

**COUNCIL ASSESSMENT BRIEFING REPORT TO PANEL**  
NORTHERN REGIONAL PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSNTH-229 – DA-164-2019/D
<b>PROPOSAL</b>	Section 4.55(2) Modification of Development Consent DA-164-2019/D
<b>ADDRESS</b>	347 Dangarsleigh Road, Armidale
<b>APPLICANT</b>	Wakefield planning
<b>OWNER</b>	Baroona Properties Pty Ltd
<b>DA LODGEMENT DATE</b>	23 May 2023
<b>APPLICATION TYPE</b>	Modification Application (Section 4.55(2))
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	<p>Section 2.19(1) and Clause 5 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as: Private Infrastructure and community facilities over \$5 million.</p> <p>Determination of the modification application required by the planning panel required under clause 123BA(2) of the <i>Environmental Planning and Assessment Regulation 2000</i></p>
<b>CIV</b>	\$6.6 million (excluding GST)
<b>CLAUSE 4.6 REQUESTS</b>	Nil
<b>LIST OF ALL RELEVANT PLANNING CONTROLS (S4.15(1)(A) OF EP&amp;A ACT)</b>	No relevant planning controls
<b>AGENCY REFERRALS</b>	Nil
<b>TOTAL &amp; UNIQUE SUBMISSIONS</b>	Nil
<b>KEY ISSUES</b>	<ul style="list-style-type: none"> <li>The inadequacy and inappropriateness of Heritage Asset Action Plan in lieu of a Conservation Management Plan</li> <li>The proposed timing of modified condition does not relate to a post consent certificate.</li> </ul>

	<ul style="list-style-type: none"> <li>The proposal to remove the curtilage of the heritage item and broader grounds of the heritage item from the condition</li> </ul>
<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	Nil
<b>PREVIOUS BRIEFINGS</b>	N/A
<b>PLAN VERSION</b>	N/A
<b>ASSESSMENT STATUS</b>	Under Assessment
<b>PREPARED BY</b>	Em Tischner
<b>DATE OF REPORT</b>	31 October 2023

## 1. THE SITE

### 1.1 The Site

The subject site is legally identified as Lot 494 DP 66672 and lot 4 DP 569410, commonly known as 347 Dangarsleigh Road Armidale. Lot 494 DP 66672 is rectangular in shape and has an approximate area of 65 hectares while Lot 2 DP 569410 is irregular in shape and has an approximate site area of 36 hectares (refer Figure 1 below). The site is located approximately 4 kilometres southeast of the Armidale CBD and is accessed via Dangarsleigh Road (refer Figure 2 – Locality Plan and Figure 3 showing proposed site access onto Dangarsleigh Road).

The adjoining Lot 192 DP 66672, is known as 345 Dangarsleigh Road, and is occupied by Palmerston House, which is identified as being a local heritage item under Schedule 5 of *ADLEP 2012*. The curtilage which has been defined by the Land and Environment Court in 1997, includes the land within the hawthorn hedge. Whilst the property is separately addressed and under separate ownership to the land on which the Solar Farm is proposed, the properties are essentially operated in conjunction with one another (refer Figure 4 below showing 345 Dangarsleigh Road in relation to 347 Dangarsleigh Road).

The heritage listing of the property includes the house, outbuildings and grounds and comprises a number of lots held under 347 Dangarsleigh Road as well as 345 Dangarsleigh Road, on which Palmerston is located (refer Figure 5 showing lots subject to heritage listing).

The Development Site and surrounding boundary of 347 Dangarsleigh Road, is ringed by an existing hawthorn hedge which varies from approximately 3 metres to 8 metres in height, which will provide screening of the arrays from surrounding properties. The hawthorn hedge itself is also of heritage significance.

The solar array as shown in Figure 3 is located on the site known as 347 Dangarsleigh Road, which comprises part of the Heritage Item. The site comprises a number of allotments, of which the lot known as 345 Dangarsleigh Road, and the other lots known as 347 Dangarsleigh Road, are held in separate names, however are still within the same ownership. The lot containing Palmerston is held personally, whilst the other lots are held in a company name, both of which have the same mailing address. Notwithstanding this the entirety of the site comprises lots that can be sold separately. The issue of site consolidation was made a requirement at the time of the original Development application, and this does not in turn affect

the Heritage Listing applying to all the lots.

Palmerston House and the grounds are currently used as a winery and guesthouse providing visitor accommodation and are also used for events such as for weddings and previously, a Day on the Green.

