

**REGIONAL PLANNING PANEL
HUNTER AND CENTRAL COAST REGION
COUNCIL ASSESSMENT REPORT**

Panel Reference	PPSNTH-76
DA Number	8/2020/20875/1
LGA	Cessnock City Council
Proposed Development	Installation of a 4.95MW AC solar farm and associated infrastructure
Street Address	127 Wills Hill Road, Lovedale (Lot: 1 DP: 1048155)
Applicant/Owner	Schwartz Family Co Pty Ltd
Submissions	A total of four (4) submissions were received, two (2) of which are unique.
Recommendation	Approval subject to conditions
Regionally Significant Development	<p>The application submitted to Council indicates a Capital Investment Value (CIV) of \$10,273,598 (inc. GST).</p> <p>Pursuant to Schedule 7(5)(a) of the <i>State Environmental Planning Policy (State and Regional Development) 2011</i>, this application is referred to the Regional Planning Panel for determination as the application is defined as electricity generating works which falls under 'private infrastructure and community facilities over \$5 million'.</p>
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Infrastructure) 2007</i> • <i>State Environmental Planning Policy (State and Regional Development) 2011</i> • <i>State Environmental Planning Policy (Koala Habitat Protection) 2020</i> • <i>State Environmental Planning Policy No. 55 - Remediation of Land</i> • <i>Draft Remediation of Land SEPP</i> • <i>Cessnock Local Environmental Plan 2011</i> • <i>Cessnock Development Control Plan 2010:</i> <ul style="list-style-type: none"> ➤ C.1 Parking & Access ➤ C.3 Contaminated Lands ➤ C.4 Land Use Conflict & Buffer Zones ➤ C.5 Waste Management & Minimisation ➤ E.3 Vineyards District
Enclosures	<p>Appendix A – Development Layout</p> <p>Appendix B – Landscape Plans</p> <p>Appendix C – Construction Aboriginal Heritage Management Plan</p> <p>Appendix D – Decommissioning and Rehabilitation Plan</p>
Report prepared by	Hamish Mackinnon – Planning Assessment Officer
Report date	27 July 2021

RECOMMENDATION

That:

Development Application No. 8/2020/20875/1 proposing a solar farm and associated infrastructure at 127 Wills Hill Road (Lot: 1 DP: 1048155), Lovedale be determined by way of approval pursuant to Sections 4.16 and 4.17 of the *Environmental Planning and Assessment Act 1979*, subject to the conditions contained at the end of the report.

Summary of s4.15 matters Have all recommendations in relation to relevant s4.15(1) 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?	No

EXECUTIVE SUMMARY

1. Development Application No. 8/2020/20875/1 seeks approval for the construction of a 4.95MW solar farm and associated infrastructure at 127 Wills Hill Road (Lot 1 DP 1048155), Lovedale, which incorporates:
 - Solar array area sufficient for approximately 7.5MW of panels.
 - Inverters to deliver 4.95MW of AC power to the local electricity grid.
 - Battery bank of approximately 5MW.
 - Control room.
 - Overhead power connection to the public network.
 - Modification to the alignment of an existing powerline easement.
 - Ausgrid Point of Attachment Yard at the connection to the public network.
 - Supplementary landscape screening.
 - Fencing.
 - Vehicle access, construction compound and laydown areas.
2. The subject application is referred to the Hunter and Central Coast Regional Planning Panel (RPP) for determination, as the solar farm (electricity generating works) is classified as 'regionally significant development' under Clause 5(a) (Private infrastructure and community facilities over \$5 million) of Schedule 7 of *State Environmental Planning Policy (State and Regional Development) 2011*, due to the Capital Investment Value being \$10,273,598.
3. A solar energy system is not separately defined in the *CLEP*, therefore, as per the notation above, *State Environmental Planning Policy (Infrastructure) 2007* is referred to for clarification with respect to permissibility. As per Clause 34(7) of this SEPP, a solar energy system “*may be carried out by any person with consent on any land.*” Effectively, a solar energy system is permitted with consent on land zoned RU4.
4. The application was exhibited in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* and the Cessnock City Council's *Community Participation Plan*. The application was exhibited between 3 February 2021 and 17 February 2021, wherein nearby affected property owners were notified. Two (2) unique submissions were received raising concerns about the environmental and amenity impacts of the proposal.
5. Once the life of the development has expired, the solar farm is to be decommissioned and rehabilitated, which is to include:

Decommissioning:

- Removal of all components.
- Removal of perimeter security fencing and maintenance storage container.
- All equipment, materials and infrastructure would be removed and then sorted and packaged for removal from the site for recycling or re-use.
- All areas of soil disturbed would be rehabilitated with the aim of meeting the existing (pre-construction) land capability.

Rehabilitation:

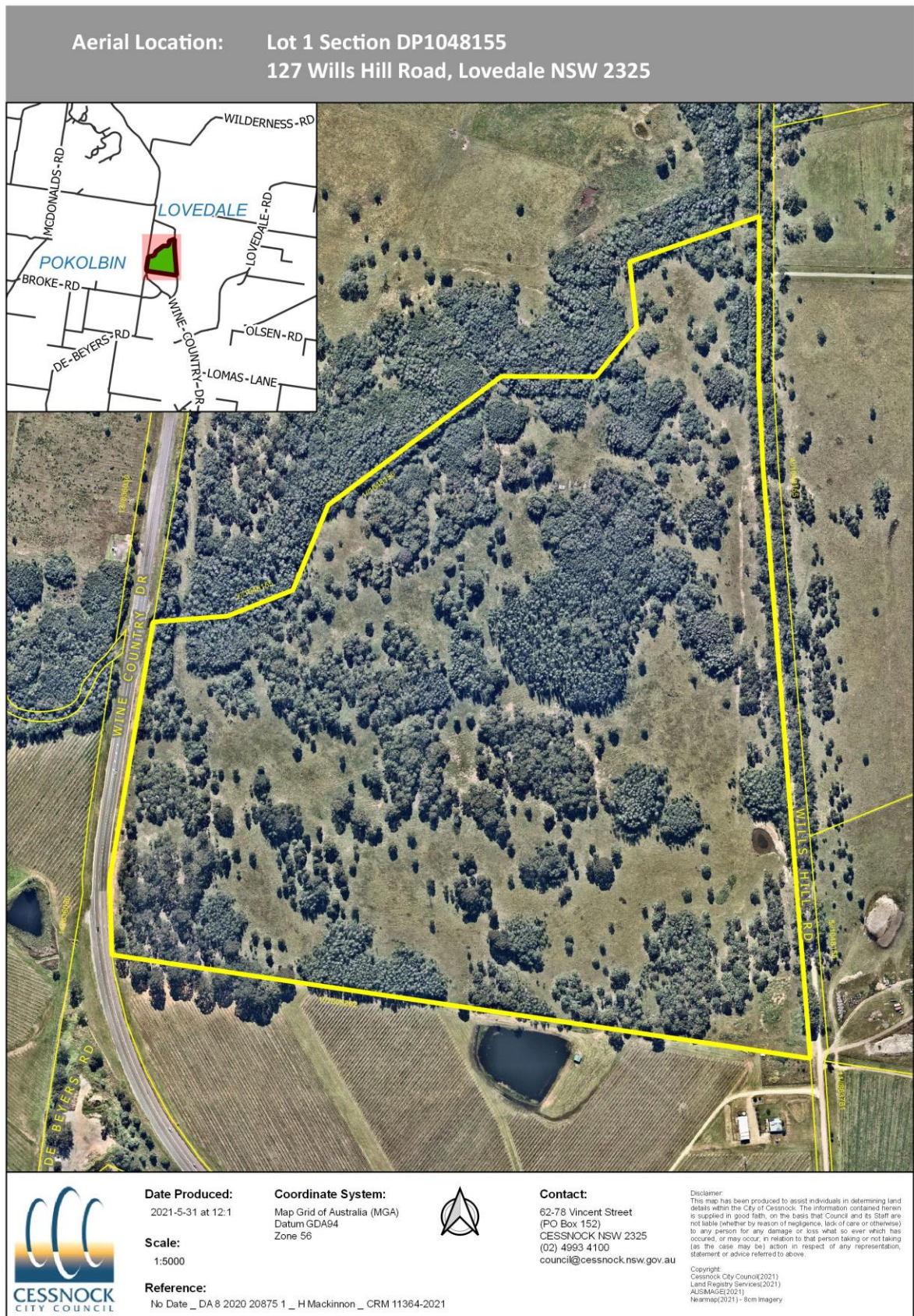
- Backfilling of all trenches and excavations.
- Laying of topsoil where required and in accordance with landowners' requirements for continued agricultural use.
- Revegetation with native species where suitable to allow continued agricultural use of the site.
- Reseeding of areas of pasture/crop in consultation with the landowner.
- Regular monitoring of rehabilitated areas for 2 years after decommissioning.

6. The Development Application has been assessed against the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulations 2000*, relevant Environmental Planning Instruments and Council policies. The outcome of this assessment is detailed further in this report.

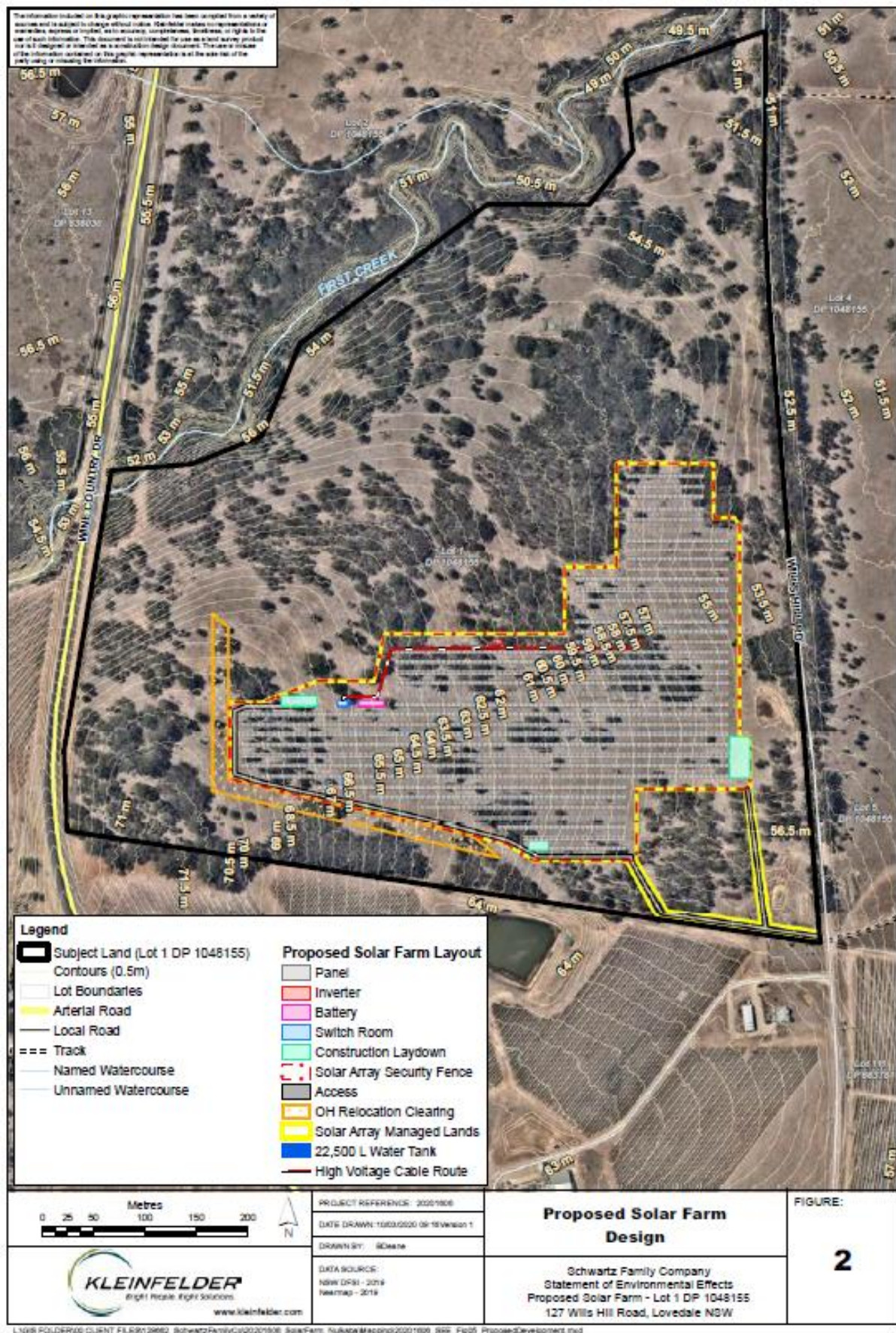
LOCATION MAP



AERIAL



DEVELOPMENT LAYOUT



SITE DESCRIPTION AND LOCALITY

The subject site is commonly known as 127 Wills Hill Road, Lovedale, and is legally described as Lot 1, DP 1048155.

