

**COUNCIL ASSESSMENT REPORT
WESTERN REGIONAL PLANNING PANEL**

PANEL REFERENCE & DA NUMBER	[PPSWES-137] – [DA 10.2022.56.1]
PROPOSAL	[Electricity generating works – Installation of a 4.95 MW photovoltaic electricity generating system and associated works]
ADDRESS	Lots: 70 & 212 DP 751152 - 55 Milgate Road MOAMA NSW 2731
APPLICANT	Chris Smith & Associates
OWNER	G W & S E Milgate
DA LODGEMENT DATE	03/03/2022
APPLICATION TYPE	Development Application - Regionally Significant Development
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19 (1), Section 5(a) of Schedule 6 within the State Environmental Planning Policy (Planning Systems) 2021
CIV	\$9,426,680 (excluding GST)
SECTION 4.6 REQUESTS	Not Applicable
LIST OF ALL RELEVANT PLANNING CONTROLS (S4.15(1)(A) OF EP&A ACT)	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021;</i> • <i>State Environmental Planning Policy (Planning Systems) 2021;</i> • <i>State Environmental Planning Policy (Resilience and Hazards) 2021;</i> • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021;</i> • <i>Murray Local Environmental Plan 2011;</i> • <i>Murray Development Control Plan 2012;</i> • <i>Planning agreements: Nil</i>
TOTAL & UNIQUE SUBMISSIONS	Two (2)
KEY ISSUES	<ol style="list-style-type: none"> 1. <u>The first submission maker</u> noted the poles located on their property will be utilised to transfer of power generated from the proposed development; 2. <u>The second submission maker</u> sought a further clarification regarding the 1km radius shown on one of the plans.
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ol style="list-style-type: none"> 1. Traffic Impact Assessment Report prepared by Traffic Works and dated 15/12/2021; 2. Site survey Plan showing the existing condition of the site prepared by Chris Smith & Associates and dated 10/12/2021; 3. Statement of Environmental Effects (Revision 2) prepared by Chris Smith & Associates;

	4. Series of preliminary plans prepared by Green Gold Energy (i.e. site plans, elevation diagrams of the solar panels and the transformer, elevation diagram of the chain mesh fence and landscaping plan); 5. Landowner's consent; 6. Estimation of development cost; 7. Certificates of Title; 8. Decommission Waste Management Plan prepared by MC – Low Impact Development Consulting and dated 08/04/2022; 9. Construction Environmental Management Plan prepared by Green Gold Energy (undated); 10. Noise Impact Assessment prepared by ADP Consulting Engineering and dated 21 December 2021.
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A only 7.12 Applicable
RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	NO
SCHEDULED MEETING DATE	7 November 2022
PLAN VERSION	9 September 2022 Revision I
PREPARED BY	Gayan Wickramasinghe – Acting Senior Town Planner Isobella Lucic – Senior Town Planner Chris O'Brien – Senior Town Planner
DATE OF REPORT	1 November 2022

EXECUTIVE SUMMARY

The development application DA 10.2022.56.1 seeks consent for the construction and operation of a 4.95MW solar farm on Lots: 70 & 212 DP 751152 - 55 Milgate Road MOAMA NSW 2731. The footprint of the proposed development comprises approximately 15ha of the development sites 80 hectares.

As noted within the SEE lodged in support of the proposal, the proposed development includes the following:

- ***“Approximately 12,300 solar panels, mounted on single axis tracking arrays, each having the following specification: ▪ Nominal dimensions of 2.2m by 1.1m.***
- ***Maximum height of 2.7m above ground (when at maximum rotation).***
- ***The panels will be arranged in 162 individual rows, each will comprise 76 individual panels.***
- ***1.8m high chain mesh perimeter fence around entire perimeter of facility, including two (2) gates – positioned to the front of compound.***
- ***Landscaping along the all perimeters of the facility, as shown on Landscape Plan, directly outside the compound fence.***
- ***Pole and 22kV overhead powerline connection to Essential Energy electricity distribution network and nearby Moama substation.***
- ***One (1) high voltage power switchboard, positioned centrally at the front of the facility – along the south-western edge of the facility.***
- ***One (1) power station inverter positioned centrally within the facility – between panel arrays”.***

The proposed development aims to ensure compliance with the relevant State Environmental Planning Policies and the Murray Local Environmental Plan 2011 and Murray Development Control Plan 2012 and an assessment against the relevant pieces of legislation has been provided throughout this report. It is the intent of the development to ensure the proposal is consistent with the development outcomes envisaged for the development site and wider Moama locality. The sites characteristics (natural) have also been considered as part of this assessment to achieve the best possible design outcome.

The subject land is known as Lots: 70 & 212 DP 751152 - 55 Milgate Road MOAMA NSW 2731 ('the site') and is generally a rectangular shaped parcel with approximately 406m of street frontage (Milgate Road) along the western boundary and a 403m width at the rear boundary. It has a variable depth of 419m and 425m on the western and eastern side boundaries respectively equating to a total land area of 172,662 m². The land is currently a vacant allotment and access to the site is provided via Milgate Road, an all-weather gravel road which would be capable of supporting vehicle traffic during construction of the proposed solar development. Arterial road access to this road is from the Cobb Highway to the west. The subject site, including the broader property to the north is largely open, and contains mature scattered vegetation along the southern boundary of the site and some notable vegetation patches interspersed through the locality.

The site is zoned RU1 Primary Production in accordance with the *Murray Local Environmental Plan 2011 (MLEP 2011)* and is mapped as River Murray lands under Chapter 5 of the *State Environmental Planning Policy (Biodiversity and Conservation) 2021*. The site is not mapped as bushfire prone land on the map maintained by the NSW Rural Fire Service (RFS). It is further noted the site is mapped as Flood Prone Land and Terrestrial Biodiversity (Native Vegetation), in accordance with the *MELP 2011*. The site does not contain any known items of environmental heritage significance as outlined in Schedule 5 of *MLEP 2011*.

An assessment of the proposal has been made against the relevant planning instruments applicable to the land and the proposal, these are:

- *State Environmental Planning Policy (Planning Systems) 2021;*
- *State Environmental Planning Policy (Resilience and Hazards) 2021;*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021;*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021;*

- Murray Local Environment Plan (LEP) 2011; and
- Murray Development Control Plan 2012.

There were no formal concurrence requirements from agencies for the proposal and the application is not integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). The application however was referred to DPE Biodiversity and Conservation Division (BCD) under Chapter 5 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021. BCD have advised the application is required to be supported with a Biodiversity Development Assessment Report (BDAR) however the Applicant has failed to provide the requested report. The application also included referral to Essential Energy and Transport for NSW (Roads) pursuant to *State Environmental Planning Policy (Transport and Infrastructure) 2021*. It is also noted the Application was referred to CASA, DPE Western Region, EPA and Heritage NSW with no objections raised from these agencies.

The application was placed on public exhibition from 2 May 2022 to 30 May 2022 pursuant to the *Environmental Planning and Assessment Act 1979*. Two (2) submissions were received which are addressed in this report.

The application is referred to the Western Regional Planning Panel ('the Panel') as the development is '*regionally significant development*', pursuant to Section (5)(a) of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021* as the proposal is development for *electricity generating works* with a CIV over \$5 million.

The application has been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979* and is deemed inconsistent with the requirements. As a BDAR is required but not provided by the Applicant, the Consent Authority is unable to be satisfied the proposal complies with the *Biodiversity Conservation Act 2016*. Without sufficient information being provided, the application has the potential to adversely impact upon the natural environment. It is therefore recommended the proposed development be refused, with the reasons for refusal outlined at the end of this document.

1. THE SITE AND LOCALITY

1.1 The Site

The subject land to which this development application relates is located at 55 Milgate Road, Moama NSW 2731 on Lots 212 & 70 DP 751152. The Applicant has proposed to install the solar system on Lot 212 DP 751152 whilst it is also proposed to install a new 22kV pole on the adjacent Lot 70 DP 751152.

Lot 212 DP 751152 is generally a rectangular shaped parcel with approximately 406m of street frontage (Milgate Road) along the western boundary and a 403m width at the rear boundary. It has a variable depth of 419m and 425m on the western and eastern side boundaries respectively equating to a total land area of 172,662 m². The land is currently a vacant allotment and access to the site is provided via Milgate Road, an all-weather gravel road which would be capable of supporting vehicle traffic during construction of the proposed solar development. Arterial road access to this road is from the Cobb Highway to the west. The subject site, including the broader property to the north is largely open, and contains mature scattered vegetation along the southern boundary of the site and some notable vegetation patches interspersed through the locality. The site survey plan prepared by Chris Smith & Associates and dated 10/12/2021 indicates that from the western boundary, the property slightly slopes down towards Milgate Road.

The site is zoned RU1 Primary Production in accordance with the *Murray Local Environmental Plan 2011 (MLEP 2011)* and is mapped as River Murray lands under Chapter 5 of the *State Environmental Planning Policy (Biodiversity and Conservation) 2021*. The site is not mapped as bushfire prone land on the map maintained by the NSW Rural Fire Service (RFS). It is further noted the site is mapped as Flood Prone Land and Terrestrial Biodiversity (Native Vegetation), in accordance with the *MELP 2011*. The site does not contain any known items of environmental heritage significance as outlined in Schedule 5 of *MLEP 2011*.

The site is in close proximity to existing overhead powerlines which run within the existing property – to the west of the proposed facility – which will provide an immediate “plug-in” connection to the Essential Energy grid. Figures 1 and 2 outline the existing conditions and applicable planning controls for the subject site.

Figure 1 – Zoomed in version of the site; Source: Spectrum Spatial Analyst

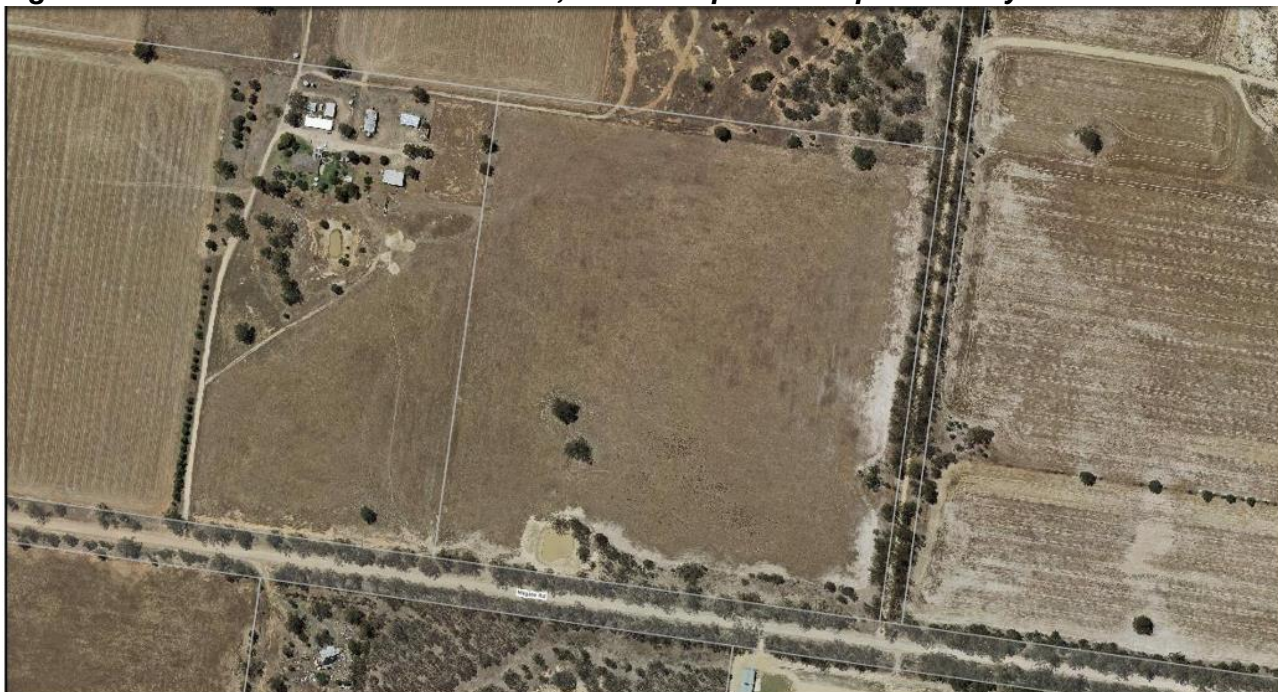


Figure 2– Site subject of the Development Application with relevant zoning layers; Source: ePlanning Spatial Viewer



1.2 The Locality

Moama is bounded by Nineteen Mile Road, Perricoota Forest Road, and the localities of Womboota, Thyra and Mathoura in the north, and the Murray River and the Victorian border in the east, south and west. The site is located within close proximity to an existing industrial estate (Moama Business Park) and is located approximately 2.8 km north of the Moama township. Access to the site is via all-weather Milgate Road off the Cobb Highway (classified road). The surrounding area is predominantly a mix of dryland agriculture, public land, and non-agricultural rural land uses and largely zoned RU1 Primary Production. It is noted some of the land surrounding is primarily used for conventional agriculture – with grazing and some cropping evidenced through historical imagery.

