

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSWES-2
DA Number	DA0288/2019
LGA	Mid-Western Regional Council
Proposed Development	Electricity Generating Works (2 x 5MW Solar Farms) and Associated Infrastructure
Street Address	3B Sydney Road, Burrundulla
Applicant/Owner	Mr Mishka Talent C/- IT Power Australia Pty Ltd & Burrundulla Pty Ltd
Date of DA lodgement	14 June 2019
Number of Submissions	Public Exhibition Round 1 - 349 Submissions (335 Objections , 14 in Support and 1 Petition with 780 Signatures) Public Exhibition Round 2 – 28 Submissions of Objection
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	Pursuant to the requirements of Schedule 4A of the Environmental Planning and Assessment Act 1979 and Clause 22 of the State Environmental Planning Policy (State and Regional Development) 2011, this application is referred to the Western Regional Planning Panel for determination as the application is defined as 'private infrastructure' with a capital investment value exceeding \$5,000,000. The development application indicates a value of \$13,200,000 for all works.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy No. 33 – Hazardous and Offensive Development • State Environmental Planning Policy No. 44 – Koala Habitat Protection • State Environmental Planning Policy No. 55 – Remediation of Land • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy (State and Regional Development) 2011 • Mid-Western Regional Local Environmental Plan 2012 • Mid-Western Regional Development Control Plan 2013
List all documents submitted with this report for the Panel's consideration	Attachment 1: Site Photos Attachment 2: Development Plans Attachment 3: Additional Information - October 2019 Attachment 4: Amended Plan and Traffic Assessment – October 2020 Attachment 5: Public Submissions (Round 1 and 2) Attachment 6: Referral responses: <ul style="list-style-type: none"> • Roads and Maritime Services (Transport for NSW) • Development Engineer • Transgrid • Essential Energy • NSW DPI Agriculture • Rural Fire Service Attachment 7: Draft Conditions of Consent
Report prepared by	Kayla Robson
Report date	November 2020

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not Applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **No**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**
Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

Executive Summary

Subject site

Council is in receipt of development application DA0288/2019 that seeks approval for a 10MW (two x 5MW systems) electricity generating works (Solar Farm) to be located off the Castlereagh Highway, Burrundulla on land legally identified as Lot 6 DP1069441. The application was received by Council on 14 June 2019 however, a further information request was issued pursuant to Clause 54 of the Environmental Planning and Assessment Regulation 2000.

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

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

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

The proposed development footprint seeks to occupy a total area of 26.9 hectares of the 67.33 hectares in two (2) systems, each comprising 5MW of AC capacity, separated by the existing dam and drainage line which bisects the site.

Site photos are included in Attachment 1.



Figure 1: Site Plan



Figure 2: Location Map

Proposed development

The application documentation submitted to Council details the following key elements of the proposal:

1. 31,000 solar modules are to be installed with each photovoltaic (PV) panel placed on steel driven piles using a vibrating pile driver, typically driven 1.2 to 3.5 metres into the ground;
2. The proposal seeks to have a DC array capacity of 12.1MW and AC output of 10MW;
3. The panels will be in rows up to 88 metres long, 2 metres wide, and spaced 1 metre apart running north to south that will rotate with the sun;
4. Each row of modules will reach an overall maximum height of 2.61 metres when fully tilted at 60 degrees during the early mornings and late evenings (tracking east to west);
5. Construction of two (2) inverter and transformer stations, mounted on a skid base with an oil bund and have an overall maximum height of 2.97 metres, also incorporating high and medium voltage switch gear;
6. Trenching of underground cables from the inverter stations to an existing 22kV power line at the northern end of the site;
7. Security fencing around the arrays comprising chain-link and barb wire to a height of 2.1 metres with one (1) main access gateway from the Castlereagh Highway;
8. Three (3) 'lay down' areas for construction of each system located at the southern end of the site along with a car park area at the entry to the solar farm off the Castlereagh Highway;
9. Landscaping the boundary of the site with 'Acacia and Grevilleas' at 5 metre spacings and 'white and yellow box eucalypts' where they will not cause shading of the PV panels; and
10. 50 construction workers are required during a 6 month construction period and upon operation, maintenance will be carried out quarterly by a crew of 2 – 3 people.

Figure 3, provides the site arrangements of the development with a full copy of the development plans included within Attachment 2.

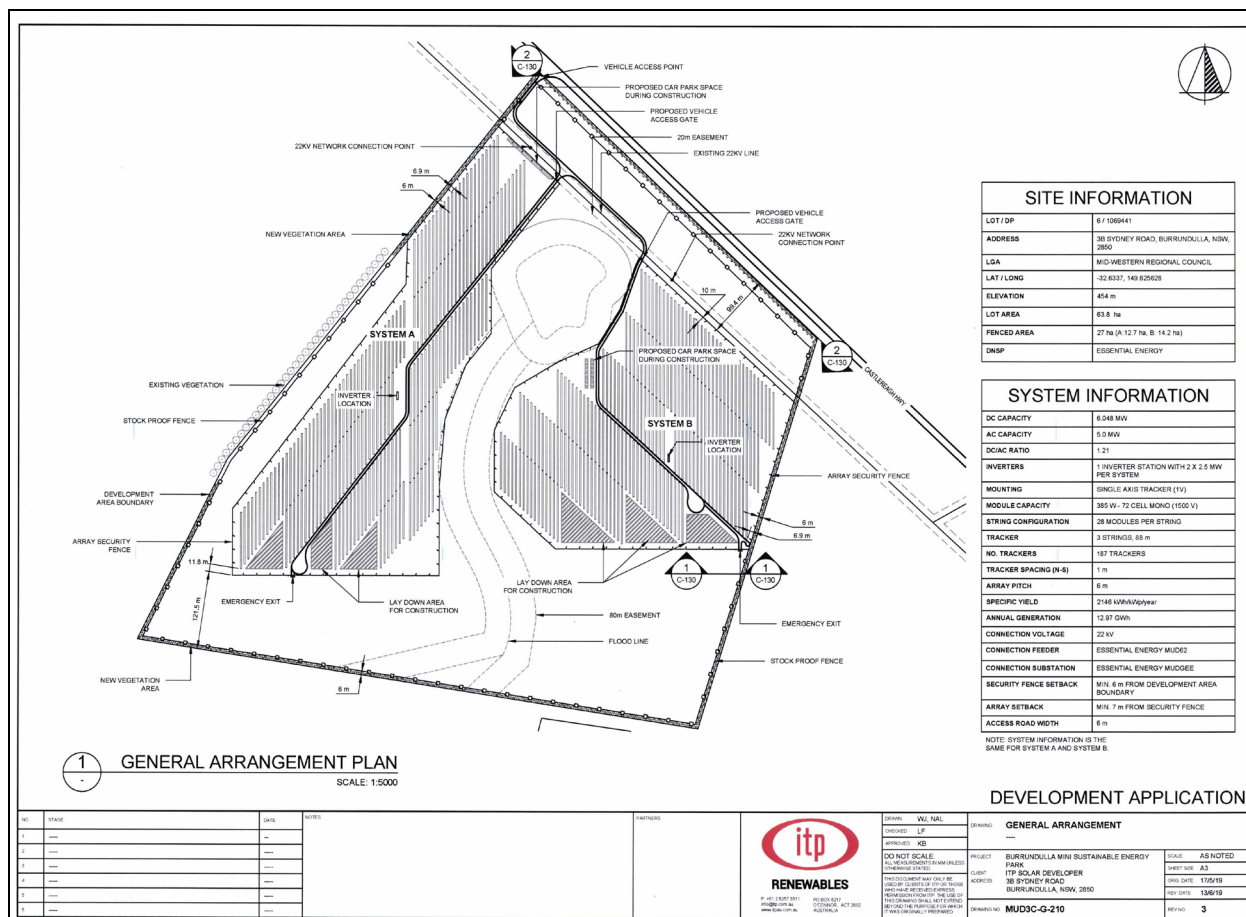


Figure 3: Site Layout Plan - October 2019

Upon submissions from Transport for NSW (TfNSW) and Council issuing Draft Conditions of Consent, the Applicant submitted revised development plans in October 2020. The following key changes have been made by the Applicant, as shown in Figure 4 below:

1. Reduction and redesign of the solar array from 31,000 to approximately 25,000 panels;
2. Alterations to the proposed setbacks of the development from the boundaries of the lot including an increased front setback from the Castlereagh Highway (190 metres to the array however a laydown and car parking area is proposed within the 190 metre setback), 30 metre setback from the eastern boundary, 54.4 metre setback from the western boundary and a minimum of 128.5 metres from the southern boundary; and,
3. Relocation of the proposed access into the site further east on the Highway along with a modification to the internal parking area and internal access road.

A full copy of the revised development plan including updated traffic assessment is included within Attachment 3.

