



COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSHCC-362 DA2019-102(3)	
PROPOSAL	Section 4.55(2) to: • modify the landscaping screening requirements, • remove references to permanent amenities building and • remove the requirement to seal part of the internal access road.	
ADDRESS	Lot 12 DP 1042612	
APPLICANT	Stroud Agricultural Company Pty Ltd	
OWNER	Stroud Agricultural Company Pty Ltd	
MOD LODGEMENT DATE	7 April 2025	
ORIGINAL DA DETERMINATION DATE	6 May 2020	
APPLICATION TYPE	Modification Application under Section 4.55(2)	
CIV	\$11,960,115 (excluding GST)	
TOTAL SUBMISSIONS	One (1)	
DOCUMENTS SUBMITTED FOR CONSIDERATION	Attachment A Attachment B Attachment C Attachment D Attachment E Attachment F Attachment G Attachment H	Draft Conditions Physical Comment correspondence Proposed plans Landscape Plan Photomontage Shading Analysis - current Shading Analysis 2 - proposed Submission
RECOMMENDATION	Approval	
DRAFT CONDITIONS TO APPLICANT	No	
SCHEDULED MEETING DATE	7 October 2025	
PREPARED BY	Donna Watson Senior Land Use Planner	
DATE OF REPORT	13 October 2025	

EXECUTIVE SUMMARY

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

- The original application was for 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 Hunter Central Coast Regional Planning Panel determined the application (PPSHCC-23) on 6 May 2020 subject to conditions.
- The applicant lodged a Section 4.55(1)(a) modification with Muswellbrook Shire Council on 12 April 2024. This modification was approved by Council on 21 June 2024.
- On 7 April 2025, a Section 4.55(2) was lodged with Council for:
 - Modification of the landscaping screening requirements
 - Removal of references to a permanent amenities building
 - Removal of the requirement to seal part of the internal access road.
- The modification is not 'designated development' or 'integrated development'.
- The modification was publicly notified and advertised between the 28 April to 12 May 2025 with one (1) submission being received.
- The proposal was referred to the following government agencies, and their comments taken into consideration:
 - Traffic for NSW (legislated referral)
- On 5 August 2025, the modification was considered at a Briefing with the Hunter and Central Coast Regional Planning Panel.
- Key findings of the Section 4.55 (2) Assessment which inform this recommendation include:
 - 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 visual impact assessment has been prepared in relation to the changes proposed to the landscaping. Council Officers accept that the proposed modification can be supported from a visual impact perspective. A summary of the proposed landscaping arrangement juxtaposed against the landscaping previously stipulated by the Panel in the initial determination of the application has been included in this report to assist the Panel in their deliberations.
 - 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.

1. THE SITE AND LOCALITY

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 C3 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.



Figure. 1 - Site and locality plan

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.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposed Modification

The applicant is seeking the following modification to the proposal:

- **1. Modification of the landscape screening requirements.**

Reasons: Views of the proposed development are not readily available from surrounding receivers due to topography and existing vegetated areas. Landscape screening was not considered strictly necessary for the original development proposal, nor the modified development proposal, according to the outcomes of the Visual Impact Assessment (VIA).

The Applicant seeks consideration of alternative landscape screening arrangements as detailed in this report and supported by an updated Visual Impact Assessment and Landscape Plan prepared by Moir Landscape Architecture. In this regard, the Applicant is seeking:

- a reduction in the height of landscaping from 8m to 4m; and
- a change to the width of landscaping from 10m to be 8m landscaping and a 2m grassed strip.

- **2. Removal of references to a permanent amenities building.**

Reasons: The original development proposed an amenities building during the construction phase but it was not considered required during the operational phase of the solar farm. However, the condition was imposed by Council during assessment of the application. On-site activity during operation is very limited due to advancements in remote monitoring, tracking and equipment durability. Local subcontractors would be deployed during the operational phase, to replace minor components from time to time. Temporary toilet and washing facilities would be provided as outlined in this report.

- **3. Clarification of condition related to sealing part of the internal access road.**

Reasons: Sealing of internal roads was not considered necessary for the original development proposal. The internal roads are gently sloped and consistent with access requirements under Planning for Bushfire Protection 2019 (PBP). The proponent is seeking the consent to be updated to clarify that the internal access is to be established and maintained to a satisfactory standard rather than any express requirement for it to be fully sealed.

