

COUNCIL ASSESSMENT REPORT
WESTERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSWES-129 – RVA0002/2022
PROPOSAL	Electricity Generating Works (2 x 5MW Solar Farms) and Associated Infrastructure
ADDRESS	3B Sydney Road, Burrundulla (Lot 6 DP1069441)
APPLICANT/OWNER	Applicant: Timothy Allen - Beatty Hughes & Associates C/- IT Power Australia Pty Ltd Owner: Burrundulla Pty Ltd
DATE OF LODGEMENT	8 February 2022
REGIONALLY SIGNIFICANT CRITERIA	<p>Development Application subject of Review.</p> <p>Original application referred to Western Regional Planning Panel in accordance with the requirements of Schedule 4A of the Environmental Planning and Assessment Act 1979 and Clause 22 of the State Environmental Planning Policy (State and Regional Development) 2011, as the application is defined as 'private infrastructure' with a capital investment value exceeding \$5,000,000.</p> <p>The development application indicated a value of \$13,200,000 for all works.</p>
LIST OF ALL RELEVANT S4.15(1)(A) MATTERS	<ul style="list-style-type: none"> • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy (Planning Systems) 2021 • Mid-Western Regional Local Environmental Plan 2012 • Mid-Western Regional Development Control Plan 2013
DOCUMENTS SUBMITTED FOR CONSIDERATION	<p>Attachment 1: Development Plans (Revised 14 July 2022)</p> <p>Attachment 2: Additional Information submitted by Applicant 28 June 2022</p> <p>Attachment 3: Public Submissions</p> <p>Attachment 4: Referral responses:</p> <ul style="list-style-type: none"> • Roads and Maritime Services (Transport for NSW) • Essential Energy • NSW DPI Agriculture • Rural Fire Service <p>Attachment 5: Draft Conditions of Consent</p>

NUMBER OF SUBMISSIONS	Forty-two (42) Objections
RECOMMENDATION	Refusal
REPORT PREPARED BY	Kayla Robson
REPORT DATE	5 August 2022

Summary

An application has been received under Section 8.2 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* for the Western Regional Planning Panel (Panel) to review its decision on determination of DA0288/2019 (PPSWES-2) for a 10MW (two x 5MW systems) electricity generating works (Solar Farm) to be located on the southern side of the Castlereagh Highway, Burrundulla on land legally identified as Lot 6 DP1069441.

The original application was refused by the Panel on 21 December 2020. The reasons for refusal at that meeting are provided below:

1. *The proposed development is considered contrary to the relevant aims of the MWRLEP 2012 in that it is unlikely to conserve the significant visual elements that contribute to Mudgee's setting through the rural character existing along this section of the Castlereagh Highway, the main entry corridor into Mudgee (s4.15(1)(a)(i));*
2. *The proposed development is considered contrary to the objectives of the RU4 Primary Production Small Lots zone applying to the subject land under the MWRLEP 2012, in particular as it does not ensure the availability of land for intensive plant agriculture (s4.15(1)(a)(i));*
3. *The likely visual impact of the proposed development including the mitigation measures proposed is considered unacceptable having regard to the subject land's rural setting and its location on the main entry corridor into Mudgee (s4.15(1)(b));*
4. *As a result of the subject land's rural setting, its high visibility and flat topography and location on the main entry corridor into Mudgee, the site is considered unsuitable for the proposed development (s4.15(1)(c)).*

In reaching its decision, the Panel noted the following issues of concern:

- The negative visual impact of the proposal within its rural landscape setting.
- The negative visual impact of the proposal upon the rural character of the Castlereagh Highway.
- Unacceptable noise impacts during construction.
- Unacceptable impacts regarding reflective glare from the solar arrays.
- The impact of the proposal on property values.
- The inadequacy of proposed screen planting on the site.
- The questionable economic benefits flowing to Mudgee from the proposal.
- Concerns about decommissioning.

The Review application has been examined having regard to the matters for consideration detailed in Section 4.15 and Section 8.2 of the *EP&A Act*, and other statutory requirements which have been further considered in this report.

The Review application was placed on public exhibition, in accordance with the Mid-Western Regional Community Participation Plan 2019, from the 11 February 2022 to the 25 February 2022. A total of 42 objections were received during this period.

Briefing of the application was held with the Panel on the 8 June 2022 however, since this time, amended documents were provided on the 28 June 2022 following Council's final follow up request for information that remained outstanding since February 2022.

Lastly, the applicant submitted amended plans on the 14 July 2022 which is sought to be relied upon for determination of the application.

In summary, and based on the revised plans and documentation submitted by the applicant on 28 June 2022 and 14 July 2022, the key changes result in the following:

1. Modified setbacks to boundaries and the Castlereagh Highway (dated 30 June 2022) as follows:
 - 200m to the security fencing from the Highway;
 - 100m to the security fencing from the eastern boundary;
 - 50m to the security fencing from the western boundary; and
 - 95m (area A) and 250.5m (area B) to the security fencing from the southern boundary.
2. Modified landscaping layout (dated 1 July 2022) incorporating 3 metre high earth mounds at specific locations on the site including within the front setback and south eastern side setback;
3. Inclusion of an extension to water supply from the adjoining land / existing Water Access Licence (held in common ownership with the site) – this generates the need for a Water Supply Works Approval to be obtained under section 90 of the *Water Management Act 2000* unless an exemption would otherwise apply.
4. Proposed vegetation management plan (dated April 2022), water management plan (dated 20 May 2022), decommissioning plan (dated April 2022), and glare memorandum (dated 28 April 2022) to accompany a revised Landscape and Visual Impact Assessment (dated March 2022). It should be noted that the applicant has not updated the management plan documents for assessment with the Review application to align with the amended plans lodged on the 14 July 2022.

Recommendation

In accordance with sections 8.2-8.5 of the *EP&A Act*, the application is recommended for refusal as the revised development does not satisfactorily address or alter the original reasons for refusal.

Draft Conditions of Consent

Despite the recommendation of refusal, draft conditions of consent have been provided as Attachment 5 should the Panel wish to alter its original decision.

ASSESSMENT

Application History

Date	Event
21 December 2021	Application submitted
8 February 2022	Application lodged (fees paid) Referrals commenced Planning Panel initiated
23 February 2022	First request for information: <i>The following information is to be submitted to Council within 14 days:</i> 1. The 'revised glint and glare assessment' referred to in the SEE addendum. 2. The 'Decommissioning Assessment' referred to in the SEE addendum. 3. Confirmation of any modified screening (previously proposing 'shade clothe' material) along on the boundary fencing of the site. 4. A clear vegetation management plan confirming how the proposed new landscaping will be maintained until mature establishment (including method of water access / irrigation and frequency of maintenance activities) across the site.
11 February 2022 to 25 February 2022	Public exhibition period – 42 objections received.
24 February 2022	NSW DPI response received.
27 February 2022	NSW RFS response received.
3 March 2022	Request for response to Submissions: <i>Please find attached copy of submissions received during the exhibition period. Your response to the concerns raised is requested along with any further amendments you seek to the development to address the concerns raised. Should you not wish to provide a response, please advise Council as a matter of urgency.</i>
8 March 2022	Revised visual impact and glint and glare assessment provided.
22 March 2022	Essential Energy final response received.
7 April 2022	TfNSW response received.
8 June 2022	Panel briefing completed.
27 June 2022	Final letter request for information that remains outstanding issued by Council as instructed by Panel.
28 June 2022	Submission of Vegetation Management Plan, Glare Assessment, Decommissioning Plan for assessment.
29 June 2022	Submission of Water Management Plan for assessment.
14 July 2022	Submission of amended Site Layout and Landscape Plans. Not re-notified or re-referred at the direction of Panel due to the determination date already set by the Panel.

Further Relevant History

The proposed development is also the subject of Class 1 proceedings in the Land and Environment Court which were filed by the applicant on the 21 December 2021.

It is understood that the Section 34 Conference has been terminated and the Hearing is scheduled for the 21-23 September 2022.

Site description

The subject site comprises 67.33 hectares of vacant, agricultural land used historically for cropping activities and the grazing of livestock with scant mature paddock trees throughout the site, including a single row of mature eucalypts planted along the western boundary. A large dam is also located over a portion of the northern section of the site.

The land is situated off the Castlereagh Highway, 2.4km south-east of Mudgee. The site is surrounded by existing farm land with associated rural dwellings and smaller rural lifestyle holdings to the east and south of the site. The closest dwelling to the project area is approximately 105 metres from the southern boundary.

To the immediate west of the land, an existing cellar door with café and grape vines are found. Further west includes rural residential land (R5 zoning of land is located 685 metres west of the site) and single dwellings along with the Oaky Creek running in a north – south direction. The closest buildings from the proposed development site includes the Burrundulla winery (75 metres from the boundary of the site to the west) and a dwelling (110 metres from the boundary of the site to the south). See Figures 1 and 2 below depicting the subject site.

The proposed development footprint still seeks to occupy a total area of 26 hectares of the 67.33 hectare site in two (2) systems, each comprising 5MW of AC capacity, separated by the existing dam and drainage line which bisects the site.



Figure 1: Site Plan



Figure 2: Location Map

Proposed development including amendments

The application documentation submitted with the Review details the following key elements of the proposal:

1. Rotating solar modules with an array pitch of 6.25m are to be installed with each photovoltaic (PV) panel placed on galvanized steel driven piles up to a minimum 1.5m, with a maximum overall height of each row of panels shown to be approximately 2.75m from finished ground level;
2. The proposal seeks to retain an AC output of 10MW;
3. Construction of two (2) 3MW inverters and transformer stations within the centre of each system arrangement, mounted on a skid base with an oil bund and have an overall maximum height of 2.77 metres, also incorporating high and medium voltage switch gear – it should also be noted the applicant now seeks to reserve area for future 'BESS Stations' adjacent to the proposed inverter locations;
4. Trenching of underground cables from the inverter stations to an existing 22kV power line at the northern end of the site;
5. Modified security fencing around the arrays comprising galvanized wire chain-link and barb wire toppers to a height of maximum 2.3 metres, with one (1) main access gateway from the Castlereagh Highway and one side access gate from the western side;
6. One (1) laydown and car parking area, reduced from 3, located outside of the security fencing and within the 200m front setback from the Castlereagh Highway;

7. Landscaping has been amended to include '1. Native screen planting 10metres wide', '2. Mounding (max 1:5 slope to 3metres tall) with scattered trees in pasture' and '3. scattered trees in pasture';
8. 50 construction workers are still suggested to be required during a 6 month construction period and upon operation, maintenance will be carried out quarterly by a crew of 2 – 3 people; and
9. Increasing the proposed life of the project from 30 years to 35 years.

Figure 3 below provides the site arrangements of the original development with a full copy of the revised layout plan included within Figure 4 and Attachment 1.