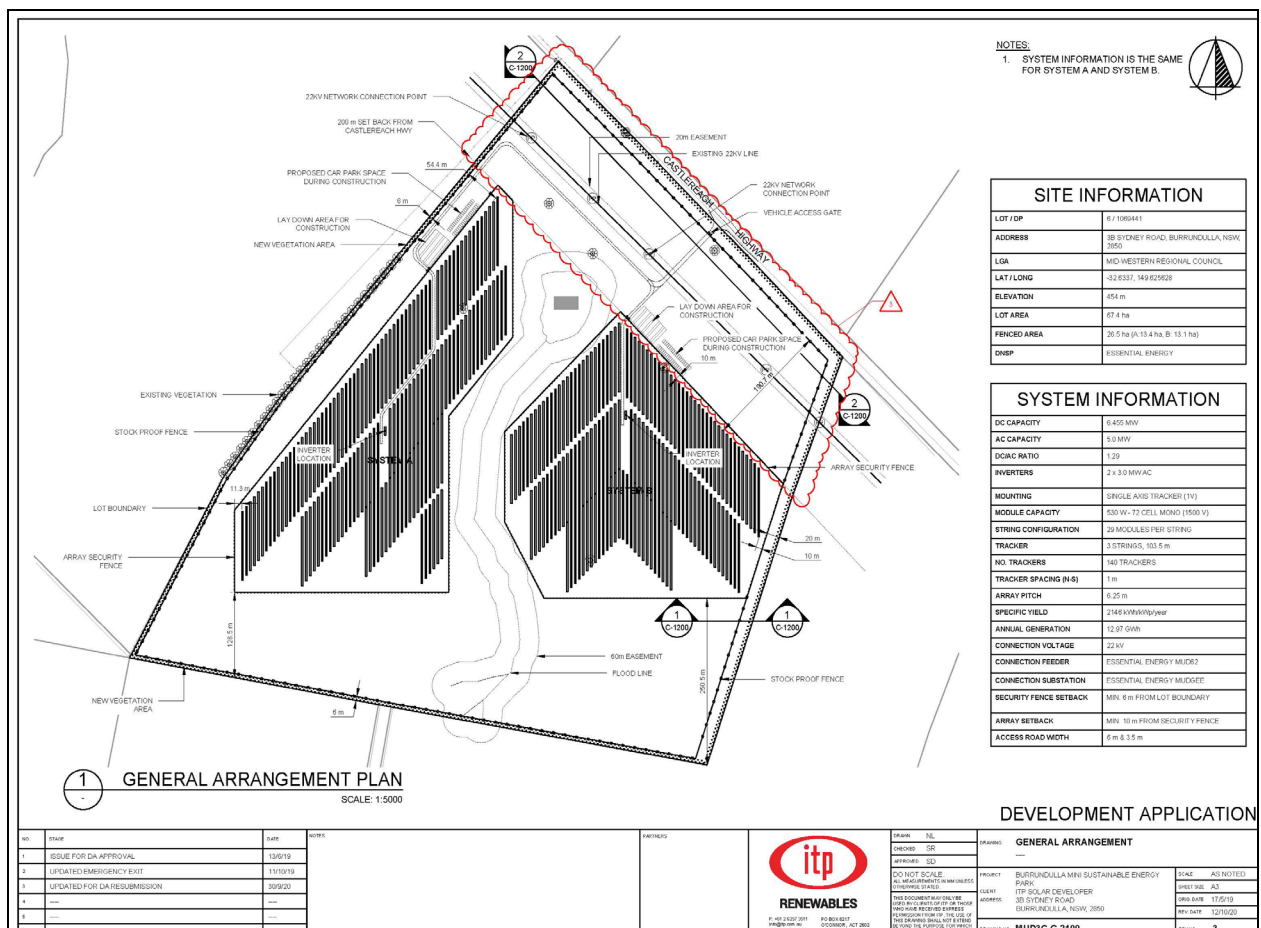


Figure 4: Amended Development Plan - October 2020

Assessment Summary

The proposed development has been assessed in accordance with Section 4.15(1) of the Environmental Planning and Assessment Act (EP&A Act) 1979 including Council's Policies, Mid-Western Regional Development Control Plan 2013 (MWRDCP) and the Mid-Western Regional Local Environmental Plan 2012 (MWRLEP).

It is important to note that the application was submitted to Council following the public exhibition of an Amendment to the Mid-Western Regional DCP 2013 specifically relating to solar energy development in the Mid-Western Region. Amendment 4 – Part 6.5 Solar Energy Farms was adopted by Council on 19 June 2019 (minute number 148/19) following a 28 day public exhibition period in May 2019, and commenced operation on 21 June 2019. The subject application was submitted to Council on 14 June 2019 however, an assessment of the proposal against the relevant provisions of the Mid-Western Regional Development Control Plan 2013 was not included within the Statement of Environmental Effects.

An amendment to the Mid-Western Regional Local Environmental Plan (MWRLEP) 2012 (Amendment No. 24) to the Visually Sensitive Land Mapping relating to Clause 6.10 of the MWRLEP 2012 also commenced on 17 April 2019 and was legally made on the 22 November 2019. This was undertaken by Council's Strategic Planning Department in light of a number of issues identified with projects proposed at the entrances to Mudgee and to highlight the importance of the vision held by Council's Comprehensive Land Use Strategy in relation to the protection and improvement of town gateways, ridgelines and the existing rural views and landscapes, particularly from the southeast of town. The site is therefore currently mapped to be Visually Sensitive Land pursuant to Clause 6.10 of the MWRLEP 2012.

The application was first advertised and neighbour notified, in accordance with Mid-Western Regional Development Control Plan 2013, from the 19 June 2019 to the 5 July 2019. During the first public exhibition period, 349 submissions were received, plus one (1) petition objecting to the development with 780 signatures. A total of 335 objections and 14 submissions in support of the proposal were received. It should be noted however that a number of submissions, whilst individually signed, were identified as pro-forma or template letters. As a result, only one copy of each template letter has been included for the panel's consideration.

Following lodgment of the new site plan and traffic assessment in October 2020, a second public exhibition period occurred from the 22 October 2020 to 5 November 2020. 28 individual submissions of objections were received during this period. It was again noted that a number of the submissions were identified as a template ('copied') response, each raising the same matters of concern. Therefore only one copy of this pro-forma template objection has been provided for the panels' consideration.

The proposed development is considered to generally comply with the applicable planning controls, with variations noted to the setbacks of the proposed development. There are however a number of concerns with the proposed development following a merits based assessment undertaken. Subsequently, the proposal cannot be supported by Council staff. These matters include:

- Compliance with the MWRLEP 2012 and the objectives of the RU4 Zone (4.15(1)(a)(i));
- Compliance with the MWRDCP 2013 (4.15(1)(a)(iii));
- The likely impacts of the development including the visual, noise (9 properties impacted), glare (5 properties affected), natural hazard (bushfire), social and economic impacts on the locality (4.15(1)(b));
- The location and suitability of the site for the development (4.15(1)(c));
- The large number of submissions received during the public exhibition periods objecting to the proposed development (4.15(1)(d)); and
- The development is not considered to be in the public interest (4.15(1)(e)).

The application is therefore recommended for refusal and referred to the Western Regional Planning Panel for determination in accordance Clause 20 and Schedule 7 (5)(a) of the State Environmental Planning Policy (State and Regional Development) 2011, as the application is defined as 'private infrastructure' with a capital investment value exceeding \$5,000,000. The proposed development has an estimated cost of \$13,200,000.

Draft Conditions of Consent

Despite the recommendation of refusal, draft conditions of consent were provided to the Applicant.

The Applicant failed to provide any feedback in respect of the draft conditions despite two (2) separate requests made on 10 and 21 September 2020.

Recommendation

That the Western Regional Planning Panel refuse DA0288/2019 for an electricity generating work and associated infrastructure proposed over 3B Sydney Road, Burrundulla, legally identified as Lot 6 DP1069441, on the basis of the reasons for refusal, provided within this report.

Environmental Planning and Assessment Act 1979

Section 1.3 – Objects of Act

The objects of this Act are as follows:

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

Comment: The proposed development does not seek to promote the social and economic welfare of the community due to the significant lack of economic benefit during both the construction and operational phases of the development. There are significantly limited and only short-term employment opportunities generated by the proposal that does not contribute or benefit the ongoing or long term welfare of the wider Mid-Western community.

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

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

In addition, with a large volume of objections received during the public exhibition process, it is considered that an electricity generating works in the location proposed is inconsistent with the objects of the Environmental Planning and Assessment Act 1979.

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

Section 1.7 of the EP&A Act 1979 identifies that Part 7 of the Biodiversity Conservation Act 2016 and Part 7A of the Fisheries Management Act 1994 have effect in connection with terrestrial and aquatic environments. The proposal is confirmed to have no adverse significant impact upon biodiversity (both terrestrial or aquatic), with the existing landform historically used for agricultural production and only scant paddock trees remaining across the site, including a row of eucalypts at the western boundary. The site is not affected by any significant waterways, with a single dam located on the site that has contributed to the proposed design outcomes of two (2) separate solar arrays bisected by the dam and the overflow path. All works are proposed to be setback 40 metres from the drainage line.

Section 4.10 - Designated Development

The development proposal is not identified as Designated Development pursuant to Section 4.10 of the Environmental Planning and Assessment Act 1979 (EP&A Act) and Schedule 3 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation).

Section 4.14 Consultation and development consent – certain bushfire prone land

In accordance with Section 4.14, development for any purpose on bushfire prone land (recorded as bushfire prone land on a relevant certified map) shall conform to the specifications and requirements of the document Planning for Bush Fire Protection prepared by the NSW Rural Fire Service in co-operation with the Department that are relevant to the development or, a certificate is provided by a person recognised by the NSW Rural Fire Service stating the development conforms to the relevant specifications and requirements.

In this circumstance, and whilst the site is not currently mapped to be bushfire prone land upon the certified map, the existing site is identified to be surrounding by grassland (including managed land) to the west, east and south. Furthermore, the site is bound to the north by the Castlereagh Highway.

Whilst there is no requirement under Section 4.14 for the application to have a bushfire assessment report or certificate provided by suitably qualified consultant, it is evident that there are identified and greater fire risks associated with an electricity generating works that may pose a threat to adjoining lands, including an increased need for emergency services to respond, significantly impact upon the community.

As a result, the NSW Rural Fire Service were consulted and advised that they have no specific recommendations to bushfire protection for the application. As a result, Council's development engineer has provided a recommendation, due to no water

reticulation being available onsite that a dedicated water storage tank is to be installed along with a 10 metre defendable space provided around the perimeter of the solar arrays. This matter can be conditioned accordingly, should the application be approved. The Applicants amended plans submitted in October 2020 have however made provision for a 10 metre defendable space accordingly.

Section 4.46 - Integrated Development

The development proposal is not identified or nominated as Integrated Development pursuant to section 4.46 of the (EP&A Act).

Section 4.15- Evaluation - Environmental Planning & Assessment Act 1979

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

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

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

State Environmental Planning Policy No.33 – Hazardous and Offensive Development

Pursuant to Section 2 of SEPP No. 33, the aims of the Policy include:

-(d) *to ensure that in determining whether a development is a hazardous or offensive industry, any measures proposed to be employed to reduce the impact of the development are taken into account, and*
- (e) *to ensure that in considering any application to carry out potentially hazardous or offensive development, the consent authority has sufficient information to assess whether the development is hazardous or offensive and to impose conditions to reduce or minimise any adverse impact, and.....*

Consideration of the above aims, Section 13 requirements of SEPP No. 33 and current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development as required by Section 8 has been undertaken during the assessment of the proposal. The most current guidelines published by the Department in January 2011 state:

SEPP 33 applies to any proposals which fall under the policy's definition of 'potentially hazardous industry' or 'potentially offensive industry'. Certain activities may involve handling, storing or processing a range of substances which in the absence of locational, technical or operational controls may create an off-site risk or offence to people, property or the environment.

And

Consent authorities should firstly consider whether the proposed use falls within the definition of 'industry' adopted by the planning instrument which applies or whether it is a 'storage establishment'.

The definitions of a 'potentially hazardous industry' and 'potentially offensive industry' is provided below:

potentially hazardous industry means a development for the purposes of any industry which, if the development were to operate without employing any measures (including, for example, isolation from existing or likely future development on other land) to reduce or minimise its impact in the locality or on the existing or likely future development on other land, would pose a significant risk in relation to the locality—

- (a) to human health, life or property, or*
- (b) to the biophysical environment,*

and includes a hazardous industry and a hazardous storage establishment.

potentially offensive industry means a development for the purposes of an industry which, if the development were to operate without employing any measures (including, for example, isolation from existing or likely future development on other land) to reduce or minimise its impact in the locality or on the existing or likely future development on other land, would emit a polluting discharge (including for example, noise) in a manner which would have a significant adverse impact in the locality or on the existing or likely future development on other land, and includes an offensive industry and an offensive storage establishment.

