

COUNCIL ASSESSMENT REPORT

JOINT REGIONAL PLANNING PANEL

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| PANEL REFERENCE & DA NUMBER | PPSWES-175 – DA.2023/0024 |
| PROPOSAL | Installation of a 4.95MW solar farm and associated works |
| ADDRESS | Lot 2 DP 778062 39 HOGANS LANE DENILIKUIN |
| APPLICANT | Chris Smith & Associates |
| OWNER | Roger and Nadine Campton |
| DA LODGEMENT DATE | 11 April 2023 |
| APPLICATION TYPE | Development Application – Regionally Significant |
| REGIONALLY SIGNIFICANT CRITERIA | Clause 5, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : Development has capital investment value of more than \$5 million for the purpose of electricity generating works |
| CIV | \$5,159,946 (excluding GST) |
| CLAUSE 4.6 REQUESTS | N/A |
| KEY SEPP/LEP | <ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Planning Systems) 2021</i> • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> • <i>Draft Edward River Local Environmental Plan 2023; - (Planning Proposal 2022-3030 – consolidation of the Conargo LEP 2013, Deniliquin LEP 2013 & Deniliquin LEP 1997 into a single consolidated Edward River LEP)</i> • <i>Deniliquin Local Environmental Plan 2013</i> • <i>Deniliquin Development Control Plan 2016</i> |
| TOTAL & SUBMISSIONS ISSUES SUBMISSIONS UNIQUE KEY IN | <p>12 unique submissions received, key issues raised as follows:</p> <ul style="list-style-type: none"> • compatibility with existing ‘rural residential’ character, • suitability of the site, • visual amenity, • council road infrastructure, • landscaping / screening , • health impacts, • agricultural land use conflict, • flora and fauna, |

| | |
|---|---|
| | <ul style="list-style-type: none"> • land value decline, • lack of consultation, • hazards – fire & flood, • construction impacts, • electricity infrastructure, and • community benefit. |
| DOCUMENTS SUBMITTED FOR CONSIDERATION | <ul style="list-style-type: none"> • Statement of Environmental Effects – Chris Smith & Associates - March 2023 • Traffic Impact Assessment - Traffic Works - 3/03/2023 • Construction Environmental Management Plan – Green Gold Energy • Test of Significance – Red-Gum Environmental Consulting – 27/02/23 • Land Use Conflict Assessment – Chris Smith & Associates – March 2023 • Glint & Glare Assessment – Environmental Ethos – August 2022 • Electricity Generation Report – Green Gold Energy – June 2023 • Submissions Report – Chris Smith & Associates – June 2023 • Plan of Existing Conditions – Sheets 1-2 – Chris Smith & Associates • Site Plan – Rev G – Green Gold Energy • Landscape Plan - Sheets 1-2 – Chris Smith & Associates • Construction Noise Assessment – Muller Acoustic Consulting – August 2023 |
| SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24) | N/A |
| RECOMMENDATION | Refusal |
| DRAFT CONDITIONS TO APPLICANT | N/A |
| SCHEDULED MEETING DATE | 3 October 2023 |
| PLAN VERSION | Plan of Existing Conditions – Sheets 1-2 – Chris Smith & Associates Site Plan – Rev G – Green Gold Energy Landscape Plan - Sheets 1-2 – Chris Smith & Associates |
| PREPARED BY | Eliza Eastman |
| DATE OF REPORT | 21 September 2023 |

EXECUTIVE SUMMARY

The development application (DA2023/0024) seeks consent for the Installation of a 4.95MW solar farm and associated works at Lot 2 DP 778062 39 HOGANS LANE DENILIQUN

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

- Installation of 12,000 solar panels (2.2m x 1.1m) mounted on single axis tracking arrays with a maximum height of 2.9m above the ground.
- Construction of 1.8m high perimeter chain mesh fencing
- Landscaping of the perimeter
- Construction of a 22kV pole to connect to the overhead powerline
- Construction of a high voltage power switchboard
- Construction of an inverter station

The proposed development aims to ensure compliance with the relevant State Environmental Planning Policies, Deniliquin Local Environmental Plan 2013 and Deniliquin Development Control Plan 2016 and an assessment against the relevant pieces of legislation has been provided throughout this report.

The subject land is known as Lot 2 DP 778062 39 HOGANS LANE DENILIQUN ('the site') and is generally a rectangular shaped parcel with approximately 263m of street frontage (Hogans Lane) along the western boundary. It has a depth of 805m on the northern and southern side boundaries respectively equating to a total land area of 21 hectares.

The land has an existing dwelling and associated shedding in the northwest corner and access to the site is provided via Hogans lane, an unsealed Council road. Dust and damage to Hogans Lane during construction is likely to be an issue and will require monitoring and mitigation measures to be identified and provided. The remainder of the subject site is largely open grazing land, and contains mature scattered vegetation in the southern boundary of the site and some notable vegetation patches interspersed through the locality. The footprint of the proposed development comprises approximately 15ha of the development sites 21 hectares.

The site is zoned RU1 Primary Production in accordance with the Deniliquin Local Environmental Plan 2013 (DLEP 2013). The site is 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 Terrestrial Biodiversity, in accordance with the DLEP 2013. The site does not contain any known items of environmental heritage significance as outlined in Schedule 5 of DLEP 2013. The site is not mapped as River Murray Lands clause as outlined in Chapter 5 of the Biodiversity and Conservation SEPP. The site is not identified as flood prone land on Council mapping and Council does not hold any flood data for this site.

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 (Transport and Infrastructure) 2021;
- Draft Edward River Local Environmental Plan;
- Deniliquin Local Environment Plan (LEP) 2013; and
- Deniliquin Development Control Plan 2016.