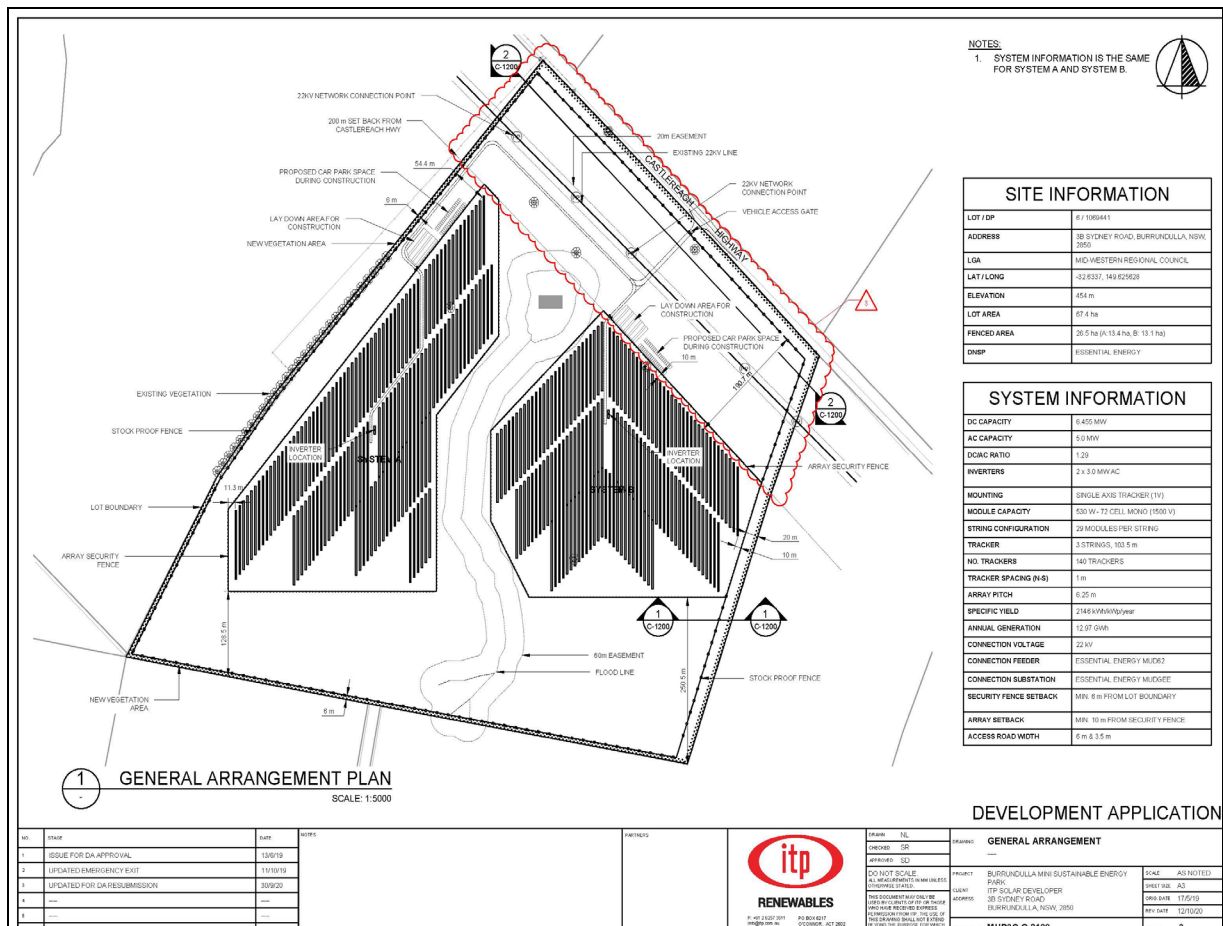


Figure 3: Site Layout Plan - October 2020 (original DA)

- Proposed vegetation management plan (dated April 2022),
- Water management plan (dated 20 May 2022), and
- Decommissioning plan (dated April 2022).

5. Updated reports for assessment:

- Glare memorandum (dated 28 April 2022)
- Landscape and Visual Impact Assessment (dated March 2022).

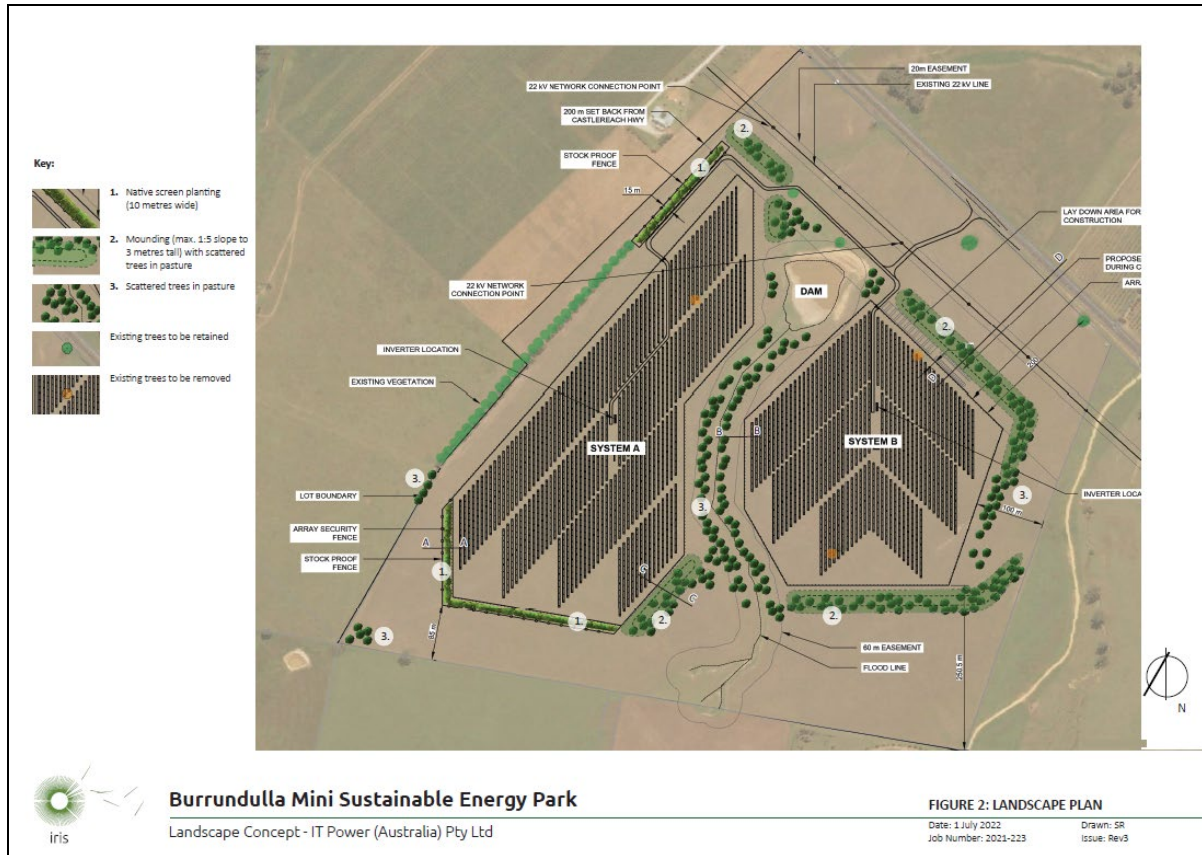


Figure 5: Revised site layout with landscaping detail - July 2022

Whilst the applicant has not provided a response to each of the grounds for refusal, an addendum letter has been provided responding to key issues raised in the assessment which is included within Attachment 2 and is summarized (in the context of the reasons for refusal) below:

Reasons for Refusal	Applicants Response (Zenith Town Planning Pty Ltd)
<i>The proposed development is considered contrary to the relevant aims of the MWRLEP 2012 in that it is unlikely to conserve the significant visual elements that contribute to Mudgee's setting through the rural character existing along this section of the Castlereagh Highway, the main entry corridor into Mudgee (s4.15(1)(a)(i));</i>	<p><i>The proposal is satisfactory having regard to the statutory framework including the objects of the EPA Act, the aims of MWRLEP 2012 and zone RU4 objectives for the following reasons:</i></p> <ul style="list-style-type: none"> <i>• A rural site close to the township is necessary to allow connection to existing infrastructure to enable power to be directed to Mudgee. As demonstrated by investigations into amenity impacts carried out for the proposed development such as the effects of noise, traffic and the like, and subject to implementation of the recommendations of those studies to mitigate impacts, the development is not expected to impact on the setting of Mudgee and constitutes orderly and</i>

The proposed development is considered contrary to the objectives of the RU4 Primary Production Small Lots zone applying to the subject land under the MWRLEP 2012, in particular as it does not ensure the availability of land for intensive plant agriculture (s4.15(1)(a)(i));

economic development.

- The site is located on the Castlereagh Highway on approach to Mudgee, however, the existence of commercial development and a range of land uses including bulky goods, light industry and Council infrastructure means that the proposal would be compatible with the existing landscape and land uses.*

- Electricity generating works are an appropriate use in the zone otherwise they would be prohibited. The facility when operational does not emit noise, dust or odours and therefore cannot be in conflict with other primary production activities in the surrounding rural zone. The applicant will provide additional information to demonstrate that impacts on the occupants of dwellings in proximity to the proposal have been addressed such as noise emissions, visual impacts and the effects of glare and glint.*

- It is considered that the solar farm can co-exist with existing and future rural residential development. The owners of rural land have a reasonable expectation to be able to develop permissible uses and inhabitants of residential or rural residential zones purchase and build with the knowledge that rural uses exist and will continue to be developed on nearby rural land. The operational lifespan of the development is 35 years. Following decommissioning the land could be made available if necessary for urban expansion.*

- The proposal will not prevent future agricultural use of the land upon decommissioning. Farming of the site will continue and the land owner is committed to grazing sheep and lambs beneath and amongst photovoltaic panels - a use that is defined as extensive agriculture and permitted without consent in zone RU4. Elsewhere on the land, intensive agriculture may continue to be carried out.*

- Zoning of the land as RU4 is in recognition of Council's preferred use of the land to utilise natural resources, in this case solar energy. The solar farm is appropriate development in a rural area due to the size of the parcel of land that is needed for such projects and the ability to co-locate with ongoing agricultural activities. The solar farm helps to diversify rural activities and farm income and will not conflict with adjoining land uses. This is in addition to the creation of employment for 50 workers for 6 months during the construction phase. Restaurants, cafes, bakeries, supermarkets, pubs, newsagents and accommodation providers would all benefit from the additional custom this will bring.*

- The generation of electricity using solar photovoltaic panels is essentially a primary production use that that requires a rural location. The photovoltaic panels harvest sunlight (solar radiation) and convert that*

	<p>resource to electricity in the same way that farming harvests sunlight and water to grow crops. There is no secondary industry or manufacturing involved in the generation of electricity by sunlight. This fact has been accepted by the Western Regional Planning Panel as evidenced by granting consent to the subdivision of land to be occupied by a solar farm to a lot size less than permitted by the relevant environmental planning instrument at Hay and Hillston.</p>
<p>Council comment:</p> <p>There has been no significant change to the proposed development that alters the original concerns raised in the assessment or the reasons for refusal. The development still fails to conserve the significant visual elements that contribute to Mudgee's setting through the rural character existing along this section of the Castlereagh Highway, the main entry corridor into Mudgee and the proposal does not ensure the availability of land for intensive plant agriculture.</p> <p>The panels will occupy 29 hectares of the 67.3 hectare allotment alone and with the recent amendments to now also include 3 metre high bunds with landscaping on top at the the north, east and south-eastern sections of the land, outside of the panel array footprint. This is a significant amount of fill to be placed on a flat parcel of land, further reducing the ability for the site to be used for intensive plant agricultural purposes.</p>	
<p><i>The likely visual impact of the proposed development including the mitigation measures proposed is considered unacceptable having regard to the subject land's rural setting and its location on the main entry corridor into Mudgee (s4.15(1)(b));</i></p> <p><i>As a result of the subject land's rural setting, its high visibility and flat topography and location on the main entry corridor into Mudgee, the site is considered unsuitable for the proposed development (s4.15(1)(c)).</i></p>	<p><i>Planning Proposal General Amendment 2019 was exhibited between 24 May and 7 June 2019 prior to lodgement of the development application on 14 June 2019. In accordance with section 4.15 of the EPA Act, the planning proposal was considered in the original SEE submitted with the application. The planning proposal was a review of visually sensitive land and caused an amendment to clause 6.10 Visually sensitive land near Mudgee of Mid-Western Regional LEP 2012. The effect was to map the development site and surrounding land at Burrundulla as visually sensitive.</i></p> <p><i>The considerations of clause 6.10 read:</i></p> <p><i>Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:</i></p> <p><i>a) will complement the visual setting forming the backdrop to Mudgee, and</i></p> <p><i>(b) will be designed, set back and sited to respond sympathetically to the landform of the site on which the development is proposed to be carried out and will minimise visual intrusion.</i></p> <p><i>A revised visual impact assessment and amended plans are to be submitted with the application to review the proposal. This visual assessment includes landscaping with native endemic shrubs that will grow to a height of 3 metres setback between security and/or stock fencing and development area</i></p>

