

COUNCIL ASSESSMENT REPORT

Doc No. #A2019/11980

Panel Reference	2019NTH016
DA Number	10.2019.169.1
LGA	Byron Shire Council
Proposed Development	This application seeks approval for Concept Development Application for Electricity Generating Works - 5 Megawatt Solar Energy System.
Street Address	19 Grays Lane TYAGARAH
Applicant/Owner	Dieter Horstmann
Date of DA lodgement	9 April 2019
Number of Submissions	Seven (7) submissions received. All in opposition.
Recommendation	Pursuant to Section 4.15 of the Environmental Planning & Assessment Act 1979, Concept Development Application no. 10.2019.169.1 for Electricity Generating Works - 5 Megawatt Solar Energy System, be Approved subject to conditions.
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	This proposal is considered to be "regionally significant development" as defined under Clause 20 and Schedule 7(5) of the State Environmental Planning Policy (State and Regional Development) 2011 as the proposed development is private infrastructure (electricity generating works) with a capital investment value over \$5million.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Environmental Planning and Assessment Regulation 2000 • State Environmental Planning Policy No 44 – Koala Habitat Protection • State Environmental Planning Policy No 55 – Remediation of Land • State Environmental Planning Policy (Coastal Management) 2018 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy (Primary Production and Rural Development) 2019 • State Environmental Planning Policy (State and Regional Development) 2011 • Byron Local Environment Plan 2014 • Byron Development Control Plan 2014
List all documents submitted with this report for the Panel's consideration	Attachment A Environmental Health Officer review Attachment B Development Engineer review Attachment C Systems Planning Officer review Attachment D Contributions Officer review Attachment E Essential Energy referral response Attachment F Roads & Maritime Services referral response
Report prepared by	Ivan Holland
Report date	20 November 2019

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Yes

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

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

N/A

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?	No
<i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	

Conditions

Have draft conditions been provided to the applicant for comment?	Yes
<i>Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report</i>	

EXECUTIVE SUMMARY

The development application as lodged sought approval for construction of a 5MW Solar Farm and was advertised as “Electricity Generating Station – 5 Megawatt Solar Farm. Council’s preliminary assessment of the application identified as range of issues, primarily associated with the proposed earthworks, which were set out in a request for further information. Council received correspondence from the applicant which provided a partial response to the further information request and requested that the application be treated as a “concept development application”. This approach was requested to enable the applicant scope to vary the site preparation works required (including earthworks) depending on the final design style of the solar panels and mounting methodology selected. The revised development application seeks consent for a “Concept Development Application” being a 5 Megawatt Solar Farm Electricity Generating Station. The applicant has not sought any changes to the proposal (i.e., description, scale, location) from that first lodged with Council and advertised.

The subject property is 73.5ha and is located between the Pacific Highway to the west, the Tyagarah airfield to the north, the Tyagarah Nature Reserve to the east with Byron Bay approximately 5km to the south. The proposed location of the solar farm is at the west of the property closest to the airfield and Pacific Highway. The proposed solar farm site is border on the east and north by tributaries of Simpsons Creek.

The subject property is zoned RU2 Rural Landscape / PART 1(a) General Rural / PART 7(b) Coastal Habitat with the proposed solar farm being located entirely within RU2 zoned land.

The property includes an elevated section of land to the east of the proposed development site, areas of potential koala habitat, threatened flora and fauna habitat, high environmental value vegetation (comprising coastal swamp forest, subtropical rainforest, coastal floodplain wetlands, coastal dune dry sclerophyll, wallum sand heaths, coastal heath swamps), key fish habitat and Cape Byron Marine Park Sanctuary zones (associated with the Simpsons Creek tributaries).

The subject site is largely level (less than 5 per cent slope) and low-lying (less than 5m above sea level) and is mapped as having the following constraints:

- Acid Sulfate Soils - Class 3;
- Bushfire prone land - Vegetation category 2 and buffer;
- Flood Prone Land; and
- Active water mains.

The development application was accepted by Byron Shire Council on 9 April 2019 and placed on public exhibition from 2 to 22 May 2019 (which was extended to 5 June 2019). Council requested further information on 10 July 2019. The applicant responded with an addendum to the application and a request for the application to be considered as a concept development application on 14 October 2019.

In determining the application, the consent authority must be satisfied about the following matters:

- State Environmental Planning Policy No 44 – Koala Habitat Protection –Although some areas of the property, including to the north of the proposed solar farm, are mapped as potential koala habitat, the development site is cleared land and is not mapped as potential koala habitat. Consequently, the consent authority is not prevented from granting consent to the development application (c.7).
- State Environmental Planning Policy (Coastal Management) 2018
 - In relation to the development being located in a ‘coastal environment area’ (clause 13), the consent authority needs to be satisfied that: “(a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*” Due to the location (>1km from the coastal zone) and the site being already cleared of vegetation, the concept development proposed is not likely to cause an adverse impact on coastal environment

area matters such as coastal processes, vegetation, public open space and access and use of the surf zone. Earthworks to prepare the site and stormwater from the development will need to be carefully managed to avoid or minimise adverse impacts on water quality and the ecological environment. However, as this is a concept development application, details of earthworks and stormwater management will need to be provided to support subsequent development application/s for these aspects of the proposal.

- In relation to the development being located in a 'coastal use area' (clause 14), the consent authority needs to be satisfied that: *"(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact,"*. The concept development will not cause an adverse impact on the coastal use area matters such as access to the coastal zone and visual amenity and scenic qualities of the coast, particularly due to the proposed location of the solar farm being over 1km from the coastal zone and on a low-lying area of land that is west of elevated land (i.e., visually separate from the foreshore and coastal zone).
- Byron Local Environmental Plan 2014
 - Flood planning – clause 6.3(3) - Council's engineering review of the application concluded that the concept proposal was consistent with the relevant flood planning requirements subject to recommended conditions and provision of further detail with the subsequent development application.
 - Essential services – clause 6.6 – Based on the information provided with the application, it would appear that essential services for the development (electricity, stormwater management and vehicular access) are available or can be made available when required.

The following matters are relevant to the subject development and must be taken into consideration in determining the development application (s.4.15):

The provisions of any environmental planning instrument

State Environmental Planning Policy No 55 – Remediation of Land - Council's contaminated land records have mapped the site due to being used for agriculture – cattle. The site is identified as being low risk and not requiring remediation. The application included a preliminary contaminated land assessment (Byron Environmental Consulting, December 2018) which, based on the analysis of soil samples, concluded the site is not contaminated and is suitable for the proposed development (clause 7).

Byron Local Environmental Plan 2014 – The concept development application is considered to be consistent with the relevant provisions of the BLEP 2014 subject to recommended conditions and a subsequent development application for the detailed design, construction, operation and decommissioning of the solar farm.

The provisions of any development control plan

Byron Shire Development Control Plan 2014 – The concept development application is considered to be consistent with the relevant provisions of the BDCP 2014 subject to recommended conditions and a subsequent development application for the detailed design, construction, operation and decommissioning of the solar farm.

