

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	<b>2018NTH014</b>
<b>DA Number</b>	<b>DA2018/39</b>
<b>LGA</b>	<b>Moree Plains Shire Council</b>
<b>Proposed Development</b>	<b>Erection of a 4.99MW Solar Farm</b>
<b>Street Address</b>	<b>9339 Gwydir Highway BULLARAH LOT: 21 DP: 750514</b>
<b>Applicant/Owner</b>	Kinelli Pty Ltd Ms N L Dallimore, Miss M C Kendall & Mr G A Boland
<b>Date of DA lodgement</b>	30 April 2018
<b>Number of Submissions</b>	<b>0</b>
<b>Recommendation</b>	<b>Approval</b>
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011</b>	<b>Private infrastructure for the purpose of electricity generating works with a capital investment value of more than \$5 million.</b>
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <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>• Moree Plains Development Control Plan 2013</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Location plan</li> <li>• Site plan</li> <li>• Statement of Environmental Effects</li> <li>• Submission from Roads &amp; Maritime Services</li> <li>• Draft conditions of approval</li> </ul>
<b>Report prepared by</b>	<b>Murray Amos</b>
<b>Report date</b>	

### 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**

### 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)?

**No**

### Conditions

Have draft conditions been provided to the applicant for comment?

**Yes**

## EXECUTIVE SUMMARY

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### Description of Proposal

The development encompasses the construction and operation of a solar farm with a maximum transfer capacity 4.999 MW AC.

The development will consist of:

- Two solar arrays, 3 blocks wide (east-west) and 8 blocks long (north-south). Each block is made up of 760 PV modules arranged 19 PV modules long (north-south) and 40 PV modules wide (east-west). The PV module will be a Global Tier 1 panel.
- 2 combined inverter/transformer stations.
- 8 battery storage containers with a combined storage capacity of 20 MWh (2.5 MWh per container).
- Overhead 22kV line with MV pole mounted recloser.
- 1.8m surrounding chain link fence with 2 x 6m double leaf gate.

The PV modules will be mounted on piers with a minimum height above ground level of 950mm. Two inverter stations convert DC power into AC power and feed into the attached substations. The substations will interface between the solar farm and Essential Energy's 22kV distribution network. The high voltage switch infrastructure will be controlled through a data communications and monitoring network allowing the farm to be managed during periods of peak demand to better suit Essential Energy's network requirements.

The proposal would provide an additional revenue stream for the land owners to supplement their existing agricultural operations.

The development is for electricity generating infrastructure by a private company and has a capital investment value of \$6 million. Consequently the Development Application is required to be determined by the Joint Regional Planning Panel (JRPP) as the development is for infrastructure undertaken by a private developer with a capital investment value over \$5 million, as outlined in Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011.

### Site Description & Surrounding Land Uses

The subject site has been used historically for agricultural cropping purposes and does not feature any trees or shrubs.

The surrounding locality is characterised by cropland to the east and south, with grazing and cropping land to the north and west, and riparian vegetation further to the south. The nearest sensitive receptor (dwelling) is located approximately 4.5km from the development site.

The development footprint will cover approximately 8.13 hectares and will be restricted to land which has previously been cleared for crop production.

The site has been selected for solar development due partly to its close proximity to the Wenna substation. This substation is located some 1.7km west of the subject site.

## **Permissability**

The proposed solar farm is properly categorised as “electricity generating works” under the LEP.

“Electricity generating works” is defined as follows:

“...means a building or place used for the purpose of making or generating electricity”.

The subject site is located within the RU1 – Primary Production Zone (RU1 Zone). Under the RU1 Zone, within the LEP, “electricity generating works” are prohibited. The permissibility arises from the SEPP Infrastructure 2007, Division 4 (Electricity generating works or solar energy systems), Clause 34 (Development permitted with consent) which states the following:

*34(1) Development for the purpose of electricity generating works may be carried out by any person with consent on any land in a prescribed rural, industrial or special use zone.*

The RU1 Zone is a prescribed rural zone.

## **Recommendation**

The proposed development is considered to be generally compatible with its surrounds and provides for an additional revenue stream for the land owners.

As a result of this assessment, the proposed development is recommended for conditional consent. Appendix 1 to this report contains the proposed conditions of consent.

### **Recommendation:**

- a) **That having regard to the assessment of the application, DA2018/39 (JRPP Ref. 2018NTH014) be granted conditional consent in the terms set out in Appendix 1 to this report.**

# PLANNING REPORT

## 1. Site and locality

The proposed site is located 95km west of Moree. The property description of the land is “Kanowna”, 9339 Gwydir Highway, Bullarah, (Lot 21 in Deposited Plan 750514). The subject lot has a total area of 133 hectares and the proposed solar farm would occupy 8.13 hectares of this. The subject lot is part of a larger property holding known as “Kanowna”.

