

<b>ADDRESS:</b>	LOT: 12 DP: 1042612 1333 Merriwa Road DENMAN
<b>APPLICATION No:</b>	102/2019
<b>PROPOSAL:</b>	Electricity Generating Works (Solar Farm)
<b>OWNER:</b>	Stroud Agricultural Company Pty Limited
<b>APPLICANT:</b>	Vernon Trust C/- Andrew King Po Box 420 TERREY HILLS NSW 2084
<b>AUTHOR:</b>	Mr H A McTaggart
<b>REVIEWED BY:</b>	Ms S Pope
<b>DATE LODGED:</b>	19 November 2019
<b>DATE OF REPORT:</b>	6 April 2020
<b>CONSENT AUTHORITY:</b>	Hunter and Central Coast Regional Planning Panel
<b>RECOMMENDATION:</b>	Approval subject to conditions

## 1. EXECUTIVE SUMMARY

The following is a summary of key points regarding the assessment of the development application:

- The proposed development involves the establishment of an electricity generating works (solar farm) at 1333 Merriwa Road, Denman (Lot 12 DP 1042612). The proposed solar farm will have an electricity generating capacity of 6 Megawatts.
- The estimated capital investment value (CIV) for the proposed development is \$5,558,870. The State Environmental Planning Policy (State and Regional Development) 2011 identifies development for the purposes of electricity generating works with a CIV between \$5-million and \$30-million as regionally significant development. The Hunter Central Coast Regional Planning Panel is the consent authority for regionally significant development in the Muswellbrook Local Government Area (LGA).
- The proposed development is not 'designated development' or 'integrated development'.
- The proposed development was publicly notified and advertised between the 5 December 2019 and the 6 January 2020. The local business association, the Sandy Hollow Progress Association was also directly notified of the proposed development. No submissions were received in relation to the proposed development.
- The proposal was notified to the following government agencies and Council Sections/Officers, and their comments taken into consideration:
  - Ausgrid (legislated referral)
  - Traffic for NSW (legislated referral)
  - Australian Rail Track Corporation (legislated referral)
  - NSW Rural Fire Service
  - Council's Community Infrastructure Department
  - Council's Ecologist and Sustainability Team Leader
  - Council's Senior Environmental Health Officer
- Key findings of the Section 4.15 Assessment which inform this recommendation include:
  - The proposed development is not permissible under the provisions of the Muswellbrook LEP 2009. The proposal is permissible with consent under the provisions of the ISEPP as the development is for the purpose of energy generating works. The provisions of the ISEPP related to the permissibility of the development prevail over the contrary provisions contained in the Muswellbrook LEP 2009.
  - The proposed development is in accordance with all other relevant provisions of the Muswellbrook LEP 2009.
  - The proposed development would be compatible with the requirements of the relevant SEPP's.
  - A BDAR has been prepared to consider ecological impacts related to the proposed development. The BDAR requires the retirement of 4 ecosystem and 9 species credits for the development to be carried out from an ecological impact perspective.
  - The proposed development is compatible with the relevant requirements of the Muswellbrook DCP 2009 and conditions of consent have been recommended to ensure the development is carried out in accordance with certain DCP provisions.
  - Council Officers are satisfied that the proposed development is unlikely to have a significant adverse environmental impact.
- The proposed development is compatible with public interest. It would have positive social and economic impacts for the Muswellbrook LGA.
- Council Officers recommend that the development application be approved subject to conditions of consent.

## 2. SITE DESCRIPTION

The proposed development relates to Lot 12 DP 1042612, with the street address of 1333 Merriwa Road, Denman. This land was created in 2002 through an exempt provision as subdivision for a public purpose related to acquisition of land under the Roads Act 1993.

Lot 12 DP 1042612 has a total area of 149.5ha and is situated approximately 2.5km east of the village of Sandy Hollow. The northern boundary of the land adjoins the Golden Highway (a classified State Road) and the southern boundary adjoins the Goulburn River. The Muswellbrook-Merriwa rail line bisects the land in an east – west direction. A dwelling and associated buildings are situated on the part of the site north of Muswellbrook-Merriwa rail line.

The subject site is zoned RU1 Primary Production under the Muswellbrook Local Environmental Plan (LEP) 2009 and adjoins similarly zoned land to the south and west, while land to the immediate north and east of the site is zoned E3 Environmental Management.

The subject land is identified as bushfire prone by Council's bushfire information mapping.

The subject land is identified as flood liable by Council's flood information mapping. Council does not have a detailed flood study in relation to the site or the Goulburn River catchment. Identification of the site as flood liable is based on the 1955 flood event affecting the southern portion of the site. That portion of the site is not part of this application.

The image below identifies the subject site in context with the surrounding locality.

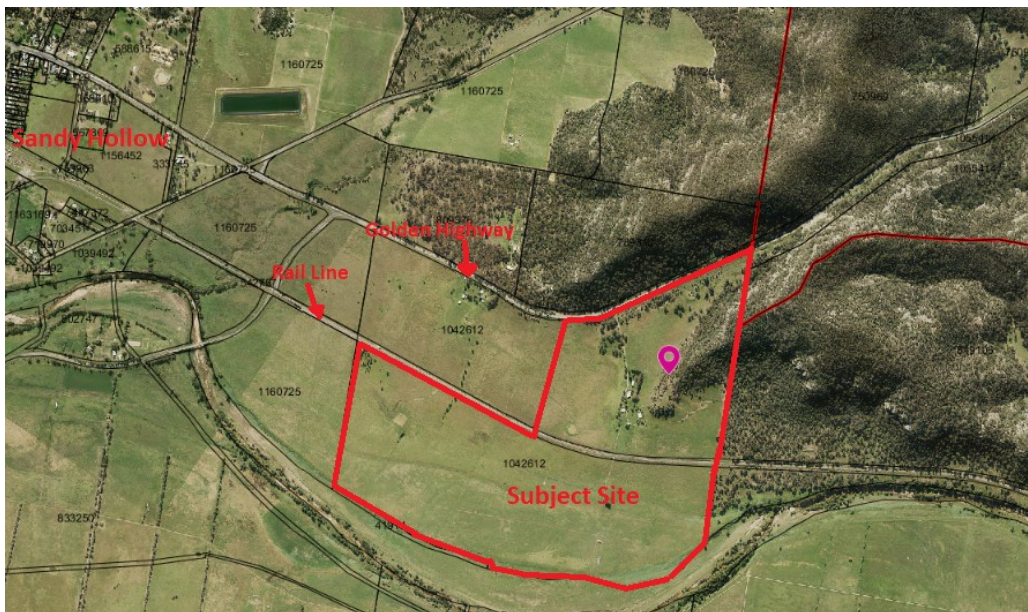


Image. 1 (Site and locality plan, source: Council GIS System)

Council had approved three (3) development applications in relation to the site, being:

- An awning (DA 140/2007);
- A garage (DA 172/2004).
- Two lot subdivisions (DA 435/2007). This development application was approved by Council Officers on the 7 March 2008. There is no evidence to indicate that the approved development had 'physically commenced' within 5 years of its approval; Council Officers are therefore of the view that this consent has lapsed.

### 3. DESCRIPTION OF THE PROPOSAL

The proposed development seeks to establish an electricity generating works on the land by developing a solar farm and associated infrastructure across approximately 14ha of the 149.5ha subject site.

The table below has been taken from the applicant's statement of environmental effects (SoEE) and provides a summary of the key components of the proposed development.