Likely impacts of the development

The consent authority need only consider the likely impact of the concept proposal. Potential impacts specific to the proposed solar farm including glint and glare, landscape and visual impacts, health and noise impacts have been considered as well as potential impacts on aviation. A cursory assessment of other impacts including on flooding, earthworks, acid sulfate soils, stormwater management, traffic has been conducted with the acknowledgement that further consideration of these matters can be undertaken when a subsequent development application is lodged for detailed development of the site.

It is considered that the likely impacts of the concept development can be adequately managed through recommended conditions.

Site suitability

The proposed development site is mapped as having the following constraints:

- Acid Sulfate Soils - Class 3;
- Bushfire prone land - Vegetation category 2 and buffer;
- Flood Prone Land; and
- Active water mains.

Despite these constraints, the site is considered suitable for the proposed solar farm development in that:

- It is not highly visible and is relatively low lying;
- Does not require the removal of native vegetation;
- Is separate from nearest residences (~250m to the east); and
- It is not subject to natural hazards or natural hazards are manageable

Public interest/submissions

The proposed development is considered to be in the public interest as it is for the generation of renewable energy through the installation of a medium-scale solar farm. Further, the proposed solar farm will not create an undesirable precedent and may encourage future renewable energy projects in Byron Shire.

NB - The following assessment report needs to be read in conjunction with the various attached reports and submissions from government agencies and Council staff.

1. INTRODUCTION

1.1. History/Background

Council's records indicate the following development approval history for the site:

Development Application number	Development Application description	Determination	Determination date
10.2013.147.3	Amend the consent to relocate condition No.9 to "During construction"	Approved	27/09/2013
10.2013.147.2	modification to stage consent and review conditions	Approved	13/09/2013
10.2013.147.1	Rural Industry and Plant Nursery	Approved	29/05/2013
10.2008.663.1	Alterations and additions to an existing shed	Approved	27/01/2009
10.2007.477.1	Tree Removal - Six (6) Trees	Withdrawn	31/08/2007
10.2005.135.1	Erection of a farm shed	Refused	11/05/2005

Application processing

The development application (10.2019.169.1) was accepted by Byron Shire Council on 9 April 2019.

An acknowledgment letter was sent by Council on 16 April 2019 (A2019/11975).

Council's preliminary assessment of the application identified as range of issues, primarily associated with the proposed earthworks, which were set out in a request for further information. The following further information was requested by Council on 10 July 2019 (A2019/21707).

- 1. Details and specifications of the solar panels proposed to allow Council to assess any likely environmental risks associated with their management (Research indicates that there are a number of solar panel products on the market that contain chemical compounds).*
- 2. Details of the method/s to be employed for decommission of damaged solar panels.*
- 3. Confirmation of the volume of material that will be required for the proposed site preparation (cut and fill) particularly the volume of material that will be sourced from the 'borrow pit'.*
- 4. Based on the volume of material that will be sourced from the 'borrow pit', confirmation and verification of the exact size, depth and location of the finished/used borrow pit (including updated site plan and cross-sections). Separation distances between the borrow pit and the waterway (measured from the top of the bank) should be indicated on plans and cross-sections (Note: A controlled activity approval under the Water Management Act 2000 & integrated development may be triggered).*
- 5. Council officers have reviewed Acid Sulfate Soils Assessment No. 1-18981_2a prepared by AWC P/L dated September 2018 and are of the view that the report should be amended to include discussion on:*
 - a. Management of extracted soils (site conditions indicate that they are likely to be waterlogged)*
 - b. total volume of lime needed to treat extracted acid sulfate material*
 - c. detailed site plan demonstrating management arrangements, bunding, pads etc.*
 - d. nominate the specific mixing method*
 - e. pH sampling rates to be reduced from 1: 1000 m3 to 1: 150m3*
 - f. assessment and management of acid sulfate waters*
 - g. contingency planning*
- 6. A Groundwater Impact Assessment should be undertaken by a suitably qualified professional engineer/scientist. (The proposed borrow pit is located between two watercourses and the excavation of 34,000m3 of soil has the potential to impact on-site and off-site hydrology).*

7. *An estimate of the volume of lime required to manage acid sulfate soils and the number of vehicle movements that will be required to import this material (A preliminary review of the proposed lime treatment of acid sulfate soils indicates a large volume of lime will need to be imported to the site. The traffic assessment should be updated to include this component of the development).*
8. *Revision of the Erosion and Sediment Control plan to show the location of any stockpiles of materials and measures to prevent soil transportation due to wind and surface water.*
9. *Submission of an earthworks plan to include the current site levels, proposed level, a plan showing cut and fill areas and representative cross sections of the pad/site.*
10. *Submission of a Stormwater Concept Plan for the developed site (in accordance with section 3.4 of Council's Comprehensive Guidelines for Stormwater Management, demonstrating compliance with section B3.2.3 of Chapter B3 of DCP 2014).*

Council received a request to change the applicant from Dr Greg Wilding, Coolamon Energy Pty Ltd to Dieter Horstmann, Byron ECO Park Holding on 1 August 2019.

Council received correspondence from the new applicant on 14 October 2019 (#E2019/76647) which provided a partial response to the further information request and requested that the application be treated as a "concept development application". This approach was requested to enable the applicant scope to vary the site preparation works required depending on the final design style of the solar panels and mounting methodology selected.

Public notification/exhibition

The development application was notified on 16 April 2019 to property owners in the neighbouring areas (Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications). The development application was placed on public exhibition from 2 May to 22 May 2019. The application was re-notified on 22 May 2019 to property owners in the neighbouring areas to clarify that the Northern Region Joint Planning Panel would have the function of determining the application and public exhibition was extended to 5 June 2019. Council received 7 submissions following public exhibition of the development application all of which were in opposition.

1.2. Description of the proposed development

This application seeks approval for Concept Development Application for a five (5) Megawatt Solar Farm Electricity Generating Station.

1.3. Description of the site

Land is legally described as	LOT: 11 DP: 1066623
Parcel number:	239157
Property address is	19 Grays Lane TYAGARAH
Land is zoned:	RU2 Rural Landscape / PART 1(a) General Rural / PART 7(b) Coastal Habitat
Land area is:	73.53 ha
Property is constrained by:	<ul style="list-style-type: none"> • Acid Sulfate Soils - Class 2 and 3; • Bushfire prone land – Vegetation category 1, 2 and buffer; • Flood Liable Land; • High Environmental Value vegetation – coastal swamp forest, subtropical rainforest, coastal floodplain wetlands, coastal dune dry sclerophyll, wallum sand heaths, coastal heath swamps; • Key fish habitat (~40m either side of Simpsons Creek tributaries); • Cape Byron Marine Park Sanctuary zones (Simpsons Creek tributaries); and • Active water mains that traverse the property.

