

DA 2019/102 Energy generating works (solar farm) – Council's Recommended Conditions of Consent

Should DA 2019/102 be approved by the Hunter and Central Coast Regional Planning Panel it is recommended that the following conditions of consent be imposed on the Notice of Determination for the development application:

IDENTIFICATION OF APPROVED PLANS

(1) Development in Accordance with Plans

The development being carried out in accordance with the development application and the drawings referenced below, and endorsed with Council's approval stamp, except where amended by the following conditions.

Drawing No.	Revision	Drawn by	Drawing Date	Received
80219037-CI-1001	3	Cardno	14/6/2019	20/11/2019
80219037-CI-1011	2	Cardno	14/6/2019	20/11/2019
80219037-CI-1031	3	Cardno	14/6/2019	20/11/2019
80219037-CI-1101	3	Cardno	14/6/2019	20/11/2019
80219037-CI-1131	2	Cardno	14/6/2019	20/11/2019
80219037-CI-1201	3	Cardno	14/6/2019	20/11/2019
80219037-CI-1251	2	Cardno	14/6/2019	20/11/2019
80219037-CI-1301	2	Cardno	14/6/2019	20/11/2019
80219037-CI-1601	3	Cardno	14/6/2019	20/11/2019
80219037-CI-1651	1	Cardno	14/6/2019	20/11/2019
80219037-CI-2101	2	Cardno	14/6/2019	20/11/2019
Siteworks Plan	-	HLD	07/11/2019	20/11/2019

(2) Development in Accordance with Documentation

The development is to be carried out generally in accordance with the documents referenced below, endorsed with Council's approval stamp, except where amended by the conditions:

Title	Written by	Date
Statement of Environmental Effects (Appendix A, B, D, E, F, G, H I inclusive)	NGH Environment	November 2019
Biodiversity Assessment Report	NGH Environment	February 2020

Note: Nothing in this consent authorises any site activities or civil works including, but not limited to earthworks, the installation of any utility service, excavation, filling of land, construction of any roads, pathways or retaining walls, undertaking landscaping works or riparian corridor rehabilitation, bushfire hazard management works, clearing of vegetation or the removal of topsoil, before a construction certificate has been issued for the development.

(3) Compliance with Ausgrid Advice

The letter issued by Ausgrid dated 14 January 2020 shall be complied with prior, during and at the completion of the development, as required.

(4) **Amenities Building Requirement**

An amenities building inclusive of a toilet facility is to be provided at the site for the duration of its operation. This permanent fixture should be installed within or adjacent to the area set aside for temporary construction buildings. Detailed design plans of the amenities building are to be provided to and approved by Council prior to the issue of a Construction Certificate.

OPERATIONAL CONDITIONS IMPOSED UNDER THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT AND REGULATIONS AND OTHER RELEVANT LEGISLATION

(5) **Building Code of Australia**

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

ANCILLARY MATTERS TO BE COMPLETED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

(6) **Construction Certificate Requirement**

No works shall commence on site until such time as a Construction Certificate has been issued for either part or all of the works. If a certificate is issued for part of the works it must cover the works being undertaken onsite.

(7) **Vehicle Access Design and Construction Requirements**

Vehicular access to the site is to be designed in accordance with the following requirements:

- a) Vehicle access between the site boundary and Golden Highway road pavement should be bitumen sealed as a minimum construction standard.
- b) An Auxiliary left-turn treatment (AUL) is to be provided to the development to allow for the safe movement of vehicles into and out of the development site.
- c) A protective safety barrier is required to be installed on the southbound approach to the proposed switching station.
- d) No temporary barriers are to be installed on highway (over size, over mass vehicles regularly use the Golden Highway and a median barrier is not appropriate).

Prior to the issue of a Construction Certificate the person acting on this consent is to provide suitable documentary evidence to the Certifying Authority, demonstrating that the vehicular access design prepared in relation to the development and the requirements referenced above, has been accepted by Transport for NSW as the Roads Authority for the carrying out of works in relation to the Golden Highway Classified State Road.

Council would consider either of the following to comprise suitable documentary evidence:

- a) A Works Authorisation Deed (WAD) entered into between the developer and Transport for NSW for the carrying out of the work referenced by this condition.

- b) Written correspondence from Transport for NSW approving the design plans prepared in relation to the worked referenced by this condition.