	<p>boundaries. Additional planting is proposed on all sides of the proposed array to ensure screening from the Castlereagh Highway and any other public places and to better screen the proposal from nearby receptors within the visual catchment of the development site. The proposed screening will ensure that the development is compatible with the visual setting of the entry to Mudgee.</p> <p>The parts of the site to be used to install rows of PV modules are flat. The drainage line and small farm dam in the centre of the development site is to remain and a setback of 30 metres from modules to the edge of the drainage line is to be incorporated. The array will be setback approximately 200 metres from the Castlereagh Highway and approximately 100 metres from the eastern and southern boundaries to further minimise visual intrusion.</p> <p>The PV arrays are mounted on a single axis tracking system whereby the panels rotate to remain perpendicular to the sun. The panels will have a horizontal height of 1.64 metres with the peak of the modules reaching an approximate maximum height of 2.75 metres when the array is fully tilted to 60 degrees from horizontal, i.e. in the early morning and late evening. The modules will have a uniform height above natural ground level similar to neighbouring plantings of grapes for wine production. Solar photovoltaic (PV) panels are constructed of dark, light-absorbing material and covered with anti-reflective coating. In order to maximise the efficiency, the panels are designed to limit reflection and to absorb around 98% of sunlight received. The glare generated from solar panels is significantly lower than many other surfaces, including water. However, the metal frames surrounding panels have the potential to reflect sunlight. In this case and due to the sensitivity of the landscape to visual change, the frames are to be anodized black to minimise potential for reflectivity. The solar farm incorporates non-reflective materials as reflectivity is lost energy and indicative of inefficiency in a solar system. An updated assessment of the potential effects of glare and glint from the panels has been prepared and will also be submitted with the application to review the proposal.</p>
	<p>Council comment:</p> <p>The modifications to the landscape plan recently submitted in order to address the visual impacts of the proposal is considered to further exacerbate the concerns previously raised regarding the impacts of the development on the rural locality and the suitability of the site for the development.</p> <p>The Burrundulla area has a generally flat terrain which adjoins the nearby creeks and Cudgegong River systems. The surrounding valley then increases in topography to the areas of Mount Frome in the north and the Avisford Nature Reserve in the south.</p>

Both areas form part of the significant visual catchment, contributing to the rural character of the area which creates the primary 'backdrop' associated with the main entry corridor into Mudgee. The area has been mapped, remaining consistent with Council's Comprehensive Land Use Plan and Local Strategic Planning Statement, and requires protection for the community and visitors to the region as a result of its highly valued scenic character.

The modified development does not address the key issue of visual impacts on the locality and the inclusion of 3m high, elongated earth mounds in order to 'screen' the development from the Highway and to the south-eastern landowners does not consider the amount of fill required for this to be successful nor the impacts the placement of such a significant amount of fill will have on the future use of the land.

The proposal, as modified, is therefore considered to remain unacceptable having regard to the subject lands rural setting, its location on the main entry corridor into Mudgee, its high visibility, existing flat topography and impacts the proposed mounding will have on the site and locality. It should further be noted that the Visual Assessment has not been updated to accommodate the revised landscape plans provided on the 14 July 2022.

LEGISLATIVE REQUIREMENTS

Environmental Planning and Assessment Act 1979

Section 1.3 – Objects of Act

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

Comment: It is not considered that the revised development proposal alters the previous assessment of compliance with the Objectives of the EP&A Act. The proposed development does not seek to promote the social and economic welfare of the community due to the significant lack of economic benefit during both the construction and operational phases of the development. There are significantly limited and only short-term employment opportunities generated by the proposal that

does not contribute or benefit the ongoing or long term welfare of the wider Mid-Western community.

Whilst Council encourages and promotes ecologically sustainable development, supporting diversification with renewable energy forms, the proposed site location is considered to be unsuitable for the development and does not promote good design or positive visual or amenity outcomes, in this circumstance.

The proposal is not considered to be for the orderly use or development of the land. The site is located on the primary gateway to Mudgee from the southeast, abutting rural residential and agricultural land, along with a number of existing nearby dwelling-houses already constructed. The development footprint will occupy a large proportion of the land and will cause a significant modification to the existing character of the locality both during and after construction of the electricity generating works over the site. Furthermore, nearby land towards Mudgee (Spring Flat Road) and Rocky Waterhole Road have been identified for future rural residential opportunities which will create land use conflicts with the proposed development.

Section 1.7 - Application of Part 7 of Biodiversity Conservation Act 2016 and Part 7A of the Fisheries Management Act 1994

The revised development proposal does not alter the previous assessment of compliance under Part 7 of the Biodiversity Conservation Act 2016 or Part 7A of the Fisheries Management Act 1994.

Section 4.10 - Designated Development

The revised development proposal is not identified as Designated Development pursuant to Section 4.10 of the *EP&A Act* and Schedule 3 of the *Environmental Planning and Assessment Regulation 2000 (EP&A Regulation)*.

Section 4.14 Consultation and development consent – certain bushfire prone land

The revised development proposal does not alter the previous assessment of compliance with Section 4.14 of the *EP&A Act* and whilst the site is not currently mapped to be bushfire prone land, it is identified to be surrounding by grassland (including managed land) to the west, east and south. The NSW Rural Fire Service were consulted on the revised proposal and updated conditions have been recommended accordingly.

Section 4.46 - Integrated Development

The revised development proposal has been identified as Integrated Development pursuant to section 4.46 of the (EP&A Act) as a result of the amended plan to extend water from adjoining lands that will require a Water Supply Works Approval in accordance with Section 90 of the Water Management Act 2000. The applicant has not however nominated the revised proposal as integrated development and therefore such works will require the separate approval of the relevant Stage Government Agency unless an exemption otherwise applies.

Section 4.15- Evaluation - Environmental Planning & Assessment Act 1979

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application.

4.15(1)(a) Requirements of Regulations and Policies

(i) Do any environmental planning instruments (SEPP, REP or LEP) apply to the land to which the Development Application relates?

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The SEPP applies to the proposal as Mid-Western Regional Council is listed within Schedule 1 of the SEPP and the area of land associated with the proposal in the same ownership is greater than 1 hectare in size. The revised proposal however, does not involve the clearing of core koala habitat nor is significant native vegetation proposed to be removed. As a result, the revised development proposal does not alter the previous assessment of compliance with the SEPP requirements.

State Environmental Planning Policy (Resilience and Hazards) 2021

The proposed development is defined as an 'Electricity Generating Works' which is not currently a prescribed 'industry' or 'storage establishment' under the definitions of the Policy, and currently no battery storage is proposed at this time (the application has been amended to include a 'future BESS area' however).

Further, the prior assessment did not reveal any potentially contaminating activities upon the subject site that would impact on the proposed development proceeding. As a result, no further consideration of the SEPP is necessary.

State Environmental Planning Policy (Transport and Infrastructure) 2021

The proposed development was previously submitted to Council in accordance with Part 3, Division 4, clause 34 of the ISEPP being for the construction and operation of a utility-scale photovoltaic (PV) electricity generating system. The subject land is zoned RU4 Primary Production Small Lots under MWRLEP 2012, which is identified as being a prescribed rural zone under the SEPP. As such, the proposal remains permissible with consent under the provisions of the consolidated SEPP.

The proposed development retains frontage to a classified road network to the north and also proposes a new access crossover into the site from the Castlereagh Highway. The previously application was referred to Roads and Maritime Services (now known as Transport for NSW (TfNSW)). The Review application was subsequently referred to TfNSW with no objections raised on the basis of the previous concurrence provided which remains unaltered by the amended proposal. This includes the requirement to include an upgraded access treatment into the site to accommodate the largest vehicle proposed and a bus would be used to commute 50% of workers into the site during construction. A Section 138 application will be required to be referred to TfNSW for concurrence should the application be approved.

State Environmental Planning Policy (Planning Systems) 2021

The previous application was submitted in accordance Clause 20 and Schedule 7 (5)(a) of the State Environmental Planning Policy (State and Regional Development) 2011 with the proposal deemed Regionally Significant Development for the purposes of 'private infrastructure' having a capital investment value exceeding \$5,000,000.

The application still retains a CIV greater than \$5,000,000 and the Review application is to be determined by the Western Regional Planning Panel in accordance with Section 8.2 of the *EP&A Act*.

Mid-Western Regional Local Environmental Plan 2012 (MWRLEP 2012)

The following clauses of the Mid-Western Regional Local Environmental Plan 2012 have been assessed as being relevant and matters for consideration in assessment of the Development Application.

Clause 1.2 Aims of Plan

The aims of the MWRLEP 2012 is as follows:

- (a) to promote growth and provide for a range of living opportunities throughout Mid-Western Regional,*
- (b) to encourage the proper management, development and conservation of resources within Mid-Western Regional by protecting, enhancing and conserving—*
 - (i) land of significance to agricultural production, and*
 - (ii) soil, water, minerals and other natural resources, and*
 - (iii) native plants and animals, and*
 - (iv) places and buildings of heritage significance, and*
 - (v) scenic values,*
- (c) to provide a secure future for agriculture through the protection of agricultural land capability and by maximising opportunities for sustainable rural and primary production pursuits,*
- (d) to foster a sustainable and vibrant economy that supports and celebrates the Mid-Western Regional's rural, natural and heritage attributes,*
- (e) to protect the settings of Mudgee, Gulgong, Kandos and Rylstone by—*
 - (i) managing the urban and rural interface, and*
 - (ii) preserving land that has been identified for future long- term urban development, and*
 - (iii) promoting urban and rural uses that minimise land use conflict and adverse impacts on amenity, and*
 - (iv) conserving the significant visual elements that contribute to the character of the towns, such as elevated land and the rural character of the main entry corridors into the towns,*
- (f) to match residential development opportunities with the availability of, and equity of access to, urban and community services and infrastructure,*
- (g) to promote development that minimises the impact of salinity on infrastructure, buildings and the landscape.*

Comment: It is considered that the development continues to conflict with the aims of the MWRLEP. This is based on the following:

- The proposal is to be located over 26ha of an existing primary production holding comprising of 67.33ha, containing class 3 soils.
- The proposal continues to reduce the extent, carrying capacity and likelihood of future agricultural production over the land. This has now been further exacerbated by the inclusion of 3m high mounds which results in extensive introduced fill placement over the highly productive agricultural site and therefore the development does not seek to conserve or protect the agricultural capacity of the site.

- The revised application does not commit to any intensive agriculture being undertaken on the site with a broad statement that sheep and lamb will continue to graze the land as extensive agriculture which does not require consent.
- The proposal will continue to remove a significant proportion of land identified as class 3 soils, therefore reducing the supply of agricultural production from the region.
- The site and surrounding lands are mapped within the Draft State Significant Agricultural Land supply which requires protection and conservation for agricultural purposes.
- The revised proposal still does not satisfactorily consider or provide appropriate mitigation measures to protect the broader scenic values and character of the existing rural landscape in this location with a lack of consideration towards land use conflicts with neighbouring properties which is also further exacerbated by the inclusion of 3m high mounds in a generally flat location to attempt to 'hide' the proposal from both private and public locations.
- The proposal does not conserve the setting or existing character of the Burrundulla area with the proposal to be closely located or abutting rural, rural residential and residential land on the immediate entry corridor to the Mudgee township;
- The proposal continues to generate immediate land use conflicts and will have long term adverse amenity and visual impacts on the locality due to the industrial form and nature of the proposal.

Clause 1.4 Definitions

The proposal is defined in accordance with the MWRLEP 2012 as a:

electricity generating works means a building or place used for the purpose of—

- (a) *making or generating electricity, or*
- (b) *electricity storage.*

Clause 2.2 Zoning of Land to Which Plan Applies

The land is zoned RU4 Primary Production Small Lots and is therefore subject to the Plan.

Clause 2.3 Zone objectives and Land Use table

The land is zoned RU4 Primary Production Small Lots pursuant to the MWRLEP 2012. The proposal, being an electricity generating works is permitted with consent in the RU4 zone. The objectives of the RU4 Primary Production Small Lots with comments is provided below:

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

Comment: The proposed amended development does not propose to encourage sustainable primary industry production such as 'agro-voltaic' or the like. Whilst a broad statement within the supporting addendum letter that sheep and lamb will continue to graze the land as extensive agriculture, there is no other details included to further enable sustainable primary industry on the site. As such, the proposal still does not achieve this objective of the RU4 zone.

- *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 use is considered to be in conflict with existing and surrounding uses as there is no 'primary industry enterprises' accommodated within the application submitted. The proposal is therefore not considered to be a primary industry enterprise (encouraging primary production employment opportunities), but continues to be a significant intensification of the land for an industrial land use.

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

Comment: As noted above, it is considered that the proposal will create land use conflicts within the existing RU4 Primary Production Small Lots zone and will also impact and encroach upon residential development opportunities to the west of the site. Nearby land to the west of the site has been identified in Council's Comprehensive Land Use Strategy as a long term opportunity for residential development along with Rocky Waterhole Road (to the north), also identified for future rural residential opportunities.

