND**

Part of the subject site is mapped as bush fire prone land (refer **Figure 6**).

The area surrounding the proposed solar array is primarily modified land with little native vegetation. The application notes that there is an area of unmaintained eucalypt forest between the site and the adjoining quarry, a 1ha isolated pocket of camphor laurel forest in the site's north as well as a small area of camphor laurel forest in the site's east, which connect to a larger remnant forest to the north of the quarry. These vegetation communities are considered to present the greatest bushfire risk in and around the site.

Under section 4.14(1) of the Act, the consent authority must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document Planning for Bush Fire Protection (PBP) 2019.

In this regard, Section 8.3.5 of PBP 2019 contains requirements for solar farms and includes:

- a minimum 10m APZ for the structures and associated buildings/infrastructure.
- the APZ must be maintained to the standard of an IPA for the life of the development.
- Essential equipment should be designed and housed in such a way as to minimise the impact of bush fires on the capabilities of the infrastructure during bush fire emergencies. It should also be designed and maintained so that it will not serve as a bush fire risk to surrounding bush
- A Bush Fire Emergency Management and Operations Plan should identify all relevant risks and mitigation measures associated with the construction and operation of the wind or solar farm

The application has demonstrated compliance with PBP 2019. In particular,

- The public road network is suitable for emergency vehicles
- The roadway access into the site as well as the internal private roadway are being upgraded to provide safe entry and exit for larger vehicles as well as vehicle passing, which in turn, will ensure safe and efficient accessibility in and around the site for emergency vehicles.
- A dedicated supply of water for firefighting will be made available onsite and located adjacent to the access roadway
- greater than 10m setbacks / buffer areas are provided from any combustible materials, including landscape screening, the viewing platform and wider vegetation. This 10m buffer area can be managed as an inner protection area (IPA) for the life of the development
- landscape screening is located greater than 40m from any surrounding bushfire hazard vegetation, ensuring that it itself does not constitute a bushfire threat. It is intended that the vegetation fuel under and between the solar panels will be maintained in a low fuel state through land management activities such as mowing and application of pesticides.
- All electrical components will be manufactured in material that does not allow combustion and ignition.

The application notes that a Bush Fire Emergency Management and Operations Plan should be prepared at the design and construct phase of the project (Construction Certificate) by the solar farm operator. This is consistent with the requirements of PBP 2019. Any consent will be conditioned accordingly.

Referral of the application to the Rural Fire Service was not required.

## 5. SECTION 4.15C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

Having regard to the matters for consideration detailed in Section 4.15(1) of the Environmental Planning & Assessment Act 1979 (EP&A Act), the following is a summary of the evaluation of the issues.

### State Environmental Planning Policies (SEPP)

Considerations	Satisfactory	Unsatisfactory
SEPP ( <i>Biodiversity and Conservation</i> ) 2021 Consideration: Chapter 3: Koala Habitat Protection 2020 This chapter requires that before consent being granted to a development application, the council must be satisfied as to whether or not the land is a potential koala habitat.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Considerations	Satisfactory	Unsatisfactory
<p>The Terrestrial Flora and Fauna Assessment included Spot Assessment Technique (SAT) surveys, spotlight surveys and amplified call playback and no koala activity was recorded on the land.</p> <p>The Assessment identifies that the land contains potential koala habitat, however the vegetation does not meet the core koala habitat definition.</p> <p>The proposed solar array is on a cleared portion of the site with a 50m setback from any preferred koala habitat trees.</p> <p>It is concluded that the land is not potential koala habitat.</p>		
<p><i>SEPP (Resilience and Hazards) 2021</i></p> <p>Consideration:</p> <p>Chapter 4: Remediation of Land</p> <p>Section 4.6 - Contamination and remediation has been addressed in the SEE as follows:</p> <p><i>In this regard, the subject land is not known on any contaminated land registers, nor involve existing land uses likely to result in site contamination of concern. The proposal does not involve extensive ground disturbance and earthworks, likewise, does not involve specifically sensitive land uses, such as a child care centre. Accordingly, the proposal is considered to satisfy the provisions of the Resilience and Hazards SEPP, Chapter 4.</i></p> <p>Councils Environmental Health Officer has raised no objections in this regard.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>SEPP (Planning Systems) 2021</i></p> <p>Consideration:</p> <p>Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 3 of Schedule 6 '<i>Council related development over \$5million</i>'.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>SEPP (Primary Production) 2021</i></p> <p>Consideration:</p> <p>Chapter 2: Primary Production and rural development</p> <p>The SEPP applies to the land, however there are no relevant provisions for the proposed land use.</p> <p>There are no areas of 'State significant agricultural land' listed in Schedule 1 of the SEPP.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>SEPP (Transport and Infrastructure) 2021</i></p> <p>Consideration:</p> <p>Chapter 2: Infrastructure</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Considerations	Satisfactory	Unsatisfactory
The proposed “electricity generating works” is permitted with consent on the RU2 zoned land by way of Section 2.36 (Development permitted with consent).		
SEPP ( <i>Exempt and Complying Development Codes</i> )2008 Consideration: Division 2 Advertising and Signage Exempt Development Code  The proposed car park sign and information signs shown on the Statement of Landscape Intent are ‘exempt development’ pursuant to Subdivision 9 Internal Signs and Subdivision 10 Community notice and public information signs.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