Note: *A WAD must be entered into between the developer and Transport for NSW prior to the commencement of the works related to the Golden Highway improvements required by this condition related requirements of this approval. The WAD process, including acceptance of design documentation and construction, can take time. The developer should be aware of this and allow sufficient lead time within the project development program to accommodate this process. It is therefore suggested that the developer work through this process as soon as possible with the Traffic for NSW.*

(8) **Construction Traffic Management Plan**

Prior to the issue of a Construction Certificate a Construction Traffic Management Plan is to be prepared in relation to construction of the development. Documentary evidence is to be provided to the Certifying Authority demonstrating that this plan has been submitted and approved by Council in writing prior to the issue of a Construction Certificate. Construction works associated with this development should be carried out generally in accordance with the requirements of this plan except as otherwise directed by Traffic for NSW.

The Construction Traffic Management Plan should:

- Identify the type and volume of vehicles anticipated to access the site during the carrying out of construction works.
- Anticipated paths of travel for construction vehicles accessing the site.
- Detail how vehicles will enter and exit the site. For safety purposes it is recommended that wherever possible vehicles enter and exit the site in accordance with the left in, left out Transport for NSW requirement. Where this cannot be practically achieved, due to the size or point of origin of construction vehicles, the traffic management plan must outline additional traffic control measures to be implemented to support the safety of construction vehicles entering and exiting the site. Traffic control measures along the Golden Highway will require approval from Transport for NSW prior to their implementation.
- Identify a 80km/h temporary work zone adjacent the site along the Golden Highway to be provided during the carrying out of construction works in accordance with the requirements of Transport for NSW's correspondence dated 19 February 2020. The establishment of this temporary work zone would be subject to the requirements of any Road Occupancy License issued by Transport for NSW.
- Identify and detail any further traffic/road impact mitigation measures deemed necessary to manage the impact of construction vehicles on the road network.

(9) **Amenities Building Design Plans**

Prior to the issue of a Construction Certificate detailed design plans are to be provided to Council, and approved by Council, for the installation of an amenities building on-site for use over the life of the development. The building is to be installed within or adjacent to the area set aside for the installation of temporary construction buildings, or at an alternative location approved by Council in writing. The building height, setbacks and materials are to be in accordance with the minimum requirements of the Muswellbrook Local Environmental Plan 2009 and Muswellbrook Development Control Plan 2009. Evidence demonstrating

compliance with this condition is to be provided to the Certifying Authority with any application for a Construction Certificate.

(10) Ecosystem Credit Retirement Conditions

- (10.1) Prior to issue of construction certificate the class and number of ecosystem credits in Table.1 must be retired to offset the residual biodiversity impacts of the development.
- (10.2) The requirement to retire credits in condition 10.1 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator.
- (10.3) Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of condition 10.1 must be provided to the consent authority prior to issue of construction certification.

Table.1 Ecosystem credits required to be retired – like for like

Impacted plant community type	Number of ecosystem credits	IBRA sub-region
Narrow-leaved Ironbark – Grey Gum – Native Olive Woodland of Central Hunter (PCT 1612)	4	Hunter, Ellerstou, Karuah Manning, Kerrabee, Liverpool Range, Peel, Tomalla, Upper Hunter, Wyong and Yengo. or Any IBRA subregion that is within 100 kilometers of the outer edge of the impacted site.

(11) Species Credit Retirement Conditions

- (11.1) Prior to issue of construction certificate the class and number of species credits in Table.2 must be retired to offset the residual biodiversity impacts of the development.
- (11.2) The requirement to retire credits outlined in condition 11.1 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of species credits, as calculated by the Biodiversity Offsets Payment Calculator.
- (11.3) Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table.2 requirements must be provided to the consent authority prior to issue of construction certification.

Table.2 Species credits required to be retired – like for like

Impacted species credit species	Number of species credits	IBRA sub-region
---------------------------------	---------------------------	-----------------

<i>Diuris Tricolor</i>	4	Anywhere in NSW
<i>Prasophyllum petilum</i>	5	Anywhere in NSW

(12) **Section 7.12 Contributions**

Pursuant to section 4.17(1) of the Environmental Planning and Assessment Act 1979, and the Muswellbrook Shire Council Section 94A Development Contributions Plan 2010, a contribution of \$61,147.57 shall be paid to Muswellbrook Shire Council.

The amount to be paid is to be adjusted at the time of the actual payment, in accordance with the provisions of the Muswellbrook Shire Council Section 94A Development Contributions Plan 2010. The contribution is to be paid prior to the issue of the Construction Certificate.