- *To ensure that land is available for intensive plant agriculture.*

Comment: The proposal seeks to remove 26ha of class 3 soil from a total current 2% available supply of class 3 agricultural land in the Mid-Western Region for an alternative development with no supporting intensive plant agriculture use incorporated into the design outcomes for the subject site. This is considered a significant loss to the local industry. Whilst the applicant contends this is a 'short term' loss, the significance of this loss based on the limited supply of productive agricultural land in the Region, has still not been established by the Applicant. To clarify, 'intensive plant agriculture' is defined under the MWRLEP 2012 as:

intensive plant agriculture means any of the following—

- (a) the cultivation of irrigated crops for commercial purposes (other than irrigated pasture or fodder crops),*
- (b) horticulture,*
- (c) turf farming,*
- (d) viticulture.*

The proposed development is therefore considered to significantly impact on the total land available for intensive plant agriculture opportunities for the next 35 years (which has now been increased from the previous application), and does not achieve this objective of the RU4 zone.

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

Comment: The proposed development will offer short term construction employment opportunities, however limited fulltime opportunities exist following construction with maintenance only proposed on a quarterly (to adhoc) basis. The employment generation is not however for a primary industry enterprise to operate from the site, and no multifunctional use of the land for intensive primary production is detailed in the current design of the proposal.

On the basis of the above assessment, the proposed development remains inconsistent, and conflicts with the objectives of the RU4 Primary Production Small Lots zone.

Clause 5.10 Heritage Conservation

The objectives of the clause is provided below:

- (a) to conserve the environmental heritage of Mid-Western Regional,*
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) to conserve archaeological sites,*
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.*

Comment: In accordance with the provisions of Clause 5.10 Heritage conservation of the MWRLEP 2012, a heritage listed item is identified to be located approximately 800 metres to the south east of the development. Under Schedule 5 of the MWRLEP 2012, the item is identified as the “Wallinga homestead” (item number I401).

The assessment of this heritage item was originally omitted from the SEE due to the limitation of a 500 metre catchment used within the visual impact assessment where the applicant states *‘as the land is generally flat it is unlikely that the site will be clearly visible from adjoining private properties and public roads beyond 500 metres’*.

The applicant has now included this property within the Visual Impact Assessment which has concluded that:

A desktop assessment of the potential for views from this property has been undertaken. While access to this property was not possible during the preparation of this assessment, analysis based on topographic and LiDAR data and subsequent site observations has confirmed that this property is unlikely to have a clear view to the proposal site and due to the distance and intervening landform and vegetation, and as such there would not be a visual impact from this property.

Further to the above requirements of Clause 5.10, the proposed development site does not have any existing recorded archaeological sites or items of aboriginal significance. A condition would however be required to be placed upon any consent ensuring that work is ceased should an item be discovered during construction.



Figure 6: Clause 5.10 MWRLEP 2012 Heritage Map

Clause 6.1 Salinity

The objectives and requirements of Clause 6.1 are provided as follows:

- (1) *The objective of this clause is to provide for the appropriate management of land that is subject to salinity and the minimisation and mitigation of adverse impacts from development that contributes to salinity.*
- (2) *Before determining a development application for development that, in the opinion of the consent authority, may affect the process of salinisation or is proposed to be carried out on land affected by groundwater salinity, the consent authority must consider the following—*
 - (a) *whether the development is likely to have any adverse impact on salinity processes on the land,*
 - (b) *whether salinity is likely to have an impact on the development,*
 - (c) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*
- (3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—*
 - (a) *the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment: The proposed development site is identified to be partly affected by salinity per Figure 7 below. Salinity occurs when salts naturally found in soil or groundwater mobilise, allowing capillary rise and evaporation to concentrate the salt at the ground's surface. This process can have a significant impact on the structural stability of concrete, brick or metal structures, also having a corrosive effect on steel reinforcing.

Whilst the area of impact is identified to follow the nature drainage line which bisects the site, the design of footings and subsequent earthworks will need to ensure that there are no significantly adverse impacts on the land as a result of salinity which may be managed as a conditional matter, with best practice management techniques required.



Figure 7: Salinity Mapping

Clause 6.2 Flood planning

The subject site is not identified as being within the flood planning area in accordance with the Mudgee Flood Study 2021. It is noted however that the site contains an existing dam which may present localised flooding over the site. The development has been designed to provide a minimum 40 metre setback from the dam and natural drainage line. No further consideration is therefore necessary in respect of clause 6.2 of the MWRLEP 2012.

Clause 6.3 Earthworks

The provisions under Clause 6.3(3) are provided follows:

- (3) *Before granting development consent for earthworks, the consent authority must consider the following matters—*
 - (a) *the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development,*
 - (b) *the effect of the development on the likely future use or redevelopment of the land,*
 - (c) *the quality of the fill or the soil to be excavated, or both,*
 - (d) *the effect of the development on the existing and likely amenity of adjoining properties,*
 - (e) *the source of any fill material and the destination of any excavated material,*
 - (f) *the likelihood of disturbing relics,*

- (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Note. The *National Parks and Wildlife Act 1974*, particularly section 86, deals with harming Aboriginal objects.

Comment: The proposal continues to involve extensive earthworks including piles driven for each PV panel up to a depth of 3.5 metres, levelling to create hardstand areas including the car park, and significant trenching up to 1.2 metres for all underground cables to service the proposal.

The subject land will require management measures to be implemented during the excavation works for sediment and erosion control as well as management of the soil / fill material for bunds in stock piles, particularly towards the drainage line and existing dam onsite. It is considered that this is able to be addressed as conditional matters.

Whilst the works are likely to impact the natural drainage patterns across the site, concern is now also raised in relation to the effect the development will have (now including 3 metre high bunds with the importation of fill material) on stormwater drainage and the future use of the site, including rehabilitation of the site for the purposes of reinstating primary production activities. The applicant states within the decommissioning plan that post the use of the site for electricity generating works, all infrastructure will be removed. The matter of decommissioning would need to be conditioned accordingly and ensure all underground works are also removed however, the extent of fill to be placed over the land has not been clarified by the applicant in respect of its removal post use of the site for an electricity generating works.

Concern continues to be raised in relation to the effects the proposal will have on the existing and likely amenity of adjoining properties (Clause 6.3(3)(d)). As the proposal is to be located within close proximity of existing dwellings (closest being 105 metres to the southern boundary) and an existing winery / cafe who will have direct amenity impacts, such as noise, glare and visual impacts as a result of the proposal whilst the landscape buffers are still being established.

Clause 6.4 Groundwater vulnerability

The site is partly identified as groundwater vulnerable in accordance with Council's mapping – see Figure 8 below.

Matters contained within clause 6.4(3) and (4) is provided below:

- (3) Before determining a development application for development on land to which this clause applies, the consent authority must consider the following—*
 - (a) the likelihood of groundwater contamination from the development (including from any on-site storage or disposal of solid or liquid waste and chemicals),*
 - (b) any adverse impacts the development may have on groundwater dependent ecosystems,*
 - (c) the cumulative impact the development may have on groundwater (including impacts on nearby groundwater extraction for a potable water supply or stock water supply),*

- (d) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.
- (4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—
- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or
 - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment: The proposal continues to include steel piles being driven for each PV panel to a depth of up to 3.5 metres along with trenching for underground cables throughout the site. Further, the proposal will incorporate aboveground transformer stations with an oil bunded skid (in the form and shape of shipping containers) which enables the panels to rotate and track the movement of the sun throughout the day.

Two (2) existing groundwater bores (GW800396 and GW802645) are located within 500 metres of the proposed development however it is considered that the natural level of standing water within the ground water table is unlikely to be significantly affected by the proposed drilling and excavation works up to 3.5 metres and the existing water supplies in close proximity to the works are also unlikely to be significantly impacted.

No testing has however been undertaken onsite to support the proposed amended development.



Figure 8: Groundwater Vulnerability MWRLEP 2012 Mapping

Clause 6.5 Terrestrial biodiversity

The proposal is not located in any area identified as 'Moderate or High Biodiversity Sensitivity' under the MWRLEP 2012 - see Figure 9 below. No further consideration is therefore required on this basis.

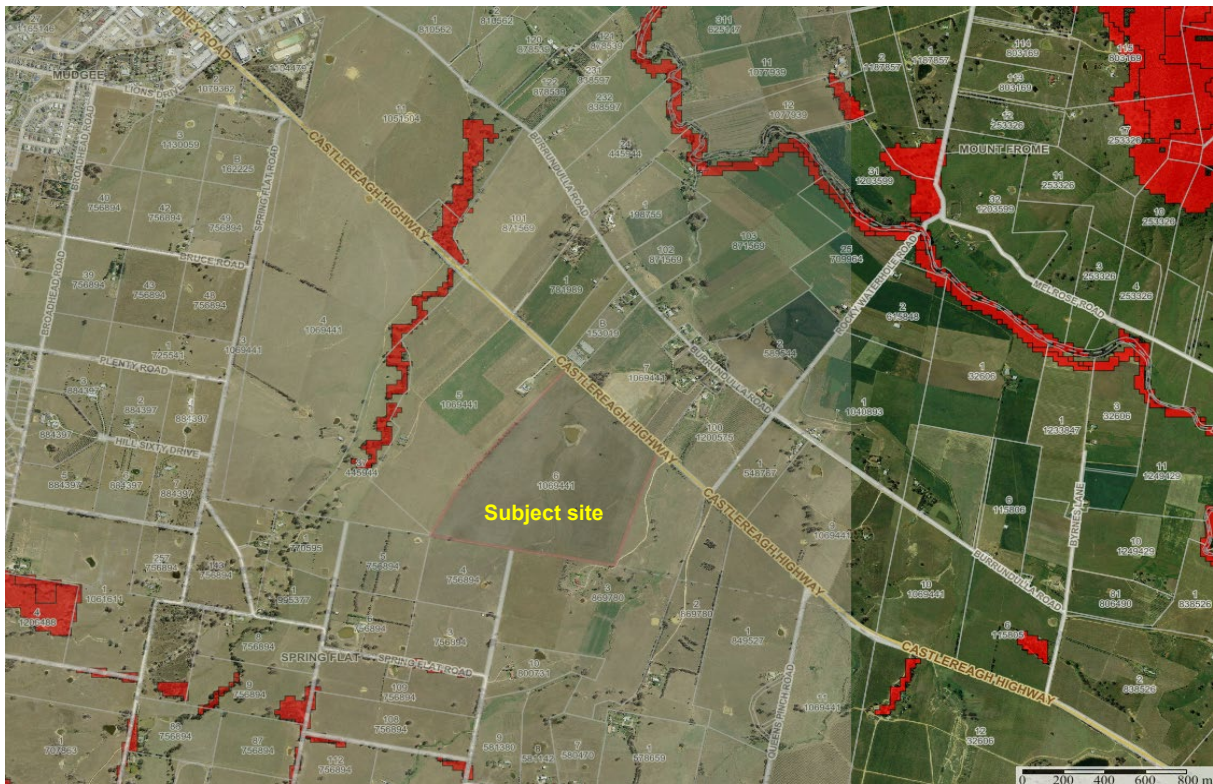


Figure 9: Terrestrial Biodiversity MWRLEP 2012 Mapping

Clause 6.8 Airspace Operations – Mudgee Airport

In accordance with clause 6.8 of the MWRLEP, the objectives of this clause are as follows—

- (a) to provide for the effective and ongoing operation of the Mudgee Airport by ensuring that such operation is not compromised by proposed development that penetrates the Limitation or Operations Surface for that airport,
- (b) to protect the community from undue risk from that operation.

Comment: Whilst the subject site is not located with the Obstacle Limitation Surface Map, the Panel were concerned by the impact of glare as a result of the development on airspace operations. Upon contacting CASA in relation to this matter, the following advice was provided:

In relation to the installation of solar panels and/or farms near to and on airports, CASA's advice is that solar assessments should be conducted in accordance with the FAA guidance material. The crux of that advice is that any solar installation on an aerodrome or within 2nm of a runway end should be subject to a glare analysis using the SANDIA (now Forge Solar) measuring software endorsed by the FAA.