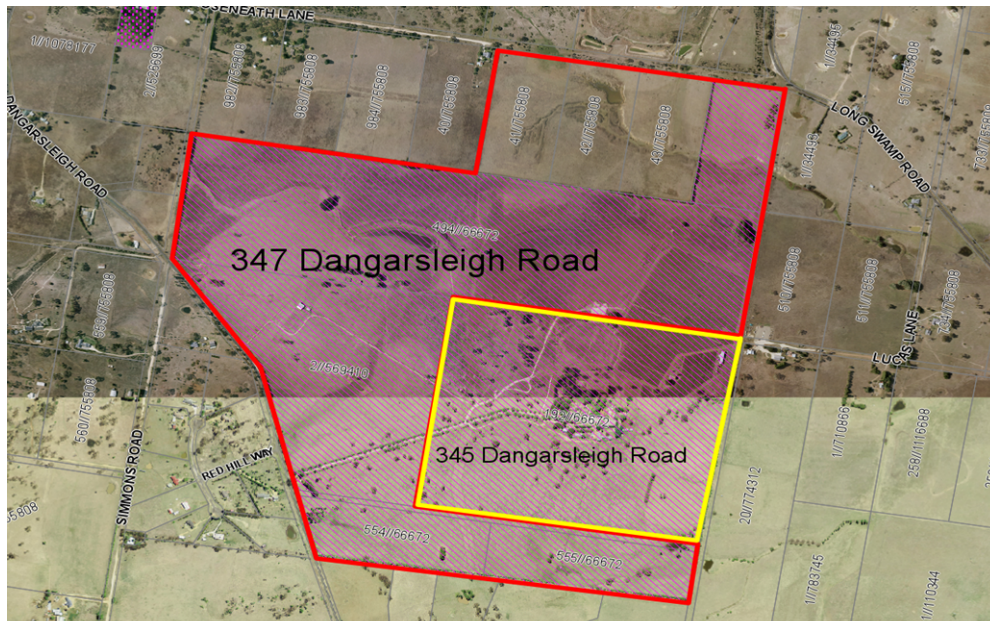


Figure 1 – Lots subject to the Heritage Listing under Schedule 5 of the ARLEP 2012 are hatched.

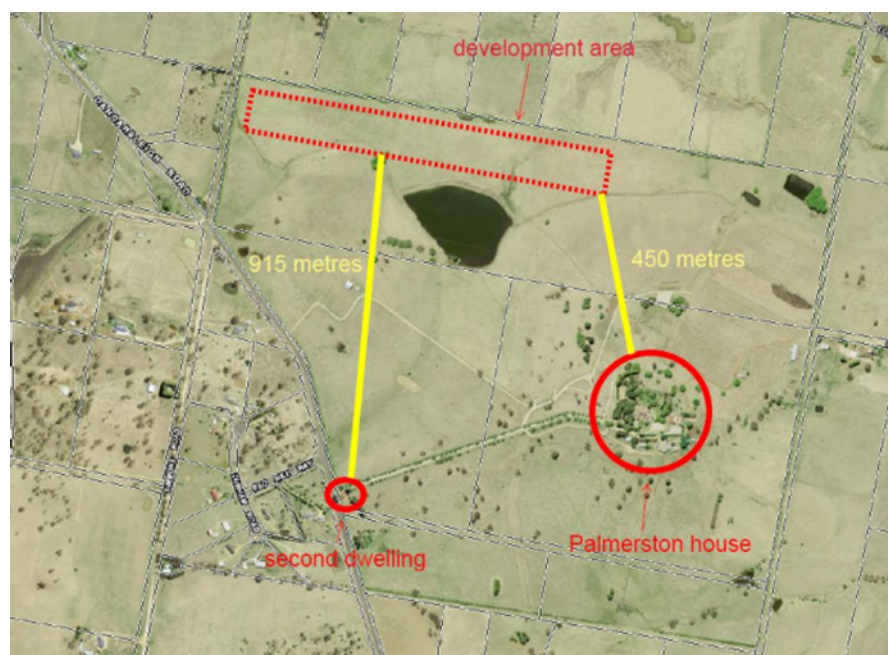


Figure 2 – Location of the solar array in proximity to Palmerston house and its presence on the heritage item. (Statement of Heritage Impact for DA-164-2019 - Zenith Town Planning)