(13) **Construction Environmental Management Plan**

A Construction Environmental Management Plan will be provided to Council for approval and will include but not be limited to:

- Identifying critical life cycle events of target species and detail timing of vegetation clearing to ensure no impacts to these target fauna occur.
- measures to avoid noise encroachment on adjacent habitats, such as avoiding night works as much as possible and directing lights away from vegetation.
- Identify tree protection zones (TPZ) around retained trees for management for the duration of construction in accordance within *Australian Standard 4970-2009 – Protection of trees on development site*.
- sediment and dust control measures to prevent indirect impacts to retained vegetation including an adaptive dust monitoring programs to control air quality, daily monitoring of dust generated by construction activities with all activities relating to the proposal would be undertaken with the objective of preventing visible dust emissions from the development site.
- vehicle hygiene protocols

Documentary evidence demonstrating that this plan has been prepared and provided to Council is to be submitted to the Principle certifying Authority. The requirements of this Plan are to be adhered to during the carrying out of the development.

(14) **Stormwater Management Adjacent the Rail Corridor**

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.

(15) **ARTC Engagement Regarding the Carrying out of Earthworks Adjacent a Rail Corridor**

Prior to the issue of a Construction Certificate, the person acting on this consent shall provide documentary evidence to the Certifying Authority demonstrate that they have engaged with or taken reasonable steps to engage with the Australian Rail Track Corporation (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, 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 on 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 request that the requirement to engage with the ARTC has been completed and the development may 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.

(16) Landscape Design Plan

A landscape plan is to be prepared in relation to the proposed development in accordance with the mitigation measures recommendations of the Visual Impact Assessment. The plan should detail the establishment of mature vegetation screening around the proposed solar farm to compliment mature vegetation around the perimeter of the site. The plan should include botanical names; planting quantities; planted state of maturity of all proposed trees, shrubs and ground covers; and should be prepared in accordance with Council's Landscaping Guidelines.

The Landscape Plan is to be submitted to and approved by Council in writing prior to the issue of a Construction Certificate. Written confirmation demonstrating that the Landscape Plan has been approved by Council should be provided to the Principle Certifying Authority with an application for a Construction Certificate.

(17) Site Waste Minimisation Management Plan

Prior to the issue of a Construction Certificate a Site Waste Minimisation Management Plan is to be prepared, submitted to and approved by Council in relation to the operation of the site.

Prior to the issue of a Construction Certificate a Site Waste Minimisation Management Plan is to be prepared in relation to the construction and operation of the development in accordance with the requirements of the Muswellbrook Development Control Plan. The site waste minimisation management plan must have regard to the objectives of this Section of the Development Control Plan and should achieve the requirements of the controls expressed by this part wherever possible.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO COMMENCEMENT
--

(18) Ausgrid Connection Application

In accordance with the requirements of condition (3) of this Determination, and the Ausgrid letter dated 14 January 2020, a connection application is to be submitted to Ausgrid prior to the commencement of any construction works.

(19) **Road Occupancy License/S138 Approval Requirement**

Prior to the carrying out of any work or activities with the potential to impact on the operational efficiency of the road network the person acting with this consent must obtain a Road Occupancy License

(20) **Clearing Management**

Approved Clearing limits and Tree preservation zones are to be clearly delineated with temporary fencing or similar prior to construction commencing.

(21) **Pre-clearing survey**

An ecologist is to conduct a pre-clearing survey and pre-clearing checklist no more than 7 days prior to the commencement of tree clearing to identify and mark any hollow bearing trees.

(22) **Sediment and Erosion Control**

Prior to the commencement of works Sediment and erosion controls are to be installed at the site in accordance with the Erosion and Sediment Control Plan prepared in relation to the proposed development and referenced by this consent.

All required erosion and sedimentation techniques are to be maintained in a functional and effective condition throughout the construction activities until the site is stabilised.

(23) **Site Sign**

A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:

- (a) stating that unauthorised entry to the work site is prohibited;
- (b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
- (c) showing the name, address and telephone number of the Principal Certifying Authority for the work.

Any such sign must be maintained while to building work or demolition work is being carried out, but must be removed when the work has been completed.

This condition does not apply to building works being carried out inside an existing building.

(24) **Damage to Public Infrastructure**

The applicant shall bear the cost of all restoration works to Council property damaged during the course of this development. The applicant shall submit in writing and/or photographic record any existing damage to Council property before commencement of work.