The subject site is located on the western side of Wills Hill Road, Lovedale. The site has an approximate frontage of 870.34 metres along Wills Hill Road and 337.13 metres along Wine Country Drive; a varied depth of between 121 metres and 735 metres; and an overall site area of 39.89 hectares. Vehicular access to the site is available from the Wills Hill Road frontage in the south-eastern corner of the site.

The allotment is encumbered by an electricity transmission easement of varying widths.

The subject site is currently void of structures and has historically been used for grazing.

LOCALITY

The subject site is situated in a rural setting approximately 4 kilometres to the north of the suburb of Nulkaba. The surrounding properties are characterised by:

- Rural residential land to the north, which comprises a dwelling and a number of sheds;
- 'De Bortoli' winery, cellar door, commercial vineyard with a large dam to the south;
- Wills Hill Road and the site of an existing approved solar farm to the east; and
- Wine Country Drive and commercial vineyards to the west.

Associated by ownership is an integrated tourist facility located 800 metres to the south-east of the subject land, which contains a golf course, hotel, restaurant, function centre and tourist accommodation known as 'Crowne Plaza'. It is intended that the solar farm will further improve the sustainability of the hotel and tourist facilities.

Cessnock Airport is situated 900 metres to the south of the subject site, which consists of an aerodrome, a number of aircraft hangars, motel, café and visitor information centre.

HISTORY AND SUMMARY OF DEVELOPMENT APPLICATION

Background

Council has considered a number of solar energy generation proposals in the last 5 years. In terms of significant proposals, a solar farm was approved by the Regional Planning Panel on 11 December 2018 at 66 Wills Hill Road, Lovedale (Council Reference DA No. 8/2018/181/1) (RPP Reference No. 2018HCC014), directly to the east of the subject site.

This 2018 approval enabled the construction of a 5MW solar energy system and is very similar in area and capacity to the proposal. It is also associated with the 'Crowne Plaza'.

Summary of Development Application

The history of the subject Development Application is summarised in the following table:

Date	Action
10 December 2020	The development application is lodged with Council.
15 December 2020	Additional information seeking clarification of the size of the solar farm and more detailed plans, is requested.
16 December 2020	The application is referred internally to Council officers/departments for comment.
14 January 2021	Completed referral received from Council's Principal Development Engineer with recommended conditions of consent.
18 January 2021	Council's Ecologist referral received requesting additional information.
18-19 January 2021	Response provided from applicant for initial additional information.
19 January 2021	The application is referred internally to Council's heritage consultant.
20 January 2021	The application is referred externally to the Civil Aviation Safety Authority (CASA).
2 February 2021	Heritage consultant referral received requesting additional information.
3 February 2021	The application is registered with the RPP Secretariat.
3 February 2021 to 17 February 2021	The application is placed on public exhibition.
3 February 2021	Further additional information requested relating to ecology and heritage.
15 February 2021	Additional information lodged by applicant regarding ecology and heritage and referred to Council's Ecologist and heritage consultant (raised issue with the mapping of the heritage item adjacent to subject lot which is incorrectly mapped).
17 February 2021	One (1) submission received on time.
18 February 2021	Two (2) late submissions received via different methods, however they are from the same source. These submission supersede the previous submission received on the 17 February.
18 February 2021	Response received from CASA, recommending that a glare assessment be undertaken
26 February 2021	Completed referral from Council's Ecologist with recommended conditions of consent.
3 March 2021	Advised of delay for heritage consultant to provide referral response.
30 March 2021	Further update from strategic planning regarding delay of heritage referral.

15 April 2021	Completed referral from heritage consultant who acknowledged that the mapped heritage item was incorrect and so a Heritage Impact Statement was not required, however insisted that an Aboriginal Heritage Impact Permit (AHIP) be requested from the applicant.
22 April 2021	Briefing held with Regional Planning Panel (RPP) where it was advised that an Aboriginal Heritage Management Plan and Decommissioning Plan were required. Advised RPP that additional information was being requested for a landscape plan, glare assessment and fencing details. Panel requested further clarification as to whether an AHIP was required, noting that AHIP is usually only required if application is lodged as Integrated Development (ID).
27 April 2021	The applicant is requested to lodge additional information as per the outcome of the RPP briefing.
6 May 2021	One (1) late submission received, however it contains the same information as the previous submissions.
21 May 2021	Additional information is lodged by the applicant in relation to aboriginal heritage, landscaping, fencing, glare and decommissioning of the proposed solar farm.
26 May 2021	Applicant re-lodged additional information to clarify proposal further.
26 May 2021	Glare assessment referred to CASA for assessment.
2 June 2021	<p>Contacted Council's heritage consultant to advise that the applicant was not required to apply for an AHIP, as no artefacts were proposed to be disturbed. This is consistent with advice outlined in publication by the Office of Environment and Heritage NSW, Department of Premier and Cabinet (OEH) (2011) 'Applying for an Aboriginal Heritage Impact Permit: Guide for applicants', which states on Page 5:</p> <p><i>If your proposed activity also requires consent or a determination under Part 4 or Part 5 of the EP&A Act you should obtain this first, and then lodge your application for an AHIP. The AHIP application may be accepted before a decision or determination under the EP&A Act is made, but as a general rule OEH will not issue (where it is determined that an application should be granted) an AHIP before any necessary development consent has been obtained or determination made.</i></p> <p>Request for conditions of consent to be provided.</p>
9 June 2021	Response from CASA re review of glare assessment, supporting the installation of the solar panels.
9 July 2021	Council's heritage consultant has provided standard advisory conditions to be imposed.
27 July 2021	Regional Planning Panel assessment report finalised.

DETAILS OF THE PROPOSED DEVELOPMENT

Development Application No. 8/2020/20875/1 seeks approval for the construction of a 4.95MW solar farm and associated infrastructure, at 127 Wills Hill Road (Lot 1, DP 1048155), Lovedale.

The solar farm is intended to be used for private infrastructure and will support the nearby 'Crowne Plaza' estate, which accommodates a golf course, hotel, restaurant and associated land uses.

The proposed works will have a disturbance footprint of 11.27 hectares, with the solar array contained within a 10.3 hectare area, which incorporates the following key elements:

- Solar array area sufficient for approximately 7.5MW of panels.
- Inverters to deliver 4.95MW of AC power to the local electricity grid.
- Battery bank of approximately 5MW.
- Control room.
- Overhead power connection to the public network.
- Modification to the alignment of an existing powerline easement.
- Ausgrid point of attachment yard at the connection to the public network.
- Supplementary landscape screening.
- Fencing.
- Vehicle access, construction compound and laydown areas.

The separate components are summarised as follows:

Solar array area

The proposed solar array area is anticipated to cover 10.3 hectares of the 39.89 hectare site. The panels will be arranged in east-west rows, with the panel face directed to the north for optimum solar access, or north south rows of single axis tracking panels that will track the sun from east to west. The applicant has stated that the panels are '*non-reflective to minimise glare*'.

An indicative model of the solar panel proposed is shown in figure 1 below:

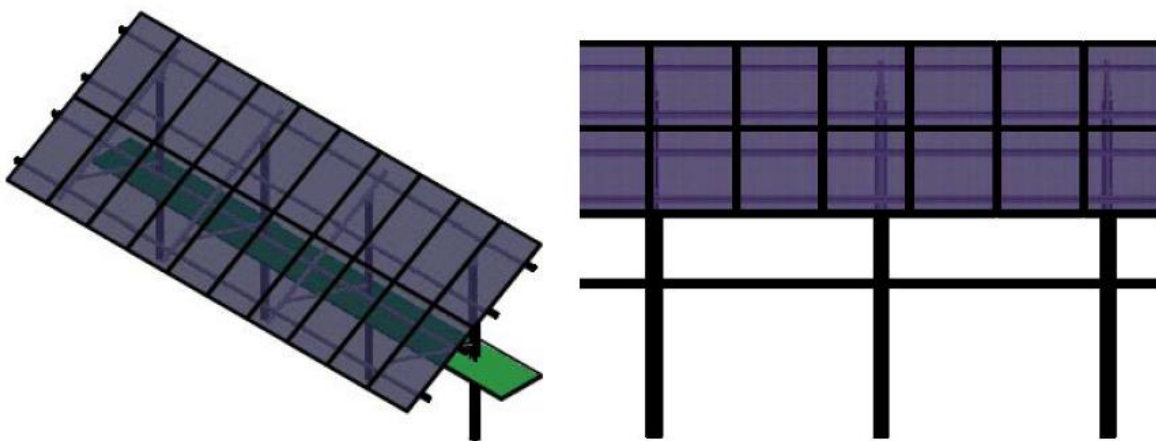


Figure 1: Indicative solar panel design

The array area will be fenced and will include a 7 metre wide fire-defendable asset protection zone (APZ) around the perimeter, with a further 3 metre wide path around the outside of the fenced area to maintain the fence and provide a full 10 metre APZ.

The solar panels are angled, meaning that they are 2.8 - 3 metres in height on the high side, before sloping down to 0.8 – 1.0 metres in height on the low side. The panel face will be 2.0 metres x 1.0 metre.

Both fixed and tracking arrays are installed on pile driven type with the single axis tracking array type containing small motors that slowly move the panels at the end of the day to the starting position, however the motors are a negligible source of noise.

Table 1: Indicative design of proposed solar panel array

Design	Approximate Dimension	
	Single Axis Tracking	Fixed
Row / table width	2 m (1 panel wide)	4 m (2 panels wide)
Gap between piles	4 m	6 m
Individual panel dimension	2 m x 1 m	2 m x 1 m
Gap between panels – same row	0.02 m	0.02 m
Height - high side	2.8 - 3 m	2.8 - 3 m
Height – low side	0.8 - 1 m	0.8 - 1 m

Power from the panels will be conveyed through both above ground cabling attached to the panels, and within subsurface trenching through to one of two inverters.

Inverters

The two inverters are designed to convert the power to enable connection to the mains power network. The inverters are proposed to be housed within shipping containers, measuring 6.1 metres x 2.4 metres x 2.6 metres (length, width, height). The inverters sit atop elevated piers, approximately 2.0 metres high, therefore having a total height of approximately 4.5 metres. Once the power is converted, it will be transferred through below ground cabling to the control room, before being directed to overhead power lines through to the mains network.

Battery Bank

A battery (approximately 5MW delivering approximately 8.5MWH), will be installed on the site to enable the extended delivery of sustainably sourced power into the local network. The battery is likely to be containerised and similar to those produced by Tesla. The battery will be installed on a compacted gravel hardstand with a 20 metre buffer for the purpose of an exclusion zone and asset protection zone.

Control Room (Switch Room)

A control room is proposed within the north western portion of the solar farm area. The control room will house the equipment necessary to manage the transfer of power to the mains network, with added provision of work areas for technicians for maintenance and operational activities.

The control room will be constructed in concrete block/panel walls with corrugated iron roofing. The control room measures 7 metres x 5 metres x 3.5 metres (length, width, height). A verandah will be constructed on the west and east facades; the intent of which is to provide consistency with the surrounding rural landscape.

A 22,500L water tank is to be located adjacent to the control room. The tank is designed to collect rain water and will provide the onsite water supply for cleaning solar panels and potential bushfire suppression.

Overhead power cables

The existing overhead powerline alignment will require realignment to facilitate the proposed solar array. Powerline realignment will involve the following:

- Clearing of alignment;
- Removal of redundant power line and poles, noting a portion may be utilised (pending condition) to facilitate connection to the solar farm control room;
- Installation of three new overhead power poles along the southern and western boundary of the solar farm;
- Installation of approximately 420 metres of overhead powerlines following the modified alignment and clearing of a 15 metre wide easement.

The point of attachment design will be subject to the approval of Ausgrid and may be yard or pole based. The point of attachment provides for the safe and uniform transfer of power into the mains network.

Vehicle access, construction compound and laydown areas

Access to the site is gained from Wills Hill Road which is a gravel public road located north of the 'Crowne Plaza', off Wine Country Drive.

The proposed solar farm design includes the provision of one formalised access via the existing site entrance from Wills Hill Road, with the proposed internal access road diverging to two separate directions approximately 50 metres inside the subject land boundary.

The proposed internal access road will be constructed to a 3 – 4 metre wide gravel road, which will have turning heads and provision of laydown areas along the road shoulder to facilitate construction related deliveries and several construction laydown areas. All traffic will enter and exit the site in a forward direction.

Passing bays will need to be constructed on the internal access road, and no access onto Wine Country Drive will be permitted.

The proposed construction traffic, as shown in the table below, is for a temporary period of 6-8 months. A condition of consent has been imposed on the draft determination notice requiring submission of a Traffic Management Plan prior to commencement of works.

Table 2: Estimated vehicle trips (one way) required during construction

Activity	Estimated Heavy Vehicle	Estimated Light Vehicles
Site preparation	5 only	3 daily
Pylons and racking	5 only	Up to 25 daily
Control room	3 only	
Solar Panels	25 only	
Inverters and battery	2 only	
Cabling and poles	5 only	
Other deliveries	Up to 2 per week	

After construction is complete, the solar panels will be maintained by two full-time staff and a number of part-time staff who will access the site using light vehicles on an infrequent basis. As such, visits to the site will only occur to ensure the facility is maintained and/or repairs carried out.