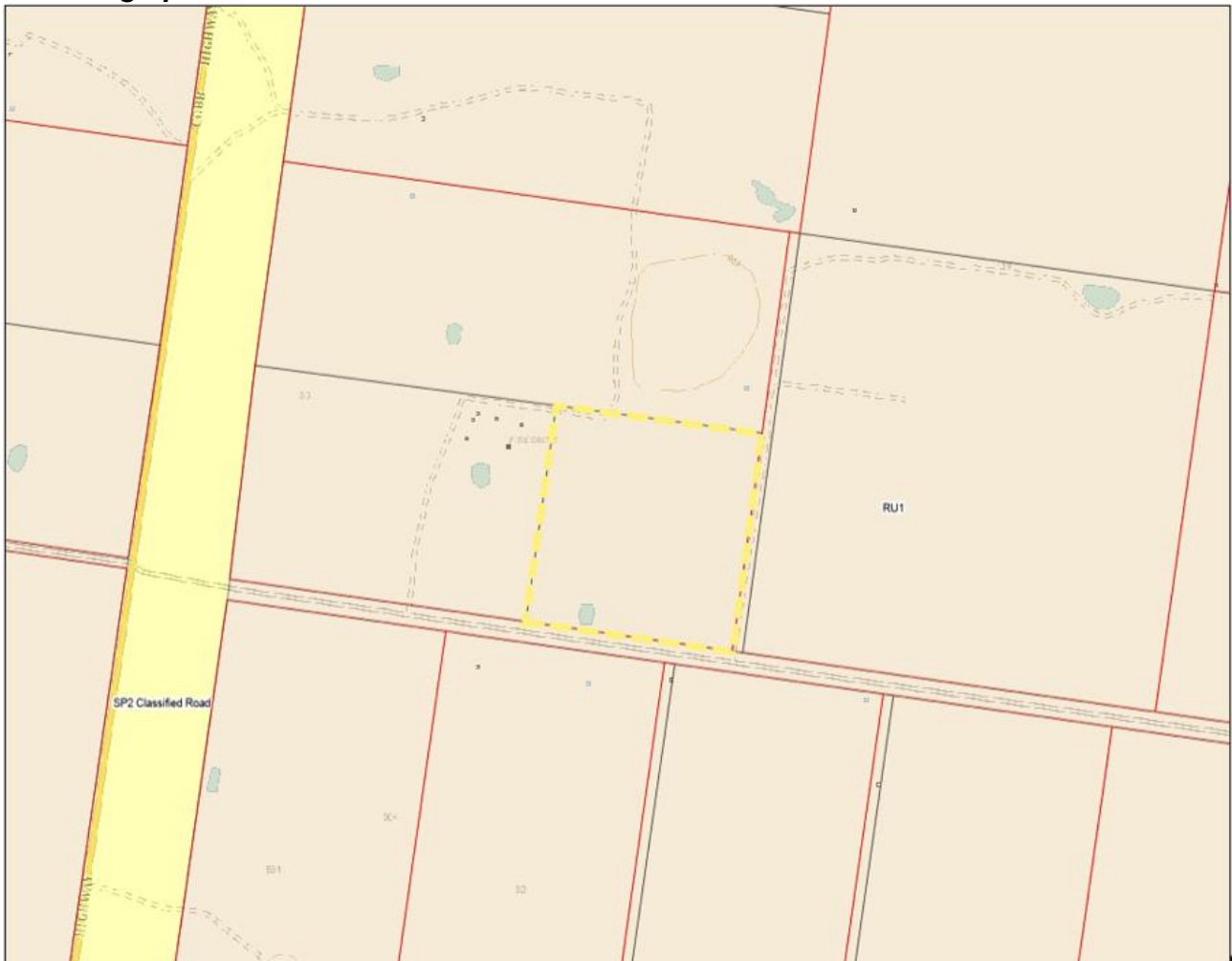
The adjoining lot to the north is identified as Lot 123 DP 751152 whilst to the east is Lot 70 DP 129944. It is noted the surrounding lots are generally mapped as RU1 Primary Production pursuant to the *MLEP 2011* and also have been identified as bush fire prone land. The Strategic Land Use Plan 2010-2030 prepared by the previous Murray Shire Council indicates the site subject of this development has been categorised as rural and is therefore considered the proposal is not inconsistent with the future land use direction of the Council.

As per Council's Development Application history and Council's GIS mapping system, the adjacent Lot 215 DP 751152 contains an airstrip approved under DA 10.2015.78.2 for the purpose of operating private/commercial aircraft use including storage of aircraft.

Council's GIS Mapping system further indicates the lot to the west (Lot 70 DP 751152) contains a single storey dwelling house and a number of outbuildings of varying sizes and conditions.

The following image indicates the applicable planning zoning layers and the existing condition of the development site in a broader context.

Figure 3– The location of the development site and the surrounding uses; Source: ePlanning Spatial viewer



2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

This application has sought consent to develop a 4.95 MW photovoltaic electricity generating system and associated works on the abovementioned allotments. It is noted the proposal is not considered to be Integrated Development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act (EP&A Act) 1979* nor has the proposal been identified as Designated Development under Section 4.10 of *EP&A Act*.

The following Key components can be identified within the development proposal as per the Applicant's submitted correspondence:

- **“Approximately 12,300 solar panels**, mounted on single axis tracking arrays, each having the following specification: ▪ Nominal dimensions of 2.2m by 1.1m.
- Maximum height of 2.7m above ground (when at maximum rotation).
- The panels will be arranged in **162 individual rows**, each will comprise **76 individual panels**.
- **1.8m high chain mesh perimeter fence** around entire perimeter of facility, including two (2) gates – positioned to the front of compound.
- **Landscaping** along the all perimeters of the facility, as shown on Landscape Plan, directly outside the compound fence.
- **Pole and 22kV overhead powerline** connection to Essential Energy electricity distribution network and nearby Moama substation.
- **One (1) high voltage power switchboard**, positioned centrally at the front of the facility – along the south-western edge of the facility.
- **One (1) power station inverter** positioned centrally within the facility – between panel arrays”.

The key development data is provided in **Table 1**.

Table 1: Key Development Data

Control	Proposal
Site area	Approximately 172,662 m ² .
GFA	Not applicable
FSR (retail/residential)	Not applicable
Section 4.6 Requests	No
No of apartments	Not applicable
Max Height	Not applicable
Landscaped area	As shown on the proposed Landscaping Plan prepared by Chris Smith and Associates Pty Ltd
Car Parking spaces	Not applicable
Setbacks	Refer to Figures below for setbacks and site overview of proposal

The Applicant has noted the proposed development will also incorporate landscaping around the perimeters of the development to reduce potential visual impact. A Landscaping Plan has been supplied in support of the Application as outlined above which consists of vegetation indigenous to the local area. The Applicant further noted the established vegetation along the southern (fronting Milgate Road) and eastern boundaries which will be retained and be incorporated into the proposal.

The below diagrams indicate the nature of the proposal.