Note: This documentation will be used to resolve any dispute over damage to infrastructure. If no documentation is received prior to commencement of work it will be assumed that the infrastructure was undamaged and the applicant will be required to restore all damaged infrastructure at their expense.

(25) Site Facilities

- (a) If the development involves building work or demolition work, the work site must be fully enclosed by a temporary security fence (or hoarding) before work commences.
- (b) A minimum width of 1.2m must be provided between the work site and the edge of the roadway so as to facilitate the safe movement of pedestrians.
- (c) Any such hoarding or fence is to be removed when the work has been completed.
- (d) A garbage receptacle fitted with a tight fitting lid for the reception of all food scraps and papers from the work site must be provided prior to building work commencing and must be maintained and serviced for the duration of the work.
- (e) Toilet facilities must be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the work site.
- (f) Each toilet provided must:
 - be a standard flushing toilet, connected to a public sewer, or
 - if connection to a public sewer is not available, to an on-site effluent disposal system approved by the council, or
 - an approved temporary chemical closet.
- (g) The provision of toilet facilities must be completed before any other work is commenced.
- (h) A person having the benefit of this certificate who causes an excavation that extends below the level of the base of the footings of a building on an adjoining allotment of land must at their own expense and where necessary:
 - protect and support the building from damage, and
 - If necessary, underpin and support the building in accordance with the details prepared by a professional engineer.
- (i) A person having the benefit of this certificate who causes the excavation must, at least 7 days before commencing this work, give notice of intention to do so to the owner of the adjoining allotment of land and provide particulars of the proposed work.
- (j) Erosion and sediment controls must be provided in accordance with the details shown on the approved plans, prior to the disturbance of any soil on the work site.

CONDITIONS THAT MUST BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK
--

(26) Non-reflective building materials

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.

(27) **Installation of lighting**

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.

(28) **Cost of Work Affecting Public Infrastructure**

The person acting with this consent shall be responsible for all costs incurred related to any works related to the relocation, alteration or improvement of public utility, infrastructure or service required as part of the carrying out of the development. All works affecting public infrastructure are to be carried out in accordance with the requirements of the relevant service provider.

(29) **Restriction on the import of fill**

Any fill imported to and used at the site is to be sourced from an approved quarry, landscaping supply business or reputable source.

All fill must be free of contaminants and the person operating with this consent is to provide details of the location or premises that any fill used at the site has been obtained from and provide these details to the Principle Certifying and Council.

(30) **Discovery of Aboriginal Heritage**

If Aboriginal objects are uncovered during work, excavation or disturbance of the area, work must stop immediately. The Environmental Protection and Regulation Group of the OEH is to be contacted. Aboriginal archaeological excavation must be co-ordinated with any proposed investigation of non-indigenous material.

(31) **Clearing limits**

During construction the approved Clearing limits to remain clearly delineated with temporary fencing or similar.

(32) **Hollow Bearing Tree felling and wildlife rehoming**

Ecologist or trained wildlife handler would be present during the felling of all hollow-bearing trees.

Any fauna captured as part of this process are to be relocated into surrounding suitable habitat and any injured fauna are to be taken to the nearest veterinary hospital or wildlife carer.

(33) **Storage of materials and equipment**

During construction works no stockpiling or storage of materials or equipment or parking of vehicles within the drip-line of any mature trees to be retained at the site is to occur.

(34) **Management of weeds**

During the construction of the development weed management is to occur on-site in accordance with the following:

- Machinery would be cleaned prior to entering the site to ensure that weed seeds and propagules are not imported to the site.
- Weeds shall be managed according to the requirements of the Biosecurity Act; in that they are to be disposed of at a licenced waste management facility or similar. Weeds are not to be mulched and repurposed for any landscaping use.
- Any occurrences of pathogens such as Myrtle Rust and Phytophthora would be monitored, treated, and reported to council.

(35) Workforce Training

All staff and contractors will be given training and site briefing to communicate environmental features to be protected and measures to be implemented.

(36) Management of Dust

Construction would cease if dust observed being blown from construction site until control measures were implemented.