**Table 1 – Description of the proposed development (Source: SoEE)**

<b>Proposal element</b>	<b>Description</b>
<b>Proposal</b>	Sandy Hollow Solar Farm
<b>Capacity</b>	6 MW <i>Note: the capacity is based on products and technology available at the time of the proposal but may change through the life of the solar farm as advances in technology occur.</i>
<b>Development footprint</b>	Approximately 14 hectares solar farm infrastructure area
<b>Solar array</b>	Approximately 16,200 solar panels mounted in rows on tracker tables and approximately 2,000 array posts. One containerised power station (containing 2 x SMA MV Power Station 4950 or similar) on the eastern side of the solar array.
<b>Substations</b>	A grid connection switching station on the northern side of the site is proposed. This would connect to the existing 33kV transmission line which would be extended to a proposed containerised power station within the development site. A right of carriage way would need to be established on the property title, in favour of AusGrid, for access/maintenance purposes.
<b>Site compound</b>	Approximately 800sqm containing containerised inverter, control facilities, storage as well as temporary site office and amenities.
<b>Access tracks</b>	Internal access tracks would be constructed of engineered fill topped with crushed stone pavement would access the solar farm infrastructure for maintenance, as per accompanying design plans.
<b>Perimeter fencing, lighting and CCTV</b>	Wire mesh fencing installed around the site would indicatively be 1.94 metres high. Continuous infra-red security technology and CCTV cameras would be installed on posts around the perimeter fence and on the main access track.
<b>Construction hours</b>	Standard daytime construction hours would be 7.00am to 6.00pm Monday to Friday and 8.00am to 1.00pm on Saturdays.
<b>Construction timing</b>	9 months
<b>Workforce</b>	Construction – approximately 30 workers Operation – 1 operation and maintenance contractor, stationed off-site
<b>Operation period</b>	Up to 40 years
<b>Decommissioning</b>	The site would be returned to its pre-works state. All above ground infrastructure would be removed to a depth of 1000mm (exceptions apply, see Section 2.6). The site would be rehabilitated in consultation with the landowner, consistent with future land use requirements.
<b>Capital investment value</b>	Calculated \$5.6 million.

The image below provides a general overview of the solar panel arrangement and layout of the development.



	the State Heritage register which requires approval under Section 57 of this Act.	Heritage item.	
<i>Mining Act 1992</i>	Granting a mining lease	The proposed development does not involve the granting of a mining lease.	<b>NA</b>
<i>National Parks and Wildlife Act 1974</i>	Granting an aboriginal impact permit.	An Aboriginal Due Diligence Assessment has been carried out by NGH Environment. This assessment did not identify any new sites or areas of potential archaeological significance. Council Officers are satisfied that the subject site is unlikely to contain any sites of aboriginal significance and thereby the development may proceed without a requirement to obtain an aboriginal impact permit from National Parks and Wildlife Service.	<b>NA</b>
<i>Petroleum (onshore) Act 1991</i>	Petroleum production lease.	The proposed development does not relate to the production of petroleum.	<b>NA</b>
<i>Protection of the Environment Operations Act 1997</i>	Restricts the carrying out of a range of potentially polluting activities without the issue of an Environmental Protection License	Schedule 1 of this Act identifies activities that require environmental protection licenses under this Act. Council Officers have reviewed the range of scheduled activities and determined that the development is unlikely to require an Environmental Protection License as the system will have capacity to generate only 6 megawatts.	<b>NA</b>
<i>Roads Act 1993</i>	The carrying out of certain works or activities within a classified state road	<p>The proposed development involves the construction of a vehicular access from a Classified State Road.</p> <p>The proposed development was referred to Transport for NSW under the provisions of the Roads Act 1993. Transport for NSW provided their concurrence to the application. The referral was not processed as an integrated development referral in line with recent advice.</p>	<b>NA</b>
<i>Rural Fires Act 1997</i>	The subdivision or use of land for a special fire protection purpose that is	The land subject to this development application is identified as bushfire prone	<b>NA</b>

	identified as bushfire prone land.	land on Council's mapping. The proposed development is not a type of development that requires approval from the NSW Rural Fire Service (RFS) under the Rural Fires Act 1997. This notwithstanding, Council Officers engaged with the NSW RFS who provided comments that have informed the development assessment. This referral is discussed in detail under the external referral heading of this report.	
<i>Water Management Act 2000</i>	Water use approvals, water management approvals and approvals to carry out works on water front land. Land within 40m of a watercourse	The nearest adjoining waterway is Goulburn river situated adjacent the southern boundary of the land holding and physically separated from the proposed development by the Muswellbrook-Merriwa railway.	<b>NA</b>

## 4.2 External Referrals

The development application was referred to the following external government agencies for comment/consideration:

### Transport for NSW/NSW Roads and Maritime Services

In response to Council's referral TfNSW raised no object to the proposed development provided that a number of matters addressed and included in Council's conditions of consent. The TfNSW recommendations related to conditions of consent have been listed below along with comments from Council Officers as to how these conditions have informed/been incorporated into the recommended conditions of consent:

- Access to the site is restricted to left in/left out only.*

Planning comment: condition of consent recommended imposing left in/out access only.

- No temporary barrier to be installed on highway – Over size over mass (OSOM) vehicles regularly use the Golden Highway and a median barrier is not appropriate.*

Planning comment: comment has informed recommended pre-Construction Certificate condition of consent related to the construction of a vehicle access.

- It is considered that an AUL(s) treatment is appropriate for this location. The submitted BAL design does not consider the 4% downgrade on the northbound approach. If the downgrade is considered, the BAL extends to 1.2 times longer than submitted design.*

*The required length of an AUL(s) is 10m longer than the submitted BAL design. The turning volumes fall marginally short of requirements for an AUL(s), however with consideration of safety issues listed below, an AUL(s) treatment is required:*

- 1. An AUL would better highlight the entry for entering trucks.*
- 2. An AUL(s) would increase sight distance to northbound vehicles following entering trucks.*
- 3. An AUL(s) will allow the installation of a permanent, concreted, raised island at the entrance. A raised island provides a location for left only and give way signage as there will be no median barrier to deter right turns out of the facility. Additionally, the raised island will prevent right turns into the facility in the absence of a median barrier.*

Planning comment: comment along with additional TfNSW advice related to Works Authorisation Deeds has informed a recommended conditions regarding a pre-Construction Certificate and a pre-Occupation Certificate related to completion of these works.

- As vehicles are forced to turn left from the facility, Council may consider a turnaround area at Wybong Road as proposed by the applicant. The turnaround area may become damaged as there is no pavement and is for consideration by Council.*

Planning comment: Council Officers have noted that operational traffic related to the development would be limited as the premises is only anticipated to require 1 full time employee. A requirement for the construction of a turning bay along the Highway adjacent Wybong Road was therefore considered to be unnecessary. Safe turning options are available for light vehicles exiting the site in accordance with the left out requirement, and Wybong Road provides an alternative route for light vehicles returning east after leaving the development site. The additional vehicle movements of the single operational staff member were considered to have a negligible impact on the overall road network traffic volumes.

Council's Chief Engineer expressed some interest regarding how the left out/in site access requirements would be administered through the carrying out of construction works. Conditions are recommended requiring the submission and implementation of a Construction Traffic Management Plan in relation to the development.

- An 80km/h temporary works zone is required on the highway for the duration of the work which is 9 months. This time frame includes proposed haulage to site of materials by heavy vehicles over the proposed period of 30 days and any miscellaneous use of the entrance by heavy vehicles within the construction period.*

Planning comment: this temporary work-zone speed limit has been referenced as a requirement for the construction traffic management plan.

- Construction activities may be undertaken during standard daytime construction hours (7:00am to 6:00pm Monday to Friday, and 7:00am to 1:00pm on Saturdays). Any construction outside of these normal working hours would only be undertaken with prior approval from TfNSW.*

Planning comment: Council Officers have included a standard condition of consent restricting construction hours in accordance with this requirement.

- There is a proposed switching station near the entrance on the highway which is fenced however a protective safety barrier is required to be installed on the southbound approach.*

Planning comment: an appropriate condition of consent is recommended.