The highlighted relevant section is below. As a result of the proposal being located greater than 2nm of the runway, the glare assessment has not included any reference to potential impacts on airport operations.

Standard for Measuring Ocular Impact

FAA adopts the *Solar Glare Hazard Analysis Plot* shown in Figure 1 below as the standard for measuring the ocular impact of any proposed solar energy system on a federally-obligated airport. To obtain FAA approval to revise an airport layout plan to depict a solar installation and/or a “no objection” to a Notice of Proposed Construction Form 7460-1, the airport sponsor will be required to demonstrate that the proposed solar energy system meets the following standards:

1. No potential for glint or glare in the existing or planned Airport Traffic Control Tower (ATCT) cab, and

2. No potential for glare or “low potential for after-image” (shown in green in Figure 1) along the final approach path for any existing landing threshold or future landing thresholds (including any planned interim phases of the landing thresholds) as shown on the current FAA-approved Airport Layout Plan (ALP). The final approach path is defined as two (2) miles from fifty (50) feet above the landing threshold using a standard three (3) degree glidepath.

Ocular impact must be analyzed over the entire calendar year in one (1) minute intervals from when the sun rises above the horizon until the sun sets below the horizon.

Clause 6.9 Essential Services

In accordance with clause 6.9 of the MWRLEP, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the proposed development are available or that adequate arrangements have been made to make them available when required—

- (a) *the supply of water,*
- (b) *the supply of electricity,*
- (c) *the disposal and management of sewage,*
- (d) *stormwater drainage or on-site conservation,*
- (e) *suitable road access.*

Comment: The subject site is not serviced, having no current Council services such as water or sewer. The land is burdened by an electrical easement to the northern boundary.

The applicant has now amended the application to include an extension of water supply from an existing Water Access Licence from the adjoining land held in common ownership. It is intended that this will fill a 20,000L onsite tank used during construction, for firefighting and also allowing for onsite watering of proposed landscaping (up to 6.7ML being suggested in the first year). There is no inclusion however of details in relation to the estimated demand for water in relation to construction activities such as dust suppression or for the ongoing maintenance such as cleaning of panels, which may be significant. This amendment will require a Water Supply Works Approval pursuant to Section 90 of the *Water Management Act 2000*. The applicant has stated that they do not seek a WMA approval and Council does not consent to these works.

The applicant has not confirmed how the internal site landscaping will be watered (i.e. via water tanker, manually by staff or via internal sprinkler system/s) and has stated that this will be determined as part of the detailed design. It is noted however that the Vegetation Management Plan states that soil moisture testing should be undertaken to determine frequency / amount of water required.

The applicant maintains that onsite maintenance would be quarterly and will be a *'separate contract to the general maintenance contract'*. The applicants states that *'The exact number of staff will be determined when the landscaping contract is tendered. Given the infrequency of watering, we do not expect this to change the original estimate of 2-3 staff for maintenance'*.

The Vegetation Management Plan submitted with the Review application states that a three-month (13 week) establishment period followed by a 21-month monitoring period, totaling 24 months, is proposed. Monthly actions are proposed during the establishment period, i.e. within the first 3 months. The Vegetation Management Plan does not accommodate the revised landscape plan detail however it is presumed that the general management of the landscaping will remain consistent with the previous plan proposed.

The application does not propose any modification to the proposed introduction of portable toilets for workers nor to the proposed access road arrangements.

As noted previously within this report however, the management of stormwater runoff as a result of the proposed placement of fill to accommodate the 3m high earth mounds has raised concerns which has not been addressed to date. It is expected that the mounds will create a dam effect, altering natural runoff over the site and cause sediment and erosion management requirements to be increased as a result of the development.

Clause 6.10 Visually sensitive land near Mudgee

The subject land is mapped as 'Visually Sensitive Land' pursuant to clause 6.10 of the MWRLEP 2012 – see Figure 10 below.

The objective of clause 6.10 is to *'protect the visually and environmentally significant land on the urban fringe of the town of Mudgee'*.

Pursuant to Clause 6.10(3):

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—

(a) will complement the visual setting forming the backdrop to Mudgee, and

- (b) *will be designed, set back and sited to respond sympathetically to the landform of the site on which the development is proposed to be carried out and will minimise visual intrusion.*

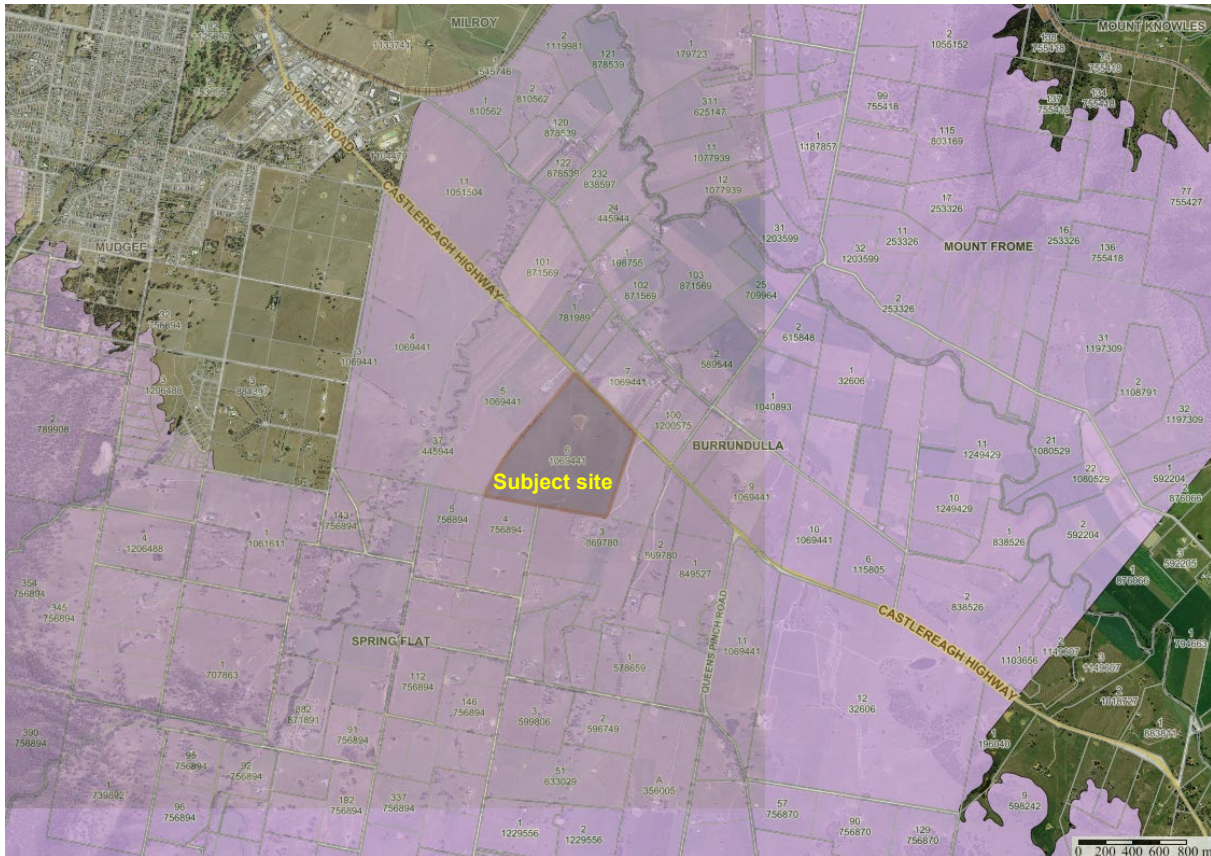


Figure 10: Visually Sensitive Land MWRLEP 2012 Mapping

Comment:

The revised development has attempted to address this clause by now including 3m high elongated earth mounds within the front northern setback and at the eastern and south eastern areas of the site in order to screen the development from direct views. The applicant has also suggested that the glare assessment now provided to Council has included 'anti-reflective coating' on the panels and black frames around each panel, rather than galvanized frames are now proposed to reduce the impact of glare.

The proposals is to be located on gently undulating land with full frontage to the Castlereagh Highway. The Highway has been constructed at a higher elevation to the site, with land located further south also presenting a similar undulating profile of between 472 – 484m AHD. Further south towards Spring Flat and the Avisford Nature Reserve however, the land begins to steeply rise to elevations of up to 520-540m AHD which forms a natural rural 'backdrop' to the lower lying areas and the primary entrance road into Mudgee. This visual setting is also very similar at the northern areas of the site, rising to the higher elevations of Mount Frome. As a result, the need to guide and place developments in the area that will complement the visual setting, without intrusion, is of high significance.

Whilst the Applicant has submitted amended plans to provide a greater development setback from the Castlereagh Highway (200m) along with the earth mounds with landscaping and the parking / laydown area now located behind the mounds, the applicant has still failed to consider the significant visual intrusion and change in landscape character as a result of the proposed development.

The Visual Impact Assessment has not been updated to reflect the modifications to the landscape plans revised in July 2022 and has also not considered sensitive receptors (dwellings) from surrounding land located at higher elevations.

The applicant was also asked to clarify if the previous green shade cloth material was still proposed to be placed around the security fencing however no response to this request was provided. Notwithstanding, this proposed mitigation measure is still not supported by Council.

A Visual Impact Assessment has been provided with the review application (dated March 2022). The assessment has been conducted based on the previous landscape plans provided (excluding mounding) and has made the following key findings on views from the public domain (Castlereagh Highway, Spring Flat Road, Rocky Waterhole Road, Burrundulla Road):

TABLE 5-4 SUMMARY OF VIEWPOINT ASSESSMENT

		Without mitigation		With mitigation	
Viewpoint number and location	Sensitivity	Magnitude	Visual impact	Magnitude	Visual impact
Views from the Castlereagh Highway					
Viewpoint 1: View northwest from the Castlereagh Highway	Medium	Negligible	Negligible	Negligible	Negligible
Viewpoint 4: View from the Castlereagh Highway about 350 metres from the site	Medium	Low	Moderate-minor adverse	Negligible	Negligible
Viewpoint 5: View from the Castlereagh Highway alongside the site	Medium	Low	Moderate-minor adverse	Negligible	Negligible
Viewpoint 6: View southeast from the Castlereagh Highway	Medium	Low	Moderate-minor adverse	Negligible	Negligible
Views from Burrundulla Road					
Viewpoint 7: View south from Burrundulla Road	Low - medium	Low	Minor adverse	Negligible	Negligible
Views from Rocky Waterhole Road					
Viewpoints 8 and 9: Views from Rocky Waterhole Road	Low - medium	Negligible	Negligible	Negligible	Negligible
Views from Springs Flat Road					
Viewpoint 11: View north from Spring Flat Road	Low - medium	Low	Minor adverse	Negligible	Negligible
Viewpoint 12: View east from Spring Flat Road	Low - medium	Low	Minor adverse	Negligible	Negligible

Figure 10: View Point Assessment Summary Public Roads – VIA March 2022

The assessment proceeds to assess private dwellings within 1km of the site and has relied up the judgement of Tenacity Consulting V Warringah Council (2004) NSWLEC140. However, it is noted within the report that the *assessment team were not granted access to private dwellings on the adjoining sites and therefore were not able to take photographs, our team took photographs from the site, on the fence line nearest to the closest dwellings, and prepared photomontages from these locations.*

A summary of the assessment at assumed viewpoints of residences (not from the dwellings themselves) is provided below with table 6.2 of the report providing the full assessment undertaken:

TABLE 6-1 SUMMARY OF VIEWPOINT ASSESSMENT				
	Viewpoint number and location	Distance (dwelling to panel array)	Without mitigation	With mitigation
	Properties north of the Castlereagh Highway			
OP3	446 Rocky Waterhole Road, Burrundulla	460 metres	Low	Negligible
OP6	328 Burrundulla Road, Burrundulla	550 metres	Low	Negligible
	Properties south of the Castlereagh Highway			
OP20	46 Queens Pinch Road, Spring Flat	1.187 km	Negligible	Negligible
OP21	411 Spring Flat Road, Spring Flat	760 metres	Negligible	Negligible
OP 22	345 Spring Flat Road, Spring Flat	775 metres	Negligible	Negligible
OP 23	312 Castlereagh Highway, Spring Flat	335 metres	Low	Negligible

Figure 11: View Point Assessment Summary Dwellings– VIA March 2022

Notwithstanding the above, it is considered that the applicant has failed to consider the broader views of the site from surrounding land and minimise visual impacts of the proposal from elevated view points, including at various times throughout the day.