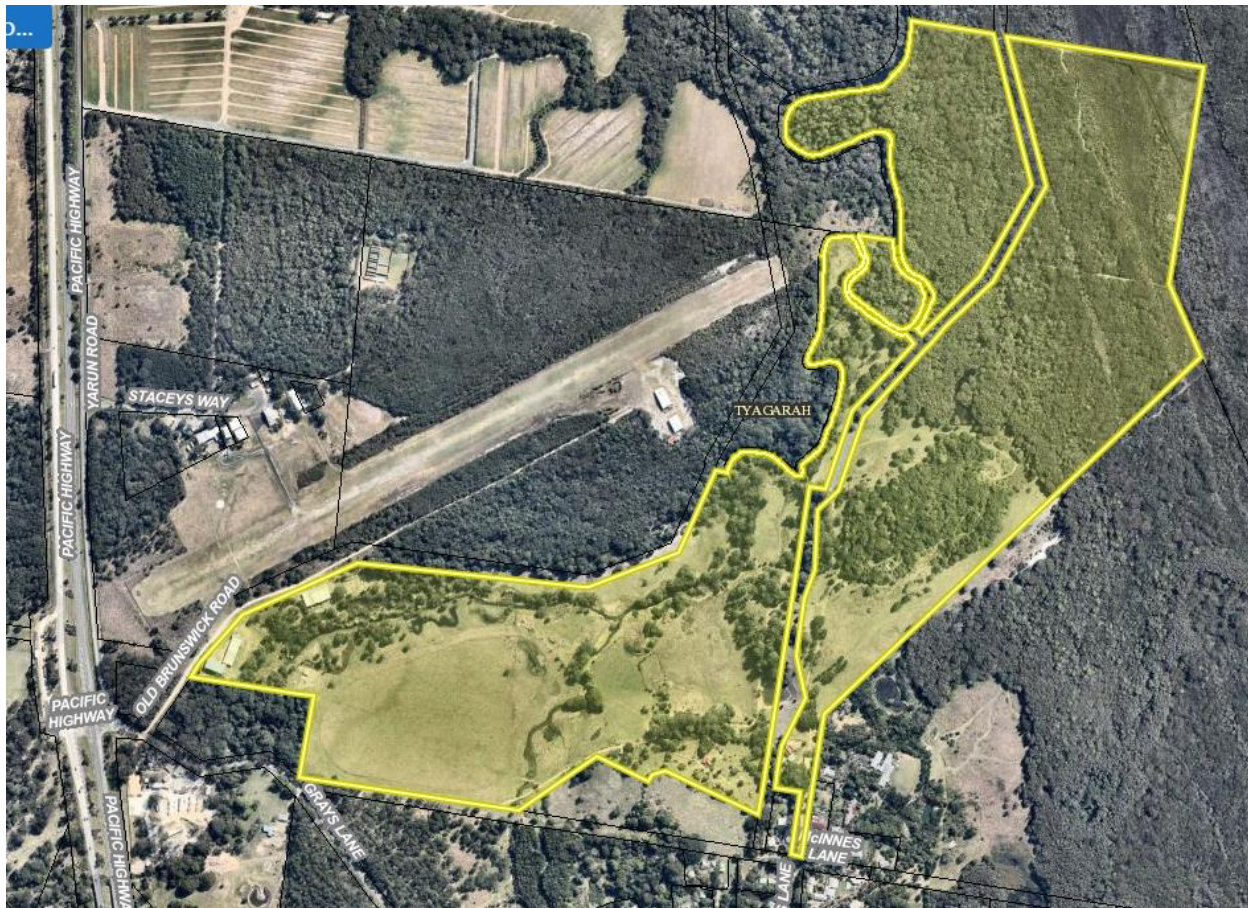


Figure 1. Aerial photo showing property boundary.



Figure 2. Aerial photo showing proposed development area and zoning.

A site inspection was conducted on 28 May 2019.



Photo 1. View north east over proposed location of solar farm.



Photo 2. View north over proposed location of solar farm.

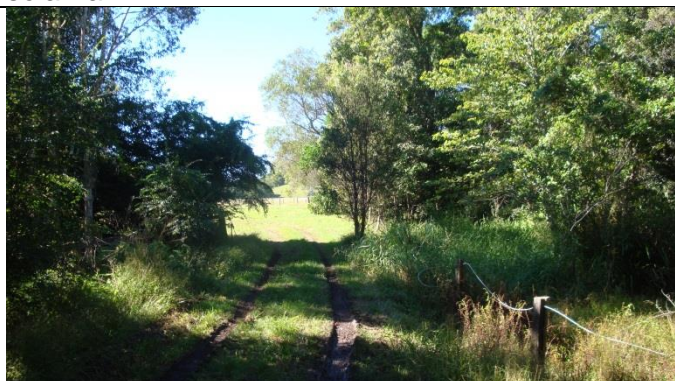


Photo 3. Proposed path for connection of solar farm to electricity grid (north west of site).



Photo 4. Bridge over tributary of Simpsons Creek which is part of proposed path for connection of solar farm to electricity grid (north west of site).



Photo 5. Driveway/site access from Grays Lane – south west corner of site.

The subject site is largely level (less than 5 per cent slope) and low-lying (less than 5m above sea level) and is mapped as having the following constraints:

- Acid Sulfate Soils - Class 3;
- Bushfire prone land - Vegetation category 2 and buffer;
- Flood Prone Land; and
- Active water mains.

2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections subject to conditions. Refer to Doc #A2019/11983

Referral	Issue
	(Attachment A)
Development Engineer	No objections subject to conditions. Refer to Doc # A2019/11985 (Attachment B)
S64 / Systems Planning Officer	No objections, no contributions required. Refer to Doc # A2019/11987 (Attachment C)
S94 / Contributions Officer	No objections subject to condition requiring developer contributions. Refer to Doc #A2019/11988 (Attachment D)
Essential Energy	No objections, general comments only. Refer to Doc #E2019/33697 (Attachment E)
Bundjalung (Arakwal)	No response received.
Roads and Maritime Services	Roads and Maritime Services provided advice/comments on the application including that the Statement of Environmental Effects (SEE) should have been accompanied by a Traffic Impact Assessment (TIA) and recommended a condition of approval that requires preparation of an Operational Traffic Management Plan. Refer to Doc #E2019/36877 (Attachment F)

I accompanied representatives of the Tweed Byron Local Aboriginal Land Council (TBLALC) for a site inspection on 6 June 2019. Aspects of the proposal were discussed during the site inspection however no formal/written submission was received by Council from TBLALC in relation to this application.

The application included correspondence from Rous Water (dated 1 March 2019) confirming acceptance on the proposed water pipeline/easement undercrossing plan (SK0001, Revision A).

3. SECTION 4.14 – BUSH FIRE PRONE LAND

Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document 'Planning for Bush Fire Protection 2006'. The site is bush fire prone land (see Figure 3). The SEE includes a consideration of Planning for Bushfire Protection 2006 (section 2.8) and recommends that:

- *A defensible space of five (5) metres is maintained around in the asset; and*
- *If any trees are to be located within the envisaged defensible space this is considered acceptable.*

Provided the following conditions are met:

- *Vegetation is not to touch or overhang building;*
- *Vegetation is not a species that retain dead material or deposit excessive quantities of ground fuel in a short period or in a danger period; and*
- *Vegetation is located far enough away from building so that it will not ignite the building by direct flame contact or radiant heat emission.*

The proposed solar farm is considered to be a class 10b (a structure) under the Building Code of Australia. For such buildings/structures, consent should be determined on a case by case basis without the need to refer the development application to the Rural Fire Service (RFS) (section 1.3).

