

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSNTH-35
DA Number	DA2020-0419
LGA	Tamworth Regional Council
Proposed Development	Construction and use of a 5MW solar farm and associated infrastructure
Street Address	Country Road, Westdale LOT: 211 DP: 1069964
Applicant/Owner	DG Property Management Pty Ltd Tamworth Regional Council (land owner)
Date of DA lodgement	20 April 2020
Number of Submissions	Two (2) public submissions
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	Private infrastructure for the purpose of electricity generating works with a capital investment value of more than \$5 million.
List of all relevant s4.15(1)(a) matters	• State Environmental Planning Policy (Koala Habitat Protection) 2020 • State Environmental Planning Policy 55 – Remediation of Land • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy (State and Regional Development) 2011 • New England North West Regional Plan 2036 • Tamworth Regional Blueprint 100 • Tamworth Regional Local Environmental Plan 2010 • Tamworth Regional Development Control Plan 2010
List all documents submitted with this report for the Panel's consideration	• Annexure A - Development Plans including Design, Landscaping and Stormwater Plans; • Annexure B – Recommended Conditions of Consent; • Annexure C – Internal and External Referral Responses; and • Annexure D – Support Documents and Reports • Annexure E – Submissions
Clause 4.6 requests	Not applicable
Summary of key submissions	2 submissions objecting to the proposal, 0 in support; 1 representation from Kevin Anderson MP on behalf of an objector Key issues of concern for the development: • Impacts on local land values (2 submissions) • Visual amenity (2 submissions) • Noise impacts (1 submission) • Temperature increase at neighbouring dwellings (1 submission) • Decommissioning of the development (1 submission)
Report prepared by	Murray Amos, Team Leader Planning – Moree Plains Shire Council
Report date	4 March 2021

Summary of s4.15 matters	
Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction	
Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?	Yes
Clause 4.6 Exceptions to development standards	
If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Not Applicable
Special Infrastructure Contributions	
Does the DA require Special Infrastructure Contributions conditions (S7.24)?	No
Conditions	
Have draft conditions been provided to the applicant for comment?	Yes

EXECUTIVE SUMMARY

Description of Proposal

The development encompasses the construction and operation of a solar farm with a maximum transfer capacity 5 Megawatts (MW).

The development will consist of:

- Establishment of a grid-connected solar photovoltaic (PV) plant including associated electrical generation, supplying no greater than 5 megawatts (MW);
- New 4m wide access road which will be connected to the approved internal road on-site shared with the existing quarry operation;
- Security fencing 2.2m high; and
- Other associated site improvements as shown on the Plans.

A copy of the submitted plans is **ATTACHED**, refer to **ANNEXURE A**.

The development is for electricity generating infrastructure by a private company and has a capital investment value of \$6,952,819 million. Consequently, the Development Application is required to be determined by the Northern Regional Panel as the development is for infrastructure undertaken by a private developer with a capital investment value over \$5 million, as outlined in Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011.

The subject land is owned by Tamworth Regional Council (TRC). This assessment report has been independently prepared by Murray Amos of Moree Plains Shire Council to ensure that there is no potential conflict of interest for TRC.

Site Description & Surrounding Land Uses

The land is legally known as part Lot 211 in DP 1069964 and is situated on Country Road, Westdale NSW 2340. The land is currently used for an extractive industry (quarry) with good grass coverage surrounding the area of ground disturbance. In terms of topography, the site slopes from the northwest to the southwest at grades of approximately 3.0% to 3.5%.

The lot consists of a large rural type lot which contains a quarry development covering the central and southern parts of the site. A low number of scattered trees are present on the site with the site consisting of predominantly low grassland outside of the quarry area.

Access to the existing quarry is provided via an existing crossover from Country Road and would be shared with traffic generated by the quarry.

The site is owned by Tamworth Regional Council and has historically been operated as a quarry site. The quarry has largely been restricted to the centre and southern portions of the site with the Rural Fire Service developing the north-western portion of the site for a fire control centre and helipad.

The surrounding area is made up of large rural lots generally containing a rural type land use typically with a single dwelling house. The Tamworth Airport is located approximately 2.3km to the north west of the site.

Permissibility

The proposed solar farm is properly categorised as “electricity generating works” under the Tamworth Regional Local Environmental Plan 2010 (LEP).

“Electricity generating works” is defined as follows:

“electricity generating works means a building or place used for the purpose of—
(a) making or generating electricity, or
(b) electricity storage.”

The subject site is located within the RU4 – Primary Production Small Lots Zone (RU4 Zone). Under the RU4 Zone, within the LEP, “electricity generating works” are permitted with consent.

Public Submissions

Issues raised in public submissions include the following:

- **Impacts on local land values**
Response: A vegetative screen will be installed and maintained along the property boundary. Land values are not a consideration under the EP&A Act.
- **Visual amenity**
Response: The proposal includes a 20m boundary setback for security fencing and a vegetative screen to shield the fence and solar panels from neighbouring properties. These measures are supplemented by existing tree lines to the north and east of the site.
- **Noise impacts**
Response: The construction phase of the development will create noise. Mitigation measures include a construction noise management protocol to minimise noise emissions, manage out of hours (minor) works to be inaudible, use mobile screens as noise barriers between works and receivers, and to respond to potential concerns from the community.
- **Temperature increase at neighbouring dwellings**
Response: The panels are proposed to use an anti-reflective coating and are designed to absorb sunlight. This coupled with the available separation distances is considered to minimise the risk of temperature increase at neighbouring dwellings.
- **Decommissioning of the development**
Response: The applicant will be required to develop a Rehabilitation and Decommissioning/Closure Plan to detail infrastructure and environmental management during decommissioning.

The issues raised in public submissions are discussed in detail later in this report.

Recommendation

The proposed development is considered to be generally compatible with its surrounds and provides for a diversification of land uses on the property.

As a result of this assessment, the proposed development is recommended for conditional consent. Annexure B to this report contains the proposed conditions of consent.