*Proposed Changes to Conditions***Table 1:** Proposed Changes to Conditions – show in bold

No	Condition requirements	Change Proposed	Reason for Change
4	An amenities building providing hand washing and toilet facilities, and a place to eat meals, is to be provided on the site for the construction, operation and decommissioning phases of the development. The amenities building is to be installed within the area identified for temporary construction buildings. A separate development application is to be lodged with Council to obtain approval for the installation of the amenities building.	Temporary amenities An amenities building providing hand washing and toilet facilities, and a place to eat meals, is are to be provided on the site for the construction, operation and decommissioning phases of the development. Amenities are to be placed The amenities building is to be installed within the area identified for temporary construction buildings. A separate development application is to be lodged with Council to obtain approval for the installation of the amenities building.	The development will not require permanent / regular staff to be on site during the operational phase.
6	An amended plan being submitted with the Construction Certificate that shows: a) 10 metre landscape strip along the western boundary in addition to the APZ b) 5 metre landscape strip along the Golden Highway frontage c) All vegetation required to be kept as shown on Site Works DWG No. 80219037-CI-1201 Revision 3 d) Vegetation requirement along the western side of the access road, between the northern boundary of the panels as required by Condition 17	An amended plan being submitted with the Construction Certificate that shows: a) 10 metre landscape strip along the western development boundary which may be partially incorporated into in addition to the APZ b) 5 metre landscape strip along the Golden Highway frontage northern development boundary c) All vegetation required to be kept as shown on Site Works DWG No. 80219037-CI-1201 Revision 3 d) Vegetation requirement along the western side of the access road, between the northern boundary of the panels as required by Condition 17	

	e) Reduction in panels to accommodate the above - a to d	d e) Reduction in panels to accommodate the above - a to d c	
9	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 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 the Golden 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 (a classified State Road).	Vehicular access to the site is to be designed in accordance with the following requirements: a) Vehicle access between the site boundary and within the Golden Highway road reserve pavement should must be bitumen sealed as a minimum construction standard. b) An Auxiliary left-turn treatment 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 the Golden 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 (a classified State Road).	The applicant is seeking additional wording to be added to the condition to clarify where the bitumen sealing is to occur. They are concerned it could be interpreted to mean the boundary of the solar array. In this regard, sealing of the internal access road into the site to the solar farm would be considered unwarranted. Council Staff support the additional wording and agree that the internal access road does not need to be sealed due to minimal traffic access. Council Staff believe the WAD has already been submitted to Transport for NSW for their consideration.

	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) b) Written correspondence from Transport for NSW approving the design plans prepared in relation to the worked referenced by this condition.	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.	
17	A landscape plan is to be prepared in relation to the proposed development in accordance with the mitigation measure recommendations of the Visual Impact Assessment. The plan should: a) Identify the existing vegetation to be retained on the site. Wherever possible existing vegetation should be retained, and all vegetation identified as being retained by the BDAR and approved plans is to be retained on-site. b) Identify a 10m wide landscape screen planting adjacent the western site boundary, separate to the 10m wide asset protection zone (APZ). The landscape screen planting is to be planted with both shrub and tree species to achieve screening from the ground level to a minimum height of 8m. Where there is a conflict between this landscaping requirement and the location of solar panels marked on the approved plans, the landscape plan is to take precedence.	A landscape plan is to be prepared in relation to the proposed development in accordance with the mitigation measure recommendations of the Visual Impact Assessment. The plan should: a) Identify the existing vegetation to be retained on the development site. Wherever possible existing vegetation should be retained, and all vegetation identified as being retained by the BDAR and approved plans is to be retained on-site. b) Identify a 10m wide landscape screen planting for the length of solar panels adjacent the western development boundary, which may be partially incorporated into separate to the 10m wide asset protection zone (APZ) as proposed. The landscape screen planting is to be planted with both shrub and tree species to achieve screening from the ground level to a minimum height of 8 height of 4m. Where there is a conflict between this landscaping requirement and the location of solar panels marked on the approved plans, the landscape plan is to take precedence.	

	c) Identify landscape screen planting along the Golden Highway frontage with a minimum width of 5m. The landscape screen planting is to be planted with both shrub and tree species to achieve screening from the ground level to a minimum height of 8m. d) Identify tree planting on the western side of the internal access road, between its intersection with the Golden Highway and the northern boundary of the solar panel array. e) Locally indigenous plant species should be used wherever possible. f) 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. g) Show all vegetation to be retained on the site and additional landscape buffers. h) No approval is granted to any other vegetation removal. 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.	c) Identify 5m wide landscape screen planting along the Golden Highway frontage with a minimum width of 5m northern development boundary. The landscape screen planting is to be planted with both shrub and tree species to achieve screening from the ground level to a minimum height of 8m to a height of 4m. d) Identify tree planting on the western side of the internal access road, between its intersection with the Golden Highway and the northern boundary of the solar panel array. e d) Locally indigenous plant species should be used wherever possible. F e) 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. g) Show all vegetation to be retained on the development site and additional landscape buffers. h) No approval is granted to any other vegetation removal. 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.	
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45	A permanent amenities building as required by Condition 4 must be approved and constructed prior to the issue of any Occupation Certificate or commencement of operations	To be deleted.	
53	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.	During operation, temporary amenities are At all times the premises is in operation an amenities building is to be provided at the development site on-site for use by Staff where on-site works would extend for two continuous working days or more. in accordance with the requirements of this consent.	

2.2 Background

The original development consent was issued on 6 May 2020, with the key issues considered in the assessment of the original development comprising the following:

- 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 SEPP (Transport and Infrastructure) as the development is for the purpose of energy generating works. The provisions of the SEPP (Transport and Infrastructure) 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.

