

DETERMINATION AND STATEMENT OF REASONS

WESTERN REGIONAL PLANNING PANEL

PANEL REF & DA NO	PPSWES-123 – Mid-Western – DA0170/2022 - 5MW Electricity Generating Works and Associated Infrastructure and Works (as described in Schedule 1)
ADDRESS	Lot 286 DP756894, Lot 90 and 91 DP756897 33 Blain Road, Caerleon
APPLICATION TYPE	CIV > \$5M - Council interest
APPLICANT	Simon Jones on behalf Mid-Western Regional Council
LGA	Mid-Western Council
DETERMINATION (s4.16)	Approval
DATE OF DETERMINATION	25 August 2022
DATE OF PANEL DECISION	24 August 2022
DATE OF PANEL MEETING	23 August 2022
PANEL MEMBERS	Sandra Hutton (Acting Chair), Graham Brown, Clare Brown
APOLOGIES	
DECLARATIONS OF INTEREST	Mid-Western Regional Council – Council is the proponent. Council nominated representatives will attend briefing invitations but will not participate in the decision.
MEETING DETAILS	Papers circulated electronically on 17 August 2022.

SUMMARY

- The development application (DA0170/2022) was lodged with Mid-Western Council ('the Council') on 11 November 2021 for 5MW Electricity Generating Works and Associated Infrastructure ('the proposal') at 33 Blain Road Caerleon. The application was referred to the Panel on 16 November 2021.
- The Council prepared an Assessment Report dated 27 May 2022 recommending approval of the development application. The Council identified key issues such as access, the adjoining waste facility, visual and glare impact mitigation, landscaping, Transgrid easement and variations to DCP side setback and considered that the application can be supported subject to recommended draft conditions.
- The Panel considered the application on 14 June 2022 and deferred its determination seeking additional information from the applicant, and an addendum assessment from Council, responding to matters listed in the deferral. The matters requested further

information on the proposed access road and extent of earthworks inclusive of all works including within the solar array footprint and on impacts to future (zoned) residential land directly adjoining the site, relating to visual impact, interface, landscaping and glint and glare assessment. The

- The Council prepared a Supplementary Assessment Report dated 16 August 2022 providing additional information from the applicant, brief responses to the deferral matters and recommending approval of the development application, with updated recommended draft conditions limited to capturing revised landscaping plans only.
- The Panel partially agrees with the Council's Supplementary Assessment and otherwise has identified amendments to recommended draft conditions in order to be fully satisfied.
- Having considered all the supporting material lodged with the application and submissions made by the community, the Panel has determined to approve the development application pursuant to section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* ('the EP&A Act').

MATERIAL CONSIDERED BY THE PANEL

- The Panel considered the following material in making their decision:
 - a) the conclusions and recommendations in the Council's Assessment Report dated 27 May 2022 prepared and provided to the Panel pursuant to Section 4.7(2)(b) of the EP&A Act;
 - b) the conclusions and recommendations in the Council's supplementary report received: 16 August 2022
 - c) information included in the development application pursuant as outlined in Schedule 1;
 - d) the relevant matters listed in Section 4.15(1) of the EP&A Act including the environmental planning instruments, proposed instruments and development controls plans relevant to the proposal as outlined in Schedule 1;
 - e) the objects of the EP&A Act pursuant to Section 1.3;
- The Panel has also considered the views of the community, through the written submission made during the public exhibition period.
- The Panel noted the following issues of concern were raised and have been considered in the assessment and Panel considerations:
 - Obstruction of scenic views
 - Glare impacts and effectiveness of landscaping
 - Construction related impacts
 - Noise impacts
 - Access impacts
 - Stormwater management impacts.

KEY ISSUES

- The matters identified in the Panel's deferral record comprise the following key issues:
 - a) **Access Road** – The Panel is satisfied that the additional information clarifies the siting and location of the access road and its relationship to the Transgrid easement and requires amendment to the conditions to capture the plans provided;

- b) **Earthworks** – The Panel was only partially satisfied with the information provided on earthworks, and so has sought to capture the basis on which the Panel can be satisfied through the provision of an additional condition that reflects the applicants stated objective to limit benching and bulk earthworks, whilst accepting a maximum panel height compared to natural ground level and the supplied proposal plans;
 - c) **Visual Impact and Landscaping** – The Panel notes that no additional visual impact assessment was directly provided, however, is satisfied that the revised landscaping provide an acceptable length, width and planting strategy, in combination with Council’s recommended conditions relating to establishment and maintenance. Clarification of conditions have been included to ensure the landscape objectives are achieved.
 - d) **Glint and Glare Assessment** – The Panel is satisfied with the assessment and Council’s supplementary assessment.
- The Panel is satisfied that the key issues of deferral have been adequately addressed through additional information and assessment and through the conditions of consent to be imposed.