Recommendation:

- a) **That having regard to the assessment of the application, DA2020/0419 (Panel Ref. PPSNTH-35) be granted conditional consent in the terms set out in Annexure B to this report.**

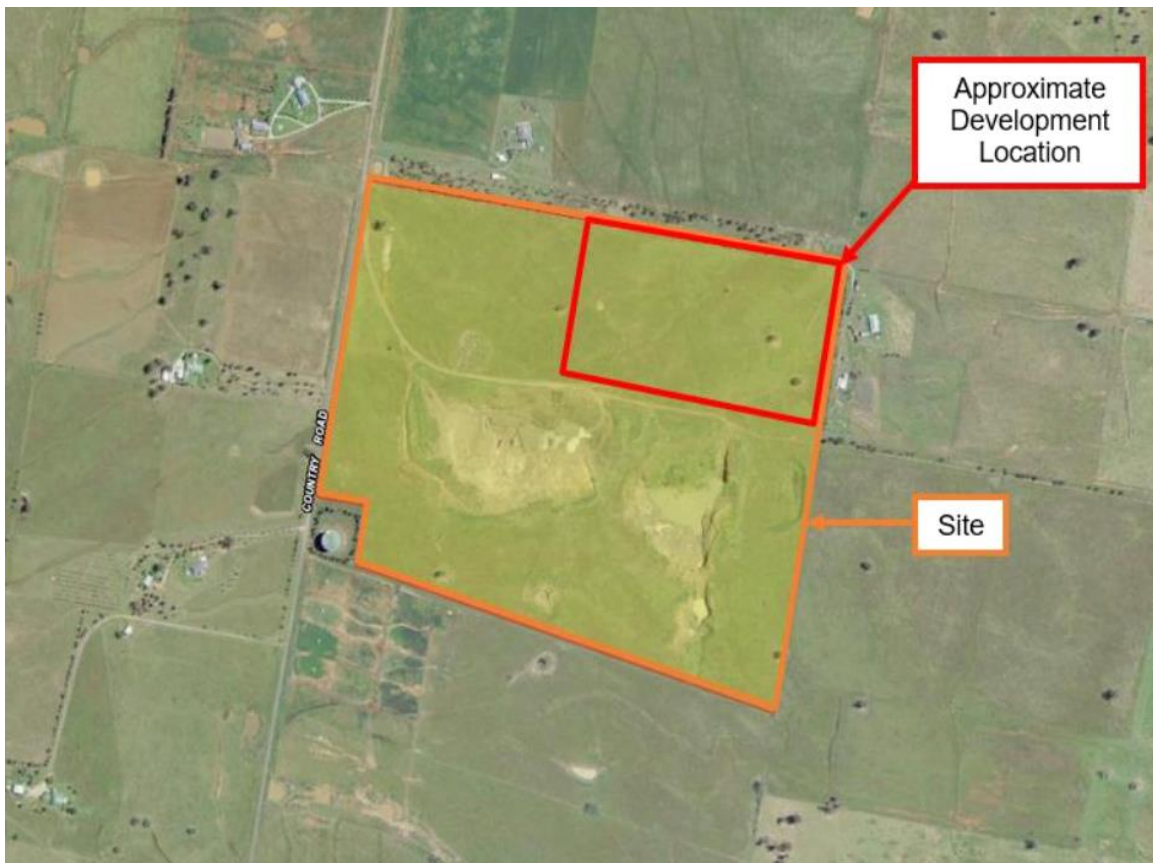
1. Site and locality

The site is located on the eastern side of Country Road, within the Tamworth Regional Council Local Government Area (LGA). It is approximately 1.5km south of the junction of Country Road and Oxley Highway.

Near the site, Country Road is a local sealed rural road with its primary function to provide vehicular access to properties along its length though it also performs as a collector road in distributing local traffic to the arterial road network at the Oxley Highway. Country Road is a local road under the care and control of Council and has 70 km/hr speed zoning.

The surrounding area is made up of large rural lots generally containing a rural type land use typically with a single dwelling house. The Tamworth Airport is located approximately 2.3km to the north west of the site.

Figure 1 Location plan



5 m WATER MAIN EASEMENT

PERIMETER FENCE

PROJECT LEASE BOUNDARY

10 m SETBACK FOR FIRE VEHICLES ACCESS

PV TRACKER

10 m BUFFER FOR EXISTING OVERHEAD LINE

ABORIGINAL SCAR TREE

17 m RADIUS BUFFER ZONE FROM TREE

SITE ENTRANCE

PROPOSED PRIVATE ACCESS ROAD

EXISTING TRACK

INTERNAL NOTES:

ALL DIMENSIONS ARE IN METERS (UNLESS OTHERWISE SPECIFIED) AND ONLY INDICATIVE. TO BE CONFIRMED ON SITE PRIOR TO INSTALLATION. DESIGN BASED ON SITE LEASE BOUNDARIES AND CONTOURS DRAWINGS PROVIDED BY THE CLIENT.

4 m WIDE ROADS HAVE BEEN DRAWN WITH SUFFICIENT SETBACK TO ALLOW ROOM FOR TRENCING, DRAINAGE SYSTEM AND SAFETY CLEARANCE TO THE PV ARRAY. A PERIMETER CLEARANCE FROM FENCE LINE TO PV MODULE HAS BEEN RESERVED FOR THE ACCESS OF FIRE VEHICLES.

LOCATION OF THE PERIMETER FENCE, PV ARRAYS AND BUILDINGS (POWER CONVERSION UNIT, MSP KIOSK, O&M / CONTROL ROOM AND STORAGE BUILDING) ARE INDICATIVE AND MAY CHANGE DURING THE DETAILED DESIGN PHASE.

ALL INTERNAL ROAD LOCATIONS ARE PRELIMINARY AND SUBJECT TO CHANGE. FINAL LAYOUT IS SUBJECT TO FINALIZATION OF SITE STUDIES, INCLUDING FLOOD RISK ASSESSMENT, GEOTECHNICAL, ETC.

POINT OF CONNECTION (POC) IS EXPECTED TO BE AT THE SOUTH EASTERN AREA OF THE SITE. EXACT LOCATION TO BE CONFIRMED.

BASED ON A HIGH-LEVEL ASSESSMENT OF THE TOPOGRAPHICAL INFORMATION GRADING IS EXPECTED TO BE REQUIRED FOR SOME TRACKERS (REFER TO THOSE HIGHLIGHTED IN YELLOW) TO ENSURE THE MINIMUM CLEARANCE TO GROUND REQUIRED BY THE TRACKER MANUFACTURER.