#### 4.2A Byron Local Environmental Plan 2014 (LEP 2014)

LEP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development. The LEP 2014 clauses that are checked below are of relevance to the proposed development:

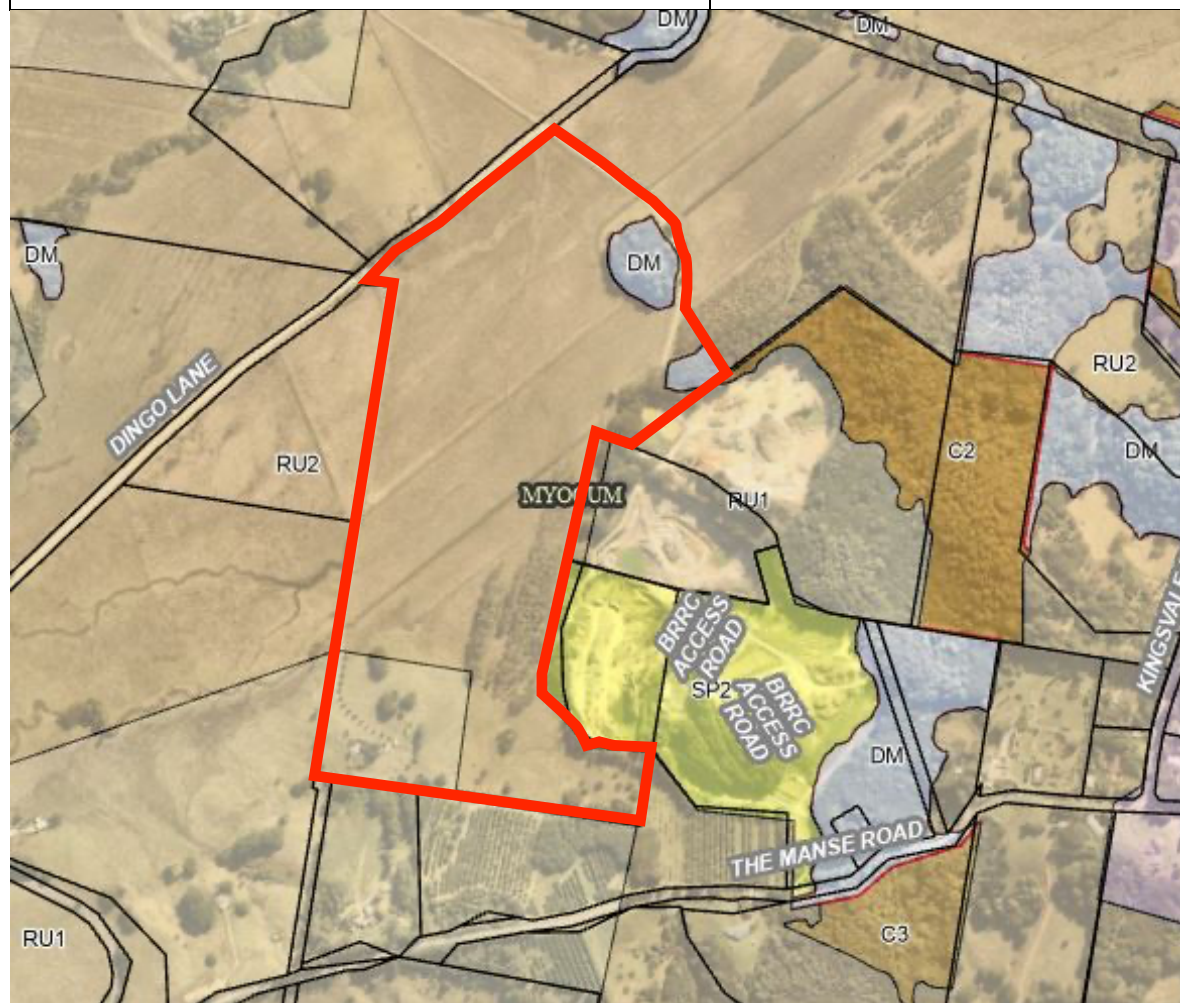
Part 1	<input checked="" type="checkbox"/> 1.1   <input checked="" type="checkbox"/> 1.1AA   <input checked="" type="checkbox"/> 1.2   <input checked="" type="checkbox"/> 1.3   <input checked="" type="checkbox"/> 1.4   <input checked="" type="checkbox"/> Dictionary   <input checked="" type="checkbox"/> 1.5   <input checked="" type="checkbox"/> 1.6   <input checked="" type="checkbox"/> 1.7   <input checked="" type="checkbox"/> 1.8   <input type="checkbox"/> 1.8A   <input checked="" type="checkbox"/> 1.9   <input type="checkbox"/> 1.9A
Part 2	<input checked="" type="checkbox"/> 2.1   <input checked="" type="checkbox"/> 2.2   <input checked="" type="checkbox"/> 2.3   <input checked="" type="checkbox"/> Land Use Table   <input type="checkbox"/> 2.4   <input type="checkbox"/> 2.5   <input type="checkbox"/> 2.6   <input type="checkbox"/> 2.7   <input type="checkbox"/> 2.8
Part 3	<input type="checkbox"/> 3.1   <input type="checkbox"/> 3.2   <input type="checkbox"/> 3.3
Part 4	<input type="checkbox"/> 4.1   <input type="checkbox"/> 4.1A   <input type="checkbox"/> 4.1AA   <input type="checkbox"/> 4.1B   <input type="checkbox"/> 4.1C   <input type="checkbox"/> 4.1D   <input type="checkbox"/> 4.1E   <input type="checkbox"/> 4.1F   <input type="checkbox"/> 4.2   <input type="checkbox"/> 4.2A   <input type="checkbox"/> 4.2B   <input type="checkbox"/> 4.2C   <input type="checkbox"/> 4.2D   <input checked="" type="checkbox"/> 4.3   <input type="checkbox"/> 4.4   <input type="checkbox"/> 4.5   <input type="checkbox"/> 4.6
Part 5	<input type="checkbox"/> 5.1   <input type="checkbox"/> 5.2   <input type="checkbox"/> 5.3   <input type="checkbox"/> 5.4   <input type="checkbox"/> 5.6   <input type="checkbox"/> 5.7   <input type="checkbox"/> 5.8   <input checked="" type="checkbox"/> 5.10   <input type="checkbox"/> 5.11   <input type="checkbox"/> 5.12   <input type="checkbox"/> 5.13   <input type="checkbox"/> 5.14   <input type="checkbox"/> 5.15   <input type="checkbox"/> 5.16   <input type="checkbox"/> 5.17   <input type="checkbox"/> 5.18   <input type="checkbox"/> 5.19   <input type="checkbox"/> 5.20   <input checked="" type="checkbox"/> 5.21   <input type="checkbox"/> 5.22
Part 6	<input checked="" type="checkbox"/> 6.1   <input checked="" type="checkbox"/> 6.2   <input checked="" type="checkbox"/> 6.4   <input type="checkbox"/> 6.5   <input checked="" type="checkbox"/> 6.6   <input type="checkbox"/> 6.7   <input type="checkbox"/> 6.8   <input type="checkbox"/> 6.9   <input type="checkbox"/> 6.11   <input type="checkbox"/> 6.12   <input type="checkbox"/> 6.13   <input type="checkbox"/> 6.14   <input type="checkbox"/> 6.15   <input type="checkbox"/> 6.16