On 12 April 2024, the applicant lodged a Section 4.55(1)(a) modification with Muswellbrook Shire Council. This modification was to:

- Include an ancillary battery energy storage system (BESS) being eight 980 skid-mounted battery containers which reduced the amount of solar panels.
- Modified location of the inverters – change from the eastern edge of the original footprint to be centrally located within the array.
- Minor adjustment to the route of the proposed underground powerline (relocated from overhead), from the solar array immediately east to the dwelling.

The Section 4.55(1)(a) modification was assessed and determined by Council on 21 June 2024 in accordance with the instruction made under Clause 123BA (2) of the Environmental Planning and Assessment Regulation.

On 7 April 2025, the proposed modification application was lodged with Council. A chronology of the modification application since lodgement is outlined below in **Table 2** including the Panel's involvement (briefings, deferrals etc) with the application:

Table 2: Chronology of the Modification Application

Date	Event
7 April 2025	Modification application lodged
28 April 2025	Exhibition of the application
29 April 2025	Modification referred to external agencies
5 August 2025	Panel briefing

3. STATUTORY CONSIDERATIONS

When determining a modification application, the consent authority must take into consideration the matters outlined in 4.55(2) of the EP&A Act in relation to modification of consents provisions, Section 4.15(1) of the EP&A Act in relation to matters for consideration for applications and Part 5 of the 2021 EP&A Regulation in relation to information requirements and notification. These matters are considered below.

3.1 Physical Commencement

The application was originally determined on 6 May 2020 by the Hunter Central Coast Regional Planning Panel subject to conditions. At the 5 August Panel briefing it was raised whether the development had lapsed.

Prior to lodging the current modification, the Applicant submitted correspondence to Council on 14 March 2025, attached as **Attachment B**, notifying Council of and seeking acknowledgement for the physical commencement of works related to the development.

The works physically commenced prior to the lapsing date of 6 May 2025, and which Council was notified of included:

- a) extensive engineering, in collaboration with TfNSW, relating to the intersection upgrade for the development (Clauses 9 & 40 of the Notice of Determination);
- b) topographical survey has been completed;
- c) earth resistivity testing has been completed on site and the report is being finalised

Section 96(1) of the Environmental Planning and Assessment Regulation 2021 specified work states:

(1) Work is not taken to have been physically commenced merely by the doing of 1 or more of the following—

- (a) creating a bore hole for soil testing,*
- (b) removing water or soil for testing,*
- (c) carrying out survey work, including the placing of pegs or other survey equipment,*
- (d) acoustic testing,*
- (e) removing vegetation as an ancillary activity,*
- (f) marking the ground to indicate how land will be developed.*

(2) This section does not apply to a development consent granted before 15 May 2020.

The development application determined 6 May 2020, prior to 15 May 2020.

Accordingly, the limitations to the definition of physical commencement described above do not limit this development. The physical survey and investigation work carried out by the applicant were at the time, a type of work that substantiated physical commencement.

Accordingly, Council has acknowledged that the development has physically commenced and that the development consent remains current.

3.2 Section 4.55 of the EP&A Act

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Hunter Central Coast Regional Planning Panel and subject to and in accordance with the regulations, modify the consent if a number of matters are satisfactorily addressed pursuant to Section 4.55(2) of the EP&A Act. The matters include the following:

- (a) ***It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all) (s4.55(2)(a)), and***

The proposed changes do not substantially alter the approved development. The proposal remains for an electricity generating works (solar farm). The modification involves changes only in relation to landscape height and width along the western development boundary, the installation of an amenities building and condition clarification.

The proposed modification is substantially the same development as the development for which consent was originally granted on 6 May 2020.

- (b) ***It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent (s4.55(2)(b)), and***

The modification has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act, refer to Section 4.

- (c) ***it has notified the application in accordance with—***
(i) ***the regulations, if the regulations so require, or***
(ii) ***a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent (s4.55(2)(c)), and***

The proposal was notified in accordance with Council's Community Participation Plan from 28 April 2025 until 12 May 2025. One submission, comprising an objection was received.

- (d) ***it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be (Section 4.55(2)(d)).***

The submission confirms their objection to the reduced landscape screening on the western boundary as it will have significant visual impacts and inhibit the future development of their property. Further discussion regarding the submission can be found under Section 4.3 of the report.

- (e) ***In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified (Section 4.55(3)).***

The matters required to be considered include:

- Matters for consideration pursuant to Section 4.15(1) of the EP&A Act – these matters are considered below in Section 3.2 of this report; and
- Reasons given by the consent authority for the grant of the consent that is sought to be modified – outlined below.