STORMWATER DETENTION BASIN

POINT OF CONNECTION

POWER CONVERSION UNIT (PCU)

HARD STAND AND CONSTRUCTION LAYDOWN AREA

The site plan for Lot 211 DP 1069964 illustrates the proposed quarry operations and associated infrastructure. Key features include:

- Proposed Quarry Operations:** A central area designated for quarrying, with a proposed quarry pit gate and an existing quarry entrance.
- Training Zone:** A 20m x 140m area for training, featuring a 1.5m high privacy screening enclosure and a hot fire training area.
- Easements:** A water main easement (5m wide) and a water supply easement (6m wide) are shown along the western boundary. A transmission easement (20m wide) is located along the eastern boundary.
- Access and Boundaries:** The site is accessed from the west via a road upgraded and sealed to T.R.C. requirements. A proposed private access road and a shared access road are also indicated. The project lease boundary is defined by a perimeter fence.
- Infrastructure:** A water main easement (5m wide) and a water supply easement (6m wide) are shown. A proposed screening and 20m wide berm to form a detention basin is located along the northern boundary.
- Neighbouring Property:** The site is bordered by neighbouring property to the north and east.

2. Statutory Development Assessment Framework

2.1 Permissibility

Regionally Significant development

The site is zoned RU4 - Primary Production Small Lots under the Tamworth Regional Local Environmental Plan 2010 (LEP) as shown in the figure below. The proposal is defined as Electricity Generating Works and is permissible under the LEP Land Use Table for the RU4 zone.

Figure 4 Land Use Zoning map RU4 Primary Production Small Lots

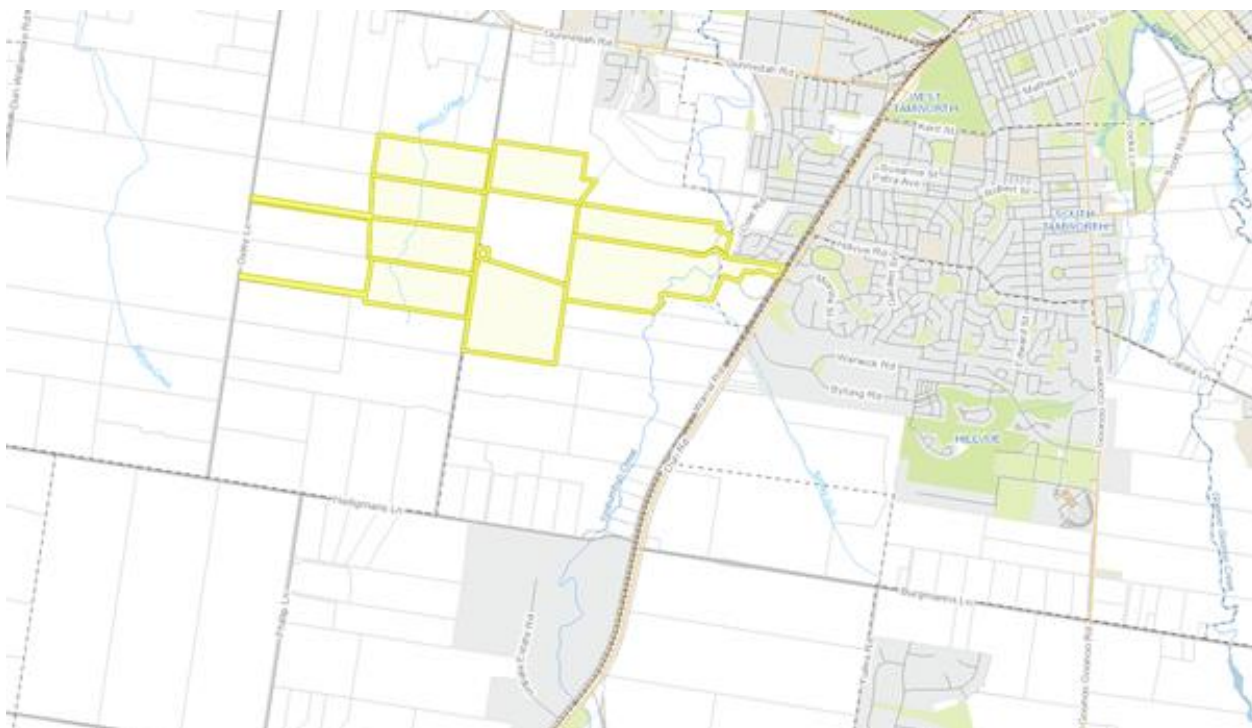


2.2 Public Participation

The development application (**DA**) was publicly notified as required by the provisions of the Tamworth Regional Council Community Participation Plan 2019.

The DA was publicly notified for a period of 30 days commencing 1 May 2020 and closing 5 June 2020. The notification included letters to property owners/occupiers if, in the opinion of the Planning and Development Department, the enjoyment of land adjoining the development may be detrimentally affected by the proposed development. Those properties that were notified are indicated in the figure below.

Figure 5 Notification plan



During the notification period two (2) submissions were received. Representation on behalf of one (1) of the objectors from Kevin Anderson MP was also received. The issues raised in the submissions are detailed as follows:

Issue	Comment
The proposal would devalue neighbouring properties.	The proposal would be bordered by vegetative screening to minimise the visual impact of the development on neighbouring properties. While land values are not a consideration under the Environmental Planning & Assessment Act 1979 there is no direct evidence that land values in the area would be negatively impacted.
Visual impacts on neighbouring dwellings from solar farm and security fencing. One suggestion is that a 2.5m high earth berm be constructed along the solar farm boundary and dense vegetation be planted.	A Visual Impact Assessment has been submitted by the applicant and is ATTACHED in ANNEXURE D. The proposal includes mitigation measures to ensure a high level of visual amenity, particularly to the north and east of the site. This includes a 20m boundary setback for security fencing and a vegetative screen to shield the fence and solar panels from neighbouring properties. These measures are supplemented by existing tree lines to the north and east of the site which assist in buffering neighbouring dwellings from the development. The two closest neighbouring dwellings are separated by distances of approximately 70m (to the east) and 180m (to the north-west). The vegetative screen would include tree and shrub species such as Green Wattle, Western Silver Wattle, Weeping Myall, Native Willow, Honey Myrtle and Black Tea Tree. At maturity the vegetative screen would have a height ranging from 4 metres to 15 metres above ground level. The proposed visual treatments are considered adequate. Additional works, such as an earthen mound, are not justified.