In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:

- The proposed development is defined in the LEP 2014 Dictionary as ‘electricity generating works’;
- The subject site is zoned part RU2 Rural Landscape, part RU1 Primary Production and part Deferred Matter pursuant to Clause 2.3 of the Byron LEP 2014 (**Figure 13**). The Deferred Matter is land zoned 1(a) General Rural Zone under Byron LEP 1988. The proposal is located entirely within the RU2 Rural Landscape zone;

- (c) The proposed development is not permissible in the zone and as such relies upon SEPP (Transport and Infrastructure) 2021 for its permissibility; and
- (d) Regard is had for the RU2 Zone Objectives as follows:

Zone Objective	Consideration
<ul style="list-style-type: none"> <li>• To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.</li> <li>• To maintain the rural landscape character of the land.</li> <li>• To provide for a range of compatible land uses, including extensive agriculture.</li> <li>• To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality.</li> <li>• To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.</li> </ul>	<p>The proposed solar energy system will cover approximately 11ha (~27.5%) of the 40 ha property. This area of land is currently grass and the solar farm will prevent this land from being used for primary production during the operation of the solar farm.</p> <p>It may be possible for the site to be used for primary production should the solar farm be decommissioned in the future.</p> <p>The proposal has been subject to a detailed Visual Impact Assessment the outcome of which indicates that the proposal will result in a satisfactory visual impact. This issue is further discussed in Section 4.6 of this report.</p>



**Figure 13 – Zoning – Byron LEP 2014**

#### Clause 4.3 Height of buildings

The Height of Buildings Map specifies a height limit of 9m. The highest structure is the proposed viewing platform which has a maximum height of 5.1m. The proposal complies with the requirements of this clause.

#### Clause 5.10 Heritage conservation

*Non-indigenous heritage:* The site does not contain any listed heritage items, is not located adjacent to any listed heritage items, and is not within a heritage conservation area.

*Indigenous heritage:* The application included an AHIMS (Aboriginal Heritage Information Management System) search, which found no Aboriginal sites or places have been recorded or declared in or near the subject site.

As discussed, Council has been advised by Bundjalung of Byron Bay Aboriginal Corporations that the proposal is an area that Aboriginal Cultural Heritage is at high risk of uncovering or disturbing Cultural Heritage and that site monitors should be engaged to oversee the work.

#### Clause 5.21 Flood planning

Clause 5.21(2) requires that:

- (2) *Development consent must not be granted to 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.*

The proposed solar inverter is located on elevated land above the Q100 flood event level however the remainder of the proposal is located on the floodplain.

The plan sections show that both the fixed (2m high) and tracked (3m high) options have the panels above the Q100 + 1m assumed 2100 flood planning level.

There are no enclosed areas proposed below the Q100 level and no significant site works, including filling proposed. The proposal is unlikely to result in detrimental increases in the potential flood affectation of other development or properties.

Conditions have been recommended to ensure that flood compatible materials are used in the construction of the proposal.

The proposal is not a high-risk flooding land use and will not be permanently occupied. Therefore, there are no special evacuation measures required.

Councils Engineer raises no objections to the proposal subject to conditions.

#### Clause 6.1 Acid sulfate soils

The proposed development is located on land identified as Class 4 on the Acid Sulfate Soils Map. Acid sulfate soil investigations have been undertaken and management measures will be required. This

includes nominated liming rates which will need to be implemented through the construction phase of the proposal.