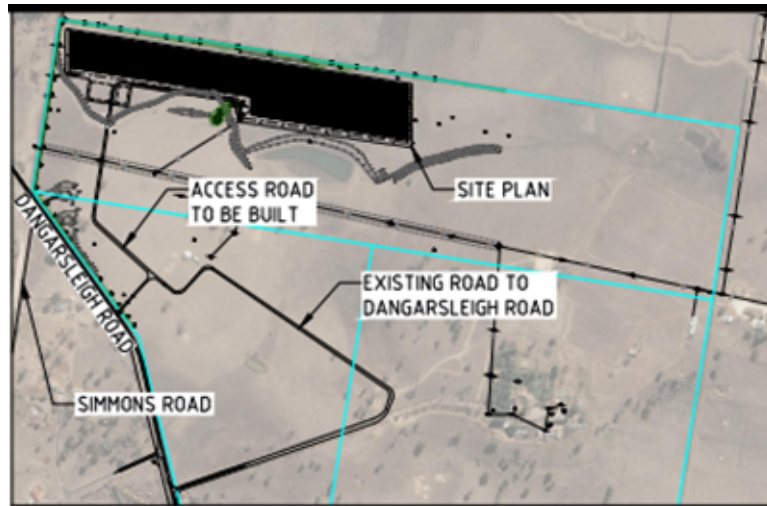


Figure 3 – The array was modified slightly under DA-164-2019/A as in the plan above however the proximity to Palmerston has not changed and the array is still located on the heritage item.

## 1.2 Background

There is a substantial background associated with the application specifically regarding the proposed modification. Given the importance of the background in understanding the purpose and intent of the condition in question, a comprehensive background has been provided in this report.

This background predates the application for the solar farm, but informed Councils position to support the solar farm.

In the mid 1990's, Dumaresq Shire Council refused an application for subdivision of the land surrounding 'Palmerston', with one of the key reasons being the impacts on the Heritage item.

- The decision was appealed and the Land and Environment Court upheld Councils determination with the matter dismissed.
- The LEC decision is Residential and commercial Developments Pty Limited v Dumaresq Shire Council (conciliation and Technical Assessor S J Watts, Case no. 10510 of 1996)
- It was concluded that there was a significant relationship between the homestead and the open rural setting adjoining which extends to the Hawthorn Hedge and should be preserved in its entirety. Given this it was established by the LEC that the curtilage of Palmerston extends to the Hawthorn hedge and any development within this curtilage needs to be carefully managed and controlled to limit impacts to the item.

### Development Applications to date

**DA-164-2019** – 5MW Solar Farm approved 27 August 2020

**DA-164-2019/A** – s.4.55(1A) to amend the layout of the solar farm and amend condition 18, to move the requirement for a CMP to prior to Occupation Certificate instead of prior to

**DA-164-2019/B** – s.4.55(1A) to amend condition 10 of the consent to allow for articulated 19m vehicles to enter the site. Revised Traffic management Plan. Approved 15 March 2023.

**DA-164-2019/C** – this application was returned due to unpaid fees. Request to amend condition 18 as per the current application.

**DA-164-2019/D** - s.455(2) to modify condition 18 to remove the requirement for the Conservation Management Plan

The application was notified for a period of 14 days being– 20 July 2023 – 03 August 2023. No submissions were received.

This application has been referred to the Northern Regional Planning Panel

### **DA-164-2019**

Development Consent was granted by the Northern Regional Planning Panel on 27 August 2020, for DA-164-2019, being a 5MW solar farm on Lot 2 DP 569410 and Lot 494 DP 66672, known as 347 Dangarsleigh Road, Armidale.

Councils support of the application was substantially based on the ability of the solar farm to provide a diversified income stream to support the ongoing management and maintenance of the Heritage Item, whilst being somewhat reversible, in comparison to a residential subdivision. This determination was supported by Councils Heritage consultant that recommended the preparation of a Conservation Management Plan in response to the application, which also aligned with the objections that were received in relation to the development regarding heritage.

Based on the above, the original condition drafted by Council and reported to the Panel for determination reads as follows:

*In consideration of the heritage significance of the subject site and to ensure the ongoing preservation of not only Palmerston but also the outbuildings and grounds, a Conservation Management Plan (CMP) is to be prepared for the property including curtilage area, in consultation with a suitably qualified heritage consultant.*

*The CMP is to establish a strategy for the ongoing management of the heritage assets that exist on the property.*

*Such Plan is to be submitted to the satisfaction of the relevant Certifying Authority prior to the release of the Construction Certificate.*

This condition was then modified by the Planning Panel in its determination of the application to read as follows, with the sections in bold being the specific modifications by the Panel.