ASSESSMENT

In determining a Development Application, the consent authority is to take into consideration the following matters of relevance in the assessment of the Development Application:

Environmental Planning and Assessment Act 1979 – Section 1.7

Application of Part 7 of Biodiversity Conservation Act 2016

As per Part 7.7 of the *Biodiversity Conservation Act 2016* (BC Act), an application for development consent under Part 4 of the EP&A Act is to be accompanied by a Biodiversity Development Assessment Report (BDAR) if the proposed development is likely to significantly affect threatened species. Part 7.2(1) of the BC Act states that a development is *likely to significantly affect threatened species* if it:

- a) it is likely to significantly affect threatened species or ecological communities, or their habitats, according to the test in section 7.3, or
- b) the development exceeds the biodiversity offsets scheme threshold if the biodiversity offsets scheme applies to the impacts of the development on biodiversity values, or
- c) it is carried out in a declared area of outstanding biodiversity value.

Under clause 7.2 of the *Biodiversity Conservation Regulation 2017* (BC Regulation), the area of native vegetation clearing threshold for the proposed development is 1 ha or more, as the minimum lot size of the development site is 40 hectares. The proposed development will directly impact on approximately 6.15 ha of native vegetation. As such, the proposal exceeds the native vegetation clearing threshold set out in the BC Regulation, and a BDAR was required to support the proposal.

Biodiversity Assessment Method (BAM)

The proposed development has been assessed under the BAM (2017). The Biodiversity Accredited Assessor System (BAAS) Case number for the project is, 00019254, and the BAM Calculator numbers are 00019251/BAS17039/20/00019252 and 00019251/BAS17039/20/00019253.

The native vegetation communities within the development site occur within five vegetation zones (area of impact due to the proposal indicated):

- PCT 1600: Spotted Gum - Red Ironbark – Narrow-leaved Ironbark - Grey Box shrub-grass open forest of the lower Hunter:
 - Moderate – Good (2.05 hectares).
 - Grassland (1.04 hectares).
- PCT 1731: Swamp Oak – Weeping Grass Grassy Riparian Forest of the Hunter Valley:
 - Moderate - Good (1.24 hectares).
- PCT 1598: Forest Red Gum Grassy Open Forest on Floodplains of the Lower Hunter:
 - Grassland (1.49 hectares).
 - Moderate – Good (0.34 hectares).

The total area of the proposed development is 11.27 hectares and includes all areas of direct impact, including the construction footprint. However, portions of the total development site will not be directly impacted. The area of the development site to be impacted by the proposal has been assessed as 6.15 hectares. This impact area has been calculated as follows:

- Hard infrastructure areas: areas of infrastructure will involve 100% impact.
- Solar array area: within the solar array area will involve 100% impact on woodland/forest vegetation, while areas of grassland will involve approximately 30% impact.
- Powerline easement (0.63 hectares): the small section of powerline realignment will involve removal of trees only, understorey vegetation will be maintained in its current condition.

The offsetting requirements of the proposal includes:

- 62 PCT 1600 credits, of which 38 must be equivalent to the Lower Hunter Spotted Gum Ironbark Forest EEC.
- 24 PCT 1731 credits equivalent to the Swamp Oak Forest EEC.
- 27 PCT 1598 credits, of which 7 must be equivalent to the Hunter Lowlands Red Gum EEC.
- 54 *Eucalyptus glaucina* species credits.
- 47 *Diuris tricolor* species credits.
- 120 *Pterostylis chaetophora* species credits.
- 1 Southern Myotis species credit.
- 45 Squirrel Glider species credits.

Council's Ecologist has assessed the impact of the proposed development and concluded that it is unlikely to have a significant impact on any of the EECs or threatened species recorded or likely to occur on the site.

As such the proposed development is considered acceptable subject to conditions of consent.

Environmental Planning and Assessment Act 1979 – Section 4.14

Consultation and development consent – certain bushfire prone land

The proposal is situated upon bushfire prone land. Pursuant to this clause, development consent must not be granted for the carrying out of development for any purpose on bushfire prone land unless the consent authority is satisfied that the proposal complies with the *Planning for Bushfire Protection 2019* (PBP 2019).

The proposed works will be situated upon a part of the land that is predominantly cleared and relatively flat; resulting in a low risk of bushfire threat. Furthermore, no habitable components or regular staff presence will occur on site; therefore, the risk to human life is low.

The proposed internal access road has been designed to allow emergency vehicle access. There is a 7 metre wide defendable Asset Protection Zone around the perimeter, with a further 3m wide path around the outside of the fenced area to maintain the fence. Hence, a full 10 metre APZ, as required by PBP 2019, is provided.

Grasslands surrounding the solar energy system will be managed to prevent the accumulation of bushfire fuels. Effectively, with the imposition of precautionary conditions, the proposal is deemed to comply with Clause 4.14 of the *EP&A Act 1979*.

Conditions of consent ensuring compliance with PBP 2019, have been imposed on the draft notice of determination.

Environmental Planning and Assessment Act 1979 – Section 4.15(1)

4.15(1)(a)(i) the provisions of any environmental planning instrument

The following EPI's are applicable to the assessment of the application:

1. *State Environmental Planning Policy (Infrastructure) 2007*
2. *State Environmental Planning Policy (State and Regional Development) 2011*
3. *State Environmental Planning Policy No. 55 – Remediation of Land*
4. *State Environmental Planning Policy (Koala Habitat Protection) 2020*
5. *Draft Remediation of Land SEPP*
6. *Cessnock Local Environmental Plan 2011*

1. *State Environmental Planning Policy (Infrastructure) 2007*

Division 4 – Electricity Generating Works or Solar Energy Systems applies to this proposal.

The proposed solar farm is not exempt development under this division, as the area of works greatly exceeds 150sqm as specified in Clause 39(3)(e) of this SEPP.

In accordance with Clause 34(7), solar energy systems (defined in this instance as *a photovoltaic electricity generating system*) are permitted with consent by any person on any land. There are no restrictions on determining the development consent under this SEPP. The proposal complies with the SEPP as development consent has been sought.

2. *State Environmental Planning Policy (State and Regional Development) 2011*

The purpose of *SEPP (State and Regional Development) 2011*, is to identify development that is state significant, state significant infrastructure, critical state significant infrastructure and regionally significant development.

In accordance with Clause 5(a) of Schedule 7 of *SEPP (State and Regional Development) 2011*, the subject development for electricity generating works is classified as “regionally significant development” as the proposal comprises ‘private infrastructure and community facilities over \$5 million’.

The application submitted to Council indicates a Capital Investment Value of \$10,273,598 (inc. GST).

3. *State Environmental Planning Policy No. 55 – Remediation of Land*

The aim of the policy is to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. Clause 7(1) of *SEPP No. 55 – Remediation of Land*, is relevant to the assessment of this Development Application.

Clause 7(1) requires that consent not be granted until Council has considered whether the land is contaminated. If the land is contaminated, the Council needs to be satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

The subject site has historically been used for rural purposes and the past grazing practices of the site are not expected to have rendered the site unsuitable for the proposed development. No evidence of contamination was observed during inspection of the site. As there is no historical evidence of the site being previously used for a purpose which would result in the land being contaminated, further testing of the site in respect of contamination is not warranted in this instance.

4. State Environmental Planning Policy (Koala Habitat Protection) 2020

The aim of the policy is to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline

The site is considered to be potential koala habitat due to at least 15% of the tree species being a listed feed tree species, however as there is a lack of historical data and surveys didn't identify any evidence of koalas on site, the site is not considered to be core koala habitat. Accordingly, no further provisions of the SEPP apply.

5. Draft Remediation of Land SEPP

The proposed Remediation of Land SEPP is intended to repeal and replace SEPP 55 – Remediation of Land. The Draft SEPP was exhibited from 25 January to 13 April 2018 and is currently under consideration.

The proposed SEPP seeks to provide a state-wide planning framework to guide the remediation of land, including outlining provisions that require consent authorities to consider the potential for land to be contaminated when determining development applications; clearly listing remediation works that require development consent; and introducing certification and operational requirements for remediation works that may be carried out without development consent.

Consideration has been given to the suitability of the site with respect to potential land contamination under SEPP 55, as discussed above in this report.

In respect to the consideration of this application, the Draft SEPP does not propose requirements that warrant further investigation regarding site contamination or remediation.

6. Cessnock Local Environmental Plan (CLEP) 2011

6.1 Permissibility

The subject site is zoned RU4 Primary Production Small Lots under the provisions of Cessnock Local Environmental Plan (CLEP) 2011. The land use is characterised in the CLEP via a notation in the Land Use Table:

"A type of development referred to in the Land Use Table is a reference to that type of development only to the extent it is not regulated by an applicable State environmental planning policy. The following State environmental planning policies in particular may be relevant to development on land to which this Plan applies: ...

State Environmental Planning Policy (Infrastructure) 2007—relating to infrastructure facilities such as those that comprise, or are for, air transport, correction, education, electricity generating works and solar energy systems, health services, ports, railways, roads, waste management and water supply systems."

A solar energy system is not separately defined in the CLEP, therefore, as per the notation above, *State Environmental Planning Policy (Infrastructure) 2007* is referred to for clarification on permissibility. As per Clause 34(7) of this SEPP, a solar energy system *"may be carried out by any person with consent on any land"*. Effectively, a solar energy system is permitted with consent on land zoned RU4.

6.2 Objectives

The objectives of the RU4 Primary Production Small Lots zone, and a comment as to how the proposal is consistent with each objective, is outlined as follows:

- *To enable sustainable primary industry and other compatible land uses.*

Comment: A primary industry is an industry that is concerned with converting natural resources into consumable products. In this case, the solar energy system proposes to capture and collect sunlight, before converting it into an electrical energy source. Effectively, the solar energy farm is considered to be a type of primary industry.

A solar farm produces a renewable type of electrical energy and is thereby considered to be a sustainable land use.

The proposed development is consistent with this objective.

- *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*

Comment: The proposed solar energy system is a diverse and alternative source of energy. The proposal is not antipathetic to this objective.

- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

Comment: The proposal does not create land use conflict with other uses in the location. The solar farm is sited in the landscape to limit environmental and visual impacts on surrounding uses, with a vegetative screen to be provided along Wills Hill Road in areas of sparse vegetation.

The potential glare from the solar panels has been assessed by CASA who concluded that the solar panels are unlikely to impact the operation of the airport and accordingly, were supportive of the application.

- *To maintain prime viticultural land and enhance the economic and ecological sustainability of the vineyards district.*

Comment: The site has an agricultural land classification of Class 4, and does not currently cultivate viticulture. This class of land is not suitable for any cultivation and has a low agricultural productivity rating. Therefore, the proposal development is not contrary to this zone objective. The alternative energy source is however likely to be a positive influence on the economic and ecological sustainability of the vineyards; therefore this objective is deemed to be met.

- *To encourage appropriate tourist development (including tourist-related retail) that is consistent with the rural and viticultural character of the vineyards district.*

Comment: N/A as this proposal is not a tourist development.

- *To enable the continued rural use of land that is complementary to the viticultural character of the land.*

Comment: The site has an area of 39.89 hectares and the solar energy system is proposed to cover 11.27 hectares of the site. The remaining 28.62 hectares will allow for continued rural use of the land (i.e. the solar energy system will not extinguish remaining portions of the land from other uses).

6.3 Relevant Clauses

The following clauses of *CLEP* are relevant to the proposal.

Clause 2.3 Zone Objectives and Land Use Table

This clause outlines how the land use table within the *CLEP* specifies a zone, the objectives for the zone, development that may be carried out with or without development consent, and prohibited development. The clause also requires that the consent authority must have regard to the objectives for development in a zone when determining an application.

The land use zone and permissibility of the proposed uses has been raised previously within this report. Due regard has been applied to the objectives of the RU4 Primary Production Small Lots zone. Accordingly, this clause is deemed to have been satisfied.

Clause 5.10 Heritage Conservation

European Heritage

The subject site immediately adjoins a listed item of local heritage significance, known as 'Weronga' (1179) pursuant to Schedule 5 Environmental Heritage of the *CLEP*. Due to the proximity to the heritage item the proposal was referred to Council's heritage consultant, who noted that "...*While the location of the proposed solar farm is set in from the property boundaries and will retain some vegetation along the periphery of the site, insufficient consideration has been given to the potential heritage impacts on the adjoining heritage item. In this regard, a Heritage Impact Statement (HIS), prepared by a suitably qualified heritage consultant, must be submitted to Council for review.*"

However, conflicting information was received in relation to the location of the heritage item and as such further investigation was undertaken to determine the validity of the heritage item. The outcome of such investigation is outlined below.

Assessing Officer comments:

The City of Cessnock Heritage Study was undertaken by Penelope Pike and Meredith Walker in 1992-93, and it is noted within this study that the heritage item 'Weronga' is located on Lot 9 DP 836030 (790 Wine Country Drive as listed within the NSW Heritage register), which is over 1000m from both the subject site and the lot mapped as a heritage item within the *CLEP*. Therefore it can be ascertained that the mapping within the *CLEP* is incorrect and as such, the requirement for a heritage impact statement in relation to the proximity to the heritage item is invalid. Accordingly, it is considered unreasonable and unnecessary for the applicant to undertake such a report.