Further, there is still no confirmation of how the development will result in a negligible visual impact with the inclusion of landscaping as the sole mitigation measure that will ultimately take 2-3 years (as a minimum) to become established. It is highly likely that the landscaping proposed will take at least 5 years before it will see any mitigating effect on both the public and private domains. In addition, the assessment has failed to accommodate the significant landscape character change that the new landscape plans will cause as a direct result of large amounts of fill placed at various locations within the northern, eastern and south-eastern setbacks of the development.

On this basis, it is considered that the proposal will still not complement the visual setting of the area and will not protect the visual significance of the land located on the immediate approach into Mudgee.

4.15(1)(a) Requirements of Regulations and Policies

(ii) Draft environmental planning instruments (EPI)

No draft environmental planning instruments apply to the land to which the Development Application relates.

4.15(1)(a) Requirements of Regulations and Policies

(iii) Any development control plans

Mid-Western Regional DCP 2013

As previously noted in the original assessment, the previous application was submitted to Council following the public exhibition of an Amendment to the Mid-Western Regional DCP 2013 specifically relating to solar energy development in the Mid-Western Region. The DCP was updated as it already included wind farm controls and there were significant increases in inquiries relating to solar developments in the area that also required controls to be established.

Amendment 4 – Part 6.5 Solar Energy Farms was adopted by Council on 19 June 2019 (minute number 148/19) following a 28 day public exhibition period in May 2019, and commenced operation on 21 June 2019. The applicant at the time also lodged a submission in relation to the amendment to the DCP and was therefore aware of Council's expectations regarding solar farm developments in the Region.

The subject application was submitted to Council on 14 June 2019 however, an assessment of the proposal against the relevant provisions of the Mid-Western Regional Development Control Plan 2013 was not included within the Statement of Environmental Effects. In accordance with Part 1.4 of the DCP – Transition Provision, the applicant nominated that the application at the time be assessed against the provisions of Amendment 3. The applicant did not however provide an assessment of the proposed development against the provisions of Amendment 3 of the Development Control Plan 2013 within the Statement of Environmental Effects.

Of relevance to the content of both Amendment 3 and 4 of the DCP 2013 for the Mid-Western Region, consideration of the approach to be adopted to a DCP which are also identified planning principals, has been detailed in the following court cases:

- *Stockland Development v Manly Council [2004] NSWLEC 472;*
- *North Sydney Council v Ligon 302 Pty Ltd (1995) 87 LGERA 435, and in the later decision North Sydney Council v Ligon 302 Pty Ltd (No 2) (1996) 93 LGERA 23.*

The summarised planning principals for a DCP are identified as follows:

- *A development control plan is a detailed planning document which reflects a council's expectation for parts of its area, which may be a large area or confined to an individual site. The provisions of a development control plan must be consistent with the provisions of any relevant local environmental plan. However, a development control plan may operate to confine the intensity of development otherwise permitted by a local environmental plan.*
- *A development control plan adopted after consultation with interested persons, including the affected community, will be given significantly more weight than one adopted with little or no community consultation.*
- *A development control plan which has been consistently applied by a council will be given significantly greater weight than one which has only been selectively applied.*
- *A development control plan which can be demonstrated, either inherently or perhaps by the passing of time, to bring about an inappropriate planning solution, especially an outcome which conflicts with other policy outcomes adopted at a State, regional or local level, will be given less weight than a*

development control plan which provides a sensible planning outcome consistent with other policies.

- *Consistency of decision-making must be a fundamental objective of those who make administrative decisions. That objective is assisted by the adoption of development control plans and the making of decisions in individual cases which are consistent with them. If this is done, those with an interest in the site under consideration or who may be affected by any development of it have an opportunity to make decisions in relation to their own property which is informed by an appreciation of the likely future development of nearby property.*

As a result and to provide a comprehensive merits based assessment, Amendment 4 has been considered in addition to the provisions of Amendment 3 on the revised proposal, accordingly.

AMENDMENT 3 – Mid-Western Regional DCP 2013

Part 4.4 Signs

The application does not propose any signage as part of the development application.

It is noted however that a number of existing advertising signs are located within the front setback of the proposed development site. As no record of a development consent can be located for these existing signs, a condition will be recommended to ensure these are removed or development consent obtained. Alternatively a Development Control Order may be issued by Council.

Part 4.6 Industrial Development

The part applies to all development within industrial zones and industrial development generally.

DEVELOPMENT CONTROL REQUIREMENT

COMPLIANCE / COMMENT

Setbacks

Less than 2000m²:

Front 6m to street; nil side/rear secondary frontage 4m; site coverage 60%

Site area = 67.3ha

2001m² 5,000²:

Front 12m to street; nil side/rear; 10m secondary frontage; site coverage 55%

The revised development has a minimum front setback of 200 metres to the proposed security fencing and a minimum 50 metre side setback which complies. The proposed car park and construction laydown is also now relocated to be behind the 'mounding' located in the front setback and is a suitable modification.

Over 5,001m²:

Front 15m to street; nil side/rear; 12m secondary frontage; site coverage 50%

The proposal still seeks a 42% site coverage which complies.

Landscaping

- 5m in front for Sydney Road; 3m in front for all other;
- Landscaping in front to improve visual presentation from street;
- Side/rear setbacks to provide visual relief from public areas;

3 metre high (1:5 slope) mound with landscaping is now proposed at the northern front setback (within the 200m setback from the Highway). The Applicant does not propose mature species however this may be conditioned accordingly.

Internal landscaping is also now proposed.

DEVELOPMENT CONTROL REQUIREMENT	COMPLIANCE / COMMENT
<ul style="list-style-type: none"> – Must consist of mature trees and lawn which are low maintenance, drought and frost tolerant; – Must be provided in car parks if >10 spaces required 	
Design	
<p>Low scale building elements (display areas, offices, amenities) to be located at front and constructed in brick or concrete; roof materials non-reflective</p>	<p>The transformer / inverter stations will have a maximum overall height of 2.7 metres. The form of these structures will be steel enclosures. The other elements of the proposal will also be of steel construction including the piles and fencing, with PV solar panels, including steel framing and glass used throughout.</p> <p>Whilst the PV panels may be designed to be ‘non-reflective’ and ‘absorb’ light, the extensive steel utilised may present a glare to the Castlereagh Highway and adjacent properties until the landscaping is established.</p> <p>The Applicant has provided a new Glare Hazard Analysis that identified that Burrundulla Road, Castlereagh Highway and Rocky Waterhole Road have a glare hazard risk. It has identified they are for short sections of the roadways however the assessment proceeds to state that once the vegetation is established, there would be no glare risks identified. This is obviously going to take a minimum of 2-3 years to occur. Again, the subject assessment does not include elevated sensitive receptors.</p>
Design	
<ul style="list-style-type: none"> –Must be powder coated –Work/storage areas visible from street must be masonry or pre-coloured metal cladding, min. 2m height and set back from street –Gates set back from street by length of largest vehicle accessing site 	<p>The proposed plans provide fencing details including ‘galvanized’ wire chain link fencing up to 2.3 metres. This still does not comply. A condition may be imposed to require a powder coating be applied accordingly. In addition, a condition may be applied in relation to gates being setback from the road for the largest possible vehicle (during both construction and operation) to access the site.</p>
Utilities	
<ul style="list-style-type: none"> –Statement of servicing to be provided (water, sewer, stormwater) –Adequate provision for storage/handling waste –LTW application to be provided where liquid wastes proposed to be discharged to Council’s sewer 	<p>The only service available over the site is electricity with easements already over the land. As per the assessment under the MWRLEP 2012 provisions, water supply is now proposed to be extended to the site and will require water supply works approval under section 90 of the Water Management Act.</p> <p>Conditions may be imposed in relation to stormwater runoff, waste management and easements.</p>

DEVELOPMENT CONTROL REQUIREMENT	COMPLIANCE / COMMENT
–No buildings in utility easements	
Traffic and Access	
Traffic Access Report	Traffic report previously provided and remains unaltered by the proposal. Discussed elsewhere in report.
Site access: Loading/unloading facilities designed for largest vehicle	Loading to be undertaken within the subject site, a condition may be imposed.
Safe manoeuvring area	Manoeuvring to be undertaken within the site, a condition may be imposed.
No unsealed manoeuvring areas	Does not comply. All areas are proposed to be unsealed.
All vehicles enter/leave in forward direction; maximum 1 ingress and 1 egress point; no vehicular access to main road where alternative present	One (1) entry point to be provided from the Castlereagh Highway.
Car Parking	
Refer to Part 5.1 of DCP	Capable of achieving compliance. Refer to Part 5.1 below
Signage	
Refer to Part 4.4 of DCP	No signage is proposed.
Outdoor Noise and Lighting	
<ul style="list-style-type: none"> –Must comply with AS4282 Control of Obtrusive Effects of Outdoor Lighting –Windows, doors, wall openings arranged to minimise noise impacts on residences within 400m of residential zone –External plant enclosed to minimise noise impacts 	Acoustic assessment provided and addressed within the report. Lighting will be conditioned however construction hours will be limited to ensure lighting will not impact on adjoining lands.
Subdivision	
<ul style="list-style-type: none"> –Minimum 30m frontage; roads designed to AustRoads standards for B-Doubles –Lots provided with water and sewer –Stormwater drainage and water quality measures implemented (see Part 5.5 of DCP) –Lots serviced with telecommunications/underground electricity –New roads constructed of bitumen 	Not applicable.

Part 5.1 Car Parking

The proposal seeks to provide onsite parking for up to 50 workers during construction, or a bus may be used for transportation of workers to and from the site.

It is considered there is sufficient onsite area to accommodate parking however this area will require formalisation and may be conditioned accordingly to minimise impacts such as dust, and sediment and erosion control.

Part 5.3 Stormwater Management

Council's Development Engineer has provided comments and recommended conditions concerning management of stormwater runoff over the site.

Part 5.4 Environmental Controls

All relevant considerations have been discussed elsewhere in this report.

Part 6.1 Development in Rural Areas

Part 6.1 discusses development in the rural zones, it is important to highlight that the minimum setback requirements applicable to development in the RU4 zone is as follows:

- 60 metre Street Setback unless the lot is located on a State Highway then the required setback is 200 metres. The amended proposal therefore complies.
- 20 metre Side / Rear Setback and 15 metres for secondary frontage or corner lots. The amended proposal therefore complies.