Conditions have been recommended that will ensure the proposed development can meet the relevant aims and objectives of Planning for Bushfire Protection 2006 being:

- Appropriate separation and defensible space between the building/structure and the hazard;
- Ensure safe operational access and egress for emergency service personnel;
- Ongoing management and maintenance of bush fire protection measures; and

- Ensure utility services are adequate to meet the needs of firefighters (section 1.1).

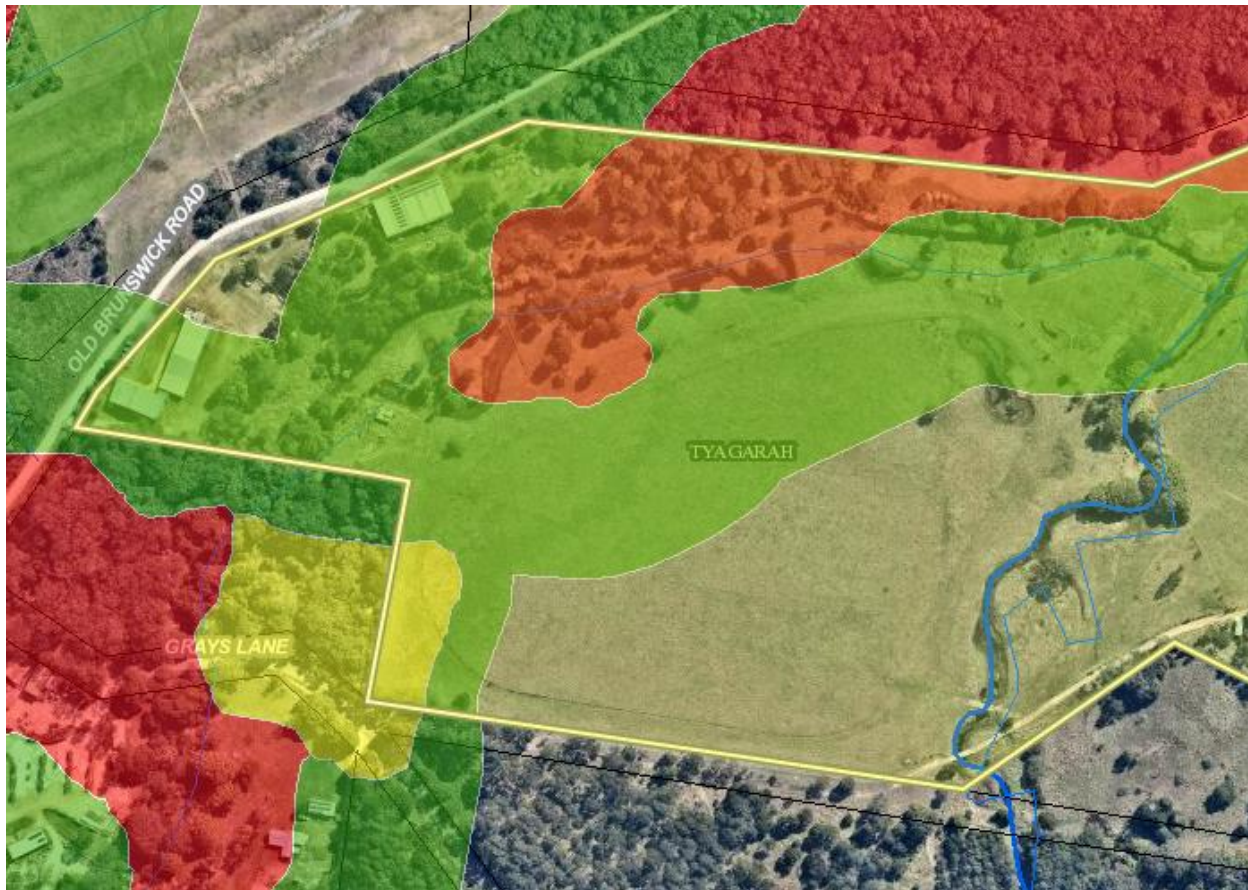


Figure 3. Aerial photo showing proposed development area and bushfire vegetation categories.

4. SECTION 4.15C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

Concept development applications

The applicant requested that the application be treated as a “concept development application” (E2019/77243) (Section 4.22(3), EP&A Act). Special provisions apply to assessing concept development applications (Division 4.4, EP&A Act) in particular that the consent authority need only consider the likely impact of the concept proposal and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications (section 4.22(5)).

The proposal is not considered to be integrated development under section 4.46 of the EP&A Act and designated development under section 4 and Schedule 3, Part 1, sub. 18 of the EP&A Regulation.

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

The following documents have been used to assist with the assessment of this application:

- Queensland solar farm guidelines (Department of State Development, Manufacturing, Infrastructure and Planning, September 2018); and
- Large-scale Solar Energy Guideline (Department of Planning and Environment, December 2018).

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 44—Koala Habitat Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>

	Satisfactory	Unsatisfactory
Consideration: This SEPP is a relevant consideration as the subject property is greater than 1 ha in area (clause 6). Although some areas of the property, including to the north of the proposed solar farm, are mapped as potential koala habitat, the development site is cleared land and is not mapped as koala habitat. Consequently, the consent authority is not prevented from granting consent to the development application (clause 7).		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Council's contaminated land records have mapped the site due to being used for agriculture – cattle. The site is identified as being low risk and not requiring remediation. The application included a preliminary contaminated land assessment (Byron Environmental Consulting, December 2018) which, based on the analysis of soil samples, concluded the site is not contaminated and is suitable for the proposed development (clause 7).		
State Environmental Planning Policy (Coastal Management) 2018	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The site of the proposed development is mapped as a coastal environment area (clause 13) and a coastal use area (clause 14). The subject site appears to be identified as a coastal use area and coastal environment area at least partly due to being in the catchment of Simpsons Creek which confluent with the Brunswick River at Brunswick Heads. Due to the location (>1km from the coastal zone) and the site being already cleared of vegetation, the concept development proposed is not likely to cause an adverse impact on coastal environment area matters such as coastal processes, vegetation, public open space and access and use of the surf zone. Earthworks to prepare the site and stormwater from the development will need to be carefully managed to avoid or minimise adverse impacts on water quality and the ecological environment. However, as this is a concept development application, details of earthworks and stormwater management will need to be provided to support subsequent development application/s for these aspects of the proposal. The concept development will not cause an adverse impact on the coastal use area matters such as access to the coastal zone and visual amenity and scenic qualities of the coast particularly due to the proposed location of the solar farm being over 1km from the coastal zone and on a low-lying area of land that is west of elevated land (i.e., visually separate from the foreshore and coastal zone).		
State Environmental Planning Policy (Infrastructure) 2007	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposed “electricity generating works”/“solar energy system” is permitted with consent on the RU2 zoned land by way of clauses 34(1) and (7).		
State Environmental Planning Policy (Primary Production and Rural Development) 2019	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: No specific provisions were identified in this policy that are relevant to this application. The property is not identified as state significant agricultural land (clause 11 and schedule 1). The proposed solar farm is not contrary to the aims of the policy (clause 3).		
State Environmental Planning Policy (State and Regional Development) 2011	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: This proposal is considered to be “regionally significant development” (clause 20 and Schedule 7(5)) as the proposed development is private infrastructure (electricity generating works) with a capital investment value over \$5million.		

