

DETERMINATION AND STATEMENT OF REASONS
NORTHERN REGIONAL PLANNING PANEL

DATE OF DETERMINATION	Thursday, 5 December 2019
PANEL MEMBERS	Garry West (Chair), Pamela Westing, Stephen Gow, David Brown and Basil Cameron
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held at Byron Shire Council on Thursday, 5 December 2019, opened at 12.30pm and closed at 1.30pm.

MATTER DETERMINED

2019NTH016 – Byron Shire – 10.2019.169.1 at 19 Grays Lane TYAGARAH – electricity generating works (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at the meeting and briefings and the matters observed at the site inspections listed at item 8 in Schedule 1.

Development application

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

The decision was unanimous.

REASONS FOR THE DECISION

- The proposed concept development is consistent with the relevant planning instruments and planning controls applicable to the site;
- 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;
- Amended conditions require any future development application addresses compliance with the concept conditions of approval in addition to flooding impacts and movement of native fauna across the site.

CONDITIONS

The development application was approved subject to the conditions in the council assessment report with the following amendments:

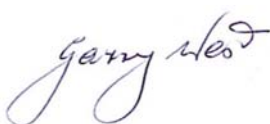

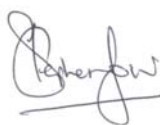


- Condition 2 was changed to clarify what works are not permitted;
- Condition 3 was changed to require Illustration X10 to show the exact location of the proposed solar farm and compliance with other conditions of the consent, in particular condition 6;
- Condition 7 was changed to clearly require that there is no net gain from any filling of the land associated with earthworks to be undertaken;
- New condition 21 to require that the development is not to include barbed wire or any form of fencing which would prevent the movement of native fauna across the site or propose a threat to wildlife.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition and heard from all those wishing to address the panel. The panel notes that issues of concern included:

- Visual impacts
- Glare impacts
- Health impacts/electromagnetic radiation
- Noise impacts
- Impacts on Hairy Join Grass
- Impacts on farmland
- Impacts of excavation (including flooding, acid sulfate soils)
- Impact on vegetation from installation of transmission lines
- Impacts on landscape character
- Fence
- Dust impacts from traffic on Grays Lane
- Impact on Aboriginal cultural heritage

The panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting. The panel notes that conditions were amended at the determination meeting to address the issues raised in the public meeting.

PANEL MEMBERS	
 Garry West (Chair)	 Pamela Westing
 Stephen Gow	 David Brown
 Basil Cameron	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2019NTH016 – Byron Shire – 10.2019.169.1
2	PROPOSED DEVELOPMENT	Concept development application for electricity generating works – 5 Megawatt solar energy system
3	STREET ADDRESS	19 Grays Lane TYAGARAH
4	APPLICANT/OWNER	Dieter Horstmann
5	TYPE OF REGIONAL DEVELOPMENT	Private infrastructure and community facilities over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy No 44 – Koala Habitat Protection State Environmental Planning Policy No 55 – Remediation of Land State Environmental Planning Policy (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 Environmental Plan 2014 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Byron Development Control Plan 2014 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council assessment report: 20 November 2019 Written submissions during public exhibition: seven (7) Verbal submissions at the public meeting: <ul style="list-style-type: none"> In support – None In objection – Stephen (Mitra) Ardron and Bela Allen Council assessment officer – Ivan Holland On behalf of the applicant – None
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Site inspection and final briefing: 5 December 2019 at 11am <ul style="list-style-type: none"> <u>Panel members</u>: Garry West (Chair), Pamela Westing, Stephen Gow, David Brown and Basil Cameron <u>Council assessment staff</u>: Ivan Holland (Planner); Jeff Begovic (Supervisor, Development Engineer); Emma Holt (Environmental Health Officer); and Greg Smith (Team Leader, Planning Services)
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report and amended at the meeting

SCHEDULE 2

CONDITIONS OF CONSENT

Parameters of consent

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:
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Illustration X10	Byron ECO Park Solar Farm	-	18/07/2019
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Drawing SK0001 Revision A	Proposed Electrical Cable Undercrossing of Rous County Council Water Easement Layout Plan and Typical Section	Planit Consulting	01.03.19
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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.

Works are not permitted

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 works associated with the concept solar farm.

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:

- a) The exact location of the proposed solar farm within the area shown in Illustration X10 and compliant with the other conditions of this consent, in particular condition 6.
- b) Vehicular access to the site;
- c) Traffic assessment (construction, operational and decommissioning);
- d) Earthworks;
- e) Flood mitigation;
- f) Bush fire assessment;
- g) Potential adverse impacts on surface water and groundwater and measures to avoid, manage and mitigate any such impacts;
- h) Stormwater management;
- i) Erosion and sediment control;
- j) Contaminated site assessment
- k) Acid sulfate soils assessment;
- l) Noise impact assessment
- m) Landscaping and restoration of riparian land.

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

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.

Bushfire

Any subsequent development application must include an 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.

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.

Earthworks

The development shall not include any net gain from any filling of the land nor any importation or exporting of fill from the subject site.

Native vegetation removal

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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").

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.

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.

Fencing

The development is not to include barbed wire or any other form of fencing which would prevent the movement of native fauna across the site or pose a threat to wildlife.