	A condition has been drafted requiring the applicant submit a landscape management plan which details ongoing maintenance of the vegetation screening.
Noise impacts from solar farm operations including wind noise generated from solar farm infrastructure.	The Noise Impact Assessment (NIA) has been submitted by the applicant and is ATTACHED in ANNEXURE D. The NIA indicates that worst-case noise generation from the development would comply with the applicable noise criteria at all neighbouring dwellings. Operational solar developments are passive land uses and would not be expected to create noise, including wind noise, of any significance to neighbouring dwellings. This assessment has not identified any evidence that the solar panels may create discernible noise, such as a 'wind-tunnel noise' effect. For construction noise the modelled emissions may exceed the relevant noise management levels at two receiver locations. Construction noise mitigation measures have been identified to reduce potential impacts on neighbouring properties. The proposed mitigation measures include: • A construction noise management protocol to minimise noise emissions, manage out of hours (minor) works to be inaudible, and to respond to potential concerns from the community. • Use mobile screens or construction hoarding around plant to act as barriers between works and receivers, particularly where equipment is near the site boundary or a neighbouring dwelling. • Avoidance of noisy machinery working simultaneously where practicable. • Utilise a broadband (white noise) reverse alarm instead of the traditional high frequency type reverse beeper. A condition has been drafted requiring the applicant submit a site environmental management plan prior to the release of a construction certificate. Furthermore, a condition of consent requires noise validation monitoring assessment must be completed once operational to quantify emissions from the site and to confirm emission meet relevant criteria.
Temperature increase at neighbouring dwellings.	The panels are proposed to use an anti-reflective coating and are designed to absorb sunlight. The development is separated from the two closest neighbouring dwellings by distances of approximately 70m (to the east) and 180m (to the north-west). These separation distances include existing and proposed vegetation screening. As such it is considered unlikely that the development would influence the air temperature at neighbouring dwellings.
Further information required on decommissioning of solar farm when panel life has ended. Including site remediation.	When solar developments are decommissioned the panels and infrastructure are able to be removed from the site. A condition has been drafted requiring the applicant to develop a Rehabilitation and Decommissioning/Closure Plan. The Plan would include rehabilitation objectives, restoration strategies and would require the removal of all solar infrastructure.

Probity on public tender process for development on Council-owned land	This is not a planning consideration.
Neighbourhood alliance agreement not in place	It is unclear what this agreement entails. The agreement is not referred to in the Development Application documentation and is not a requirement for this Development Application. A merit assessment has concluded the proposed development is suitable for the site, subject to the recommended conditions of consent.

2.3 Referrals

The application was referred externally to the following agencies for comment:

- Department of Planning, Industry & Environment, Biodiversity & Conservation Division
- Public Works Advisory NSW (acting for NSW Rural Fire Service)
- Essential Energy
- Tamworth Local Aboriginal Lands Council
- Natural Resources Access Regulator
- Air Services Australia
- Civil Aviation Safety Authority

The application was referred internally to the following divisions for comment:

- Tamworth Regional Airport
- Tamworth Regional Council - Development Engineering

Comments and recommendations have been received from each of the aforementioned agencies/divisions (refer to **ANNEXURE C**). No objections were raised subject to compliance with the recommended conditions of consent. The matters concerning each agency and their recommendations are summarised in the **TABLE 1** below:

TABLE 1. Referral responses from agencies/divisions

Referral agency	Summary of advice/ issues
Public Works Advisory NSW acting for NSW Rural Fire Service	Public Works Advisory NSW identified the following matters in relation to impacts on the nearby Rural Fire Service Fire Control Centre (RFS FCC): <u>Consultation</u> The proponent indicates that consultation has been undertaken with RFS but does not identify how the development responds to this consultation. Further, it is understood that RFS is not aware of any consultation taking place. Applicant response: Numerous consultation attempts were made with RFS in late 2019 and early 2020 however no discussions were successfully held. This period coincided with Australia's bushfire emergency over the summer of 2019/2020. Further meeting requests were made upon lodgement of this Development Application but a meeting did not eventuate. Assessing Officer comment: The Development Application was referred to Public Works Advisory on behalf of the Rural Fire Service and their formal response received. The issues raised are able to be satisfactorily resolved through this assessment process and ongoing land tenure arrangements. The Rural Fire Service facility and proposed solar development are situated on the same parcel of land which is owned by Tamworth Regional Council.

Traffic & Access

The traffic impact assessment does not specifically address any potential interaction between vehicle movements associated with the Solar PV Plant and the RFS FCC facility respectively, or any potential operational issues associated with the shared use of this access road. The assessment also identifies requirements for the proposed entrance width at the combined entry / exit access at Country Road; however, it is not known whether this is consistent with RFS requirements for this entrance.

Applicant response: The proposed solar farm was originally designed based on the approved RFS plans which included a shared access. However, since this time the RFS access design was changed, providing dedicated and secure access to the RFS facility only.

The proposed solar farm has accordingly revised its access arrangement in alignment with this change. The solar farm access, as discussed and agreed with Tamworth Regional Council, will be via the existing quarry access track. A basic 4-wire star picket fence with new locked gates will be constructed by the solar farm proponent to separate the quarry pit from the shared access road, preventing inadvertent unauthorised pit access.

Assessing Officer comment: The RFS facility, solar farm and existing quarry will have an independent access to Country Road. As such the potential for vehicle interaction, road design issues and security concerns are effectively removed.

Visual impact

The visual impact on the RFS development is not specifically addressed, although it may be inferred that there are no views to the site from the RFS centre located to the west due to the presence of the ridgeline on the site. This would need to be confirmed.

Applicant response: It is noted that a ridgeline is located through the western side of the proposed solar PV farm. While the ridgeline does largely obscure views to the solar farm, a portion of the panels would be visible. The RFS centre is located well away from the solar PV farm with open training zones establishing a buffer between the centre and the proposed development. In addition, with no residential component proposed/approved for the RFS centre the visual impact is expected to be low.

