

NORTHERN JOINT REGIONAL PLANNING PANEL

Meeting held at Boggabilla Town and Country Club on Wednesday 7 September 2016 at 10:30 am

Panel Members: Garry West (chair), Pamela Westing, Stephen Gow, Claudia Gall and Sue Price

Apologies: None - Declarations of Interest: Claudia Gall advised she was present at the Moree Plains Shire Council meeting when the Assessment report was tabled for information. The meeting did not consider the merits of the development.

Determination and Statement of Reasons

2016NTH021 – Moree Plains Shire Council – DA2016/44 [at Kentucky Road, Boggabilla] as described in Schedule 1.

Date of determination: 7 September 2016

Decision:

The panel determined to approve the development application as described in Schedule 1 pursuant to section 80 of the *Environmental Planning and Assessment Act 1979*.

Panel consideration:

The panel considered: the matters listed at item 6 as addressed in the Council Assessment Report, the material listed at item 7 and the material presented at meetings and the matters observed at site inspections listed at item 8 in Schedule 1.

Reasons for the panel decision:

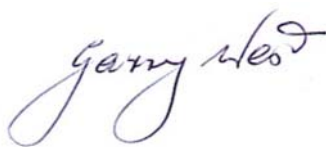




SEPP 44: The site is not mapped as potential koala habitat; SEPP 55: There is no evidence that the site is contaminated; The proposed facility is consistent with the relevant clauses of the Infrastructure SEPP and the LEP requirements as to satisfaction of consistency with zone objectives.

The panel adopted the assessment of those matters in the Council Assessment Report.

The principal reason for the panel decision was that the site is considered suitable for the proposed development subject to the conditions contained in Schedule 2. The modified conditions were agreed to address concerns raised in regard to flooding, debris, vegetation management as well as construction and operational management issues.

Conditions: The development application was approved subject to the conditions in Appendix A of the Council Assessment Report as amended at the meeting. The conditions were amended to remove duplicated conditions; to define the probable maximum flood level for the development (PMF); to require all sensitive equipment to be located a minimum above the PMF; to require a site environmental management plan for both construction and operational issues for endorsement by Council; to require a review of the potential impacts of debris from flood events and to require the fencing to be modified if necessary; and to define the operational noise limits at nearby residential receivers. Approved conditions are in Schedule 2

Panel members:

 Garry West (chair)	 Pamela Westing	 Stephen Gow
 Claudia Gall	 Sue Price	

NORTHERN JOINT REGIONAL PLANNING PANEL

SCHEDULE 1	
1	JRPP Reference – LGA- Council Reference: 2016NTH021 – Moree Plains Shire Council DA2016/44
2	Proposed development: construction of a 3.6mw solar farm consisting of 240 PV modules, 3 inverter stations, 2 MVS sub-station, overhead 22kV feeder line and 1.8m chain wire fencing, and a 3 lot subdivision.
3	Street address: Lot 103, Kentucky Lane, Boggabilla
4	Applicant: Michael Mailler Owner: Michael and Barbara Mailler
5	Type of Regional development: Private infrastructure and community facilities with a capital investment value of more than \$5 million (electricity generating works)
6	Relevant mandatory considerations <ul style="list-style-type: none"> • State Environmental Planning Policy No. 44 – Koala Habitat Protection • State Environmental Planning Policy No. 55 – Remediation of Land • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy (State and Regional Development) 2011 • Moree Plains Local Environmental Plan 2011 • Moree Plains Development Control Plan 2013 • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality. • The suitability of the site for the development. • Any submissions made in accordance with the EPA Act or EPA Regulation. • The public interest, including the principles of ecologically sustainable development.
7	Material considered by the panel: Council Assessment Report dated 22 August 2016 Written submissions during public exhibition: two (2) Letter from Moree Plains Shire Council, addressing issues raised by panel in response to Council Submission by General Manager, Moree Plains Shire Council Assessment Report, dated 29 August 2016. Verbal submissions at the panel meeting: Support- 1; Against- 1; On behalf of the applicant- 1
8	Meetings and site inspections by the panel: Site Visit on 7 September 2016
9	Council recommendation: Approval
10	Approved conditions: As attached in Schedule 2

NORTHERN JOINT REGIONAL PLANNING PANEL

SCHEDULE 2

**SCHEDULE B
ADMINISTRATIVE CONDITIONS****Development Description**

1. Except as amended by the conditions of this consent, development consent is granted only to carrying out the development as described in Schedule A.