#### Clause 6.2 Earthworks

The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The proposed development will involve minor earthworks to accommodate footings for each panel within the panel array, as well as the construction of the carpark and access for the viewing platform and solar inverter areas. The extent of the earthworks will not alter existing drainage patterns.

Conditions of any consent will require the implementation of erosion and sediment controls in accordance with accepted standards.

The proposal is considered satisfactory with respect to this clause.

#### Clause 6.4 Floodplain risk management

The proposal does not include sensitive land uses listed in this clause. The facility will be unstaffed and the proposal should not affect the operational capacity of emergency services. No specific flood evacuation measures are required. The proposal is considered to satisfy the provisions of clause 6.4.

#### Clause 6.6 Essential services

All required services are available to the site. As the proposal is not proposed to involve active staffing, no additional water or sewerage services are required.

The remaining checked clauses have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act. The proposed development complies with all clauses of LEP 2014 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

### **4.2B Byron Local Environmental Plan 1988 (LEP 1988)**

The land affected by Byron LEP 1988 is zoned 1(a) General Rural Zone. The proposed development envelope and associated infrastructure is located on the RU2 zoned land under the Byron LEP 2014. There is no work in the land affected by the Byron LEP 1988 and there are no specific clauses that need to be addressed.

### **4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority**

None that are relevant to the proposal.

### **4.4A Byron Shire Development Control Plan 2014 (DCP 2014)**

DCP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the land to which LEP 2014 applies. The DCP 2014 Parts/Chapters that are checked below are of relevance to the proposed development:

Part A	<input checked="" type="checkbox"/>
Part B Chapters:	<input checked="" type="checkbox"/> B1   <input type="checkbox"/> B2   <input checked="" type="checkbox"/> B3   <input checked="" type="checkbox"/> B4   <input type="checkbox"/> B5   <input checked="" type="checkbox"/> B6   <input type="checkbox"/> B7   <input type="checkbox"/> B8   <input checked="" type="checkbox"/> B9   <input type="checkbox"/> B10   <input type="checkbox"/> B11   <input type="checkbox"/> B12   <input type="checkbox"/> B13   <input type="checkbox"/> B14
Part C Chapters:	<input type="checkbox"/> C1   <input checked="" type="checkbox"/> C2   <input checked="" type="checkbox"/> C3   <input type="checkbox"/> C4

Part D Chapters	<input type="checkbox"/> D1   <input type="checkbox"/> D2   <input type="checkbox"/> D3   <input type="checkbox"/> D4   <input type="checkbox"/> D5   <input type="checkbox"/> D6   <input type="checkbox"/> D7   <input type="checkbox"/> D8   <input type="checkbox"/> D9
Part E Chapters	<input type="checkbox"/> E1   <input type="checkbox"/> E2   <input type="checkbox"/> E3   <input type="checkbox"/> E4   <input type="checkbox"/> E5   <input type="checkbox"/> E6   <input type="checkbox"/> E7   <input type="checkbox"/> E8   <input type="checkbox"/> E9   <input type="checkbox"/> E10

Council's Engineer has reviewed the application regarding access, traffic, stormwater management, flood planning and earthworks (Chapters B3, B4, B14 and C2) and found the proposal to be adequate subject to recommended conditions and the provision of further detail with any subsequent development application.

Council's Environmental Health Officer has reviewed the application regarding site waste minimisation and land use conflicts (Chapters B6 and B8) and found the proposal to be adequate subject to recommended conditions.

Council's Ecologist has reviewed the application with respect to biodiversity (Chapter B1 - Biodiversity). The proposal complies with the prescriptive measures in Chapter B1.

The application included a Statement of Landscape Intent (SLI) (Chapter B9). A condition has been recommended requiring the submission of a detailed landscape plan.

Chapter C3 – Visually Prominent Sites, Visually Prominent Development and View Sharing - This Chapter applies to visually prominent development on a visually prominent site.

*Visually prominent development:*

*means any development located on a visually prominent site or development in a location that has the potential to impact the visual or scenic character of a visually prominent site.*

*Visually prominent site:*

*means land that is wholly or partly within the coastal zone; and land in Zone RU1 Primary Production, RU2 Rural Landscape with a height of 60m AHD or greater.*

As the proposal is to be located on land zone RU2 which a height of less than 60m AHD, this Chapter does not apply. Notwithstanding, a detailed Landscape and Visual Impact Assessment has been prepared which is discussed in the Section 4.6.

These checked Parts/Chapters have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act. The proposed development is demonstrated to meet the relevant Objectives of all relevant Parts/Chapters (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

#### **4.4B Byron Shire Development Control Plan 2010 (DCP 2010)**

The DCP applies to the parts of the subject site that are affected by Byron DCP 2010. These areas are outside of the development footprint and there are no relevant matters for consideration.

#### **4.5 Environmental Planning and Assessment Regulation 2021 considerations**

	<b>Applicable to the proposal:</b>	<b>Considered the control as it relates to the proposal:</b>	<b>If this control is applicable, does the proposal comply?</b>

Section 61 - Additional matters that consent authority must consider	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
Section 62 - Consideration of fire safety	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
Section 64 - Consent authority may require upgrade of buildings	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
Section 63 - Considerations for erection of temporary structures	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA

\* Non-compliances and any other significant issues discussed below

#### 4.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Impact on:	Likely significant impact/s?
<b>Natural environment</b>	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
<b>Built environment</b>	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
<b>Social Environment</b>	No. The proposal will not have a significant social impact on the locality.
<b>Economic impact</b>	No. The proposal will not have a significant economic impact on the locality.
<b>Construction Impacts</b>	The development will generate minor impacts during its construction. Conditions of consent recommended to control hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts.