PANEL DETERMINATION (Section 4.16 of the EP&A Act)

- Following a thorough assessment and consideration, the Panel determined to approve the development application pursuant to section 4.16(1)(a) of the EP&A Act.
- The decision was unanimous.

REASONS FOR THE PANELS DECISION (Section 2.16(2) of the EP&A Act)

- The Panel’s reasons for granting consent to the development application include:
 - the proposal utilises buffer lands of an existing infrastructure site to contribute towards the production of renewable energy.
 - the land use is permissible with development consent, and is consistent with NSW Government policies and strategic directions.
 - the proposal is consistent with the LEP and appropriate consideration has been given to Council’s DCP provisions including the non-compliance with a side boundary setback to zoned residential land.
 - the impacts on the community and the environment can be appropriately minimised and managed to an acceptable level, in accordance with applicable NSW Government policies and standards as identified in the Council’s Assessment Report.
 - the issues raised by the community in submissions have been considered and adequately addressed, including through Panel imposed conditions of consent and the proposal itself, inclusive of its landscaping, will provide a suitable interface to adjoining residential zoned lands.
 - weighing all relevant considerations, the project is in the public interest.

CONDITIONS (Section 4.17 of the EP&A Act)

- The development application is approved subject to the conditions in the Council supplementary assessment report pursuant to Section 4.17 of the EP&A Act with the following amendments:

- **Condition 1 to be amended** to include reference to Barnson Civil Construction Documentation relating to the Proposed Access Road and various assessment reports relied upon, to read as follows:
1. *The development is to be carried out generally in accordance with the following stamped plans except where amended as required by the following conditions. Approved documentation including Planning or Engineering Reports submitted with and in support of the Application as detailed below:*

Title/Name	Drawing No./Document Ref./Sheet No.	Revision	Date	Prepared by:
<i>PV Layout (2) for DA</i>	102	6	14/02/2022	EQUANS
<i>Civil Works</i>	400	5	14/02/2022	EQUANS
<i>Key Equipment Elevations</i>	300	2	10/11/2021	EQUANS
<i>Mudgee Solar Farm Landscape Plan</i>	Pages 1-4	C	20/6/2022	Ecstaff
<i>Land and Water Management Plan</i>	-	-	-	Constructive Energy
<i>Civil Construction Documentation Proposed Access Road</i>	38519-C00 38519-C01 38519-C02 38519-C03 38519-C04 38519-C05	2 1 2 2 1 A	07/07/2022 21/07/2022 29/07/2022 29/07/2022 07/07/2022 07/07/2022	Barnson Pty Ltd
<i>Biodiversity Development Assessment Report</i>	-	Final	05/11/2021	Access Environmental Planning
<i>Stormwater Management Plan</i>	TX15019.00-01.Rpt.JD	0	17/09/2020	Triaxial Consulting
<i>Traffic Assessment Report</i>	TX15150.00-01.RPT.RS	0	27/05/2021	Triaxial Consulting
<i>Cultural Heritage Statement</i>	-	Final	08/11/2021	Access Environmental Planning
<i>Geotechnical Investigation Report</i>	B20354	00	08/09/202	Macquarie Geotech
<i>Land Use Conflict Risk Assessment</i>	-	-	Sept 2020	E Yule t/a Atlas Environment and Planning
<i>Solar Glare Analysis</i>	105501-01	-	10/08/2022	Aviation Projects
<i>Statement of Environmental Effects</i>	-	002	October 2021	Atlas Environment and Planning

Any minor modification to the approved plans other than as required by following conditions will require the lodgement and consideration by Council of amended plans and lodgement of a Modification Application.