Figure 4– Proposed site plan

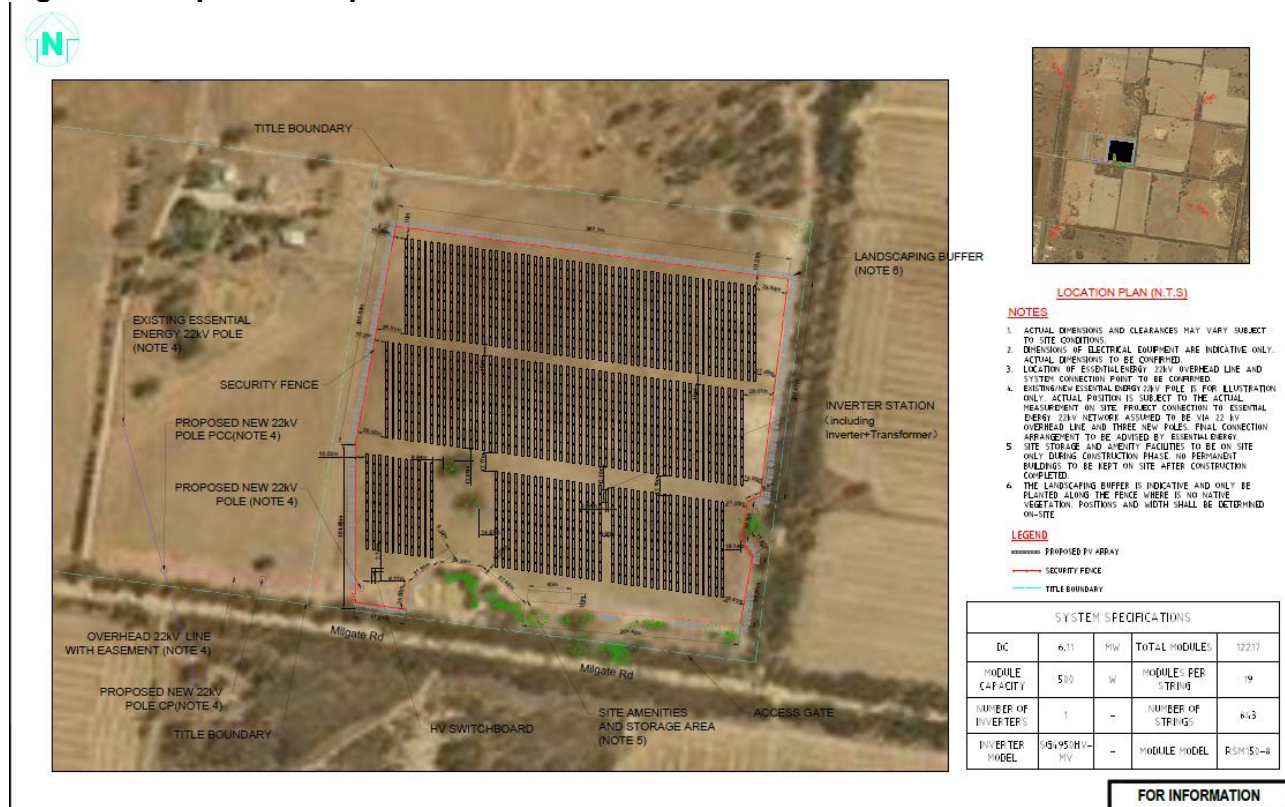


Figure 5– Submitted plans

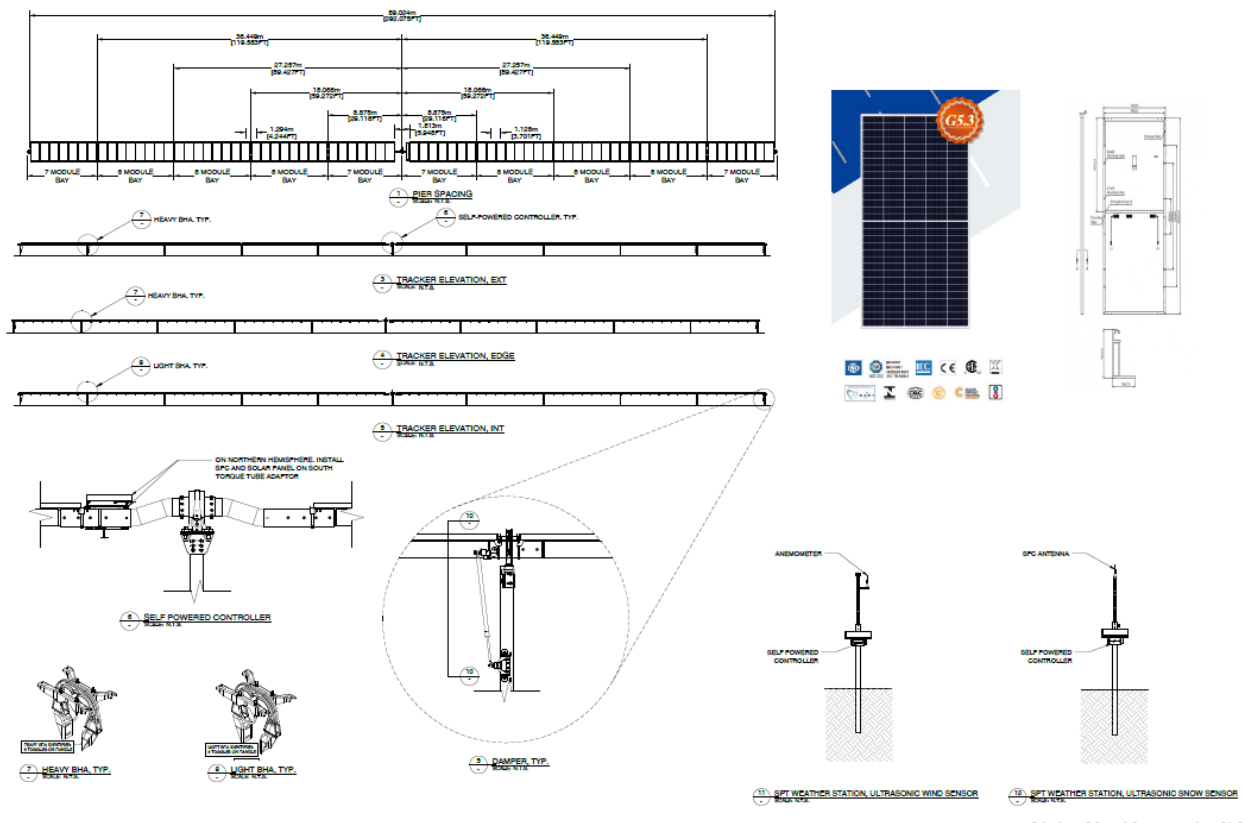


Figure 6– Submitted plans

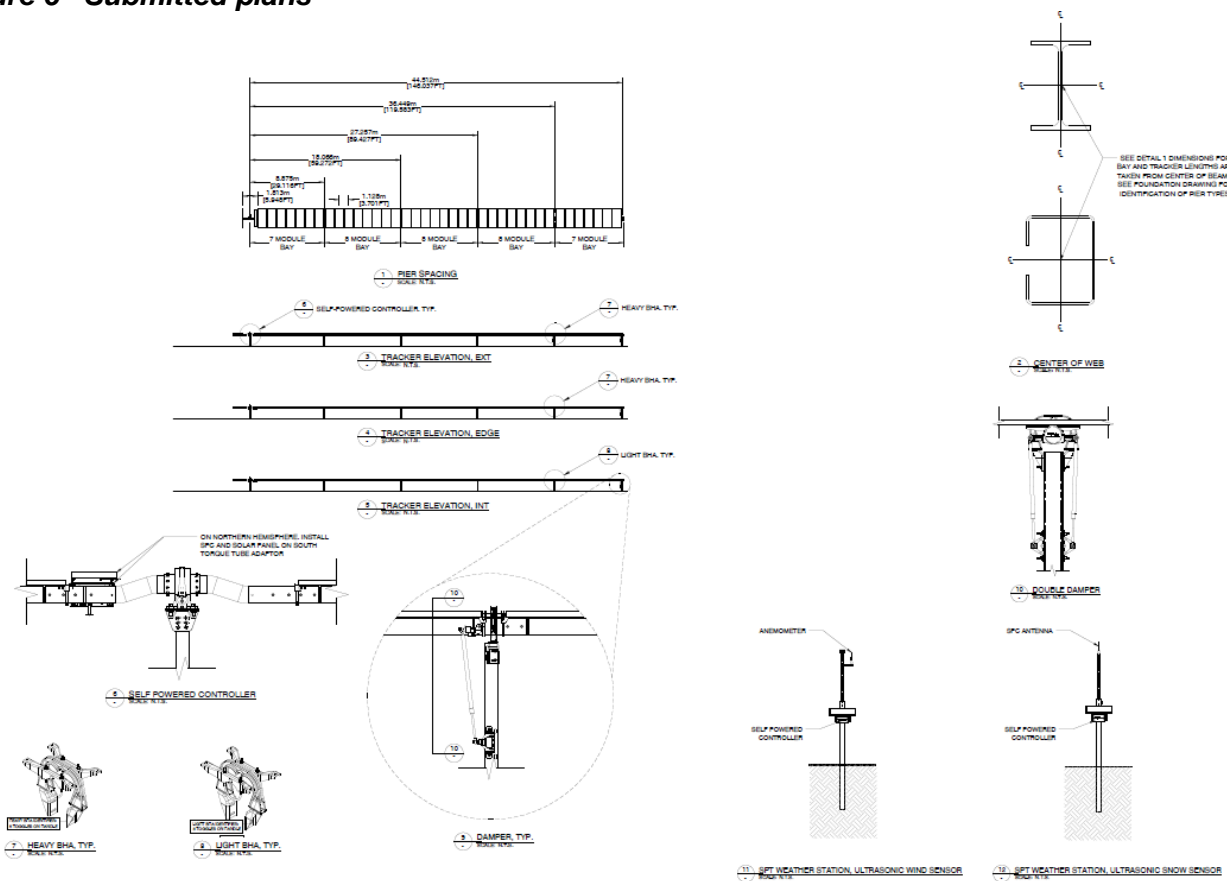


Figure 7– Submitted plans

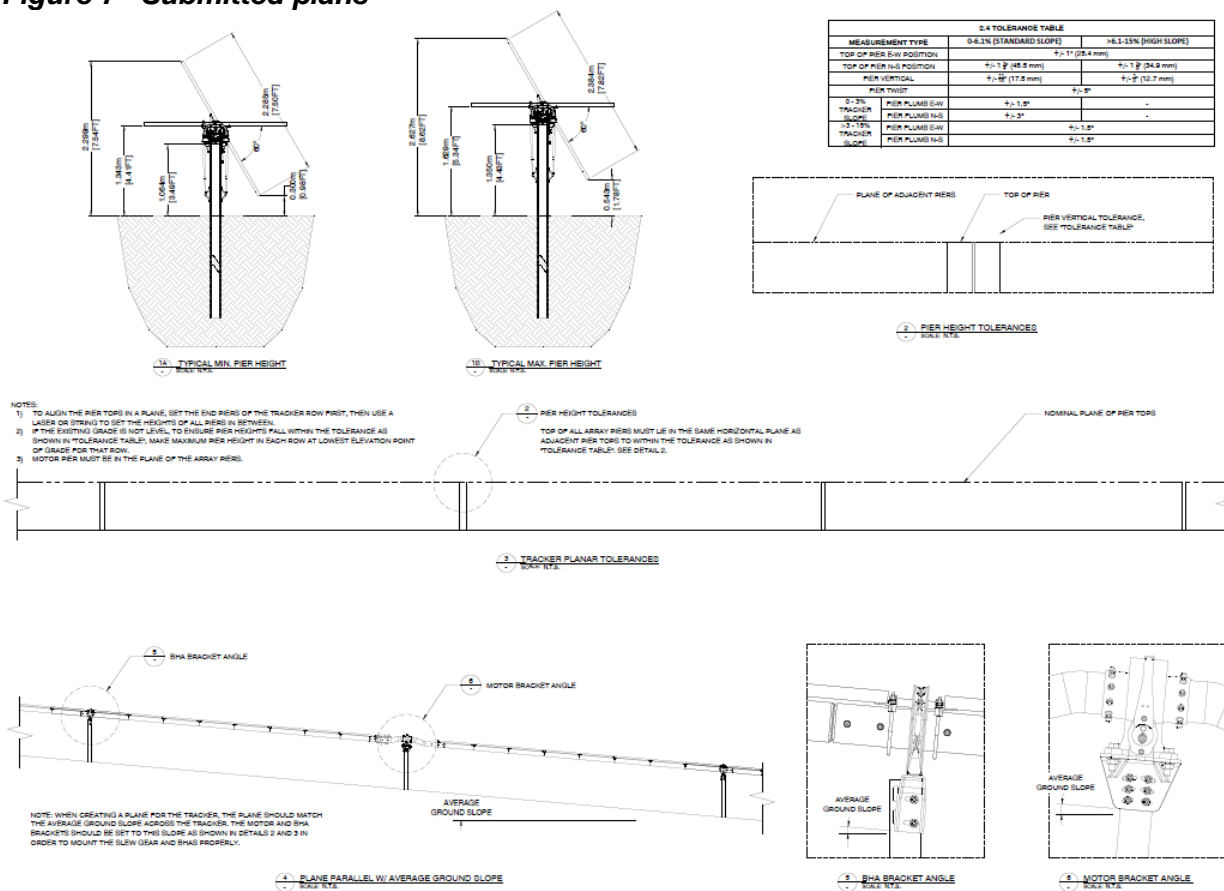