(37) Construction Hours

- (1) Unless otherwise approved by Council in writing, or authorised by a Section 10.17 COVID-19 pandemic Ministerial Order building construction is to be carried out during the following hours:
 - (a) between Monday to Friday (inclusive)—7.00am to 6.00pm,
 - (b) on a Saturday—8.00am to 1.00pm.
- (2) Building construction must not be carried out on a Sunday or a public holiday.
- (3) Demolition works and excavation works must only be carried out between Monday to Friday (inclusive) between 8.00am and 5.00pm.
- (4) The builder and excavator must display, on-site, their 24 hour contact telephone numbers, which are to be clearly visible and legible from any public place adjoining the site.

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE
--

(38) Occupation

The building is not to be used or occupied until a final inspection has been carried out and an occupation certificate has been obtained from the Principal Certifying Authority.

(39) Vehicle Access Construction

Prior to the issue of an Occupation Certificate, an auxiliary left turn treatment (AUL) and vehicle access to the site is to be constructed in accordance with the requirements of this consent, approved design plans and any Works Authorisation Deed (WAD) entered into between Transport for NSW and the developer.

In addition to the above, the person completing these works is to ensure that they are carried out in accordance with the provisions of any related Road Occupancy License/Section 138 Permit.

(40) Fire Management Plan

Prior to the issue of an Occupation Certificate a Fire Management Plan (FMP) shall be prepared in relation to the development. The FMP is to be prepared in consultation with the NSW RFS Hunter Valley Fire Control Centre and Council. 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).

The final FMP is to be provided to the NSW RFS Hunter Valley Fire Control Centre and Council and documentary evidence provided to the certifying authority demonstrating that this condition has been complied with prior to the issue of an Occupation Certificate.

(41) Fire fighting water supply

Prior to the issue of an Occupation Certificate, a 20,000 litre water supply (tank) fitted with a 65mm storz fitting shall be located adjacent to the internal property access road within the required APZ.

(42) Habitat Management

Prior to the issue of an Occupation Certificate, all habitat features (fallen timber, hollow logs) are to be relocated from within the development site to adjacent areas of Zone 2 for habitat enhancement.

A brief report is to be provided to Council to demonstrate that all habitat features have been relocated to Zone 2 and details of hollow bearing tree removal including fauna species observed, their health on relocation, and any other relevant details.

(43) Installation of landscaping

Prior to the issue of any Occupation Certificate, landscaping is to be installed at the site in accordance with the approved Landscape Plan, the requirements of this consent or as otherwise directed by Council in writing.

(44) Construction of bunded storage areas

Prior to the issue of any Occupation Certificate involving elements of the approved development, where chemicals or dangerous goods would be stored, or used,

impervious bunded areas are to be constructed in accordance with the requirements of this consent, the approved plans and Preliminary hazard Analysis.

CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

(45) Site Access Requirement

At all times in accordance with the requirement of Transport for NSW outlined in their letter dated 19 February 2020, or as otherwise authorised by the Roads Authority in writing. Access to the site is restricted to be left in and left out only.

(46) Asset Protection Zone Development Area

At all times 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'.

(47) Asset Protection Zone Perimeter Area

At all times to allow for emergency service personnel to undertake property protection activities, a 10 metre defensible space (APZ) that permits unobstructed vehicle access is to be provided around the perimeter of the solar array development site, including associated infrastructure.

(48) Amenities Building Requirement

At all times the premises is in operation an amenities building is to be provided on-site for use by Staff in accordance with the requirements of this consent.

(49) Storage of any Chemicals or Dangerous Goods

Where chemicals or dangerous goods are to be stored on-site during the construction or operation of the facility, these materials are to be stored in an impervious bunded area.

(50) Rail Corridor Fencing

At all times, unless otherwise agreed by Council or the ARTC in writing, secure fencing is to be maintained adjacent the solar farms boundary with the Muswellbrook-Merriwa rail corridor.

CONDITIONS THAT MUST BE COMPLIED WITH AT THE CONCLUSION OF THE DEVELOPMENTS OPERATIONAL LIFETIME

(51) Decommissioning

At the conclusion of the developments operational lifetime the site is to be returned to a standard that would support the agricultural/grazing use of the site consistent with the current land use, and as outlined in the approved Statement of Environmental Effects.

Documentary evidence is to be provided to Council from a suitably qualified person to confirm that the development has been successfully decommissioned to a standard to support the agricultural use of the land in accordance with this requirement.

This condition has no affect where a subsequent development application is approved for the continued use of the site as an Energy generating Works or an alternate non-agricultural use. Where this is the case any decommissioning is to be carried out in accordance with the requirements of the relevant approval.