

DATE OF DETERMINATION	9 August 2021
PANEL MEMBERS	Alison McCabe (Chair), Juliet Grant, Marcia Doheny, Anne Sander and Bob Pynsent
APOLOGIES	None
DECLARATIONS OF INTEREST	Sandra Hutton has had no involvement with this development application, but the applicant is a current client of ADW Johnson, her employer, on unrelated projects elsewhere in NSW. Ms Hutton declared a conflict of interest, and did not participate in this decision.

Papers circulated electronically on 28 July 2021.

MATTER DETERMINED

PPSNTH-76 – Cessnock – 8/2020/20875 at 127 Wills Hill Rd, Lovedale – solar farm (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

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

The Panel had the benefit of a briefing from council officers, applicant and heard from those submitters who wished to address the Panel. The Panel also received a supplementary memo addressing queries regarding the BDAR assessment.

The Panel received additional information regarding a recent request to Heritage NSW for an Interim Heritage Order for Wills Hill Road. The Panel was also advised that a Planning Proposal for Wills Hill Road to be included as a Heritage Item in Schedule 5 of the CLEP 2011 has also been lodged. Both matters are at the early stages of consideration and are not draft instruments.

The Panel reviewed the current listings in Schedule 5 relating to I222 (Peacock Hill/Glenmore Burial Ground) and I179 (“Weronga”) noting that I179 is referenced as a landscape item and located to the east of the site. It is understood that the actual location of the I179 is further north on Wine Country Drive.

The Panel considers that the context and character of Wills Hill Road and surrounds contributes visually and historically to the broader area. While Wills Hill Road is not a listed heritage item, it is of historical importance and supports a character that should be preserved.

The Panel considered the provisions of clause 5.10(4) and (5) and concluded a Heritage Impact Management document is not required and the proposal will have minimal impacts on items I222 or I179.

The Panel is of the view that the proposed development, given the setback proposed and additional landscape treatment, will not adversely impact upon Wills Hill Road. Additional landscape planting and screening detail along the frontage of the southern boundary is required to minimise the visual impact.

Additional conditions are proposed to:

- Require a minimum landscape depth to Wills Hill Road and the southern boundary via a revised landscape plan to be submitted for council approval.
- Limit construction vehicles access to the southern point of the site.
- Limit left turn movements from the site.
- Ensure no vegetation is to be removed from Wills Hill Road.
- Ensure no upgrades occur to Wills Hill Road – other than to fix damage or maintenance and allow for a gravel vehicular crossing.
- Incorporate additional waste management requirements.

The Panel has also clarified that the Vegetation Management Plan (VMP) is in addition to the landscaping required along Wills Hill Road and southern boundary to minimise visual impacts.

These additional conditions and ongoing management and maintenance of landscaping will ensure that the visual impacts of the development will be minimal and the character of Wills Hill Road preserved.

The Panel is satisfied that the development is appropriate for its setting and that impacts arising from the development can be reasonably mitigated.

Development application

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* subject to the conditions in Schedule 2.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to approve the application for the reasons outlined in the council assessment report and as follows:

- The development is compatible with the character of the surrounding area.
- The proposed development provides for an environmentally sustainable form of electricity generation.
- The impacts of the development can be appropriately mitigated.

CONDITIONS

The development application was approved subject to the conditions in Schedule 2. The conditions were amended from those in the public report in the following way:






- Additional details added to landscape conditions to require minimum dimension, detailed plan and additional planting and maintenance (conditions 18(a) and (b), 46 and 59).
- Distinction between VMP and landscape (condition 19).
- Additional waste management requirement condition (conditions 32, 52 and 62).
- Additional conditions regarding Wills Hill Road and no removal of vegetation, no upgrading and restrictions on access (conditions 20, 24, 53, 54 and 64).

CONSIDERATION OF COMMUNITY VIEWS

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

- Heritage impact
- Requirement for visual analysis
- Visual impact
- Non-compliant setbacks
- Cumulative impact of development on Wills Hill Road.

The Panel considers that concerns raised by the community have been adequately addressed in the assessment report. The Panel has imposed additional conditions regarding landscaping requirements, construction access and restrictions on changes to Wills Hill Road and a requirement for retention of vegetation.