Consideration of potential impacts not addressed above:

#### **Landscape and Visual Impacts**

The Landscape and Visual Impact Assessment lodged with the application examines the proposal from the 'Zone of Theoretical Visibility'. **Figure 14** illustrates the viewpoints assessed.



**Figure 14 – Viewpoint locations** (source: *Environmental Ethos*)

The assessment indicates that the predicted impact significance on character will be minor to moderate from the surrounding flat to gently undulating land and negligible from all other landscape units (undulating to steep rural land, large lot residential land and Resource Recovery land).

In relation to visual impacts, the predicted impact significance in the long term ranges from 'negligible' to 'minor' and 'moderate'. These are summarised on the following Table.

<b>Views and Corridors</b>	<b>Magnitude of Change</b>	<b>Predicted Impact Significance</b>
Views from Myocum Road	No change	Negligible
Views from Dingo Lane	Low: a potentially noticeable change to the visual baseline affecting a small part of the view, or visible for a short duration	Negligible
Views from The Manse Road	Slight: a small change of the visual baseline which is insignificant, not distinct and is expected to blend in with the baseline view.	Minor
Views from Coolamon Scenic Drive	No change – once established, the proposed screen planting along the western boundary will	Negligible

	mitigate potential impacts to visual amenity	
Views from other surrounding local roads within the viewshed	No change	Negligible
Views from rural and residential dwellings less than 500m from the site	Low: a potentially noticeable change to the visual baseline affecting a small part of the view, or visible for a short duration.	Moderate
Views from rural and residential dwellings less 500m – 2km from the site	Slight: a small change to the visual baseline which is insignificant, not distinct and expected to blend in with the baseline view.	Minor
Views from rural and residential dwellings greater than 2km from the site	Low: a potentially noticeable change to the visual baseline affecting a small part of the view, or visible for a short duration.	Moderate

\* Complete table is located in the Visual Impact Assessment (Table 5)

Landscape screen planting is identified as a mitigation measure to avoid potential impacts on views from roads and properties to the west of the site. This includes:

- Screen planting to a minimum height of 8m along the western boundary, with a width of 4-5 metres.
- Quick growing long life species are to be used

A condition of any consent will require the preparation and implementation of a Landscaping and Maintenance Plan.

It is important that the buffer is planted and established early and in this regard, the applicant has indicated that this can be done before other physical construction work commences. It is noted that it will take 3-5 years for vegetation to reach a height of 8 metres (refer **Figure 11**).

Based on the detailed assessment in the Landscape and Visual Impact Assessment, the potential impacts are considered satisfactory.

## Glare and glint

The results of the Glint and Glare Impact Assessment are summarised as follows:

- The viewshed analysis identified limited visibility of the Project site from the north, south and east due to ridgelines blocking views from these directions.
- The Project is visible from the ridgeline to the west of the site.
- Existing vegetation, along creek lines, on hill slopes, and surrounding large lot residential areas, substantially screen views to the Project site.
- Glare modelling was undertaken for 116 dwellings and 10 roads within 4 km of the Project site.
- No glare potential was identified in the assessment modelling when the Project utilises a single axis tracking system, including during a (standard) backtracking operation.

- One (1) dwelling within 1km of the Project site and seven (7) dwellings on the ridgeline to the west were identified in the glare modelling with potential to be affected by glare when the Project utilises a Fixed Frame System.
- Dingo Lane, and to a lesser extent Myocum Road and Coolamon Scenic Drive (north), were identified in the modelling as potentially affected by glare when a Fixed Frame System is used.
- A recommendation of this report is to establish vegetated landscape buffers along the Project site's northern and western boundaries as detailed in the Statement of Landscape Intent, to mitigate glare potential identified in the modelling when using a Fixed Frame System.
- Vegetation screening should be established prior to the operation of the Solar Farm, and managed and maintained for the life of the Project, in order to avoid the risk of glare impacting travellers along Dingo Lane, Myocum Road, and Coolamon Scenic Drive.
- Vegetation screening will also mitigate the potential impact of glare on the amenity of the eight (8) residential properties identified in this assessment.

No particular concerns are raised if the single axis tracking system is used. However, until the buffer planting is sufficiently established, there is potential glare impacts to 8 dwellings and to users of Dingo Lane, and to a lesser extent Myocum Road and Coolamon Scenic Drive if the fixed system is used.

In relation to impacts on these roads, modelling indicates that the impacts on Dingo Lane would be during late spring to early autumn (October to April), for approximately 1 hour in the morning (6am to 7am) and approximately 1 hour in the late afternoon (5pm to 6pm).

