

ATTACHMENT K- APPLICANT'S COMMENTS ON RECOMMENDED DRAFT CONDITIONS OF CONSENT AND STAFF RESPONSE

As requested by the Western Region Planning Panel, the recommended Draft Conditions of Development Consent were referred to the Applicant for consideration and comment.

The following comments were received by Council from the Applicant:

SCHEDULE 1 CONDITIONS

1. **Development Address:** The Applicant seeks to change Lot 5 DP 1210276 to **Lot 6 DP 1287937** *"due to an approved subdivision irrelevant to this development"*.

Staff Comment: Council has been recently advised of the registration of new Lot 6 DP 1287937 and therefore this will be included in the Table to the Draft Conditions.

2. **Applicant:** ACEnergy Pty Ltd was listed on the NSW Planning Portal Application Form (PAN-272167) as being the Applicant in respect of the Development Application.

Staff Comment: **No change** be made to this description.

3. **Condition 3) (g):** The Applicant seeks to change the requirement for a car parking area for up to 50 vehicles during the construction phase to *"10 parking spaces"*.

Staff Comment: In Section 7.1.1 on page 22 of the Statement of Environmental Effects under the heading of *"Construction traffic management"* it states, inter alia:

*The peak of construction activities will occur during the mechanical and electrical installation phases of construction. During these times, up to **50 workers** could be on site during working hours. Workers will access the site in the morning (and leave at the end of the working day in either their private car or work vehicle (ute or small truck).*

Therefore, during the **construction period** only, a total of 50 temporary car parking spaces for workers needs to be provided. **No change** is to be made to this condition.

4. **Condition 3) (k):** The Applicant seeks the deletion of the words *"outside of the Carrathool Shire"* as some of the components may be *treated, sold or disposed of* within the Carrathool LGA.

Staff Comment: The intention of this condition is that any waste materials (components with no resale value that are not sold as scrap for recycling) from the decommissioning of the project are not to be disposed of at landfill sites within the Carrathool LGA as Council landfill facilities are not able to adequately dispose of the waste components. Therefore, **no change** is to be made to this condition.

5. **Condition 7):** The Applicant seeks to delete this condition as the landholder and solar farm owner may enter into another agreement to continue a lease agreement after the expiry of the current 31-year lease agreement.

Staff Comment: As the facility is likely to remain functional and operating as new technology becomes available at the end of the 31-year design life expectancy, Condition 7 **may be deleted**.

6. **Condition 10) (8):** The Applicant seeks the deletion of subclause (8) which refers to a Vegetation Screening Plan as a Landscape Plan was submitted with the Development Application.

Staff Comment: Council agrees to this modification and subclause (8) **may be deleted**.

7. **Condition 11):** The Applicant is of the opinion that as *“no building works are proposed”* the condition requiring an Occupation Certificate should be deleted.

Staff Comment: As stated in Condition 11, Part 6 of the Environmental Planning and Assessment Act, 1979 (EP&A Act 1979) requires that any *“building work”* must not be carried out without a Construction Certificate being obtained. *“Building work”* is defined in Section 6.1 as *“means any physical activity involved in the erection of a building”*. *“Building”* is defined in the Dictionary in Section 1.4 of the EP&A Act 1979 as *“includes part of a building, and also includes any structure or part of a structure (including any temporary structure or part of a temporary structure), but does not include a manufactured home, moveable dwelling or associated structure within the meaning of the [Local Government Act 1993](#).”*

Therefore, the proposed solar panels will require a Construction Certificate, as required by Condition 9) in Schedule 1, to be obtained. If Council is appointed as the Principal Certifier, the solar panels will be given a “Class 10b non- habitable structure” building classification pursuant to the National Construction Code- Building Code of Australia Volume Two. It should be noted that all other solar farm developments in the Carrathool Shire were the subject of a Construction Certificate. Therefore, **no change** is to be made to this condition.

8. **Condition 12):** The Applicant seeks the deletion of this condition for the following reasons:

- a) *“The EP&A Regulation requires a nexus for s.7.12 contributions. In considering the unmanned nature of the land use, solar farms do not generate demand for infrastructure. Rather, they directly underpin the integrity of it.”*
- b) *“The NSW Productivity Commission recommends that wind and solar farm developments be exempted from development contributions”*
- c) *“The proposed solar farm is infrastructure that provides community benefit to Carrathool Shire Council”*

Staff Comment: A Section 7.12 Contribution is a fixed development consent levy that is a percentage of the value of the proposed works. The levy imposed on this development has been imposed strictly in accordance with the requirements of *the Carrathool Shire Council*

Section 7.12 Fixed Levy Plan dated October 2021. Therefore, **no change** is to be made to this condition.