### Ausgrid

The proposed development was referred to Ausgrid on the 9 December 2019 as the electricity supply authority for the Hunter Region in accordance with the requirements of the State Environmental Planning Policy (Infrastructure) 2007. Ausgrid provided a response in relation to the referral dated 14 January 2020.

Ausgrid has no objection to the proposed development subject to the following requirements:

- 1) Heavy vehicle access to all pole locations must be maintained.*
- 2) No structures are to be constructed within Ausgrid's easement.*
- 3) No structures are to be constructed under or near Ausgrid poles and overhead/underground powerlines that are covered under Section 53 of the Electricity Supply Act 1995 No 94 in accordance with Ausgrid's usual easement widths.*
- 4) Existing ground levels under overhead powerlines are to be maintained.*
- 5) A Connection Application should be submitted to Ausgrid for assessment prior to the commencement of construction.*

A condition of consent has been recommended to require adherence to these requirements by the direct reference to the Ausgrid correspondence.

A pre-commencement of works condition of consent has also been recommended to remind the applicant of their obligation to lodge a Connection Application with Ausgrid ahead of the commencement of any works.

### NSW Rural Fire Service

The EP&A Act 1979 and the Rural Fires Act 1997 do not require development for the purposes of energy generating works on bushfire prone land to be referred to the NSW Rural Fire Service (RFS). This notwithstanding, Council Officers undertook to refer the proposed development to the NSW RFS as a precautionary measure.

A referral was issued on the 9 December 2019 and a response provided dated the 29 January 2020.

This response raised no concern in relation to the proposed development and recommended the following conditions of consent.

- 1. A Fire Management Plan (FMP) shall be prepared in consultation with NSW RFS Hunter Valley Fire Control Centre. The FMP shall include:*
  - 24 hour emergency contact details including alternative telephone contact;*
  - Site infrastructure plan;*
  - Fire fighting water supply plan;*
  - Site access and internal road plan;*
  - Construction of Asset Protection Zones (APZ) and their continued maintenance;*
  - Location of hazards (Physical, Chemical and Electrical) that will impact on fire fighting operations and procedures to manage identified hazards during fire fighting operations;*
  - Such additional matters as required by the NSW RFS District Office (FMP review and updates).*
- 2. The entire solar array development footprint to be managed as an Asset Protection Zone as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire*

*Protection 2006' and the NSW Rural Fire Service's document 'Standards for Asset Protection Zones'.*

- 3. To allow for emergency service personnel to undertake property protection activities, a 10 metre defendable space (APZ) that permits unobstructed vehicle access is to be provided around the perimeter of the solar array development site including associated infrastructure.*
- 4. A 20,000 litre water supply (tank) fitted with a 65mm storz fitting shall be located adjoining the internal property access road within the required APZ.*

The recommended conditions incorporate appropriate conditions of consent.

#### Australian Rail Track Corporation

Clause 85 of the State Environmental Planning Policy (Infrastructure) 2007 requires the referral of certain development adjacent a rail corridor to the Australian Rail Track Corporation (ARTC). Council undertook to refer this application to the ARTC due to the broad provisions of Clause 85(1)(a) that require referral of applications 'likely to have an adverse impact on rail safety'.

The proposed development was referred to the ARTC on the 9 December 2019 and a response received dated 20 March 2020. This response did not object to the proposed development and put forward commentary around matters related to stormwater management, lighting and the carrying out of excavation works.

#### *Stormwater*

The ARTC raised concern that the current drainage plan will impact the rail corridor with regard to stormwater runoff. The ARTC have raised an interest in ensuring that stormwater run-off does not affect the rail corridor and requested Council impose a condition requiring written concurrence for the stormwater design be obtained from the ARCT prior to the issue of a Construction Certificate. Council Officers have recommended the following condition:

- # prior to the issue of a Construction Certificate documentary evidence is to be provided to the Certifying Authority demonstrating that the flow of stormwater toward the rail corridor will not be increased as a result of the carrying out of the development.*

In their correspondence the ARTC put forward a recommended condition of consent that required ARTC concurrence for the final stormwater design, however this has not been recommended. The objective could be achieved by requiring documentary evidence to be provided to the Certifying Authority demonstrating that the development would not increase stormwater flow ahead of the issue of a Construction Certificate and that a condition requiring further ARTC consultation and the requirement of a pre-construction certificate approval from a non-approval body could cause unnecessary delays.

#### *Lighting external finishes and design*

The ARTC expressed an interest in ensuring that lighting and external finishes of buildings orientated toward the rail corridor are low reflective materials and adhere to relevant design standards. The applicant has provided information to indicate that materials would not be highly reflective or visually imposing. The following conditions have been recommended:

- # Non-reflective building materials are to be used in the carrying out of the development in accordance with the provisions of the Muswellbrook Development Control Plan and the documentation accompanying this development application.*
- # All external lighting installed at the premises is to be installed in accordance with the provisions of AS4282-1997 Control of Obtrusive Effects of Outdoor Lighting.*

### *Excavation and Earthworks*

The ARTC raised an interest regarding the carrying out of earthworks within 25m of the rail corridor and the potential for these works to impact on the safety of the rail network. The ARTC have provided a contact email address for liaison in relation to these works and requested the applicant obtain their concurrence prior to them proceeding. To ensure works adjacent the rail corridor are appropriately managed, following condition has been recommended:

- # *Prior to the issue of a Construction Certificate the person acting with this consent shall provide documentary evidence to the Certifying Authority demonstrate that they have engaged with or taken reasonable steps to engage with the ARTC in relation to the carrying out of any excavation works adjacent to and within 25 metres of the rail corridor including the establishment of the set-down area. The applicant shall comply with any requirements for the carrying out of these works put forward by the ARTC subject to any dispute resolution set out in the paragraphs below.*

*Council would view the taking of reasonable steps to engage with the ARTC to include contacting the ARTC Property Services Team via the provided email address of [HVpropertyservices@artc.com.au](mailto:HVpropertyservices@artc.com.au) and ensuring the work is carried out in accordance any relevant requirements of that Team or that their concurrence is obtained. Where the ARTC does not engage with the person acting with this consent within 21 days of being issued a notice and reasonable attempts have been made to follow up any correspondence issued to the above address Council should be contacted to advise whether the requirement to engage with the ARTC can be taken to have been completed and the development proceed.*

*Where there is a dispute between the applicant and ARTC in relation to measures to be put in place to comply with this condition Council should be contacted. Council will review the matter being disputed and stipulate how the development is to proceed in relation to the matter of concern.*

### **4.3 Internal Referrals**

#### Senior Environmental Health Officer

Council's Senior Environmental Health Officer has recommended that the following conditions be imposed:

#### **1. chemicals to be stored appropriately**

*Chemicals stored onsite are required to be stored in manner that reduces any potential impacts to the environment should a spill or leak occur. Best practices for safe use and storage of chemicals as recommended by Safe Work NSW are to be implemented.*

#### **2. Spill response plan**

*The site is required to have a spill response plan in to manage any potential leaks or spills from chemical storage and handling onsite.*

Council's Senior Environmental Health Officer requested on-site amenities to support the ongoing operation of the premises. The SoEE indicates that intermittent on-site staffing would be required to support the operation of the premises. Conditions of consent have been recommended requiring staff amenities and their servicing via an on-site wastewater management system or a pump out sewage system acceptable to Council.

#### Ecologist and Sustainability Team Leader

Section 1.7 of the EP&A Act 1979 specifies that the Act and the assessment of development applications under it is subject to the provisions of Part 7 of the Biodiversity Conservation Act 2016.

Council's Ecologist has reviewed the requirements of this legislation relating to development assessment and the Biodiversity Development Assessment Report (BDAR) submitted in relation to the proposed development.