Reasons for Grant of Consent

The Hunter and Central Coast Regional Planning Panel granted consent to the original development in a notice of determination dated 6 May 2020. The reasons outlined in the Statement of reasons for this decision included the following:

- The subject site is suitable for the proposed development having regard to environmental considerations include the visual impact of the proposal. Visual impacts associated with the proposed development would not have a significant adverse environmental impact where mitigated through vegetation screening set-out in the recommended conditions of consent.
- Traffic associated with the development would not have a significant impact on the road network where required road upgrades are implemented and where the requirements of the consent are adhered to in relation to the management of construction and operational traffic associated with the development.
- Measures are to be put in place through the preparation and implementation of an Operation Management Plan to ensure that the premises is operated in an environmentally sustainable manner.
- Measures are to be put in place through the preparation and implementation of a Decommissioning Plan to ensure that the site is rehabilitated and returned to a standard to support its pre-development agricultural status.
- The proposed development is in the public interest, as the proposal will support a renewable energy generating activity and provide employment opportunities.

The proposed modification is consistent with these reasons for the decision on this consent in that the proposed development is entirely consistent with the planning controls and expectations for the site given the zoning and other planning controls for the site.

3.3 Section 4.15(1) of the EP&A Act

Section 4.15(1) of the EP&A Act contains matters which the consent authority must take into consideration in determining a development application and modification applications pursuant to Section 4.55(3), which are of relevance to the application.

These matters include the following, which are considered in detail below:

- (a) *the provisions of—*
- (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

3.3.1 Section 4.15(1)(a) - Provisions of Environmental Planning Instruments, Proposed Instruments, DCPs, Planning Agreements and the Regulations

The relevant provisions under s4.15(1)(a) are considered below.

(a) ***Environmental planning instruments (s4.15(1)(a)(i))***

The following Environmental Planning Instruments are relevant to this application:

- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Muswellbrook Local Environmental Plan 2009

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 4** and considered in more detail below.

Table 3: Summary of Applicable State Environmental Planning Policies

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	There is no substantive change to the development's relationship with these assessment considerations as they were assessed when the development application was determined on 6 May 2020. The proposed development may be accepted as being in accordance with this assessment consideration.	Y

State Environmental Planning Policy (Planning Systems) 2021	In reviewing this SEPP Council Officers have given consideration to the SEPP's criteria for identifying State Significant development and are satisfied that the modification does not meet the criteria for this type of development.	Y
SEPP (Resilience & Hazards)	<u>Chapter 3: Hazardous and Offensive Development</u> Council officers are satisfied that the modification will not involve any changes that will result in potentially hazardous or potentially offensive development. <u>Chapter 4: Remediation of Land</u> 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.	Y Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	<u>Chapter 2: Infrastructure</u> The modification was referred to Transport for NSW for consideration and comment as the Applicant was seeking an amendment to conditions relating to the intersection with the Golden Highway. Transport for NSW have supported the proposed amendments to the conditions as the requirements for the construction of the intersection will be detailed in the Works Authorisation Deed.	Y

Muswellbrook Local Environmental Plan 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 and there is no change to the original assessment.

(b) Provisions of any Proposed Instruments (s4.15 (1)(a)(ii))

There are several proposed instruments which have been the subject of public consultation under the EP&A Act, and none are relevant to the proposal.

(c) Provisions of any Development Control Plan (s4.15(1)(a)(iii))

The proposed modification will not result in any changes to the original assessment carried out under the Muswellbrook Development Control Plan.

- *Muswellbrook Section 94A Development Contributions Plan 2010*

The original cost of the development was \$6,114,757 which resulted in a condition being imposed requiring the payment of Section 7.12 in accordance with Council's Section 94A Development Contributions Plan 2010. The first modification resulted in an increase in development cost to \$11,960,115. The condition requiring payment of Section 7.12 was amended to reflect the amended cost.

The current modification will not alter the current estimated cost of the development and therefore, no amendments are required to the condition.

(d) Planning agreements under Section 7.4 of the EP&A Act (s4.15(1)(a)(iia))

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

(e) Provisions of Regulations (s4.15(1)(a)(iv))

These provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended draft conditions (where necessary).

3.3.2 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- Context and setting – The modification is considered to be generally consistent with the context and setting of the site. The proposed amendments to the conditions will not change the streetscape, overall footprint of the development site.
- Visual Impact

As a short summary of the key proposed changes to the landscaping at the western boundary it is proposed to:

- Adjust the height of mature screening trees from the 8m current requirement to heights of 4m.
- Adjust the landscape buffer strip from the 10m excluding the APZ to a 10m wide strip which includes 2m of the APZ area that would be seeded and turfed at a low height level. Meaning that there would be an 8m wide landscaping strip populated by medium to taller tier landscaping in place of the 10m wide landscape buffer originally approved.

The applicant has provided photomontages and an amended landscaping plan which is included as **Attachments D and E**.

The applicant has advised that the tallest solar panels have an overall height of 2.78m being from the ground to the top of the panel (See Figure 2 below). In this regard, the panels will be adequately screened by 4m high vegetation.