PANEL MEMBERS	
 Alison McCabe (Chair)	 Juliet Grant
 Marcia Doheny	 Bob Pynsent
 Anne Sander	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-76 – Cessnock – 8/2020/20875
2	PROPOSED DEVELOPMENT	Installation of a 4.95MW AC solar farm and associated infrastructure
3	STREET ADDRESS	127 Wills Hill Road, Lovedale (Lot: 1 DP: 1048155)
4	APPLICANT/OWNER	Schwartz Family Co Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Infrastructure) 2007 State Environmental Planning Policy (State and Regional Development) 2011 State Environmental Planning Policy (Koala Habitat Protection) 2020 State Environmental Planning Policy No. 55 - Remediation of Land Cessnock Local Environmental Plan 2011 Draft environmental planning instruments: <ul style="list-style-type: none"> Draft Remediation of Land SEPP Development control plans: <ul style="list-style-type: none"> Cessnock Development Control Plan 2010: <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 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council assessment report: 28 July 2021 Council supplementary report received: 3 August 2021 Written submissions during public exhibition: four Total number of unique submissions received by way of objection: two
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: 22 April 2021 <ul style="list-style-type: none"> <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant and Anne Sander <u>Council assessment staff</u>: Hamish MacKinnon, Janine Maher, Peter Giannopoulos and Richard Forbes <u>Department staff</u>: Leanne Harris, Carolyn Hunt and Lisa Foley Site inspection: <ul style="list-style-type: none"> <u>Alison McCabe (Chair)</u>: 5 April 2021 <u>Juliet Grant</u>: 16 April 2021 <u>Anne Sander</u>: 20 July 2021 <u>Bob Pynsent</u>: 13 April 2021

		<ul style="list-style-type: none"> • Final briefing to discuss council's recommendation: 4 August 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant, Marcia Doheny, Bob Pynsent and Anne Sander ○ <u>Council assessment staff</u>: Hamish MacKinnon, Janine Maher, Richard Forbes, Rachel Brown and Angela Peterson ○ <u>Department representatives</u>: Leanne Harris and Lisa Foley • Submitter Briefing: 4 August 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant, Marcia Doheny, Bob Pynsent and Anne Sander ○ <u>Council assessment staff</u>: Hamish MacKinnon, Janine Maher, Richard Forbes and Angela Peterson ○ <u>Department representatives</u>: Leanne Harris, Carolyn Hunt and Lisa Foley ○ <u>Submitters</u>: Shayne Herring, Stephen Batey and Cameron Ashe • Applicant Briefing: 4 August 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant, Marcia Doheny, Bob Pynsent and Anne Sander ○ <u>Council assessment staff</u>: Hamish MacKinnon, Janine Maher, Richard Forbes and Angela Peterson ○ <u>Department representatives</u>: Leanne Harris, Carolyn Hunt and Lisa Foley ○ <u>Applicant representatives</u>: Paul Briggs <p><u>Note</u>: Applicant briefing was requested to respond to the recommendation in the council assessment report</p>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report as amended.

SCHEDULE 2

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	38	Hunter, Ellerston, Karuah Manning, Kerrabee, Liverpool Range, Peel, Tomalla, Upper Hunter, Wyong and Yengo. or Any IBRA subregion that is within 100 kilometres	Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions. This includes PCT's: 1590, 1592, 1593, 1600, 1602

Forest in the Sydney Basin and NSW North Coast Bioregions EEC.		of the outer edge of the impacted site.	
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
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.

- c) 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 (5) 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 mid-storey cover
Primary	Less than 25%	At least 10% or replanting is required	At least 10% or replanting is required
Secondary	Less than 10%	At least 15% or replanting is required	At least 15% or replanting is required
Maintenance	Less than 5%	At least 20% or replanting is required	At least 20% or replanting is 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.

18. Detailed Landscape Plan

- (a) A detailed landscape plan, prepared by a suitably qualified landscape architect and generally consistent with Condition 1, shall be submitted to and approved by Council prior to the issue of a CC.

The detailed landscape plan must exclude the area to be planted identified in the approved Vegetation Management Plan (3.63ha) and Condition 15.

The plan shall clearly detail the following:

- i) Exact dimensions of areas to be planted. A minimum depth of 40 metres is required for the four (4) areas identified along the whole of the Wills Hill Road frontage;
 - ii) Establishment of landscaping along the southern boundary (south of the proposed access road). A minimum depth of 160 metres is required from the Wills Hill Road frontage, with a minimum width of 5 metres;
 - iii) A mix of varying levels of plant maturity, comprising 50% tube stock and 50% greater than tube stock;
 - iv) Density of planting, noting that a minimum density of one (1) tree per 4m² is required;
 - v) Vegetation species, to be consistent with existing vegetation communities existing on the site;
 - vi) Maintenance schedule, addressing establishment and ongoing maintenance of the landscaping.
- (b) Implementation of landscape works is to commence prior to the issue of a CC and progress during construction of the approved development, with all works being completed prior to the issue of an OC.