Following an initial review of this documentation Council's Ecologist issued a request for additional information and a revised BDAR was received by Council on the 26 February 2020. Following the receipt of this information Council's Ecologist indicated that they were satisfied. Council's Ecologist's requirements have been incorporated into the recommended conditions of consent.

#### Community Infrastructure Department

Comments from the Chief Engineer are:

- *A Construction Traffic Management Plan would also be suitable for the client to demonstrate the strategy of how they will manage their vehicular movements and demonstrate no adverse damage to Council assets*

Planning comment: a condition of consent has been recommended requiring the preparation of a construction traffic management plan prior to the issue of a construction certificate.

- *Regarding stormwater management, although not ideal, I do not believe the current stormwater management strategy will lead to significant stormwater pollution issues.*

Planning comment: Noted.

- *The site would need to remain left in left out regardless of direction of travel (i.e. including local quarries from beyond Wybong Road)*

Planning comment: a condition is recommended requiring left in and left out site access in accordance with TfNSW requirements.

- *If the applicant demonstrates a requirement to use turning off the road to make a maneuver that could damage infrastructure, we would need to consider a voluntary contribution instead of a paved area*

Planning comment: As the concern is that any damage to community infrastructure, through the carrying out of works, needs to be repaired prior to the completion of the development, a condition of consent to address this objective has been included.

- *The applicant has shown a turning circle for leaving the site. Confirmation that all vehicles can achieve swept path turning at this location with the proposed traffic island at the top of their driveway is required*

Planning comment: it will be necessary for the applicant to prepare design details of the AUL turn in accordance with the TfNSW requirements. A condition requiring the preparation and approval of detailed design drawings prior to the issue of a Construction Certificate has been included as a recommended condition of consent.

- *A Sealed asphaltic concrete road is required at least at a minimum to the edge of their boundary, with pavement design by a suitably qualified consultant.*

Planning comment: this requirement has been captured in the recommended condition of consent related to the vehicle access and AUL design.

- *TfNSW comments recommend an AUL lane, which is appropriate for this development. Other advice from TfNSW to be adopted for conditions.*

Planning comment: TfNSW comments have been considered under a separate referral heading and have informed the recommended conditions of consent.

## **5 SECTION 4.15 ASSESSMENT**

This section of this report includes an assessment of the development application against the relevant heads of consideration prescribed by the Environmental Planning and Assessment Act 1979.

### **5.1 Section 4.15(1)(a)(i) The provisions of any Environmental Planning Instrument (EPI)**

#### **5.1.1 Muswellbrook Local Environmental Plan (LEP) 2009**

The provisions of the Muswellbrook LEP 2009 which relate to the proposed development have been considered under this section of the development assessment report.

#### Land Use Zoning and Permissibility

The subject site is zoned RU1 Primary Production and the proposed developments relationship with the RU1 Primary Production has been considered below.

##### **Zone RU1 Primary Production**

###### **1 Objectives of zone**

- *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 protect the agricultural potential of rural land not identified for alternative land use, and to minimise the cost to the community of providing, extending and maintaining public amenities and services.*
- *To maintain the rural landscape character of the land in the long term.*
- *To ensure that development for the purpose of extractive industries, underground mines (other than surface works associated with underground mines) or open cut mines (other than open cut mines from the surface of the flood plain), will not—*
  - a) *destroy or impair the agricultural production potential of the land or, in the case of underground mining, unreasonably restrict or otherwise affect any other development on the surface, or*
  - b) *detrimentally affect in any way the quantity, flow and quality of water in either subterranean or surface water systems, or*
  - c) *visually intrude into its surroundings, except by way of suitable screening.*
- *To protect or conserve (or both)—*
  - a) *soil stability by controlling development in accordance with land capability, and*
  - b) *trees and other vegetation, and*
  - c) *water resources, water quality and wetland areas, and their catchments and buffer areas, and*
  - d) *valuable deposits of minerals and extractive materials by restricting development that would compromise the efficient extraction of those deposits.*

###### **2 Permitted without consent**

*Extensive agriculture; Home occupations; Intensive plant agriculture*

###### **3 Permitted with consent**

*Air transport facilities; Airstrips; Animal boarding or training establishments; Aquaculture; Camping grounds; Caravan parks; Cellar door premises; Cemeteries; Community facilities; Crematoria; Depots; Dwelling houses; Eco-tourist facilities; Educational establishments; Environmental facilities; Environmental protection works; Extractive industries; Farm buildings; Flood mitigation works; Forestry; Function centres; Group homes; Hazardous industries; Health consulting rooms; Heavy industrial storage establishments; Helipads; Highway service centres; Home-based child care; Home businesses; Home industries; Industrial retail outlets; Information and education facilities; Intensive livestock agriculture; Kiosks; Landscaping material supplies; Open cut mining; Places of public worship; Plant nurseries; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Research stations; Restaurants or cafes; Roads; Roadside stalls; Rural industries; Rural supplies; Rural worker's dwellings; Secondary dwellings; Service stations; Sewerage systems; Signage; Storage premises; Take away food and drink premises; Tourist and visitor accommodation; Transport depots; Truck depots; Turf farming; Veterinary hospitals; Waste disposal facilities; Water supply systems*

#### **4 Prohibited**

*Any development not specified in item 2 or 3*

The proposed development best meets the land use classification of an electricity generating works. The definition of this land use has been included below:

**electricity generating works** means a building or place used for the purpose of making or generating electricity.

Electricity generating works are not identified as a type of development permissible with consent in the Muswellbrook LEP 2009 RU1 Primary Production land use zone and as a result is a type of development prohibited under the land use table.

Clause 8 of the ISEPP identifies that where there is an inconsistency with that plan and any other environmental planning instrument the provisions of the ISEPP prevail. Part 3 Division 4 of the ISEPP identifies the RU1 Primary Production zone as a prescribed zone within which electricity generating works may be carried out with development consent despite any provisions to the contrary in another environmental planning instrument.

As a result of the provisions of the ISEPP the proposed development is viewed as a type of development permissible with consent despite the provisions of the Muswellbrook LEP 2009 land use table.

#### General Muswellbrook LEP 2009

The following table considers the proposed development against the provisions of the proposed development relevant to the assessment of the proposed development.

**Table 3 – Muswellbrook LEP 2009 provisions**

<u>MUSWELLBROOK LEP 2009 CLAUSE PROVISIONS</u>	<u>PLANNING CONSIDERATION</u>	<u>COMPATIBLE WITH</u>
<b>Part 2 Permitted or Prohibited Development</b>		
2.3 Zone Objectives	<p>Council Officers are satisfied that there would be no significant inconsistencies between the proposed development and land use zone objectives. In forming this view Council Officers have observed that:</p> <ul style="list-style-type: none"> <li>• The subject site is bisected by the Merriwa Muswellbrook railway line and Council the portion of the site to be developed is not identified as high quality agricultural land.</li> <li>• At the conclusion of the project's lifespan the site will be returned to an agricultural/grazing use consistent with its current land use.</li> <li>• The proposed solar farm is a moderate size and scale and would not fragment or alienate</li> </ul>	<b>Yes</b>

