

<b>DATE OF DETERMINATION</b>	29 November 2022
<b>DATE OF PANEL DECISION</b>	28 November 2022
<b>PANEL MEMBERS</b>	Paul Mitchell (Chair), Penny Holloway, Stephen Gow, Joe Vescio and David Brown
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	Simon Richardson declared a perceived conflict of interest as he has made public statements supporting the proposed development.

Papers circulated electronically on 16 November 2022.

#### **MATTER DETERMINED**

PPSNTH-155 – Byron – DA 10.2022.134.1 at 1 Dingo Lane, Myocum - Electricity Generating Works (as described in Schedule 1).

#### **PANEL CONSIDERATION AND DECISION**

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

#### **Development application**

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

The decision was unanimous.

#### **REASONS FOR THE DECISION**

The Panel determined to approve the application for the following reasons:

1. The proposal is permissible in the RU2 zone by virtue of Clause 2.36 of SEPP (Transport and Infrastructure) 2021 and is generally consistent with the zone objectives as far as they apply to this application; with respect to the objective of maintaining the natural resource base, the Panel notes that the proposal will have no adverse impacts on the site's agricultural capability and will remain suitable for long-term agricultural use following decommissioning of the solar farm. The proposal is also consistent with the relevant provisions of all applicable SEPPs.
2. The site is suitable for the proposed use. It is cleared land of low visual prominence that is largely free of environmental constraints. While parts of the site are flood and bushfire prone, the proposed use does not involve residential occupancy meaning there will be no risk to life or human safety, nor will the proposal divert flood waters in a way that would pose a risk to other properties. The development proposes to place the solar panels above potential flood level and will be conditioned to require the use of flood compatible materials and services below the flood planning level. The site is also identified as being land of high agricultural capability despite its not having been used for productive agricultural purposes for an extended period, meaning the proposal will not cause a material reduction in agricultural output, could be used for agricultural purposes following decommissioning of the solar farm and co-location of agricultural activities is possible and encouraged.
3. The proposal's environmental impacts will be largely positive. It will produce electricity from a renewable non-polluting source, does not involve removal of native vegetation and will be concealed by landscape screening. No areas of biodiversity value will be affected and potential disturbance to Aboriginal cultural heritage items will be managed through the presence of on-site monitors during construction.

4. The Panel has carefully considered all issues raised in the objections received on the proposal with particular consideration given to the potential for adverse visual impacts. The Panel is satisfied that the proposal has been designed and sited to avoid any significant adverse impacts and includes appropriate visual mitigation and other safeguards. Overall, the Panel believes there are no unresolved or residual issues that warrant refusal of the application.
5. For the reasons given above the Panel believes the proposal is orderly development that is consistent with ESD principles, and that approval of the application is in the public interest.

## CONDITIONS

The Development Application was approved subject to the conditions in the Council Assessment Report with the following amendments.

- Replace the table in Condition 1 with the following:

Plan No.	Revision No.	Plan Title/Description	Prepared by	Dated
J6558-0020	C	General Arrangement Plan	Planit Consulting	11/01/2022
J6558-0100	B	Erosion And Sediment Control Plan	Planit Consulting	11/01/2022
J6558-0110	B	Erosion And Sediment Control Notes and Details	Planit Consulting	11/01/2022
J6558 – SK040	A	Perimeter Section	Planit Consulting	21/9/2020
J6558 - 0310	B	Site Access Arrangement	Planit Consulting	11/01/2022
J6558-320	A	Typical Sections Sheet 1	Planit Consulting	Not dated
J6558-330	B	Typical Sections Sheet 2	Planit Consulting	Not dated
		Viewing Platform – Typical Details	Planit Consulting	Not dated
H19-1331-ASS-R		Acid Sulfate Soil Investigation	Australian Soil and Concrete Testing	10/01/2020
19010		Glare Impact Assessment	Environmental Ethos	10/08/2020
	01	Statement of Landscape Intent	Planit Consulting	Not dated

- Amend Condition 2, third paragraph to read as follows:

### 2. Landscaping and Maintenance Plan

A detailed Landscaping and Maintenance Plan is to be prepared by an appropriately qualified professional and approved by Byron Shire Council prior to commencement of the buffer planting, or issuing a Construction Certificate, whichever occurs first.

This Plan is to be in accordance with the principals and layout contained in the Statement of Landscape Intent.

Plantings are to be advanced and established prior to the Issue of an Occupation Certificate for the Solar Array in the opinion of appropriately qualified horticulturalist or landscape architect.