Clause 5.10(4) requires the consent authority, prior to issuing consent, to consider the '*effect of the proposed development on the heritage significance of the item or area concerned.*' Council's heritage consultant has considered the potential error with mapping of the heritage item and has provided the following comment: '*I accept the commentary about the placement of heritage items in the vicinity of the site, in that the LEP mapping is erroneous. Consequently, I am satisfied that a Heritage Impact Statement is not required for this project.*'

Council has been advised by Heritage NSW that an interim heritage order application has been lodged over Wills Hill Road. Although this order is not currently in force, it has been taken into consideration for the assessment. Notwithstanding, it is considered that the proposed solar farm will not have an ongoing impact on Wills Hill Road, as only a small portion of Wills Hill Road is proposed to be used to facilitate construction of the solar farm, and that portion of the road is not in original condition or of visual significance.

Aboriginal Heritage

The Statement of Environmental Effects submitted by the applicant states that the due diligence assessment was completed in conjunction with two Local Aboriginal Land Council members. The Aboriginal Heritage Impact Assessment provides a due-diligence assessment of potential Aboriginal cultural heritage and identified a total of 19 Aboriginal objects on the subject site.

The report indicates that the findings of the due diligence assessment have informed the final placement and configuration of the proposed solar farm and concludes that the solar farm will not involve any impact on identified archaeological deposits. However, in the event that items are discovered during construction of the solar farm, works will need to cease in the immediate area and an AHIP obtained.

Council's heritage consultant conducted a desktop review of the site and concluded:

"The proposed works will involve the removal of vegetation, together with ground disturbance, involving minor excavation works to permit footings and battery and underground cabling. While the immediate footprint of the proposed works may have been designed to fit within the intervening spaces of the identified archaeological deposit sites, the close proximity to and the high potential for disturbance, demonstrates that the site has a higher degree of archaeological sensitivity than what is suggested in the report. In this regard, it is considered that an Aboriginal Heritage Impact Permit (AHIP) is required under the National Parks and Wildlife Act 1974."

Council's heritage consultant was asked for clarification as to the requirement for an AHIP, as the proposed solar farm and associated infrastructure is not disturbing or destroying any Aboriginal artefacts.

In response, Council's heritage consultant advised:

"I remain of the view that an AHIP is required given the number of identified Aboriginal archaeological sites on the subject site and within very close proximity to the proposed works. It is interesting to note that the indigenous artefacts identified in the assessment are all conveniently framing the location of the proposed solar farm, but that none are immediately within the footprint of the proposed solar farm. There is very high potential for these sites to be disturbed during construction works, hence an AHIP is considered necessary."

The requirement for an AHIP was discussed at the Regional Planning Panel Briefing held on 22 April, 2021. An AHIP has not been required on the basis that the application was not lodged as integrated development. Furthermore, this approach is consistent with the advice outlined in the OEH publication referenced previously, which states '*... as a general rule OEH will not issue (where it is determined that an application should be granted) an AHIP before any necessary development consent has been obtained or determination made.*'

A Construction Aboriginal Heritage Management Plan has been provided by the applicant to ensure sites are avoided during any works associated with the solar farm.

The above was communicated to Council's heritage consultant who did not object any further to the proposed development and provided standard advisory conditions to include in the development consent.

Clause 7.2 Earthworks

Pursuant to the provisions of Clause 7.2 of the *CLEP*, before granting consent for earthworks, Council must consider the impacts of the proposed earthworks to ensure they do not detrimentally affect adjoining land.

The earthworks proposed to be carried out in conjunction with the development are not located close to any adjoining boundaries, and adequate sediment and erosion control measures will be employed during the construction phase. The proposed works are to consist of minor grading and levelling of undulations within the solar array area, while maintaining the existing topography. On this basis, the proposed earthworks are exempt from the need for further consent and will not have an adverse environmental impact on the subject site or upon adjoining land.

Clause 7.4 Airspace Operations

Clause 7.4 of the *CLEP* requires all development proposed within the Obstacle Limitations Surface (OLS) zone to be referred to the relevant 'Commonwealth body'. As depicted in the figure below, the OLS zone encompasses land north and south of the runway (consistent with the ascent/descent zone of the runway), before arcing into a circular pattern up to 6 kilometres away from the aerodrome runways (the regular flight circuit).

The proposed development site is identified in figure 2 in red. The majority of the site is captured in the light blue, blue, dark blue and light grey OLS zones, with the allowable building heights ranging from 80-100m. As the maximum height for any additional structures on the site will only be approximately 4.5 metres in height, the proposed development is not foreseen to impact on the circulation of aircraft from the aerodrome. The application was referred to CASA for comment and no issues were raised in relation to the height of the development.



Figure 2: Obstacle Limitation Surface zone

Clause 7.5 Areas Subject Airport Noise

Clause 7.5 relates to development in areas subject to airport noise and uses an Aircraft Noise Exposure Forecast (ANEF) to determine if a proposed development will be sensitive to noise or not. The subject site is positioned within the “*between 20 and 25*” ANEF zone, however the proposal does

not comprise a habitable land use or area that may be sensitive to noise. Therefore no further consideration with regard to this clause is required.

4.15(1)(a)(ii) *the provisions of any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)*

The *Draft Remediation of Land SEPP* is relevant and has been discussed previously.

4.15(1)(a)(iii) *the provisions of any development control plan*

Cessnock Development Control Plan 2010

The following chapters of the DCP apply to the proposal:

- C.1 Parking & Access;
- C.3 Contaminated Lands;
- C.4 Land Use Conflict & Buffer Zones;
- C.5 Waste Management & Minimisation;
- E.3 Vineyards District

An assessment of the proposal's compliance with the relevant provisions of the DCP, are outlined below:

Cessnock Development Control Plan Part C: General Guidelines		
Chapter – C.1 Parking and Access	Complies?	Comment
1.2 Car Parking Standards 1.4.1 Access	Yes	The application includes provision for parking and access for the construction and operational phases, which have been assessed by Council's Development Engineer, and are considered satisfactory.
Chapter – C.3 Contaminated Lands	Complies?	Comment
Council must ensure that sites of potential or actual contamination are identified correctly and that the extent of any contamination is assessed appropriately and in accordance with any regulations, guidelines or environmental planning instruments that are applicable at the time of assessment.	Yes	As this chapter of Council's DCP has been prepared in accordance with the requirements of <i>SEPP 55 – Remediation of Land</i> , the proposed development is consistent with the requirements of this chapter as previously outlined.
Chapter – C.4 Land Use Conflict and Buffer Zones	Complies?	
4.3.16 Airports – Category C 1. No structure shall be erected on land within the area surrounding Cessnock Air Transport Facility, above the Obstacle Height Limitation Surface (OLS), without the consent of Council. 2. Council will consult with the Commonwealth Department of Transport and Regional Services and the Civil Aviation Safety Authority.	Yes	1. No structure is proposed above the OLS. 2. No works are proposed directly upon the airport land, however as the location of the solar panels may have implications for aviation safety, the Civil Aviation Safety Authority (CASA) was consulted for comment. CASA provided a response that the glare assessment was satisfactory and that they supported the installation of the solar panels.

<p>3. No Category A land use will be permitted on land with a Noise Exposure Forecast higher than 25.</p> <p>4. Council consent is required for any Category A land use on land with a Noise Exposure Forecast of between 20 and 25. Council consent will not be granted unless buildings comply with the requirements AS 2021 – 'Acoustics - Aircraft Noise Intrusion - Building Siting and Construction', or any document replacing or amending that standard</p>		<p>3. N/A – the proposed development is not a Category A land use.</p> <p>4. N/A – the proposed development is not a Category A land use.</p>
Chapter – C.5 Waste Management and Minimisation	Complies?	Comment
5.7.1 Potential for Waste Minimisation	Yes	<p>A suitable waste management plan has been submitted.</p> <p>Waste generated during construction of the development shall be separated into recyclable and non-recyclable materials and where possible shall be reused on-site. All other materials shall be disposed of at an appropriate facility.</p>
Part E: Specific Areas		
Chapter – E.3 Vineyards District	Complies?	Comment
3.2.1 Consideration of Surrounding Land Uses	Yes	The development has been positioned in a portion of the land that minimises conflict with adjoining properties.
3.2.2 Soils Analysis	Yes	<p>The development will be contained to the portion of the land identified as Class 3 on the NSW Land and Soil Capability Mapping. Class 3 land is only moderately restricted for cultivation and has limitations that must be managed to prevent soil and land degradation. As such the site is considered suitable for the development.</p> <p>Notwithstanding, the solar panels do not require substantial modification to the landscape. Furthermore, the panels are able to be removed and vines planted should viticulture be established in this location at some time in the future.</p>
3.2.3 Building Siting and Design	Yes	<p>The proposed development complies with this objective as it cannot be readily viewed from high trafficable public viewpoints. Where the proposal can be seen from Wills Hill Road, vegetation planting is proposed to provide screening. The solar array has been proposed upon a part of the land where no/minimal vegetation clearing is required. The development has adequately considered the constraints of the site.</p> <p>The subject land is only partly identified within the 'visually significant areas' map, with the majority of the frontage to Wills Hill Road not included in this mapping. Therefore the further</p>

		provisions of 'visually significant areas' do not apply as the proposed development cannot be seen from the areas mapped as being visually significant.
3.2.4 Development Densities	Not Applicable	
<p>3.2.5.1 Front Setbacks</p> <p>Council will usually require a minimum front setback of 75 metres. However, where it is felt that this requirement is inappropriate and that there are more appropriate locations within 75 metres of the front property boundary, Council may vary this figure having regard to the particular qualities of a site, e.g. existence of vineyards, existence of stands of vegetation, existence of prime/poorer viticultural soils, existing site development, topography and visual impact, servicing etc.</p>	Complies	<p>The application proposes a front setback of 50 metres. In this instance, the reduced setback is considered acceptable as the proposal is of a different character to the usual type of development established in the vineyards district.</p> <p>The proposed solar farm is relatively low impact and is considered to be an unobtrusive form of development in the location. In addition, a landscape buffer is proposed which will reduce visual impacts when viewed from Wills Hill Road.</p> <p>The applicant has demonstrated that the proposed solar farm has been sited in such a way to reduce impacts on the surrounding environment. On the basis of the scale of development proposed, the setback is considered acceptable.</p>
3.2.7 Ground Spraying and Aerial Spraying Considerations	Complies	The proposed development will not be impacted from potential spray drift from neighbouring properties, or restrict the development of surrounding land for vines.
3.2.8 Noise Generation and Odour Considerations	Complies	<p>Operational noise of the solar farm is negligible.</p> <p>The remainder of this provision is not applicable as the proposed works do not comprise 'human habitation' or a 'new winery'.</p>
3.2.9 Development alongside Main Road 220	Complies	<p>There is no habitation or permanent staff presence at the site, therefore there are no occupants who could be adversely affected by traffic noise.</p> <p>The proposed development cannot be seen from Wine Country Drive and as such, will not impact on passing traffic.</p>
3.2.10 Development in the Vicinity of Cessnock Airport	Complies	<p>The maximum height of any structure on site will be 4.5 metres, which is well below the designated Obstacle Height Limitation Surface (OLS) of 80-100 metres.</p> <p>CASA confirmed that the glare assessment submitted in conjunction with the application was satisfactory. Accordingly, no objection was raised to the proposal.</p>
3.3.3 Clearing of Vegetation	No	The offsets provided as part of the Biodiversity Offsets Scheme are not guaranteed to be within the Vineyards District and therefore are not considered to contribute to the provision of

		<p>“no net loss” in the Vineyards District as required.</p> <p>However assessment of the application has been undertaken by Council’s Ecologist and with the combination of the offset credits, proposed areas of revegetation and the imposition of a VMP, can compensate for the overall “no net loss” principle. As such, the application is supported subject to conditions of consent being imposed.</p>
3.3.5 Aboriginal Archaeology	Complies	Refer to Section 6.3 above.
3.3.5 European Heritage	Complies	Refer to Section 6.3 above.
3.3.7 Water Management Plan	Complies	A 22,500L rainwater tank will be provided on site to collect roof water from the control room. The rainwater will be stored on site and used for the cleaning of the solar panels as well as for bushfire fighting purposes.
3.3.8.1 Waste Water	Complies	<p>No staff will be based at the site; therefore, no amenities are required. Staff will occasionally visit the site to inspect the panels and undertake maintenance; however, no requirement for permanent facilities is established.</p> <p>Therefore, no wastewater will be generated on site.</p>
3.3.8.2 Solid Waste	Complies	Waste management will be carried out in accordance with the waste management plan submitted with the application.
3.3.9 Servicing	Complies	There is no habitation or permanent staff presence at the site, therefore connection to services is not required.
3.3.10 Outdoor Lighting	Complies	There will be low lux, shielded security lighting erected around the control room. The lighting will not be visible from public areas.
3.3.11 Fencing	Complies	Fencing of the perimeter of the site will remain as rural style fencing. A chain wire security fence will be erected around the solar array area to prevent unauthorised access.
3.3.12 Car Parking	Complies	Three (3) car spaces will be provided onsite for technical and maintenance staff. Construction parking will occur in nominated areas alongside the access road.