	<p>resource lands.</p> <ul style="list-style-type: none"> <li>The proposed development is not anticipated to give rise to land use conflict with nearby established agricultural land uses.</li> </ul> <p>In view of these considerations the proposed development is considered to be a form of development compatible with the RU1 Primary Production land use zone objectives and the provisions of this Clause.</p>	
<b>Part 4 Principle Development Standards Additional local provisions</b>		
4.3 Height of Buildings	The maximum building height for the land is 12m. The height of the proposed solar panels and associated structures would not exceed this maximum building height limitation.	<b>Yes</b>
4.4 Floor Space Ratio	No FSR is applicable to the subject site and the proposed development may proceed without further consideration of this Clause.	<b>NA</b>
<b>Part 7 Additional Local Provisions</b>		
7.1 Terrestrial Biodiversity	The land subject to this development application is not identified as terrestrial biodiversity by Muswellbrook LEP 2009. Accordingly, the provisions of this clause do not require further consideration.	<b>NA</b>
7.6 Earthworks	<p>Clause 7.6(3) provides a number of matters which a consent authority is required to consider prior to granting development consent to development involving earthworks. Each of the relevant matters have been listed and commented on below.</p> <p><i>(3) Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:</i></p> <p><i>(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,</i>  <u>Planning comment:</u> the proposed development is not anticipated to have a significant impact on the stormwater run-of or drainage patterns of the site.</p> <p><i>(b) the effect of the development on the likely future use or redevelopment of the land,</i>  <u>Planning comment:</u> it is unlikely that the proposed development and earthworks would adversely impact the capacity of the site to be redeveloped in the future. The proposed earthworks would not significantly alter the natural contouring of the site and primarily relate to the filling of two existing dams and the construction of swale drains to direct stormwater within the site.</p> <p><i>(c) the quality of the fill or the soil to be excavated, or both,</i>  <u>Planning comment:</u> the engineering services and civil report suggests that soil used to fill the existing dams would primarily be sourced on-</p>	<b>Yes</b>

	<p>site from the construction of swale drains and that minimal off-site fill will be required. Should any fill be required from off-site it will be necessary for that fill to be obtained from a reputable source.</p> <p><i>(d) the effect of the development on the existing and likely amenity of adjoining properties,</i>  <u>Planning comment:</u> Earthworks associated with the proposed development will have limited impact on the amenity of adjoining properties. The development is located on a rural lot and the separation distance between the proposed development and nearby residential buildings would negate any impacts to the amenity of neighbouring residents that can be attributed to earthworks carried out on the site.</p> <p><i>(e) the source of any fill material and the destination of any excavated material,</i>  <u>Planning comment:</u> It is unlikely that a significant amount of fill would be transported to the site. To ensure that fill brought to the site is obtained from an appropriate facility and suitable for use a condition of consent has been included in the recommended notice of determination regarding the quality of fill.</p> <p><i>(f) the likelihood of disturbing relics,</i>  <u>Planning comment:</u> An aboriginal due diligence assessment has been carried out in relation to the proposed development. This report suggests that the proposed development is unlikely to disturb any aboriginal relics. In the event that aboriginal relics are disturbed through the carrying out of the development recommended conditions of consent have been put forward to ensure the developer adheres to their legislated responsibilities should aboriginal artefacts be disturbed through the carrying out of works.</p> <p><i>(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,</i>  <u>Planning comment:</u> noting the scope of the proposed development and its proximity to drinking water catchments and environmentally sensitive areas Council Officers are satisfied that the proposed development is unlikely to have any significant adverse impacts in this area.</p> <p>The proposed development is not anticipated to present any significant issues. Conditions are proposed to manage the carrying out of the development as set out in the comments above.</p>	
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### **5.1.2 State Environmental Planning Policy No 33 Hazardous and Offensive Development:**

Council Officers have observed that:

- Solar farms or electricity generating works are not identified as types of potentially hazardous or offensive development by the NSW Department of Planning and Environment publication that informs the application of SEPP – 33.
- The SoEE includes information about the 'dangerous goods' that would require storage at the site during construction and operation. The quantities of all dangerous goods stored on-site would be less than the thresholds that would cause the development to be classified as a potentially hazardous development.
- The Section 3.8.4 of the applicants SoEE includes information regarding electromagnetic fields associated with electricity generating facilities. The proposed facility would be separated from the nearest sensitive receptor by approximately 200m and the potential for electromagnetic interference would be negligible.

Council Officers are satisfied that the proposal does not involve a potentially hazardous or potentially offensive development and thereby further assessment of this development against the SEPP provisions is not required.

### **5.1.3 State Environmental Planning Policy No 44 Koala Habitat Protection:**

This SEPP has been repealed and replaced by the newly gazetted SEPP (Koala Habitat Protection) 2019. However, at the time the development application was lodged this SEPP was still in force and thereby its remains a relevant consideration in any Section 4.15 Assessment of the proposed development.

Flora and fauna investigations in relation to the development site identified the presence of a single species of koala feed tree. The total population of this species at the site was identified to comprise two (2) trees and an area less than the 15% coverage.

As the subject site does not comprise a potential koala habitat the development is not subject to further assessment provisions under this SEPP.

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

Under Clause 7 of this SEPP a consent authority must not consent to the carrying out of any development on land unless:

- (a) It has considered whether the land is contaminated, and*
- (b) 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*
- (c) 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 subject land has historically been utilised for agricultural activities, with a particular focus on the grazing of livestock and less frequent small scale cropping activities. Certain agricultural pursuits including intensive livestock keeping or horticultural activities have the potential to result in site contamination. However, based on the information submitted with this development application, Council records in relation to the land and the inspection of the site, Council Officers Council considered there to be a low risk of contamination. No visual evidence of contamination has been observed by Council Officers inspecting the site.

Accordingly, Council Officers are satisfied that the land is unlikely to be subject to contamination which would require remediation under the SEPP for the proposed development to proceed.

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

Part 3 of this SEPP includes provisions which are specifically related to development for the purpose of electricity generating works and thereby relevant to the assessment of this development application.

Clause 34(1)(b) contained in Part 3 of the SEPP establishes development for the purpose of an electricity generating works to be a type of development permissible with consent in any prescribed rural zone which is identified to include the RU1 Primary Production zone (the land use zoning for the proposed development).

In addition to the permissibility provisions of the SEPP:

- Clause 45 includes provisions that require Council to notify the relevant electricity supply authority of the proposed development and take into consideration any comments received from that authority in its determination of the development. This notification has been completed and its outcomes are referenced in greater detail under the referral heading of this report.
- Clause 101 of the SEPP restricts a consent authority from granting development consent to the development of land with frontage to a state classified road unless it has considered matters prescribed that clause that relate to the safety of vehicular access to that road and protection of the roads ongoing operation. The Golden Highway is a classified state road and the proposed development has been referred to the NSW RMS and Council's Community Infrastructure Department to review access provisions and the impact of the development on the road network. Comments have been received from the RMS and Council Community Infrastructure Department that indicate the proposed development can be supported from a traffic impact and management perspective. The outcomes of these referrals are discussed in greater detail under the referral section of this report.

Council Officers are satisfied that the provisions of the ISEPP establish the proposal to be a type of development permissible with consent and that the proposed development may be supported under the provisions of Clause 45 and Clause 101, subject to the imposition of conditions of consent that have been recommended by the referral agencies.

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

Part 4 and Schedule 7 of the SEPP identify types of development that are regionally significant development and require determination by a Planning Panel as the relevant consent authority. These types of development includes 'private infrastructure' inclusive of electricity generating works with an estimated capital investment value greater than \$5-million. The capital investment value for the proposed development has been established as \$5.559 – million. The proposed development therefore qualifies as regionally significant development. Under the provisions of the EP&A Act 1979 a Regional Planning Panel is required to assume the function of a consent authority for the determination of regionally significant development.

In reviewing this SEPP Council Officers have also given consideration to the SEPP's criteria for identifying State Significant development and are satisfied that this development does not meet the criteria for this type of development.

## **5.2 Section 4.15(1)(a)(ii) the provisions of any draft Environmental Planning Instrument**

### **5.2.1 State Environmental Planning Policy (Koala Habitat Protection) 2019**

This SEPP came into force on the 1 March 2020. Accordingly, the provisions of this SEPP have been considered in relation to the proposed development as a draft environmental planning instrument.