The subject land is currently zoned RU1 ‘Primary Production’ under the Moree Plains Local Environmental Plan 2011. The property is owned by Nicole Louise Dallimore, Martine Carol Kendall and Guy Alexander Boland.

Figure 1 Location plan

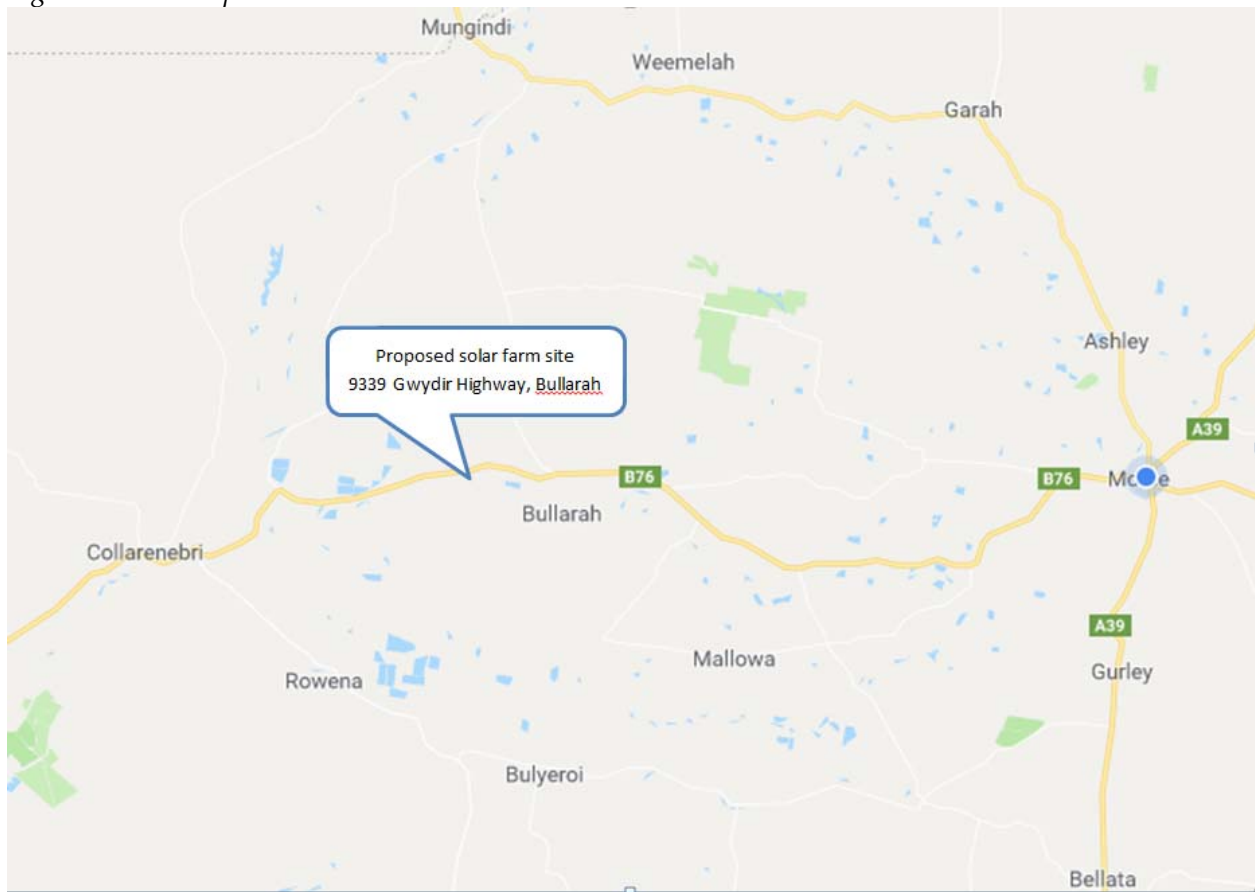


Figure 2 Site Plans



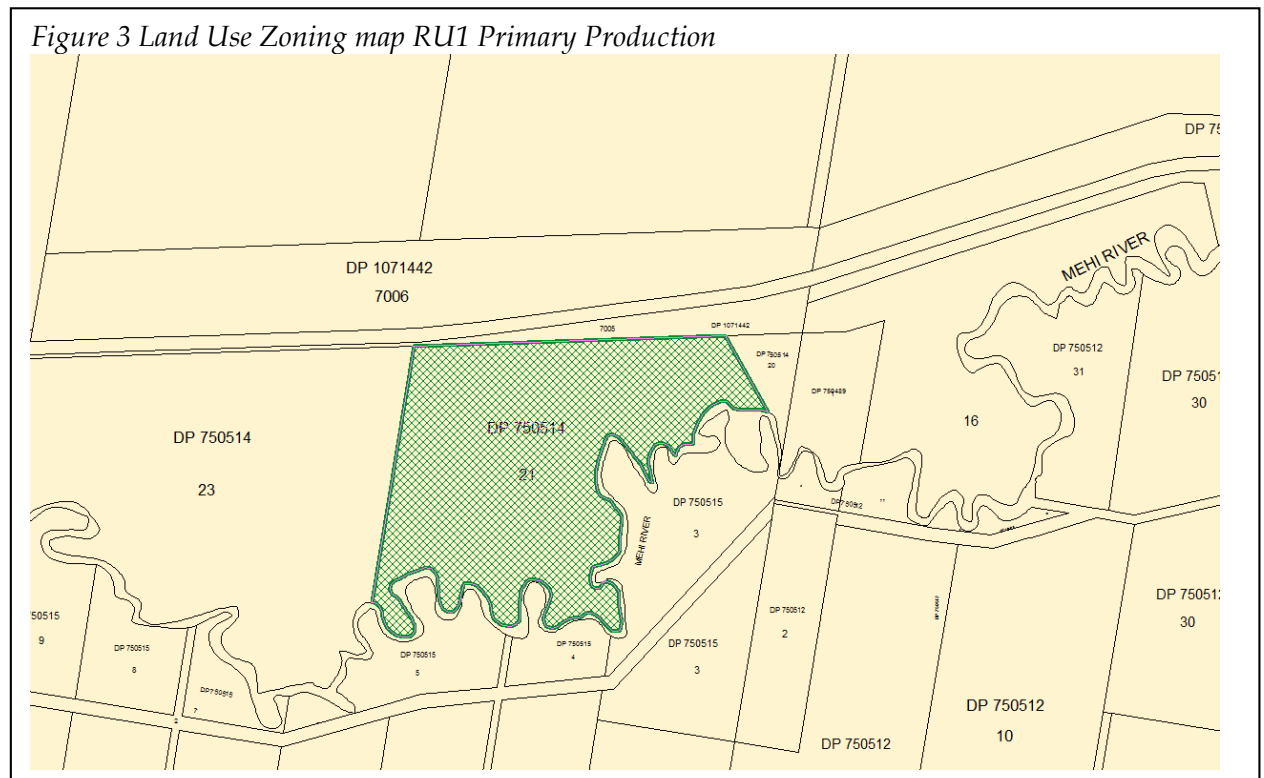


## 2. Statutory Development Assessment Framework

### 2.1 Permissibility

#### Regionally Significant development

The site is zoned RU1 - Primary Production under Moree Plains Local Environmental Plan 2011 (LEP) as shown in the figure below. The development proposal is not permissible under the LEP Land Use Table however it is permissible under State Environmental Planning Policy (Infrastructure) 2007.



### 2.2 Public Participation

The development application (DA) was publicly notified as required by the provisions of the Moree Plains Development Control Plan 2013 (DCP).

The DA was publicly notified for a period of 14 days commencing 18 May 2018 and closing 04 June 2018. The notification included letters to property owners/occupiers if, in the opinion of the Planning and Development Department, the enjoyment of land adjoining the development may be detrimentally affected by the proposed development. Those properties that were notified are indicated in the figure below.

[illegible]

No submissions were received during the notification period.

## 2.3 Referrals

Internal - Council Engineering Department

## External – Roads & Maritime Services

## 2.4 Section 79C assessment

In determining a DA, a consent authority is to take into consideration matters referred to in section 4.15(1) of the EPA Act (previous s 79C) as are of relevance to the development the subject of the application. The relevant matters for this application are detailed below:

- a) **4.15 Evaluation– any environmental planning instrument; any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority, any development control plan, any planning agreement entered into under Section 7.4 or any draft planning agreement that a developer has offered to enter into under Section 7.4, and the Regulations;**

### *Environmental Planning & Assessment Act, 1979 and Environmental Planning & Assessment Regulation, 2000*

#### **Designated development**

Schedule 3 of the EP&A Regulation indicates “Electricity generating stations” such as solar farms are considered designated development under the EP&A Act and associated regulations where the development generates more than 30 megawatts of electrical power.

The proposed development is predicted to generate a maximum of 4.999 megawatts. Therefore, the proposal is not considered designated development.

#### **Integrated development**

The solar farm is not considered integrated development under Division 4.8 of the EP&A Act because the solar farm does not require any additional approval / permit / licence / authorisation under the:

- Fisheries Management Act 1994;
- Heritage Act 1977;
- Mine Subsidence Act Compensation Act 1961;
- Mining Act 1992;
- National Parks and Wildlife Act 1974
- Petroleum (Onshore) Act 1991;
- Protection of the Environment Operations Act 1997;
- Roads Act 1993;
- Rural Fires Act 1997; or
- Water Management Act 2000.

### *Biodiversity Conservation Act 2017*

The Biodiversity Conservation Act 2017 provides a basis for the Biodiversity Offset Scheme (BOS). Development that is subject to the BOS scheme includes development needing consent under Part 4 of the EP&A Act (excluding complying development), activities under Part 5 of the EP&A Act, State significant development and State significant infrastructure.