4.15(1)(a)(iia) any planning agreement or any draft planning agreement

No such agreement exists between the owner and Council, and none is proposed as part of this application.

4.15(1)(a)(iv) the regulations

There are no matters prescribed by the Regulations that apply to this development

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*

As demonstrated by the above assessment, the proposed development is unlikely to have a significant impact on both the natural and built environments, and the social and economic conditions of the locality.

Visual Impact

The solar farm has been positioned:

- 160 metres from Wine Country Drive, which for the section of Wine Country Drive adjacent to the site, is within a slight cut. The cut, in combination with the trees, will result in little or no visibility of the development.
- The solar array is located over 300 metres from portions of Wine Country drive to the southwest that are not cut in, views to the solar array are obscured by vineyards on neighbouring land and site vegetation.
- The solar array has been positioned over 60 metres west of Wills Hill Road. Wills Hill Road is a local gravel road providing access to other private properties not associated with the development. Filtered views of the solar array will be possible through the vegetated setback.
- Views into the site from the north are restricted by existing riparian vegetation.
- Inverters, battery and control room infrastructure are positioned near the centre of the solar property resulting in little or no visibility from surrounding roads.

The first visual analysis point is situated 1.2 kilometres north from the solar array area. A photograph was taken at the area known as 'Peacock Hill', which is adjacent to Wine Country Drive, and the solar farm site is not visible due to the presence of mature vegetation surrounding the site. This photograph is shown below:



Figure 3: Photograph courtesy of Kleinfelder. View line south towards the site from 'Peacock Hill'.

The second visual analysis point is from Wine Country Drive located south west of the site. The photographs (shown below) demonstrate that the proposed solar array is located above the sightlines of Wine Country Drive, and on the other side of the vegetation shown at the right of the photograph. The topology and established vegetation along with the vines of 'De Bortoli' vineyard successfully screen the development from view from Wine Country Drive.



Figure 4: Photograph courtesy of Kleinfelder. Looking north, with the site to the right .



Figure 5: Photograph courtesy of Kleinfelder. Looking north across 'De Bortoli' vineyard with the site highlighted.

Below illustrates the approximate location of the closest residential property to the proposed development. It is clearly shown that the residential property is set lower in the landscape than the proposed development, and any view into the site is screened by the significant riparian vegetation of First Creek and the retained vegetation on the subject lot.

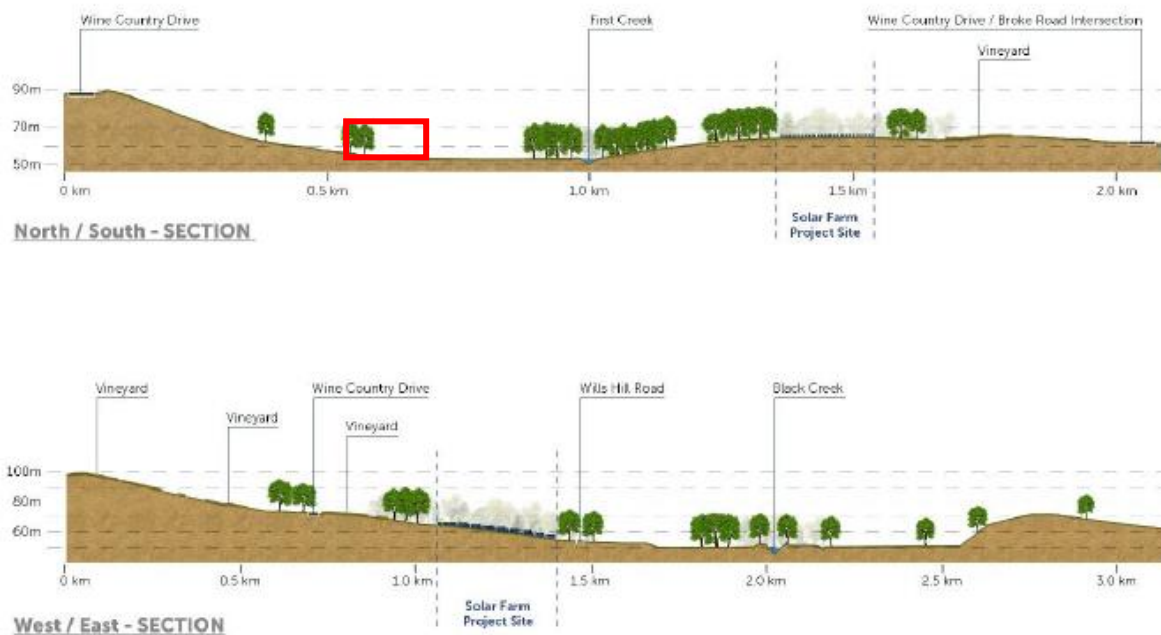


Figure 6: Image courtesy of Kleinfelder. Sections showing visibility from surrounding roads.

The final visual analysis point is from Wills Hill Road which runs along the entire eastern boundary of the site. The dense and established clusters of native vegetation screen a large portion of the development from view from Wills Hill Road. There are four small existing gaps in the vegetation allowing the development to be visible. The applicant has identified on the landscape plan where supplementary planting is to occur. The supplementary planting is proposed within the four gaps of vegetation (shown on Figure 8 below). Once established, the replanting areas will soften the view of the solar farm from Wills Hill Road.



Figure 7: Photography courtesy of Kleinfelder. View towards the site from Wills Hill Road (location where photo was taken is shown on Figure 8 below).

The applicant has proposed to vegetate portions of the land to provide a visual screen for four public view points along Wills Hill Road. The proposed landscape works are to supplement existing trees located along the Wills Hill Road boundary. The vegetated visual buffer is proposed to consist of tree species that form part of the Forest Red Gum Grassy Open Forest on Floodplains of the Lower Hunter vegetation community. This vegetation type has been identified as occurring along the Wills Hill Road boundary.

The figure below (submitted by the applicant) illustrates the location of the solar array with respect to the proposed supplementary planting.

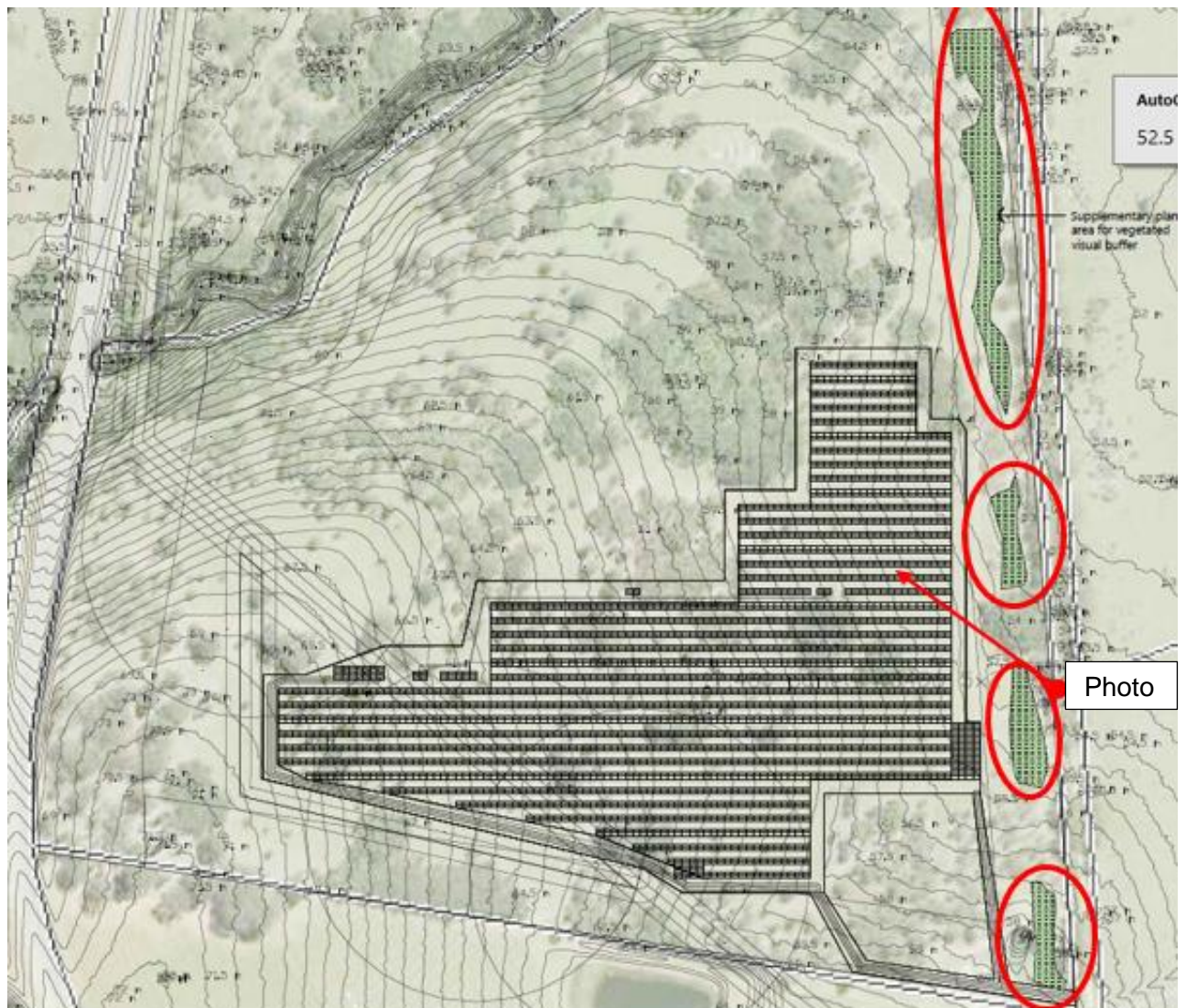


Figure 8: Proposed supplementary planting areas along Wills Hill Road.

In summary, the visual analysis of the site concludes the following:

- The site benefits from a topographical position which restricts the ability to view the site from Wine Country Drive.
- The existing vegetation upon the site is of a density and height that will screen large portions of public view lines to the solar energy system.
- The identified gaps within the existing vegetation will be rectified with four (4) areas of supplementary planting.

Construction Traffic

The proposed construction traffic, as shown in the table below, details the estimated number of heavy vehicles that will access the site during the construction phase of the development (6-8 months):

Activity	Estimated Heavy Vehicle	Estimated Light Vehicles
Site preparation	5 only	3 daily
Pylons and racking	5 only	Up to 25 daily
Control room	3 only	
Solar Panels	25 only	
Inverters and battery	2 only	
Cabling and poles	5 only	
Other deliveries	Up to 2 per week	

The proposed impact of the construction traffic on Wills Hills Road has been assessed by Council's Principal Development Engineer. It was concluded that any impact on the road would be temporary, and accordingly, no nexus is established to require road/intersections upgrades.

Notwithstanding, the condition of Wills Hill Road may be impacted during construction works and/or during decommissioning and rehabilitation works (in the event the facility is no longer required in the future). In this regard, conditions of consent requiring the submission of dilapidation reports, at various times during/after the lifespan of the development, have been imposed on the draft notice of determination. Such dilapidation reports will determine if the condition of Wills Hill Road has deteriorated, and if so, the conditions of consent require rectification works to be carried out, at the applicant's cost.

4.15(1)(c) the suitability of the site for the development

As demonstrated by the above assessment, the site is considered to be suitable for the proposed development. The suitability of the site is explicitly supported by Direction 12: Diversify and Grow the Energy Sector of the Hunter Regional Plan 2036. A listed action within Direction 20 is to: *"Diversify and grow the energy sector by working with stakeholders, including councils, communities and industry, to identify and support opportunities for smaller-scale renewable energy initiatives..."*

4.15(1)(d) any submissions made in accordance with this Act or the regulations

The development application and accompanying information were placed on public exhibition in accordance with Council's *Community Participation Plan* for a period of 14 days from 3 February to 17 February 2021. As a result of the public exhibition process, a total of 4 submissions were received, two (2) of which are considered unique.