- **New Condition 2a to be added** to capture the Panels understanding on limits of earthworks and relationship of heights of Panel arrays to natural ground level, to read as follows:

2a. This development consent does not authorise any benching of existing site levels to accommodate solar panel arrays. Development for the solar arrays, tracking systems and works with the fencing compound must not exceed the following parameters:

- a) a maximum cut allowable within the solar array footprint is up to 5,300m³;*
- b) a maximum fill allowable within the solar array footprint of up to 4,700m³;*
- c) a maximum height of the tracker and solar array at maximum tilt to be 2.8m from existing natural ground level.*

Any excess spoil from authorised earthworks must not be taken off site unless approved by Council.

- **New Condition 2b to be added**, that relocates draft Condition 66 to a more prominent location within the consent, and to amend draft Condition 66 to require approval by Council of submitted plans and compliance with the parameters set by new Conditions 2a and 71, to read as follows:

2b. Prior to the commencement of any construction within the proposed development site the applicant must submit detailed plans of the final layout of the development to Council for Council's approval. Details must include the siting of solar panels, the design and layout of any internal access roads and driveways (including provision for stormwater drainage and culverts where necessary), car parking and laydown areas and the location and design of all ancillary infrastructure. The detailed plans are to also demonstrate compliance with the parameters set by Condition 2a, and nominate the location of the required 10m APZ set by Condition 71 which must be sited clear of and not incorporating the approved vegetation corridors and landscape screen buffer.

- **Condition 19 to be deleted.** The Panel is satisfied that the nature of the construction and operation does not warrant the need for an independent environmental audit, and there is no rationale provided for its requirement with the Council assessment reports.
- **Condition 26 to be amended** to capture the commitment made in the SEE to integrate with existing plans in place for the Mudgee Waste Facility and Sewerage Treatment Plant, to read as follows:

26. The Applicant must minimise the fire risks of the development by preparing and implementing a Bush Fire Emergency Management and Operations Plan, that integrates with existing plans in place for the Mudgee Waste Facility and Sewerage Treatment Plant, which should identify all relevant risks and mitigation measures associated with the construction and operation of the solar farm. This should include:

- detailed measures to prevent or mitigate fires igniting;*
- work that should not be carried out during total fire bans;*
- availability of fire-suppression equipment, access and water;*
- storage and maintenance of fuels and other flammable materials;*
- notification of the local NSW RFS Fire Control Centre for any works that have the potential to ignite surrounding vegetation, proposed to be carried out during a bush-fire fire danger period to ensure weather conditions are appropriate; and*
- appropriate bush fire emergency management planning.*

Note: It is important to be aware of operations that may be carried out on days of Total Fire Ban and any prohibited activities or exemptions that are notified by the Commissioner of the NSW RFS under the Rural Fires Act s.99.

- **Condition 29 to be amended** to reinforce the siting of the APZ consistent with amended Condition 71, to read as follows:

29. Landscaping, if any, within the required asset protection zone consistent with Condition 71 must comply with Appendix 4 of Planning for Bush Fire Protection 2019. In this regard, the following principles are to be incorporated:

- *A minimum 1 metre wide area (or to the property boundary where the setbacks are less than 1 metre), suitable for pedestrian traffic, must be provided around the immediate curtilage of the building;*
- *Planting is limited in the immediate vicinity of the building;*
- *Planting does not provide a continuous canopy to the building (i.e. trees or shrubs are isolated or located in small clusters);*
- *Landscape species are chosen to ensure tree canopy cover is less than 15% (IPA), and less than 30% (OPA) at maturity and trees do not touch or overhang buildings;*
- *Avoid species with rough fibrous bark, or which retain/shed bark in long strips or retain dead material in their canopies;*
- *Use smooth bark species of trees species which generally do not carry a fire up the bark into the crown;*
- *Avoid planting of deciduous species that may increase fuel at surface/ ground level (i.e. leaf litter);*
- *Avoid climbing species to walls and pergolas;*
- *Locate combustible materials such as woodchips/mulch, flammable fuel stores away from the building;*
- *Locate combustible structures such as garden sheds, pergolas and materials such as timber garden furniture away from the building; and*
- *Low flammability vegetation species are used*

- **Condition 58 to be amended** to ensure that landscaping is consistent with the approved landscape plans, to reinforce no APZ is permitted to extend into the approved vegetation corridors and to establish that where any inconsistency occurs within those plans as it relates to the approved vegetation corridors and their extents, page 3 of the approved plans prevail, to read as follows:

58. Prior to issue of a Construction Certificate, amended plans / information shall be provided to the Certifying Authority detailing the following:

- a) All landscaping shrubs or trees within the approved vegetation corridors must be mature (i.e. not seedlings / tube stock) at the time of planting;*
- b) Demonstrate that no APZ extends into the approved vegetation corridors and landscape screen buffer;*
- c) Demonstrating that the plantings within the vegetative screen buffer is consistent with that shown on Page 3 of the approved landscape plans, noting that Page 3 prevails to the extent of any inconsistency in approved documentation;*
- d) Include full details of the vegetation management for the development, with commitment to a replacement frequency over the life of the proposal to ensure mortality is kept low (a maximum of 10%), and include confirmation of a water source and minimum watering schedule to ensure survival;*
- e) Provision of a minimum of 40,000L of dedicated onsite water storage, or an approved alternative water supply, for the purposes of onsite maintenance to the landscaping and panel cleaning. This supply is required in addition to dedicated firefighting water requirements*

- **Condition 60 to be amended** to capture the commitment made in the SEE to reflect DCP requirements for the management plan to include construction program, to read as follows:

60. Prior to issue of a Construction Certificate, the developer is to prepare and submit to Council's satisfaction a comprehensive Site Environmental Management Plan that includes, but shall not be limited, to the following:

- *A construction program;*
- *Management strategies to limit noise and vibration impacts during construction and operation on surrounding land;*
- *Management strategies to limit traffic impacts on surrounding land;*
- *Measures to reduce air emissions, including dust to surrounding land;*
- *Management strategies to ensure groundwater is not contaminated;*
- *Measures to conserve water during construction and operation such as during regular cleaning of the infrastructure during operation;*
- *Measures to manage groundcover vegetation and reduce bushfire risks to surrounding land;*
- *Management strategies to limit the spread and contamination of the site from all waste material including oil used in the integrated transformer and inverter stations along with full details of how each type of waste material will be disposed during construction and operation;*
- *Measures to maintain site landscaping for the life of the operations;*
- *Rehabilitation objectives and strategies for the site including timeframes for rehabilitation and decommissioning;*
- *Specific measures to protect productive capacity including soil and erosion mitigation and weed management practices;*
- *Topsoil management proposals to make best use of this resource and 9 maximise rehabilitation and revegetation success;*
- *Proposals to reform the landscape to blend with surrounding land and avoid land use conflicts; and,*
- *Complaints management procedures and contact person for the site including notification processes to be implemented when the owner and / or operator of the site changes over time*

- **Condition 71 to be amended** to ensure the APZ location does not extend into the approved landscaped vegetative buffer, to read as follows:

71. From the start of building works, the property around the proposed works must be managed as an inner protection area (IPA) for a distance of 10 metres in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019. The IPA must not extend into the approved vegetation corridors and landscape screen buffer. When establishing and maintaining an IPA the following requirements apply, if any landscaping is contained within IPA:

- *tree canopy cover should be less than 15% at maturity;*
- *trees at maturity should not touch or overhang the building;*
- *lower limbs should be removed up to a height of 2 metres above the ground;*
- *tree canopies should be separated by 2 to 5 metres;*
- *preference should be given to smooth barked and evergreen trees;*
- *large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards buildings;*
- *shrubs should not be located under trees;*
- *shrubs should not form more than 10% ground cover;*
- *clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation.*
- *grass should be kept mown (as a guide grass should be kept to no more than 100mm in height); and*

- *leaves and vegetation debris should be removed*
- **Conditions 90 and 93** to be amended to replace references to requirements prior to the issue of an occupation certificate to prior to commencement of the use to capture the intent of the timing for condition compliance, to read as follows:

90. Prior to commencement of the use as a solar farm, all approved landscaping, stormwater, fencing, road and associated works are to be completed




93. Prior to commencement of the use as a solar farm, a Rehabilitation and Decommissioning/Closure Plan must be prepared and submitted for approval by Council. The plan must include rehabilitation objectives and strategies, including:

- a) a plan for decommissioning, prepared or certified by an engineer, confirming that full remediation / restoration of the site to its former primary production use;*
- b) expected timeline for the rehabilitation program;*
- c) management controls regarding decommissioning and removal of all solar arrays and ancillary infrastructure, including methods, responsibilities of personnel and locations proposed for all waste disposal;*
- d) a commitment to remove all solar farm infrastructure including all works installed below the surface of the site;*
- e) the anticipated present value cost of decommissioning works, along with an explanation of the calculation of that cost (including a buffer for changes in market values/ inflation);*
- f) commitment to a financial security to cover the cost of decommissioning*
- g) Management and waste reduction initiatives proposed during all 3 phases of the development and a commitment as to where this waste will be disposed and/or recycled, without impacting on local waste facilities and in accordance with:*
 - *Protection of the Environment Operations Act 1997*
 - *Protection of the Environment Operations (Waste) Regulation 2014*
 - *Waste Avoidance and Resource Recovery Act 2001*
 - *NSW Environment Protection Authority (EPA) Waste Classification Guidelines*

Note: the Rehabilitation and Decommissioning/Closure Plan should be updated every 5 – 7 years to keep up with changes

NOTICE OF DETERMINATION (Section 4.7(2)(e) of the EP&A Act)

- The Panel requests that the Council undertake the required notification and registering of the Panel's determination.
- The Panel requests that Council note the Panels strong preference for future assessment reports relating to solar farm proposals and recommended draft conditions be formulated using the Regionally Significant Development Draft Standard Conditions of Consent for Solar Farms as a base.

PANEL MEMBERS	
 Sandra Hutton (Acting Chair)	 Graham Brown
 Clare Brown	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSWES-123 – Mid-Western – DA0170/2022
2	PROPOSED DEVELOPMENT	5MW Electricity Generating Works and Associated Infrastructure
3	STREET ADDRESS & LEGAL DESCRIPTION (LOT/DP)	Lot 286 DP756894, Lot 90 and 91 DP756897 33 Blain Road, CAERLEON
4	APPLICANT/OWNER	Simon Jones C/ Mid-Western Regional Council
5	TYPE OF REGIONAL DEVELOPMENT (Schedule 7; SRD SEPP 2011)	Council related development over \$5 million
6	MATTERS FOR CONSIDERATION (s 4.15(1) of the EP&A Act)	<p>a) The provisions of</p> <p>(i) Environmental planning instruments (s4.15(1)(a)(i)):</p> <ul style="list-style-type: none"> State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 Mid Western Regional Local Environmental Plan 2012 <p>(ii) Draft environmental planning instruments (s4.15(1)(a)(ii)): NIL</p> <p>(iii) Development control plans (s4.15(1)(a)(iii)):</p> <ul style="list-style-type: none"> Mid-Western Regional Development Control Plan 2013 <p>(iv) Planning agreements (s4.15(1)(a)(iiia)):NIL</p> <p>(v) the <i>Environmental Planning and Assessment Regulation 2000</i> (s4.15(1)(a)(iv)): NIL</p> <p>b) The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p> <p>c) The suitability of the site for the development</p> <p>d) Any submissions made in accordance with the Act or regulations</p> <p>e) The public interest</p>
7	MATERIAL CONSIDERED BY THE PANEL	<p>a) Council assessment report received: 1 June 2022</p> <p>b) Council memo or supplementary report received: 16 August 2022</p> <p>c) Written submissions during public exhibition: 1</p> <p>d) Total number of unique submissions received by way of objection: 1</p>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Site inspection: 24 November 2021 <ul style="list-style-type: none"> <u>Panel members</u>: Garry Fielding (Chair), Sandra Hutton, Graham Brown <u>Council assessment staff</u>: Kayla Robson <u>DPE</u>: Carolyn Hunt Briefing: 8 March 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Garry Fielding (Chair), Sandra Hutton, Peter Shelley, Katie Dicker

		<ul style="list-style-type: none"> ○ <u>Council representatives</u>: Kayla Robson ○ <u>DPE</u>: Carolyn Hunt and Brianna Cheeseman <ul style="list-style-type: none"> • Final briefing to discuss council's recommendation: 14 June 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Sandra Hutton (Acting Chair), Graham Brown, Clare Brown ○ <u>Council assessment staff</u>: Kayla Robson ○ <u>DPE representatives</u>: Carolyn Hunt • Final briefing to discuss council's Supplementary Assessment Report and recommendation: 23 August 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Sandra Hutton (Acting Chair), Graham Brown, Clare Brown ○ <u>DPE representatives</u>: Sung Pak
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Supplementary Assessment Report