Planting in accordance with the approved Landscaping and Maintenance Plan may occur prior to the Construction Certificate being issued

- Amend Condition 5 to read as follows:

### 5. Decommissioning

In the event that the Solar Farm is decommissioned, a Decommissioning Plan is to be prepared and submitted to Council for approval, prior to the decommissioning or within 25 years from the date of the occupation certificate, whichever occurs first, that includes the following commitments:

- Complete removal of all infrastructure including underground cabling and piping, but excluding the access driveway.
  - Returning the land to its pre-existing (2022) or improved condition for agriculture, as guided by soil survey, agricultural land assessment or like specialist assessment
- Include the following condition:
 

**X. Decommission and Remediation of Land**

Prior to the issue of an Occupation Certificate, the Applicant must ensure that there is a notation registered on the subject land (Lot 15 DP 1178892) ensuring that the electricity generating works (solar farm) is required to be decommissioned and the subject lands remediated at the cessation of operations in accordance with the development consent (DA). Any such notation must be approved by the Byron Shire Council's Manager Sustainable Development prior to lodgement with the NSW Land Registry Services.
  - Include the following condition:
 

**X. Inverters and Control Building Material Colours**

Inverters and control buildings are to be constructed in colours that are muted and compatible with the natural landscape.
  - Include the following condition:
 

**X. Acid Sulfate Soil Management**

The acid sulfate soil management activities outlined in the Acid Sulfate Soil Investigation (prepared by Australian Soil and Concrete Testing, dated 10/01/2022) are to be implemented.
  - Include the following in Schedule 4 Notes.:
 


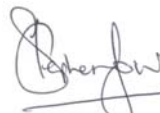


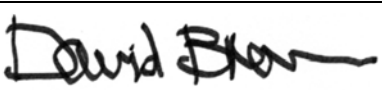
The proponent is encouraged to look at potential productive agricultural uses that can be co-located with the electricity generating works (solar farm) development.

## CONSIDERATION OF COMMUNITY VIEWS

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

- Visual and glare impacts of the proposal particularly for the residents along the elevated areas to the west of the site (Coolamon Scenic Drive), users of Coolamon Scenic Drive and other public areas.
- Consistency with zone objectives including loss of important farmland
- Impact on property values and tourist economy
- Precedent

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report and that no new issues requiring assessment were raised during the submitters briefing.

PANEL MEMBERS	
 Paul Mitchell OAM (Chair)	 Stephen Gow
 Penny Holloway	 Joe Vescio
 David Brown	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-155 – Byron – DA 10.2022.134.1
2	PROPOSED DEVELOPMENT	Electricity Generating Works (5x Megawatt Solar Farm)
3	STREET ADDRESS	Lot 15 DP 1178892 No.1 Dingo Lane, Myocum
4	APPLICANT/OWNER	Byron Shire Council
5	TYPE OF REGIONAL DEVELOPMENT	Council related development over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>• Environmental planning instruments: <ul style="list-style-type: none"> <li>○ State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>○ State Environmental Planning Policy (Industry and Employment) 2021</li> <li>○ State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>○ State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>○ State Environmental Planning Policy (Planning Systems) 2021</li> <li>○ State Environmental Planning Policy (Primary Production) 2021</li> <li>○ SEPP (Exempt and Complying Development Codes) 2008</li> <li>○ Byron Local Environmental Plan 2014</li> <li>○ Byron Local Environmental Plan 1988</li> </ul> </li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Byron Development Control Plan 2014</li> <li>○ Byron Development Control Plan 2010</li> </ul> </li> <li>• Planning agreements: Nil</li> <li>• Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i></li> <li>• Coastal zone management plan: Nil</li> <li>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>• The suitability of the site for the development</li> <li>• Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>• The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>• Council Assessment Report: 14 November 2022</li> <li>• Written submissions during public exhibition: five (5)</li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• Briefing: 23 August 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Penny Holloway (Acting Chair), Stephen Gow and Joe Vescio</li> <li>○ <u>Council assessment staff</u>: Kellie Shapland (independent planning consultant assessing DA) and Greg Smith</li> <li>○ <u>Department staff</u>: Carolyn Hunt and Lisa Foley</li> </ul> </li> <li>• Final briefing to discuss council's recommendation: 23 November 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Paul Mitchell (Chair), Penny Holloway, Stephen Gow, Joe Vescio and David Brown</li> <li>○ <u>Council assessment staff</u>: Kellie Shapland and Chris Larkin</li> <li>○ <u>Department staff</u>: Carolyn Hunt, Lisa Foley</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>• Submitter Briefing: 23 November 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Paul Mitchell (Chair), Penny Holloway, Stephen Gow, Joe Vescio and David Brown</li> <li>○ <u>Council assessment staff</u>: Kellie Shapland and Chris Larkin</li> <li>○ <u>Department staff</u>: Carolyn Hunt</li> <li>○ <u>Submitters</u>: Anthony Stante, Clinton Hook and Tom McHugh</li> </ul> <p><u>Note</u>: Submitter briefing was requested to provide the Panel with clarification on concerns raised and to respond to the recommendation in the council assessment report</p> </li> <li>• Applicant Briefing: 23 November 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Paul Mitchell (Chair), Penny Holloway, Stephen Gow, Joe Vescio and David Brown</li> <li>○ <u>Council assessment staff</u>: Kellie Shapland and Chris Larkin</li> <li>○ <u>Department staff</u>: Carolyn Hunt, Lisa Foley</li> <li>○ <u>Applicant representatives</u>: Josh Townsend, Sian Crawford, John Hart and Julia Adams</li> </ul> <p><u>Note</u>: Applicant briefing was requested to respond to the recommendation in the council assessment report</p> </li> </ul>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report