Clause 9 of this SEPP restricts Council from determining a development application to which the SEPP applies unless Council has either considered the provisions of the 'Koala Habitat Guideline' or received information from a suitably qualified person that indicates that no koala feed trees are present within the development area or the land is not a core koala habitat.

Council has received information that indicates two feed trees of the species *Eucalyptus Punctata* are present at the site.

The SEPP defines a core koala habitat as:

**core koala habitat means—**

- (a) *an area of land where koalas are present, or*
- (b) *an area of land—*
  - (i) *which has been assessed by a suitably qualified and experienced person in accordance with the Guideline as being highly suitable koala habitat, and*
  - (ii) *where koalas have been recorded as being present in the previous 18 years.*

A biodiversity assessment report has been carried out by NGH Environment in relation to the proposed development which did not identify any information to suggest a koala presence on-site or a quantity of feed trees suitable for supporting a koala habitat. Council Officers are satisfied that the site is unlikely to meet the criteria of a core koala habitat under this draft environmental planning instrument and further consideration of its provisions are not required.

## **5.3 Section 4.15(1)(a)(iii) the provisions of any development control plan**

The Muswellbrook Development Control Plan (DCP) is applicable to all development applications within the Muswellbrook Shire LGA. Sections of the DCP which do not relate to the proposed development have not been referenced in the comments below. Council's DCP can be viewed in full at Council's website.

### Section 3 – Site Analysis

The documentation accompanying this development application indicates that the proponent has given consideration to the constraints and development opportunities for the subject site in the preparation of this development application in accordance with the requirements of this Section of the DCP.

### Section 8 – Rural and Environmental Zone development

The table below measures the proposed development against the DCP controls specified by this Section of the DCP.

**Table 4 – DCP Section 8 Rural and Environment Zone Development**

<u>MUSWELLBROOK SHIRE COUNCIL DCP SECTION 8 Rural and Environmental Zone Development</u>		
<u>DCP REQUIREMENTS</u>	<u>COMPLIES</u>	<u>PLANNING COMMENT</u>
<b>8.1 Introduction</b>		
8.1.1 Dwelling houses on existing parcels of land	<b>NA</b>	The development application does not involve the erection of a new dwelling.
<b>8.2 Built Form</b>		
8.2.1 Scenic Protection and Building Location	<b>Yes</b>	<p>This section of the DCP includes provisions that relate to managing the visual impact of developments, maintaining the privacy of neighbouring properties by the siting of new dwellings, discouraging the construction of structures that protrude above natural ridgelines and landscape elements and encouraging the co-location/cluster construction of buildings.</p> <p>Council Officers are satisfied that the proposed development would be compatible with the requirements of this section. Structures associated with the proposed development would be situated in a close proximity and the appearance of the proposed development would not be incongruous with the existing landscape. A visual impact assessment has been prepared in relation to the proposed development which does not raise issue with the visual impact of the proposed development and recommends the incorporation of a number of mitigation measures. These measures have been incorporated into the recommended conditions of consent.</p>
8.2.2 Setbacks	<b>Yes - to be administered by recommended conditions</b>	<p>This section of the DCP prescribes setbacks for developments of 50m from a public road, 10m from an adjoining property boundary and the completion of boundary fencing along any rail corridors adjoining development sites.</p> <p>The proposed development would achieve the minimum setback requirements established by this clause.</p> <p>The proposal has also been referred to the ARTC regarding its relationship with the rail corridor. The comments received in response to this referral have been taken into consideration in the assessment of the proposed development. These comments raised no concern with fencing along the rail corridor or any requirement for that fencing to be upgraded. To ensure compliance with the DCP rail fencing requirement Council Officers</p>

		have recommended a condition consent requiring the maintenance of rail fencing.
8.2.3 Colours and materials	<b>Yes</b>	<p>This section of the DCP encourages the use of natural colours, muted and earthy tones and the avoidance of highly reflective building materials.</p> <p>A Visual Impact assessment has been prepared and submitted in relation to the proposed development which raises no concern regarding the potential for significant visual impacts to occur as a result of the proposed development. This report includes recommendations including landscaping and colour schemes to mitigate potential visual impacts of the development.</p> <p>Council Officers are satisfied that the proposed development would be compatible with the requirements of this clause where carried out in accordance with the recommendations of the visual impact assessment.</p>
8.2.4 Car parking and access	<b>Yes</b>	<p>This section of the DCP establishes provisions for rural property accesses and requires consideration of car parking requirements against the provisions of Section 16 of the DCP.</p> <p>The site subject to this development application has direct frontage to the Golden Highway. Council Officers are satisfied that vehicular access could be achieved and constructed in accordance with Council's standard requirements. Conditions of consent have been recommended to ensure this is achieved.</p> <p>Council Officers have provided detailed commentary in relation to the developments compliance with the off-street car parking requirements of Section 16 of the DCP under that heading of this assessment. Council officers are satisfied that the proposed car parking arrangement would satisfy the DCP requirements.</p>
8.2.5 Temporary Dwellings	<b>NA</b>	The proposed development does not involve the construction of any dwellings.
<b>8.3 Environmental Matters</b>		
8.3.1 topography	<b>Yes</b>	<p>This clause seeks to ensure development does not significantly alter the natural topography of a site and that the visual amenity of an area is protected.</p> <p>The proposed development does not involve significant earthworks or the large scale reshaping of natural contours and gradients.</p>

		Council Officers are also satisfied that the proposed development would be compatible with the visual impact controls referenced by this DCP section.
8.3.2 Vegetation	<b>Yes</b>	Council Officers are satisfied that the proposed development would not have an unacceptable impact on ecological communities including native vegetation and can be supported under the provisions of this DCP Section.
8.3.3 Riparian Buffers	<b>Yes</b>	This development application would not involve the carrying out of work in a riparian buffer area.
8.3.4 Management of Rivers, Creek, Streams and Drainage	<b>Yes</b>	<p>This clause requires consideration of the impact of developments on natural drainage channels and the management of stormwater from new developments.</p> <p>An Engineering Services and Civil Infrastructure Report has been provided and outlines strategies for the management of stormwater from the development.</p> <p>Council Officers are satisfied that the impact of the proposed development on existing drainage channels and the consideration given to stormwater drainage meets the DCP requirements established by this Section.</p>
8.3.5 Services	<b>Yes</b>	<p>The applicant has proposed a potable water supply of 20,000L be provided to the development and indicated that on-site amenities will be provided during construction and operation of the facility.</p> <p>Council officers have no objection to these arrangements and have recommended conditions of consent to ensure minimum standards for on-site facilities are met.</p>
8.3.6 Buffers	<b>NA</b>	<p>This clause requires consideration to buffer areas identified by section 22 of the DCP.</p> <p>The proposed development is not located within an identified buffer area and thereby the provisions of this section do not require further consideration.</p>
8.4 Frost Control Fans	<b>NA</b>	<p>This clause prescribes controls relevant to the assessment of development applications for frost control fans.</p> <p>The proposed development does not involve the construction of any frost fan. Accordingly, the provisions of this section of the DCP do not have any bearing on the assessment of this development application.</p>

## Section 13 – Flood Prone Land

Council's flood information mapping identifies part of the land subject is flood liable. Council has not undertaken a detailed flood study of the Goulburn River and Council Officers are not aware of another flood study carried out on behalf of another public authority for this location.

Council Officers have reviewed historic flood records from the 1955 flood to identify the portion of the site inundated during that flood event as a reference point when considering the flood affection of the proposed development.