The proposal is inconsistent with various provisions of the planning controls including:

- inconsistencies with the requirements for determination of development applications for solar electricity generating works relating to conflict with existing residential uses pursuant to State Environmental Planning Policy (Transport and Infrastructure) 2021 Chapter 2, Part 2.3, Division 4, Section 2.42
- Inconsistent with the aims of the Deniliquin Local Environmental Plan 2013 which include *to minimise land use conflicts and adverse environmental impacts* as Council is not satisfied that the site selection of the proposed solar farm within a closely settled rural residential area adequately minimizes land use conflict with nearby residential development.
- Inconsistent with the objectives of the RU1 zone as the development is not considered to be compatible with the character of the zone in this locality for the reasons.
- Inconsistencies with the aims & zone objectives of the proposed *Draft Edward River Local Environmental Plan 2023*
- *Inconsistencies with the objectives of Chapter 5 – Rural Zone, 5.2 Other Development 5.2.6 Impacts on Surrounding Land of the Deniliquin Development Control Plan 2016* relating to amenity and land use conflict.

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), Essential Energy, Transport for NSW (Roads), DPI Agriculture and DPE – Biodiversity, Conservation & Science with no objections raised by any of these agencies.

The application was placed on public exhibition from 13 April 2023 to 8 May 2023 pursuant to the Environmental Planning and Assessment Act 1979. Twelve (12) submissions were received which raised issues relating to compatibility with existing 'rural residential' character, suitability of the site, visual amenity, council road infrastructure, landscaping / screening , health impacts, agricultural land use conflict, flora and fauna, land value decline, lack of consultation, hazards – fire & flood, construction impacts, electricity infrastructure and community benefit.

The application is referred to the Joint 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.

A briefing was held with the Panel on 25 July 2023 where it was determined that a public meeting would be required as more than 10 unique submissions were received and the applicant is to provide an acoustic impact report to address potential noise impacts on the nearby sensitive receivers during construction of the solar farm. A site visit was then held with the panel on 16 August 2023 and key issues observed included relative proximity of sensitive receptors to the proposed development, noise impacts during construction, visual amenity impact, whether site selection and site panning had been undertaken appropriately and ongoing maintenance requirements of Hogans Lane during construction.

The key issues associated with the proposal include:

1. Noise –the construction noise assessment provided by the applicant, demonstrates construction noise levels are anticipated to exceed the Noise Management Levels

- (NMLs) at 4 neighbouring residential receivers. This is considered to be a significant conflict which will be unable to be mitigated through conditions of consent
2. Visual Impact - The bulk and scale of the development in such close proximity to surrounding dwellings (60m being the closest neighbouring dwelling) is not considered to be able to be effectively mitigated by the landscape screening proposed. The built form of the development will have a detrimental impact on visual amenity in the area.
 3. Suitability of site – it is not considered that site selection and site planning for the proposal has been adequately undertaken given the relatively small size of this rural allotment (21ha) and the close proximity to surrounding dwellings from the development. It is difficult to appropriately mitigate the amenity impacts through site design.
 4. Construction - Dust and damage to Hogans Lane during construction is likely to be an issue and will require monitoring and mitigation measures to be identified and provided. Additionally, the construction noise assessment provided by the applicant, demonstrates construction noise levels are anticipated to exceed the NMLs at 4 neighbouring residential receivers. This is considered to be a significant conflict which will be unable to be mitigated through conditions of consent
 5. Social Impacts - Whilst it is difficult to measure health impacts associated with many amenity issues, the construction noise assessment provided identifies excessive noise levels during the construction phase for some neighbouring residential properties. Health impacts are a realistic impact of the identified excessive construction noise levels.
 6. Public Interest - Council is of the view the amenity impacts, particularly construction noise and visual impact are unable to be satisfactorily mitigated on this site. For this reason Council is of the view the proposal is contrary to public interest.

Following consideration of the matters for consideration under Section 4.15(1) of the EP&A Act, the provisions of the relevant State environmental planning policies, in particular the State Environmental Planning Policy (Transport and Infrastructure) 2021 , the proposal cannot be supported.

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

- 21ha rectangular shaped flat allotment with frontage to Hogans Lane, an unsealed road. The site has an existing dwelling and associated shedding with the balance of the site being cleared farm land used for sheep and goat grazing.
- Surrounding land consists of similar sized rural allotments generally used for 'rural residential' purposes, with larger scale traditional agriculture further to the north and east.
- The nearest neighbouring dwelling to the north will be approximately 60m from the proposed development
- The town of Deniliquin is approximately 4.5km east of the site
- The site is identified as bushfire prone land