On the basis of the above, and the proposed development defined as an 'Electricity Generating Works' which is not currently a prescribed 'industry' or 'storage establishment' under the definitions of the Policy, no further consideration of SEPP No. 33 is necessary.

State Environmental Planning Policy (Koala Habitat Protection) 2019 (SEPP KHP)

The SEPP KHP commenced on 1 March 2020 and applies to the proposal as Mid-Western Regional Council is listed within Schedule 1 of the SEPP and the Koala Management Area is identified as the Northwest Slopes.

In accordance with clause 15 - Savings provision relating to development applications:

A development application made, but not finally determined, before the commencement of this Policy in relation to land to which this Policy applies must be determined as if this Policy had not commenced.

Owing to the savings provisions, the repealed SEPP on 1 March 2020 being State Environmental Planning Policy No. 44 relating to Koala Habitat Protection has been considered in the assessment of the application.

State Environmental Planning Policy No. 44 - Koala Habitat Protection (SEPP 44)

SEPP 44 applies to the proposal as Mid-Western Regional Council is listed within Schedule 1 of the SEPP and the area of land associated with the proposal in the same ownership is greater than 1 hectare in size. The proposal however, does not involve the clearing of core koala habitat nor is significant native vegetation proposed to be removed to support the proposal.

State Environmental Planning Policy No. 55 – Remediation of Land

A site inspection and a search of Council's records did not reveal any potentially contaminating activities upon the site. Accordingly, and as the proposed development is not considered a 'sensitive land use' no further consideration is necessary.

State Environmental Planning Policy (Infrastructure) 2007

The proposed development has been submitted to Council in accordance with Part 3, Division 4, clause 34 of the ISEPP being for the construction and operation of a utility-scale photovoltaic (PV) electricity generating system. The subject land is currently zoned RU4 Primary Production Small Lots under MWRLEP 2012, which is identified as being a prescribed rural zone under the SEPP (Infrastructure). As such, the proposal is permissible with consent under Clause 34(1)(b) of the SEPP (Infrastructure).

The proposed development has frontage to a classified road network to the north and proposes a new access crossover into the site from the Castlereagh Highway. In accordance with Clause 101 of the SEPP (Infrastructure), the application was referred to Roads and Maritime Services (now known as Transport for NSW (TfNSW)). TfNSW initially refused to grant concurrence to the proposal and requested further information in relation to the proposed access arrangements into the site for use during construction and operation, including impacts to be addressed on other existing nearby property accesses.

The Applicant provided an amended Traffic Assessment and redesign of the proposal to include an upgraded access treatment into the site to accommodate the largest vehicle proposed. The Applicant also confirmed that a bus would be used to commute 50% of workers from Mudgee into the site during construction. TfNSW advised that the proposed design of the access raises concern in relation to the taper shown however, conditions of consent have been provided for this to be addressed at the Section 138 application stage, should the application be approved.

State Environmental Planning Policy (State and Regional Development) 2011

In accordance Clause 20 and Schedule 7 (5)(a) of the State Environmental Planning Policy (State and Regional Development) 2011, the proposal is deemed Regionally Significant Development being for the purposes of 'private infrastructure' with a capital investment value exceeding \$5,000,000. The proposed development has an estimated cost of \$13,200,000. As a result, the application is to be determined by the Western Regional Planning Panel.

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

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

Clause 1.2 Aims of Plan

The aims of the MWRLEP 2012 is as follows:

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

Comment: It is considered that the proposed development conflicts with the aims of the MWRLEP. This is based on the following:

- The proposal is to be located on 26.9ha of an existing primary production holding of 67.33ha containing class 3 soils, reducing the extent, carrying capacity and likelihood of agricultural production over the land.
- The proposal will remove a significant proportion of land identified as class 3 soils, therefore reducing the supply of agricultural production from the region;
- The proposal does not satisfactorily consider or provide appropriate mitigation measures to protect the broader scenic values and character of the existing rural landscape in this location with a lack of consideration towards land use conflicts with neighbouring properties, and lack of appropriate buffers from the public and private domain;
- The proposal does not conserve the setting or existing character of of the Burrundulla area with the proposal to be closely located or abutting rural, rural residential and residential land on the immediate entry corridor to the Mudgee township;
- The proposal generates land use conflicts and will have long term adverse amenity and visual impacts on the locality due to the industrial form and nature of the proposal.

Clause 1.4 Definitions

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

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

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

Clause 2.2 Zoning of Land to Which Plan Applies

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

Clause 2.3 Zone objectives and Land Use table

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

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

Comment: The proposed development does not propose to encourage sustainable primary industry production such as ‘agro-voltaic’ or the like. Whilst a broad statement within the SEE is provided that refers to ‘*possible use of the land for vegetables or grazing during operation*’, there is no confirmation of how this may be incorporated into the design. For example, additional protection of the infrastructure or ongoing management requirements, such as provision of reticulated water to the vegetable crop, has not been provided with the application. As such, the proposal does not achieve this objective of the RU4 zone.

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

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

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

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

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

Comment: The proposal seeks to remove 26.9ha of class 3 soil from a total current 2% available supply of class 3 agricultural land in the Mid-Western Region for an alternative development with no supporting intensive plant agriculture use

incorporated into the design outcomes for the subject site. This is considered a significant loss to the local industry. Whilst the Applicant contends this is a 'short term' loss (as the operation of the development is suggested to be for a period of 20 years and rehabilitation of the site will also occur), the significance of this loss, based on the limited supply of productive agricultural land in the Region, has not been established by the Applicant.

To clarify, 'intensive plant agriculture' is defined under the MWRLEP 2012 as:

intensive plant agriculture means any of the following—

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

The proposed development is therefore considered to significantly impact total land available for intensive plant agriculture opportunities for the next 20 years as highlighted by the NSW Department of Primary Industries submission response, and does not achieve this objective of the RU4 zone.

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

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

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

Clause 5.10 Heritage Conservation

The objectives of the clause is provided below:

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

Comment: In accordance with the provisions of Clause 5.10 Heritage conservation of the MWRLEP 2012, a heritage listed item is identified to be located approximately 800 metres to the south east of the development (see figure 5 below). Under Schedule 5 of the MWRLEP 2012, the item is identified as the "Wallinga homestead" (item number I401). Given the proximity of the item from the development, it is not considered that the curtilage of the heritage item would be significantly impacted by the proposal.

It is considered however that the Applicant has failed to address the heritage listed item I401 within the Statement of Environmental Effects including associated views

and settings which may be impacted by the proposal. This has been omitted due to the limitation of a 500 metre catchment used within the visual impact assessment where the Applicant states *'as the land is generally flat it is unlikely that the site will be clearly visible from adjoining private properties and public roads beyond 500 metres'*. Whilst this statement is not supported due to the higher elevation and topography of the surrounding Burrundulla area, it is considered that the conservation of the heritage item, being the original Wallinga homestead, including associated settings and views has not been adequately considered by the proposal within the visual assessment. This has been further considered within the visual assessment of this report.

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



Figure 5: Clause 5.10 MWRLEP 2012 Heritage Map

Clause 6.1 Salinity

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

- (1) *The objective of this clause is to provide for the appropriate management of land that is subject to salinity and the minimisation and mitigation of adverse impacts from development that contributes to salinity.*
- (2) *Before determining a development application for development that, in the opinion of the consent authority, may affect the process of salinisation or is proposed to be carried out on land affected by groundwater salinity, the consent authority must consider the following—*

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

Comment: The proposed development site is identified to be partly affected by salinity per Figure 6 below. Salinity occurs when salts naturally found in soil or groundwater mobilise, allowing capillary rise and evaporation to concentrate the salt at the ground's surface. This process can have a significant impact on the structural stability of concrete, brick or metal structures, also having a corrosive effect on steel reinforcing.

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



Figure 6: Salinity Mapping

Clause 6.2 Flood planning

The subject site is not identified as being within the flood planning area in accordance with the MWRLEP 2012 maps or the Mudgee Floodplain Study and

Management Plan. It is noted however that the site contains an existing dam which may present localised flooding over the site. The development has been designed to provide a minimum 40 metre setback from the dam and natural drainage line. No further consideration is therefore necessary in respect of clause 6.2 of the MWRLEP 2012.

Clause 6.3 Earthworks

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

- (3) *Before granting development consent for earthworks, the consent authority must consider the following matters—*
- (a) *the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development,*
 - (b) *the effect of the development on the likely future use or redevelopment of the land,*
 - (c) *the quality of the fill or the soil to be excavated, or both,*
 - (d) *the effect of the development on the existing and likely amenity of adjoining properties,*
 - (e) *the source of any fill material and the destination of any excavated material,*
 - (f) *the likelihood of disturbing relics,*
 - (g) *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
 - (h) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Note. *The [National Parks and Wildlife Act 1974](#), particularly section 86, deals with harming Aboriginal objects.*

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

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

Whilst the works are likely to temporarily impact the natural drainage patterns across the site, concern is raised in relation to the effect the development may have on the future use of the site, including rehabilitation of the site for the purposes of reinstating primary production activities. The Applicant states that post the use of the site for electricity generating works, all infrastructure will be removed. This matter would need to be conditioned accordingly and ensure all underground works are also removed.

Concern is also raised in relation to the effects the proposal will have on the existing and likely amenity of adjoining properties (Clause 6.3(3)(d)). As the proposal is to be located within close proximity of existing dwellings (closest being 105 metres to the southern boundary) and an existing winery who will have direct amenity impacts, such as noise, glare and visual impacts as a result of the proposal. Subsequently, there is considered to be limited onsite measures that can be immediately implemented to avoid, minimise or mitigate the amenity impacts associated with the proposal in both the short and long term.

Clause 6.4 Groundwater vulnerability

The site is partly identified as groundwater vulnerable in accordance with Council's mapping – see Figure 7 below.

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

- (3) *Before determining a development application for development on land to which this clause applies, the consent authority must consider the following—*
 - (a) *the likelihood of groundwater contamination from the development (including from any on-site storage or disposal of solid or liquid waste and chemicals),*
 - (b) *any adverse impacts the development may have on groundwater dependent ecosystems,*
 - (c) *the cumulative impact the development may have on groundwater (including impacts on nearby groundwater extraction for a potable water supply or stock water supply),*
 - (d) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*
- (4) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—*
 - (a) *the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

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

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



Figure 7: Groundwater Vulnerability MWRLEP 2012 Mapping

Clause 6.5 Terrestrial biodiversity

The proposal is not located in any area identified as 'Moderate or High Biodiversity Sensitivity' under the MWRLEP 2012 - see Figure 8 below. No further consideration is therefore required on this basis.