*In consideration of the heritage significance of the subject site and to ensure the ongoing preservation of not only Palmerston but also the outbuildings and grounds, a Conservation Management Plan (CMP) is to be prepared for the property including curtilage area, in consultation with a suitably qualified heritage consultant.*

*The CMP is to establish a strategy for the ongoing management of the heritage assets that exist on the property and provide details for the **care and maintenance of the hawthorn hedge and additional landscaping required under this consent.***

*Such Plan is to be submitted to the satisfaction of **Council** prior to the release of the Construction Certificate.*

Council considers these modifications by the Panel as reinforcements to the significance of the heritage values of Palmerston and its curtilage and the importance of the requirement for a conservation management plan.

#### DA-164-2019/A 4.55(1A)

Following a change to the Applicant/Developer of the proposal, an application was submitted to Council, DA-164-2019/A, on 27 April 2022 seeking the following modifications:

- Minor amendments to the general arrangement plan of the solar panels; and
- Modification of wording of condition 18 as per below:

The proposed amendments to the layout of the solar farm come about following further detailed geotechnical/engineering investigation. The proposed amendments were considered as minor, and located on the same footprint as previously approved and were generally consistent with the approved plan.

The applicant requested to modify the wording of Condition 18 as follows to move the requirement for the CMP to a later date;

*In consideration of the heritage significance of the subject site and to ensure the ongoing preservation of not only Palmerston but also the outbuildings and grounds, a Conservation Management Plan (CMP) is to be prepared for the property including curtilage area, in consultation with a suitably qualified heritage consultant.*

*The CMP is to establish a strategy for the ongoing management of the heritage assets exist on the property and provide details for the care and maintenance of the hawthorn hedge and additional landscaping required under this consent.*

*Such plan is to be submitted to the satisfaction of Council **prior to within twelve (12) months** of the release of the Construction Certificate.*

In that Application, the applicant provided the following statement:

*Firstly, I would like to express the view that the condition, as modified by the Panel, does not meet the Newbery Test. In particular a condition must*

- ***fairly and reasonably relate to the development that is the subject of the development application;***

*The condition does not fairly and reasonably relate to the development that is the subject of the development application. In this regard, being physically remote from the development, the heritage buildings are unaffected by the development except for minor visual impacts which can readily be addressed through landscaping. These visual impacts do not relate in any way to the effective heritage management of the buildings, the needs for which do not change irrespective of whether the development is constructed or not.*

Council has obtained legal advice stating that the condition is valid.

At the time of the assessment of DA-164-2019/A, it was reiterated that the requirement for the CMP was considered as being integral in supporting the proposed solar farm on the subject site from the outset, particularly given the previous history of the site.

Additionally, in an email to Council dated 12 April 2022, the Applicant stating the following in acknowledgement of the condition:

*Regarding the CMP requirement under the conditions of DA-164-2019 it states that this needs to be submitted prior to the issue of a Construction Certificate. After consultation with a couple of registered consultants this morning it seems the document is extensive and may take 5-6 months to complete.*

*Given the low impact nature of our development to the overall footprint of Petersons Farm is it an option for us to engage a suitably qualified consultant and present the completed document prior to project completion?*

*We accept the CMP as a condition, what we didn't anticipate, given our lack of experience in NSW, was the magnitude of the document and the timeframes required to complete it to an acceptable level.*

It was acknowledged that at the time of the s4.55 (1A) application, the Applicant was looking to commence works shortly thereafter and as such, Council was not opposed to the deferral of the requirement to comply with the condition to later in the process. As discussed with the Applicant on 23 May 2022, Council reworded condition 18, so that it was required to be complied with before the release of any Occupation Certificate.

The consent for DA-164-2019/A was modified on 23 May 2022, as follows:

*In consideration of the heritage significance of the subject site and to ensure the ongoing preservation of not only Palmerston but also the outbuildings and grounds, a Conservation Management Plan (CMP) is to be prepared for the property including curtilage area, in consultation with a suitably qualified heritage consultant.*

*The CMP is to establish a strategy for the ongoing management of the heritage assets that exist on the property and provide details for the care and maintenance of the hawthorn hedge and additional landscaping required under this consent.*

*Such Plan is to be submitted to the satisfaction of Council prior to the release of **any Occupation Certificate/Before Commencement of Operation of the Solar Farm.***