Development in Accordance with Plans

2. The Applicant shall carry out the development generally in accordance with the:
- a) Statement of Environment Effects dated June 2016; and
 - b) Environmental Planning and Assessment Act and Environmental Planning Instruments (where applicable), the Local Government Act, the Plumbing and Drainage Act and other applicable statutory codes or legislation
 - c) Following drawings, except for:
 - i) Any modifications which are Exempt' or Complying Development;
 - ii) Otherwise provided by the conditions of this consent.

Drawings prepared by SMK Consultants			
Drawing No.	Revision	Name of Plan	Date
	A	Proposed Subdivision	17-06-2016

Inconsistency Between Documents

3. If there is any inconsistency between the plans and documentation referred to above, the most recent document shall prevail to the extent of the inconsistency. However, conditions of this approval prevail to the extent of any inconsistency. Where there is an inconsistency between approved elevations and plans, the elevations prevail.

Limits of Approval

4. This consent will lapse five years from the date of consent unless the works associated with the development have physically commenced.

Probable Maximum Flood Level

5. For the purposes of this consent the Probable Maximum Flood Level (PMF) is defined to be 216.45.

**SCHEDULE C
PERFORMANCE CONDITIONS****BEFORE COMMENCEMENT OF WORKS****Notification to neighbours**

6. The person having the benefit of this development consent must give at least two days' notice in writing of the intention to commence the works to the owner or occupier of each dwelling that is situated within 20m of the lot on which the works will be carried out.

(Reason: To notify the surrounding residences of the approved development)

Construction certificate required

7. Prior to commencement of any works, it is necessary to obtain a Construction Certificate. A Construction Certificate may be issued by Council or an Accredited Certifier. Plans submitted with the Construction Certificate are to be amended to incorporate the conditions of the development consent. A Construction Certificate issued by a Private Accredited Certifier is to be deposited with Council at least 48 hours prior to the commencement of any works.

(Reason: Statutory requirement)

Utility Services

8. Prior to the commencement of work the Applicant is to negotiate with the utility authorities in connection with the relocation and/or adjustment of the services affected by the development. Any necessary alterations to, or relocations of, utility services must be carried out at no cost to the council.

(Reason: Protection of infrastructure)

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Section 94A Development Contributions

9. In accordance with Division 6 of Part 4 of the Act, the Applicant shall pay the following section 94A monetary contributions:
- \$60,000.00, being 1% of the cost of carrying out the development as determined by the Council in accordance with Act and Regulations
 - The contribution shall be paid in the form of cash or bank cheque, made out to Moree Plains Shire Council. Evidence of the payment to Council shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate.
 - The contributions will be adjusted in accordance with the requirements of the Moree Plains Development Contributions Plan 2006.

(Reason: To retain a level of service for the existing population and to provide the same level of service to the population resulting from new developments)

Prescribed conditions of development consent

10. In accordance with Division 8A of Part 6 of the Act, the following conditions are prescribed for development that involves building work:
- That the work must be carried out in accordance with the requirements of the Building Code of Australia,
 - In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

(Reason: Statutory requirement)

Long Service Levy

11. For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.

(Reason: Statutory requirement)

Driveway Access Application

12. The Applicant shall lodge a Driveway Access Application with Council prior to the issue of a Construction Certificate. The design and construction of the driveway access shall comply with Council's specification in the Driveway Access Policy.

(Reason: To ensure appropriate access to the site can be achieved)

Appropriate building work plans and specifications

13. The Applicant shall provide the Certifying Authority with specifications for the development:
- a) That describe the construction and materials of which the building is to be built and the method of drainage, sewerage and water supply, and
 - b) Design drawings for all structural elements of the building including connection details and member specifications, and
 - c) Design drawings for the roof and wall frames, including a bracing and tie down schedule showing all calculations, kN ratings and wind classification., and
 - d) Copies of any compliance certificate to be relied on.

(Reason: Structural safety)

Footing System Requirements - General

14. The Applicant shall provide the Certifying Authority with detailed design drawings for the footing system certified by a practising structural engineer as compliant with the relevant sections of Part 3.2 'Footings and Slabs' of the BCA prior to the issue of a Construction Certificate.

The footing system shall be designed for an 'E-D' (Extremely reactive clay sites which can experience extreme deep-seated ground movement from moisture changes) class site in accordance with Part 3.2.4 'Site classification' of the BCA unless accompanied by a detailed Site Classification Report from an appropriately qualified and accredited professional.