19. Establishment of Planting

Works associated with the establishment of planting and revegetation, as detailed in the approved landscape plan and Vegetation Management Plan, are to be commenced prior to the issue of a CC. Works are to occur in accordance with the approved maintenance schedule attached to the approved detailed landscape plan, as required in accordance with Condition 18.

PRIOR TO COMMENCEMENT OF WORKS

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

20. 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.
 - g) Access to the site is only to be permitted via one (1) point, being the access shown on the approved site plan referred to in Condition 1. Additional access points from either Wills Hill Road or Wine Country Drive, are not permitted.
 - h) No vegetation within the road reserve of Wills Hill Road is permitted to be removed, trimmed and/or damaged, without the prior approval of Council.

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.

21. 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.

22. 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.

23. 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.

24. Wills Hill Road and S138 Roads Act

No approval for any works on Wills Hill Road other than a vehicular access and work to rectify any damage. A S138 Roads Act Approval is required prior to any works commencing. No approval is granted to removal of any vegetation on Wills Hill Road.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. Implementation of the Waste Management Plan

The Waste Management Plan must be implemented and maintained prior to, and during, the construction works on the site, until works are completed.

DURING WORKS

The following conditions are to be complied with during works.

33. 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.

34. 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.

35. 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*.

36. 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.

37. 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.

38. 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.

39. 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:

The provision of water, electricity and gas shall comply with Table 7.4a of *Planning for Bush Fire Protection 2019*.

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.

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:

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

40. 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.

41. 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.

42. 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.

43. Waste Management

While building work, demolition or vegetation removal is being carried out, the principal certifier must be satisfied all waste management is undertaken in accordance with the approved waste management plan. Upon disposal of waste, the applicant is to compile and provide records of the disposal to the PC, detailing the following:

- a) The contact details of the person(s) who removed the waste.
- b) The waste carrier vehicle registration.
- c) The date and time of waste collection.
- d) A description of the waste (type of waste and estimated quantity) and whether the waste is expected to be reused, recycled or go to landfill.
- e) The address of the disposal location(s) where the waste was taken.
- f) The corresponding tip docket/receipt from the site(s) to which the waste is transferred, noting date and time of delivery, description (type and quantity) of waste.

Note: If waste has been removed from the site under an EPA Resource Recovery Order or Exemption, the applicant is to maintain all records in relation to that Order or Exemption and provide the records to the principal certifier and Council.

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):

44. 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*.

45. 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.

46. 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*.

47. Parking – Completion

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

48. Fencing

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

49. Bushfire Protection

The Bushfire Protection Measures and standards as outlined within Condition 39 (which forms part of this consent), shall be installed/completed prior to issue of an *OC*.

50. 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

51. Drainage Works

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

52. Removal of Waste upon Completion

Prior to the issue of an *OC*, the *PC* must ensure all refuse, spoil and material unsuitable for use on-site is removed from the site and disposed of in accordance with the approved waste management plan. Written evidence of the removal must be supplied to the satisfaction of the *PC*.

53. Signage

Signage shall be erected within the site prohibiting a left turn from the site onto Wills Hill Road. Evidence of the signage being in place shall be provided prior to the issue of an *OC*.

ONGOING USE

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

54. Access to Wine Country Drive and Wills Hill Road

No vehicles associated with the use of the solar farm are to enter or exit the site via Wine Country Drive. Access is restricted via the access point shown on the approved plan in Condition 1.

55. Driveways to be Maintained

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

56. 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.

57. 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)

58. Vegetation Management Plan Report

A monitoring report on the progress of the Vegetation Management Plan 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.

59. Landscaping Report

A monitoring report on the health of the landscaping shall be prepared and submitted to Council on an annual basis until the end of the fifth year of operation.

60. 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.

61. 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*.

62. Waste Materials

All solid waste from construction and operation of the development shall be assessed, classified and disposed of in accordance with the NSW EPA *Waste Classification Guidelines, Part 1: Classifying Waste*, November 2014. All hazardous building materials must be disposed of in accordance with the relevant statutory requirements.

63. 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.

64. Access to Wills Hill Road

Vehicles exiting the site are prohibited from turning left onto Wills Hill Road.

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.