The primary issue of concern is when the buffer landscaping be sufficiently grown to ensure that road users are not impacted by glare. In this regard, it is suggested that a condition be placed on any consent requiring:

*The solar panels may be either a 'fixed' or 'single axis tracking' format as detailed on the approved plans. The Construction Certificate application is to detail the type of panel to be used.*

*If fixed panels are to be used, they are not to be installed until the buffer planting is of a sufficient height and density to ensure that glare from the panels does not pose a safety risk to drivers. Certification of the suitability of the buffer and compliance with this condition is to be provided by a suitably qualified professional prior to the panels being installed.*

It is noted that the assessment indicates that PV modules are designed to maximise the absorption of solar energy and therefore minimise the extent of solar energy reflected. PV modules have low levels of reflectivity, and the range varies depending on the specific materials, anti-reflective coatings, and angle of incidence. The modelling included the use of smooth glass without anti-reflective coating.

In relation to the potential glare impact to residents of the 8 dwellings from fixed panels, it is noted that without the screening, this would be 'low risk of glare hazard' in the early morning. With screening, the impacts would be mitigated.

As this glare only occurs early morning for a limited time, is low risk of glare hazard, and will be mitigated once screen planting is established, the proposal is acceptable in this regard.

### **Loss of Agricultural Land**

As discussed previously, the land on which the proposal is to be located is identified as Important Farmland under the North Coast Regional Plan 2036 and mapped as State Significant Agricultural Land (SSAL) under the draft SSAL mapping recently exhibited.

The site is adjacent to a resource recovery centre and quarry and is essentially a buffer from these uses to surrounding land uses. The nature of the proposal is that the land could be returned to farming in the long term if the solar farm is decommissioned. A decommissioning plan is recommended as a condition of consent.

The use of mapped important farmland is considered satisfactory in this instance due to the nature of the development (being an important alternative energy use that does not necessarily sterilise the land for farming in the long term), and the location of the site beside other Council assets.

#### 4.7 The suitability of the site for the development

The site is considered suitable for the development as:

- The site is relatively low lying and not located on a prominent elevated area. Visual impacts have been assessed as satisfactory.
- The proposal is to be sited on disturbed cleared land with a minimum 50 metre buffer to vegetation.
- Flooding and bush fire hazards can be suitably managed.
- The site is suitably serviced.
- The proposal does not compromise the potential use of the land for agricultural purposes in the long term if the solar farm is decommissioned.

#### 4.8 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited in accordance with the Council's Community Participation Plan from 8 April 2022 until 5 May 2022.

There were **5** submissions made on the development application:

- 0 For
- 5 Against

The submissions are on the NSW Planning Portal for the Panels consideration.

The applicant made a Government Information (Public Access) Act 2009 (GIPA) application to review the submissions and consequently provided a response to these submissions. The summary and response provided by Planit Consulting, on behalf of the applicant, is provided on the Table below. Following each issue on this Table is the DA planning assessment of the issue raised. The summary generally covers the issues raised. Any additional issues are addressed after the Table.

Objection Theme & Summary*	Planit Consulting's Response
<p><b>Visual impact</b></p> <p>5x submissions were received raising concern regarding the visual impact of the proposal. Key matters include, but are not limited to:</p> <ul style="list-style-type: none"><li>• The rural hinterland vistas provide significant cultural and economic value to the community</li><li>• The topography of the locality results in the solar farm being highly visible, including from the regionally significant tourist route, Coolamon Scenic Drive. This is not in accordance with best practice guidelines and landscaping screens cannot mitigate the topographic relief between the site and Coolamon Scenic Drive (both the road and properties).</li><li>• The Proposal results in a visual 'industrialisation' of the site, particularly in comparison to typical rural pursuits.</li></ul>	<p>Visual impact is identified as the prevailing concern raised in relation to the subject Proposal. In this regard, the Proposal is supported by specialist Visual and Glare Impact Assessments.</p> <p>Each of the specialist assessments outlines a detailed methodology which included:</p> <ul style="list-style-type: none"><li>• identification of the zone of theoretical visibility (ZTV)</li><li>• ground truthing</li><li>• identification of landscape character types, and</li><li>• detailed analysis from sensitive receivers, including from Coolamon Scenic Drive.</li></ul> <p>Ultimately each specialist report concludes that whilst there will be some perceptible change over a restricted area, this small area of change will not alter the fundamental character of the landscape type. Further, the reporting states, at worse, result in a 'slight' change to the view, which is expected to blend in with the background, particularly as screening vegetation continues to mature. In the absence of any flaw being identified in the methodology, the assessment commentary is robust and supports the Proposal.</p> <p>Whilst a finding of unacceptable impact is firmly objected to, should the consent authority not be satisfied with the Visual and Glare Impact Assessments prepared, alternate methodology or</p>