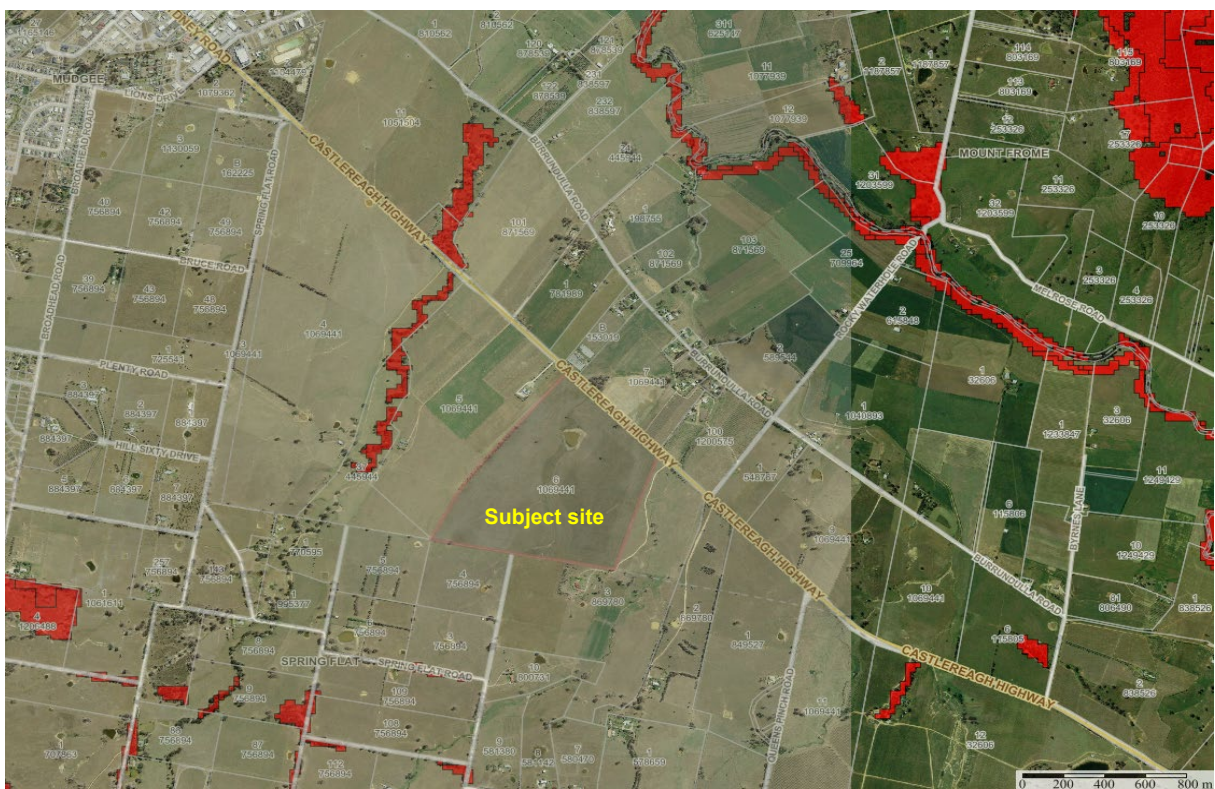


Figure 8: Terrestrial Biodiversity MWRLEP 2012 Mapping

Clause 6.9 Essential Services

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

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

Comment: The subject site is not serviced, having no current Council services such as water or sewer. The land is burdened by an electrical easement to the northern boundary. The Applicant contends that there is no requirement for a water or sewer connection to the land as all facilities will be brought into the site including portable toilets and water tankers, and suitable road access is available to the site.

The Applicant suggests that onsite maintenance would be only every 2 to 3 months and this is not considered to be satisfactory in relation to supporting and maintaining the landscape screening of the site.

As a comparison, the nearby Beryl Solar Farm (State Significant Development) undertook a recent audit (dated June 2020) of the landscaping installed in accordance with the approved conditions of consent. The audit found that over 60% of the planted boundary landscaping since operations commenced in 2019 did not survive and replanting was required. Whilst project construction was underway and completed during a period of drought, there were no connections made to water supplies (despite raw water connections nearby and ground water is also commonly relied upon in the area).

As a result of existing findings with State Significant Projects in the Region, a dedicated water supply is recommended. This may be conditioned accordingly in order to ensure the retention and longevity of the proposed landscape screening to be installed and would also support a dedicated onsite water storage tank for firefighting purposes. This service would be at the full cost of the Applicant.

In addition to the above, Council's Development Engineer has also provided comments in relation to suitable road access and has raised concerns in relation to this matter. This is further addressed in this assessment report by Council's Development Engineering referral response.

Clause 6.10 Visually sensitive land near Mudgee

Following an amendment to the MWRLEP 2012, notified November 2019, the subject land is mapped as 'Visually Sensitive Land' pursuant to clause 6.10 of the MWRLEP 2012 – see figure 9 below.

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

Pursuant to Clause 6.10(3):

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

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

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

Whilst the Applicant has submitted amended plans to provide a greater development setback from the Castlereagh Highway than initially proposed, the Applicant has still failed to consider the visual intrusion of the proposed development from surrounding land located at higher elevations along with the broader visual approach into Mudgee along the Highway. The proposal now also seeks to provide a construction laydown area and car park within the proposed front setback, which is not supported.

The Applicant contends that the proposed landscaping of up to 2 to 2.5m high shrubs, along with green shade cloth on the security fencing will provide an appropriate measure to minimise adverse visual impacts. This is not supported and is considered an inappropriate measure in contrast to the need to provide a sympathetic design that will minimise visual intrusion.

Of particular concern is the design and layout of the project which is required to track the sun on an east to west axis. This would therefore present a significant modification to the sensitive visual setting of the area when travelling from the east towards the site, the PV panels in the morning would be in direct view. Similarly, in the afternoon, the PV panels would also be a dominating view from the west and may also be visible to elevated residential land located in the Mudgee Urban area.

It is considered that the Applicant has failed to consider the broader views and minimise visual impacts of the proposal, including at various times throughout the day (and has only limited this consideration to a 500m radius of the site). On this basis, it is considered that the proposal will not complement the visual setting of the area and will not protect the visual significance of the land located on the immediate approach into Mudgee.

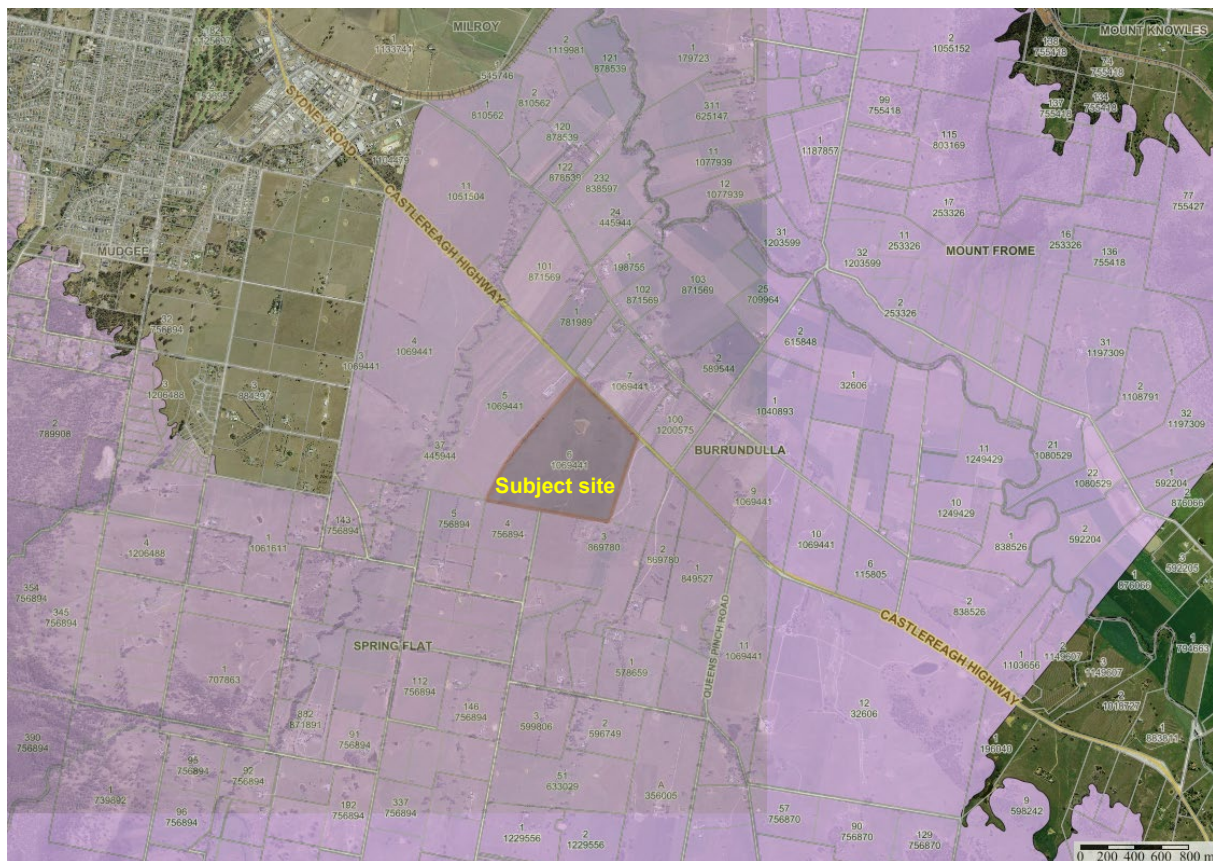


Figure 9: Visually Sensitive Land MWRLEP 2012 Mapping

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

(ii) Draft environmental planning instruments (EPI)

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

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

(iii) Any development control plans

Mid-Western Regional DCP 2013

An assessment is made of the relevant chapters and sections of this DCP. Those chapters or sections not discussed here were considered not specifically applicable to this application or are discussed elsewhere in this report.

It is important to note that the application was submitted to Council following the public exhibition of an Amendment to the Mid-Western Regional DCP 2013 specifically relating to solar energy development in the Mid-Western Region. Amendment 4 – Part 6.5 Solar Energy Farms was adopted by Council on 19 June 2019 (minute number 148/19) following a 28 day public exhibition period in May 2019, and commenced operation on 21 June 2019. The subject application was submitted to Council on 14 June 2019 however, an assessment of the proposal against the relevant provisions of the Mid-Western Regional Development Control Plan 2013 was not included within the Statement of Environmental Effects.

In accordance with Part 1.4 of the DCP – Transition Provision, the Applicant has nominated to Council on 18 October 2019 that the application be assessed against

the provisions of Amendment 3. The Applicant did not however provided an assessment of the proposed development against the provisions of Amendment 3 of the Development Control Plan 2013 within the Statement of Environmental Effects.