Figure 8– Submitted plans

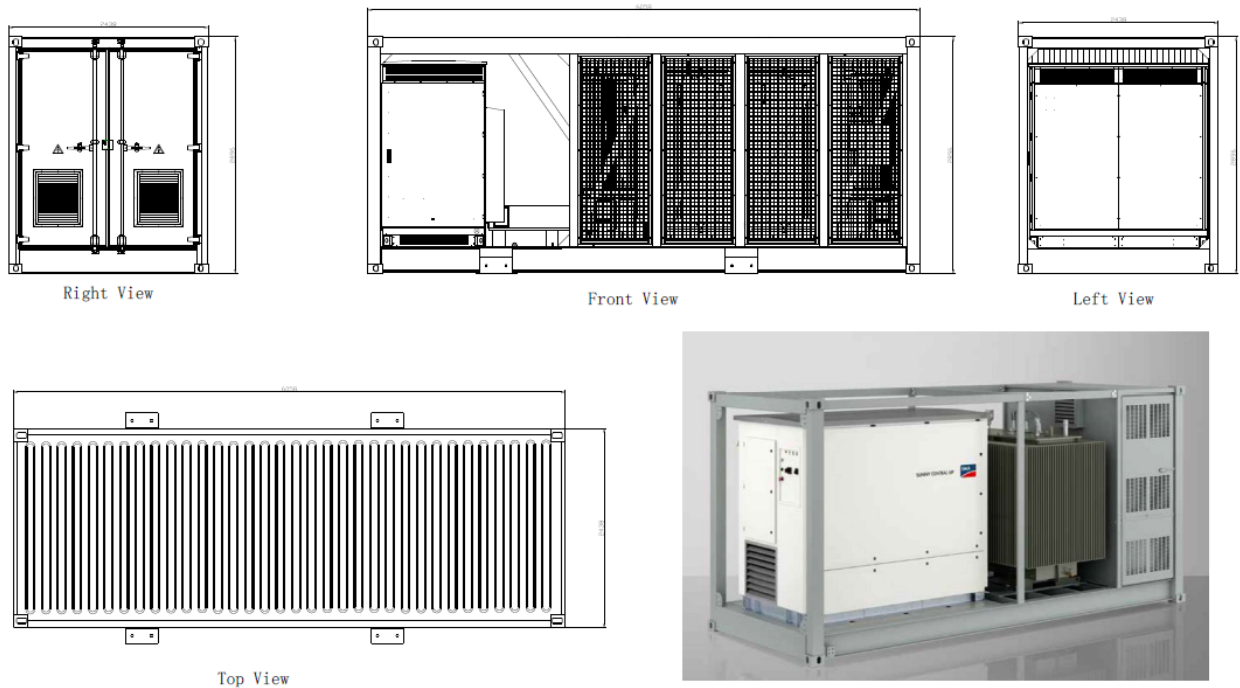


Figure 9– Submitted plans

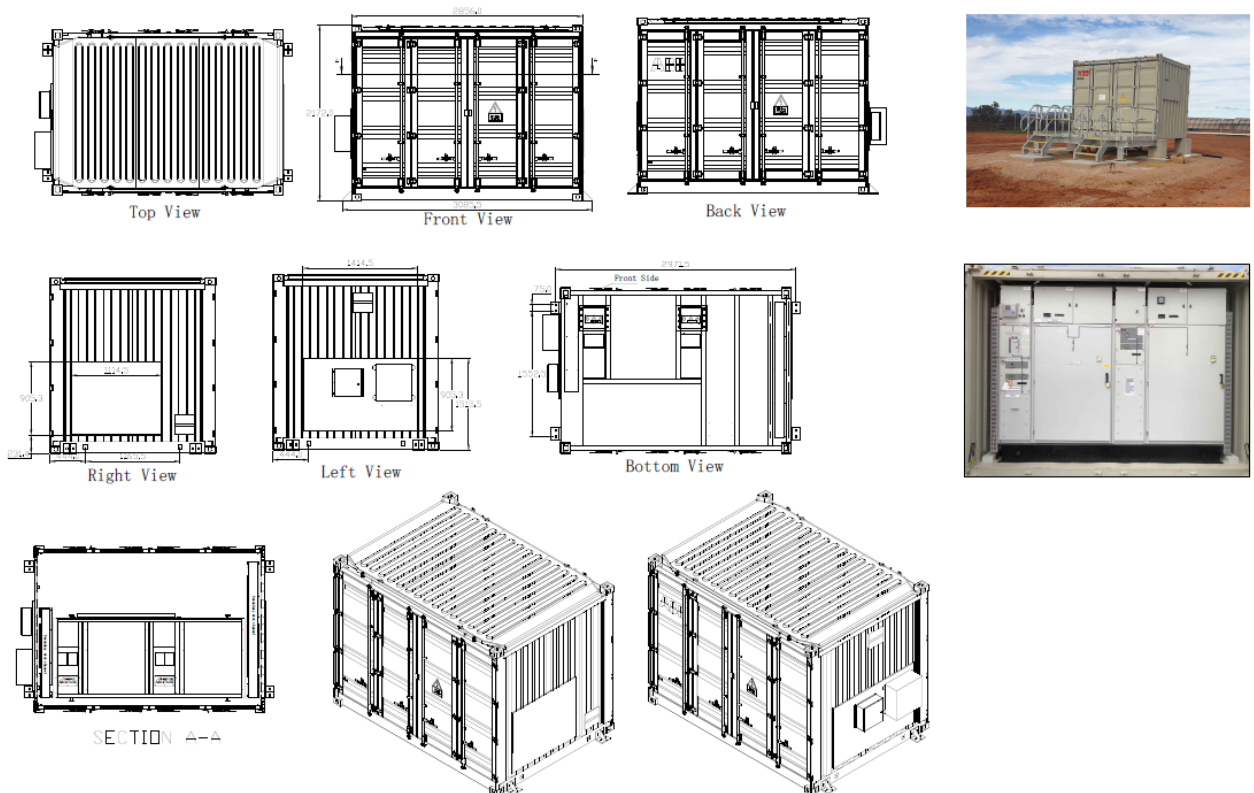
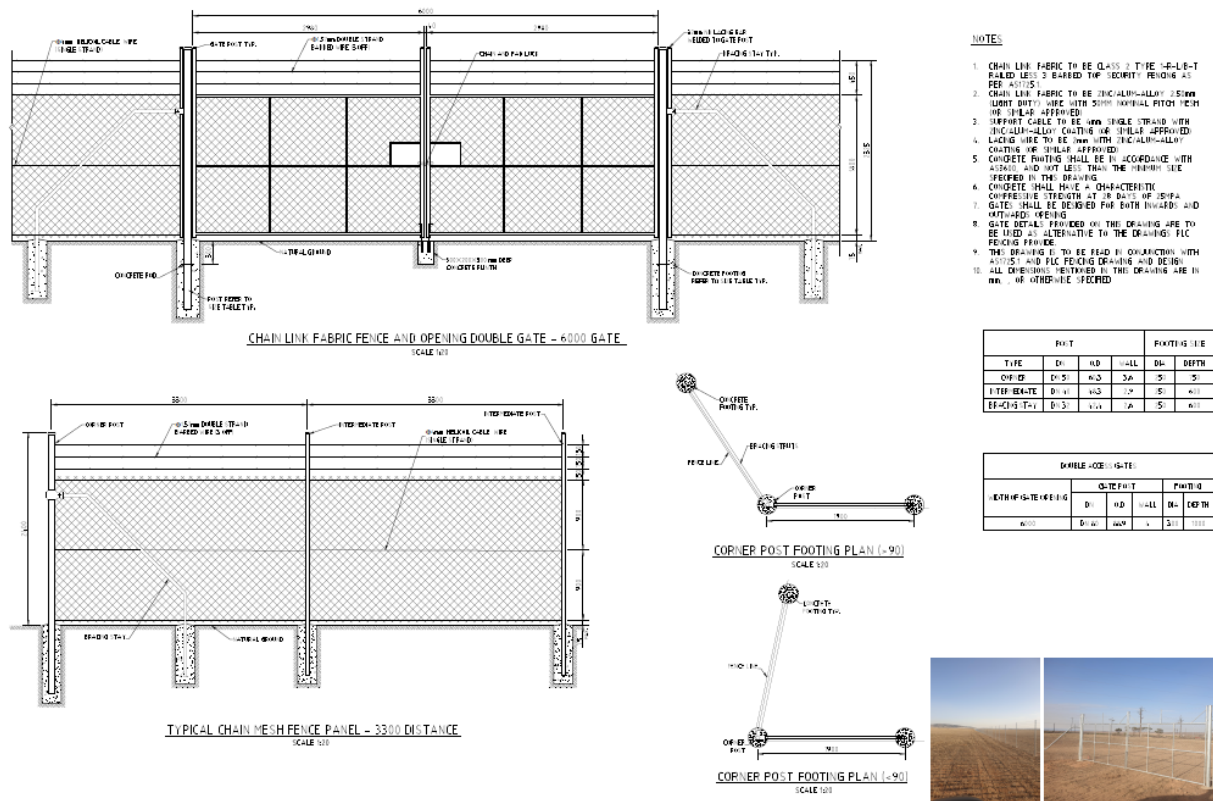
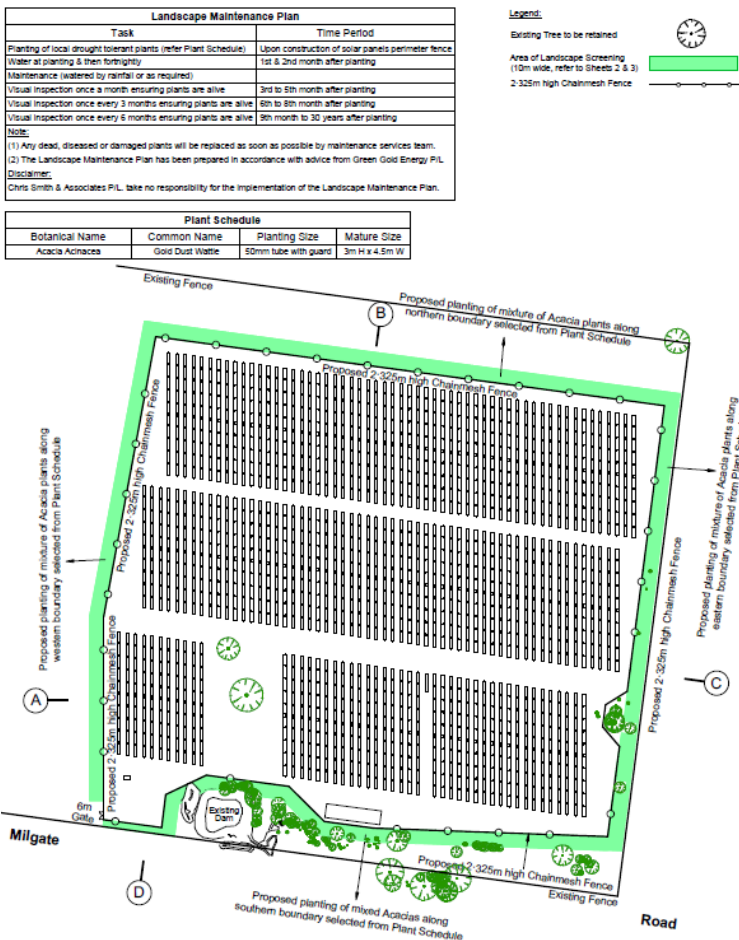
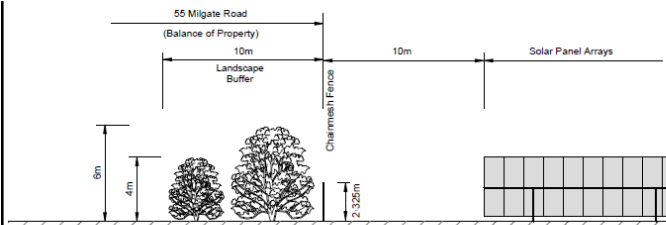