<ul style="list-style-type: none"> <li>• <i>The bulk of the Proposal is obtrusive</i></li> <li>• <i>The Proposal will damage the timeless view provided from Scarrabelotti's lookout</i></li> <li>• <i>The submitted Glare and Visual Assessments do not include and reference Coolamon Scenic Drive, which is a fundamental deficiency.</i></li> <li>• <i>The Proposal is not compliant with the NSW Coastal Management Act 2016 and Byron Development Control Plan 2014 Chapter C3 Visually Prominent Sites, Visually Prominent Development and View Sharing</i></li> <li>• <i>Natural scenic areas are an irreplaceable public asset and must be preserved for future generations</i></li> </ul>	<p><i>design would require consideration. By way of example, revisions could theoretically be made to the Site Layout, namely to fragment the solar array into smaller scales. Whilst this approach would reduce the scale of the infrastructure, to maintain the same overarching energy capacity, a larger footprint, and therefore visual catchment would in turn be created. Such approaches are not desired.</i></p> <p><i>Of note, an assessment of Chapter C3 of the Byron Development Control Plan 2014 was not included within the submitted Statement of Environmental Effects as:</i></p> <ul style="list-style-type: none"> <li>• <i>Chapter C3 applies (as per section C3.1.2) to visually prominent development on a visually prominent site.</i></li> <li>• <i>A visually prominent site is defined as land that is wholly or partly within the coastal zone; and land in Zone RU1 Primary Production, RU2 Rural Landscape with a height of 60m AHD or greater.</i></li> </ul> <p><i>The subject site does not satisfy the definition and as such the Chapter does not apply. Similarly, the subject site is outside of the extent of the NSW Coastal Management Act 2016 and current draft Coastal Design Guideline. Notwithstanding, specialist assessment has identified that the Proposal does not generate unacceptable visual or glare impacts.</i></p> <p><i>The Proponent welcomes appropriate conditions of any consent to establish a suitable planting timeline and landscape maintenance program that does not preclude the start of construction. It is anticipated that landscaping would be pursued as part of early works and site preparation or earlier, minimising the potential timeline where the structures are unscreened. These measures will ensure the successful establishment and management of vegetation to ensure the minimum height and density is achieved to effect the visual mitigation in a timely manner.</i></p>
<p><b>DA Assessment Comments:</b></p> <p>In relation to the visual impacts from Coolamon Scenic Drive and surrounding dwellings, which are the primary areas raised in the submissions, the Landscape and Visual Assessment contains the following conclusions:</p> <ul style="list-style-type: none"> <li>• <i>Coolamon Scenic Drive - the PV arrays and associated infrastructure will be visible from some locations as a change in landscape cover over a small area within the context of a panoramic view. The proposed landscape screen planting along the site's western boundary will screen the Project once established resulting in a 'slight' change to the view in the long term, which is expected to blend with the background.</i></li> <li>• <i>Assessment of the potential impact on views from properties located on the ridgeline to the west of the Project site found a number of properties are likely to have views of the solar farm due to their elevated locations. Views from these properties are panoramic and at approximately 4km from the site, the Project covers a small percentage of the total view. Views from two private properties were assessed on site (RP18 and RP39). In both cases the Project will be visible in the background of extensive panoramic views to the ocean. The proposed screen planting along the western boundary of the Project will substantially mitigate visual impacts from this direction. The magnitude of change in the views from these properties was considered 'low' (a potentially noticeable change to the visual baseline affecting a small part of the view). As the sensitivity of change to the visual amenity of residential properties is</i></li> </ul>	

considered 'high', the resulting impact on effected residential dwellings was considered 'moderate'.

- Landscape screen planting is proposed as a mitigation to potential changes in landscape character and visual amenity as a result of the Project. Vegetation native to the local area will assist in blending with the visual baseline character of the grazing landscape.

Overall, given that the proposal covers a small area in a panoramic view at a distance of approximately 4 kilometres, and that suitable mitigation measures are proposed, the potential impact is considered satisfactory. The extent of potential impact is not considered of a magnitude to justify refusal of the application.

#### **Consistency with zone objectives**

*4x submissions were received raising concern regarding the consistency with the zone objectives. Key matters include, but are not limited to:*

- *The proposal is prohibited in the zone.*
- *The proposal is not consistent with the objectives of the RU2 Rural Landscape zone*
- *The proposal undermines the strategic commitment to protecting important farmland within the North Coast Regional Plan 2036*
- *The proposal is not aligned with the Byron Rural Land Use Strategy 2013*
- *Approval of the Proposal will set a precedent and result in additional DAs being submitted for solar farms within the locality*
- *The subject site is flood prone and contains a number of constraints.*

*Through the submitted assessment, the Proposal is identified as consistent with the objectives of the Rural Landscape zone. Specifically:*

- *The Proposal does not remove land from the natural resource base, rather occupies the rural landscape in a form and use which is compatible with surrounding sustainable primary industry production. The Proposal does not form a barrier to the residue land of the subject site, which comprises existing grazing operations. Whilst agri-voltaics are not formally proposed within the DA, the opportunity is not eliminated or deterred. Notably, extensive agriculture does not require development consent, easing the future facilitation of this use if desired. Finally, the Proposal also involves a development form that allows the land to be returned to primary production in the future if so desired.*
- *The Proposal is supported by a specialist visual impact and glare impact assessments that address the rural landscape character of the land and scenic landscapes. These supporting assessments confirm the suitability of the Proposal, which includes extensive landscape screening.*
- *The Proposal does not involve tourist accommodation, however includes a small-scale tourism initiative, being the viewing deck. The architecture, scale and siting of the viewing deck is considered consistent with the rural character of the locality.*

*Whilst concern was raised that the land use is prohibited within the zone, the permissibility of the Proposal needs to be considered in context of the wider planning framework. Of note, electricity generating works are not specifically listed in any of the zones within the Byron Local Environmental Plan 2014 (Byron LEP 2014), other than the residential and business zones, where they are prohibited. This outcome is consistent with State Government Practice Notes PN 10-001 - Zoning for Infrastructure in LEPs and PN 11-002 - Preparing LEPs using the Standard Instrument: standard zones. Notably, PN 11-002 states:*

*"Councils must give effect to any relevant State or regional planning guidance when determining permitted and prohibited land uses. In addition, where the permissibility of certain land uses is provided for under a relevant SEPP (e.g. Infrastructure SEPP), there is no need to include these types of development in Standard Instrument LEPs."*