However, in response to potential visual impact concerns raised, a revised landscape plan has been prepared which includes a row of trees along a portion of the western boundary of the development site with an aim of obscuring and softening the proposed solar panels.

Assessing Officer comment: The visual impact on the RFS centre is considered to be low due to a combination of distance, the ridgeline, the new landscaping along a portion of the western boundary, and the lack of any residential or other sensitive receiver included within the RFS site.

Reflectivity

The reflectivity assessment prepared for the development did not specifically address the RFS centre as a “receiver of interest relevant to the Project”. The assessment lists issues of concern in relation to daytime reflective glare and night-time illumination glare, some of which are relevant considerations for the operation of the RFS FCC facility.

The DA for the Solar PV Plant does not specifically address any potential impacts associated with helicopters using the helipad on the RFS site.

Applicant response: The Reflectivity Report assessed impacts on operational airfields in regard to the potential impacts frequent operational flights expected to take place at such a facility. The RFS helipad is noted as an emergency helipad with flights being infrequent and limited to essential emergency flights only. As a result, ascertaining impacts on an infrequent and low use helipad is difficult.

The development area itself is located within the helicopter flightpath of the Tamworth Airport. In addition, the airport's two main asphalt runways are essentially in a direct line of sight with the Project for aircraft in a final landing approach path. Impacts experienced for the helipad would similarly have impact on the flight path for Tamworth Airport. A quantitative assessment of impacts on the airport and its flight paths concluded that minimal impact would be experienced under normal operating conditions. Solar PV panels are designed to capture (absorb) the maximum possible amount of light within the layers below the front (external) surface. Consequently, solar PV panels are designed to minimise reflections off the surface of each panel. Due to the tracking system proposed, incoming solar rays will strike the solar PV surface close to perpendicular to the panel surface maximising electricity generation and reducing reflection. To further reduce any potential for glare, solar panels with anti-reflective coating are proposed to be utilised by the development. The combined use of tracking and anti-reflective solar panels reduces outgoing lights to less than 5% of the incoming light which is less than that observed from waterbodies such as natural ponds and man-made dams which are common throughout the rural landscape of Westdale.

Assessing Officer comment: The use of anti-reflective panels and solar tracking mechanisms would minimise the potential for reflectivity impacts. Due to the close proximity of the site to Tamworth Regional Airport the proposal was referred to the Civil Aviation Safety Authority (CASA) and Air Services Australia.

It is considered that the RFS helipad will be able to be utilised with minimal impact in regard to reflectivity and glare.

Impacts on RFS expansion

It is difficult to ascertain whether there would be any impact on the potential future expansion of RFS site, due to the lack of available detail regarding any such expansion and the incomplete consideration of and assessment of impacts to, the RFS centre in the DA documents (as outlined above).

Applicant response: The ability to expand the RFS operation within their respective lease area is not considered to be impacted by the proposed development. Instances where RFS development may impact on the solar farm would likely be from overshadowing of solar panels and stormwater impacts, which can be easily managed through appropriate design and site planning.

Assessing Officer comment: Both the RFS and solar farm sites are able to operate and expand within their leased areas with the concurrence of the landowner and any necessary land use/ construction approvals. This issue does not appear to be problematic for the purposes of considering the subject Development Application.

Civil Aviation Safety Authority (CASA)	CASA has reviewed the proposal and agrees with the conclusions of the Reflective Glare Assessment report. CASA has no objection to the proposed development as presented. Assessing Officer comment: No issues
Air Services Australia	The proposal would not adversely impact on the performance of communications, navigation and surveillance equipment associated with Tamworth Regional Airport. Air Traffic Control has no objection on the condition that "in any situation where the tilting action of the solar array is disabled, panels should not be left horizontal, but be left tilted to the east, with a minimum tilt angle of 10° or greater, during the months of September to April." Air Services also recommended that Tamworth Regional Airport confirm that the potential glare from this development will not adversely impact their operations at the airport. Assessing Officer comment: The requirements to minimise the risk of glare have been included as a draft condition of consent. Tamworth Regional Airport responded to this submission by acknowledging the advice of both Air Services Australia and CASA, and noting the remote location, lack of visual impact and the presence of similar sized developments (Baiada) already situated along Country Road.
Tamworth Airport	The development is also clear of the approach path for the main runway 12L/30R and beyond the normal base turn point for parallel runway 12R/30R therefore is unlikely to affect circuit training aircraft. Given the general acceptance of solar installations in the vicinity of airports and the lack of known reported issues with glare I propose no objection to the development as proposed. Assessing Officer comment: No issues
Biodiversity Conservation and Division (BCD)	The Biodiversity Development Assessment Report has been reviewed and BCD considers that it adequately addresses the key issues. It is recommended that an appropriate condition of consent be included in any approval to describe the biodiversity credits to be retired as part of the proposal. Assessing Officer comment: A draft condition has been developed to stipulate that biodiversity credits must be retired in accordance with the Biodiversity Development Assessment Report. There had been conjecture regarding how the proposal should be considered under the Biodiversity Conservation Act 2016 and the most appropriate path to address biodiversity issues. This caused a delay of some 5 months in completing the DA assessment. Ultimately a position was reached in consultation with BCD (that a BDAR was required) and a precedent set for future development. That being that biodiversity flora impact needs to be assessed with consideration of all likely impacts, including 'disturbance' of vegetation.
Tamworth Regional Council – Engineering Department	Conditions of approval were provided for road, access, parking drainage and associated matters. A dilapidation report will be required to assess the current road formation and condition.