Where development or an activity is, “likely to significantly affect threatened species”, a Biodiversity Development Assessment Report (BDAR) must be prepared and consent authorities are required to consider the likely impact of the proposed development on biodiversity values before granting approval.



The threshold test of whether development or an activity is “likely to significantly affect threatened species” (and therefore whether a BDAR is required) is reached if:

- The test in section 7.3 of the BC Act is met;
- The BOS Threshold is met; and
- The development is carried out in a declared area of outstanding biodiversity value.

The subject lot was assessed using the online Biodiversity Offsets Scheme Entry Tool, which determines whether any proposed clearing would be above or below the area thresholds or lies within an area mapped as having high biodiversity value.

The proposed development site is not located within a declared area of outstanding biodiversity value, and the proposal does not involve any clearing of vegetation that would exceed the BOS Threshold. The site is developed for agriculture and at present, supports mainly crop stubble.

A test of significance determined that the proposal is not likely to significantly affect threatened species, and that further assessment under the BAM and the preparation of a BDAR is not required.

### **State Environmental Planning Policies**

#### **State Environmental Planning Policy No 44 – Koala Habitat Protection**

This Policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas, to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline.

The land included in the local government areas listed under Schedule 1 is subject to assessment under this Policy. The Moree Plains Shire is listed in Schedule 1 of SEPP 44 and therefore an assessment of Koala Habitat is required.

The subject site is utilised for crop production and has been cleared of all native vegetation. The site therefore does not contain primary or secondary feed trees (western slopes and plains region) which may be utilised by local Koala populations. As such, the site is not considered to constitute potential koala habitat as defined under SEPP 44.

Habitat for Koalas may be present within the wider locality, such as within the riparian corridor of the Gwydir River (approximately 800m south of the development site), or within scattered vegetation located on grazing land to the north and west of the development site. Habitat values of the riparian corridor and surrounding locality will not be disturbed by the proposed development.

On this basis, the requirements of the SEPP 44 do not require further investigation.

#### **State Environmental Planning Policy No 55 – Remediation of Land**

The Remediation of Land SEPP aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or other aspects of the environment.

Under this SEPP, a consent authority must not consent to the carrying out of any development on land unless:

- i) It has considered whether the land is contaminated, and
- ii) If the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- iii) If the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

The aim of SEPP 55 is to provide for the remediation of contaminated land for the purpose of reducing the risk of harm to human health or the environment and requiring that any remediation work meet certain standards and notification requirements. The previous use of the site was for agricultural activities such as cropping 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.

#### **State Environmental Planning Policy (Infrastructure) 2007**

Pursuant to cl.34(7) of State Environmental Planning Policy (Infrastructure) 2007 (ISEPP), development for the purpose of a solar energy system may be carried out by any person with consent on any land. Accordingly, the proposed solar farm (which is a photovoltaic electricity generating system) is permissible subject to development consent being issued.

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

The aims of this Policy are as follows:

- a) To facilitate the orderly and economic use and development of rural lands for rural and related purposes,

**Comment:** The proposal is for the use of rural land for energy generation purposes and is considered to comply with this aim.

- b) To identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State,

**Comment:** The proposal is considered to be in accordance with the Rural Planning Principles. The Rural Subdivision Principles do not apply as no subdivision of land is proposed.

- c) To implement measures designed to reduce land use conflicts,

**Comment:** The proposal is considered to be compatible with adjacent land uses which are predominately agricultural.

- d) To identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,

**Comment:** The subject land is mapped as being Biophysical Strategic Agricultural Land in the New England North West Regional Plan 2036. The proposal would complement the agricultural use of the property.

- e) To amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.

**Comment:** Not relevant

The proposed development is considered to be compatible with adjacent rural and agricultural land uses. It is expected that the proposal would not cause land use conflict in the area and would complement existing agricultural operations.

**State Environmental Planning Policy (State and Regional Development) 2011**

The State and Regional Development SEPP identifies significant development and infrastructure and confer functions on Joint Regional Planning panels to determine development applications.

The application is classified as 'Regional Development' and has been assessed by Moree Plains Shire Council for determination by the Northern Joint Regional Planning Panel in accordance with this SEPP.

The New England North West Regional Plan 2036 (the Plan), published in 2017, recognises the potential for the growth of the renewable energy industry within the Moree Plains Shire and the surrounding region.

The Plan outlines a total of nine Strategic Directions for the North West Slopes and Plains region in NSW. Strategic Direction Number 5 is to 'Grow New England North West as the renewable energy hub of NSW'. The Plan encourages the following actions be taken to achieve this goal:

- a) Diversify the energy sector by identifying renewable energy resource precincts and infrastructure corridors with access to the electricity network; and
- b) Facilitate appropriate smaller-scale renewable energy projects using biowaste, solar, wind, hydro, geothermal or other innovative storage technologies.