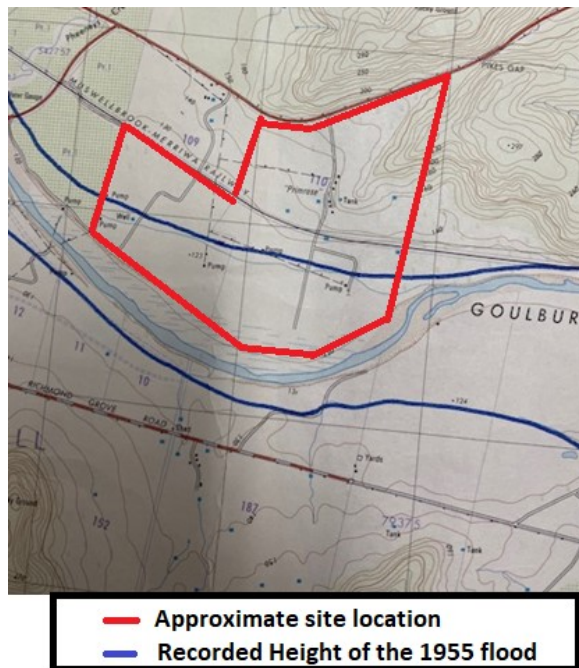


Image.3 (1955 flood heights in relation to the site, source: Council flood height maps).

The extent of inundation during the 1955 flood event was limited to land south of the Muswellbrook-Merriwa railway. The information contained in this development application indicates that the portion of the site to be developed for the purpose of an electricity generating works would be limited to land north of this rail line, and thereby land outside of the understood area of inundation during the 1955 flood event.

To identify the anticipated height of a 1% AEP flood event in the relation to the site information has been included in the Engineering Services and Civil Infrastructure Report that uses flood data from a down-river flood study and site survey information to identify a best estimate 1% AEP flood event in relation to the site. This information suggests that inundation of the site would be limited to undeveloped areas South of the Muswellbrook-Merriwa rail line. The image estimating the 1% area of inundation has been included below.

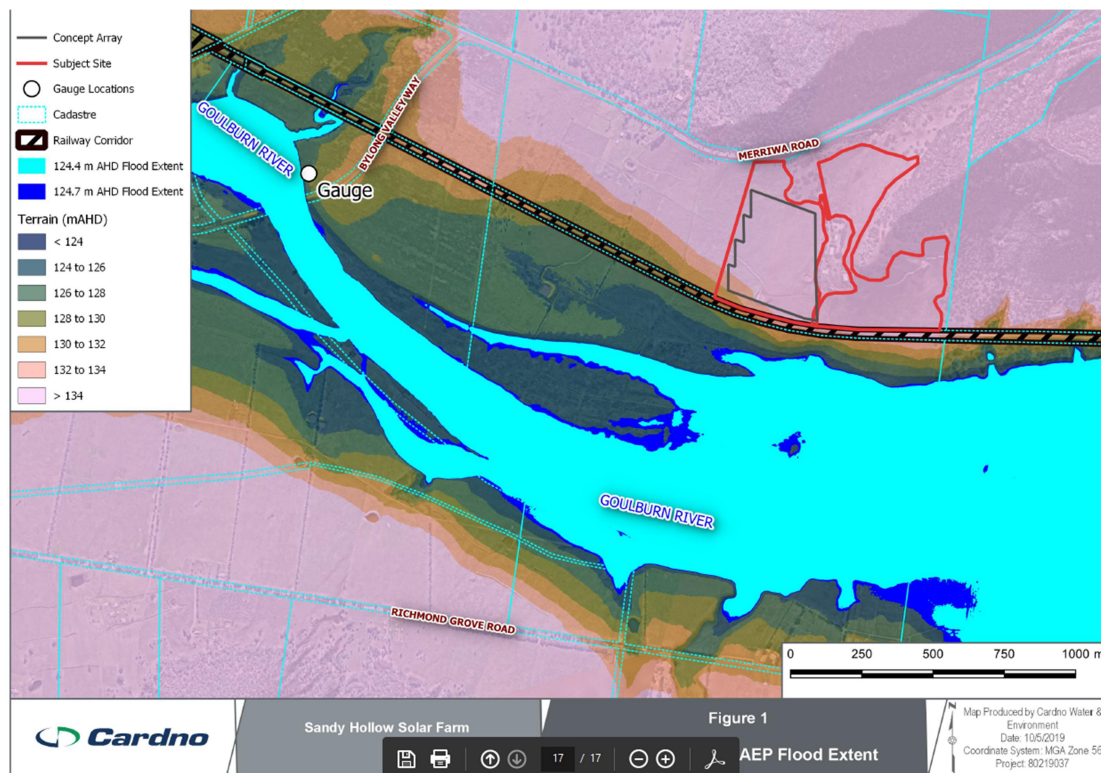


Image.4 (best estimate 1% AEP Flood extent, source: Cardno Engineering Services and Civil Infrastructure Report)

Council Officers are satisfied that the portion of the site proposed for development is unlikely to be affected by flooding and thereby further consideration of this section of the DCP is not required.

### Section 16 – Car Parking and Access

Vehicular access to the site has been reviewed by the NSW RMS and Council's Community Infrastructure Department. Council Officers are satisfied that the site attributes and parameters are sufficient to support access and vehicle manoeuvres during both construction and operation. The proposed plans include preliminary design plans for the construction of internal access roads and details of proposed upgrades to the sites Golden Highway intersection. No issue is raised with the relationship between these provided they are carried out in accordance with the recommendations of Council's Community Infrastructure Department and the RMS.

The DCP does not prescribe a rate at which off-street car parking is required to be provided for a solar farm or electricity generating works. Accordingly, there is no prescribed rate of off-street car parking for this development under this section of the DCP. The applicant has suggested that there would not be a requirement for permanent formalised on-site parking to be required due to the limited operating requirements of the premises, while it has been indicated that a temporary parking area to accommodate 30 vehicles would be provided during the construction phase of the development. This has been reviewed by Council Officers in assessing the likely environmental impacts associated with the proposed development and no objection has been raised to proposed car parking arrangements.

### Section 20 – Erosion and Sediment Control

A sediment and erosion control plan has been submitted which addresses the relevant requirements of this section of the DCP including those related to a Water Management Plan.

A Landscape Plan has not been submitted in relation to the proposal. However, a recommended condition of consent for the preparation of such a plan has been put forward in accordance with the recommendations of the Visual Impact Assessment.

It is considered that the proposed development would comply with the requirements of this section of the DCP where the works comply with the submitted sediment and erosion control plan and a landscape plan is submitted in accordance with the recommended conditions of consent.

#### Section 22 – Land Use Buffers

This section of the DCP identifies a number of sensitive uses with land use buffers within which development is to be subject to additional considerations. The proposed development is not located within any established land use buffer areas and thereby presents no issue for the provisions of this Clause.

#### Section 23 – On-site Sewage Management Systems

To ensure the safe operation of the site and equal employment opportunities staff amenities will need to be provided both during the construction and operational phases of the development. Liquid wastewater associated with the operational of an amenities building will need to be managed in accordance with the requirements of this Section of the DCP and any Section 68 Approval issued by Council's Environmental Health Officer.

Council Officers have put forward recommended conditions to ensure that any on-site sewage management is in accordance with Council requirements and the requirements of this Section of the DCP.

#### Section 24 – Waste Management

This section of the DCP requires consideration to be given to waste streams associated with the construction and operation of certain types of developments.

The documentation accompanying the proposed development has provided a broad overview of the expected waste streams from the operation of the premises and the manner of disposal. Council Officers are satisfied that this approach could be implemented as a condition of consent.

#### Section 25 – Stormwater Management

The stormwater design information submitted with the proposed development has been reviewed by Council's Community Infrastructure Department Community Infrastructure Roads and Drainage team who have raised no concern with the proposed design. Council Officers are satisfied that stormwater management has been appropriately considered through the design of the development and that any stormwater discharges from the site are highly unlikely to have an adverse impact on neighbouring properties and thereby conflict with the key related requirements of this section of the DCP.