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

LEP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development (The proposed development is entirely within RU2 zoned land).

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

- (a) The proposed development is defined in the LEP 2014 Dictionary as “electricity generating works”;
- (b) The site of the proposed development is within the RU2 Rural Landscape according to the Land Zoning Map;
- (c) The proposed development is prohibited under the LEP 2014 but is permitted with consent by way of clause 34(1) and (7) of SEPP (Infrastructure) 2007; and
- (d) Regard is had for the Zone Objectives as follows:

RU2 Rural Landscape Zone

Zone Objective	Consideration
<ul style="list-style-type: none"> • To encourage sustainable primary industry production by maintaining and enhancing the natural resource base. • To maintain the rural landscape character of the land. • To provide for a range of compatible land uses, including extensive agriculture. • To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality. • To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality. 	<p>The proposed solar energy system will cover approximately 6.3ha (~8.5%) of the 73.53 ha property. This area of land is currently grassed and the solar farm will prevent this land from being used for primary production (e.g., grazing cattle) during the operation of the solar farm.</p> <p>It may be possible for the site to be used for primary production should the solar farm be decommissioned in the future. “<i>Solar farms developed on agricultural lands should aim to be reversible and allow for land to be restored to its pre-developed state</i>” (Department of State Development, Manufacturing, Infrastructure and Planning, September 2018).</p> <p>The subject site is largely level (less than 5 per cent slope), low-lying (less than 5m above sea level) and surrounded by vegetation thus limiting the potential impact on rural landscape character and minimising potential impacts on the scenic quality of the locality. Although there is elevated land to the east of the proposed solar farm (i.e., Prestons Lane), this area is well vegetated and the solar farm is not expected to cause a more than minor impact on the scenic quality of the locality.</p>

Clause 6.1 - Acid sulfate soils

The subject site is mapped as having class 3 acid sulfate soils. Construction of the proposed solar farm may require “*Works more than 1 metre below the natural ground surface*” and consequently development consent. A condition has been recommended that clearly states that any concept approval does not authorise works impacting acid sulfate soils which would need to be the subject of a subsequent development application.

Clause 6.2 - Earthworks

Construction of the proposed solar farm may require development consent for earthworks. A condition has been recommended that clearly states that any concept approval does not authorise earthworks which would need to be the subject of a subsequent development application.

The applicant has requested the site preparation works including earthworks and works that may disturb, expose or drain acid sulfate soils be considered at a later stage by way of a subsequent development application (1.0 of Addendum, #E2019/76647).

Clause 6.3 – Flood planning

The subject site is mapped as being flood prone land. The application included flood modelling (BMT, January 2019) which concluded that “no significant off site affluxes are predicted”. Council’s Engineer supports the concept application subject to recommended conditions and the provision of further information with the subsequent development application required for the proposal.

Clause 6.6 – Essential services

The applicant has indicated that the proposed solar farm will connect to the grid via a transmission line that extends from the north west of the solar farm site to a powerline/pole that runs along Old Brunswick Road. It is expected that the proposed connection will be subject to approval from Essential Energy. On that basis it would appear that essential services for the development (electricity, stormwater management and vehicular access) are available or can be made available when required.

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

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

No proposed instruments were identified that are applicable to this proposal.

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

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

Part A	<input checked="" type="checkbox"/>
Part B Chapters:	<input type="checkbox"/> B2 <input checked="" type="checkbox"/> B3 <input checked="" type="checkbox"/> B4 <input type="checkbox"/> B5 <input checked="" type="checkbox"/> B6 <input type="checkbox"/> B7 <input checked="" type="checkbox"/> B8 <input checked="" type="checkbox"/> B9 <input type="checkbox"/> B10 <input type="checkbox"/> B11 <input type="checkbox"/> B12 <input type="checkbox"/> B13 <input checked="" type="checkbox"/> B14
Part C Chapters:	<input type="checkbox"/> C1 <input checked="" type="checkbox"/> C2 <input type="checkbox"/> C3 <input type="checkbox"/> C4
Part D Chapters	<input type="checkbox"/> D1 <input type="checkbox"/> D2 <input type="checkbox"/> D3 <input type="checkbox"/> D4 <input type="checkbox"/> D5 <input type="checkbox"/> D6 <input type="checkbox"/> D7 <input type="checkbox"/> D8
Part E Chapters	<input type="checkbox"/> E1 <input type="checkbox"/> E2 <input type="checkbox"/> E3 <input type="checkbox"/> E4 <input type="checkbox"/> E5 <input type="checkbox"/> E6 <input type="checkbox"/> E7

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

Council’s Environmental Health Officer has reviewed the concept application regarding site waste minimisation and land use conflicts (Chapters B6 and B8) and found the proposal to be adequate subject to recommended conditions and the provision of further detail with any subsequent development application.

The application did not include a landscape plan (Chapter B9). A condition has been recommended that requires a vegetation management plan to be prepared and provided with any subsequent development application that particularly addresses screening of the development from Grays Lane and riparian restoration along the tributaries of Simpsons Creek.

These checked Parts/Chapters have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act. The proposed

development is demonstrated to meet the relevant Objectives of all relevant Parts/Chapters (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

4.5 Any Planning Agreement or Draft Planning Agreement?

	Yes	No
Is there any applicable planning agreement or draft planning agreement?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

4.6 Environmental Planning & Assessment Regulation 2000 Considerations

Clause	This control is applicable to the proposal:	I have considered this control as it relates to the proposal:	If this control is applicable, does the proposal comply?
92	No	Not applicable	Not applicable
93	No	Not applicable	Not applicable
94	No	Not applicable	Not applicable
94A	No	Not applicable	Not applicable

4.7 Any COASTAL ZONE MANAGEMENT PLAN?

	Satisfactory	Unsatisfactory	Not applicable
Is there any applicable coastal zone management plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

Note:

The consent authority, when considering under section 4.15 the likely impact of the development the subject of a concept development application, need only consider the likely impact of the concept proposals and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications (clause 4.22(5) EP&A Act). The proposals for detailed development of the site will require further consideration under section 4.15 when a subsequent development application is lodged.

Impact on:	Likely significant impact/s?
Natural environment	No. The concept proposal, subject to the recommended conditions will not have a significant adverse impact on the natural environment of the locality.
Built environment	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.

Consideration of potential impacts not addressed above:

Visual impacts – Visual impacts are expected to be minimal due to the solar farm being:

- located on a largely level (less than 5 per cent slope) and low-lying (less than 5m above sea level) area of land;
- largely surrounded by vegetation; and
- located adjacent to elevated land to the east, preventing a view of the solar farm from the east/coastline, and the pacific highway to the west.

There are some dwellings/buildings located on the elevated land (accessed via Prestons Road) however this area is well vegetated and the dwellings/buildings do not appear to have unobstructed

view, if any, of the proposed solar farm location. The proposed solar farm may have a minor visual impact on the property directly opposite the current driveway access to the subject site (Lot 2 DP 1229068) and to a lesser extent the property immediately to the east (Lot 10 DP 1066623). The recommended condition/s relating to preparation of a landscape plan/vegetation plan will enable any visual impact on these properties to be adequately mitigated.