The proposed development is considered to contribute to achieving the outcomes of Strategic Direction Number 5 of the Plan, as it will enable diversification and expansion of energy generation within the region by capitalising on high rates of regional solar penetration.

**New England North-West Regional Plan 2036**

The New England North West Regional Plan 2036 (the Plan) recognises the potential for growth of the renewable energy industry within the Moree Plains Shire and the surrounding region.

The site is mapped as comprising Biophysical Strategic Agricultural Land in Figure 4 of the Plan.

The Plan outlines nine Strategic Directions for the North West Slopes and Plains region in NSW. Strategic Direction Number 5 is to 'Grow New England North West as the renewable energy hub of NSW'. The Plan encourages the following actions be taken to achieve this goal:

- a) Diversify the energy sector by identifying renewable energy resource precincts and infrastructure corridors with access to the electricity network; and
- b) Facilitate appropriate smaller-scale renewable energy projects using biowaste, solar, wind, hydro, geothermal or other innovative storage technologies.

The proposed development is considered to contribute to achieving the outcomes of Strategic Direction Number 5 of the Plan, as it will enable diversification and

expansion of energy generation within the region by capitalising on high rates of regional solar penetration.

### **Moree Plains Local Environmental Plan 2011 (LEP)**

#### **Land Use Table**

The land is zoned RU1 - Primary Production under the LEP. The zone objectives as provided in the Land Use Table are:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To permit development for certain purposes if it can be demonstrated that suitable land or premises are not available elsewhere.

Under clause 2.3(2) of the LEP, the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone. It is considered that the proposed Solar Farm would increase farm sustainability and economic diversity, whilst not fragmenting any land or causing land use conflict. The fifth objective is of most relevance to the proposal. The key issue for Solar Farms is being located in proximity to a substation which has sufficient grid capacity, with the Wenna Substation being situated 1.7km west of the site. The proposal is considered to be consistent with the fifth objective for this reason.

Under the the LEP, “electricity generating works” are prohibited in the RU1 zone. The permissibility arises from the SEPP Infrastructure 2007, Division 4 (Electricity generating works or solar energy systems), Clause 34 (Development permitted with consent).

#### **Clause 5.10 – Heritage conservation**

Heritage was considered during the assessment. In brief, it is concluded that the site does not contain any European heritage items, conservation areas or indigenous places or objects.

The site is not identified as or located near a known Aboriginal Place of Heritage Significance on the Aboriginal Cultural Significance map or in the Moree Plains Aboriginal Heritage Study and therefore no Aboriginal Heritage Impact Assessment is required.

#### **Clause 7.6 Flood Planning**

The subject land is identified as flood prone, however the site will be located within an approved flood levee (Flood Work Approval 90FW833397). The levee will be 1 metre high (155.25 m AHD on the eastern edge and 155.15 m AHD on the western edge) and 4.2 metres wide at the top. The levee will have a 1:2 side slope, which makes it 8.2 metres wide at the base. All solar farm infrastructure will be located within the levee. The flood work approval was issued by Water NSW and remains current.

3. *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*
- a) *Is compatible with the flood hazard of the land, and*  
Comments: The proposal is for the construction of solar farm infrastructure and is considered to be compatible with the flood hazard of the land. The site is within an existing cropped area and would be protected by a levee. The construction materials are required to be compatible with flooding.
  - b) *Is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*  
Comments: Due to the extensive nature of the floodplain and the location of the proposed development it is considered that adverse impacts on flood behaviour are unlikely. The proposed levee (which is not the subject of this Development Application) has been approved by Water NSW.
  - c) *Incorporates appropriate measures to manage risk to life from flood, and*  
Comments: Upon becoming operational the proposed solar farm would not be occupied by workers apart from periodical servicing and maintenance. As such the risk to life during flood is considered to be very low. The site is distant from neighbouring dwellings.
  - d) *Is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*  
Comments: The development is not likely to adversely affect the environment or cause erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses. This is due to the nature of the development and its proposed location.
  - e) *Is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*  
Comments: The proposed solar farm would not likely result in unsustainable social and economic costs to the community as a consequence of flooding. The development is considered to have a low level of susceptibility to flood impacts due to its location, the type of construction proposed and the presence of standard cut-offs switches for the development.

Whilst the proposed development is identified as a flood control lot it meets the objectives of clause 7.6 of the LEP.

#### **Clause 7.7 Places of Aboriginal cultural significance**

The development is not located on land identified as “place of Aboriginal cultural significance”.

#### **Moree Plains Development Control Plan 2013 (DCP)**

##### **Chapter 2 – Parking**

The ‘Performance Outcomes’ of the DCP require new car parks to be sufficient in number and design to provide appropriately for the needs of new developments. Once the infrastructure is installed and operational the only access to the site will be for maintenance and cleaning purposes. In this regard no designated parking is required.