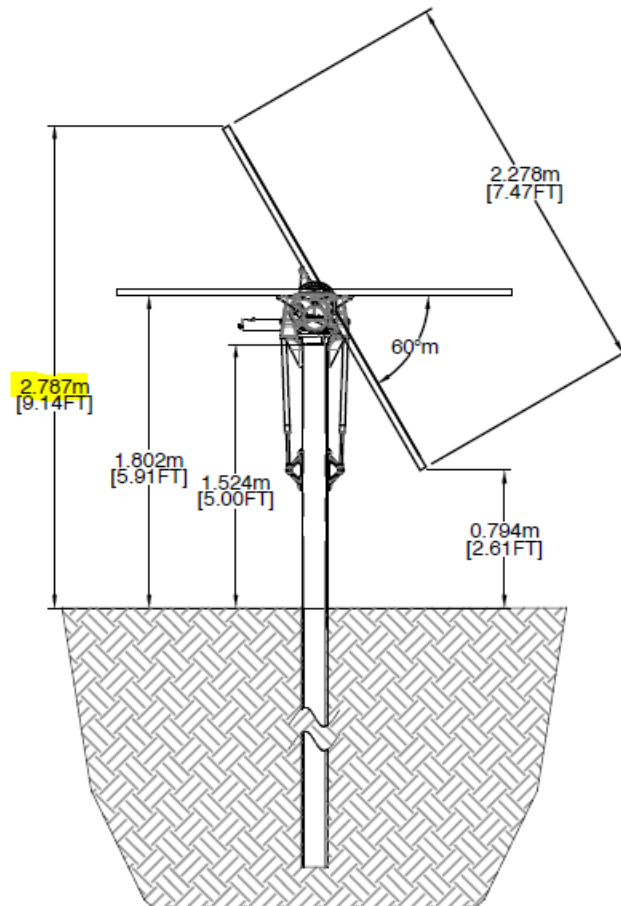


Figure 2 – Plan showing the height of tallest solar panel.

The applicant has provided a photo montage looking from Goulburn Drive back towards the site. In addition, site inspection photos below show the view from Goulburn Drive to the development site. The location of the solar panels will not be visible from the submitter's site.



Figure 2 – View from Submitter's property on Goulburn Drive, Sandy Hollow. Approximate location of development shown in red circle.

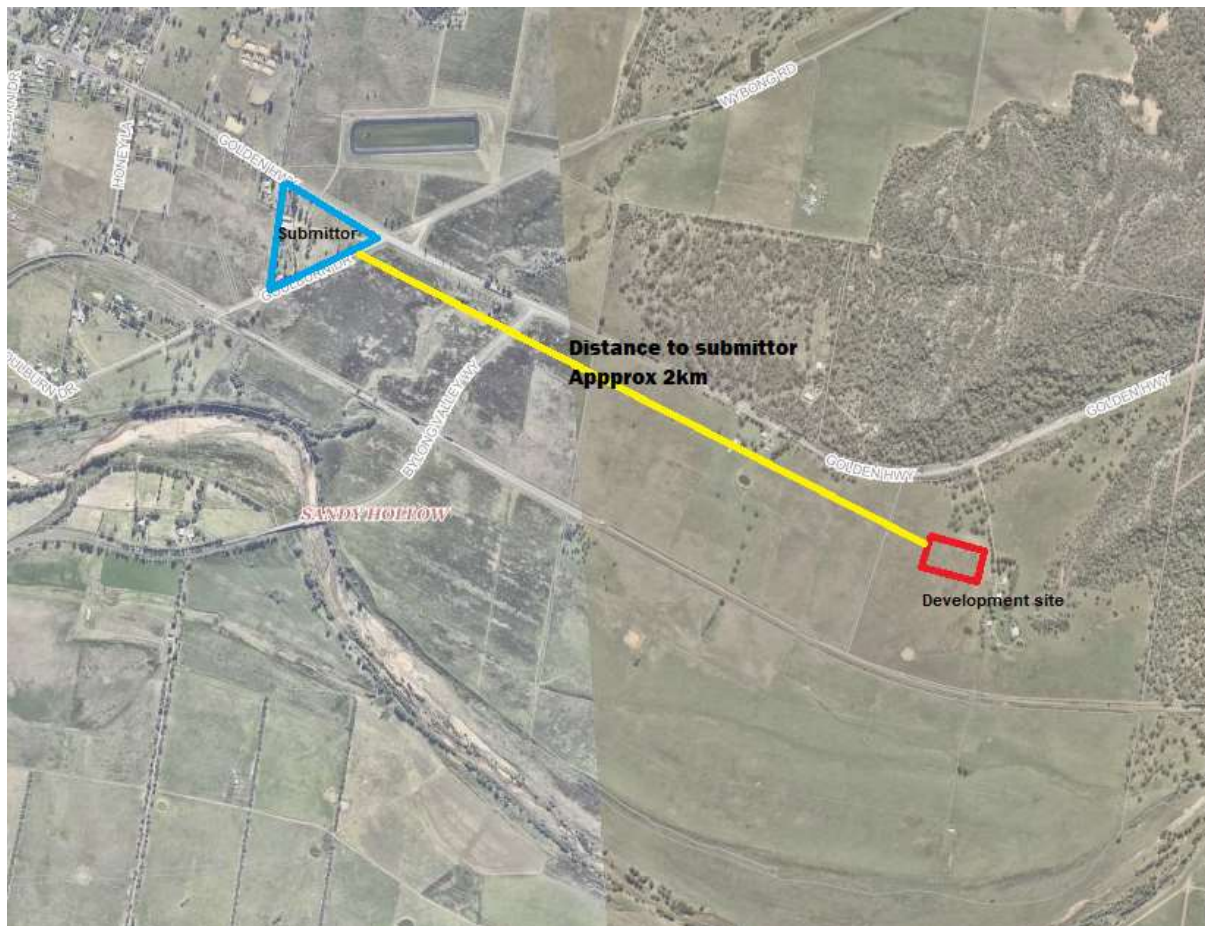


Figure 3 – Location of submitter in relation to the site.