9. **Condition 23):** The Applicant seeks the deletion of this condition for the following reason:

“Section 19 of the NSW Work Health and Safety Act 2011 requires the provision of toilets on work sites.”

Staff Comment: The NSW Work Health and Safety Act 2011 is administered by SafeWork NSW, not Council's. The provision of ablution facilities for workers is a standard condition on most Development Consents. Therefore, **no change** is to be made to this condition.

SCHEDULE 2 CONDITIONS

1. **Condition 1) (in part):** The Applicant seeks the amendment of **part** of this condition as follows:

“The Applicant must ensure at all times that 6-8 light vehicle movements and an average of 10-15 truck and trailer movements per day occur on the site” **be amended to read:**

“The Applicant must ensure at all times that no more than 10 light vehicle movements (defined as one vehicle entering and leaving the site) and an average of 3 truck and trailer movements (defined as one vehicle entering and leaving the site) per day occur on the site”

Staff Comment: Council **concurs** with this amendment to the first paragraph of the above condition.

2. **Condition 4):** Delete condition and replace with the following:

“Prior to commencing construction, the Applicant must upgrade the access to the site as per Attachment L (Rural Driveways RS-056). No work can commence on site until these works have been approved by Council.”

3. **Condition 5) (a):** The Applicant seeks the deletion of the words *“all-weather road”* and to describe it as an *“unsealed crushed rock based all-weather road”* in order to clarify this condition.

Staff Comment: Council **concurs** with this amendment to the above condition.

4. **Condition 7):** The Applicant seeks the amendment of the **first paragraph** of this condition by adding the words *“that generate noise with heavy equipment”* after the word *“activities”* and before the word *“on”*.

Staff Comment: Council **concurs** with this amendment to the above condition.

5. **Condition 9):** The Applicant seeks to amend this condition to request adequate dust suppression measures be included in the Construction Environmental Management Plan required by Condition 10 (3) in Schedule 1 as a water cart may or may not be required.

Staff Comment: This condition should be **amended** to read as follows:

“The Construction Environmental Management Plan as required by Condition 10 (3) in Schedule 1 is to consider whether or not a water cart is required on-site during construction activities to minimise and prevent dust generation so as to avoid community complaints”

6. **Condition 10) (a):** The Applicant seeks the deletion of this condition for the following reasons:

“There are no dwellings within a one-kilometre radius of the site, the nearest dwelling to the site is located over 1800m south of the proposed facility.

Also, glint and glare assessment found:

In summary, based on the assumptions and parameters of this desktop assessment, the following results were identified:

-The SGHAT modelling identified no glare is geometrically possible affecting rural dwellings within 2km of the Project, therefore no impact is likely.

-The SGHAT modelling identified no glare is geometrically possible affecting local roads within 2km of the Project, therefore no impact is likely.

- The SGHAT modelling identified no glare is geometrically possible affecting the local airstrip to the South of the Project, therefore no impact is likely.”

Staff Comment: The condition has been applied appropriately and will only take effect should complaints be received from adjoining and adjacent property owners. Therefore, **no change** is to be made to this condition.

7. **Condition 10) (b):** The Applicant advises that this condition contradicts Condition 4) (g) and also that the proposal includes landscaping of up to 3 metres height around the perimeter of the solar farm.

Staff Comment: It is considered that the proposed landscaping will address this issue. Council **concurs** with the deletion of this condition.

8. **Condition 10 (c):** The Applicant seeks to amend this condition to read as follows:

“All ancillary infrastructure is to be painted in low impact colours, such as RAL7035 grey”

Staff Comment: The proposed condition essentially achieves the same result as the suggested amendment. Therefore, **no change** is to be made to this condition.

SCHEDULE 3 CONDITION

1. **Condition 8) (ninth dot point):** The Applicant seeks to delete this condition for the following reason:

“The construction would not involve independent environmental audit given the relatively small scale compared to conventional solar farms. Internal environmental audits would be conducted on a monthly basis during construction, in compliance with relevant state environmental legislation and guidelines”.

Staff Comment: The intention of the proposed condition is that, notwithstanding the small -scale of the proposed development, **if** there was a need to conduct an independent environmental audit, then the Applicant’s response to any recommendations made in that audit should be readily available in the public domain. It follows that if there is not a need for an independent environmental audit, then this condition would not be triggered. Therefore, **no change** is to be made to this condition.