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

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

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

- *A development control plan is a detailed planning document which reflects a council's expectation for parts of its area, which may be a large area or confined to an individual site. The provisions of a development control plan must be consistent with the provisions of any relevant local environmental plan. However, a development control plan may operate to confine the intensity of development otherwise permitted by a local environmental plan.*
- *A development control plan adopted after consultation with interested persons, including the affected community, will be given significantly more weight than one adopted with little or no community consultation.*
- *A development control plan which has been consistently applied by a council will be given significantly greater weight than one which has only been selectively applied.*
- *A development control plan which can be demonstrated, either inherently or perhaps by the passing of time, to bring about an inappropriate planning solution, especially an outcome which conflicts with other policy outcomes adopted at a State, regional or local level, will be given less weight than a development control plan which provides a sensible planning outcome consistent with other policies.*
- *Consistency of decision-making must be a fundamental objective of those who make administrative decisions. That objective is assisted by the adoption of development control plans and the making of decisions in individual cases which are consistent with them. If this is done, those with an interest in the site under consideration or who may be affected by any development of it have an opportunity to make decisions in relation to their own property which is informed by an appreciation of the likely future development of nearby property.*

As noted above, the Draft DCP 2013 – Amendment 4 including provisions under Part 6.5 for electricity generating works was publically exhibited immediately prior to lodgment of the current development application. IT Power were also aware of Amendment 4 and the development controls relating to Solar Energy Farms in the Region as IT Power also lodged a submission during the May 2019 public exhibition period of Amendment 4.

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

AMENDMENT 3 – Mid-Western Regional DCP 2013

Part 4.4 Signs

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

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

Part 4.6 Industrial Development

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

DEVELOPMENT CONTROL REQUIREMENT	COMPLIANCE / COMMENT
Setbacks	
<i>Less than 2000m²:</i> Front 6m to street; nil side/rear secondary frontage 4m; site coverage 60%	Site area = 67.3ha
<i>2001m² 5,000²:</i> Front 12m to street; nil side/rear; 10m secondary frontage; site coverage 55%	The subject development has a minimum front setback of 190 metres and a 10 metre side setback which complies. The proposed car park and construction laydown is however located in the front setback and would require relocation.
<i>Over 5,001m²:</i> Front 15m to street; nil side/rear; 12m secondary frontage; site coverage 50%	The proposal seeks a 42% site coverage which complies.
Landscaping	
– 5m in front for Sydney Road; 3m in front for all other; – Landscaping in front to improve visual presentation from street; – Side/rear setbacks to provide visual relief from public areas; – Must consist of mature trees and lawn which are low maintenance, drought and frost tolerant; – Must be provided in car parks if >10 spaces required	3 metre wide buffer of landscaping provided at the site boundary with spacings at 5 metres, generally complies. The Applicant does not propose mature species however this may be conditioned accordingly. No internal landscaping is proposed. Further conditions may be imposed in this regard.
Design	
Low scale building elements (display areas, offices, amenities) to be located at front and constructed in brick or concrete; roof materials non-reflective	The transformer / inverter stations will have a maximum overall height of 2.978 metres. The form of these structures will be steel enclosures. The other elements of the proposal will also be of steel construction including the piles and fencing, with PV solar panels, including steel framing and glass used throughout.

DEVELOPMENT CONTROL REQUIREMENT

COMPLIANCE / COMMENT

	<p>Whilst the PV panels may be designed to be 'non-reflective' and 'absorb' light, the extensive steel utilised may present a glare to the Castlereagh Highway and adjacent properties.</p> <p>The Applicant has provided within the Statement of Environmental Effects a Solar Glare Hazard Analysis that concluded that there will be 5 properties impacted by 'glare' from the 'observation points' within a 2 kilometre radius of the site using a desktop assessment. Of concern however, the glare analysis does not take into account the elevation of potential receptors. The concerns raised by the assessment have been further considered within the visual assessment of this report.</p>
Design	
<ul style="list-style-type: none"> – Must be powder coated – Work/storage areas visible from street must be masonry or pre-coloured metal cladding, min. 2m height and set back from street – Gates set back from street by length of largest vehicle accessing site 	<p>The proposed plans provide fencing details including 'galvanized' wire chain link fencing up to 2.1 metres. This does not comply. A condition may be imposed to require a powder coating be applied accordingly. In addition, a condition may be applied in relation to gates being setback from the road for the largest possible vehicle (during both construction and operation) to access the site.</p>
Utilities	
<ul style="list-style-type: none"> – Statement of servicing to be provided (water, sewer, stormwater) – Adequate provision for storage/handling waste – LTW application to be provided where liquid wastes proposed to be discharged to Council's sewer – No buildings in utility easements 	<p>The only service available over the site is electricity with easements already over the land. As per the assessment under the MWRLEP 2012 provisions, it is considered that water to maintain landscaping in addition to firefighting supply with an onsite tank is required to be provided.</p> <p>Conditions may be imposed in relation to stormwater runoff, waste management and easements.</p>
Traffic and Access	
Traffic Access Report	Traffic report provided. Discussed elsewhere in report
Site access: Loading/unloading facilities designed for largest vehicle	Loading to be undertaken within the subject site, a condition may be imposed.
Safe manoeuvring area	Manoeuvring to be undertaken within the site, a condition may be imposed.
No unsealed manoeuvring areas	Does not comply. All areas are proposed to be unsealed.
All vehicles enter/leave in forward direction; maximum 1 ingress and 1 egress point; no vehicular access to main road where alternative present	One (1) entry point to be provided from the Castlereagh Highway.

DEVELOPMENT CONTROL REQUIREMENT	COMPLIANCE / COMMENT
Car Parking	
Refer to Part 5.1 of DCP	Capable of achieving compliance. Refer to Part 5.1 below
Signage	
Refer to Part 4.4 of DCP	No signage is proposed.
Outdoor Noise and Lighting	
<ul style="list-style-type: none"> –Must comply with AS4282 Control of Obtrusive Effects of Outdoor Lighting –Windows, doors, wall openings arranged to minimise noise impacts on residences within 400m of residential zone –External plant enclosed to minimise noise impacts 	Acoustic assessment provided and addressed within the report. Lighting will be conditioned however construction hours will be limited to ensure lighting will not impact on adjoining lands.
Subdivision	
<ul style="list-style-type: none"> –Minimum 30m frontage; roads designed to AustRoads standards for B-Doubles –Lots provided with water and sewer –Stormwater drainage and water quality measures implemented (see Part 5.5 of DCP) –Lots serviced with telecommunications/underground electricity –New roads constructed of bitumen 	Not applicable.

Part 5.1 Car Parking

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

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

Part 5.3 Stormwater Management

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

Part 5.4 Environmental Controls

All relevant considerations have been discussed elsewhere in this report.

Part 6.1 Development in Rural Areas

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

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

The proposed development seeks to provide a minimum setback of 30 metres (eastern side boundary) to the solar panel arrays and a 190.7 metre front setback from the Castlereagh Highway to the panel arrays.

The proposal has been modified in October 2020 to achieve compliance with the above for the PV panels and security fencing, however, the laydown and construction parking area is currently proposed within the 200 metre front setback which is not supported and is required to be relocated behind the front setback. This has therefore been included in the Draft Conditions of Consent should the application be approved.

AMENDMENT 4 – Mid-Western Regional DCP 2013

Part 6.5 Solar Energy Farms

Visual Impact	
–Must include an assessment of the scenic value and character of the locality, all significant vistas and local community values.	Visual impact assessment provided and prepared by 'Zenith Town Planning Pty Ltd'. The assessment does not accommodate sites outside of a 500 metre radius of the development area including topography or elevated sites beyond 500 metres. The visual impacts of the proposal have been assessed later in this report.
Siting to minimise impacts	
–The development should be sited and carried out to minimise impacts on or restrictions to grazing, farming, residential, tourism, business and forestry practices.	Does not comply – it is not considered that the project site selection avoids or minimizes impacts on surrounding land. Of particular concern is the noise impacts to a large number of receptors (9) and glare impacts on 5 properties however this does not account for further elevated areas in this assessment. This is further considered in the merits of this assessment.
Physical adverse effects on adjoining land minimised	
– The development should be carried out that minimises any adverse physical effects on adjoining land and the development site.	Management of adverse physical impacts may be conditioned accordingly however it is considered that the subsequent design changes made to manage the risk of fire including a 10 metre defendable space is supported however no proposal for an onsite static supply of water for firefighting purposes or to support landscaping has been provided.
Cumulative impacts from other solar developments	
– Assessment to be included for existing built and approved but not constructed solar farms with identified cumulative impacts.	The assessment within the Statement of Environmental Effects does not address cumulative impacts with existing or proposed solar farms in the locality. The Beryl Solar Farm has been constructed to the south west of the site however a number of larger scale SSD solar

	farms are also proposed within the broader Mid-Western Region. Many concurrent significant projects can create cumulative impacts associated with various issues including worker accommodation, traffic impacts, and social and economic impacts in the locality.
Consideration with the DPIE Solar Farm Guidelines, NPI and other Guidelines applicable to Solar Farms	
– Consideration with State Significant Development Guidelines for Solar Farm guidelines including site selection, NPI and other solar farm Acts, Rules or Regulations.	The assessment within the Statement of Environmental Effects does not address the DPIE Solar Farm Guidelines.
Within 5km of any township	
– Assessment to demonstrate that the proposal will not impact on the scenic value and character of the locality where the proposal is with 5km of main townships.	The assessment within the Statement of Environmental Effects provides a visual impact assessment, along with a glare assessment however this only considers sensitive visual receptors within 500 metres of the site. The glare assessment considers a 2 kilometre radius of the site and concludes that 5 properties would be impacted by glare. This however does not account for any elevated properties within the ‘Glaregauge’ modelling conducted.
Locational requirements	
<ul style="list-style-type: none"> – Should not be located within 500m of any dwelling not associated with the development. – Should not be located within 200m from a formed public road or 500m from a Regional or State Road. – Should not be located within 100m from a non-related property boundary. – Screening is not the only preferred method of minimising visual impact, solar arrays to be located in positions so as to have minimal visual impact on nearby properties. – Sensitive to existing related dwellings – noise and glare minimised. – Not surround a non-related property. 	<p>The proposal is located within 500 metres of a dwelling to the south (existing dwelling is 105 metres from the boundary and 355 metres from the panel arrays).</p> <p>The proposal is to be located in a visually sensitive and prominent location from nearby properties and abuts a classified road network. The proposal seeks to screen the boundaries with vegetation up to 2.5 metres in height, spaced at 5 metre intervals, and ‘green shade cloth’ material is proposed on the security fencing until the vegetation is established. This is not supported due to the suggested operational maintenance program of quarterly visits and no onsite manager to ensure the screening material and landscape watering is carefully managed.</p>
Construction Traffic shall only travel on approved route	
Assessment included in Traffic Report having regard to public safety, school bus hours and	Traffic Assessment included notes the peak travel periods during construction and seeks to avoid other peak travel periods. This requirement is

peak travel to work.	further enforced by Transport for NSW and Council's Development Engineer.
Road upgrades to support traffic movements	
Road works and / or bond may be required and determined by Council costs borne by developer. Internal roads shall be the responsibility of the developer and shall be adequately designed and constructed.	The updated Traffic Assessment provided includes a proposed road upgrade for the intersection with the site to conform with Transport for NSW requirements.
Infrastructure including temporary facilities	
All infrastructure to be included in the application including temporary facilities. All infrastructure to be located in low visual impact locations.	Proposal seeks to provide portable facilities during construction for workers with no services to be provided (such as sewer or water). All cables are to be located underground to support the solar farm with container style metal inverters and transformer stations to be located on the site.
Rights of Carriageways	
Rights of carriageways to be extinguished within 6 months of the proposal ceasing to operate, unless otherwise agreed with the landowner.	Not Applicable. Direct access to the site available from the Castlereagh Highway subject to suitable upgrades.
Removal of infrastructure	
Within 12 months of the solar farm ceasing to operate, all infrastructure is to be dismantled and removed from the site	Conditional matter.

