

<b>DATE OF DETERMINATION</b>	Tuesday, 14 August 2018
<b>PANEL MEMBERS</b>	Garry West (Chair), Pamela Westing, Stephen Gow, Stephen Ritchie and Sue Price
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	None

Public meeting held at Moree Plains Shire Council on 14 August 2018, opened at 2.30pm and closed at 4.15pm.

#### **MATTER DETERMINED**

2018NTH013 – Moree - DA2018/40 at Lot 1 DP1236244 Kentucky Road, Boggabilla (as described in Schedule 1)

#### **PANEL CONSIDERATION AND DECISION**

The Panel considered: the matters listed at item 6, 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.

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

#### **REASONS FOR THE DECISION**






- The proposal is in the locality of a previously approved (and now constructed) solar farm and is in the proximity to Essential Energy's 22kv network;
- The proposed development is considered to be generally compatible with its surrounds and provides for diversification of land uses on the property;
- The flood heights and flow velocities at the site have been considered and they are deemed based on modelling not to impact on the proposed infrastructure and adjacent lands;
- The proposed drainage channels to the east and west of the proposed development will better facilitate overland flows to the south away from the Macintyre River channel;
- The security fence designed will be modified to facilitate floodwater flows and flood debris, if necessary; and
- SEPP 55 Remediation of Land – previous use of the site was for agricultural activities and there is no evidence to suggest that the site is or might be contaminated to a level that would impact on the proposed use.

#### **CONDITIONS**

The development application was approved subject to the revised conditions supplied by Council on 10 August 2018 with the following amendments.

- Condition 2 was amended to update the SEE and attachments;

- Condition 12 was amended to require Council and the Applicant to determine the Probable Maximum Flood (PMF) for the site;
- Condition 14 was amended to have regard to the outcome of Council's peer review;
- Condition 15 was amended to clarify representation of the Kentucky Road Users' Group; and
- Delete proposed condition 27 deleting the requirement for the payment of a remediation bond.

PANEL MEMBERS	
 Garry West (Chair)	 Pamela Westing
 Stephen Gow	 Stephen Ritchie
 Sue Price	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2018NTH013 – Moree - DA2018/40
2	PROPOSED DEVELOPMENT	Erection of a 4.99MW Solar Farm
3	STREET ADDRESS	Lot 1 DP1236244 Kentucky Road, Boggabilla
4	APPLICANT/OWNER	Kinelli Pty Ltd Michael Kendall Mailler and Barbara Mildred Mailler
5	TYPE OF REGIONAL DEVELOPMENT	Private infrastructure and community facilities over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>Environmental planning instruments: <ul style="list-style-type: none"> <li>State Environmental Planning Policy No 44 – Koala Habitat Protection</li> <li>State Environmental Planning Policy No 55 – Remediation of Land</li> <li>State Environmental Planning Policy (Infrastructure) 2007</li> <li>State Environmental Planning Policy (Rural Lands) 2008</li> <li>State Environmental Planning Policy (State and Regional Development) 2011</li> <li>New England North West Regional Plan 2036</li> <li>Moree Plains Local Environmental Plan 2011</li> <li>Upper North-West Regional Economic Development Strategy</li> </ul> </li> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans: <ul style="list-style-type: none"> <li>Moree Plains Development Control Plan 2013</li> </ul> </li> <li>Planning agreements: Nil</li> <li>Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil</li> <li>Coastal zone management plan: Nil</li> <li>The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>The suitability of the site for the development</li> <li>Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>Council assessment report: 7 August 2018</li> <li>Written submissions during public exhibition: eight (8)</li> <li>Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>Support – NIL</li> <li>Object – Graeme Scheu, Mayor Goondiwindi Regional Council; Rob Tweedy and Robert Reardon.</li> <li>On behalf of the applicant – Peter Mailler, Applicant and Hayley Greenham, Planner SMK Consultants.</li> </ul> </li> </ul>
8	MEETINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>Site inspection on 14 August 2018 and briefing on bus enroute to and from the sit inspection. Attendees: <ul style="list-style-type: none"> <li>Panel members: Garry West (Chair), Pamela Westing, Stephen Gow, Stephen Ritchie and Sue Price</li> <li>Council assessment staff: Murray Amos, Planner</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Revised conditions supplied by Council on 14 August 2018 and amended at the meeting and attached.

## 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 and all associated supplied documents dated July 2018; 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 any modifications:
    - i) 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
		Site Plan	

#### 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 any inconsistency. However, conditions of this approval prevail over endorsed plans and documents. 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.

### SCHEDULE C PERFORMANCE CONDITIONS

#### BEFORE COMMENCEMENT OF WORKS

#### Construction certificate required

5. 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 all relevant 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

6. 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 7.12 Development Contributions

7. In accordance with Division 7.1 of Part 7 of the Act, the Applicant shall pay the following section 7.12 (formerly 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 contribute to the overall level of public services needed as a result of new developments)*

### Prescribed conditions of development consent

8. In accordance with 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 National Construction Code,
  - 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

9. 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)*

### Footing System Requirements - General

10. 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

11. The Applicant shall provide the Certifying Authority with certification from a practicing structural or civil engineer with relevant 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)*

### Flood compatible materials

12. Materials used for structural and operational 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.

In this regard, the PMF for the site is to be determined between the Council and the Applicant by reference to the most recent relevant flood information/studies; and used for the purposes of this condition and condition 22.