*In the context of the above, the Byron LEP 2014 sits below the State Environmental Planning Policy (Transport & Infrastructure) 2021, as opposed to in competition.*

	<p><i>Whilst submissions encouraged other Council owned land to be considered for the purpose of electricity generating works, the permissibility of solar farms of suitable scale (i.e. beyond ancillary to existing uses) outside of the rural, industrial and special use zones is identified as problematic. Although the delivery of the Proposal may generate interest from others to pursue a co-located solar farm/s, this outcome is speculative only at this time, beyond the scope of the subject Proposal and no specific cumulative impact concerns identified within the assessment. Notwithstanding, any further proposals will be subject to their own development assessment process and merit considerations, including cumulative impact.</i></p> <p><i>The identification of the subject site as Regionally Significant Farmland within the Northern Rivers Farmland Protection Project 2005 (NRFPP 2005) and subsequently as Important Farmland within the North Coast Regional Plan 2036 (NCRP 2036) are not identified as prohibitive matters. Specifically, both the NRFPP 2005 and NCRP 2036 are primarily strategic tools to guide strategic plans and growth management strategies, as opposed to specifically guiding individual Development Applications. Notwithstanding, the Proposal is effectively benign post construction, facilitating a small quantity of visitors for educational purposes, and ultimately removeable should demand and desire for additional agricultural pursuits be present. Finally, site attributes, such as topography, prevailing winds and the like are not identified as giving rise to any additional opportunities for conflict.</i></p> <p><i>In this regard, the Proposal is identified as a compatible land use for the locality, as well as its constraints. The Proposal does not undermine existing agriculture, or its capacity, through additional land use conflict. The proponent welcomes appropriate conditions of any consent to prepare a Decommissioning Plan should the operations cease, which would include appropriate testing and soil rehabilitation at that time, if and as required.</i></p>
<p><b>DA Assessment Comments:</b></p> <p>The applicant's assessment of these issues is concurred with. Refusal of the application on this basis is not justified.</p>	
<p><b>Impact to property values and tourist economy</b></p> <p><i>2x submissions were received raising concern in this regard. Key matters include, but are not limited to:</i></p> <ul style="list-style-type: none"> <li><i>• The Proposal will have a profound impact on property values and no suitable mitigation actions or compensation identified.</i></li> <li><i>• Byron's landscapes are a core foundation of its largest industry, being tourism.</i></li> <li><i>• The Proposal will detract from the tourism experience of Tourist Route 28, which leverages the hinterland vistas.</i></li> </ul>	<p><i>Whilst property values are generally not a land use planning consideration, as discussed previously, specialist visual and glare impact assessments have been prepared and support the Proposal having minor to moderate impacts.</i></p> <p><i>It is agreed that Byron's landscapes are highly valued by its community and visitor economy, however the Proposal is not identified as undermining these qualities. Further, the Proposal is considered to reflect positively on Byron's 'clean and green' ethos and branding by taking positive steps towards achieving 'net zero' and addressing climate change.</i></p>

<ul style="list-style-type: none"> <li><i>The world class view is of significant cultural and economic benefit to the community and talks to who we are, clean and green and not industrialised.</i></li> </ul>	
<p>DA Assessment Comments:</p> <p>It is agreed that effect on property values is not a land use planning consideration. Therefore, no determining weight should be given to this issue. Visual and character impacts have been assessed as being satisfactory.</p>	

\* as provided by the applicant's consultant

Other issues raised in submissions included the following:

- Financial implications of the project – project is too costly and would put Council in a net debt to revenue basis and no other projects would be able to be funded.  
Comment: This is an issue for Council rather than as part of the DA assessment process.
- Inconsistency with State Government Guidelines for Large Solar Projects.  
Comment: The document referred to is the 'Large-Scale Solar Energy Guideline' (NSW Government, December 2018). This guideline was prepared for solar energy projects that are State significant development (Section 1.2 Application of the Guidelines). The proposal is not State significant development.
- Precedent – Objectors advise that they are aware that other parties are interested in establishing solar farms in the general locality if this project is approved which will increase impacts.  
Comments: It is not known whether any other applications for solar farms in the area will eventuate. Any future applications would need to be considered on their merits including an assessment of cumulative impacts with the current proposal.

#### 4.9 Public interest

The proposed development is unlikely to prejudice or compromise the public interest or create an undesirable precedent.

There is a public interest benefit to establishing a solar farm to offset Councils power usage.

### 6. DEVELOPER CONTRIBUTIONS

#### 5.1 Water & Sewer Levies

No Section 64 levies will be required.

#### 5.2 Developer Contributions

No Developer Contributions will be required.

### 7. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Disclosure details	Response
Has a Disclosure Statement been received in relation to this application? If Yes, Provide Disclosure Statement register reference: 91.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

## **8. CONCLUSION**

The DA proposes Electricity Generating Works (5x Megawatt Solar Farm).

The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development. The application appropriately addresses the relevant constraints applying to the site, and is recommended for approval subject to the conditions listed in the Recommendation of this Report below.

## **9. RECOMMENDATION**

It is recommended that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2022.134.1 for Electricity Generating Works (5x Megawatt Solar Farm), be granted consent subject to the Conditions attached (Appendix A) and the plan set (Appendix B).