Section 64/Section 7.12 Contributions

Mid-Western Regional Development Contributions Plan 2019

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

Based on the current submitted cost of \$13.2 Million, a contribution amount of \$132,000 will be required. It is noted that the proposed design has been modified since the original submission of the application, including the access to the site and reduction in the number of PV panels. It is therefore recommended an appropriate condition be imposed to ensure the correct cost of the development is submitted with a report provided by a quantity surveyor.

Developer Servicing Plans for Water and Sewer 2008

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

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

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

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

Regulations –4.15(1)(a)(iv)

Environmental Planning and Assessment Regulation 2000

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

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

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

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

(a) Context, Setting and Visual Impact

The Applicant has provided a visual impact assessment within the Statement of Environmental Effects, prepared by 'Zenith Town Planning Pty Ltd' which has utilised the RMS Guideline 'Environmental Impact Assessment Practice Note – Guideline for Landscape Character and Visual Impact Assessment 2013'.

The assessment states the character of the landscape at Burrundulla '*is predominantly an open modified agricultural landscape shaped by farming*'. The assessment then proceeds to describe the surrounding land including the diversity in agriculture for the area including grazing, cropping, viticulture, horticulture and rural living. The assessment then states the site is close to the '*industrialised entrance to the township and is relatively close to coal mining operations to the east*' and the '*rural landscape is attractive particularly due to its position between steep forested country*'. The assessment concludes the project impact on landscape character to be 'moderate' for private property and public roads.

The assessment however erroneously makes reference to a sewer treatment plant, extractive industries and coal mines forming part of the Burrundulla landscape. It is confirmed that the Council asset is in fact a water treatment plant (nearby Bunnings 2.4 kilometres west of the site) and there are no extractive industries or coal mines operating in the area.

The visual catchment within the assessment has been limited to 500 metres from the site which is 1.5 kilometres less than considered in the glint and glare assessment and states that '*as the land is generally flat it is unlikely that the site will be clearly visible from adjoining private properties and public roads beyond 500m*'. Within the 500 metre catchment, 7 dwellings are noted (1 'dwelling' is the Burrundulla Winery building) and the sensitivity to landscape change is referred to 'low, moderate and high' for those closest to the subject site.

To summarise the conclusions of the visual impact assessment by Zenith Town Planning, the impacts of the proposal are assessed to be 'low-moderate' to 'high-moderate' with dwellings 6 and 7 (both closest to the site) identified as 'high-moderate' and 'moderate'. The assessment of the impacts from the development on passing motorists along the Highway has been considered 'low-moderate' with the landscape 'screen' reaching 2 to 2.5 metres high suggested to be 'acceptable', particularly given the proximity to the urban area of Mudgee. The assessment states that *'these impacts are considered acceptable given the nature of the proposed development and screening measures, and that it will contribute to renewable energy generation'*.

Based on an assessment of the site in the context of the surrounding rural and rural-residential character of the Burrundulla area, it is considered that the visual impact assessment has failed to adequately and accurately identify the existing landscape character and the scenic qualities of the area, and has not considered any key elevated view points as part of the assessment outside of the 500 metre radius applied. Elevated views or an 'undulating topography' has a significant impact on such assessment whereby low level planting to 'screen' direct views will not reduce visual impacts on these viewpoints.

The assessment of impacts has also been supported by a Glare Analysis which confirms that at least 5 properties will be impacted by glare from the PV panels at specific times through the day and depending upon the time of the year. One dwelling is suggest to be impacted for up to 17 minutes at 5am-7am in August to May (however it is noted that existing vegetation along the western boundary may reduce this extent). In addition, the glare assessment also confirms that the GlareGauge modelling does not account for elevated receptors. Therefore, it is considered that the number of properties impacted may infact be greater than 5, due to the higher elevations of residents found in each direction from the site.

Furthermore, the assessment does not consider the proposed security fencing as part of the modification to the existing landscape character which is considered to be a significant change to the current onsite arrangement. Whilst the proposed 5 metre spacings of shrubs (2.5 metres when at maturity) will provide a modest visual obstruction once mature, the use of shade screening material on the security fencing is not supported as an impact mitigation measure due to the high likelihood of the material being unsightly, with no frequent onsite management available during operations.

Based on a full assessment of the proposed development, it is considered that the proposed siting and location of the energy generating works is inappropriate in the context of the surrounding sensitive rural landscape and the development has not proposed any significant mitigation measures to reduce the visual impacts of the development on surrounding land.

(b) Access, Transport and Traffic

The application was supported by a Traffic Report, with the application also considered by Transport for NSW (TfNSW) and Council's Development Engineer.

Based on the initial site access location proposed from the Castlereagh Highway utilising an access farm gate access point, TfNSW and Council's Development Engineer did not support this access arrangement due to conflicts with nearby existing driveways. The access was then modified further east along the frontage of the site and whilst TfNSW are supportive of this measure to reduce traffic conflicts, concern is raised by the concept design submitted. This however may be further

addressed in the submission of a Section 138 Application. A condition has been recommended in this regard.

The Applicant also proposes to transport workers to the site via bus to reduce the traffic impacts of increased single vehicles however, concern was raised in relation to 'pick up and drop off point/s'. It is considered that these matters may be able to be conditioned accordingly.

(c) Public Domain

The proposed development will not impact the public domain in terms of recreation opportunities, the amount, location, design, use and management of public spaces, or pedestrian linkages between public spaces.

(d) Utilities

The subject site is burdened by an electrical easement for the 22KV network at the frontage of the site. There are no other utilities available to the site which has raised concern in relation to ongoing management of the landscaping which has been proposed to 'screen' the development from the road and adjoining lands. It is considered that for both management and maintenance of the site and planted vegetation, dedicated water storage onsite is required. This may be conditioned accordingly.

(e) Heritage

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

(f) Other Land Resources

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

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

The application refers to the 'growing of vegetables' or 'grazing' which could be undertaken in conjunction with the proposal and is stated to be similarly undertaken successfully in other energy generating works nationally and internationally. This however has not been tied into the proposal for the future; such as the supply of water for vegetable crops.

In this regard, referral of the proposal was provided to NSW Department of Primary Industries, with comments provided accordingly, including the suggestion of the proposal being investigated for the use of 'agro-voltaic' to enable the land to be used for both agriculture and electricity generating activities. Given the equally important

need to mitigate visual impacts, this is not considered to be supported in this location due to the need to raise the piles of the panels even further to allow an appropriate clearance, intensifying visual impacts of the proposal.

(g) Water

The application is presented to Council on the basis of there being no impact on groundwater or need to use water to manage the site into the future. This is concerning on the basis of the proposed landscaping of the boundaries (to enable an effective 'screen' to be established) will require frequent watering in the first 3 months of planting. Additionally, the cleaning of the panels is suggested to require quarterly washing to maintain electricity generation effectiveness.

The application states that there is no reticulated water supply required to the site however does not confirm where water will be sourced to manage the plantings, provide for future fire suppression, or for the washing of the panels during operation.

Further, there is no confirmation of where water will be obtained from during the construction period to suppress dust. As a result, it is considered that water supply for the development (bore or onsite tanks) should be investigated as part of the project including onsite static water supply provided for firefighting activities.

(h) Soils

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

(i) Air and Microclimate

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

(j) Flora and Fauna

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

(k) Waste

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

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

(l) Energy

The proposal seeks to provide a 10MW electricity generating works on a 26ha rural vacant site 2.4 kilometres east of the Mudgee urban area. The proposal seeks to connect to an existing 22KV electricity line located on the site which feeds to the Mudgee Zone Substation. Given the small scale nature of the proposal and the concurrent larger renewable energy projects in the Region (as a result of the “Central-West Renewable Energy Zone” development), concern is raised by the proposal, being a smaller scale renewable development with significant local environmental and community impacts in this location that, if approved, will provide very limited benefit to the NSW State Governments Renewable Action Plan and numerical targets sought to be achieved.

(m) Noise and Vibration

The application was supported by a Noise Assessment prepared by ‘Muller Acoustic Consulting’ which seeks to quantify potential environmental noise emissions associated with the construction and operation of the proposal along with providing recommendations for noise mitigation and management measures. Key noise generating activities during construction include earthworks, pile driving and assembly onsite using various machinery, and traffic movements from heavy trucks and light vehicles. Operational noise activities are limited to the transformer/inverter stations, and onsite maintenance activities such as cleaning of the panels on a quarterly basis.

The report identifies 30 sensitive receivers surrounding the project site.

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

Utilising a computer model, it was determined that nine (9) of the sensitive residential receivers listed in the report would have construction noise levels exceedances when such activities are their nearest point to the receivers. These were identified as R1 – 446 Rocky Waterhole Road, R2 - 354 Burrundulla Road, R3 – 328 Burrundulla Road, R4 – 322 Burrundulla Road, R5 – 327 Burrundulla Road, R6 – 371 Burrundulla Road, R12 – 312 Castlereagh Highway, R29 – 243 Castlereagh Highway, R30 – 297 Burrundulla Road. The most affected dwelling is identified as 312 Castlereagh Highway (105 metres from the southern boundary) with the highest predicted noise level reported to be 51dB LAeq(15min) during construction.

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

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

- preparation of a construction management plan.
- use localised mobile screens or hoarding around plant to provide a barrier.
- operate plant in a conservative manner.
- selection of the quietest possible machinery.
- avoid noisy plant working simultaneously.
- minimise impact noise wherever possible.

- use broadband reverse alarms.
- provide toolbox meetings, training and education to drivers and contractors.
- signage is to be placed at the front entrance to advise drivers to minimise noise.
- utilise project related community consultation forums to notify residences.

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

On the basis of the above, it is confirmed that the construction phase of the proposal will have a significantly adverse environmental impact on 9 sensitive residential receivers in close proximity to the site. The Applicant has stated that the construction period could be between 3 to 6 months and as a result, all recommendations outlined in the assessment would need to be further refined prior to any construction commencing onsite and may be conditioned accordingly.

(n) Natural Hazards

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

(o) Technological Hazards

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

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

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

(p) Safety, Security and Crime Prevention

The proposed development is considered to be able to be adequately secured with significant security fencing of the boundaries. The proposal is not considered to contribute to, or increase crime in the locality however, the maintenance of the site is required to be upheld to ensure there are no risks of fire which may rapidly spread to nearby properties.