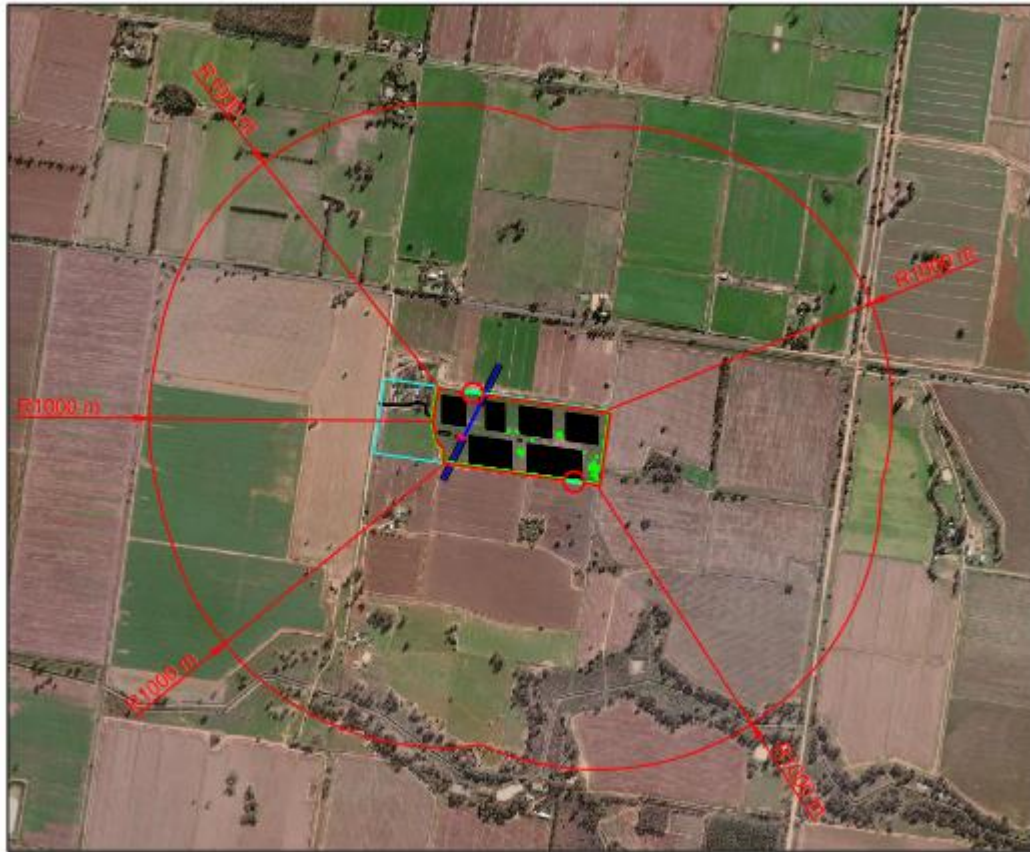


Figure 1: Locality Map



Figure 2: Aerial photograph

1.2 The Locality

- Surrounding land consists of similar sized small rural allotments used for 'rural residential' purposes.
- There are 11 existing neighbouring dwellings within 1200m of the development site
- Hogans Lane is an unsealed Council road with poor drainage.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent for a 4.95MW solar farm and associated works.

Specifically, the proposal involves:

- Installation of 12,000 solar panels (2.2m x 1.1m) mounted on single axis tracking arrays with a maximum height of 2.9m above the ground.
- Construction of 1.8m high perimeter chain mesh fencing
- Landscaping of the perimeter
- Construction of a 22kV pole to connect to the overhead powerline
- Construction of a high voltage power switchboard
- Construction of an inverter station

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

Table 1: Development Data

| Control | Proposal |
|-----------------------------|--|
| Site area | 21ha |
| GFA | n/a |
| FSR (retail/residential) | n/a |
| Clause 4.6 Requests | No |
| No of apartments | n/a |
| Max Height | Solar panels 2.9m above the ground |
| Landscaped area | Landscaping proposed on perimeter – see landscape plan |
| Car Parking spaces | Lay down area during construction |
| Setbacks | Minimum 13m boundary setback |



Figure 3: Site Plan

2.2 Background

A pre-lodgement meeting was not held prior to the lodgement of the application. However the DA was originally submitted to Council in early 2022 and Council requested additional information prior to lodgement of the DA on 7 April 2022. A summary of the issues raised in the pre lodgement additional information request and how they were addressed by the proposal is outlined below:

- Landscape screening – additional screening provided on southern and eastern boundaries
- Electricity Generation Report - provided
- Glint & Glare Assessment – provided
- Biodiversity – addressed
- Land Use Conflict Risk Assessment – provided
- Consultation – no consultation undertaken by the applicant

The development application was lodged on 11 April 2023. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

Table 2: Chronology of the DA

| Date | Event |
|----------------|---|
| 11 April 2023 | DA lodged |
| 13 April 2023 | Exhibition of the application |
| 13 April 2023 | DA referred to external agencies |
| 8 June 2023 | Request for Information from Council to applicant |
| 23 June 2023 | Applicant provided submissions report |
| 25 July 2023 | Panel briefing |
| 25 July 2023 | Request for Information from Council to applicant |
| 15 August 2023 | Applicant provided Construction Noise Assessment |
| 16 August 2023 | Panel site visit |

2.3 Site History

- The lot was created by a 6 lot subdivision (987/2) approved 29/6/88. It is Important to note this subdivision was approved pursuant to a previous planning ordinance which permitted a minimum lot size of 20ha. This created the 'rural residential' character still existing in this locality today and provides a dwelling entitlement for some 'undersize' vacant allotments in the locality
- Machinery Shed – approved 12/9/90
- Dwelling – approved 1/5/92
- Septic tank – approved 11/11/92
- Shed addition – approved 15/10/92

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 are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (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*

- (iiiia) *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), 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 that the proposal is not considered to be:

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

3.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

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

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Deniliquin Local Environmental Plan 2013*
- *Draft Edward River Local Environmental Plan 2023; - (Planning Proposal 2022-3030 – consolidation of the Conargo LEP 2013, Deniliquin LEP 2013 & Deniliquin LEP 1997 into a single consolidated Edward River LEP);*
- *Deniliquin Development Control Plan 2016*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

Table 3: Summary of Applicable Environmental Planning Instruments

| EPI | Matters for Consideration | Comply (Y/N) |
|-----|---------------------------|--------------|
|-----|---------------------------|--------------|

development for electricity generating works that has a capital investment value of more than \$5 million. Accordingly, the Joint Regional Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

State Environmental Planning Policy (Transport and Infrastructure) 2021

The proposal is permitted with consent pursuant to Chapter 2, Division 4, Section 2.36, Clause 2.36(1) as it is development for the purpose of electricity generating works in a prescribed non-residential zone. The RU1 zone is defined as a prescribed non-residential zone. These provisions prevail over any inconsistency in any other planning instruments, inclusive of the Deniliquin LEP 2013. As such, the proposed development is permitted with consent pursuant to the Transport and Infrastructure SEPP.