#### Section 94 Contributions Plan 2001

Council's Section 94 Contribution Plan does not specify any Section 7.11 (former Section 94) contributions that relate to the proposed development.

#### Section 94A Contributions Plan 2009

Council's Section 94A Contribution Plan requires the payment of a development contribution at a rate of 1% of the total estimated value of a development for development applications

with a value exceeding \$100,000.

The Capital Value Estimation submitted with this development application has estimated the total value of the proposed development to be \$5,558,870 (excluding GST). For the purpose of applying Council's Section 94A Contribution Plan, the estimated value of a development is to be GST inclusive. Accordingly, a Section 7.11 Contribution would be payable under the provisions of this plan at a rate of 1% of \$6,114,757. The total contribution payable equates to \$61,147.57 and a condition of consent has been recommended to require the payment of this contribution prior to the issue of a Construction Certificate for the development.

#### **5.4 Section 4.15(1)(a)(iia) the provisions of any planning agreement**

There are no existing planning agreements that relate to the subject site and the proposed development, nor has the applicant proposed to enter into a voluntary planning agreement as part of this development application.

#### **5.5 Section 4.15(1)(a)(iv) the provisions of the regulations**

These sections have been reviewed in relation to the proposed development and Council Officers are satisfied that there are no additional matters prescribed by Division 8 that have implications for the assessment and determination of this development application. While the recommended conditions of consent has been drafted to include the prescribed conditions of consent referenced by Division 8A relevant to the proposed development.

#### **5.6 Section 4.15(1)(a)(v) the provisions of any coastal zone management plan**

The land subject to this development application is not located within a coastal management zone or affected by a coastal management zone plan.

#### **5.7 Section 4.15(1)(b) the likely impacts of that development**

Environmental impacts that were considered to be of particular relevance in relation to the proposed development:

##### Context and setting

The land subject to this development application is situated in a rural locality. The proposed development is for the establishment of an array of solar panels and ancillary infrastructure. This development of the land would alter the appearance of the site and its relationship with the prevailing rural character of the area.

To inform the assessment of this issue a Visual Impact Assessment has been submitted. This visual impact assessment identifies that the proposed development is likely to have a moderate-low visual impact when viewed from all adjacent sensitive receivers with the exception of two (2) immediately adjoining residences which are located on the same land. The visual impact would not be an off-site impact.

Similarly Council Officers are satisfied that the visual impact of the proposed development on low-moderately affected nearby receptors would not be substantial. The Visual Impact Assessment puts forward a recommendation related to vegetation planting and landscaping to mitigate impacts. This recommendation has been adopted by Council Officers and the recommended conditions require the preparation and implantation of a landscape plan.

##### Access, Transport & Parking

Access to the subject site will be via the Golden Highway. The proposed development has been reviewed by the NSW RMS and Council's Community Infrastructure Department and all recommends made regarding vehicle access and road construction are reflected in the

recommended conditions of consent.

#### Utilities

Council Officers have given consideration to the operational utility requirements of the proposed development. The proposed development has been referred to Ausgrid as the energy provider for the locality who specified conditions of consent relating to the connection of the development with its energy network. A supply of potable water is to be made available to the development site as part of the development, while the management of wastewater from the sites operation has been considered by Council's Environmental Health Officer and is to be controlled in accordance with recommended conditions related to wastewater management. Council Officers are satisfied that due consideration has been given to the operational requirements of the development in terms of available utilities.

#### Flora and Fauna

Section 1.7 of the EP&A Act 1979 specifies that the Act and the assessment of development applications under it is subject to the provisions of Part 7 of the Biodiversity Conservation Act 2016. In accordance with the requirements of this Act the applicant has engaged an accredited ecologist to prepare a Biodiversity Development Assessment Report (BDAR) in relation to the development.

This BDAR has been subject to review by Council's Ecologist and Sustainability Team Leader. Following a request for additional information and the provision of a revised BDAR Council's Ecologist advised that the information provided in the BDAR was satisfactory and the proposed development could be supported from an ecological standpoint subject to recommended conditions of consent.

The conclusions and recommendations of the BDAR require the off-set of 4 ecosystem credits and 9 species credits. Recommended conditions of consent put forward by Council's Ecologist following the review of the BDAR to ensure the appropriate species credits are met and the development carried out in accordance with relevant requirements have been included in the recommended conditions of consent.

#### Heritage

The proposed development is not located in a heritage conservation area or situated in the vicinity of any State or Locally listed items of environmental heritage.

An aboriginal archaeological due diligence assessment has been completed in relation to the proposal and development site. This investigation did not identify any evidence of culturally significant sites or aboriginal artefacts on the site.

It is recommended that the proposed development proceed subject to recommended conditions of consent that reference the developers obligations to manage and report any previously unidentified aboriginal artefacts should they be uncovered through the carrying out of the development.

#### Technological Hazards

The part of the site to be developed under this proposal is outside the identified parameter of the 1955 flood, and based on the hydraulic information accompanying this development application, is unlikely to be affected by the 1% AEP or 1 in 100 year flood event. Accordingly, Council Officers are satisfied that further consideration of the flood risk of the site is not required.

A Bushfire Assessment Report has been prepared and submitted with this development application to consider the site's bushfire risk in relation to the proposed development. This Report and its recommendations have been reviewed by the NSW RFS who have put forward recommended conditions of consent to manage bushfire threat in relation to the proposed development. These recommendations have informed the recommended

conditions of consent.

In reviewing technological impacts associated with the development Council has taken into consideration the potential for the development to have any adverse emissions or cause pollution incidents harmful to human health. The SoEE includes information regarding electromagnetic fields associated with the proposed development. This information

#### Soils/impact on productive land

The carrying out of this development would affect the productive potential for the duration of the development. Land capability mapping suggests that the balance of the site has low to medium productive capabilities. Council is not aware of any information which suggests that the land is highly productive and therefore should be preserved for agricultural productivity. Further information in relation to the productive potential of the land is included in the SoEE.

#### Social and Economic Impacts

The proposed development is anticipated to have moderate social and economic benefits for the locality and wider region. The proposed development would generate a supply of electricity capable of powering approximately 13,000 homes and save around 17,700 tonnes of carbon dioxide production per annum.

The construction phase of the development would support 30 jobs with 1 full time equivalent position attributed to the regular operation of the facility.

### **5.8 Section 4.15(1)(c) the suitability of the site for the development**

The subject site is considered to be suitable to the proposed development. Council Officers are satisfied that where the proposed development is carried out in accordance with the recommended conditions of consent it would be compatible with the site attributes and would be unlikely to have any significant impact on the locality.

### **5.9 Section 4.15(1)(d) any submissions made**

The proposed development was publically notified and advertised between the 5 December 2019 and the 6 January 2020.

The proposed development was also notified to the Sandy Hollow Progress Association who provided no response in relation to the application.

No submissions were received in relation to the proposed development.

### **5.10 Section 4.15(1)(e) the public interest.**

The proposed development is considered to be consistent with the public interest. The proposed development would establish a new electricity generating works with the capacity to generate enough energy to power approximately 13,000 homes a year. The facility would support 1 full time equivalent role while its construction would support a workforce of 30 people over 9 months.

## **6. CONCLUSION**

A comprehensive assessment of the proposed development against the relevant heads of consideration of Section 4.15 of the Environmental Planning and Assessment Act 1979 has been carried out. This assessment outlined in Section 5 of this report above. Based on the findings of the section 4.15 assessment, it is recommended that the Hunter central Coast Planning Panel grant approval to DA 102/2020 involving the construction and operation of an electricity generating works (solar farm) at 1333 Merriwa Road, Denman (Lot 12 DP 1042612), subject to the recommended conditions of consent.