	Assessing officer comment: These requirements have been included in the draft conditions document in Annexure B.
Essential Energy	Essential Energy has existing 11kV overhead powerlines located on the property and requires that all solar farm infrastructure and vegetation plantings be well clear of the easement area. The applicant must enter into a Connection Agreement with Essential Energy prior to the development being operational. Assessing officer comment: These requirements have been included in the draft conditions of approval.
Tamworth Local Aboriginal Lands Council (LALC)	It is recommended that the scarred tree be fenced off, pruned back if necessary and inspected in 12 months to check the wellbeing of the tree. Assessing officer comment: The applicant does not intend to remove the scarred tree. Draft conditions have been developed to preserve Indigenous relics.
Natural Resource Access Regulator	For the purposes of the Water Management Act 2000 a controlled activity approval is not required for the proposed works. Assessing officer comment: No issues

2.4 Section 4.15 assessment

In determining a DA, a consent authority is to take into consideration matters referred to in section 4.15(1) of the EPA Act (previous s 79C) as are of relevance to the development the subject of the application. The relevant matters for this application are detailed below:

- a) **4.15 Evaluation– any environmental planning instrument; 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, any development control plan, any planning agreement entered into under Section 7.4 or any draft planning agreement that a developer has offered to enter into under Section 7.4, and the Regulations;**

Environmental Planning & Assessment Act, 1979 and Environmental Planning & Assessment Regulation, 2000

Designated development

Schedule 3 of the EP&A Regulation indicates “Electricity generating stations” such as solar farms are considered designated development under the EP&A Act and associated regulations where the development generates more than 30 megawatts of electrical power.

The proposed development is predicted to generate a maximum of 5 megawatts. Therefore, the proposal is not considered designated development.

Integrated development

The solar farm is considered integrated development under Division 4.8 of the EP&A Act because approval is required from the Natural Resource Access Regulator (NRAR) under the Water Management Act 2000 (WM Act). The proposal was referred to the NRAR given development is within 40m of a water course. The NRAR advised a controlled activity approval is not required as the proposed works are not located on waterfront land as defined by the WM Act - The mapped drainage line within proximity to the proposed works is not considered to be waterfront land as it does not exhibit bed, banks and/or fluvial geomorphic features.

Biodiversity Conservation Act 2016

The Biodiversity Conservation Act 2016 provides a basis for the Biodiversity Offset Scheme (BOS). Development that is subject to the BOS scheme includes development needing consent under Part 4 of the EP&A Act (excluding complying development), activities under Part 5 of the EP&A Act, State significant development and State significant infrastructure.

Where development or an activity is, “likely to significantly affect threatened species”, a Biodiversity Development Assessment Report (BDAR) must be prepared and consent authorities are required to consider the likely impact of the proposed development on biodiversity values before granting approval.

The threshold test of whether development or an activity is “likely to significantly affect threatened species” (and therefore whether a BDAR is required) is reached if:

- The test in section 7.3 of the BC Act is met;
- The BOS Threshold is met; and
- The development is carried out in a declared area of outstanding biodiversity value.

The subject lot was assessed using the online Biodiversity Offsets Scheme Entry Tool, which determines whether any proposed clearing would be above or below the area thresholds or lies within an area mapped as having high biodiversity value.

The proposal involves the disturbance and clearing of vegetation which exceeds the BOS Threshold. As a result the applicant submitted a BDAR to provide a comprehensive assessment of impacts on biodiversity. The BDAR requires that 3 species credits are to be retired to meet the requirements of the Act. The Biodiversity and Conservation Division have concurred with the investigations and conclusions of the BDAR.

As discussed earlier in this report there had been conjecture over the most appropriate application of the Biodiversity Conservation Act 2016 for the development. This caused a lengthy delay in finalising the development assessment process. Ultimately a position was reached in consultation with BCD (that a BDAR was required) and a precedent set for future development. That being that biodiversity flora impact needs to be assessed with consideration of all likely impacts, including ‘disturbance’ of vegetation.

State Environmental Planning Policies

State Environmental Planning Policy (Koala Habitat Protection) 2020

Tamworth Regional Council does not possess a Koala Plan of Management; therefore, the Koala Habitat Protection SEPP 2020 applies to the site.

A number of White Box *Eucalyptus albens* are proposed to be removed from the site. This species is not listed as a Koala Feed Tree in Schedule 2 of the SEPP. An assessment of Koala habitat within the subject site determined that no highly suitable koala habitat, or core koala habitat is present. This is based on the following:

- No evidence of a resident population of Koalas was detected during the assessment (i.e. No Koala individuals, scats or scratch marks were identified).
- The existing trees within the subject site are isolated in the landscape and are therefore unlikely to be fed upon by Koalas.
- Only one historical record of a Koala occurs within 5 km of the study area (DPIE, 2020a).

As a result, further assessment under this SEPP is not required.

State Environmental Planning Policy No 55 – Remediation of Land

This SEPP requires the consent authority to consider the potential contamination status of the land prior to approving the development. Noting that the development site area has historically used for agriculture (farming), and it is unlikely that contamination requiring remediation exists. Agricultural activity is identified as an activity that may potentially cause contamination under Table 1 of the Planning Guidelines for Managing Land Contamination.

A search of the NSW EPA's 'List of NSW contaminated sites notified to the EPA' and 'POEO Public Register' has been undertaken which revealed no contaminated sites listed in or around the site and no licences provided under the Protection of the Environment Operations Act were noted in proximity to the site. A site inspection of the development area carried out on 24 June 2020 found no evidence of the following:

- Intensive animal handling facilities;
- Scums or discoloured waterbodies;
- Operational, or disused, sheds or other built structures;
- Chemical storage facilities;
- Evidence of land-based waste disposal or dumping; and
- Evidence of land disturbance, filling or excavation.

The subject allotment includes an existing quarry which is located outside of the development footprint. The proposed development is not considered to be sensitive in nature and as a result is considered to be appropriate for the site in its current site in accordance with SEPP 55.

State Environmental Planning Policy (Infrastructure) 2007

Pursuant to cl.34(7) of State Environmental Planning Policy (Infrastructure) 2007 (ISEPP), development for the purpose of a solar energy system may be carried out by any person with consent on any land. Accordingly, the proposed solar farm (which is a photovoltaic electricity generating system) is permissible subject to development consent being issued.

Clause 45 Determination of development applications—other development

The proposed development will require works to connect to the overhead electricity power lines and as a result constitutes works within 5m of powerlines. Transmission lines are noted as being present on the site supported with an easement for transmission. Due to the location and nature of the proposed development referral to the electricity supply authority, Essential Energy, was required during the assessment period. Essential Energy advised that easements need to be protected for the existing 11kV overhead powerlines located on the property. The applicant must enter into a Connection Agreement with Essential Energy prior to the development being operational.