In addition Section 2.42 of the SEPP relates to determination of development applications for solar or wind electricity generating works on certain land and states the following:

(1) This section applies to development in a regional city for the purposes of electricity generating works using a solar or wind energy source that is—

- (a) State significant development, or*
- (b) regionally significant development.*

(2) Development consent must not be granted unless the consent authority is satisfied that the development—

- (a) is located to avoid significant conflict with existing or approved residential or commercial uses of land surrounding the development, and*
- (b) is unlikely to have a significant adverse impact on the regional city's—*
 - (i) capacity for growth, or*
 - (ii) scenic quality and landscape character.*

(3) In determining whether to grant development consent, the consent authority must consider measures proposed to be included in the development to avoid or mitigate conflicts referred to in subsection (2)(a) or adverse impacts referred to in subsection (2)(b).

Council is not satisfied the proposed development is located appropriately to avoid significant conflict with existing residential uses of land surrounding the development, as per clause 2(a) above. The locality is closely settled for a RU1 zoning with 12 dwellings within a 1200m radius of the proposed development site (see image below). The nearest neighbouring dwelling is only 60m from the development. 12 objections were received on the development, many raising issues regarding compatibility with the existing rural residential land use of the locality including detrimental amenity impacts. This is supported by the construction noise assessment provided by the applicant, which demonstrates construction noise levels are anticipated to exceed the NMLs at 4 neighbouring residential receivers. The construction period is forecast to be approximately 9 months. This is considered to be a significant conflict which will be difficult to mitigate and therefore not appropriate in this locality.

Furthermore, the bulk and scale of the development in such close proximity to surrounding dwellings (60m being the closest neighbouring dwelling) is not considered to be able to be effectively mitigated by the landscape screening proposed. The built form of the development will have a detrimental impact on visual amenity in the area.



Deniliquin Local Environmental Plan 2013

The relevant local environmental plan applying to the site is the *Deniliquin Local Environmental Plan 2013* ('the LEP'). While the proposal is generally consistent with the aims of the LEP, the aims include *to minimise land use conflicts and adverse environmental impacts*. The proposal is inconsistent with this aim as Council is not satisfied that the site selection of the proposed solar farm within a closely settled rural residential area adequately minimizes land use conflict, for the reasons discussed above.

Zoning and Permissibility (Part 2)

The site is located within the Primary Production Zone (RU1) pursuant to Clause 2.2 of the LEP.

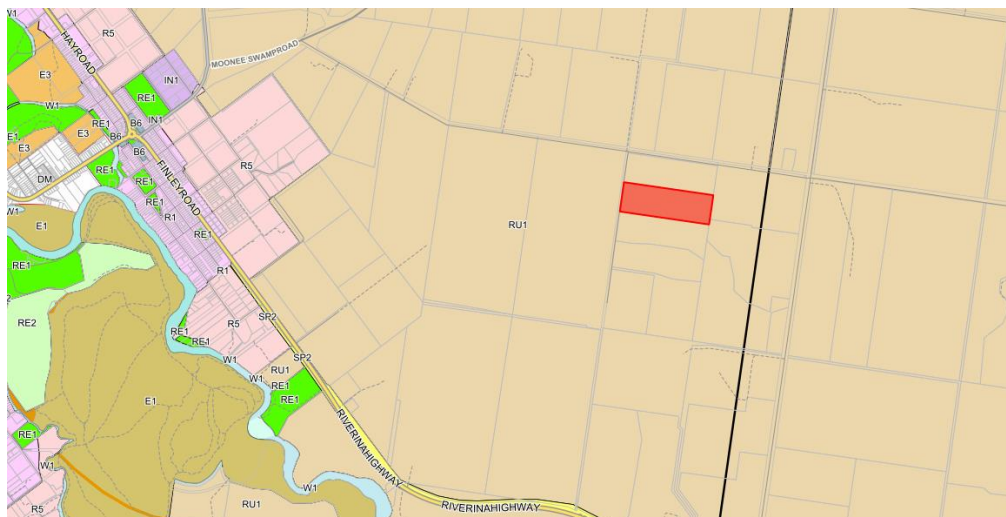


Figure 4: Zoning Map

According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the definition of electricity generating works which is a prohibited use in the Land Use Table in Clause 2.3. However *State Environmental Planning Policy (Transport and Infrastructure) 2021* overrides this prohibition, and permits with consent development for the purpose of electricity generating works in a prescribed non-residential zone, which includes the RU1 zone.

The zone objectives are as follows:

- *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.*
- *To allow the development of non-agricultural land uses that are compatible with the character of the zone.*

The proposal is not considered to be consistent with these zone objectives for the following reasons:

- The proposal is for the development of a non-agricultural land use which is not considered to be compatible with the character of the zone in this locality for the reasons discussed above.

General Controls and Development Standards (Part 2, 4, 5 and 6)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 4** below.

Table 4: Consideration of the LEP Controls

| Control | Requirement | Proposal | Comply |
|-----------------------------------|---|--|--------|
| Earthworks (CI 6.1) | The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. | Earthworks are required to construct the proposal. Appropriate conditions of consent would satisfactorily mitigate any adverse impacts. | Yes |
| Terrestrial biodiversity (CI 6.3) | The consent authority must consider— (a) whether the development is likely to have— (i) any adverse impact on the condition, ecological value and | A small treed area in the south east corner of the site is identified as “biodiversity” on the terrestrial biodiversity map. The applicant submitted a | Yes |

| | | | |
|-----------------------------|--|---|-----|
| | <p>significance of the fauna and flora on the land, and</p> <p>(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and</p> <p>(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and</p> <p>(iv) any adverse impact on the habitat elements providing connectivity on the land, and</p> <p>(b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</p> <p>(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—</p> <p>(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or</p> <p>(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or</p> <p>(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.</p> | <p>test of significance for the proposal. The test of significance concluded that the proposal would not significantly impact on any threatened species or ecological communities. It is noted that this test of significance was based on a previous site layout that required tree clearing – the site layout was changed before the DA was lodged and now does not require any tree clearing, further reducing impact.</p> | |
| Essential services (CI 6.7) | <p>The following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—</p> <p>(a) the supply of water,</p> <p>(b) the supply of electricity,</p> <p>(e) suitable vehicular access.</p> | <p>Electricity is available to the site through Essential Energy overhead powerlines. Water is available to the site with existing rainwater tanks, dams and irrigation infrastructure. Vehicular access is available off Hogans Lane, subject to appropriate conditions of consent to ensure the road</p> | Yes |

| | | | |
|--|--|--|--|
| | | is constructed to an appropriate standard. | |
|--|--|--|--|