Figure 10 – Submitted plans

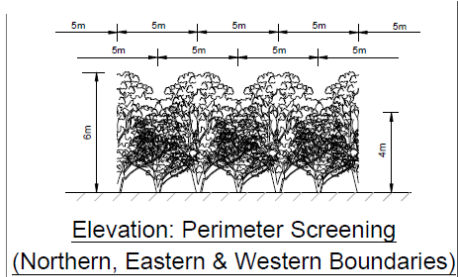


Figures 11-13 Submitted Landscaping plans

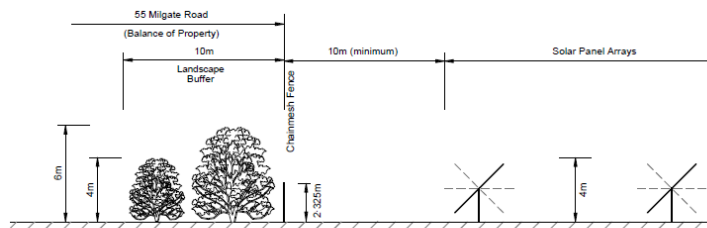




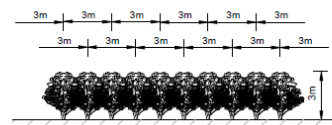
Section B: Northern Site Boundary



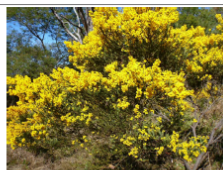
Elevation: Perimeter Screening
(Northern, Eastern & Western Boundaries)



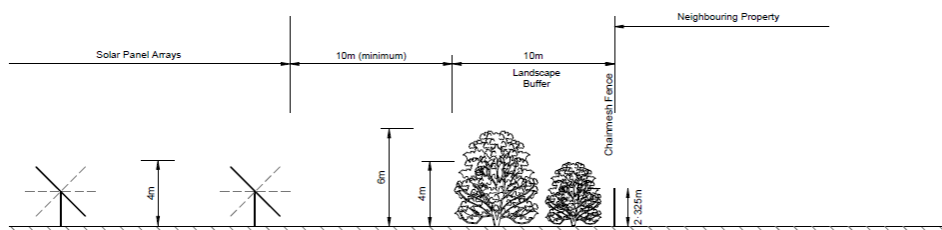
Section A: Western Site Boundary



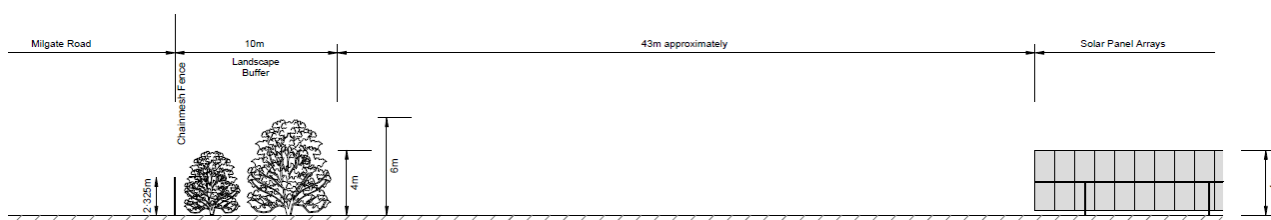
Elevation: Perimeter Screening
(Southern Boundary)



Acacia Acinacea
Gold dust Wattle



Section C: Eastern Site Boundary



Section D: Southern Site Boundary
(Milgate Road)

2.2 Background

The development application was lodged on **4 March 2022**. A chronology of the development application since lodgement is outlined in **Table 2**.

Table 2: Chronology of the DA

Date	Event
22 February 2022	Request for Information from Council to applicant (prior to accepting lodgement of application)
3 March 2022	DA lodged
2 May 2022	DA referred to external agencies
3 May 2022	Exhibition of the application
27 June 2022	The Applicant lodged amended preliminary plans via the Portal indicating the site boundaries. In addition the submitted Landscaping Plan was also amended and lodged via the Portal on 29/4/2022 incorporating additional vegetation along the southern and eastern boundaries of the development site.
6 July 2022	Panel briefing
29 September 2022	Final response from DPE BCD received (outlining refusal is required due to Applicant not providing a BDAR).

2.3 Site History

It is noted neither Council's Development Approval register nor the GIS Mapping system indicate that the site subject of this Application has development approval to use land for any other purposes. It is noted however, the adjoining allotment (Lot 70 DP 751152) contains a single storey dwelling house with a number of outbuildings of varying sizes and conditions whilst Lot 215 DP 751152 contains an airstrip approved under DA 10.2015.78.2 for the purpose of operating private/commercial aircraft use including storage of aircraft. The following is also noted in relation to the adjacent allotments:

- DA 381/03 was approved on 18th November 2003 on Lot 121 DP 751152 for the purpose of extractive industries.
- DA 10.2020.14.1 was approved on 24th April 2020 for an electricity transmission line to connect 'Moama Solar Farm' to Moama Substation and replacement of approved substation with switching station affecting Lots 70, 71, 112, 114, 123, 170, 171 & 213 DP 751152, & Lot 253 DP 722047.

3. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

(a) *the provisions of —*

(i) *any environmental planning instrument, and*

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

(iii) *any development control plan, and*

(iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*

(iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*

(v) *(Repealed)*

that apply to the land to which the development application relates,

(b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

(c) *the suitability of the site for the development,*

(d) *any submissions made in accordance with this Act or the regulations,*

(e) *the public interest.*

These matters are further considered below.

It is noted the proposal is not considered to be (which are considered further in this report):

- Integrated Development (s4.46)
- Designated Development (s4.10)
- Requiring concurrence (s4.13)
- Crown DA (s4.33)

3.1 Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments and DCP's are relevant to this application:

- *State Environmental Planning Policy (Planning Systems) 2021*;
- *State Environmental Planning Policy (Resilience and Hazards) 2021*;
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*;
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*;
- Murray Local Environmental Plan (LEP) 2011; and
- Murray Development Control Plan 2012.

A summary of the key matters for consideration arising from these EPIs and DCP's are outlined in **Table 3** and considered in more detail below.

Table 3: Summary of Applicable Environmental Planning Instruments, draft instruments, DCPs (Preconditions in **bold**)

EPI/DCP	Matters for Consideration	Comply (Y/N)
<i>State Environmental Planning Policy (Planning Systems) 2021</i>	<ul style="list-style-type: none"> • Section 2.19 (1), Section 5(a) of Schedule 6 declares the proposal as regionally significant development. 	Y
<i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>	<ul style="list-style-type: none"> • Chapter 3 - Hazardous and offensive development; • Chapter 4 - Remediation of land. 	Y
<i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	<ul style="list-style-type: none"> • Chapter 2, Part 2.3, Division 4, Section 2.36 - Development permitted with consent • Chapter 2, Part 2.3, Division 4, Section 2.42 - Determination of development applications for solar or wind electricity generating works on certain land 	Y
<i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>	<ul style="list-style-type: none"> • Chapter 3 - Koala habitat protection 2020; • Chapter 4 - Koala habitat protection 2021; • Chapter 5 - River Murray lands 	N
LEP	Under the Murray LEP 2011, the proposed development is prohibited on land zoned RU1. As such the Application relies upon the State Environmental Planning Policy (Transport and Infrastructure) 2021 for permissibility.	N
Proposed instruments	No relevant proposed instruments apply to the site. It is noted Council is in the process of preparing the draft Murray River Local Environment Plan 2021. As per the plan, the site has been identified as RU1 Primary Production and the same inconsistency applies. It is noted however the draft MRLEP 2021 has not been identified as a proposed instrument as per Section 4.15 (1)(a)(ii) of the <i>EP&A Act 1979</i> .	N/A

DCP	The Murray Development Control Plan (MDCP) 2012 does not contain specific design criteria for the proposed development.	Y
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State Environmental Planning Policy (Planning Systems) 2021

State Environmental Planning Policy (Planning Systems) 2021 applies to the proposal as it identifies if development is regionally significant development. In this case, pursuant to section 2.19 of the SEPP, the proposal is a regionally significant development as it satisfies the criteria in Section 5(a) of Schedule 6 of the SEPP as the proposal is development for *electricity generating works* with a CIV over \$5 million. Accordingly, the Western Regional Planning Panel is the consent authority for the application. It is noted the proposal is not inconsistent with this Policy.

State Environmental Planning Policy (Resilience and Hazards) 2021

The provisions of *State Environmental Planning Policy (Resilience and Hazards) 2021* have been considered in the assessment of the development application.

Chapter 3 – electricity generating works (including battery storage) are not identified as potentially offensive or hazardous within the guidelines. It is also considered the proposed development would not meet the definition of potentially offensive development.

Chapter 4 – Section 4.6(1)(a) requires the consent authority to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

A search of the NSW EPA contaminated land public record of notices identified no records within or near the development site in Moama. A search of the POEO Act register identified five (5) current POEO licensed facilities in Moama, with the closest being the Moama Sewer Treatment Plant, located in Hillside Road. The proposed development is not considered to impact this licensed facility or be impacted upon by this facility.

The subject land has been utilised for agricultural purposes, namely livestock grazing and cropping. The project is considered broadly consistent with the established activity pattern on the development site, given the low intensity operations occurring after construction. The proposed development would be remotely operated for the most part, and a more sensitive land use is not considered appropriate. Regarding Chapter 4 of the SEPP, the site is considered suitable for its intended use and further investigation is not considered necessary at this time.

State Environmental Planning Policy (Transport and Infrastructure) 2021

The State Environmental Planning Policy (Transport and Infrastructure) 2021 includes provisions for infrastructure and services to facilitate the effective delivery of infrastructure across the state. Permissibility for the purposes of electricity generation is provided pursuant to Division 4 Section 2.36 which states:

(1) Development for the purpose of electricity generating works may be carried out by any person with consent on the following land—

(a) in the case of electricity generating works comprising a building or place used for the purpose of making or generating electricity using waves, tides or aquatic thermal as the relevant fuel source—on any land,

(b) in any other case—any land in a prescribed rural, industrial or special use zone.

These provisions prevail over any inconsistency in any other planning instruments, inclusive of the Murray LEP 2011. As such, the proposed development is permitted with consent pursuant to the Transport and Infrastructure SEPP. In addition, Section 2.48 of the SEPP relates to determination of development applications – other development – electricity transmission and states the following:

(1) This section applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following—

- (a) the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,
- (b) development carried out—
 - (i) within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or
 - (ii) immediately adjacent to an electricity substation, or
 - (iii) within 5m of an exposed overhead electricity power line,

Subsequently, the application was referred to Essential Energy for comment, who provided the following response:

“Strictly based on the documents submitted, Essential Energy makes the following comments as to potential safety risks arising from the proposed development:

1. *The proposed site plan indicates a new 22kV pole and overhead powerline is proposed as part of the development:*
 - a. *Any security boundary fencing in this area must comply with the latest industry guideline currently known as ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure, in particular as to safety/earthing controls and meeting minimum safe distances (powerlines to fence).*
 - b. *Any proposed tree planting or landscaping in this area must also comply with ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure.*
 - c. *During construction around the powerline, SafeWork NSW clearances MUST be maintained.*

Essential Energy also makes the following general comments:

1. *If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment.*
2. *Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above property should be complied with.*
3. *Satisfactory arrangements are to be made with Essential Energy with respect to the proposed photovoltaic electricity generating system which will form part of the development. It is the Applicant’s responsibility to enter into the required Connection Agreement/s and any other requirements with Essential Energy for the development, which may include the payment of fees and contributions. Refer Essential Energy’s Network Connections team for requirements via email networkconnections@essentialenergy.com.au.*
4. *In addition, Essential Energy’s records indicate there is overhead electricity infrastructure located within the property and within close proximity of the property. Any activities within these locations must be undertaken in accordance with ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure. Approval may be required from Essential Energy should activities within the property encroach on the electricity infrastructure.*
5. *Prior to carrying out any works, a “Dial Before You Dig” enquiry should be undertaken in accordance with the requirements of Part 5E (Protection of Underground Electricity Power Lines) of the Electricity Supply Act 1995 (NSW).*
6. *Given there is electricity infrastructure in the area, it is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW (www.safework.nsw.gov.au) has publications that provide guidance when working close to electricity infrastructure. These include the Code of Practice – Work near Overhead Power Lines/Underground Assets.*

In the event the application is approved, these comments made by Essential Energy can be suitably conditioned within the development consent.