The issues raised in the submissions, and a response to each, are detailed in the table below:

Issue	Comment
History and significance of the surrounding area in relation to Wills Hill Road, which includes various historic studies and proposed mapping	<p>The application has been reviewed by Council's heritage consultant. It is acknowledged that there are inconsistencies in the mapping of the adjacent item, therefore the following is noted:</p> <p><i>'the commentary about the placement of heritage items in the vicinity of the site is accepted, in that the LEP mapping is erroneous. Consequently, I am satisfied that a Heritage Impact Statement is not required for this project.'</i></p>

Requirement for Visual Analysis	<p>The applicant has provided a visual analysis of the proposed development, and this is contained in Section 3.10 of the submitted Statement of Environmental Effects.</p> <p>As the subject land is only partly identified within the 'visually significant areas' of the DCP (with the majority of the frontage to Wills Hill Road not being part of this mapping), it is considered that the provisions of 'visually significant areas' do not apply. The section on 'Visual Amenity' in the Statement of Environmental Effects, contains images demonstrating that the proposed development cannot be seen from the areas mapped as being visually significant.</p> <p>Supplementary landscaping is to be planted to further screen the solar farm from Wills Hill Road.</p>
View of the Solar Farm from Wills Hill Road	<p>The applicant has proposed to vegetate portions of the land to provide a visual screen from four (4) public view points along Wills Hill Road. The proposed landscape works are to supplement existing trees located along the Wills Hill Road boundary. The vegetated visual buffer is proposed to consist of tree species that form part of the Forest Red Gum Grassy Open Forest on Floodplains of the Lower Hunter vegetation community. This vegetation type has been identified as occurring along the Wills Hill Road boundary.</p>
No Visual Assessment or Photo Montage	As above
Visibility of solar farm from Wills Hill Road and potential views from properties on Lovedale Road	<p>As discussed previously, a vegetated buffer is proposed to screen the proposed development from Wills Hill Road. During the site inspection, the properties identified as properties of concern on Lovedale Road were barely visible from Wills Hill Road. The visibility of the site from these properties would be restricted due to the significant vegetation that lines Wills Hill Road and that is to be retained in the south-eastern corner of the site. Furthermore, because the proposed solar farm has a low profile, it is unlikely that the solar panels would be visible from these residences.</p>
Setbacks non-compliant with the DCP.	<p>Extract from Council's DCP:</p> <p><i>Council will usually require a minimum front setback of 75 metres. However, where it is felt that this requirement is inappropriate and that there are more appropriate locations within 75 metres of the front property boundary, Council may vary this figure having regard to the particular qualities of a site, e.g. existence of vineyards, existence of stands of vegetation, existence of prime/poorer viticultural soils, existing site development, topography and visual impact, servicing etc.</i></p> <p>The proposed application does not comprise conventional built structures associated with development within the vineyards district where the larger setback is justified in</p>

	<p>order to maintain rural scenic character. The proposed solar farm is low impact and will be unobtrusive in the location, with a landscape buffer proposed to reduce any visual impact the solar farm may have from Wills Hill Road.</p> <p>The applicant has demonstrated that the location of the proposed solar farm was selected to reduce impact upon the surrounding environment, and that the proposal has been sited in such a way to be sympathetic to the rural character of the locality.</p> <p>On the basis of the above, the encroachment into the 75m front setback is considered reasonable in this instance.</p>
– Suggest a setback of 200m and landscape buffer planted, construction traffic	<p>A setback of 200 metres is considered unreasonable and unjustified in this instance. The development has been located to reduce the environmental and visual impact within the existing rural environment. Therefore the setbacks proposed are reasonable for the scale and type of development. A setback of 200 metres would increase the environmental impacts of the proposed solar panels as they have been located in the least visually prominent area due to the elevation and existing landscaping on the site. In addition, there is a watercourse that runs through the property which has been avoided. This, along with the proposed additional landscaping, will ensure that the reduced setbacks do not affect the visual character of the area.</p> <p>As previously stated, native supplementary landscaping is proposed to screen the proposed development from Wills Hill Road.</p> <p>The proposed construction traffic is only temporary and will gain access from Wine Country Drive to the portion of Wills Hill Road that is not in its original condition and has been heavily maintained with foreign material. The traffic impact generated by the proposal has been assessed by Council's Development Engineer.</p> <p>Conditions of consent requiring dilapidation reports have been imposed on the draft notice of determination to ensure the condition of the road is maintained.</p>

4.15(1)(e) the public interest

The public interest is served through the detailed assessment of this Development Application under the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2000*, Environmental Planning Instruments and Council Policies.

Based on the above assessment, it is considered that the proposed development is consistent with to the public interest.

SECTION 7.12 CONTRIBUTIONS

Section 7.12 of the Act – Developer Contributions

The proposed development will attract payment of a contribution under the provisions of Council's Section 7.12 Levy Contributions Plan 2017. As the cost of works are in excess of \$100,000.00 (being \$10,273,598.00) a 1% contributions levy applies. Therefore, the sum payable is \$102,735.98

Cessnock Section 7.12 Levy Contributions Plan 2017 : Calculator			
DA Number:	8 2020 20875 1		
Address:	127 Wills Hill Road Lovedale		
Planner:	H Mackinnon		
Date	4/06/2021		
Proposed cost of carrying out the development (PC)	Percentage of Levy (L%)	Proposed Cost of Development	\$7.12 Contribution
\$0 to \$100,000	0.0%	No levies applicable	\$0.00
\$100,001 to \$200,000	0.5%		\$0.00
More than \$200,000	1%	\$10,273,598.00	\$102,735.98
Contribution Total			\$102,735.98
Works valued over <u>\$1,000,000.00</u> require a Quantity Surveyor's report.			

INTERNAL AND EXTERNAL REFERRALS

The Development Application was referred to the following Council sections for comment:

Referral Officer	Comments
Development Engineer	<p>The application has been assessed by a Consultant Engineer and peer reviewed by Council's Principal Development Engineer.</p> <p>No objection raised to approval of the application, subject to appropriate conditions of consent.</p>
Ecologist	<p>Council's Ecologist reviewed the information submitted by the applicant, and provided the following comment:</p> <p><i>'The proposed development has been assessed and it is considered that it is unlikely to have a significant impact on any of the EECs or threatened species recorded or likely to occur on the site.'</i></p> <p>No objection raised to approval of the application, subject to appropriate conditions of consent.</p>
Strategic Planning (Heritage Consultant)	<p>Council's Heritage Consultant provided comment regarding the potential impact of the proposed development on the adjacent heritage item; the accuracy of the heritage mapping; and confirmation regarding an AHIP.</p> <p>No objection raised to approval of the application, subject to appropriate conditions of consent.</p>

The Development Application was referred to the following external authorities for comment:

Referral Officer	Comments
Civil Aviation Safety Authority (CASA)	<p>CASA initially noted that the proposed solar panels are not expected to impact on aircraft visibility in the vicinity of Cessnock Airport, however recommended that a glare assessment be conducted.</p> <p>CASA provided comment in respect of the submitted glare assessment, confirming that such assessment was satisfactory and that installation of the solar panels was supported.</p>
Ausgrid	No objection raised to approval of the application, subject to appropriate conditions of consent.

CONCLUSION

The Development Application has been assessed in accordance with *Section 4.15(1) of the Environmental Planning and Assessment Act 1979*, and all other relevant instruments and policies.

As outlined in the report, the assessment has taken into consideration the relevant planning provisions and the proposal is supported based on the following:

- There are no matters within a SEPP that restrict the granting of development consent to the proposed development;
- The proposed development is consistent with the CLEP. In particular, it is considered that the proposal is permissible on the land and is consistent with the objectives of the zone;
- Council officers have assessed the proposal against the requirements of the CDCP 2010 and determined that it is consistent with the prescriptive provisions;
- The objections received during the public notification period have been considered pursuant to Section 4.15(1)(d), and the matters raised are not considered sufficient to warrant refusal of the application; and
- Overall, the application is considered to be in the wider public interest.

It is therefore recommended that the application be approved subject to the conditions contained at the end of this report.

ENCLOSURES

Appendix A – Development Layout

Appendix B – Landscape Plan

Appendix C – Construction Aboriginal Heritage Management Plan

Appendix D – Decommissioning and Rehabilitation Plan

SCHEDULE 1

CONDITIONS OF CONSENT

TERMS OF CONSENT

1. Approved Plans and Documents

Development must be carried out strictly in accordance with DA No. 8/2020/20875/1 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Proposed Solar Farm Design Project Reference: 20201606 Version 1	Kleinfelder Australia Pty Ltd	10.03.2020

Document Title	Prepared By	Dated
Statement of Environmental Effects Project No. 20201606 Version 1.0	Kleinfelder Australia Pty Ltd	12.03.2020
Landscape Plan Job No. 2132 Revision C Sheets L01, L02 & L03	MARA Consulting Pty Ltd	24.05.2021
Construction Aboriginal Heritage Management Plan Revision No. 1	earthconnect Pty Ltd	21.05.2021
Decommissioning & Rehabilitation Plan Revision No. 0	earthconnect Pty Ltd	29.04.2021

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

2. CC, PC & Notice Required

In accordance with the provisions of Section 6.6 and 6.7 (cf previous Section 81A) of the *EP&A Act 1979* construction works approved by this consent must not commence until:

- a) A *CC* has been issued by a Certifier (being Council or a registered certifier); and
- b) A *PC* has been appointed by the person having benefit of the development consent; and
- c) If Council is not the *PC*, notify Council no later than two (2) days before building work commences as to who is the appointed *PC*; and
- d) At least two (2) days before commencement of building work, the person having benefit of the development consent is to notify Council as to the intention to commence building work.

3. BCA Compliance

Pursuant to Section 4.17(11) (cf previous s 80A) of the *EP&A Act 1979* all building work must be carried out in accordance with the requirements of the *BCA*.

4. Requirements of Electricity Supply Authority

The applicant must comply with the requirements specified by the Electricity Supply Authority, Ausgrid, as detailed within their correspondence dated 10.02.2021, Reference TRIM 2017/12/247, a copy of which is attached to this consent.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

The following conditions are to be complied with, to the satisfaction of the Certifier, prior to issue of a Construction Certificate.

5. Long Service Levy

In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, the applicant must pay a long service levy at the prescribed rate to either the Long Service Payments Corporation or Council for any work costing \$25,000 or more. The Long Service Levy is payable prior to the issue of a CC.

6. Cessnock Section 7.12 Levy Development Contributions Plan

A total monetary contribution of \$102,735.98 is to be paid to Council, pursuant to Section 7.12 of the *EP&A Act 1979*, such contribution is to be paid prior to the issue of any CC.

- i) This condition is imposed in accordance with the provisions of *Cessnock Section 7.12 Levy Contributions Plan 2017 (as amended)*. A copy of the document is available on Council's website at www.cessnock.nsw.gov.au or may be inspected at Councils' Customer Services Section, Administration Building, Vincent Street Cessnock.
- ii) The amount of contribution payable under this condition has been calculated at the date of consent. In accordance with the provisions of the Contributions Plan, this amount shall be indexed at time of actual payment in accordance with the Consumer Price Index. Indexation of contributions for payment occurs quarterly.

Any party intending to act on this consent should contact Council prior to the date of payment to determine the indexed amount payable.

7. Car Parking

The design of the vehicular access, laydown area and off street parking facilities must comply with *AS 2890.1:2004 Parking Facilities – Off-Street Car Parking*. Details demonstrating compliance with this Standard are to be included on the plans submitted in association with a CC application.

A design certificate satisfying these requirements is to be issued by a suitably qualified professional engineer and submitted to the Certifier prior to the issue of a CC.

8. Parking – Minimum Requirement

Onsite car parking shall be provided for a minimum of three (3) vehicles and such being set out generally in accordance with Council's Development Control Plan.

The plans submitted in association with the CC application are to demonstrate compliance with this requirement. The plans are to be approved by the Certifier as satisfying this requirement prior to the issue of a CC.

9. Roads – All Weather

The registered proprietors shall construct and maintain an all-weather access road from the property boundary to the proposed development site to a Category A standard in accordance with Council's 'Engineering Requirements for Development' Pt 4.5.13 (available at Council offices).

The plans submitted in association with the CC application are to demonstrate compliance with this requirement. The plans are to be approved by the Certifier as satisfying this requirement prior to the issue of a CC.

10. Stormwater – Detailed Design Requirements

A detailed drainage design shall be prepared for the disposal of roof and surface water from the site, including any natural runoff currently entering the property, and connection to the existing drainage system in accordance with Council's 'Engineering Requirements for Development' (available at Council's offices). Such layout shall include existing and proposed surface levels, sub-catchments and conduit sizing appropriate for the development.

The plans submitted in association with the CC application are to demonstrate compliance with this requirement. The plans are to be approved by the Certifier as satisfying this requirement prior to the issue of a CC.

11. Temporary Marking of Asset Protection Zone

Evidence that boundaries of the Asset Protection Zone have been marked using temporary protective fencing or brightly coloured tape must be provided to Council's Ecologist prior to the issue of a CC.

12. Nest Boxes

Nest boxes must be installed if hollow bearing trees are removed, at a ratio of at least 2 boxes per hollow. Nest boxes must be installed in mature trees on the lot outside the Asset Protection Zone. Evidence that this has occurred must be provided to Council's Ecologist for approval prior to the issue of a CC.

13. Ecosystem credit retirement conditions

- a) Prior to the issue of a CC the class and number of ecosystem credits in Table 1 must be retired to offset the residual biodiversity impacts of the development.
- b) The requirement to retire credits in (a) may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator¹.

- c) Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of (a) must be provided to the consent authority prior to the issue of a CC.