Glint and glare – *“PV solar panels are designed to have low levels of reflectivity ... [and] ... PV panels are constructed of dark, light absorbing material and covered with an anti-reflective coating”* *“Reflectivity assessments ... typically find minimal to no risks”* (Department of State Development, Manufacturing, Infrastructure and Planning, September 2018). The original SEE (Byron Bay Planning and Property Consultants, April 2019) included a consideration of potential glare impacts particularly on aviation at the nearby Tyagarah Air Strip (~200m to the north) including examples of commercial airports with solar installations on their premises, a general assessment of potential impacts on aviation (Spaven Consulting, 2011) and evidence of consultation with the Civil Aviation Safety Authority (CASA). The comparative reflection analysis provided shows solar panels being marginally more reflective than asphalt but significantly less reflective than water (Spaven Consulting, 2011). Given the proximity of the proposed development to the Pacific Ocean (~1.7km) the likely glint and glare contribution from the solar panels is not expected to be significant. Further, correspondence from CASA provided with the application states that *“In this particular proposal, the solar panels will be adjacent the runway which is facing more east-west than north-south. Therefore the likelihood the panels will impact on the airstrip is unlikely. Therefore CASA would advise that the proposal is unlikely to present a hazard to air aviation”* (email from Matthew Windebank, 21 November 2018).

Hazards, risks and waste – Council’s Environmental Health Officer has recommended a condition requiring preparation of a waste minimisation and management plan for the proposal. Bushfire safety measures have been included in conditions.

Health – *“Due to the negligible electromagnetic radiation produced by solar farms and related infrastructure, no specific mitigation measures are required beyond compliance with normal electrical safety practices and standards”* (Department of State Development, Manufacturing, Infrastructure and Planning, September 2018).

Noise - Council’s Environmental Health Officer has recommended a condition requiring the preparation of a noise management plan to be submitted with the subsequent development application/s.

The following Council Policies are applicable to the proposed development:

Council Policy	Consideration
Building over pipelines and other underground structures Policy	A water pipeline traverses the subject site for which an easement is registered on the property title. The proposal does not include placement of solar panels within the easement and limits proposed development within the easement to two access gates and an electrical underpass (identified on Drawing SK0001 Revision A). It is understood that Rous Water are responsible for the management of the subject water pipeline and the application includes evidence of consultation with Rous Water prior to lodgement of the DA which indicates that Rous Water are comfortable with what is proposed.
Management of Contaminated Land Policy	Council’s Environmental Health Officer has recommended that a contaminated land assessment be provided with any subsequent development application (Doc #A2019/11983).
Corporate Sustainability Policy	The proposed solar farm will <i>“increase in the proportion of energy supplied from renewable energy source”</i> in accordance with item 3.6.

4.9 The suitability of the site for the development

The site is suitable for the proposed development in that:

- It is not highly visible and is relatively low lying;

- Does not require the removal of native vegetation;
- Is separate from nearest residences (~250m to the east); and
- It is not subject to natural hazards or natural hazards are manageable.

4.10 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited. There were seven (7) submissions made on the development application:

- Nil (0) For
- Seven (7) Against

Key issues identified in submissions	Consideration
Visual impacts	As noted above, visual impacts of the proposed solar farm are expected to be minimal. The proposed solar farm may have a minor visual impact on the property directly opposite the current driveway access to the subject site (Lot 2 DP 1229068) and to a lesser extent the property immediately to the east (Lot 10 DP 1066623). The recommended condition/s relating to preparation of a landscape plan/vegetation plan will enable any visual impact on these properties to be adequately mitigated.
Glare impacts	The recommended condition/s relating to preparation of a landscape plan/vegetation plan are expected to adequately mitigate visual impacts on neighbouring properties including any potential glare impacts.
Health impacts/Electromagnetic radiation	The nearest <u>potential</u> dwelling would be ~300m to the east of the proposed solar farm (Lot 10 DP 1066623). As noted above, <i>“Due to the negligible electromagnetic radiation produced by solar farms and related infrastructure, no specific mitigation measures are required beyond compliance with normal electrical safety practices and standards”</i> (Department of State Development, Manufacturing, Infrastructure and Planning, September 2018).
Noise impacts	Council's Environmental Health Officer has recommended that any subsequent development application include a noise impact assessment and this requirement has been included in the recommended conditions for this development application .
Impacts on Hairy Joint Grass (<i>anthaxon hispidus</i>)	<p>The SEE included a consideration of plant communities (3.3) but did not identify any Hairy Joint Grass being present on the subject site. Further, Hairy Joint Grass is a <i>“moisture and shade-loving grass, found in or on the edges of rainforest and in wet eucalypt forest, often near creeks or swamps”</i> (environment.nsw.gov.au/threatenedspeciesapp/Profile.aspx?id=10066)</p> <p>The requirement that a 40m buffer between the development and Simpsons Creek be provided should minimise or prevent any impacts on Hair</p>

	Joint Grass in the event that it subsequently found to be present on the property.
Impacts on farmland	<p>The proposed solar energy system will cover approximately 6.3ha (~8.5%) of the 73.53 ha property. This area of land is currently grassed and the solar farm will prevent this land from being used for primary production (e.g., grazing cattle) during the operation of the solar farm.</p> <p>It may be possible for the site to be used for primary production should the solar farm be decommissioned in the future. <i>“Solar farms developed on agricultural lands should aim to be reversible and allow for land to be restored to its pre-developed state”</i> (Department of State Development, Manufacturing, Infrastructure and Planning, September 2018). A condition has been recommended to require restoration of the site to farmland following decommissioning of the solar farm.</p>
Impacts of excavation (including flooding, acid sulfate soils)	<p>Council received correspondence from the new applicant on 14 October 2019 (#E2019/76647) which included a request that the application be treated as a “concept development application”. This approach was requested to enable the applicant scope to vary the site preparation works required depending on the final design style of the solar panels and mounting methodology selected (i.e., .It may be possible to minimise the scope and scale of earthworks through the use of ballasted panels or other technology).</p> <p>Details of proposed earthworks will need to be provided with the subsequent development application for detailed design and physical works. Conditions have been recommended for this development application that set the boundaries for acceptable earthworks for the site taking into account the identified constraints.</p>
Impact on vegetation from installation of transmission lines	A conditions has been recommended that confirms that this development application does not authorise the removal of any native trees and vegetation from the site.
Impacts on landscape character	<p>As noted above, visual impacts of the proposed solar farm are expected to be minimal. The proposed solar farm will result in a change to the current landscape but this change is expected to be minor due to the solar farm being:</p> <ul style="list-style-type: none"> • Located on low-lying land (less than 5m above sea level); • Largely surrounded by vegetation; and • Adjacent to elevated land to the east preventing a view of the solar farm from the east/coastline and the pacific highway to the west.
Fence	The initial application indicated that a high-tensile steel barb wire fence would be constructed around the development. No further details of this fence was provided however, it is likely that such a fence

	could be installed as exempt development (clauses 2.35, 2.36 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008).
Dust impacts from traffic on Grays Lane	<p>Council's Development Engineer has recommended a condition that prevents the import and/or export of soil from the site which will reduce the required vehicle movements and consequently dust generation from the construction phase of the development.</p> <p>Council's Development Engineer has also recommended a condition that requires a traffic assessment to be presented with the subsequent development application for the proposal. An assessment of potential dust impacts can be conducted on receipt of the traffic assessment.</p>
Impact on Aboriginal cultural heritage	<p>The Bundjalung (Arakwal) were notified of the development application but did not provide any comments. I accompanied representatives of the Tweed Byron Local Aboriginal Land Council (TBLALC) for a site inspection on 6 June 2019. Aspects of the proposal were discussed during the site inspection however no formal/written submission was received by Council from TBLALC in relation to this application.</p>

4.11 Public interest

The proposed development is considered to be in the public interest as it is for the generation of renewable energy through the installation of a medium-scale solar farm. Further, the proposed solar farm is unlikely to create a desirable precedent that may encourage future renewable energy projects in Byron Shire.