The original Visual Impact Assessment 2019, included a view point from this location and the recommended mitigation measures:

Consultation should be undertaken with the sensitive receivers in this area. Should additional screening be necessary, a landscape plan should be developed in consultation with the sensitive receiver with the aim to obstruct the view of the solar farm. This should be relatively easy to achieve as the topography between the proposal site and sensitive receiver is relatively flat and any plantings would be very effective.

In the original report to the Planning Panel, Council staff recommended a condition that would require a landscaping plan be submitted to and approved by Council prior to the issue of a Construction Certificate. This condition was a general condition and didn't specify any widths and / or height of landscaping. The condition also required the landscaping plan be prepared in accordance with the mitigation measures of the Visual Impact Assessment.

At the Planning Panel meeting 6 May 2020, the application was determined with changes to the draft conditions. This included a new condition, being condition No. 6, which specified landscape strip widths along the western boundary and Golden Highway frontage. The Visual Impact Assessment did not recommend a width and / or height for landscaping along the western boundary. Therefore, the Panel specified widths as it was considered these widths would be sufficient to achieve the mitigation measures from the Visual Impact Assessment.

The modification is requesting a reduction to the height of landscaping from 8m in height to 4m along the western and northern boundaries of the development site. In addition to the reduction in landscaping height along the western development boundary, the applicant is requesting a change to the width from 10m of landscaping to 8m and a 2m grassed strip, as seen below.

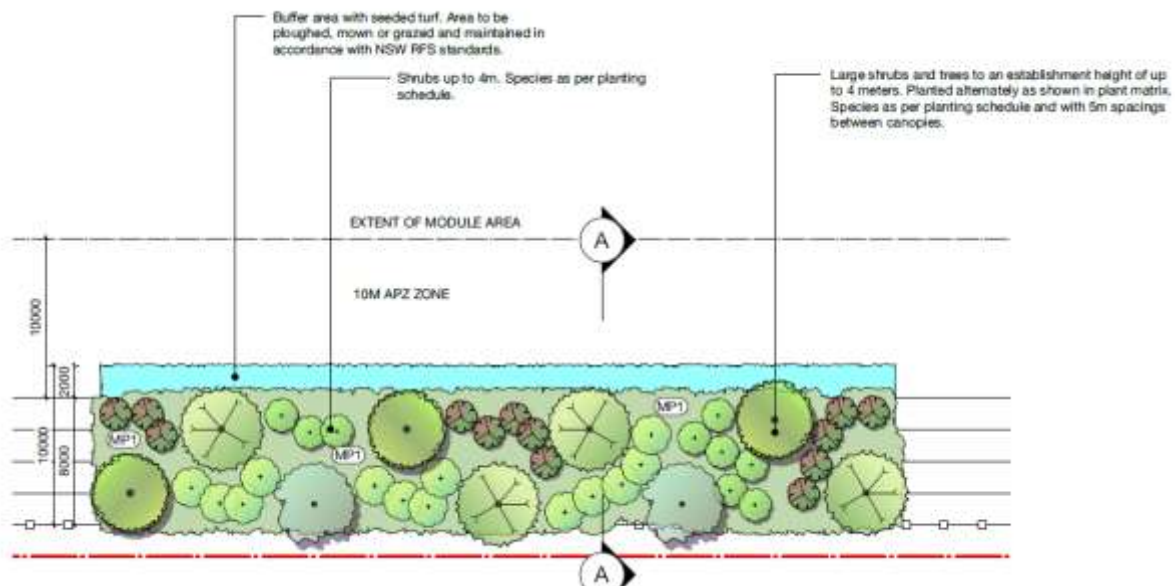


Figure 4 – Extract from Landscaping plans showing aerial view of proposed landscaping strip.