The Application was also referred to Transport for NSW given its close proximity the Cobb Highway, pursuant to section 2.119 of the Transport and Infrastructure SEPP. Section 2.119 states the following

- (2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*
- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
 - (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
 - (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

It is noted however TfNSW rejected the referral request made via the Planning Portal on 29/04/2022.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 – Vegetation in non-rural areas.

Comment: The subject land is zoned RU1 Primary Production therefore this chapter does not apply.

Chapter 3 – Koala Habitat Protection 2020

The development site is zoned RU1 Primary Production within Murray River Council, which is a local government area specified in Schedule 1 of State Environmental Planning Policy (Koala Habitat Protection) 2021 and is not marked with an * in that Schedule. Chapter 3 is therefore applicable. The development site is also larger than 1ha, therefore this Chapter is applicable. The subject land is not known to be core koala habitat, however may be land which is potential koala habitat.

Chapter 4 – Koala Habitat Protection 2021

The development site is zoned RU1 Primary Production therefore this Chapter is not applicable.

Chapter 5 – River Murray lands

The subject site is mapped as River Murray land under the State Environmental Planning Policy (Biodiversity and Conservation) 2021.

Part 5.1 Introduction

5.1 Aims of this Chapter

Comment: DPE BCD have advised a BDAR is required to support the proposed development. As the Applicant has not provided this required document, the consent authority is unable to be satisfied the proposal is consistent with the aims of this Chapter.

5.2 Objectives of this Chapter

Comment: DPE BCD have advised a BDAR is required to support the proposed development. As the Applicant has not provided this required document, the consent authority is unable to be satisfied the proposal is consistent with the objectives of this Chapter.

Part 5.2 Planning principles

5.8 General principles

Comment: DPE BCD have advised a BDAR is required to support the proposed development. As the Applicant has not provided this required document, the consent authority is unable to be satisfied the proposal is consistent with the general principles of this Chapter.

5.9 Specific principles

Comment: DPE BCD have advised a BDAR is required to support the proposed development. As the Applicant has not provided this required document, the consent authority is unable to be satisfied the proposal is consistent with the specific principles of this Chapter.

Part 5.3 Planning requirements and consultation

5.12 Planning Control and Consultation Table

Comment: The application was referred to DPE BCD under this section. BCD have advised a BDAR is required to be provided to support the application, however the applicant has failed to provide this required document.

5.13 Building setbacks—special provisions

Comment: Noted.

Murray Local Environmental Plan 2011

The relevant local environmental plan applying to the site is the *Murray Local Environmental Plan 2011* ('the LEP').

Part 1 Preliminary

1.2 Aims of Plan

Comment: The proposed development is not specifically inconsistent with the aims of the Murray LEP 2011, however the Applicant has failed to provide the required BDAR to provide a suitable assessment.

1.9A Suspension of covenants, agreements and instruments

Comment: For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument which restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.

Part 2 Permitted or prohibited development

2.3 Zone objectives and Land Use Table

Zone RU1 Primary Production

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

Comment: The proposed development is not inconsistent with the objectives of the zone. It is noted however the State Environmental Planning Policy (Transport and Infrastructure) 2021 is required to be utilised to achieve permissibility of the proposal.

2.6 Subdivision—consent requirements

Comment: Not applicable.

2.7 Demolition requires development consent

Comment: Noted.

2.8 Temporary use of land

Comment: Not applicable.

Part 3 Exempt and complying development

Comment: Noted. The proposed development cannot be classed as exempt or complying development as it does not meet all development controls.

Part 4 Principal development standards

Comment: Not applicable.

Part 5 Miscellaneous provisions

5.3 Development near zone boundaries

Comment: Not applicable.

5.4 Controls relating to miscellaneous permissible uses

Comment: Not applicable.

5.10 Heritage conservation

Comment: The site does not contain any known items of Environmental Heritage Significance. It is the responsibility of the Applicant to ensure compliance with the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*. In the event consent is issued, the consent will include the standard condition regarding protection of Aboriginal Cultural Heritage.

5.13 Eco-tourist facilities

Comment: Not applicable.

5.16 Subdivision of, or dwellings on, land in certain rural, residential or environment protection zones

Comment: Not applicable.

5.17 Artificial waterbodies in environmentally sensitive areas in areas of operation of irrigation corporations

Comment: Not applicable.

5.18 Intensive livestock agriculture

Comment: Not applicable.

5.20 Standards that cannot be used to refuse consent—playing and performing music

Comment: Not applicable.

5.21 Flood planning

Comment: Part of the subject land is mapped as Flood Prone Land, therefore this section applies to the proposal. It is noted DPE BCD have advised a BDAR is required to support the proposed development. As the Applicant has not provided this required document, the consent authority is unable to be satisfied the proposal is consistent with this section, due to potential impact to the environment.

5.22 Special flood considerations

Comment: Not yet adopted.

Part 6 Urban release areas

Comment: Not applicable. The subject land is not mapped as an Urban Release Area.

Part 7 Additional local provisions

7.1 Essential services

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:

Subsection	Comment
(a) the supply of water,	Not applicable.
(b) the supply of electricity,	Electricity is available.

<i>(c) the disposal and management of sewage,</i>	Not applicable.
<i>(d) stormwater drainage or on-site conservation,</i>	Not applicable.
<i>(e) suitable road access</i>	Existing suitable access to the property frontage.

7.2 Earthworks

Comment: Development consent is required for the earthworks to facilitate the proposed development. It is considered the proposal is not inconsistent with the requirements of the section.

7.3 Biodiversity protection

Comment: Part of the subject land is mapped as Terrestrial biodiversity, therefore this section is applicable. It is noted DPE BCD have advised a BDAR is required to support the proposed development. As the Applicant has not provided this required document, the consent authority is unable to be satisfied the proposal is consistent with this section, due to potential impact to the natural environment including biodiversity.

7.4 Development on river front areas

Comment: Not applicable. The subject land is not classed as a river front area.

7.5 Riparian land and Murray River and other watercourses—general principles

Comment: Not applicable. The proposed development is not occurring on riparian land.

7.6 Additional provisions—development on river bed and banks of the Murray and Wakool Rivers

Comment: Not applicable. The proposed development is not occurring on the river bed or bank of the Murray or Wakool River.

7.7 Wetlands

Comment: Not applicable. The subject land is not mapped as a wetland.

7.8 (Repealed)

Proposed instruments

Comment: No relevant proposed instruments apply to the site.

3.2(a)(iii) Any development control plan

Comment: Murray Development Control Plan 2012 applies to the proposal.

Chapter 2 Residential Development

Comment: Not applicable.

Chapter 3 Industrial Development

Comment: Not applicable.

Chapter 4 Commercial Development

Comment: Not applicable.

Chapter 5 Tourist Accommodation

Comment: Not applicable.

Chapter 6 Strategic Land Use Plan

Comment: The proposed development is not inconsistent with the SLUP.

Chapter 7 Subdivision

Comment: Not applicable.

Chapter 8 Urban Release Areas

Comment: Not applicable.

Chapter 9 Vegetation Removal

Comment: Due to the zoning of the land, this Chapter does not apply.

Chapter 10 Watercourses & Riparian Land

Comment: Not applicable.

Chapter 11 Flood Prone Land

Comment: The subject land is partially mapped as Flood Prone Land. It is noted DPE BCD have advised a BDAR is required to support the proposed development. As the Applicant has not provided this required document, the consent authority is unable to be satisfied the proposal is consistent with this Chapter, due to potential impact to the natural environment including biodiversity.

Chapter 12 Notification Policy

Comment: The application was notified to adjoining property owners in accordance with Council's Policy and legislation. Two (2) submissions were received.

The following contributions plan is relevant pursuant to Section 7.18 of the EP&A Act and has been considered in the assessment (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *S7.12 Development Contributions Plan 2011*

This Contributions Plan has been considered however as the recommendation is for refusal of the application no further assessment required.

3.4 Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

3.5 Section 4.15(1)(a)(iv) - Provisions of Regulations

The regulations have been considered in the assessment of this application. It is considered the application is not inconsistent with the objectives of the regulations.

3.6 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

- **Amenity**

The proposed development is considered to have an acceptable impact on local amenity. There will be some localised visual and construction noise impacts on a small amount of

receivers. Mitigation measures are considered to be able to be satisfied via conditions of consent (in the event approval is granted).

- **Waste**

- Waste would be generated during the construction phase and predominantly be classified as solid waste. Such examples include; packaging materials, excess building materials, scrap metal and cabling materials. Masonry products including concrete waste, excavation of top soils and vegetation clearing and bio wastes.
- All waste generated on site during all phases of the development will be managed in accordance with the POEO Act and adhere to the objectives of the Waste Avoidance and Resource Recovery Act 2001.
- Waste produced during construction will be required to be disposed of at a licensed facility.
- Any green waste (e.g. low lying grass) will be mulched and rehabilitated at the site or appropriately removed.
- Upon decommissioning of the proposed development (20–30-year life span), all infrastructure including cabling and panels and mounting frames including footings and inverters will be disassembled and removed from the site.

The consideration of impacts on the natural and built environments includes the following:

- **Context and setting**

- The proposed development is unlikely to adversely impact upon the built environment. The built form is considered to appropriately response to the site's natural features.
- From a visual perspective, the composition of materials utilised throughout the development is not considered to adversely impact the public domain.
- The proposed development confirms to the sites natural landform and is considered to be appropriate for the location given its uniform layout, and subsequently is not considered to create any adverse bulk and scale impacts.

- **Access and traffic**

- A Traffic Impact Assessment Report (TIAR) has been undertaken in support of the Application, and included recommendations at the end of the document. See below:

"The key recommendations of the TIA are summarised below.

- *Recommendation 1: a traffic management plan be implemented for the Cobb Highway / Milgate Road intersection during the construction phase of the project to mitigate the impacts of the construction traffic*
- *Recommendation 2: the subject site access be constructed to Council satisfaction*
- *Recommendation 3: the security gate at the subject site access to be installed a minimum of 20 m from the through traffic lane on Milgate Road*
- *Recommendation 4: the site plan is updated to include a designated car parking area to accommodate the anticipated demand for a minimum of twenty vehicles during construction. These should be located close to temporary site huts and clear of heavy vehicle movements to maximise safety for all construction staff.*

The proposed development would not adversely impact on the safety or operation of the surrounding road network, provided the recommended mitigations works are undertaken".

- The application was referred to Council's Infrastructure Department and Transport for NSW, no objections were received regarding access arrangements.
- In the event consent is granted, appropriate conditions will be required to be included regarding access and traffic.