(q) Social Impact in the Locality

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

The Applicant has suggested there will be opportunity for local employment however, with the experience of other renewable projects in the Region, it is unlikely that local employment opportunities will be generated. This creates significant pressures on local accommodation providers and to the rental market with drive-in-drive-out workers. Mudgee also benefits from a large tourist and mining employment sector to support the township and during peak seasons, accommodation options have historically been significantly limited. This is also supported by Mudgee Region Tourism (MRT) statistical data which has identified a 28% increase in overnight visitors since 2014 and prior to the COVID-19 pandemic. Since the COVID-19 lockdown and in the first quarter of the new financial year 2020, this number has significantly increased to 47%. Such increases place immediate pressure on accommodation availability ranging from Hotel and Motel / Serviced Apartments, and Air BnB options which also impacts the rental market supply.

Whilst the Applicant has provided a Social and Economic Impact Statement, prepared by 'Zenith Town Planning Pty Ltd' this has relied upon the benefits of the 'Renewable Action Plan' prepared by the NSW Government and also relies upon the Destination NSW Tourist Accommodation profile for the Mid-Western Region which is stated to average 62.3% occupancy for the year, rather than specifically only relying on accommodation opportunities for the Mudgee area. This generates further concern that up to 50 workers would therefore look to be accommodated in the Gulgong, Kandos or Rylstone areas and may be commuting long distances to and from the subject site following prolonged hours on a construction site.

It would therefore be recommended that further evidence of consultation with local accommodation providers along with local recruitment providers be undertaken accordingly to validate the assessment undertaken by 'Zenith Town Planning Pty Ltd' and this may be conditioned accordingly.

(r) Economic Impact in the Locality

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

(s) Site Design and Internal Design

Upon review of the initial design submitted, noting the significant non-compliance with the setback provisions of the Development Control Plan 2013, was also concern raised in relation to adequate fire management measures to be installed onsite. This includes an adequate defendable space between the infrastructure and boundaries along with the provision of onsite water storage given there are no hydrants available for firefighting activities. Given the heightened risk of fire generated by the proposal, a 10 metre defendable setback was recommended to all boundaries and the PV panels along with a dedicated onsite water storage capable of being accessed by emergency services or onsite personnel. This is particularly important given the proximity of the development from residential properties. The plans were subsequently amended and resubmitted in October 2020. Dedicated water supply has still however not been addressed and this may be conditioned accordingly.

(t) Construction

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

(u) Cumulative Impacts

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

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

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

A full assessment of the proposal has identified a number of significant concerns with the location of the proposed development including the following:

1. The site is located on the immediate gateway to the town of Mudgee which is required to be protected under the provisions of the Visually Sensitive Land mapping, along with the Comprehensive Land Use Strategy requirements.
2. The site is located on the primary tourist route into Mudgee and is readily visible to passing traffic.
3. The proposal seeks to construct PV panels on 26ha of vacant, class 3 land suitable for intensive plant agricultural use.
4. The proposal seeks to 'screen' the infrastructure from the boundaries in order to reduce visual impacts on surrounding land.
5. The proposal will have construction noise exceedances at 9, of the nearby sensitive receivers.
6. The proposal will have glare impacts on a minimum of 5 properties which does not account for elevated land or properties surrounding the site.
7. The proposal has been public exhibited on 2 occasions and a significant number of objections have been received.
8. The proposal does not seek to provide any form of onsite reticulated water supply to enable effective maintenance of the proposed landscaping or cleaning of the assets, and therefore seeks to rely upon an offsite water supplier on an ad-hoc to quarterly basis.

9. The proposal increases the risk of fire occurrence on the subject site and onto surrounding properties.
10. The proposal is to be partly located within a saline soil environment which can be corrosive to metal structures.

Whilst a number of the above matters can be conditioned accordingly, it is considered that the subject site and the overall location is not suitable for the development.

Further to the above, it is not agreed with the statement that the project can be justified on the grounds that '*existing electrical infrastructure and favorable lease arrangements*' are available. These two matters do not adequately resolve the significantly adverse locational and visual impacts that the proposal also presents.

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

(a) Public Submissions

The application was first advertised and neighbour notified, in accordance with Mid-Western Regional Development Control Plan 2013, from the 19 June 2019 to the 5 July 2019. During the first public exhibition period, 349 submissions were received, plus one (1) petition objecting to the development with 780 signatures. A total of 335 objections and 14 submissions in support of the proposal were received. It should be noted however that a number of submissions, whilst individually signed, were identified as pro-forma or template letters. As a result, only one copy of each template letter has been included for consideration.

Following lodgment of the new site plan and traffic assessment, a second public exhibition period occurred from the 22 October 2020 to 5 November 2020. 28 individual submissions of objections were received during this period. It was again noted that a number of the submissions were identified as a template ('copied') response, each raising the same matters of concern. Therefore only one copy of this pro-forma template objection has been provided for the panel's consideration.

The Applicant was forwarded a copy of all submissions received and provided an opportunity to address the matters raised. Following the first exhibition period, the Applicant advised Council that no further information will be provided to address the submissions on the basis that all information is already available within the documentation submitted to Council. As a result, no amendments were made to the proposed plans or documentation.

Following the second round of public exhibition, the Applicant provided a response to those submissions received.

A summary of the matters raised by the submissions is provided below with a copy of the public submissions, including the Applicants response to round 2 of the exhibition period is included in Attachment 5.

Summary of Issues Raised:
Prime agricultural land (class 3) located in a fertile valley and should be preserved – it is not industrial land.
Located within 10km of the township of Mudgee – 594m from the urban area of Mudgee which is too close to the town.
Will have significant visual impacts as: <ul style="list-style-type: none"> It is on the main gateway to Mudgee (from Sydney)

<ul style="list-style-type: none"> • It will be visible from any elevated position in Mudgee • It is in close proximity to scenic and public locations.
It is a conflicting land use to existing land uses in the vicinity and creates a conflict that the 'Right to Farm Policy' seeks to avoid.
The negative social and economic impact it will have on neighboring properties, tourism reliant business and the Mudgee region generally – loss of the 'country feel' sought by tourists.
The EIS contains insufficient detail for a determination of the proposal.
The visual impact assessment does not consider all impacted residents and visual points – a comprehensive visual impact analysis needs to be undertaken including Castlereagh Highway, Springflat Road, Rocky Waterhole Road residents.
The setbacks are not appropriate for a development of this size and scale. Low impact development such as dwellings are required to be 100m from the Highway – 500m should be considered.
The proposed screening is not effective and should be installed at the mature height and a minimum of 2 rows.
The development is not consistent with the MWR LEP objectives of RU4 Zoned land.
The development is not considered with the General Amendment to the MWR DCP 2019.
The development does not align with key strategic economic objectives or strategies of the Mid-Western region, including promoting and supporting tourism and is inconsistent with the Mudgee Region Destination Management Plan 2018, the Destination Country and Outback Destination Management Plan 2019, the NSW Visitor Economy Industry action Plan 2030, the NSW Food and Wine Tourism Strategy 2018-2022
The Glare and Glint Study are unclear with no address details in the report and appears to be a desktop report, rather than actual physical study. Page 64 states that the Glare Gauge tool used to identify potential glare does not take into account topography. Homes are built at higher elevations to the site need to be assessed – a clearer report should be provided to the community so property owners can understand the proposed impacts to their home and lifestyle.
Further traffic impacts need to be assessed as data has been used from 2014 and significantly understates traffic movements – undertake a current traffic study including buses and 'Friday' traffic due to the increase in number of visitors to the Region via the Castlereagh Highway on Fridays.
The proposal does not provide any ongoing employment opportunities – no discussion on how the 50 construction jobs will be filled – transient workers are highly likely due to short timeframes during construction.
<p>The development is not consistent with the Mid-Western Regional Comprehensive Land Use Strategy:</p> <ul style="list-style-type: none"> • Item 1.4.1 Economic Prosperity • Item 1.4.4 avoiding adhoc development, particularly in rural areas • Item 2.1 rural land protection and support • Item 2.2.2 protection and the important role of Town Gateways • Item 2.3.9 supporting ridgelines and rural views
Poor community engagement has taken place in preparation of the Development application that has significant impact on the broader community.
Cumulative impact of many major projects and development in the region that will increase demand on social and physical resources of the region. Other proposed major renewable projects include Wollar Solar, and the Uungula Wind Farm in addition to the existing Beryl Solar and Crudine Ridge Wind Farm.
The justification for the proposal due primarily to proximity to existing electricity

infrastructure and favorable lease arrangements however all other site options considered are owned by the same individual – were any other sites further away from the main entrance and exists to a tourist mecca even considered.
High risk of devaluation of properties.
The development fails to consider the Amendment to the MWR LEP 2012 for Visually Sensitive Land Map with a specific focus on southern gateway to Mudgee. The amended mapping was in the public domain since April 2019 Council meeting, the proponent was aware of the intensions of MWRC.
The DA does not clearly lay out decommissioning plan.
The applicants have not kept the community informed during the design process.
The cumulative social, environmental, economic and visual impact must be considered for both the Gulgong and Mudgee Solar Farms.
The fencing proposed is intrusive and inconsistent with surrounding dwellings, land uses and the natural environment – it is industrial like the Wellington correctional centre.
The proposed landscaping is unclear and there is not a sufficient screen plan to reduce the impact on surrounding property – landscaping should be at least 3m to the height of the inverters.
Lack of clarity with regard to maintenance and upkeep.
Increase fire risk to neighboring properties and surrounding area – consult with the RFS and develop an emergency response plan.
The proposal poses a risk to aviation and road safety with glare and glint from solar panels (both the metal frames and the glazed surfaces). The Highway is elevated from the site drivers will be overlooking the panels in both directions.
The traffic interactions during construction of this project on a busy highway with 100km speed limits.
Its location will unfavorably impact on the character of our town.
Detracts from the rural nature of our tourist hub.
The proposal is causing stress and other health issues amongst residents.
Environmental degradation and habitat loss burnt by the heat from the solar mirrors and beam on concentrated sunlight.
Leaks of toxic materials and chemicals could be harmful to the environment.
The condition of the soil during and after the solar farm is decommissioned. A rehabilitation and decommissioning plan should be submitted.
Sets a precedent for other solar farms to be built nearby.
Mudgee is a historically significant town and well known for the great vineyards, wine and food.
The growth rates of the vegetation proposed will be dependent on regular attention and watering / maintenance – based on an estimated 700 screening shrubs, minimum of 10lt of water per plant per month in the first 12 months, the water required for this would be 84,000 litres in the first year. The application does not address the source of water.
The water to be used to attend to washing the panels 4 times per year would equate to 124,000litres of water – where is the water supply coming from – Beryl Solar used significant tankers for dust suppression alone.
The applicant proposes no toilets onsite for staff (cleaning crew, gardeners, general maintenance) - refer to the regulations of Safe Work Australia for adequate facilities for workers – clean toilets must be provided for all workers while they are work.
The application fails to maintain development standards under the Environmental Planning and Assessment Act - the character, location, sitting, bulk, scale, shape, size, height, density, design or external appearance of a building or work.
Indigenous heritage – remaining artefacts or tree markings – a Cultural Heritage Assessment should be undertaken.