## **Chapter 4 – Moree & Environs Floodplain Development and Management**

The subject land is identified as flood-prone, however the site will be located within an approved flood levee (Flood Work Approval 90FW833397). The site is therefore not considered to be impacted by or have an impact upon the flow of flood water.

The proposed development meets the 'Performance Outcomes' of the DCP. The proposal does not involve any habitable buildings and therefore will not materially increase the risk to life. Risk to property is managed by the sensitive infrastructure being located above the predicted Probable Maximum Flood.

## **Chapter 9 – Rural Development**

This chapter addresses various aspects of rural development including biodiversity, bushfire management, recreational vehicles, feedlots, access to rural properties and dwelling development.

### **Biodiversity:**

1. *Proposals falling within areas mapped as Koala Habitat undertake a review of the potential impacts on Koala Habitat as required by SEPP 44.*

Comment: SEPP 44 has been addressed in section 4.3.3 and it was determined that the subject area does not contain any potential or core koala habitat as defined within the provisions of SEPP 44. On this basis, the requirements of SEPP 44 do not necessitate further considerations in this assessment.

2. *Proposals are reviewed against the provisions of the NSW Threatened Species Conservation Act and the NSW Planning Guideline, Commonwealth Environmental Protection and Biodiversity Conservation Act 1999 Guide to implementation in NSW May 2007, by an appropriately qualified and experienced ecologist or environmental scientist, and, if necessary, appropriate additional environmental investigations are conducted.*

Comment: The NSW Threatened Species Conservation Act was replaced by the Biodiversity Conservation Act. The requirements of this Act have been addressed in Section 4.3.2 and Appendix 9.

3. *Where proposals would significantly affect areas of native vegetation, a review by an appropriately qualified and experienced ecologist or environmental scientist is undertaken as to the potential impact on wildlife habitat corridors.*

Comment: The proposed development does not involve any additional clearing and is not considered to have a significant effect on any area of native vegetation. The proposal is therefore considered to be consistent with the performance outcome for biodiversity "to address biodiversity issues when the development is proposed so as to ensure appropriate weight is given to management of the natural environment as part of the consideration of proposals".

### **Bushfire Management:**

The subject land is identified as being bushfire-prone land. The NSW Rural Fire Service map indicates that the site is classified as Vegetation Category 3.

Vegetation Category 3 is defined as:

"Vegetation Category 3 is considered to be medium bush fire risk vegetation. It is higher in bush fire risk than Category 2 (and the excluded areas) but lower than Category 1. It is represented as dark orange on a Bush Fire Prone Land map and will be given a 30 metre buffer. This category consists of: Grasslands, freshwater wetlands, semi-arid woodlands, alpine complex and arid shrublands."



The site and surrounding land uses currently consist of cropping and grasslands used for grazing. Such land is considered to be managed vegetation which presents a relatively low fire risk. However, to address bushfire risk an Asset Protection Zone (APZ) would need to be established around the development site.

An APZ is an area between a bushfire hazard and buildings/development, which is managed to reduce fuel loads surrounding buildings to provide a barrier between buildings and bushfires which may occur within the region. The size of APZs varies depending upon the fire hazard each site (which depends upon site factors such as topography, vegetation type and levels of construction).

Overall, the development is required to maintain a 10m APZ, which will comprise of 10m of Inner Protection Area (IPA).

An IPA is defined as “the inner component of an asset protection zone, consisting of an area maintained to minimal fuel loads and comprising a combination of perimeter road, fire trail, rear yard or reserve, so that a fire path is not created between the hazard and the building.”

The APZ should be maintained to ensure fuel load is minimised, through measures such as mowing of grasses and weeds. The APZ must be maintained within the boundaries of the development property (i.e. within Lot 21, DP 750514).

#### **Access to Rural Properties:**

The proposal has existing access from the Gwydir Highway which is a public road. It is proposed to construct a new access point from the Gwydir Highway some 800 metres west of the existing access. The new access would provide a more direct access to the development and would provide for better management of the solar farm and agricultural land uses within the property. The proposal is therefore considered consistent with the performance outcome for access to rural properties to ensure “the development provides safe, convenient and readily maintainable access from a public road”.

#### **Chapter 10 – Notification Policy**

The proposal was notified to the adjoining owner located adjacent to the west of the development site. No other land owners in the area were considered to require notification due to the distance to neighbouring properties and

The proposed development complies with all aspects of Moree Plains Development Control Plan 2013.

**b) Section 4.15(1)(b) – the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality:**

It is considered that the likely impacts of the development including design, height, overshadowing, privacy, car parking, traffic and drainage have been satisfactorily addressed.

The proposed development has been designed in compliance with the acceptable solutions of the DCP and it is believed that the proposed development will not have any unfavourable social or environmental impacts.