## **DA-164-2019/B**

This application for modification relates to the Traffic Management Plan for the development and access to the site by large vehicles. The application sought approval to modify the consent to allow for heavy vehicles with a length greater than 12m to enter and exit the site for a temporary period, being a total of 20 movements over a month period. The original consent limited the length of vehicles to 12m (rigid). Council was made aware that articulated vehicles with a length of 19m had been accessing the site. The application for modification included a revised traffic management plan wherein approval was given to the 19m vehicles but also required the need to traffic management measures at the time of these vehicle movements. Council was then made aware after issuing consent and approval of the update Traffic management plan that the applicant/operator of the solar farm was not acting in accordance with the modified consent and compliance action was taken again. Though this application does not relate directly to the issue of the CMP, a factor that contributed to Council accepting the larger vehicles, with the traffic management requirements, was so that the Hawthorn Hedge would not be impacted by the vehicles, as without the traffic management (stop/go) on Dangarsleigh Road, the vehicles would have impacted on the hedge and given its identified heritage significance this was not acceptable.

## **2. THE PROPOSAL**

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### **2.1 The Proposal**

The proposal seeks to modify the wording of Condition 18, which refers to the requirement of a Conservation Management Plan prior to the issue of an occupation certificate. (note. This condition has already been modified previously under DA-164-2019/A.)

The applicant is seeking to remove the requirement for a Conservation Management Plan (CMP) and replace it with a Heritage Asset Action Plan, as well as reduce the area of the site to be included in the document and amend the timing for the requirement. The applicant is seeking the following modification (in red) to Condition 18:

18. ~~In consideration of the heritage significance of the subject site and to ensure the ongoing preservation of not only Palmerston but also the outbuildings and grounds, a Conservation Management Plan (CMP)~~ **Heritage Asset Action Plan (HAAP)** ~~is to be prepared for the property including curtilage area, in consultation with a suitably qualified~~ **and/or experienced person or persons** ~~heritage consultant.~~  
~~The CMP~~ **HAAP** ~~is to establish a strategy for the ongoing management of the heritage assets that exist on the property~~ **outside the immediate landscaped grounds of Palmerston** ~~and provide details for the care and maintenance of the hawthorn hedge and additional landscaping required under this consent.~~  
~~Such Plan is to be submitted to the satisfaction of Council prior to the release of any~~ **within twelve (12) months of the** ~~Occupation Certificate/Before Commencement of Operation of the Solar Farm.~~

Councils refusal to accept the modification relates to the following issues:

- As per the heritage advice, a CMP is required.
- The HAAP provided by the applicant is completely inadequate, as per the Heritage Advice
- The reduced area, to be covered by the document, is not satisfactory as the Heritage listing covers all lots, including the lot the Solar Farm is on.
- The timeframe proposed by the applicant is unacceptable as Council is unable to relate the requirement for compliance to a relevant part of the application, such as the occupation certificate.

Councils increased reluctance to accept a timeframe not related to a post consent certificate relates to the applicants history of non – compliance with the consent.

There have been continued breaches largely centred around non compliance with their conditions and their own TMP. In total Council has issued three PINs to date, below is a bit of a chronology.

The initial complaints revolved around the use of larger vehicles such as semi's which are bringing in plant and material to the site which is in breach of conditions 10 & 47 of DA-164-2019/A and their own Traffic Management Plan (TMP).

As the vehicles being used are oversized, they are not able to turn into the site without crossing to the other side of the road, which is a road safety concern which was raised during the assessment of the DA, and their way of dealing with this was to split the loads coming to the site onto smaller trucks with a maximum length of 12.5m.

- The initial complaint was received on 11 January 2023, which showed photos of semi's on the site.
- Council raised these concerns with the Applicant via email on 16 January 2023, which requested a written response to the non-compliance matters.
- Response received from Applicant 27 January 2023, essentially acknowledging non-compliance but trying to say that the condition was ambiguous.



- Email from Council sent to Applicant 30 January 2023, advising that Council would consider the matters raised in their response prior to making any decision on any action.
- Further complaint received via Councillor Galletly 6 February 2023, regarding a further breach of the consent, with another semi being photographed on the site after the Applicant had provided assurances that this would not happen.
- Council contacted complainant 7 February 2023, requesting clarification on some matters and if he could provide Council with date stamped photos.
- Response received 8 February 2023, with photos attached.
- Dates of non-compliance were initially 12.10pm on Friday 16 December 2022 and then again at 2.15pm on Monday 6 February 2023.

**Two separate PINs were issued for – development not accord consent, on 16 December 2022 and 6 February 2023.**

19/4/23

Council received a further complaint regarding the development approved under DA-164-2019/B, in that it was not being undertaken in accordance with the consent.

Following Council's consideration of the s4.55 (1A) application, which sought to modify condition 10 to allow access onto the site for a limited number of larger 19m long vehicles, condition 10 was amended accordingly by Council, with the modified consent being issued on 15 March 2023.