AMENDMENT 4 – Mid-Western Regional DCP 2013

Part 6.5 Solar Energy Farms

Visual Impact	
–Must include an assessment of the scenic value and character of the locality, all significant vistas and local community values.	A new visual impact assessment has been provided but again only accommodate sites at a 1 kilometre radius of the development site and does not include elevated dwelling sites. The assessment has also not identified all dwellings within the 1km catchment. The visual impacts of the proposal have been assessed later in this report.
Siting to minimise impacts	
–The development should be sited and carried out to minimise impacts on or restrictions to grazing, farming, residential, tourism, business and forestry practices.	Does not comply – it is not considered that the project site selection avoids or minimizes impacts on surrounding land. Of particular concern is the noise impacts which continues to impact a large number of receptors during construction (9 properties) and glare impacts on the road network. This is further considered in the merits of this assessment below.
Physical adverse effects on adjoining land minimised	
– The development should be carried out that minimises any adverse physical effects on adjoining land and the development site.	The design has been amended to include a 10m defendable area between fencing and solar array. However, with the introduction of the mounding / significant fill, the impacts of storm water drainage diversions over the site and onto adjoining land, additional management conditions are required.
Cumulative impacts from other solar developments	
– Assessment to be included for existing built and approved but	The revised proposal still does not address cumulative impacts with existing or proposed

not constructed solar farms with identified cumulative impacts.	solar farms in the locality. A number of small and larger scale SSD solar farms are also proposed within the broader Mid-Western Region which is causing significant cumulative impacts associated with various issues including worker accommodation, traffic impacts, and social and economic impacts in the locality.
Consideration with the DPIE Solar Farm Guidelines, NPI and other Guidelines applicable to Solar Farms	
– Consideration with State Significant Development Guidelines for Solar Farm guidelines including site selection, NPI and other solar farm Acts, Rules or Regulations.	The revised proposal does not address the DPIE Solar Farm Guidelines.
Within 5km of any township	
– Assessment to demonstrate that the proposal will not impact on the scenic value and character of the locality where the proposal is with 5km of main townships.	The revised proposal provides a new visual impact assessment, along with a glare assessment however this only considers sensitive visual receptors within 1 kilometre of the site. The glare assessment considers a 2 kilometre radius of the site and concludes that public roadways and properties would be impacted by glare until the landscaping proposed is established.
Locational requirements	
<ul style="list-style-type: none"> – Should not be located within 500m of any dwelling not associated with the development. – Should not be located within 200m from a formed public road or 500m from a Regional or State Road. – Should not be located within 100m from a non-related property boundary. – Screening is not the only preferred method of minimising visual impact, solar arrays to be located in positions so as to have minimal visual impact on nearby properties. – Sensitive to existing related dwellings – noise and glare minimised. – Not surround a non-related property. 	<p>The revised proposal is still located within 500 metres of a dwelling to the south (existing dwelling is 105 metres from the boundary and 355 metres from the panel arrays).</p> <p>The proposal is to be located in a visually sensitive and prominent location from nearby properties and abuts a classified road network. The proposal seeks to screen the boundaries with mounds and vegetation which has raised new concerns as a result of the proposal.</p>
Construction Traffic shall only travel on approved route	
Assessment included in Traffic Report having regard to public safety, school bus hours and	Traffic Assessment included notes the peak travel periods during construction and seeks to avoid other peak travel periods. This requirement is

peak travel to work.	further enforced by Transport for NSW and Council's Development Engineer and remains unchanged by the revised proposal.
Road upgrades to support traffic movements	
Road works and / or bond may be required and determined by Council costs borne by developer. Internal roads shall be the responsibility of the developer and shall be adequately designed and constructed.	The previous Traffic Assessment provided includes a proposed road upgrade for the intersection with the site to conform with Transport for NSW requirements.
Infrastructure including temporary facilities	
All infrastructure to be included in the application including temporary facilities. All infrastructure to be located in low visual impact locations.	Proposal seeks to provide portable facilities during construction for workers with an extension of water from the adjoining land now proposed (subject to a WSWA under section 90 of the Water Management Act). All cables are to be located underground to support the solar farm with container style metal inverters and transformer stations to be located on the site.
Rights of Carriageways	
Rights of carriageways to be extinguished within 6 months of the proposal ceasing to operate, unless otherwise agreed with the landowner.	Not Applicable. Direct access to the site available from the Castlereagh Highway subject to suitable upgrades.
Removal of infrastructure	
Within 12 months of the solar farm ceasing to operate, all infrastructure is to be dismantled and removed from the site	Conditional matter.

Section 64/Section 7.12 Contributions

Mid-Western Regional Development Contributions Plan 2019

Pursuant to Council's Development Contributions Plan 2019, the development is submitted as an electricity generating works with a proposed cost of development greater than \$200,000, therefore a levy of 1% applies and is payable to Council.

Based on the submitted cost of \$13.2 Million, a contribution amount of \$132,000 will be required. As the proposed design has been modified is therefore recommended an appropriate condition be imposed to ensure the correct cost of the development is submitted with a report provided by a quantity surveyor.

Developer Servicing Plans for Water and Sewer 2008

In accordance with the Developer Servicing Plans for Water and Sewer (August 2008), the development does not increase the demand or loading upon Councils

infrastructure or require additional town water, sewer or trade waste services to the land or buildings. No charges can therefore be applied under the plan.

4.15(1)(a) Provisions of any Planning Agreement or Draft Planning Agreement – (1)(a)(iiia)

The applicant has not requested to enter into a Planning Agreement in respect of the proposed revised development.

Regulations –4.15(1)(a)(iv)

Environmental Planning and Assessment Regulation 2000

No matters prescribed by the Regulations impact determination of the Application.

Likely impacts of the development – 4.15(1)(b)¹

¹Including environmental impacts on both the natural and built environments, and social and economic impacts of the locality.

The following matters have been identified by Council and also the NSW Department of Planning Industry and Environment (DPIE) Solar Energy Guidelines as key environmental issues for consideration associated with any Solar Energy proposal.

(a) Context, Setting and Visual Impact

The Applicant has provided a new visual impact assessment which also included a glint and glare assessment prepared by Iris Visual Planning & Design (dated March 2022). The assessment was prepared to *include an assessment of the impact on views from the public domain (including the Castlereagh Highway and surrounding roads) and nearby private properties. The amenity impacts of glare will also be addressed with a glint and glare risk assessment considering the potential nuisance effect of glare on the amenity of private residential receptors.*

It should be noted that the Visual Impact Assessment (dated March 2022) has not been updated to reflect the modifications to the landscape plans provided with the Review application on the 14 July 2022 and has also not considered all sensitive receptors (dwellings) from surrounding land or those located at higher elevations. Photo montages have also been provided within the assessment report.

As noted from the above assessment against the requirements of clause 6.10 of the MWRLEP 2012, the objective of clause 6.10 is to *‘protect the visually and environmentally significant land on the urban fringe of the town of Mudgee’*. Pursuant to Clause 6.10(3):

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—

- (a) will complement the visual setting forming the backdrop to Mudgee, and*
- (b) will be designed, set back and sited to respond sympathetically to the landform of the site on which the development is proposed to be carried out and will minimise visual intrusion.*

Generally, the assessment has stated that the existing visual sensitivity for the local roads within the vicinity of the site (Castlereagh Highway, Burrundulla Road, Rocky

Waterhole Road, Spring Flat Road) are found to be '**medium**' to '**low medium**' – see Figure 10 above.

From a public domain perspective, this is not considered to be accurate. Council considers that that existing visual sensitivity to be **high sensitivity**. Furthermore, Council considers that the magnitude of change to be **medium to high**. This is reflective of the Guidance note EIA-N04 Guidelines for Landscape Character and Visual Impact Assessment, based on previous strategic planning work undertaken by Council in order to protect and conserve the unique landscape character of the Burrundulla and Spring Flat areas along with the large number of community submissions objecting to the proposed development.

The assessment proceeds to assess private dwellings within 1km of the site and has relied up the judgement of Tenacity Consulting V Warringah Council (2004) NSWLEC140. However, it is noted within the report that the *assessment team were not granted access to private dwellings on the adjoining sites and therefore were not able to take photographs, our team took photographs from the site, on the fence line nearest to the closest dwellings, and prepared photomontages from these locations.*

A summary of the assessment at assumed viewpoints of residences (not from the dwellings themselves) was provided with table 6.1 (Figure 11 above) and 6.2 of the report noting the visual impact on dwellings 446 Rocky Waterhole Road, 328 Burrundulla Road and 312 Castlereagh Highway to be 'low' without mitigation measures installed and 'negligible' once landscaping is installed. However, the applicant has failed to consider the broader views (up to 5km in accordance with the DCP) and from elevated viewpoints such as those residents on the southern side of Mount Frome that are accessible via Rocky Waterhole Road.

Further, there is still no confirmation of how the development will result in a negligible visual impact with the inclusion of landscaping as the sole mitigation measure that will ultimately take 2-3 years (as a minimum) to become established. It is highly likely that the landscaping proposed in this area will take at least 5 years before it will see any mitigating effect on both the public and private domains. In addition, the assessment has failed to accommodate the significant landscape character change that the new landscape plans will cause as a direct result of large amounts of fill placed at various locations within the northern, eastern and south-eastern setbacks of the development.

On the basis of the above, it is considered that the proposal remains unsympathetic to the locality and will not provide any meaningful mitigation measures to conserve the visual significance of the land located on the immediate approach into Mudgee.

(b) Access, Transport and Traffic

The original application was supported by a Traffic Report, with the application also considered by Transport for NSW (TfNSW) and Council's Development Engineer. The applicant does not propose any modifications to the upgraded access arrangements proposed from Castlereagh Highway and seeks to retain the commitment to transport workers to the site via bus to reduce the traffic impacts of increased single vehicles in this location.

It is considered that these matters may be able to be conditioned accordingly.

(c) Public Domain

The revised development will not impact the public domain in terms of recreation opportunities, the amount, location, design, use and management of public spaces, or pedestrian linkages between public spaces. There is however continued concern in relation to the visual impacts of the development on the rural character of the area when viewed from the public domain.

(d) Utilities

The subject site is burdened by an electrical easement for the 22KV network at the frontage of the site. There are no other utilities available to the site however the applicant has committed to extending water supply from the adjoining land as noted within this report. This will require separate approval under Section 90 of the Water Management Act.

(e) Heritage

As noted from the assessment under Clause 5.10 of the MWRLEP 2012, there are no immediate impacts identified to the curtilage of the Wallinga Homestead given the proximity of the site from the Heritage Item. Conditions may be imposed however in relation to uncovering of unknown artefacts or relics during the earthworks conducted over the site.

(f) Other Land Resources

The proposed development is to be located on Class 3 land which, in the Mid-Western Region, makes up only 2% of this category of land supply. Class 3 land is deemed to have moderate limitations and is capable of most land uses with appropriate practices implemented such as rotational grazing and reduced tillage methods. A range of crops including cereals are able to be grown on class 3 land, depending upon soil fertility.

The subject land has historically been used for agricultural production including the grazing of stock and cropping activities. As a result, the removal 26ha of class 3 land in the Mid-Western Region is considered to be a loss of valuable agricultural land due to the limited availability of class 3 land in the region.

The application has not been revised to include any dedicated intensive plant agriculture use in association with the development and simply states that the site will continued to be used to graze sheep and lambs as extensive agriculture, albeit at a substantially reduced capacity.

Comments received in response to the revised proposal were received from NSW DPI and have been included in Attachment 4.

(g) Water

The revised application is presented on the basis of there being no impact on groundwater however onsite drilling was not undertaken to confirm the standing water levels over the site.

An extension to water supply is now proposed to manage the site into the future. Up to 6.7ML of water per year is stated to be required for the landscaping alone, however no estimates are provided in relation to construction management and dust suppression or for the operational phases of the development including cleaning of panels. It is expected that this may be substantial and would need to be considered

in relation to impacts on the existing WAL allowances and in accordance with the relevant Water Management Act approval/s.

(h) Soils

As noted from Clause 6.1 of the MWRLEP 2012 above, the subject site is identified to be affected partly by salinity which predominately follows the natural drainage line through the site. The revised proposal continues to avoid this mapped area however, saline soils may impact on the construction methods proposed generating additional erosion and may also affect the structural adequacy of the proposed development. Therefore detailed investigations will be required by a competent engineer prior to any construction works commencing.

With the inclusion of earth mounding up to 3m high in elongated sections across the land, a substantial amount of fill will now be required to be placed onsite. There is no clarity on where this amount of material will be obtained from, the amount of additional transport movements this may generate or how mounding will impact on the natural drainage patterns of the site, or the future use of the site for intensive plant agricultural activities. Based on the revised plans, a number of issues relating to the new layout with landscaping mitigation measures remains unresolved.

(i) Air and Microclimate

The proposed development, as part of the construction activities will generate dust and will require careful management practices, including dust suppression during construction. This is however not expected to significantly impact on the site or surrounding land over the long term.

(j) Flora and Fauna

The revised proposal is unlikely to impact on significant flora or fauna, with the existing site predominately cleared agricultural land with scant paddock trees located over the development site. Given the prior grazing and cropping activities undertaken onsite, the development does not exceed the biodiversity clearing thresholds under the Biodiversity Conservation Regulation and there are no significant ecological impacts associated with the proposal.

(k) Waste

The proposal will continue to generate a significant proportion of waste material during construction activities. The developer will need to make arrangements for a commercial collection and disposal of the waste material to a suitably licenced waste facility or provide an alternative to enable recycling of the waste to occur.

In addition, the site will need to be carefully managed during construction and operation to ensure all wastes are confined to the subject site which can be conditioned accordingly.

(l) Energy

The proposal still seeks to provide a 10MW electricity generating works on a 26ha rural vacant site 2.4 kilometres east of the Mudgee urban area. The proposal seeks to connect to an existing 22KV electricity line located on the site which feeds to the Mudgee Zone Substation.

Given the nature of the proposal and the concurrent larger renewable energy projects in the Region, numerous concerns continue to be raised by the proposal despite the recent amendments to the layout and landscaping proposed.