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

No Section 64 levies will be required.

5.2 Section 7.11 Contributions

No Section 7.11 Contributions will be required. A Section 7.12 levy will be payable subject to a future development application and conditions will be applied at that time.

6. CONCLUSION

The proposed concept development is consistent with the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development. The application is recommended for approval subject to conditions of consent.

Note:

A concept development application is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications (clause 4.22(1) EP&A Act).

If consent is granted on the determination of a concept development application, the consent does not authorise the carrying out of development on any part of the site concerned unless consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site. The terms of a consent granted on the determination of a concept development application are to reflect the operation of this subsection (clause 4.22(4)(a) EP&A Act).

7. RECOMMENDATION

It is recommended that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, concept development application no. 10.2019.169.1 for Electricity Generating Works - 5 Megawatt Solar Energy System, be granted consent subject to the following conditions:

CONDITIONS OF CONSENT:

SCHEDULE 1 CONDITIONS OF CONSENT

Parameters of consent

1. **Development is to be in accordance with approved plans**
The development is to be in accordance with plans listed below:

Plan No.	Description	Prepared by	Dated:
Illustration X10	Byron ECO Park Solar Farm	-	18/07/2019
Drawing SK0001 Revision A	Proposed Electrical Cable Undercrossing of Rous County Council Water Easement Layout Plan and Typical Section	Planit Consulting	01.03.19

The development is also to be in accordance with any changes shown in red ink on the approved plans or conditions of consent.

The approved plans and related documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

2. **Ground works are not permitted**
Ground works associated with construction of the solar farm are strictly not permitted to occur on the site concerned without prior development approval of the Council. Such approval must be obtained subsequent to the date of this consent. All works are subject to an assessment of environmental impacts.

Note: This condition does not predicate that an approval will be granted for ground site works associated with the concept solar farm.

3. **Subsequent development application required**
A subsequent development application is required for detailed design of the solar farm and any physical works required which address at least the following matters:
- Vehicle access to the site;
 - Traffic assessment (construction, operational and decommissioning);
 - Earthworks;
 - Flood mitigation;
 - Bush fire assessment;
 - Potential adverse impacts on surface water and groundwater and measures to avoid, manage and mitigate any such impacts;

- g) Stormwater management;
- h) Erosion and sediment control;
- i) Contaminated site assessment
- j) Acid sulfate soils assessment;
- k) Noise impact assessment
- l) Landscaping and restoration of riparian land.

Such approval must be obtained subsequent to the date of determination of this consent.

4. Solar panels

The solar panels to be used/installed shall not include cadmium telluride (CdTe). Details and specifications of the proposed solar panels must be included in any subsequent development application.

5. Bushfire

Any subsequent development application must include a Bush Fire Assessment prepared by a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment that confirms how the proposed development conforms to the relevant specifications and requirements.

Any subsequent development application must include:

- a) A minimum asset protection zone of five (5) metres to be maintained around the solar farm;
- b) Details of safe operational access and egress for emergency service personnel;
- c) Ongoing management and maintenance of bush fire protection measures; and
- d) Provision of utility services that are adequate to meet the needs of firefighters.

6. Minimum separation distance to Simpsons Creek and tributaries

A minimum forty (40) metre separation distance must be provided between the development, including any associated earthworks, and Simpsons Creek and its tributaries. Any subsequent development application must demonstrate compliance with this condition.

The only exception to this requirement is for the transmission connection to the grid which must be limited to poles and transmission lines.

7. Earthworks

The development shall not include the importation or exporting of fill from the subject site.

8. Native vegetation removal

The development shall not require the removal of any native trees and vegetation from the site.

9. Vegetation Management Plan

Any subsequent development application must include a Vegetation Management Plan that details:

- a) Proposed restoration of the Simpsons Creek riparian areas bordering the development area that includes revegetation of at least twenty (20) metres on both sides of the waterway.
- b) Proposed landscaping along the southern property boundary to minimise the visual impact of the solar farm from Grays Lane.

The Vegetation Management Plan must be prepared by a suitably qualified and experienced ecologist and for approval by Council.

10. **Rous Water easement**

No development is permitted within the Rous Water easement (identified on the property title as (B) Easement for Water Pipeline) except for access gates and the electrical underpass identified on Drawing SK0001 Revision A Plan. No works within the easement shall occur without written approval from Rous Water. Evidence of such shall be provided to Council prior to any works commencing.

11. **Groundwater protection**

The development shall not include excavation that intercepts groundwater and/or results in changes to the groundwater levels under or surrounding the site.

Any subsequent development application must demonstrate to Council that proposed construction of the development will not result in the disturbance of groundwater.

12. **Batteries**

Should the development application for detailed design and physical works include the use of batteries, a preliminary risk screening must be undertaken in accordance with State Environmental Planning Policy No33 – Hazardous and Offensive Development and be provided with the application.

13. **Acid Sulfate Soils Assessment Report required**

Any subsequent development application must include an Acid Sulfate Soils Assessment prepared by a suitably qualified person to determine whether acid sulfate soils will be disturbed by the proposed development, together with any measures to manage such disturbance. Investigations and management measures must be in accordance with the Acid Sulfate Soil Guidelines (ASSMAC, 1998) and pursuant to Clause 6.1 of Byron Local Environment Plan 2014. The report must confirm the depth of the water table.

14. **Contaminated Land Assessment Report required**

Any subsequent development application must include a Contaminated Land Assessment prepared by a suitably qualified person. Investigation and reporting must be in accordance with State Environmental Planning Policy No 55—Remediation of Land and Guidelines for Consultants Reporting on Contaminated Sites (State of NSW and Office of Environment and Heritage, 2011) and any other relevant statutory requirements.

15. **Site Waste Minimisation Management Plan**

Any subsequent development application must include a Site Waste Minimisation and Management Plan (SWMMP) outlining measures to minimise and manage waste generated during construction, operation and decommissioning of the proposed development. The SWMMP must specify the proposed method of recycling and/or disposal of solar panels and relevant waste service provider.