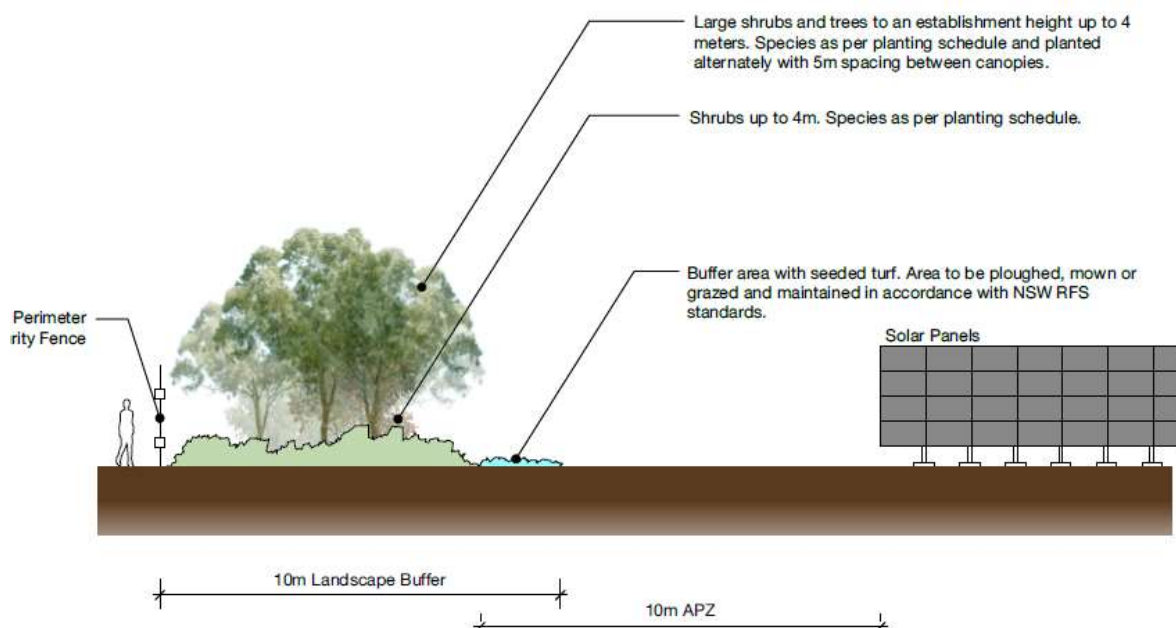


Figure 5 – Extract from Landscaping plan showing section of landscape planting

From a review of the original Visual Impact Assessment and photomontages, the reduction in tree height to 4m and width to 8m will still provide adequate screening affected receivers. Council staff have no objection to the reduction in tree height along the western development boundary.

In addition to the above, the site inspection found the existing vegetation along the northern site boundary to be well established since the initial Visual Impact Assessment in 2019. This vegetation will add another layer of screening for the solar panels when viewed from the Golden Highway.



Figure 4 – Looking south to the development site



Figure 5 – Looking west towards Sandy Hollow

Council officers have assessed the potential visual impacts from the development to surrounding properties and are satisfied there is no additional impact with the reduction of landscaping on the western development boundary. The vegetation along the Golden Highway has had a further 5 years of growth which has assisted with the screening.

- Access and traffic – The modification will not be altering the access point to the site. The modification is seeking clarification regarding the distance that the access road is to be sealed. Council officers understand that the Applicant has lodged the Works Authorisation Deed (WAD) with Transport for NSW for the intersection improvements. Transport for NSW have indicated the access / intersection is to be sealed in accordance with the plans approved under the WAD.
- Utilities – The proposed modification will not alter the requirements under the original application.

- Heritage – The site does not contain a heritage item or located within a heritage conservation area. Therefore, not applicable to the development.
- Technological hazards – There is no change to the original assessment
- Social impact – The proposed modification will not alter the social impact of the development.

Accordingly, it is considered that the proposed modification will not result in any significant adverse impacts in the locality as outlined above.

3.3.3 Section 4.15(1)(c) - Suitability of the site

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.

3.3.4 Section 4.15(1)(d) - Public Submissions

These submissions are considered in Section 4.3 of this report.

3.3.5 Section 4.15(1)(e) - 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.

3.4 Part 5 of the EP&A Regulation 2021

There are a number of matters required to be addressed in an application for modification of development consent pursuant to Division 1, 2 and 3 of Part 5 of the 2021 EP&A Regulation. These matters are considered in **Table 4** below.

Table 4: Consideration of the Requirements under the Regulation

Matter	Comment	Comply
Clause 100 Application for modification of development consent		
May be made by— (a) the owner of the land to which it relates, or (b) another person, with the consent of the owner of the land (Cl 98(1))	The modification has been made by Sandy Hollow Solar Pty Limited on behalf of the owner	Y
NSW Aboriginal Land Council consent required for land owned by a Local Aboriginal Land Council (Cl 98(6)).	The land is not owned by a Local Aboriginal Land Council and consent is not required	N/A