The proposal is considered to be generally consistent with the controls of the LEP. However it is not considered the proposal is consistent with the aims and zone objectives of the LEP. inconsistent with the LEP.

(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are several proposed instruments which have been the subject of public consultation under the EP&A Act, and are relevant to the proposal, including the following:

- *Draft Edward River Local Environmental Plan 2023*

The proposed instruments are considered below:

Planning Proposal 2022-3030 proposes to consolidate the Conargo LEP 2013, Deniliquin LEP 2013 & Deniliquin LEP 1997 into a single consolidated Edward River LEP. The land use zoning, permissibility and LEP controls relevant to this proposal will not change under the proposed ERLEP. The same inconsistencies will apply in relation to permissibility, LEP aims and zone objectives.

(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

- *Deniliquin Development Control Plan 2016* ('the DCP')

Chapter 5 – Rural Zone, 5.2 Other Development 5.2.6 Impacts on Surrounding Land includes the following objectives:

Objectives

- To ensure that development in the open space zones are suited to the site considering the nature of the development and surrounding land uses.*
- To protect the amenity of surrounding residential areas.*
- To ensure that the hours of operation do not generate land use conflicts with neighbouring properties.*

Again Council is not satisfied the site selection for this development is appropriate given the predominant rural residential nature of the locality and the potential for land use conflict. The nature of the development is not considered to be suited to surrounding residential development in very close proximity and will not adequately protect the amenity of surrounding residential development particularly in relation to noise during construction and visual impact.

(d) Section 4.15(1)(a)(iiia) – 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.

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

Not relevant

3.2 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.

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

- Context and setting – The proposal is not considered to be consistent with the context of the site, in that the proposed solar farm is inappropriate development of the site due to the proximity and land use conflict it will impose on the surrounding residential properties (see previous discussion).
- Access and traffic – A Traffic Impact Assessment was undertaken in support of the application, and included the following recommendations:

The key recommendations of the TIA are summarised below.

- *Recommendation 1: install truck warning signs along Flanagans Lane on both approaches to Hogans Lane during the construction phase only*
- *Recommendation 2: the subject site access be constructed to the Council's satisfaction*
- *Recommendation 3: the subject site plan includes a designated car parking area to accommodate the expected demand for a minimum of twenty vehicles during construction.*

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

The application was referred to Councils infrastructure Department who raised concern regarding dust and damage to Hogans Lane during the construction phase and stated monitoring and mitigation measures will need to be identified and provided.

The application was also referred to Transport for NSW who had no objection to the proposed development subject to conditions of consent. The following was stated in their response:

- *The TIA anticipates that an additional 50 (40 light and 10 heavy) daily vehicle movements will be generated as a result of the development. This is the peak generation during the construction phase;*
- *TfNSW considers that the classified road intersections along the aforementioned route are currently constructed to appropriate standards that do not require upgrading as a result of this development.*
- 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.
- Heritage – the site is not subject to any heritage conservation provisions. There are no known items of aboriginal cultural heritage 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 – no confirmed impact
- Flora and fauna impacts – There is no tree removal proposed. A small treed area in the south east corner of the site is identified as “biodiversity” on the terrestrial biodiversity map. The applicant submitted a test of significance for the proposal. The test of significance concluded that the proposal would not significantly impact on any threatened species or ecological communities. It is noted that this test of significance was based on a previous site layout that required tree clearing – the site layout was changed before the DA was lodged and now does not require any tree clearing, further reducing impact.
- Natural environment – no significant changes to the natural contours of the site proposed.
- Noise and vibration – the construction noise assessment provided by the applicant, demonstrates construction noise levels are anticipated to exceed the NMLs at 4 neighbouring residential receivers. The construction period is forecast to be approximately 9 months. This is considered to be a significant conflict which will be unable to be mitigated through conditions of consent and therefore not appropriate development in this locality.

The construction noise assessment states *the key vibration generation source proposed to be used is an impact piling rig during installation of the tracking panel support poles*. The nearest neighbouring receiver to the development is 60m which exceeds the 50m safe working distance to achieve the residential human response criteria for continuous vibration. Therefore the report concludes that vibration is anticipated to be negligible.

- Natural hazards – The site is identified as bush fire prone land. 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 farm specific measures such as:
 - solar farms require special consideration and should be provided with adequate clearances to combustible vegetation as well as firefighting access and water.
 - a minimum 10m APZ for the structures and associated buildings/infrastructure; and

- the APZ must be maintained to the standard of an IPA for the life of the development.
- Infrastructure for the purposes of requiring APZ excludes road access to the site; and power or other services to the site and associated fencing.

The above requirements would form conditions of consent in the event approval was granted.