(Reason: Structural safety)

Structural Adequacy Certificate – high hazard flood liable land

15. The Applicant shall provide the Certifying Authority with certification from a practicing structural or civil engineer with experience in flooding that the proposed development can withstand the expected flood velocities, including scour, debris and buoyancy forces prior to the issue of a Construction Certificate.

(Reason: Structural safety and floodplain risk management)

16. All sensitive equipment and the solar panels shall be located a minimum of 350mm above the PMF.

(Reason: Floodplain risk management)

Flood compatible materials

17. Materials used for structural purposes and located below the PMF must be capable of resisting damage, deterioration, corrosion or decay taking into account the likely time the material would be in contact with flood water and the likely time it would take for the material to subsequently dry out.

(Reason: Floodplain risk management)

Note: Materials used for structural purposes include loadbearing columns, bracing members, structural connections, fasteners, wall framing members and the like.

18. A site environmental management plan (SEMP) shall be submitted to Council for endorsement prior to the issue of a Construction Certificate. The SEMP shall address, at minimum, the following issues:

Construction:

- Specific noise levels to be observed and procedures in the event of noise complaints
- Disposal of wastes (noting any potential limitations on cross-border waste disposal)
- Source and type of any imported fill
- Dust management
- Erosion and sedimentation controls

Operation:

- Noise management
- Dust management
- Weed and vermin management
- Land management including vegetation management
- Flooding and debris issues
- Proposed methods of remediation at the cessation of the development

(Reason: Environmental protection)

Note: You are advised that anecdotal advice from local residents indicates that debris movements associated with major floods can be very significant, and may include large logs, trees and the like. The 2011 flood saw very high levels of debris coming down the river system.

19. The potential impacts of the proposed fence, if it were impacted by substantial debris, is to be reviewed to assess the potential impacts on the modelled flood levels. In this regard, should a measurable impact be determined, the style of fencing shall be modified to avoid any measurable impacts on flood levels.

(Reason: Floodplain risk management)

DURING CONSTRUCTION

Erosion and Sediment Control

20. Run-off and erosion controls must be effectively maintained until the site has been stabilised and landscaped.

(Reason: Environmental protection)

Hours of work

21. The hours of construction, including the delivery of materials to and from the Subject Site, shall be restricted as follows:
- a) Between 7:00 am and 6:00 pm, Mondays to Fridays inclusive;
 - b) Between 8:00 am and 1:00 pm, Saturdays;
 - c) No work on Sundays and public holidays.
 - d) Works may be undertaken outside these hours where:
 - i) The delivery of materials is required outside these hours by the Police or other authorities;
 - ii) It is required in an emergency to avoid the loss of life, damage to property and/or to prevent environmental harm;
 - iii) Variation is approved in advance in writing by Council.

(Reason: Safety and amenity)

Toilet facilities

22. Toilet facilities must be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the work site. Each toilet provided must:
- a) Be a standard flushing toilet, connected to a public sewer, or
 - b) If connection to a public sewer is not available, to an on-site effluent disposal system approved by the council, or
 - c) A portable toilet.

(Reason: Health and amenity)

Approved Plans to be on-site

23. A copy of the approved and certified plans, specifications and documents incorporating conditions of approval and certification shall be kept on the Subject Site at all times and shall be readily available for perusal by any officer of Council or the PCA.

(Reason: To ensure compliance with approved plans)

Site Notice

24. A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- a) Showing the name, address and telephone number of the principal certifying authority for the work, and
 - b) Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - c) Stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed

(Reason: Statutory requirement)

Maintenance of site

25.

- a) Building materials and equipment must be stored wholly within the work site unless an approval to store them elsewhere is held.
- b) Waste materials must be disposed of at a waste management facility.
- c) The work site must be left clear of waste and debris at the completion of the works.

(Reason: To ensure that building and any other site works are undertaken in a manner which will be non-disruptive to the local area.)

Source and content of imported fill

26. The person responsible for importing fill to the site shall provide validation by way of a statutory declaration confirming the source and content of the fill to ensure that it is suitable for the proposed land use and free from contamination. Details are to be provided to Council prior to the pouring of any slab or footings.

(Reason: To ensure that imported fill is of an acceptable standard for environmental protection purposes)

Requirements for General Utilities – flood hazard areas

27.

- a) Utilities and related equipment must not be placed below the PMF unless they have been designed specifically to cope with flood water inundation.
- b) Buried systems must be placed at a depth sufficient to prevent damage due to scour and erosion during the PMF
- c) Exposed systems must be designed to withstand the flood related actions (buoyancy, flow, debris and wave).