*(Reason: Floodplain risk management)*

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

#### Site Environmental Management Plan

13. 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:

- a) Construction:
  - i) Disposal of wastes (noting any potential limitations on cross-border waste disposal)
  - ii) Source and type of any imported fill
  - iii) Dust management
  - iv) Erosion and sedimentation controls
- b) Operation:
  - i) Noise management
  - ii) Dust management
  - iii) Weed and vermin management
  - iv) Land management including vegetation management
  - v) Flooding and debris issues
  - vi) Proposed methods of remediation at the cessation of the development
- c) Post-Development
  - i. Monitoring and mitigation measures for future rehabilitation remedial actions

*(Reason: Environmental protection)*

#### Fence Design

14. The security fence design shall incorporate the following features UNLESS Council's peer review consultant deems them to be unnecessary:

- The installation of fencing configured and designed to facilitate debris movement in the event of a major flood.

Details, if required, shall be submitted to and approved by the Certifying Authority prior to the issue of a Construction Certificate.

*Note: Council's consultant is expected to provide an opinion by close of business 17th August 2018. (Reason: Floodplain risk management)*

#### Public road condition

##### Kentucky Road Condition

15.

- a) The applicant shall cause to be undertaken a dilapidation report on Kentucky Road prior to the issue of a Construction Certificate. The dilapidation report shall be produced by an independent road assessor, agreed upon by the proponent and Council. A representative of the Kentucky Road User's Group, mutually agreeable to the group and the Applicant, shall be invited to attend the inspection.
- b) The proponent shall cause any required works needed to allow construction access to be undertaken prior to construction commencement. Works to be constructed are to facilitate construction vehicle access only, if this is necessary.
- c) Following construction, should the independent road assessor determine that the road has deteriorated due to construction activity, the proponent shall cause works to be done to bring the road to the same or better standard than the pre-construction standard.
- d) The applicant shall contact NSW Crown Lands and the relevant private landowners for approval to conduct the works,
- e) Any works needed are to be at no cost to the Council.

*(Reason: Ensure that road conditions are not adversely affected by construction activity)*

*Notes:*

1. Council can provide advice on dilapidation methodologies, as well as work health and safety systems to ensure works are undertaken in a manner consistent with industry standards.
2. Council's identified minimum standard for an unsealed road is a natural materials surface formed and graded including side drainage. Council has not identified a minimum standard for the proposed works.
3. Council notes the contribution to the Kentucky Road User's Group in the sum of \$25,000.
4. Should any legal impediment occur to the implementation of this condition, it is noted that the matter can be reconsidered under Section 82A of the EPA Act.

## DURING CONSTRUCTION

### Erosion and Sediment Control

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

*(Reason: Environmental protection)*

### Toilet facilities

17. Toilet facilities must be provided on the work site during construction 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

18. 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

19. 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

20.
  - 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

21. 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 Flood Proofing

22. Details shall be provided with the Construction Certificate to demonstrate that:
- a) Equipment is not being placed below the PMF unless it has been designed specifically to cope with flood water inundation, and would cause no damage to the grid if inundated;
  - b) Buried systems must be placed at a depth sufficient to prevent damage due to scour and erosion during the PMF; and
  - 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

23. Construction methods and flood-proofing shall be to the satisfaction of the electrical utility. Evidence of this is to be supplied prior to issue of the Construction Certificate.

*(Reason: Floodplain risk management)*

## BEFORE OCCUPATION CERTIFICATE

Occupation certificate required

24. 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

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

*(Reason: Statutory requirement)*

Public Road Condition

26. The applicant shall be responsible for restoring Kentucky Road to its previous condition or better following the construction of the proposed solar farm development. Restoration works require the concurrence of NSW Crown Lands prior to commencement.

*(Reason: Public road maintenance)*

## ONGOING USE OF THE DEVELOPMENT / LAND

Loading and Unloading

27. 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)*

Obligation to minimise harm to the environment

28. 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

29. 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

30. The Applicant shall carry out all reasonable and feasible measures to minimise dust generated during the construction, operation and decommissioning of the Development.

*(Reason: Environmental protection and neighbourhood amenity)*

Pest, Vermin & Noxious Weed Management

31. 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, including grassfire 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)*

Overland water flows

32. 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.

*(Reason: Health and amenity)*

Bushfire Protection

33. The development shall maintain a 10m APZ, which will comprise of 10m of Inner Protection Area (IPA).

The APZ shall be maintained to ensure fuel load is minimised, through measures such as mowing and spraying of grasses and weeds. The APZ must be maintained within the boundaries of the development property (i.e. within Lot 1, DP 1236244) in accordance with the NSW Rural Fire Service document 'Planning for Bush Fire Protection 2006'.

*(Reason: Protection from bushfire)*

## AT COMPLETION OF USE OF THE DEVELOPMENT / LAND

Post-development remediation

34. As part of the Site Environmental Management Plan (SEMP), a Rehabilitation and Decommissioning/Closure Plan must be prepared and submitted for approval by Council. The plan must include rehabilitation objectives and strategies, including:

- a. Description of the design criteria of the final landuse and landform;
- b. Indicators to guide the return of the land back to agricultural production;
- c. Expected timeline for the rehabilitation program;
- d. Management controls regarding decommissioning and removal of all solar arrays,
- e. Above and below ground infrastructure and any structures or infrastructure relating to the solar energy works, upon cease of solar energy works;
- f. A commitment to remove all solar farm infrastructure including materials located below the land surface.

All works shall follow the same management principles outlined in the SEMP.

*(Reason: Site remediation)*