- 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
- Social impact – Whilst it is difficult to measure health impacts associated with many amenity issues, the construction noise assessment provided identifies excessive noise levels during the construction phase for some neighbouring residential properties. Health impacts are a realistic impact of the identified excessive construction noise levels.
- Economic impact – the proposed development is considered to create some positive economic effects to the Deniliquin community whilst under construction.
- Site design and internal design – given the relatively small size of this rural allotment (21ha) and the close proximity to surrounding dwellings with the nearest neighbouring dwelling being only 60m from the development it is difficult to appropriately mitigate the amenity impacts particularly noise and visual impact through site design.
- Construction – The application was referred to Councils infrastructure Department who raised concern regarding dust and damage to Hogans Lane during the construction phase and stated monitoring and mitigation measures will need to be identified and provided. Furthermore, the construction noise assessment provided by the applicant, demonstrates construction noise levels are anticipated to exceed the NMLs at 4 neighbouring residential receivers. The construction period is forecast to be approximately 9 months. This is considered to be a significant conflict which will be unable to be mitigated through conditions of consent and therefore not appropriate development in this locality.
- Cumulative impacts – this is an isolated solar farm development and it is not considered the proposal will result in any adverse cumulative impacts.

Accordingly, it is considered that the proposal will result in significant adverse impacts in the locality as outlined above.

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

Council is not satisfied the site is suitable for the proposed development. Whilst the site is zoned RU1 the existing character of the locality is rural residential in nature. There are 11 neighbouring dwellings within a 1200m radius of the proposed solar farm, with the nearest neighbouring dwelling being only 60m from the development. It is considered the excessive noise generated though the construction phase is inappropriate and unable to be mitigated on the subject site. The scale and bulk of the development within such close proximity to

surrounding dwellings is also not considered to be able to be effectively screened with the landscaping proposed. Council is of the opinion the development is better suited to an area where land use conflict is better able to be managed.

3.4 Section 4.15(1)(d) - Public Submissions

These submissions are considered in Section 5 of this report.

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

Having regard to consideration of the requirements of the Deniliquin Local Environmental Plan 2013, inconsistency with the controls of the Deniliquin Development Control Plan 2016, inconsistency with the provisions of the *State Environmental Planning Policy (Transport and Infrastructure) 2021*, and the adverse amenity impacts generated, Council does not consider the approval of the proposed development to be in the public interest.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment as required by the EP&A Act and outlined below in Table 5.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 5: Concurrence and Referrals to agencies

| Agency | Concurrence/ referral trigger | Comments (Issue, resolution, conditions) | Resolved |
|---|--|--|----------|
| Concurrence Requirements (s4.13 of EP&A Act) | | | |
| N/A | | | |
| Referral/Consultation Agencies | | | |
| DPE – Biodiversity & Conservation Division (BCD) | other | As the proposal does not include any clearing of native vegetation , potential impacts to threatened species and communities are considered unlikely. Recommended conditions of consent provided. | Yes |
| DPE – Biodiversity, Conservation & Science | SEPP (Biodiversity and Conservation) 2021, s5.11, 5.12 | The agency returned this request which was referred under the River Murray Lands clause at Chapter 5 of the Biodiversity and Conservation SEPP. As the proposal is outside the area to | Yes |

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| | | which this clause applies assessment by DPE (Biodiversity and Conservation Division) was not required. | |
| DPI Agriculture | other | Comment provided that the LUCRA did not include consultation with surrounding landowners and did not satisfactorily consider the potential impact of surrounding agricultural operations on the proposed solar development. Additional information was provided by the applicant responding to the submissions received (submissions report). In discussions with DPI Ag it was considered this submissions report highlighted the potential impacts on agriculture and any mitigating measures proposed. | Yes |
| Essential Energy | other | Comment provided. Additional information requested for plans to show a minimum 10m distance of development from Essential Energy infrastructure (powerlines) – satisfactorily provided. | Yes |
| Transport for NSW | other | No objection subject to a condition of consent requiring a traffic management plan. | Yes |
| Integrated Development (S 4.46 of the EP&A Act) | | | |
| N/A | | | |

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 6**.

Table 6: Consideration of Council Referrals

| Officer | Comments | Resolved |
|-------------|---|----------|
| Engineering | <p>Access Dust and damage to Hogans Lane during the construction phase may be an issue (see figure 5) – monitoring and mitigation measures will need to be identified and provided.</p> <p>Stormwater</p> | Yes |

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| | <p>Hydraulic calculations and design plans for stormwater disposal are to be provided to Council's standards.</p> <p>Waste Disposal RAMJO have highlighted that the volume of waste generated in the construction of a development of this nature (wooden pallets and Styrofoam packaging) may exceed the capabilities of the local landfill. Waste disposal measures to satisfy this concern will be required.</p> | |
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Figure 5: Hogans Lane

The issues raised by Council officers have been considered and could be mitigated through the imposition of appropriate conditions of consent, particularly addressing additional information and detail on monitoring and mitigation measures to prevent dust and damage to Hogans Lane during the construction phase.

4.3 Community Consultation

The proposal was notified in accordance with Council's Community Participation Plan from 13 April 2023 until 8 May 2023. The notification included the following:

- An advertisement in the local newspaper 'The Pastoral Times';
- A sign placed on the site;
- Notification letters sent to adjoining and adjacent properties within a 1km radius of the subject site (15 letters sent);
- Notification on the Council's website.

The Council received a total of 12 unique submissions, comprising 12 objections and no submissions in favour of the proposal. The issues raised in these submissions are considered in **Table 7**.