State Environmental Planning Policy (State and Regional Development) 2011

The State and Regional Development SEPP identifies significant development and infrastructure and confer functions on Regional Planning Panels to determine development applications.

The application is classified as 'Regional Development' and has been assessed by Moree Plains Shire Council on behalf of Tamworth Regional Council for determination by the Northern Regional Panel in accordance with this SEPP.

New England North-West Regional Plan 2036

The New England North West Regional Plan 2036 (the Plan) recognises the potential for growth of the renewable energy industry within the Tamworth Regional Council area and surrounding region.

The site is not mapped as comprising Biophysical Strategic Agricultural Land according to Figure 4 of the Plan.

The Plan outlines nine Strategic Directions for the North West Slopes and Plains region in NSW. Strategic Direction Number 5 is to 'Grow New England North West as the renewable energy hub of NSW'. The Plan encourages the following actions to be taken to achieve this goal:

- a) Diversify the energy sector by identifying renewable energy resource precincts and infrastructure corridors with access to the electricity network; and
- b) Facilitate appropriate smaller-scale renewable energy projects using biowaste, solar, wind, hydro, geothermal or other innovative storage technologies.

The proposed development is considered to contribute to achieving the outcomes of Strategic Direction Number 5 of the Plan, as it will enable diversification and expansion of energy generation within the region by capitalising on high rates of regional solar penetration.

Tamworth Regional Council's Blueprint 100 (Part 1 of Local Strategic Planning Statement)

The Tamworth Regional Council Blueprint 100 is an overarching strategy that provides a roadmap towards growing the Tamworth Region to a population of 100,000 through four (4) core strategies: creating more jobs, delivering skilled workers, managing affordability, and improving liveability. There are eight (8) priority themes to the four (4) strategies including Priority Theme 8. Priority Theme 8 seeks to strengthen the Tamworth Region's identity by broadening its narrative to include its other distinguishing characteristics including innovation around clean energy.

The proposed solar farm aligns with Blueprint 100 in the following manner:

- The provision of alternative electricity generation will benefit existing citizens and attract new residents.
- The proposed development can create more jobs by generating employment opportunities from construction and operation.
- The proposal can contribute to managing affordability by diversifying the energy market and reducing dependence on a non-renewable energy source.
- The project contributes to expanding Tamworth Region's identity to include renewable energy generation.
- It can strengthen the region's reputation for supporting local innovation and investment.

Tamworth Regional Council Local Environmental Plan 2010 (LEP)

Land Use Table

The land is zoned RU4 - Primary Production Small Lots under the LEP. The zone objectives as provided in the Land Use Table are:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.

- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To permit development for certain purposes if it can be demonstrated that suitable land or premises are not available elsewhere.

Under clause 2.3(2) of the LEP, the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone. It is considered that the proposed Solar Farm is generally consistent with the objectives of the zone.

Under the LEP, “electricity generating works” are permitted with consent in the RU4 zone.

Clause 5.10 - Heritage conservation

The purpose of this clause is for the protection and conservation of heritage items and Aboriginal objects. In accordance with Clause 5.10(2)(e), development consent is required for erecting a building on land on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.

An Aboriginal Due Diligence Archaeological Assessment was undertaken by Virtus Heritage to accompany the development application (**ANNEXURE D**). The study identified one (1) potential Aboriginal site on the subject site: a potential scarred tree (TQS-STI). The tree is not proposed to be removed. The proposal was referred to the Tamworth Local Aboriginal Lands Council (LALC) who recommended that the scarred tree be fenced off, pruned back if necessary and inspected in 12 months to check the wellbeing of the tree. This is reflected in the recommended conditions of consent.

Clause 7.2 - Flood Planning

The subject site is not identified a flood prone land in accordance with Council's City Wide Flood Study. A Flood Assessment was submitted by the applicant and is attached in **ANNEXURE D**. The Assessment the site is affected by local catchment runoff and is a low flood risk and suitable for the proposed development. The modelled impacts are not considered to adversely affect neighbouring properties and can be readily managed if required.

Clause 7.6 - Development in flight path

The proposed development is located in the flight path of the Tamworth Regional Airport. As previously discussed, the proposal was referred to CASA, ASA and the Tamworth Airport for comment, who raised no objections subject to conditions of consent.

Tamworth Regional Development Control Plan 2010 (DCP)

The proposal was assessed under the Tamworth Regional Development Control Plan 2010. It is considered that the proposal would not be defined as one of the specified types of development in Step 2 of the DCP.

The Development Application has been completed in accordance with Step 3: General Development Specifications for Environmental Controls as it identifies 'potential environmental impacts of the development and demonstrates how they will be mitigated'.

- b) Section 4.15(1)(b) – the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality:**

Access & Traffic Management

The proposed development will utilise the existing quarry access to service the development. This is a sealed access capable designed to accommodate heavy rigid vehicles. The existing unsealed internal access road will be extended to service the proposed development. The developer is required to erect fencing and gates along the boundary of the quarry to ensure access to the quarry pit is restricted.

A Traffic Impact Assessment prepared by Intersect Traffic Pty Ltd accompanies the Development Application (**ANNEXURE D**). The report considers the existing transport network connection, calculation of traffic generated by the proposed development, the adequacy of the proposed vehicular access and reviews the suitability of on-site car parking. The report identifies the following:

- Up to 10 light vehicles transporting a maximum of 30 employees per day arriving between 6 am and 7 am and departing between 6 pm and 7 pm.
- Maximum of 8 delivery vehicles per day between 10am and 4pm. Delivery vehicles are heavy rigid vehicles, articulated vehicles (AV).
- Total of 18 additional vehicle movements to and from the site during the weekday AM and PM peak periods during the 4-6 months of construction
- 20 car parking spaces

As described above the majority of traffic movements associated with the development will occur during the construction period (4-6 months) with only a single weekly vehicle trip occurring once operational. Furthermore, since the submission of the development application construction has commenced on a 5-legged roundabout on the Oxley Highway which removes the current controlled give way T-Intersection. This improves the capacity and level of service of the intersection. It is considered the local road network has adequate capacity to cater for the increase in traffic over the 4-6 months construction phase of the development.