- **Utilities**

- Reticulated water and sewer services are not required to be provided to the proposed solar farm as there are no permanent staff or amenities proposed on site.

- **Heritage**

- The site is not subject to any heritage conservation provisions.

- Aboriginal Cultural Heritage - No known items identified on the subject land. In any event statutory requirements would trigger contingency measures if any Aboriginal Cultural Heritage was subsequently identified.

- **Water/air/soils impacts**

- Air quality within the locality is typical of the rural region. It is generally high however dust raised during drier months contributes to sporadic reductions in air quality, with increase in the level of particulate matter in the air due to the burning of agricultural residues and soil cultivation for cropping.
- During the operational phase of the development, soils at the site will be stable and vegetated with perennial grass cover. Dust generation will be closely managed as it is harmful to the effectiveness of the solar array to generate electricity and cause nuisance to surrounding receptors. Solar farms have very low air emissions of air pollutants whilst in operation.

- **Natural environment**

- DPE BCD have advised a BDAR is required to support the proposed development due to the potential impact the proposal will create on the biodiversity values of the site. As the Applicant has not provided this required document, the consent authority is unable to be satisfied the proposal will not create unreasonable impact upon the natural environment.

- **Noise and vibration**

- *Only residential receptors have been identified within the potential area of influence of this project.*
- *The operation of the project will involve noise emissions from transformers and inverters used in the development site. Due to the size of the project, noise associated with maintenance works would be limited to the daytime hours only and maintenance noise related impacts are not anticipated.*
- Based on the above, and given the rural zoning of the development site, the proposal is considered to have negligible impact on noise emissions and will not result in adverse impacts on surrounding rural residential receivers.

- **Construction and operational impacts**

- Nuisance or unacceptable level of noise / vibration amenity may arise from the construction or operational activities associated with the development. It is expected the impact from operational noise and vibration will be negligible with the implementation of appropriate management measures. Such can be suitably conditioned in the event the application is approved.

- **Natural hazards**

- The development site is partially mapped as bush fire prone land and flood prone land.
- Regarding Bush fire, Planning for Bushfire Protection 2019 contains specific bushfire mitigation measures relating to solar farm development and outlines standard construction bushfire risk reduction and management measures including availability of fire-suppression equipment, access and water and appropriate bushfire emergency management planning should be in place, in addition to solar farm specific measures, such as:
 - Solar farms require certain consideration to allow for adequate clearances to combustible vegetation as well as firefighting access and water the following mitigation measures will need to be included for the proposed development.
 - A minimum 10m APZ for the structures and associated buildings / infrastructure; and
 - The APZ must be maintained to the standard of an inner protection area (IPA) for the life of the development

- Infrastructure for the purposes of requiring an APZ excludes road access to the site and power or other services to the site and associated fencing.

- A Bush Fire Emergency Management and Operations Plans is required to be prepared in the event approval is granted which will be required to outline appropriate management and maintenance of bushfire protection measures, for the life of the development, This plan is to be development in consultation with the RFS.

- **Safety, security and crime prevention**

- The proposed development is considered to satisfy the principles of Crime Prevention Through Environmental Design. In this regard, a number of security features have been introduced:
 - Landscaped areas to be maintained to a good standard;
 - Clear delineation between public and private areas;
 - Design minimises public access to restricted areas.
- Based on the above provisions, the requirement of CPTED is deemed to be met.

- **Social impact**

- The development as proposed is not considered to create any adverse social impacts.

- **Economic impact**

- The proposed development is considered to create positive economic effects to the community whilst under construction.

3.8 Section 4.15(1)(c) - Suitability of the site

DPE BCD have advised a BDAR is required to support the proposed development due to the potential impact the proposal will create on the biodiversity values of the site. As the Applicant has not provided this required document, the consent authority is unable to be satisfied the site is suitable for the proposed development.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in **Table 4**.

Table 3: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act) - Not applicable			
Referral/Consultation Agencies			
DPE - Environment, Energy and Science (Biodiversity and Conservation Division)	Section 1.7 of the EP&A Act and Chapter 5 of BC SEPP	<p>The Biodiversity and Conservation Division (BCD) of the Department of Planning and Environment advised on three separate occasions a BDAR is required to support the application, however the Applicant failed to provide this required document. Response from BCD dated 29/9/2022 outlined below:</p> <p><i>“Thank you for your referral via email on 9 September 2022, seeking comment from the Biodiversity and Conservation Division (BCD) of the Department of Planning and Environment.</i></p>	N

		<p><i>BCD has statutory responsibilities relating to biodiversity (including threatened species, populations, ecological communities, or their habitats) and flooding.</i></p> <p><i>The proposal is within the riverine environment of the River Murray established by Chapter 5 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021.</i></p> <p><i>BCD have previously commented on this application, in letters dated 23 May and 8 August 2022, to support Council in making a determination. We have also provided follow up advice regarding these comments to Damian Wall (Red Gum Consulting), in an email dated 1 September 2022.</i></p> <p><i>We have previously advised that a Biodiversity Development Assessment Report (BDAR) is required. We have reviewed the additional biodiversity information that has subsequently been provided and continue to advise that a BDAR is required.</i></p> <p><i>The revised 'Preliminary Biodiversity Assessment' (Red Gum Consulting, 08/09/2022) does not provide sufficient information to support a determination consistent with Part 7 of the Biodiversity Conservation Act 2016 (BC Act). Further detail is provided at Attachment A.</i></p> <p><i>An adequate assessment of potential direct and indirect impacts has not been prepared and therefore impacts cannot be appropriately avoided and minimised. BCD considers there is potential for significant harm to terrestrial threatened species or their habitats. As such the Biodiversity Offset Scheme (BOS) applies, and a BDAR is required.</i></p> <p><i>Without a BDAR Part 7 of the BC Act has not been satisfied and the development should not be approved.</i></p> <p>ATTACHMENT A Detailed comments on DA2022.56 Solar Farm, 55 Milgate Rd, Moama - Response to Additional Biodiversity Information</p>	
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		<p><i>As the proposal is permitted with consent, Council has a duty to determine the likelihood of it impacting threatened species and their habitats according to Part 7 of the BC Act.</i></p> <p><i>BCD have previously commented on this application to support Council in making a determination. Our most recent advice to Council (8 August 2022) was that a BDAR is required.</i></p> <p><i>A revised Preliminary Biodiversity Assessment (Red Gum Consulting, 08/09/2022) has been provided, following further on-site assessment. A BDAR has not been prepared. This assessment does not provide sufficient information to support a determination consistent with Part 7 of the BC Act. It is not a substitute for a BDAR and it does not adequately demonstrate that the BOS does not apply.</i></p> <p><i>The revised assessment has identified Turnip Copperburr (<i>Scleroleana napiformis</i>) in the adjoining roadside, in an area previously recommended as an access point. This species is listed as endangered under the BC Act and the Environment Protection and Biodiversity Conservation Act 1999. This reinforces our position regarding the potential impact on threatened species.</i></p> <p><i>In addition, the following key matters remain outstanding:</i></p> <ul style="list-style-type: none"> <i>- The extent of native vegetation clearing has not been quantified. The specific Plant Community Types (PCTs) have not been clearly defined and areas of native vegetation identified on site are likely to be representative of Threatened Ecological Communities (TECs</i> <i>- such as Inland Grey Box Woodland).</i> <i>- Impacts of ancillary works and any indirect impacts have not been adequately addressed. In particular, the impacts of the proposed new powerline easement and pole locations have not been assessed. We note the final connection arrangement has not been confirmed.</i> <p><i>As potential direct and indirect impacts have not been quantified, appropriate steps to avoid and</i></p>	
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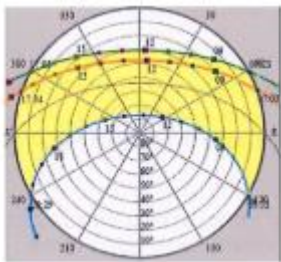
		<p><i>minimise impacts to threatened species (particularly Turnip Copperburr and TECs) cannot be identified and implemented.</i></p> <p><i>For this reason, BCD considers that there is potential for significant harm to terrestrial threatened species or their habitat. On that basis the BOS applies, and a BDAR is required. Without a BDAR Part 7 of the BC Act has not been satisfied and the development should not be approved based on the biodiversity assessment provided.</i></p> <p><i>We note that the 'preliminary' biodiversity assessments used to support this application are not sufficient for satisfying Part 7 of the BC Act. The location and total extent of native vegetation clearing must always be quantified, and this will determine whether a Test of Significance or BDAR is required. Attempts to minimise the need for assessments and avoid the BOS have been counterproductive in this instance.</i></p> <p><i>The matters highlighted above have been raised consistently by BCD since our initial response of 23 May 2022. A BDAR could have been successfully prepared in that time to support the proposal, providing greater clarity and certainty for both the applicant and Council and avoiding ongoing delays in the assessment.</i></p> <p>Recommendation</p> <p><i>We recommend Council require the proponent to prepare a BDAR, because the BOS is triggered. A BDAR must apply the Biodiversity Assessment Method 2020 and include assessment of all ancillary works.</i></p> <p><i>We recommend the BDAR Template and Biodiversity Assessment Method (BAM) operational manuals be used to guide the content of the BDAR”.</i></p> <p><i>As the Applicant has failed to provide a BDAR report, the application is unable to be supported.</i></p>	
Transport for NSW (TfNSW)	Section 2.119 of the <i>State Environmental Planning Policy (Transport and</i>	TfNSW rejected the referral request made via the Planning Portal on 29/04/2022.	Y

	<i>Infrastructure) 2021</i>		
Heritage NSW	Section 5.10 of the <i>MLEP 2011</i>	<p>Heritage NSW returned the referral request made via the Planning Portal on 29/04/2022.</p> <p>It is noted however that subject to imposition of a general condition regarding protection of unknown Aboriginal Heritage items the DA can proceed.</p>	Y
Environment Protection Authority	General referral under MDCP 2012 and Section 4.15 (1) (b) of the <i>EP&A Act</i>	<p>The following general comments were received on their letter dated 3/05/2022;</p> <p><i>“Please note that the EPA recently decided that it will no longer respond to routine referrals of certain types of planning matters. These include educational establishments, hospitals, medical centres, health research facilities and solar farms. This decision was made to ensure that the EPA can focus more resources on providing advice on other complex projects. The EPA should only be contacted about these types of developments if you believe that EPA technical expertise on a specific issue is needed. In view of these factors, the EPA has no comments to provide on this project and no follow-up consultation is required.”</i></p> <p>It light of the above response, it is considered that subject to imposition of standard conditions related to noise and amenity impacts and pollution of waterways the DA can proceed.</p>	Y
Essential Energy	Section 2.42 of the <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	<p>Essential Energy did not object to the granting of consent (subject to conditions). Response dated 8/6/2022 outlined the following;</p> <p><i>“Strictly based on the documents submitted, Essential Energy makes the following comments as to potential safety risks arising from the proposed development:</i></p> <p><i>1. The proposed site plan indicates a new 22kV pole and overhead powerline is proposed as part of the development:</i></p> <p><i>a. Any security boundary fencing in this area must comply with the latest industry guideline currently known as ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure, in particular as to</i></p>	Y