Table 7: Community Submissions

| Issue | No of submissions | Council Comments |
|--|-------------------|---|
| <p>Compatibility with existing 'rural residential' character</p> <p>Submissions raised concern of the compatibility of the development with the existing rural residential character of the area.</p> | 9 | <p>Whilst the site is zoned RU1 the existing character of the locality is rural residential in nature. There are 11 neighbouring dwellings within a 1200m radius of the proposed solar farm, with the nearest neighbouring dwelling being only 60m from the development. It is not considered development of this scale and bulk is compatible with the character of the locality.</p> <p>Outcome: The issue has not been resolved and is identified as a key issue below</p> |
| <p>Suitability of the site</p> <p>Submissions raised concern with the suitability of the site particularly in relation to the close proximity to dwellings and the detrimental amenity impact this will have.</p> | 9 | <p>Council is not satisfied the site is suitable for the proposed development. It is considered the excessive noise generated though the construction phase is inappropriate and unable to be mitigated on the subject site. The scale and bulk of the development within such close proximity to surrounding dwellings is also not considered to be able to be effectively screened with the landscaping proposed. Council is of the opinion the development is better suited to an area where land use conflict is better able to be managed.</p> <p>Outcome: The issue has not been resolved and is identified as a key issue below</p> |
| <p>Visual amenity</p> <p>Submissions raised concern the development will have a detrimental visual amenity impact on surrounding residential development.</p> | 4 | <p>Council acknowledges the development will have detrimental visual impacts in the short term. Landscaping is proposed as shown on the landscape plan provided to screen the development which may be effective in mitigating visual impact in the long term for some surrounding properties. However given the bulk and scale of the development in close proximity to some dwellings (60m being the closest neighbouring dwelling) it is not considered the landscaping will effectively mitigate detrimental visual impact of this type of development in this instance.</p> <p>Outcome: The issue has not been resolved and is identified as a key issue below</p> |

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| <p>Council road infrastructure</p> <p>Submissions raised concern that Hogans Lane is not at a suitable standard to service the construction traffic required for the development.</p> | 6 | <p>The application was referred to Councils infrastructure Department who raised concern regarding dust and damage to Hogans Lane during the construction phase and stated monitoring and mitigation measures will need to be identified and provided. This would need to be carefully conditioned on any consent granted.</p> <p>The application was also referred to Transport for NSW who had no objection to the proposed development subject to conditions of consent.</p> <p>Outcome: The issue has not been resolved and is identified as a key issue below</p> |
| <p>Landscaping / screening</p> <p>Submissions raised concern that the landscaping / screening will not effectively screen the development.</p> | 4 | <p>Council acknowledges the development will have detrimental visual impacts in the short term. However landscaping is proposed as shown on the landscape plan provided to screen the development which may be effective in mitigating visual impact in the long term for some surrounding properties. However given the bulk and scale of the development in close proximity to some dwellings (60m being the closest neighbouring dwelling) it is not considered the landscaping will effectively mitigate detrimental visual impact of this type of development in this instance.</p> <p>Outcome: The issue has not been resolved and is identified as a key issue below</p> |
| <p>Health impacts</p> <p>Submissions raised concern that the solar farm may cause physical and mental health impacts to nearby residents.</p> | 3 | <p>Whilst it is difficult to measure the impact on physical and mental health of a development of this nature the construction noise assessment provided identifies excessive noise levels during the construction phase for some neighbouring residential properties. Health impacts are a realistic impact of the identified construction noise levels and are not considered able to be appropriately mitigated in this instance.</p> <p>Outcome: The issue has not been resolved and is identified as a key issue below</p> |
| <p>Agricultural Land use conflict</p> <p>Submissions raised concern that the solar farm will conflict with surrounding</p> | 9 | <p>The application was referred to DPI Agriculture. Their response included comment that the LUCRA submitted by the applicant did not include consultation with surrounding landowners and did not satisfactorily consider the potential impact of surrounding agricultural operations on the proposed solar development.</p> <p>Additional information was provided by the applicant responding to the submissions received (submissions report).</p> |

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| agricultural land uses though glare, decrease in groundwater quality, pollution, soil degradation etc. | | <p>In discussions with DPI Ag it was considered this submissions report highlighted the potential impacts on agriculture and any mitigating measures proposed. On review of this document DPI Ag had no objection to the proposed development and Council is unable to conclude that the development will have a detrimental impact on surrounding agriculture.</p> <p>Outcome: This issue has been satisfactorily addressed</p> |
| <p>Flora and fauna</p> <p>Submissions raised concern that the development will have a detrimental impact on local flora and fauna.</p> | 7 | <p>There is no tree removal proposed. A small treed area in the south east corner of the site is identified as “biodiversity” on the terrestrial biodiversity map. The applicant submitted a test of significance for the proposal. The test of significance concluded that the proposal would not significantly impact on any threatened species or ecological communities. It is noted that this test of significance was based on a previous site layout that required tree clearing – the site layout was changed before the DA was lodged and now does not require any tree clearing, further reducing impact.</p> <p>Outcome: This issue has been satisfactorily addressed</p> |
| <p>Land value decline</p> <p>Submissions raised concern that the development will result in land value decline.</p> | 7 | <p>Not a relevant planning consideration</p> <p>Outcome: This issue has been satisfactorily addressed</p> |
| <p>Lack of consultation</p> <p>Submissions raised concern that there was no consultation undertaken by the applicant / land owner prior to lodgement of the DA.</p> | 4 | <p>Whilst consultation is recommended prior to lodgement of a DA, there is no requirement for consultation by the applicant for a solar farm of this size. Council exhibited the DA in accordance with the ERC Community Participation Plan.</p> <p>Outcome: This issue has been satisfactorily addressed</p> |
| <p>Hazards – fire & flood</p> <p>Submissions raised concern</p> | 4 | <p>The site is identified as bush fire prone land. 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</p> |