Views & Visual Impact

The Visual Impact Assessment prepared by Mara Consulting (**ANNEXURE D**) assessed visual impact and identifies the high visual impact within the immediate vicinity (i.e. within 1.5km radius) due to proximity of residences immediately to the north and east of the proposed development. The visual impact is due to the close proximity. It is noted, the proposed development is most viable from 1.5-3km from the east given the orientation of the established residential areas, however the visual impact is considered low to medium given the separation distance and existing/proposed vegetation screening.

To screen the infrastructure and reduce its visual dominance, the proponent intends to plant a mixture of large shrubs and trees (natives) along the boundaries as per the Landscape Plan prepared by Mara Consulting. This requirement is reflected in the recommended conditions of consent.

Finally, It is recommended that any outdoor lighting is to comply with AS4282-1997 Control of the Obtrusive Effect of Outdoor Lighting to minimise impact on surrounding properties, carriageways and nocturnal fauna. This requirement is reflected in the recommended conditions of consent.

Noise & Vibration

A Noise Assessment prepared by Muller Acoustic Consulting Pty Ltd accompanies the Development Application (**ANNEXURE D**). It identifies noise during construction to

potentially exceed acceptable levels and will likely to impact the following residential properties:

- 236 Green Street
- 151 Country Road

The assessment acknowledges that the exceedance would primarily be due to piling activities and be of a short duration and temporary nature during the 4-6 months construction period. It recommends implementation of noise management protocols to minimise emissions. The assessment does not anticipate operational noise and road noise from the transport route to exceed satisfactory levels.

With consideration of the Noise Assessment, it is recommended that conditions of consent to include a noise management plan to be implemented as part of the site environmental management plan and any noise generated from the operation of the development must not be intrusive or offensive as defined by the Protection of the Environment Operations Act 1997. A condition of consent requires noise validation monitoring assessment must be completed once operational to quantify emissions from the site and to confirm emission meet relevant criteria.

Stormwater Management

A Stormwater Management Report prepared by DRB Consulting Engineers accompanies the Development Application (**ANNEXURE D**). The report identifies runoff from the proposed gravel/hardstand area catchment will be conveyed via sheet flow and grass-lined swales to the proposed above-ground onsite stormwater detention (OSD) basin. By discharging the runoff from this area through the proposed OSD basin, the post-development peak flows are reduced back to the pre-development peak flow values.

A condition is recommended which requires a stormwater servicing strategy prepared in accordance with Council's Engineering Design Minimum Standards for Subdivisions and Developments.

The proposed development has been designed in compliance with the acceptable solutions of the DCP and it is believed that the proposed development will not have any unfavourable social or environmental impacts.

c) Section 4.15 (1)(c) - the suitability of the site for development;

In considering the suitability of the site for the development Council should have regard to the zoning of the site and its objectives under the current environmental planning instrument (LEP) and the permissibility of the development under the LEP. Under the LEP, "electricity generating works" are permitted with consent in the RU4 zone.

In terms of assessing the various aspects of the proposal, direction has been taken from the planning principles adopted by the Land and Environment Court of NSW.

Davies v Penrith City Council [2013] NSWLEC 1141

In this case, Moore, SC revised the *criteria for assessing impact on neighbouring properties within this Planning Principle*.

The following questions are relevant to the assessment of impacts on neighbouring properties:

- *How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?*

Assessing Officer Comment: The impacts from the proposal would be limited in the context of a rural/ residential, general business and agricultural environment. Sunlight availability, views and privacy for adjacent lands are considered to be manageable issues.

- *How reasonable is the proposal causing the impact?*

Assessing Officer Comment: The proposal is considered to cause minimal impacts on adjacent lands. Solar farms are passive land uses that produce little noise, dust or odour impacts on neighbouring properties. Vegetative screening will be installed to address visual aspects of the solar farm. On this basis the proposal is considered to be reasonable.

- *How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?*

Assessing Officer Comment: The proposal would not act to reduce the development potential of adjacent lands.

- *Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?*

Assessing Officer Comment: The proposal is not considered to cause any significant impacts.

- *Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?*

Assessing Officer Comment: The proposal in accordance with the relevant planning controls.

Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191

In this case, Roseth, SC provided direction on considering compatibility in the urban environment.

- *There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.*
- *It should be noted that compatibility between proposed and existing is not always desirable. There are situations where extreme differences in scale and appearance produce great urban design involving landmark buildings.*
- *Where compatibility between a building and its surroundings is desirable, its two major aspects are physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked.*
 1. *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*
 2. *Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

- *The physical impacts, such as noise, overlooking, overshadowing and constraining development potential, can be assessed with relative objectivity. In contrast, to decide whether or not a new building appears to be in harmony with its surroundings is a more subjective task. Analysing the existing context and then testing the proposal against it can, however, reduce the degree of subjectivity.*

Assessing Officer Comment: The proposal is considered to meet the relevant objectives of the RU4 - Primary Production Small Lots zone, complies with the flood planning clause of the LEP and performance outcomes of the DCP. On this basis the development is considered generally appropriate for the site.

The subject site is considered suitable for the proposed development for the following reasons:

- The proposed development is considered to be generally compatible with its surrounds and provides for diversification of land uses on the property.
- The proposed development comprises a passive land use and would not cause land use conflict.
- Legal and practical access to the site is available from Country Road.
- The potential Aboriginal scarred tree will be retained.
- Upon decommissioning of the solar farm (should this occur), the land can be restored to its previous form.

d) Section 4.15 (1) (d) – any submissions made in accordance with the Act or the Regulations;

As discussed earlier.

e) Section 4.15 (1) (e) – the public interest.

As discussed in this report, matters of interest raised by both the Community and Government Authorities are noted and are addressed by the proposed mitigation measures and recommended conditions of consent. There are no further matters of public interest relating to the wider community. The proposal will contribute to the provision of renewable energy for the community. The proposal is consistent with the objectives of the *Tamworth Regional Local Environmental Plan 2010* and is not considered to be incompatible with surrounding development and land use patterns.

3. Recommendation

It is recommended that DA2020/0419 be approved subject to the draft conditions contained in ANNEXURE B.