**c) Section 4.15 (1)(c) – the suitability of the site for development;**

In considering the suitability of the site for the development Council should have regard to the zoning of the site and its objectives under the current environmental planning instrument (LEP) and the permissibility of the development under the LEP. Under the LEP, “electricity generating works” are prohibited in the RU1 zone. However the proposal is permissible under the SEPP Infrastructure 2007, Division 4 (Electricity generating works or solar energy systems), Clause 34 (Development permitted with consent). In terms of assessing the ‘weight’ to be given to the zoning in assessing the appropriateness of the proposed development, direction has been taken from the planning principles adopted by the Land and Environment Court of NSW.

***Davies v Penrith City Council [2013] NSWLEC 1141***

In this case, Moore, SC revised the *criteria for assessing impact on neighbouring properties within this Planning Principle*.

*The following questions are relevant to the assessment of impacts on neighbouring properties:*

- *How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?*  
Comment: The impacts from the proposal would be limited in the context of an agricultural environment. Sunlight availability, views and privacy for adjacent lands are not considered to be problematic issues.
- *How reasonable is the proposal causing the impact?*  
Comment: The proposal is considered to cause minimal impacts on adjacent lands. On this basis the proposal is considered to be reasonable.
- *How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?*  
Comment: The proposal would not act to reduce the development potential of adjacent lands.
- *Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?*  
Comment: The proposal is not considered to cause any significant impacts.
- *Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?*  
Comment: The proposal is generally in accordance with the relevant planning controls.

***Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191***

- There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.
- It should be noted that compatibility between proposed and existing is not always desirable. There are situations where extreme differences in scale and appearance produce great urban design involving landmark buildings.

- Where compatibility between a building and its surroundings is desirable, its two major aspects are physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked.
  1. Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.
  2. Is the proposal's appearance in harmony with the buildings around it and the character of the street?
- The physical impacts, such as noise, overlooking, overshadowing and constraining development potential, can be assessed with relative objectivity. In contrast, to decide whether or not a new building appears to be in harmony with its surroundings is a more subjective task. Analysing the existing context and then testing the proposal against it can, however, reduce the degree of subjectivity.

The proposal is considered to meet the objectives of the RU1 - Primary Production zone, complies with the flood planning clause of the LEP and performance outcomes of the DCP. On this basis the development is considered generally appropriate for the site.

The subject site is considered suitable for the proposed development for the following reasons:

- The subject site is within a rural/agricultural area and is considered to be appropriate for large-scale solar development
- The proposed development is compatible with existing land uses in the locality
- The proposed development would not cause land use conflict
- Access to the subject site is readily available from the Gwydir Highway.
- Upon decommissioning of the solar farm (should this occur), the land can be restored to its previous form.

**d) Section 4.15 (1) (d) - any submissions made in accordance with the Act or the Regulations;**

As discussed earlier.

**e) Section 4.15 (1) (e) - the public interest.**

The proposal has been designed in line with the adopted standards of the DCP and as such, development consent of this proposal will not undermine the public interest.

### **3. Recommendation**

It is recommended that DA2018/39 be approved subject to the draft conditions contained in Appendix 1.

## APPENDIX 1 – DRAFT CONDITIONS OF CONSENT

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### 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 April 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:
    - 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
		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 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.

## **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 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**

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:
- a) \$60,000.00, being 1% of the cost of carrying out the development as determined by the Council in accordance with Act and Regulations
  - b) 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.
  - c) 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**

8. In accordance with the Act, the following conditions are prescribed for development that involves building work:
- a) That the work must be carried out in accordance with the requirements of the National Construction Code,
  - b) 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)*

### **Driveway Access**

10. The proposed vehicular access from the Gwydir Highway shall be constructed in accordance with Austroads Guide to Road Design: Part 4 Figure 7.4 'standard rural property access' and any relevant Roads and Maritime Services supplement. The vehicular access shall be sealed for a minimum of twenty (20) metres from the edge of the highway travel lane, match existing road levels and not interfere with existing road drainage.

The vehicular access shall be designed to accommodate the turning paths of the largest vehicle required to access the land.

Safe Intersection Sight Distance (SISD) requirements outlined in Part 4A Austroads Guide to Road Design shall be provided and maintained in both directions at the intersection of the vehicular access and the Gwydir Highway. For a 110km/h speed environment, SISD is 300 metres.

The requirements in this condition shall be satisfied and endorsed by Roads & Maritime Services prior to the issue of a Construction Certificate.

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

### **Footing System Requirements - General**

11. 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**

12. 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)*

13. All sensitive equipment and the solar panels shall be located a minimum of 1.5 metres above the 1% Annual Exceedance Probability flood event.

*(Reason: Floodplain risk management)*



### **Flood compatible materials**

14. Materials used for structural purposes and located below the 1% AEP flood level plus 1.5 metres 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.*

### **Site Environmental Management Plan**

15. 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
  - vii) Levee management
- c) Post-Development
  - i) Monitoring and mitigation measures for future rehabilitation remedial actions

*(Reason: Environmental protection)*

### **Stormwater and Drainage Works Design**

16. Final design plans of the stormwater drainage system within the proposed levee, prepared by a qualified practicing professional and in accordance with the requirements of council shall be submitted to the certifier prior to issue of a Construction Certificate. The hydrology and hydraulic calculations shall be based on models described in the current edition of Australian Rainfall and Runoff.