16. **Noise Management Plan required**

Any subsequent development application must include a Noise Management Plan prepared by a suitably qualified acoustic practitioner and detail the methods that will be implemented for the whole project to minimise and manage noise. The Noise Management Plan must include:

- a) identification of nearby residences and other sensitive land uses;
- b) assessment of expected noise impacts;
- c) detailed examination of feasible and reasonable work practices that will be implemented to minimise noise impacts;

- d) strategies to promptly deal with and address noise complaints;
- e) details of performance evaluating procedures (for example, noise monitoring or checking work practices and equipment);
- f) procedures for notifying nearby residents of forthcoming works that are likely to produce noise impacts;
- g) reference to relevant consent conditions; and
- h) name and qualifications of person who prepared the plan.

17. Access and Traffic

Any subsequent development application must include a traffic assessment prepared in accordance with the requirements of section B4.2.1 of Chapter B4 of the Byron Development Control Plan 2014. The traffic assessment shall consider:

- a) Details of existing and proposed access arrangements;
- b) Construction, operational and decommissioning phases;
- c) Heavy goods vehicles, potential for impacts on local roads and maintenance/ repair regimes;
- d) Swept paths for the largest vehicle at key intersections and the site access;
- e) Internal access, roads and parking arrangements; and
- f) Potential dust impacts from Grays Lane and the development site and proposed mitigation.

18. Stormwater

Any subsequent development application must include a Stormwater Management Plan, prepared in accordance with section 3.4 of Council's Comprehensive Guidelines for Stormwater Management, demonstrating compliance with section B3.2.3 of Chapter B3 of Byron Development Control Plan 2014. The stormwater management plan shall consider:

- a) Details of existing and proposed stormwater management;
- b) Construction, operational and decommissioning phases;
- c) Potential impacts on surface water and groundwater and proposed mitigation.

The stormwater management plan shall address all applicable standards and policies including but not limited to:

- a) Council's Norther Rivers Development & Construction Guidelines and other Council relevant Policies;
- b) NSW State Groundwater Quality Protection Policy (Department of Land & Water Conservation 1998);
- c) Bunding and Spoil Management (EPA 1997); and
- d) ANZECC (2000) Australian and New Zealand Guidelines for Water Quality Monitoring and Reporting (collectively known as the "ANZECC Guidelines").

19. Flood Modelling

Any subsequent development application must include flood modelling of the proposed development (including internal roadworks and earthworks) that takes into account any relevant statutory provisions, Council policy and climate change parameters with respect to flooding that are applicable at the time of lodgement of the development application including but not limited to the objectives and requirements of clause 6.3 of the Byron Local Environment Plan 2014.

20. Decommissioning and Rehabilitation of site

Any subsequent development application must include a decommissioning and site remediation plan for the solar farm. This plan shall include but not be limited to:

- a) Details for removal of panels, footings; underground pipes and cables;
- b) Removal of access roads;
- c) Reinstatement of soil profiles and land form based on pre-development soil information and topography; and

- d) Revegetation of the development site with appropriate grass species.

SCHEDULE 2 PRESCRIBED CONDITIONS

The prescribed conditions in accordance with Division 8A of the Environmental Planning and Assessment Regulation apply as are of relevance to this application:

- Clause 98 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989
- Clause 98A Erection of signs
- Clause 98B Notification of Home Building Act 1989 requirements
- Clause 98E Condition relating to shoring and adequacy of adjoining property

Refer to the NSW State legislation for full text of the clauses under Division 8A of the [Environmental Planning and Assessment Regulation 2000](http://www.legislation.nsw.gov.au). This can be accessed at <http://www.legislation.nsw.gov.au>.

SCHEDULE 3 NOTES

Construction Certificate required:

This development consent is issued under the Environmental Planning and Assessment Act 1979 and does not relate to structural aspects or specifications of the building under the Building Code of Australia. All buildings and alterations require the issue of a Construction Certificate prior to works commencing. Application forms are available from the customer services counter or Council's website www.byron.nsw.gov.au

Principal Certifying Authority:

Work must not commence until the applicant has:-

- a. appointed a Principal Certifying Authority (if the Council is not the PCA); and
- b. given Council at least two days notice of the intention to commence the erection of the building. Notice must be given by using the prescribed 'Form 7'.
- c. notified the Principal Certifying Authority of the Compliance with Part 6 of the Home Building Act 1989.

Protection of the Environment Operations Act 1997:

It is an offence under the provisions of the Protection of the Environment Operations Act 1997 to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ("on-the-spot fine") or prosecution.

Penalties apply for failure to comply with development consents

Failure to comply with conditions of development consent may lead to an on the spot fine being issued pursuant to section 4.2(1) of the Environmental Planning & Assessment Act 1979 or prosecution pursuant to section 9.50 of the Environmental Planning & Assessment Act 1979

Relics Provisions- Advice

Attention is directed to the NSW Heritage Act 1977 and the provisions of the Act in relation to the exposure of relics. The Act requires that if:

- a) a relic is suspected, or there are reasonable grounds to suspect a relic in ground, that is likely to be disturbed damaged or destroyed by excavation; and/or
- b) any relic is discovered in the course of excavation that will be disturbed, damaged or destroyed by further excavation;

Those responsible for the discovery must notify nominated management personnel who will in turn notify the Heritage Council of New South Wales or its delegate, the Office of Environment and Heritage, NSW Heritage Branch, and suspend work that might have the effect of disturbing, damaging or destroying such relic until the requirements of the NSW Heritage Council have been satisfied (ss139, 146).

Essential Energy general comments

Essential Energy makes the following general comments:

1. As part of the subdivision, if required by Essential Energy, easement/s are to be created for any existing electrical infrastructure, using Essential Energy's standard easement terms current at the time of registration of the easement plan.
2. If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment.
3. Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above property should be complied with.
4. Satisfactory arrangements must be made with Essential Energy for the provision of power with respect to the proposed development. It is the Applicant's responsibility to make the appropriate application with Essential Energy for the supply of electricity to the development, which may include the payment of fees and contributions. Refer Essential Energy's Contestable Works team for requirements via email contestableworks@essentialenergy.com.au.
5. Satisfactory arrangements must be made with Essential Energy with respect to the proposed solar energy system / farm. It is the Applicant's responsibility to enter into the required agreement/s and any other requirements with Essential Energy for the development, which may include the payment of fees and contributions. Refer Essential Energy's Network Connections team for requirements via email networkconnections@essentialenergy.com.au.
5. In addition, Essential Energy's records indicate there is electricity infrastructure located within the property and within close proximity to the property. Any activities within these locations must be undertaken in accordance with the latest industry guideline currently known as *ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure*. Approval may be required from Essential Energy should activities within the property encroach on the electricity infrastructure.
6. Prior to carrying out any works, a "Dial Before You Dig" enquiry should be undertaken in accordance with the requirements of Part 5E (Protection of Underground Electricity Power Lines) of the *Electricity Supply Act 1995 (NSW)*.
7. Given there is electricity infrastructure in the area, it is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW (www.safework.nsw.gov.au) has publications that provide guidance when working close to electricity infrastructure. These include the *Code of Practice - Work near Overhead Power Lines* and *Code of Practice - Work near Underground Assets*.

8. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No

Provide Disclosure Statement register details here: Not applicable