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

Impacted plant community type	Number of ecosystem credits	IBRA sub-region	Plant community type(s) that can be used to offset the impacts from development
PCT 1600: Spotted Gum - Red Ironbark – Narrow-leaved Ironbark - Grey Box shrub-grass open forest of the lower Hunter (moderate/good) – equivalent to Lower Hunter Spotted Gum – Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions EEC.	38	Hunter, Ellerston, Karuah Manning, Kerrabee, Liverpool Range, Peel, Tomalla, Upper Hunter, Wyong and Yengo. or Any IBRA subregion that is within 100 kilometres of the outer edge of the impacted site.	Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions. This includes PCT's: 1590, 1592, 1593, 1600, 1602
PCT 1600: Spotted Gum - Red Ironbark – Narrow-leaved Ironbark - Grey Box shrub-grass open forest of the lower Hunter (grassland)	24	Hunter, Ellerston, Karuah Manning, Kerrabee, Liverpool Range, Peel, Tomalla, Upper Hunter, Wyong and Yengo. or Any IBRA subregion that is within 100 kilometres of the outer edge of the impacted site.	Hunter-Macleay Dry Sclerophyll Forests. This includes PCT's: 1178, 1589, 1600, 1601
PCT 1731: Swamp Oak – Weeping Grass Grassy Riparian Forest of the Hunter Valley – equivalent to Swamp Oak Floodplain Forest of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions EEC.	24	Hunter, Ellerston, Karuah Manning, Kerrabee, Liverpool Range, Peel, Tomalla, Upper Hunter, Wyong and Yengo. or Any IBRA subregion that is within 100 kilometres of the outer edge of the impacted site.	Swamp Oak Floodplain Forest of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions. This includes PCT's: 915, 916, 917, 918, 919, 1125, 1230, 1232, 1234, 1235, 1236, 1726, 1727, 1728, 1729, 1731, 1800, 1808
PCT 1598: Forest Red Gum Grassy Open Forest on Floodplains of the Lower Hunter (grassland)	20	Hunter, Ellerston, Karuah Manning, Kerrabee, Liverpool Range, Peel, Tomalla, Upper Hunter, Wyong and Yengo. or Any IBRA subregion that is within 100 kilometres of the outer edge of the impacted site.	Coastal Floodplain Wetlands. This includes PCT's: 780, 828, 835, 924, 941, 1145, 1234, 1235, 1236, 1386, 1594, 1598, 1651, 1715, 1720, 1727, 1728, 1749, 1800

		kilometres of the outer edge of the impacted site.	
PCT 1598: Forest Red Gum Grassy Open Forest on Floodplains of the Lower Hunter (moderate/good) – equivalent to Hunter Lowland Redgum Forest in the Sydney Basin and New South Wales North Coast Bioregions EEC.	7	Hunter, Ellerston, Karuah, Manning, Kerrabee, Liverpool Range, Peel, Tomalla, Upper Hunter, Wyong and Yengo. or Any IBRA subregion that is within 100 kilometres of the outer edge of the impacted site.	Hunter Lowland Redgum Forest in the Sydney Basin and New South Wales North Coast Bioregions. This includes PCT's: 42, 1591, 1598, 1603, 1605, 1691, 1692, 1749

¹ Note that prices of credits in the Biodiversity Offsets Payment Calculator are subject to change. The amount payable to discharge an offset obligation will be determined at the time of payment.

14. Species credit retirement conditions

- Prior to the issue of a CC the class and number of species credits in Table 2 must be retired to offset the residual biodiversity impacts of the development.
- The requirement to retire credits in (a) may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of species credits, as calculated by the Biodiversity Offsets Payment Calculator¹.
- Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table 2 requirements must be provided to the consent authority prior to the issue of a CC.

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

Impacted species credit species	Number of species credits	IBRA sub-region
<i>Eucalyptus glaucina</i> Slaty Red Gum	54	Anywhere in NSW
<i>Diuris tricolor</i> Pine Donkey Orchid	47	Anywhere in NSW
<i>Pterostylis chaetophora</i>	120	Anywhere in NSW
<i>Myotis macropus</i> Southern Myotis	1	Anywhere in NSW
<i>Petaurus norfolcensis</i> Squirrel Glider	45	Anywhere in NSW

¹ Note that prices of credits in the Biodiversity Offsets Payment Calculator are subject to change. The amount payable to discharge an offset obligation will be determined at the time of payment.

15. Revegetated Area

An area of at least 3.63 ha of grassland on the lot, outside of the Asset Protection Zones, must be revegetated with native shrubs and trees to replace part of the 11.08 ha of native vegetation removed for the development and reduce the overall loss of native vegetation within the Vineyards District. Revegetation is preferably to occur via natural regeneration. Where native regeneration has not occurred within one year, revegetation through planting of native species is to occur. Any plants used for planting are to be only native species of local provenance grown by a specialist native plant nursery. Native species are to be characteristic of the EECs recorded onsite (Lower Hunter Spotted Gum – Ironbark Forest EEC, Swamp Oak Floodplain Forest EEC or Hunter Lowland Redgum Forest EEC). The area must be fenced if livestock are kept on the lot.

The revegetated areas must include the areas nominated for supplementary planting as shown on the *Landscape Plan, prepared by MARA Consulting Pty Ltd, dated 24.05.2021*.

Evidence that this has occurred is to be provided to Council's Ecologist prior to the issue of a CC.

16. 88E Required

Prior to the issue of a CC, a positive covenant must be created under Section 88E of the *Conveyancing Act 1919* burdening the owner(s) with the requirement to protect the area specified in Condition 15 from any clearing, grazing or other activities that would disturb the native vegetation and fauna habitat within the area. The terms of the 88E instrument with positive covenant must include, but not be limited to, the following:

- a) The proprietor of the property shall be responsible for the maintenance of the area in a natural state and protect the area from clearing, grazing or any other activities that disturb the native vegetation and fauna habitat within the area.

The proprietor, or successor, must bear all costs associated with the preparation of the 88E instrument. Proof of registration with the NSW Department of Lands must be submitted to and approved by the PC prior to the issue of a CC.

17. Vegetation Management Plan

Prior to the issue of a CC, the applicant must prepare, submit to Council and obtain approval for a Vegetation Management Plan (VMP) for the area to be revegetated as required in Condition 15. The VMP must be prepared by a suitably qualified and experienced Ecologist. The VMP must be for a minimum of (five) years. The primary objective of the plan must be weed management, regeneration of native vegetation and if necessary replanting. Implementation of the VMP must commence immediately following issue of a CC. In preparing and implementing the VMP the following criteria must be addressed

- i) A suitably qualified and experienced professional bush regeneration contractor must be engaged to carry out any revegetation planting, restoration and maintenance weed control specified in the VMP. The minimum qualifications and experience required for the bush regeneration contractor are a TAFE Certificate IV in Conservation and Land Management (or equivalent) and three years demonstrated experience (for site supervisor) and a TAFE Certificate 2 in Conservation and Land Management and one year demonstrated experience (for other personnel).

- ii) A site plan must be prepared at an appropriate scale, clearly showing the area to which the VMP applies, existing vegetation and extent of dominant weed infestations.
- iii) A description of existing native vegetation, assessment of ability to regenerate and rehabilitation methods must be provided.
- iv) A schedule of works must be prepared detailing the sequence and duration of works necessary for the regeneration, any revegetation and maintenance works. All primary weed control must be undertaken in the first year following commencement of the VMP, with secondary weed control undertaken in the second year following commencement of the VMP. Maintenance weed control must continue for the duration of the VMP. If natural regeneration has not occurred within one (1) year of implementation of the VMP then replanting must occur. Replanting density is to be 1 tree per 10 m² and 1 shrub or small tree per 5 m². A minimum of 90% survival rate of plantings is required, with replacement planting to occur if required to achieve this.
- v) Targets for primary, secondary and maintenance phases of the VMP must be at least:

Maintenance Phase	Exotic cover	Native canopy cover	Native midstorey cover
Primary	Less than 25%	At least 10% or replanting required	At least 10% or replanting required
Secondary	Less than 10%	At least 15% or replanting required	At least 15% or replanting required
Maintenance	Less than 5%	At least 20% or replanting required	At least 20% or replanting required

If targets are not met by the end of the maintenance phase, additional works are required so that targets are achieved before works can progress to the next maintenance phase.

- vi) The location and type of fencing or other suitable method of restricting access of livestock into the area to which the VMP applies must be identified if livestock are to be kept on the lot.
- vii) Photo monitoring points, details of plant survival, occurrence of natural regeneration and weed density must be used as part of the monitoring of the area and included in each monitoring report.
- viii) Monitoring reports on the progress of the VMP must be submitted to and approved by Council's Ecologist once every six (6) months for the duration of the VMP.

PRIOR TO COMMENCEMENT OF WORKS

The following conditions are to be complied with prior to the commencement of works on the subject site/

18. Construction and Traffic Management Plan

The applicant must prepare a Construction and Traffic Management Plan incorporating the following matters. The plan must be submitted to and approved by the PC as satisfying these matters prior to the commencement of works.

- a) A plan view of the entire site and frontage roadways indicating:
 - i) Dedicated construction site entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways.
 - ii) Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site.
 - iii) The locations of proposed work zones in the frontage roadways.
 - iv) Location of any proposed crane, concrete pump, truck standing areas on and off the site.
 - v) A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries.
 - vi) Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected.
 - vii) An onsite parking area for employees, tradespersons and construction vehicles as far as possible.
 - viii) The proposed areas within the site to be used for the storage of excavated material, construction materials and waste and recycling containers during the construction period.
 - ix) How it is proposed to ensure that soil/excavated material is not transported onto surrounding footpaths and roadways.
 - x) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed by a Chartered Civil Engineer.
- b) During excavation, demolition and construction phases, noise generated from the site must be controlled.
- c) All site works must comply with the work health and safety requirements of SafeWork NSW.
- d) During excavation, demolition and construction phases, toilet facilities are to be provided on site, at the rate of one (1) toilet for every twenty (20) persons or part of twenty (20) persons employed at the site.
- e) All traffic control plans must be in accordance with the TfNSW publication *Traffic Control Worksite Manual* and prepared by a suitably qualified person (minimum 'red card' qualification). The main stages of the development requiring specific construction management measures are to be identified and specific traffic control measures identified for each stage.
- f) Signage shall be erected within the site, prohibiting a left-turn from the site onto Wills Hill Road.

Approval is to be obtained from Council for any temporary road closures or crane use from public property. Applications to Council shall be made a minimum of six (6) weeks prior to the proposed activity being undertaken.

19. Dilapidation Report

A Dilapidation Report in respect of the visible and structural condition of Wills Hill Road (from Wine Country Drive to the point of access to the site), is required to be submitted to, and approved by the *PC*, prior to the commencement of works.

The Dilapidation Report is to be prepared by a practising structural/civil engineer agreed to by both the applicant and Council.

All costs incurred in complying with this condition are to be borne by the applicant.

The liability of any damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded by the requirements of this condition, will be borne by the applicant.

20. PC Signage and Contact Details

Prior to the commencement of works, a sign must be erected in a prominent position on the site on which the proposal is being carried out. The sign must state:

- a) Unauthorised entry to the work site is prohibited
- b) The name of the principal contractor (or person in charge of the site) and a telephone number on which that person may be contacted at any time for business purposes and including outside working hours
- c) The name, address and telephone number of the *PC* for the work

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

21. Public Liability Insurance

Any person or contractor undertaking works on public property must take out Public Risk insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within, public property. The Policy is to note, and provide protection for Cessnock City Council as an interested party, and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property. The insurance shall also note the location and the risk.

22. S138 Roads Act Approvals

Under Section 138 of the *Roads Act 1993*, should any work on the verge, footpath, or public road reserve be required, a S138 Roads Act Approval will need to be obtained from Council. In this regard, the applicant is to make a formal application to Council. The S138 application is to be submitted to, and approved by, Council prior to works commencing.

23. Implementation of Construction Aboriginal Heritage Management Plan

The requirements of the *Construction Aboriginal Heritage Management Plan*, prepared by *earthconnect Pty Ltd*, dated 21.05.2021 must be implemented prior to the commencement of works and maintained at all times during the works.

24. Heritage Site Induction

Prior to the commencement of any works, all contractors, tradesmen and the like, shall be given a heritage site induction ('toolbox talk').

The heritage site induction shall be delivered by a suitably qualified Heritage Consultant and shall ensure that all contractors, tradesmen and the like, are made aware that:

- a) The site contains items of heritage significance;
- b) A summary overview of why the place is identified as an item of heritage significance;
- c) All works involving heritage fabric are to be undertaken by suitably qualified trades with demonstrated experience relevant to the field;
- d) There are statutory obligations under the *National Parks and Wildlife Act 1974* and the *Heritage Act 1977* regarding Indigenous and built archaeology.

25. Temporary Marking of Asset Protection Zone

The boundaries of the Asset Protection Zone within the areas of native vegetation on the site must be clearly delineated using temporary protective fencing or brightly coloured tape. Clearing works or other development activities must not occur beyond the boundaries of the approved Asset Protection Zone.

26. Asset Protection Zones

Trees within the Asset Protection Zones must be clearly marked showing whether they are to be removed or retained prior to any tree removal to avoid additional trees being mistakenly removed or damaged.