(Reason: Floodplain risk management)

Requirements for Electrical Utilities – flood hazard areas

28. Unless the electrical supply authority determines otherwise-

- a) Electrical switches must be placed above the PMF
- b) Electrical conduits and cables installed below the PMF must be waterproofed or placed in waterproofed enclosures.

(Reason: Floodplain risk management)

Requirements for Mechanical and HVAC systems, tanks and the like – flood hazard areas

29. Ductwork, tanks, gas storage cylinders and the like must be placed above the PMF or designed, constructed, installed and anchored to resist all flood-related actions and other actions during the PMF with appropriate load factors as given in the relevant sections of the ABCB 'Standard for Construction of Buildings in Flood Hazard Areas'. Potential buoyancy and other flood related actions on the empty tank during the PMF condition must be considered.

(Reason: Floodplain risk management)

Traffic Control Plan

30. Council's standard Traffic Control Plan (TCP) relating to construction work in the Road Reserve shall be adopted at all times during construction work in the Road Reserve.

(Reason: To ensure safe vehicular and pedestrian access around the site)

BEFORE OCCUPATION CERTIFICATE / COMMENCEMENT OF USE/ SUBDIVISION CERTIFICATE

Occupation certificate required

31. Occupation or use of the whole or any part of a new building shall not commence unless an occupation certificate has been issued by the Certifying Authority. The final occupation certificate shall not be issued until such time as all relevant conditions of the development consent have been complied with.

(Reason: Statutory requirement)

Road Addressing

32. The applicant shall apply to Council for written confirmation of the allocated road address(s) for the development. These allocated road address(s) shall be displayed at the property in accordance with the requirements of AS/NZS 4819 – Geographic information – Rural and urban addressing.

(Reason: Statutory requirement)

Driveway Access

33. The constructed driveway(s) shall be inspected at the required intervals specified in Council's Driveway Access Policy and endorsed by Council's Engineering Department prior to the issue of a Final Occupation Certificate.

(Reason: To ensure compliance with the approved design)

ONGOING USE OF THE DEVELOPMENT / LAND

Loading and Unloading

34. All loading and unloading of service vehicles in connection with the use of the premises shall be carried out wholly within the Subject Site at all times.

(Reason: Safety and amenity)

External Lighting

35. External Lighting shall comply with AS4282: 1997 Control of the Obtrusive Effects of Outdoor Lighting.

(Reason: Neighbourhood amenity)

Obligation to minimise harm to the environment

36. The Applicant shall implement all reasonable and feasible measures to prevent and/or minimise any harm to the environment that may result from the construction, operation or decommissioning of the Development.

(Reason: Environmental protection)

Operation of plant and equipment

37. The Applicant shall ensure that all plant and equipment used for the Development is:

- a) Maintained in a proper and efficient condition; and
- b) Operated in a proper and efficient manner.

(Reason: Neighbourhood amenity)

Dust Management

38. The Applicant shall carry out all reasonable and feasible measures to minimise dust generated by the Development.

(Reason: Environmental protection and neighbourhood amenity)

Operational noise

The development shall not generate noise, when measured over a 15 minute period (LAEQ 15min), which exceeds the following noise levels at the most affected nearby residential receivers:

- 65dba, during daylight hours (7.00am to 6.00pm Monday to Saturday; or 8.00am to 6.00pm on Sundays and Public Holidays);
- 55 dba, during evening hours (6.00 to 10.00pm);
- 50dba, during night hours (10.00pm to 7.00am Monday to Saturday, and 10.00pm to 8.00am Sundays & Public Holidays).

(Reason: Neighbourhood amenity)

Pest, Vermin & Noxious Weed Management

39. The Applicant shall:

- a) Implement suitable measures to manage pests, vermin and declared noxious weeds on site; and
- b) Inspect the site on a regular basis to ensure that these measures are working effectively, and that pests, vermin or noxious weeds are not present on site in sufficient numbers to pose an environmental hazard, or cause the loss of amenity in surrounding area.

Note: For the purposes of this condition, noxious weeds are those species subject to an order declared under the Noxious Weed Act 1993.

(Reason: Environmental protection)

39. The applicant shall ensure that the development will not result in the diversion of overland surface waters onto adjoining properties and where necessary shall construct appropriate surface drainage systems that connect to Council's storm water system.