Condition 10 essentially required the submission of an updated Construction Management and Operational Management Plan, which required a number of matters and traffic control measures to be implemented on specified days when these larger vehicles were to access the site.

Council's Development Engineer approved the Plan on 23 March 2023, with a maximum of 20 trips by a 19m semi-trailer being authorised at specific times from Monday 27 March 2023 until Friday 31 March 2023.

An email with attached photos sent to Council, shows a semi-trailer on the site last Friday 14 April 2023, which is outside the authorised times specified in the approved Plan.

Despite previous assurances that improved processes would be implemented to prevent further breaches, it appears that there continues to be some problems with all workers/contractors on site being fully aware of their obligations under the consent.

**Further PIN issued for – development not accord consent issued 4/5/23**

## 2.2 Heritage Advice

Council sought independent Heritage advice with the intent of answering specific questions regarding the proposed modification to the condition, being;

1. What are the differences between a Conservation Management Plan (CMP) and a Heritage Asset Action Plan (HAAP).
2. What are the deficiencies of the HAAP submitted by the applicant?
3. Why a HAAP, in particular, is not suitable for the property?
4. What are some of the key components expected to see in a CMP for an item like Palmerston and how comprehensive would this/these be?

A summary of the advice provided by Jackson – Stepowski Heritage Planning on the above questions is provided below (the full advice is provided in an attachment);

### What are the deficiencies of the Heritage asset Action Plan submitted by the applicant?

- In the introduction of the HAAP the following is stated “this Conservation Management Plan has been prepared” this is contrary to the cover words of ‘Heritage Asset Action Plan’.
- The table below outlines the typical content of a HAAP in comparison with what has been provided.

Typical Contents of a HAAP	Comments from Heritage Advisor on applicants ‘HAAP’
A background statement, including identification of the item, purpose, scope, authorship, and limitations	Silent on limitations. Authorship - see also below
A robust statement of significance for the heritage item – where the HAAP is for a significant part the item, this statement should detail the significance of that component	Component not detailed. Seeks to re-word the Statement of significance without input for all criteria or included updated new research and/or supporting studies.
Factors that will affect the proposed conservation and management activities	Contains no policies to guide conservation, nor cites policies from a CMP. Other policies that will guide or support the proposed conservation and management activities.
Other policies that will guide or support the proposed conservation and management activities.	Not provided
<b>HAAP information on relevant factors might include:</b>	
The condition of the item and maintenance or other issues.  A HAAP should provide <u>guidance on maintenance</u> . “ <i>This means that key information about the condition of the item will be needed, maintenance problems identified, and maintenance guidance provided which is linked</i> ”	No inventory, fabric analysis or components’ maintenance schedules provided.  No link to significance or policies.  No basis HAAP is about ‘maintenance’.

<i>to cultural <u>significance</u> and related <u>conservation policy</u>"</i>	
More detailed information about a component of an item under consideration (e.g. the landscape, or one building within a complex)	See above. e.g. HAAP p6 infers 'minor visual impacts' but no basis for this statement and no studies to support it.
A discussion of any significant uses and possible sympathetic new uses	Limited to a sentence without analysis of setting / context
Analysis of the heritage item, and any extension/addition possibilities that would respect the significance of the item; and	Focus of homestead complex, silent on wider context
Analysis of the setting of a heritage item, and development that potentially impacted the setting of the item but was limited in scope and that would respect the significance of the item.	See above. No supporting study/ies.
Maintenance schedule provided as an appendix	No. See above.
<b>Characteristics of a best practice HAAP</b>	
Based on Burra Charter definitions, principles, process	No
Meets all relevant regulations and requirements	Not meet consent condition or peer guides
Developed using a targeted range of expertise, research appropriate to the item and HAAP objective	No new peer relevant research inputs or to 'object'. See also authorship
Developed using a targeted range of expertise, research appropriate to the item and HAAP objective	Confused use of terms having specific meaning in legislation and ICOMOS Burra Charter. Illustrations fail to convey the extent of issues
Is presented with a clear understanding of the audience/s for and users, with information targeted to meet their needs	Audience is the consent authority. Suggested targeted actions. Inconsistent structure for audience or profession
Is as short as possible while still including all necessary information	Not included all necessary information
Provides clarity about the scope of the heritage item and its curtilages. This might also include the significant area associated with the item, and related area of sensitivity outside of the item	Alludes to setting but without clarity. No curtilage, cultural landscape or elements assessments
Objective of the HAAP is clearly described	Unclear. Under '1. Introduction' the 'object' is to fulfill a consent condition
Identifies key opportunities and limits with the conservation and management of the item relevant to the objective of the HAAP and provides guidance about them ... text be relatively brief and provide a summary of issues and opportunities	Issues and Constraints unidentified / vague. and as relevant to HAAP 'object'. Under 'heading 7' some infer management but inconsequential without ability to activate or realise
Demonstrates a clear and logical flow from the statement of significance, to details about factors relevant to the objective of the HAAP, to the conservation management policies and/or other guidance	Structure is inconsistent with profession experience and expectations. SoS under Heading 7 is too late to be the 'object'.
It is not written with the purpose of justifying a specific project or development, although a HAAP can provide guidance on how to achieve	Written to justify a) a sought development that is not minor, and b) to reduce the land title curtilage. Consent