*(Reason: Adequate stormwater management)*

## **DURING CONSTRUCTION**

### **Erosion and Sediment Control**

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

*(Reason: Environmental protection)*

### **Toilet facilities**

18. 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**

19. 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**

20. 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**

- 21.
- 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**

22. 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**

- 23.
- 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 significant flood events
  - 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**

24. Unless the electrical supply authority determines otherwise-
- a) Electrical switches must be placed above the 1% AEP flood event plus 1.5 metres
  - b) Electrical conduits and cables installed below the PMF must be waterproofed or placed in waterproofed enclosures.
- (Reason: Floodplain risk management)*

## **BEFORE OCCUPATION CERTIFICATE**

### **Occupation certificate required**

25. 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**

26. 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)*

### **Post-development remediation**

27. The applicant shall make payment of a remediation bond, payable annually for the life of the development so that the bond equals the remediation cost at the end of the design life. The remediation bond shall be costed in today's dollar value and indexed over the design life. The applicant shall submit a fully costed remediation assessment to Council prior to the issue of an Occupation Certificate.
- (Reason: Site remediation)*

## **ONGOING USE OF THE DEVELOPMENT / LAND**

### **Loading and Unloading**

28. 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**

29. 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**

30. 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**

31. 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**

32. The Applicant shall:

- a) Implement suitable measures to manage pests, vermin and declared noxious weeds on the site of the development; 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)*

### **Overland water flows**

33. The applicant shall ensure that the development will not result in the diversion of overland surface waters onto adjoining properties or the Gwydir Highway and where necessary shall construct appropriate surface drainage systems.

*(Reason: Health and amenity)*

### **Bushfire Protection**

34. 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 21, DP 750514).

*(Reason: Protection from bushfire)*

## **AT COMPLETION OF USE OF THE DEVELOPMENT / LAND**

### **Post-development remediation**

35. 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)*

## APPENDIX 2 – STATEMENT OF ENVIRONMENTAL EFFECTS

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(Provided under a separate cover due to size)



## APPENDIX 3 – RMS SUBMISSION

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14 June 2018

SF2018/194624; WST18/00089

General Manager  
Moree Plains Shire Council  
PO Box 420  
Moree Plains NSW 2400

Dear Sir

**DA2018/39: Lot 21 DP 750514; 9339 Gwydir Highway (HW12), Bullarah; Kanowna Solar Farm**

Thank you for your letter dated 5 June 2018 referring DA2018/39 to Roads and Maritime Services for comment.

The documentation submitted in support of DA2018/39 has been reviewed and Roads and Maritime notes the proposal includes construction and operation of a 4.99 megawatt solar farm on rural land 80 kilometres west of Moree. Vehicular access to the solar farm would be obtained via the existing property access from the Gwydir Highway.

DA2018/39 has been referred to Roads and Maritime pursuant to section 104 of *State Environmental Planning Policy (Infrastructure) 2007*. In accordance with the policy, Roads and Maritime provides the following recommendations for Council's consideration:

- The existing vehicular access from the Gwydir Highway servicing the subject land is to be upgraded in accordance with *Austroads Guide to Road Design: Part 4 Figure 7.4 'standard rural property access'* (copy enclosed) and any relevant Roads and Maritime supplement. The vehicular access is to be sealed a minimum of twenty (20) metres from the edge of the highway travel lane, match existing road levels and not interfere with existing road drainage.
- The upgraded vehicular access is to be designed to accommodate the turning paths of the largest vehicle required to access the land. This may require widening of the existing pipe culvert in the access.
- The existing track from the Gwydir Highway to the vehicular access, bypassing the pipe culvert in the access, is cease being used and revegetated.
- Safe Intersection Sight Distance (SISD) requirements outlined in Part 4A *Austroads Guide to Road Design* is to be provided and maintained in both directions at the intersection of the vehicular access and the Gwydir Highway. For a 110km/h speed environment, SISD is 300 metres.
- All required road works are to be completed prior to the commencement of construction works.

Roads and Maritime Services

51-55 Currajong Street Parkes NSW 2870 |  
PO Box 334 Parkes NSW 2870 DX 20256 |

[www.rms.nsw.gov.au](http://www.rms.nsw.gov.au) | 13 22 13

Please forward a copy of Council's determination in this matter at the same time it is sent to the applicant. Should you require further information please contact Andrew McIntyre, Manager Land Use Assessment, on 02 6861 1453.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Dane Hendry', with a long horizontal stroke extending to the right.

Dane Hendry  
Network & Safety Manager  
Western