(Reason: Health and amenity)

BEFORE SUBDIVISION CERTIFICATE

40. A plan of survey and three (3) copies, prepared by a Registered Surveyor, are to be submitted for endorsement by Council with the application for a **Subdivision Certificate**.

(Reason: To enable the linen plan to be legally made.)

41. All work required by the conditions of this consent must be completed prior to issue of the Subdivision Certificate.

(Reason: To ensure the requirements of the Environmental Planning & Assessment Act 1979 are satisfied.)

ADVISORY NOTES

Appeals

1. The Applicant has the right to appeal to the Land and Environment Court in the manner set out in the Environmental Planning and Assessment Act, 1979 and the Environmental Planning and Assessment Regulation, 2000 (as amended).

Other Approvals and Permits

2. The Applicant is solely responsible for obtaining any necessary permits including crane permits, road opening permits, hoarding or scaffolding permits, footpath occupation permits and/or any other approvals under Section 68 (Approvals) of the Local Government Act, 1993 or Section 138 of the Roads Act, 1993.

Responsibility for Other Consents / Agreements

3. The Applicant is solely responsible for ensuring that all additional consents and agreements are obtained from other authorities, as relevant.

Disability Discrimination Act

4. This application has been assessed in accordance with the Environmental Planning and Assessment Act 1979. No guarantee is given that the proposal complies with the Disability Discrimination Act 1992. The Applicant/owner is responsible to ensure compliance with this and other anti-discrimination legislation. The Disability Discrimination Act 1992 covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which references AS 1428.1 - Design for Access and Mobility. AS1428 Parts 2, 3 & 4 provides the most comprehensive technical guidance under the Disability Discrimination Act 1992 currently available in Australia.

Commonwealth Environment Protection and Biodiversity Conservation Act 1999

5. The Commonwealth Environment Protection and Biodiversity Conservation Act 1999 provides that a person must not take an action which has, will have, or is likely to have a significant impact on a matter of national environmental significance (NES) matter; or Commonwealth land, without an approval from the Commonwealth Environment Minister. This application has been assessed in accordance with the New South Wales Environmental Planning & Assessment Act, 1979. The determination of this assessment has not involved any assessment of the application of the Commonwealth legislation. It is the Applicant's responsibility to consult the Department of Sustainability, Environment, Water, Population and Communities to determine the need or otherwise for Commonwealth approval and you should not construe this grant of approval as notification to you that the Commonwealth Act does not have application. The Commonwealth Act may have application and you should obtain advice about this matter. There are severe penalties for non-compliance with the Commonwealth legislation.

Site Contamination Issues During Construction

6. Should any new information come to light during demolition or construction works which has the potential to alter previous conclusions about site contamination then the Applicant must be immediately notified and works must cease. Works must not recommence on site until the consultation is made with the Department.

Discovery of Aboriginal Heritage

7. If Aboriginal objects are uncovered during work, excavation or disturbance of the area, work must stop immediately. The Environmental Protection and Regulation Group of the OEHL is to be contacted. Aboriginal archaeological excavation must be co-ordinated with any proposed investigation of non-indigenous material.

Insurance Requirements (not applicable to Crown Developments)

8. No building works shall be commenced and no Council inspection will be carried out on the subject building works until evidence of compliance with Part 6 of the Home Building Act, 1989, has been provided to Council in the form of a Certificate of Insurance provided for by the above Act.

Covenants

9. It is possible that a covenant may affect the land which is the subject of this consent. The grant of this consent does not necessarily override that covenant. You should seek legal advice regarding the effect of any covenants which affect the land.

Right of Review by Council (not applicable to Crown Developments)

10. Under Section 82A of the Environmental Planning and Assessment Act, 1979 an applicant may request the Council to review its determination except where it relates to a complying development certificate, designated development or integrated development.

Dial Before you Dig

11. Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial before you dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

Telecommunications Act 1997 (Commonwealth)

12. Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on Phone Number 1800810443.

General

13. Development Consent does not lapse if the approved use has actually commenced or the proposed work is physically commenced before the lapse date except where a condition specifies a limit to the duration of the consent.
14. Where construction work is proposed, the granting of development consent is the first step in the process. Before construction work may commence, a Construction Certificate must be obtained from Council or an accredited certifier.
15. Any alteration to the drawings and/or documentation shall be submitted for the approval of Council. Such alterations may require the lodgement of an application to amend the consent under s96 of the Act or a fresh development application. No works other than those approved under this consent shall be carried out without the prior approval of Council.