best practice heritage conservation within the context of a minor project or development.	authority deemed proposal is 'not minor'.
Research should use existing information about heritage significance, such as a robust existing statement of significance	Proposes a 'supplementary SoS', but silent on all criteria, issues as identified by the Court and consent authority, and thereby implies SoS needs further input data.
Details of factors relevant to the objective of the HAAP should be summarised	No. see also above
Demonstrates a precautionary approach, especially in the context of limited information and research – the strategy is not a full conservation management plan	No, despite p11-12 cites Condition 18 as "The conditions of consent require a landscape management plan which addresses the hawthorn hedge and, in particular, screening of the solar farm." p11
Clearly identifies the limitations of the HAAP	Limits unidentified

### Why is a HAAP in particular is not suitable in this instance?

- The State heritage inventory states the item is of **regional significance** and is identified as **rare**. The property has research value
- The CMP is a condition of consent.
- **Authorship** – the author has quoted post nominals, none of which have heritage training, professional expertise, or peer reviewed membership of recognised heritage associations. **Authorship is considered to lack heritage qualifications and demonstrated heritage experience and expertise.**
- The **Statement of significance** quotes non-statutory documents and only historic and historic association criteria. Any review of a SoS should bring forth new data inputs and use all criteria.
- **No maintenance schedules** are provided for any element, built or vegetative.
- Factors affecting the proposal conservation and management activities, has no inventory no fabric assessment of item elements, upon which to assert further comment.
- **Rather than fulfill condition 18**, the HAAP proposes a "operation environment management plan" the contents of which are not defined and legal obligations for which are vague to be ineffectual. There is no surety that such a document would conserve significance or guide retention of significance for the 'holistic site' or for each element.
- The HAAP does not display an understanding of the overall significance of the item, or the contribution of, or inter-relationship between its elements.
- The HAAP provides no policies to guide conservation nor cites policies from a CMP or an authority source.
- **No landscape management plan is included as stipulated.** An architects diagram of indicative proposed plants is not a plan to 'manage a landscape'.
- The HAAP makes no assessment if proposed species or habits are suitable for this specific cultural landscape, setting or context.

### Key Components of a Conservation Management Plan for Palmerston

- **Contents**
- **Update the statement of significance**

1. The SoS should deal with the entirety of the item land and have input for new data undertaken accordingly to current professional standards and practices
  2. A SoS should provide triggers as to where to direct policies to guide and manage significance as a whole and for each element.
  3. The SoS is a distillation of all SHI fields each criterion and thresholds of any elements
- **Changing statutory framework**
  - **Aesthetic criteria**
  - **Landscape Management Plan**
  - **Conservation Policies**  
A revised SoS should guide policy formation.
  - **Maintenance Schedules**

In summary, the heritage advice supports Councils view that the HAAP provided by the applicant is inadequate, it is not the correct document in this instance and any document to be prepared is to be done so by a qualified heritage person.