		<p><i>safety/earthing controls and meeting minimum safe distances (powerlines to fence).</i></p> <p><i>b. Any proposed tree planting or landscaping in this are must also comply with ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure.</i></p> <p><i>c. During construction around the powerline, SafeWork NSW clearances MUST be maintained.</i></p> <p><i>Essential Energy also makes the following general comments:</i></p> <ol style="list-style-type: none"> <i>1. If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment.</i> <i>2. Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above property should be complied with.</i> <i>3. Satisfactory arrangements are to be made with Essential Energy with respect to the proposed photovoltaic electricity generating system which will form part of the development. It is the Applicant's responsibility to enter into the required Connection Agreement/s and any other requirements with Essential Energy for the development, which may include the payment of fees and contributions. Refer Essential Energy's Network Connections team for requirements via email networkconnections@essentialenergy.com.au.</i> <i>4. In addition, Essential Energy's records indicate there is overhead electricity infrastructure located within the property and within close proximity of the property. Any activities within these locations must be undertaken in accordance with ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure. Approval may be required from Essential Energy should</i> 	
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		<p><i>activities within the property encroach on the electricity infrastructure.</i></p> <p>5. <i>Prior to carrying out any works, a "Dial Before You Dig" enquiry should be undertaken in accordance with the requirements of Part 5E (Protection of Underground Electricity Power Lines) of the Electricity Supply Act 1995 (NSW).</i></p> <p>6. <i>Given there is electricity infrastructure in the area, it is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW (www.safework.nsw.gov.au) has publications that provide guidance when working close to electricity infrastructure. These include the Code of Practice – Work near Overhead Power Lines/Underground Assets.</i></p> <p>As per the above response, the assessing officer of this DA is satisfied that subject to imposition of above conditions on any consent granted the DA can proceed.</p>	
Department of Infrastructure, Regional Development and Cities	General referral under MDCP 2012 and Section 4.15 (1) (b) of the EP&A Act	No applicable comments received.	Y
Civil Aviation Authority (CASA)	The adjacent Lot 215 DP 751152 contains an airstrip approved under DA 10.2015.78.2 for the purpose of operating private/commercial aircraft use including storage of aircraft. As such a response was sought from the Civil Aviation Authority under MDCP 2012 and Section 4.15 (1)	<p>CASA did not object to the granting of consent. Response dated 8/8/2022 outlined the following;</p> <p><i>"At this stage, there are no specific Australian standards that apply to solar farms near aerodromes. CASA does not have any regulatory advice or "reflectivity standards" with specific regard to solar installations. Generally, modern solar panels are designed to absorb light, and not to reflect it.</i></p> <p><i>CASA often recommended that solar developers proposing projects on or near airport land follow the guidelines issued by the US Federal Aviation Administration (FAA).</i></p> <p><i>Since 2018, as a result of consultation with solar and aviation industries, the FAA has revised its</i></p>	Y

	<p>(b) of the EP&A Act.</p>	<p><i>guidance. Following is an extract from the 'new' guidance dated 11 May 2021:</i></p> <p><i>"In most cases, the glint and glare from solar energy systems to pilots on final approach is similar to glint and glare pilots routinely experience from water bodies, glass-façade buildings, parking lots, and similar features. However, FAA has continued to receive reports of potential glint and glare from on-airport solar energy systems on personnel working in ATCT cabs. Therefore, FAA has determined the scope of agency policy should be focused on the impact of on-airport solar energy systems to federally-obligated towered airports, specifically the airport's A TCT cab."</i></p> <p><i>The glare for pilots approaching Echuca Aerodrome is not considered to be hazardous due to the following:</i></p> <ul style="list-style-type: none"> - <i>FAA advice above.</i> - <i>The significant distance between the solar farm and the aircraft approaching the runway.</i> - <i>The sun would be too high in the north to affect pilots approaching on runway 35.</i> - <i>According to NASF Guideline E "The potential for risk from building glare is further attenuated and by the use of sunglasses which pilots normally wear in bright daylight."</i> - <i>There is no Air Traffic Control Tower</i> <p><i>There is an airstrip (Aeroplane Landing Area) immediately to the south of the Milgate Road solar farm site. CASA does not regulate ALAs or provide planning advice for installations in the vicinity of ALAs. CASA has no idea whether glare will be an issue for pilots landing at the ALA. (The sun path diagram for Albury indicates that in the middle winter at about 2pm the sun would be at an angle of about 250 whereas an aircraft would normally approach from the opposite direction at about 30. However, with the panels tracking the sun and the panels covering a wide arc with respect to the airstrip, it is very difficult to predict glare without a glare study using a Solar Glare</i></p>	
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		<p><i>Hazard Analysis Tool... and even then a number of assumptions are made).</i></p>  <p><i>CASA has no objection to the installation of the solar farm. It is unlikely to constitute an unacceptable risk to aircraft operations for Echuca Aerodrome. Standard Disclaimer: Once installed, in the unlikely event that safety concerns relating to glare caused by the solar farm are raised by pilots when landing aircraft at Echuca Airport, the configuration / algorithm of the solar panels may need to be reviewed and revised”.</i></p>	
Department Of Planning Industry and Environment	General referral under MDCP 2012 and Section 4.15 (1) (b) of the EP&A Act	<p>Department Of Planning Industry and Environment returned the referral request made via the Planning Portal on 29/04/2022 and also provided the response;</p> <p><i>“As there is no legislative requirement for concurrence from the Department of Planning and Environment, Western Region team, no advice will be given as part of this agency referral process.”</i></p>	Y

5.1 Council Referrals

The development application has been referred to various Council officers for technical review as outlined in **Table 5**.

Table 4: Consideration of Council Referrals

Officer	Comments	Resolved
Infrastructure Department	<p>The DA was referred to Council's Engineering Department, with the following requested:</p> <ul style="list-style-type: none"> a) Total S 7.12 contribution payment for the development b) If any upgrades required for Milgate Road c) Rural address number for Lot 212 DP 751152. <p>The following response was provided:</p> <ul style="list-style-type: none"> - “[RAN] Application required. - No additional contributions required 	Y

	- <i>Condition report of Milgate road pre and post construction (noting this is haul route for nearby quarry)".</i>	
Building Team	The DA was referred to Council's Building Department who confirmed that the proposed solar panel structures require a Construction Certificate. As such a condition will be recommended on any consent granted to reflect this requirement.	Y
Waste & Compliance Team	The DA was referred to Council's Waste & Compliance Department for comment.	Y
1. Environmental Health Coordinator	No specific issues have been identified or comments received.	
2. Coordinator Waste Management	Council's Waste Management Coordinator has confirmed that the submitted decommission Waste Management Plan is satisfactory. In light of the above, the submitted Waste Management Plan will be recommended to be incorporated with any consent granted.	Y

5.2 Community Consultation

The proposal was notified in accordance with the *MDCP Plan 2012* from 3 May 2022 until 30 May 2022 whilst it was also advertised on the NSW Planning Portal and in the local newspaper.

A total of two (2) unique submissions, comprising one (1) objection and one (1) submission requesting further clarification on the proposal were received. The issues raised in these submissions included the following:

1. **H.J Hawkins** – *"we object to the above application (solar farm) on the basis that we believe they will use the poles on our property to send the power from the solar farm to the substation."*
2. **Tony Kitchin** – *"I would like clarification on the intention of the 1 kilometer radius (shown in the application) surrounding the solar farm which encumbers most of my property being lots 118 ,121 and 1 on Milgate rd Moama?
And will this impact on our future building permit approval?"*

Response from Council staff:

The above submissions were forwarded to the Applicant on 15/06/2022 and Council sought further clarification on the matters raised within the submissions.

In response to the objection, the Applicant provided the following response:

1. *"It should be noted that the power poles and overlines are assets that are owned and managed by Essential Energy (EE), not the landholders. The electrical distribution network is key infrastructure that we assume would have been constructed on the land with the consent of the owner of the time and retains ongoing consent via an easement.*

The proposed solar farm will be wholly constructed and connected to the existing EE grid within the property at 55 Milgate Road. A transformer will be installed on the existing power pole immediately west of the proposed solar farm – within the subject land.

In response to the objection to using the EE grid, Green Gold Energy have obtained in-principle support from EE to connect to their existing infrastructure, along with confirmation that capacity exists on the line to support the proposed increase in electricity generation.

Accordingly, the use of the existing overhead power lines, for their intended purpose, would not impact the landholders in any way."

As part of the assessment process, the DA was referred to Essential Energy for comment. As discussed above, Essential Energy did not object to the proposal subject to imposition of relevant conditions and advice on any consent granted. It is therefore considered this key issue raised by the objection can be dealt with by imposition of a condition if approved.

Of note, the Applicant has mentioned in their submission to Council that in principal support have been obtained from Essential Energy for the proposal. It is noted no documentation has been provided with the Application or the submission to support this position.

The following response has been provided by the Applicant in response to the second submission;

- 2. The 1-kilometer radius shown around the facility is solely an illustrative mechanism to provide an idea of scale and identify perceived impacts as part of the consideration of the application. However, the likelihood of any actual impacts to neighbouring properties are incredibly low/essentially non-existent and the proposal would not impact any future building approvals.*

To illustrate this, there has been extensive work undertaken as part of past applications for high profile solar farms. Most notably, in 2018, the Victorian Minister for Planning appointed an independent panel to investigate the potential for offsite impacts on neighbouring properties. This panel was appointed as a result of concerns to unknown issues as a consequence of several proposed solar farms in the Goulburn Valley. These considerations included visual impacts, noise, ambient heating and radiation, amongst others. Based on the nature of operations of solar farms, there is very little in the way of off-site impacts that would prevent adjoining landholders from enjoying the continued use of their rural properties. We would be happy to provide direction to these reports, which are publicly available for review.

In light of the above response, it is considered the intent of the polygon on the map is for indicative purpose only.

It is further noted Lot 1 DP 129944, and Lots 121 & 118 DP 751152 which have been mentioned in the submission maker's comment are currently zoned RU1 Primary Production according to the *MLEP 2011*. Any Development Application lodged for the erection of a dwelling house will be considered on its merits and the matters outlined in S 4.15 of the *EP&A Act*. Therefore, if in the event that the Panel approves this DA, it will not impact on future Development Application/s on adjoining allotments. Therefore, in this instance condition/s regarding this issue are not required.

5.1 Section 4.15(1)(e) - Public interest

As outlined in this report, the applicant has not provided a BDAR which is required in this instance to support the application. As insufficient information has been provided, the consent authority is unable to be satisfied the proposal is within the public interest. It is in the public interest to ensure planning legislation is followed.

6. RECOMMENDATION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning requirements, including controls and issues raised, it is considered the application is unable to be supported. A BDAR report has not been provided by the Applicant, therefore the consent authority is unable to be satisfied the proposal complies with Section 1.7 of the Act. It is therefore recommended the application be refused.

7. ATTACHMENTS

It is noted the following attachments are relevant and available on the Planning Portal:

1. Decommission Waste Management Plan prepared by MC – Low Impact Development Consulting and dated 08/04/2022
2. Traffic Impact Assessment Report prepared by Traffic Works and dated 15/12/2021;
3. Site survey Plan showing the existing condition of the site prepared by Chris Smith & Associates and dated 10/12/2021;
4. Statement of Environmental Effects prepared by Chris Smith & Associates;
5. Series of preliminary plans prepared by Green Gold Energy (i.e. site plans, elevation diagrams of the solar panels and the transformer, elevation diagram of the chain mesh fence and landscaping plan);
6. Estimation of development cost;
7. Noise Impact Assessment prepared by ADP Consulting Engineering and dated 21 December 2021;
8. Essential Energy referral response;
9. BCD Referral responses dated 23/5/2022, 8/8/2022 and 29/9/2022;
10. Cost Estimate Report;
11. Response to Council RFI.