Form approved by Planning Secretary and on portal (Cl 99).	The application has been provided in accordance with the Regulation.	Y
Applicant details (Cl 100(1)(a))	Sandy Hollow Solar Pty Limited	Y
Address and title details (Cl 100(1)(c))	Lot 12 DP 1042612 1333 Merriwa Road, Sandy Hollow	Y
Description of the proposed modification (Cl 100(1)(d))	Section 4.55(2) to amend DA conditions relating to landscaping, permanent amenities building and road sealing.	Y
Whether to correct a minor error, mis-description or miscalculation, or some other effect (Cl 100(1)(e))	The proposed modification is to modify the original consent under Section 4.55(2).	N/A
Description of the expected impacts of the modification (Cl 100(1)(f))	There are unlikely to be any significant impacts resulting from the proposed modification.	Y
Undertaking that modified development will remain substantially same as development originally approved (Cl 100(1)(g))	The modified development will remain substantially the same development as that originally approved. Refer to Section 3.1 of this Report.	Y
If accompanied by a Biodiversity development assessment report, the biodiversity credits information (Cl 100(1)(h))	The modification did not require a biodiversity development assessment report	N/A
Owner's consent (Cl 100(1)(i))	An undertaking has been provided on the Portal.	Y
BASIX Certificate (Cl 100(3))	The proposed modification does not involve BASIX development.	N/A
Notification and exhibition requirements (Cll 105-112)	Refer to Section 4.3 of this report.	Y
Notification of concurrence authorities and approval bodies (Cl 109) (to be undertaken by Council)	The modification application has been referred to the relevant concurrence and approval bodies as outlined in Section 4.1 of this Report.	Y

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The modification has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below .

Table 5: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Integrated Development (S 4.46 of the EP&A Act)			
Transport for NSW	S138 - Roads Act 1993 for works in the road reserve.	Transport for NSW have supported the modification. They have advised that a Works Authorisation Deed (WAD) has been submitted and is undergoing assessment. Transport for NSW noted that the plans submitted with the WAD show that part of the internal access is proposed to be sealed. In this regard, they recommend the site access be sealed in accordance with the plans approved under the WAD. The response also advised that TfNSW were not supportive of the proposed change to condition language around sealing the driveway crossover of the road reserve. Council Officers and TfNSW hold a consistent view on this item.	Yes

4.2 Council Referrals

The modification application was not required to be referred to any internal sections of Council.

4.3 Notification and Community Consultation

The proposal was notified in accordance with Council's Community Participation Plan from 28 April 2025 until 12 May 2025. One submission, comprising an objection was received.

The submission confirms their objection to the reduced landscape screening on the western boundary as it will have significant visual impacts and inhibit the future development of their property. The visual impact of the development has been discussed earlier in section 3.3.2 the report.

In this regard, the assessing officer is satisfied that the screening proposed for the development will assist with the reduction of visual impact on the submittor.

5. KEY ISSUES

Key assessment considerations for each proposed change have been noted below:

Landscaping consideration

As a short summary of the key proposed changes to the landscaping at the western boundary it is proposed to

- Adjust the height of mature screening trees from the 8m current requirement to heights of 4m.

- Adjust the landscape buffer strip from the 10m excluding the APZ to a 10m wide strip which includes 2m of the APZ area that would be seeded and turfed at a low height level. Meaning that there would be an 8m wide landscaping strip populated by medium to taller tree landscaping in place of the 10m wide landscape buffer originally approved.

The applicant has provided photomontages and an amended landscaping plan which is included as **Attachment D, E, F and G**.

Council also advises that a submission was received from the owner of the property west of the site objecting to the proposed landscaping changes.

Noting that the proposal will retain a considered approach to landscaping and the investigation of the landscaping/site in context with the locality undertaken by the applicant Council Officers have a level of comfort that the proposed alterations (reduction in landscaping height 8m-4m and effective reduction of landscaping shrubbery and tree planting from 10m-8m) could be supported.

Amenities building

Council Officers note the information around the infrequency of workers being posted at the site and the applicants advise that they do not perceive such a building will be necessary to support their operation.

Council Officers consider this an operational matter for the site operator and note that they remain subject OHS laws outside the planning process to provide a safe work environment with appropriate amenities/utilities to staff at a site. In this instance it is understood to be the view of the site operator that the infrequency of its staffing would be such that an on-site amenities building would not be necessary.

Sealing of internal roads

The applicant has requested to remove requirements for internal roads to be sealed. This is not currently required by the consent, which required the driveway crossover between the New England Highway and site boundary to be sealed. To provide additional clarity for the applicant Council Officers have supported the update/clarification of the related condition of consent by removing a reference to 'site boundary'.

The Panel will also note TfNSW advice and the TfNSW WAD approved Highway intersection design which required the vehicle access to be sealed for a length of 60m internal to the site. Compliance with the WAD approved drawing remains a requirement of carrying out the development.

6. CONCLUSION

This modification application has been considered in accordance with the requirements of the EP&A Act and the 2021 EP&A Regulation as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

It is considered that the key issues as outlined in Section 5 have been resolved satisfactorily through amendments to the proposal and in the recommended draft conditions at **Attachment A**.

7. RECOMMENDATION

It is recommended:

- That the Modification Application DA 2019-109(3) be APPROVED pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A; and
- Pursuant to Clause 118 of the *Environmental Planning and Assessment Regulation 2021*, a notice of determination is to be prepared by Council following the Panel's determination of this modification application.

The following attachments are provided:

Attachment A	Draft Conditions
Attachment B	Physical Comment correspondence
Attachment C	Proposed plans
Attachment D	Landscape Plan
Attachment E	Photomontage
Attachment F	Shading Analysis
Attachment G	Shading Analysis 2
Attachment H	Submission