### **3. KEY ISSUES**

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- The Heritage Asset Action Plan is not the replacement of a Conservation Management Plan but is the replacement of the Conservation Management Strategy, which is not relevant to this application as the condition calls for a Conservation Management Plan
- The NSW heritage guidelines for HAAP's, advise that HAAPs should not be utilised in the context of major change or development affecting a heritage item. Council considers the installation of the solar farm on land identified as the heritage item and within the curtilage of the Palmerston homestead to be a major change/development affecting a heritage item and therefore a HAAP is not sufficient in this instance.
- The Heritage Asset Action Plan is inadequate in addressing the significance of the item, its curtilage and addressing managements strategies, opportunities and constraints based on this significance.
- To reword the condition to refer to only the immediate grounds outside of Palmerston, disregards the curtilage of the item, specifically the Hawthorn Hedge which was a reference added by the Planning Panel.
- The request by the applicant to delay the timing of compliance to twelve (12) months after commencement of the operation of the solar farm, does not provide a trigger for Council to ensure compliance, like with prior to the issue of a post consent certificate. Modifying the timing, would make this a compliance matter for Council moving forward as there is no incentive for the applicant to comply.
- The client of the applicant, being for the solar farm, has a known history of non-compliance with conditions of consent, even after modifying a condition.
- The HAAP has not been prepared by a suitably qualified heritage practitioner with demonstrated experience completing similar investigations.
- The applicant has had sufficient time to engage a consultant since the granting of consent in 2019, it is considered unreasonable at this time to modify the condition at this late stage.

The key issues largely remain the same as previously stated under the initial briefing report provided above.



#### **4. DETERMINATION**

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The recommendation is for refusal.

Reasons for Refusal:

1. That having regard to the Panels determination of DA-164-2019, it was determined under point five 'Reasons for the decision', that support for the application at the time was subject to ensuring that the development would provide 'funding to improve maintenance of the heritage values of Palmerston House and grounds', identified through the preparation of a Conservation Management Plan (CMP). The Applicants request to now remove the requirement for the preparation of a CMP would be inconsistent and contrary to the Panels determination of DA-164-2019.
2. That having regard to public submissions received during the notification period of DA-164-2019 and in particular concerns raised over the developments location within the curtilage area of the heritage item, it was determined that condition 18 be included in any consent to address such concerns and provide an avenue to enable the development to proceed whilst also providing a positive outcome through which the additional income stream generated from the development could help supplement the ongoing costs associated with the maintenance of the item. Any resolution to amend and or remove condition 18 as requested by the Applicant, will not have appropriately taken into consideration the matters raised during the public submission period and the determination made at the time by the Panel to address these concerns.
3. That having regard to the comments made by Council's Heritage advisor during the assessment of DA-164-2019, any resolution to amend and or remove condition 18 as requested by the Applicant would not appropriately address the recommendations made in the assessment nor the reasons put forward in support of the development.
4. The documentation submitted with DA-164-2019/D, in particular the Heritage Asset Action Plan (HAAP), contains inaccuracies and misleading statements purporting to be a Conservation Management Plan addressing condition 18, and does not satisfactorily address the requirements for either a HAAP or CMP as detailed in the NSW Heritage Office guidelines for such documents.
5. Given that the property is identified in the State Heritage Inventory as being of 'regional significance' and 'rare', a Heritage Asset Action Plan is an inappropriate document to provide guidance on the conservation processes for large and complex heritage items, where substantial change to the item is occurring, such as the introduction of the solar farm within the curtilage area, and for heritage items of high significance, such as Palmerston.
6. The submitted Heritage Asset Action Plan does not display an understanding of the overall significance of the item, or the contribution of, or inter-relationship between its elements.
7. Contrary to the requirements of condition 18 of DA-164-2019, there is no evidence that the submitted Heritage Asset Action Plan has been prepared in consultation with a suitably qualified heritage consultant.
8. Having regard to the previous determination of the Land and Environment Court regarding the significance of the property, including but not limited to the homestead, outbuildings,

grounds and hawthorn hedge, a Heritage Asset Action Plan is an inappropriate document to fulfill the intent of condition 18 and provides no surety that such a document would conserve significance or guide retention of significance for the whole property or for each element.

9. The having regard to the comments received from Council's Heritage Advisor during the assessment of DA-164-2019/D, the Heritage Asset Action Plan submitted to address condition 18 proposes a "operation environment management plan", the contents of which are not defined and legal obligations for which are vague and ineffectual.
10. The submitted Heritage Asset Action Plan contains no policies to guide the conservation of the item, nor cites policies from a Conservation Management Plan or an authority source.
11. The submitted Heritage Asset Action Plan does not provide maintenance schedules for any element, built or vegetative.
12. The submitted Heritage Asset Action Plan provides no inventory or fabric assessment of the items elements upon which to assert any evidence that these matters have been appropriately assessed.
13. That given the circumstances of the case and having regard to the above points, the granting of consent would set an undesirable precedent and would not be in the public interest.

## **5. ATTACHMENTS**

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Advice to Armidale Regional Council – proposed modification to consent condition 18 DA-164-2019/D for heritage item land known as "Palmerston", 347 Dangarsleigh Road, Armidale dated September 2023, prepared by Jackson Stepowski – Heritage Planning Consultancy.