27. Soft-felling of Hollow Bearing/Habitat Trees

A hollow bearing/habitat tree survey must be undertaken by a fauna ecologist in the week prior to the felling of any trees. During the survey, the ecologist is to tap the tree, by banging the base of each tree with a mallet or using a similar method, to encourage any fauna to vacate. An observation period of at least 5 minutes per tree is required to observe the emergence of any fauna, and observations must be noted. All hollow bearing/habitat trees must be marked as part of the survey.

All surrounding trees that are not hollow bearing or habitat trees must be cleared at least one day prior to felling of any hollow bearing/habitat trees.

Equipment used to fell hollow bearing or habitat trees must be capable of slowly lowering the trees to the ground. A qualified fauna ecologist must be present during the felling of the trees. The fauna ecologist must have the appropriate skills and equipment to perform euthanasia if necessary. Immediately prior to felling, each hollow bearing/habitat tree should be tapped or gently shaken with the equipment followed by an observation period of at least one minute to watch for the emergence of any fauna. The tree should be tapped again, followed by a second observation period of at least one minute. If fauna appear during the observation period, the ecologist should encourage the fauna to relocate. If no fauna appear, the tree is to be lowered to the ground slowly and gently. The hollows of the felled tree should be inspected for fauna by the ecologist after it has settled.

28. Care of Native Fauna Found in Felled Trees

Any uninjured fauna should be relocated to nearby bushland. Any nocturnal fauna should be kept in a suitable cage in a shaded location until dusk, and then released into nearby bushland. If juvenile fauna are discovered in hollows after a tree is felled, they are to be taken into the care of an organisation such as the Native Animal Trust Fund.

Injured fauna should be assessed by the ecologist, and euthanised if their injuries are such that the ecologist considers that they are unlikely to survive. If injured fauna are likely to survive, they should be taken to a vet for treatment. After treatment, fauna should be taken to an organisation such as the Native Animal Trust Fund for care until they can be released.

29. Relocation of Services

The registered proprietor of the land shall be responsible for all costs incurred in the necessary relocation of any services affected by the required construction works. Council and other service authorities should be contacted for specific requirements prior to commencement of any works.

DURING WORKS

The following conditions are to be complied with during works.

30. Construction Hours

Excavation, building or subdivision work must be restricted to the hours of 7.00am and 5.00pm on Monday to Saturday inclusive. Work is not to be carried out on Sundays and public holidays.

31. Approved Plans Kept On Site

A copy of the approved plans must be kept on site for the duration of site works and be made available upon request.

32. Construction Noise

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997* and guidelines contained in the New South Wales Environment and Heritage *Noise Guide for Local Government*.

33. Stormwater Runoff

Alterations to the natural surface contours must not impede or divert natural surface water runoff, so as to cause a nuisance to adjoining property owners.

34. Erosion and Sediment Controls

The control of erosion, and the prevention of silt discharge into drainage systems and waterways, will be necessary in accordance with Council's 'Engineering Requirements for Development', and Landcom's Soils and Construction Manual - April 2004. Erosion control measures are to be implemented prior to the commencement of any earthworks, and shall be maintained until satisfactory completion and restoration of site earthworks, including revegetation of all exposed areas.

35. Location of Council Pipes

During all phases of demolition, excavation and construction, it is the full responsibility of the applicant and their contractors to:

- a) Ascertain the exact location of the Council stormwater drainage pipeline and associated pits traversing the site in the vicinity of the works
- b) Take measures to protect the in-ground Council stormwater drainage pipeline and associated pits
- c) Ensure dedicated overland flow paths are satisfactorily maintained through the site

Stormwater drainage pipes can be damaged through applying excessive loading (such as construction machinery, material storage, and the like). All proposed structures and construction activities must be sited fully clear of Council's stormwater drainage pipes, pits, easements, watercourses and overland flow paths on the site.

If the Council pipeline is uncovered during construction, all work must cease, and the PC and Council must be contacted immediately for advice. Any damage caused to the Council stormwater drainage system must be immediately repaired in full as directed, and at no cost to Council.

36. Bushfire Protection

The following bush fire protection measures are to be implemented at the commencement of building works, and maintained for the life of the development:

a) Asset Protection Zones

The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire-fighting activities. To achieve this, the following conditions shall apply:

At the commencement of building works, and in perpetuity, the 10m APZ around the development shall be managed as an 'Inner Protection Area' in accordance with Appendix 4 of *Planning for Bush Fire Protection 2019* and the NSW Rural Fire Service's document *Standards for Asset Protection Zones*.

b) Water and Utilities

The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire-fighting activities. To achieve this, the following conditions shall apply:

- i) The provision of water, electricity and gas shall comply with Table 7.4a of *Planning for Bush Fire Protection 2019*.
- ii) A 22,500 litre water supply tank (manufactured from concrete or metal) shall be provided for fire-fighting purposes. A Rural Fire Service standard 65mm metal Storz outlet with a ball valve shall be fitted to the outlet within the 'Inner Protection Area' or the non-hazard side away from the structure.
- iii) A minimum 5hp or 3kW petrol or diesel-powered pump shall be provided for connection to the water supply and shielded against bush fire attack. A hose of minimum 19mm internal diameter with reel for fire-fighting shall be provided for connection to the pump.

c) Access

The intent of measures is to provide safe operational access on property access roads for emergency services personnel in suppressing a bush fire, and for occupants faced with evacuation. To achieve this, the following conditions shall apply:

- iv) Access shall comply with Table 7.4a of *Planning for Bush Fire Protection 2019*.

37. Tree Protection

Stockpiling or storage or mixing of materials (including soil), vehicle parking, disposal of liquids, machinery repairs, refuelling and the siting of any new offices or sheds must not occur within any areas of retained native vegetation on the site during any stage of the development.

The clearing of any trees within the Asset Protection zones must be undertaken in a manner that avoids damaging adjacent vegetation to be retained.

38. Temporary Marking of Asset Protection Zone

The fencing or tape marking the boundaries of the Asset Protection Zone must remain in place until completion of construction works.

39. Clearing of Development Footprint

Vegetation must be cleared from the periphery of vegetated areas first, progressing from South to North, to enable resident fauna to relocate to adjacent areas to be retained for conservation purposes.

A suitably qualified and experienced ecologist must be present during the clearance of any trees to ensure that any native fauna present are able to be appropriately cared for.

Habitat features removed from the area cleared (hollow-logs, hollow limbs) must be salvaged and relocated to the retained vegetation areas.

PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

The following conditions are to be complied with, to the satisfaction of the Principal Certifier, prior to issue of an Occupation Certificate (as specified within the condition):

40. Second Dilapidation Report

A second Dilapidation Report in respect of the visible and structural condition of Wills Hill Road (from Wine Country Drive to the point of access to the site), is required to be submitted to, and approved by the PC, prior to the issue of an OC.

The second Dilapidation Report must include a photographic survey, and be prepared by a practising structural/civil engineer agreed to by both the applicant and Council.

Any damage to Wills Hill Road caused during construction of the proposed development will require rectification, at the applicant's cost. Any such works will require approval under Section 138 of the *Roads Act 1993*, and must be carried out prior to the issue of an OC.

41. Roads – Gravel Crossing

The registered proprietors shall construct and maintain a gravel access crossing from the edge of the road formation in Wills Hill Road to the property boundary, in accordance with Council's 'Engineering Requirements for Development' and AS 2890.1. A S138 Roads Act Approval is required from Council prior to any construction commencing within the road reserve. The access crossing is required to be constructed prior to the issue of an OC.

Construction of the crossing will require inspections to be undertaken by Council. The applicant shall pay Council engineering site supervision fees in accordance with Council's current Fees & Charges, prior to the inspections being undertaken.

The initial fee will facilitate approval of the application and one (1) construction inspection.

A final inspection will be required upon completion of the driveway and restoration of all disturbed footway areas. (A separate fee will be required to be paid when the final inspection is booked.) Should further inspections become necessary as a result of unsatisfactory or defective works, additional inspection fees will be charged in accordance with Council's current Fees & Charges.

The applicant is to advise Council at least 48 hours prior to inspection of works within the footpath and/or road reserve.

42. Completion of Landscape Works

All landscape works, including the removal of all noxious weed species, are to be undertaken in accordance with the approved landscape plan and conditions of Development Consent, prior to the issue of an OC.

43. Parking – Completion

Car parking areas shall be completed prior to the issue of an OC.

44. Fencing

All proposed fencing must be completed prior to the issue of an OC.

45. Bushfire Protection

The Bushfire Protection Measures and standards as outlined within Condition 36 (which forms part of this consent), shall be installed/completed prior to issue of an OC.

46. Finish of Excavated &/or Filled Areas Around Site

The excavated and/or filled areas of the site are to be stabilised and drained, to prevent scouring onto adjacent private or public property. The finished ground around the perimeter of the building is to be graded to prevent ponding of water, and to ensure the free flow of water away from the building and adjoining properties

47. Drainage Works

All drainage works required to be undertaken in accordance with this consent shall be completed prior to issue of an OC.

ONGOING USE

The following conditions are to be complied with as part of the ongoing use of the premises.

48. Access to Wine Country Drive.

No vehicles associated with the use of the solar farm are to enter or exit the site via Wine Country Drive.

49. Driveways to be Maintained

All access crossings and driveways shall be maintained in good order for the life of the development.

50. Road – Advice

The applicant is advised that Council will not accept responsibility for the road access. In this respect, the care, control and maintenance thereof, is the sole responsibility of the user/s, in perpetuity.

51. Weeds Listed in Biosecurity Regulation

The weeds on the site that are listed under the *Biosecurity Regulation 2017* must be removed including *Olea europaea* (African Olive), *Opuntia stricta* (Prickly Pear), and *Senecio madagascariensis* (Fireweed).

52. Outdoor Lighting

All outdoor lighting must not detrimentally impact upon the amenity of other premises and adjacent dwellings and road reserve, and must comply with, where relevant, *AS 1158.3:2005 Lighting for roads and public spaces – Pedestrian Area (Category P) lighting – Performance* and design requirements and *AS 4282:1997 Control of the obtrusive effects of outdoor lighting*.

53. Maintenance of Landscaping

Landscaping shall be maintained in accordance with the approved plan in a healthy state, and in perpetuity, by the existing or future owners and occupiers of the development.

If any of the vegetation comprising the landscaping dies or is removed, it is to be replaced with vegetation of the same species and similar maturity as the vegetation which has died or was removed.

54. Vegetation Management Plan

A monitoring report on the progress of the Vegetation Management Plan's implementation shall be prepared and submitted to Council at six monthly intervals until the end of the final year's maintenance period. A final report shall also be submitted upon completion of the maintenance period.

55. Decommissioning and Rehabilitation

Should the use of the solar farm cease, all panels and infrastructure associated with the solar farm shall be removed and decommissioned within twelve (12) months of cessation of the use.

All works shall follow the procedures as outlined in the *Decommissioning and Rehabilitation Plan*, prepared by earthconnect Pty Ltd, dated 29.04.2021. Suitable evidence of compliance with the above requirement, must be provided to Council upon completion of the decommissioning and rehabilitation works,.

In the event the solar farm is decommissioned, a Dilapidation Report in respect of the visible and structural condition of Wills Hill Road (from Wine Country Drive to the point of access to the site), is required to be submitted to, and approved by Council.

The Dilapidation Report must include a photographic survey, and be prepared by a practising structural/civil engineer agreed to by both the applicant and Council.

Any damage to Wills Hill Road caused during decommissioning of the solar farm will require rectification, at the applicant's cost. Any such works will require approval under Section 138 of the *Roads Act 1993*, and must be carried out in conjunction with the decommissioning and rehabilitation works.

ADVISORY NOTES

A. "DIAL BEFORE YOU DIG" DIAL 1100

Before any excavation work starts, contractors and others should phone the "Dial Before You Dig" service to access plans/information for underground pipes and cables. www.dialbeforeyoudig.com.au

B. Impact of Below Ground (Sub-surface) Works – Non-Aboriginal Relics

If any archaeological relics are uncovered during the course of the work, all works shall cease immediately in that area, and Heritage NSW shall be contacted. Depending on the possible significance of the relics, an archaeological assessment and an excavation permit under the *NSW Heritage Act 1977*, may be required before further works can continue in that area.

C. Aboriginal Heritage

As required by the *National Parks and Wildlife Act 1974* and the *Heritage Act 1977*, in the event that Aboriginal cultural heritage or historical cultural fabric or deposits are encountered/discovered where they are not expected, works must cease immediately and Council and Heritage NSW must be notified of the discovery.

In the event that archaeological resources are encountered, further archaeological work may be required before works can re-commence, including the statutory requirement under the *Heritage Act 1977* to obtain the necessary approvals/permits from Heritage NSW.

Note: The *National Parks and Wildlife Act 1974* and the *Heritage Act 1977* impose substantial penalty infringements and/or imprisonment for the unauthorised destruction of archaeological resources, regardless of whether or not such archaeological resources are known to exist on the site. Should any item required to be harmed an Aboriginal heritage impact Permit will be required before any further works are undertaken.

D. Responsibility for Other Consents/Agreements

The applicant is solely responsible for ensuring that all additional consents and agreements are obtained from other authorities, as relevant.