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| the development will increase bushfire & flood risk. | | <p>including availability of fire-suppression equipment, access and water and appropriate bushfire emergency management planning should be in place, in addition solar farm specific measures such as:</p> <ul style="list-style-type: none"> ○ solar farms require special consideration and should be provided with adequate clearances to combustible vegetation as well as firefighting access and water. ○ a minimum 10m APZ for the structures and associated buildings/infrastructure; and ○ the APZ must be maintained to the standard of an IPA for the life of the development. ○ Infrastructure for the purposes of requiring APZ excludes road access to the site; and power or other services to the site and associated fencing. <p>The above requirements would form conditions of consent in the event approval was granted.</p> <p>The site is not identified as flood prone land on Council mapping and Council does not hold any flood data for this site.</p> <p>Outcome: This issue has been satisfactorily addressed</p> |
| <p>Construction impacts</p> <p>Submissions raised concern the construction of development will have detrimental amenity impacts relating to noise, dust, traffic etc.</p> | 5 | <p>The application was referred to Councils infrastructure Department who raised concern regarding dust and damage to Hogans Lane during the construction phase and stated monitoring and mitigation measures will need to be identified and provided. Furthermore the construction noise assessment provided by the applicant, demonstrates construction noise levels are anticipated to exceed the NMLs at 4 neighbouring residential receivers. The construction period is forecast to be approximately 9 months. This is considered to be a significant conflict which will be unable to be mitigated through conditions of consent and therefore not appropriate development in this locality.</p> <p>Outcome: The issue has not been resolved and is identified as a key issue below</p> |
| <p>Electricity infrastructure</p> <p>Submissions raised concern the development</p> | 2 | <p>Additional infrastructure upgrades do not form part of this application and the relevant approvals will be required should this be proposed.</p> |

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| will result in other electricity network upgrades in the locality ie. powerlines. | | Outcome: This issue has been satisfactorily addressed |
| Community benefit Submissions raised concern that the development does not have any community benefit. | 3 | The SOEE submitted with the application states the proposal would provide renewable energy for about 1000 homes in Deniliquin and the surrounding area. This is difficult for Council to enforce and is not a relevant planning consideration. Outcome: This issue has been satisfactorily addressed |

5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

5.1 Noise

The potential for noise to impact on adjoining properties is an important consideration given the extent of construction required, construction methods likely to be utilised and close proximity of the development to existing residential development. The applicant submitted a Construction Noise Assessment prepared by Muller Acoustic Consulting dated August 2023 ('Construction Noise Assessment') which considered this issue.

The Construction Noise Assessment considered the noise and vibration impacts arising from the proposed construction on the site. The report concluded that construction noise levels at 4 neighbouring residences are likely to exceed the noise management levels.

The report provided 10 noise mitigation measures to reduce emissions to the surrounding community. However it is considered these measures would be very difficult for Council to enforce and it is unclear if the measures would reduce levels to a compliant level for the duration of the construction.

Given the close proximity to dwellings, the expected construction noise levels in excess of the noise management levels and the lack of quantitative mitigation measures this issue warrants refusal of the application.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application

5.2 Visual impact

It is acknowledged the development will have detrimental visual impacts in the short term. Landscaping is proposed as shown on the landscaping provided to screen the development which may be effective in mitigating visual impact in the long term for some surrounding properties.

However given the bulk and scale of the development in close proximity to some dwellings (60m being the closest neighbouring dwelling) it is not considered the landscaping will effectively mitigate detrimental visual impact of this type of development in this instance. The bulk and scale of the solar farm will impact visual amenity of the rural residential area.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application

5.3 Suitability of the site

Council is not satisfied the site is suitable for the proposed development. Whilst the site is zoned RU1 the existing character of the locality is rural residential in nature. There are 11 neighbouring dwellings within a 1200m radius of the proposed solar farm, with the nearest neighbouring dwelling being only 60m from the development. Whilst visually the impact can be mitigated through landscaping proposed on the landscape plan provided and appropriate conditions of consent it is considered the excessive noise generated though the construction phase is inappropriate and unable to be mitigated on the subject site. Council is of the opinion the development is better suited to an area where land use conflict is better able to be managed.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application.

5.4 Public Interest

Having regard to consideration of the requirements of the Deniliquin Local Environmental Plan 2013, inconsistency with the controls of the Deniliquin Development Control Plan 2016, inconsistency with the provisions of the *State Environmental Planning Policy (Transport and Infrastructure) 2021*, and the adverse amenity impacts generated, Council does not consider the approval of the proposed development to be in the public interest.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application

5.5 Construction

The application was referred to Councils infrastructure Department who raised concern regarding dust and damage to Hogans Lane during the construction phase and stated monitoring and mitigation measures will need to be identified and provided. Furthermore the construction noise assessment provided by the applicant, demonstrates construction noise levels are anticipated to exceed the NMLs at 4 neighbouring residential receivers. The construction period is forecast to be approximately 9 months. This is considered to be a significant conflict which will be unable to be mitigated through conditions of consent and therefore not appropriate development in this locality.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application

5.6 Social Impact

Whilst it is difficult to measure health impacts associated with many amenity issues, the construction noise assessment provided identifies excessive noise levels during the construction phase for some neighbouring residential properties. Health impacts are a realistic

impact of the identified construction noise levels and are not considered able to be appropriately mitigated in this instance.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application

6 CONCLUSION

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 controls, issues raised in submissions and the key issues identified in this report, it is considered that the application cannot be supported.

The key issues identified in regards to this development are noise, visual impact, suitability of the site, public interest, construction and social impact. Council does not consider the site to be a suitable location for a development of this scale in close proximity to surrounding residential land use. Council is unable to be satisfied the development is in the public interest.

It is considered that the key issues as outlined in Section 5 have not been resolved satisfactorily through amendments to the proposal.

7 RECOMMENDATION

That the Development Application DA2023/0024 for Installation of a 4.95MW solar farm and associated works Lot 2 DP 778062 39 HOGANS LANE DENILIKUIN be REFUSED pursuant to Section 4.16(1) (b) of the *Environmental Planning and Assessment Act 1979* subject to the reasons for refusal attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Reasons for refusal
- Attachment B: Architectural Plans