The development is a small scale renewable project that continues to demonstrate significant adverse local environmental and community impacts owing to its proposed location and does not provide any significant contribution to the NSW Government Clean Energy Action Plan or emission reduction targets.

(m) Noise and Vibration

The revised application was supported by the same Noise Assessment prepared by 'Muller Acoustic Consulting'. As a result, nine (9) sensitive residential receivers listed in the report would continue to have construction noise levels exceedances when construction activities are their nearest point to the receivers. These were identified as R1 – 446 Rocky Waterhole Road, R2 - 354 Burrundulla Road, R3 – 328 Burrundulla Road, R4 – 322 Burrundulla Road, R5 – 327 Burrundulla Road, R6 – 371 Burrundulla Road, R12 – 312 Castlereagh Highway, R29 – 243 Castlereagh Highway, R30 – 297 Burrundulla Road. The most affected dwelling is identified as 312 Castlereagh Highway (105 metres from the southern boundary) with the highest predicted noise level reported to be 51dB LAeq(15min) during construction.

During operation however, the assessment concludes that no noise impacts are identified to exceed 35dBA at any sensitive receiver.

Construction hours utilised in the assessment were 7am to 6pm Monday to Friday and 8am to 1pm on Saturday. The assessment also states that there are no 'out of hours work' proposed for the project which removes the sleep disturbance criteria from the assessment report. However, this does not factor in those workers who may be on night shift work rosters which is extremely common in mining communities such as Mudgee.

The assessment provides recommendations to reduce noise emissions during construction which include:

- preparation of a construction management plan.
- use localised mobile screens or hoarding around plant to provide a barrier.
- operate plant in a conservative manner.
- selection of the quietest possible machinery.
- avoid noisy plant working simultaneously.
- minimise impact noise wherever possible.
- use broadband reverse alarms.
- provide toolbox meetings, training and education to drivers and contractors.
- signage is to be placed at the front entrance to advise drivers to minimise noise.
- utilise project related community consultation forums to notify residences.

The assessment also concludes within the recommendations of the operational noise predictions that '*a one-off noise validation monitoring assessment be completed to quantify emissions from site and to confirm emissions meet relevant criteria*'.

On the basis of the above, it is confirmed that the construction phase of the proposal will continue to have a significantly adverse environmental impact on 9 sensitive residential receivers in close proximity to the site during the 6 month construction period.

(n) Natural Hazards

Whilst the site is not mapped as bushfire prone land pursuant to Section 4.14 of the Environmental Planning and Assessment Act, the subject land is a modified grassland with a classified road to the north, cellar door and grape vines to the west and residential dwellings to the east and south of the site. The development has since been modified to include a sufficient 10 metre defendable space around the asset, however the internal area of the site shall also be managed as an 'Inner Protection Area'.

(o) Technological Hazards

In accordance with previous TransGrid advice, electric and magnetic fields, commonly known as EMFS, are both naturally occurring and found wherever there is electricity. Natural occurrences include from lightning, solar activity and the earth itself. All living organisms produce EMFS. Wherever electricity is flowing or there is an electrical force, EMFS are produced.

Magnetic fields are all around us and exist wherever electricity is used however, these levels are all well below the public exposure limit of 2,000 mG as recommended by the International Commission on Non-Ionizing Radiation Protection (ICNIRP), which released an international standard in 2010.

Internationally, there have been almost 3,000 studies carried out in relation to EMFs, which has significantly enhanced knowledge of this issue. Leading health bodies such as the World Health Organisation, the US National Institute of Environmental and Health Sciences and the UK National Radiological Protection Board have evaluated the research to assess the likelihood of health effects associated with exposure to EMFs. In Australia, the Radiation Protection and Nuclear Safety Agency (ARPANSA) has advised that: *"The scientific evidence does not establish that exposure to the electric and magnetic fields found around the home, the office or near powerlines causes health effects."* *"There is no established evidence that the exposure to magnetic fields from powerlines, substations, transformers or other electrical sources, regardless of the proximity, causes any health effects."* The World Health Organisation (WHO) has advised that that: *"...current evidence does not confirm the existence of any health consequence from exposure to low level electromagnetic fields."* TransGrid is guided by these health authorities and takes a precautionary approach to EMFs as a result.

(p) Safety, Security and Crime Prevention

The propose development is considered to be able to be adequately secured with significant security fencing of the boundaries. The proposal is not considered to contribute to, or increase crime in the locality however, the maintenance of the site is required to be upheld to ensure there are no risks of fire which may rapidly spread to nearby properties. Further, the revised proposal does not seek to include any CCTV or security lighting which may further impact on nearby residents.

(q) Social Impact in the Locality

Whilst the proposal may continue to contribute to short term local employment for up to 50 workers, there is not considered to be significant ongoing or long term employment opportunities for local residents as a direct result of the proposal.

The applicant has previously suggested there will be opportunity for local employment however, with the experience of other renewable projects in the Region,

it is unlikely that local employment opportunities will be generated. This creates significant pressures on local accommodation providers and to the rental market with drive-in-drive-out workers. The revised proposal has not been supported by a Workforce Management Plan however, a previous Social and Economic Impact Statement was included within the original application which relied upon the Destination NSW Tourist Accommodation profile for the Mid-Western Region which stated to average 62.3% occupancy for the year, rather than specifically only relying on accommodation opportunities in the Mudgee area. This generates further concern that up to 50 workers would therefore look to be accommodated in the Gulgong, Kandos or Rylstone areas and may be commuting long distances to and from the subject site following prolonged hours on a construction site.

Further, Mudgee also benefits from a large tourist and mining employment sector to support the township and during peak seasons, accommodation options have historically been significantly limited. This is also supported by Mudgee Region Tourism (MRT) statistical data which has identified a 28% increase in overnight visitors since 2014. Since the COVID-19 lockdown, this number has significantly increased to 47%. Such increases place immediate pressure on accommodation availability ranging from Hotel and Motel / Serviced Apartments, and Air BnB options which also impacts the rental market supply.

The revised application also does not address cumulative impacts associated with concurrent construction projects on the accommodation and tourism sectors as a result of the increased demand for accommodation in the Region. Given the surge in renewable projects in the region since this application was first considered by the Panel, the total accommodation required to support the projected construction period of known projects is upward of 1800 beds. This is simply unachievable by using established accommodation alone in the Region.

(r) Economic Impact in the Locality

As noted above, the original Social and Economic Impact Statement prepared has not provided any significant focus on the economic impacts or benefits of the proposal on the Mudgee Region. It would be anticipated that bulk supplies of materials would be outsourced from the area, however day to day purchases such as meals and general goods would see a short-term economic stimulus for the retail sector of Mudgee.

(s) Site Design and Internal Design

The revised layout has since accommodated compliant front and side setbacks and included a 10m defendable space between fencing and the panel arrays. The proposed access arrangements have not been altered, however the parking and laydown area is reduced to one (1) within the front setback of the site.

(t) Construction

All construction, including roadways must continue to comply with the applicable Australian Standards, Council Policies and the BCA where relevant.

(u) Cumulative Impacts

An assessment of potential cumulative impacts including where other significant construction projects occur concurrently or other electricity generating works are proposed concurrently highlights a potential risk of cumulative social, economic, traffic, visual, environmental and community impacts.

Furthermore, upon review of the current Essential Energy transmission capacity in the grid, it is clear that due to the large volume of proposed electricity generating works within the Region that the transmission lines and substations are likely to need significant upgrades in the immediate future to support such developments.

Suitability of Site for Development – 4.15(1)(c)

A full assessment of the revised proposal continues to raise a number of significant concerns with the location of the proposed development including the following:

1. The site is located on the immediate gateway to the town of Mudgee which is required to be protected under the provisions of the Visually Sensitive Land mapping, along with the Comprehensive Land Use Strategy requirements. The revised landscaping plan does not address this issue.
2. The site is located on the primary tourist route into Mudgee and is readily visible to passing traffic. The revised landscaping plan does not immediately address this issue and further exacerbates the dominance of the development to passing traffic given the existing flat terrain which now proposes sporadic 3m high earth mounds to screen the hard infrastructure proposed.
3. The proposal seeks to construct PV panels on 26ha of vacant, class 3 land suitable for intensive plant agricultural use.
4. The proposal seeks to 'screen' the infrastructure from the boundaries in order to reduce visual impacts on surrounding land.
5. The proposal will continue to have construction noise exceedances at 9, of the nearby sensitive receivers.
6. The revised proposal will continue to have glare impacts on roadways and properties which does not account for elevated land or properties surrounding the site until landscaping is established to mitigate this impact.
7. The revised proposal has been public exhibited and a large number of objections have still been received despite the changes made.

Whilst a number of the above matters can be conditioned accordingly, it is considered that the subject site and the overall location is still not suitable for the development in light of the changes made to the proposal.

Submissions made in accordance with Act or Regulations – 4.15(1)(d)

(a) Public Submissions

The Review application was placed on public exhibition, in accordance with the Mid-Western Regional Community Participation Plan 2019, from the 11 February 2022 to the 25 February 2022. A total of 42 objections were received during this period. A full copy of the submissions is included in Attachment 3.

The applicant was provided a copy of all submissions and an opportunity to respond to the submissions. No response was however received.

The key concerns raised in the objections remain unchanged from the previous application and include:

- The significant adverse visual impact of the proposal within the established rural landscape from both private properties and the local road network.
- Adverse impacts on groundwater.
- Adverse impacts on agricultural and tourism businesses.
- Adverse impacts to residents from noise during construction.

- Adverse impacts regarding reflective glare from the solar arrays.
- The impact of the proposal on property values.
- The inadequacy of proposed landscaping and the time this will take to establish and be effective in mitigating visual impacts impacts.
- The adverse economic, social and cumulative impacts from the proposal.
- Concerns about decommissioning and returning the land to its former productive agricultural state.

(b) Submissions from Public Authorities

The review application was also referred back to the following authorities:

- Roads and Maritime Services (now Transport for NSW)
- Essential Energy
- Department of Primary Industries
- NSW Rural Fire Service

The other abovementioned agencies did not provide an objection to the revised proposal, however recommendations and conditions have been provided.

A copy of the responses provided by each agency has been included in Attachment 4.

The Public Interest – 4.15(1)(e)

As a result of the large number of objections to the Review application raising a number of key concerns, as also highlighted in the assessment report, the application is not considered to be within the public interest.

CONSULTATIONS

The application was also referred to internal Council Departments for review. The following responses were provided:

(a) Health and Building

Council's Health & Building Surveyor has not raised any significant building related concerns with the revised proposal and previous conditions remain unchanged.

(b) Technical Services

Council's Development Engineering Department has provided comments noting that the revised proposal has not been substantially altered to affect any previous comments and/or recommendations made.

SUMMARY AND RECOMMENDATION

The Review of the Determination (RVA0002/2022) for an electricity generating works at 3B Sydney Road, Burrundulla (Lot 6 DP1069441) has been assessed against the requirements of Section 4.15(1) and 8.2 of the *Environmental Planning and Assessment Act, 1979*, the *Environmental Planning and Assessment Regulation, 2000*, the relevant State Environmental Planning Policies, the Mid-Western Regional Local Environmental Plan 2012 and Mid-Western Regional Development Control Plan 2013 and the previous recommendation of refusal remains unchanged by the proposal based on the following:

- Non-compliance with the MWRLEP 2012 and the objectives of the RU4 Zone (4.15(1)(a)(i));
- Non-compliance with the MWRDCP 2013 (4.15(1)(a)(iii)), in particular Section 6.5 Solar Energy Farms;
- The unresolved likely impacts of the development including the visual impacts, noise impacts (9 properties impacted during construction), glare impacts (until landscaping is established), natural hazard (bushfire) impacts, social and economic impacts on the locality (4.15(1)(b));
- The unresolved location and suitability of the site for the development (4.15(1)(c));
- The large number of submissions received during the public exhibition period objecting to the proposed revised development (4.15(1)(d)); and
- The development remains inconsistent with the public interest (4.15(1)(e)).

Should the Panel be of a mind to alter the previous decision, draft conditions of consent have been prepared and included in Attachment 5.

Attachment 1: Revised Development Plans

Attachment 2: Additional Information to Support the Application

Attachment 3: Public Submissions

Attachment 4: Agency Referral Responses

Attachment 5: Draft Conditions of Consent