Earthwork impacts on bores used by the adjoining neighbors as a result of the piles driven 1.2m-3.5m into the ground – the site is mapped as groundwater vulnerable – the report provided was a desktop assessment there are 3 bores within 200m of the site licensed for irrigation and are at depths of 30m –the application does not address clause 6.4 Groundwater Vulnerability of the LEP.
Suggest the solar farm be considered for the southern end of Lots 3 & 4 DP 1069441.
No compensation for the losses by affected parties – proponent should be advising on what support will be provided to landowners due to this loss – mortgage memorandums require compulsory disclosure of a significant event or change impacting a property; a financial institution may revalue the property and if a reduction in the value is identified, they may call-in outstanding debts and result in bankruptcy of local farmers.
Unsure investment climate for potential property purchasers in our region – detracts new investors or tree changers to the region.
A significant monetary bond needs to be held on behalf of the community to ensure that the screening is maintain in the intended state throughout the life of the project. A bond should also be taken for decommissioning costs if the company becomes insolvent and to avoid abandonment of the site.
Industrial entrance to Mudgee – must not allow future planning to continue to make the same mistakes as the past – protect the rural gateway entrance to Mudgee.
<p>The site is not suitable for development of a solar farm as:</p> <ol style="list-style-type: none"> 1. It is too close to the existing town centre and boundary which will limit the ability for future residential development 2. It will have adverse visual impacts on adjoining property owners, the rural landscape and scenic town entrance corridor 3. It is inconsistent with the local character of Mudgee and its heritage and wine destination features which are highly valued by the community and well recognized by visitors.
Noise impacts on the dwelling 97m from the proposal. Constant 30 decibel intrusion on their life cannot be overlooked. The desktop assessment needs to consider the greater noise impacts during construction on homes due to the sound travelling and wind direction and the low humming sound during operation from inverters or other equipment.
Plenty of land surrounding Windemere dam not being used and \$100,000 a year they will be paying can go back into the community.
Solar farms give off carbon.
Increase in unskilled back packer style labour will be imported, as displayed and evident at the Beryl Solar Farm.
Increase weeds and use of herbicide to manage broadleaf weeds under the panels – A weed management plan needs to be provided.
Residents of Mudgee will see no reduction in bills from utility companies.
Long term effects of solar farms on prime agricultural land has not been studied enough to be able to determine or quantify the long term detriment – “food not solar”.
Use of other local roads for construction traffic off the Castlereagh Highway has not been considered.
Fails to adequately address the key issues established in the Large Scale Solar Energy Guidelines for State Significant Development published by the NSW Government in December 2018.
Biodiversity in the SEE fails to provide a report by a qualified ecologist.
On 10 August 2018 DPE approved an amendment to the LEP to facilitate residential development on parts of Lot 3 and 4 DP 1069441 and part of Lot 4 DP

1206488 Spring Flat, effectively moving the urban footprint of the town to Oak Creek, less than 600m from the site.
Natural hazards, the SEE fails to adequately consider how the watercourse will be managed and rehabilitated to avoid impacts by the development, particularly during the construction stage.
The development will have a significant visual, environmental and economic impact on the cellar door and café adjoining the site – the land use is on a separate lot and unless it is consolidated, the impact is relevant.
Application should have included a reflectivity assessment.
SEE fails to address the consistency of the proposal with the objects of the EP&A Act.
SEE refers to SEPP (Rural Lands) 2008 which has been repealed.
The panels will impact the use of the site for agriculture in terms of pasture and grass cover due to lack of rainfall or sunlight and also disrupts soil microbiology which becomes hard and compacted.
Stormwater controls are stated will be inspected on a regular basis but with the site unmanned by unskilled workers how will these controls be monitored and timeframes for inspections need to be identified.
Site photos used to identify the visual catchment has not left the highway and are quite misleading – Mudgee is derived from the Wiradjuri term Moothi meaning “Nest in the Hills”. If screening is identified as required, then this would reinforce that this is not the right location for the project.
Nearest air quality monitoring station is located at Dubbo, 129km from the site. It is not a good enough mitigation measure to considering readings so far away from a construction site.
Loss of privacy with construction activities and ongoing maintenance working within 6.9m of family farm.
Potential landslides onto driveway of adjoining land due to existing erosion concerns and significant runoff onto adjoining property from the development site. Sediment and erosion control plan to be developed to reduce impacts.
Impacts on Agri-tourism / B&B operations on adjoining lands which is used as a secondary income stream to many rural land holders engaged in agricultural production.
Fencing and solar panels 300m to the adjoining residence.
No details are included in relation to battery storage - further information needs to be provided – solar only works during the daylight hours.
No discussion regarding further security measures such as CCTV or lighting provided. Such infrastructure should be identified and considered by all parties – no night lighting should be utilized on the site due to impacts on the environment, distraction to drivers, the night sky and adjoining properties.
The proposal is not thorough and looks to be a “copy and paste” from an alternate site – it does not provide enough details and has clear errors.
The application is not within the public interest.
A geotechnical assessment should be provided to assess the impacts of the piles being driven 3.5m and the impacts on surrounding areas - the application fails to address clause 6.3 Earthworks of the LEP.
Mature landscaping should be installed prior to construction activities and the shade cloth is inappropriate for the local environment. – a landscape maintenance plan should be developed.
The Central West and Orana Regional Plan does not identify the Mudgee region as suitable for large scale solar power and geothermal energy generation. Towns included were Warren Coonamble and Bogan.
Action 9.3 of the CW&O Regional Plan - <i>Promote best practice community engagement and maximize community benefits from all utility scale renewable</i>

<i>energy projects</i> was ignored.
Direction 4 of the CW&O Regional Plan is to “promote and diversity regional tourism markets” – the proposal on the main approach into Mudgee is not in congruence with this strategy.
Removal of native paddock trees on the site.
A waste management plan should be developed to ensure that construction and demolition waste does not increase landfill for the local region.
Impact on accommodation and health services as a result of a short term temporary work force has not been considered - Negative social impacts from the transient workforce on the community.
Applicant has not advised if the 2-3 personnel who will carry out maintenance will be local positions or travelling workers.
Clause 5.10 Heritage impacts on ‘Old Wallinga’ homestead – item 401 under the LEP 2012 has not been assessed – Lot 1 DP 578659
The impact on properties public liability insurance as a result of the development – the application should include a clause that the developer covers any increased cost of public liability insurance for all impacted properties.
The economic impact on the Mudgee region - the 1% decrease in tourism would result in a reduction of output of \$1.6m, loss of 10 direct jobs and 2 indirect jobs – it is a significant risk to the region.
Mental health concerns, anxiety and stress caused – landowners committed to the rural way of life and amenity – significantly impacted by the proposal.
Capacity of the grid for this proposal needs to be provided prior to construction.
Cumulative impacts from solar within the Orana and Central west region must be included in the assessment – Mudgee is a drive destination for visitors, and visitors will be impacted by all proposals within the region and beyond.
Undertake a true assessment of alternative site consideration.
Modify the roadway into System B – too close to neighboring property.
Newly designed coal stations are in fact more efficient, can produce power 24/7 and are quiet low in carbon emissions.
Studies undertaken overseas document health problems for people and animals that live close to a solar farm.
Solar and wind farms are owned by overseas investors and subsidized by Australians.

It is considered that the primary concerns of the objections have been addressed within the assessment report and also forms the basis of a number of the reasons for refusal.

(b) Submissions from Public Authorities

The application was also referred to the following authorities:

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

Transport for NSW, based on the first design of the proposal, refused to issue concurrence and requested further information. Upon revision of the traffic assessment and the site access in October 2020, Transport for NSW have provided conditions of consent.

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

A copy of the responses provided by each agency has been included in Attachment 6.

The Public Interest – 4.15(1)(e)

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

CONSULTATIONS

The application was also referred to internal Council Departments for review. The following responses were provided with a copy of the responses also included in Attachment 6.

(a) Health and Building

Council's Health & Building Surveyor has not raised any significant building related concerns with the proposal, subject to conditions of consent.

(b) Technical Services

Council's Development Engineering Department has provided an amended referral response on the 27 November 2020 based on the revised traffic assessment and site layout and has advised the following:

Subsequent to original comments and conditions (previously provided and attached below) the Applicant has provided an amended plan that shows:

- *The proposed access driveway being shifted to a more appropriate location,*
- *The solar arrays being set back approximately an additional 100 metres from the Castlereagh highway road frontage, and*
- *The Laydown area for construction and proposed car parking for use during construction being located at the front of the site.*

Whilst it can be noted that:

- *The proposed access is now shown at a more appropriate location,*
- *The proposed car parking areas and laydown area for construction can be conditioned to be rehabilitated at the completion of construction activities, concerns regarding the visual impact of the development immediately adjacent a major highway and ongoing site management (to minimise risk of grass fires) are still applicable and suggest the proposal is not a preferred use for the site.*

Accordingly the development is still not recommended for approval.

A full copy of the Development Engineering referral response is included within Attachment 6. Recommended conditions of consent were also provided in event that the application is to be approved.

SUMMARY AND RECOMMENDATION

Development Application (DA0288/2019) for an electricity generating works at 3B Sydney Road, Burrundulla (Lot 6 DP1069441) has been assessed against the requirements of Section 4.15(1) of the Environmental Planning and Assessment Act, 1979, the Environmental Planning and Assessment Regulation, 2000, the relevant State Environmental Planning Policies, the Mid-Western Regional Local Environmental Plan 2012 and Mid-Western Regional Development Control Plan 2013 (Amendments 3 & 4) and is recommended for refusal based on the following:

- Compliance with the MWRLEP 2012 and the objectives of the RU4 Zone (4.15(1)(a)(i));
- Compliance with the MWRDCP 2013 (4.15(1)(a)(iii));
- The likely impacts of the development including the visual, noise (9 properties impacted), glare (at least 5 properties affected), natural hazard (bushfire), social and economic impacts on the locality (4.15(1)(b));
- The location and suitability of the site for the development (4.15(1)(c));
- The large number of submissions received during the public exhibition periods objecting to the proposed development (4.15(1)(d)); and
- The development is not considered to be in the public interest (4.15(1)(e)).

The application is referred to the Western Regional Planning Panel for determination in accordance Clause 20 and Schedule 7 (5)(a) of the State Environmental Planning Policy (State and Regional Development) 2011, as the application is defined as 'private infrastructure' with a capital investment value exceeding \$5,000,000. The proposed development has an estimated cost of \$13,200,000.

As a result, should the Panel be of a mind to support the proposal, Draft Conditions of consent have been prepared and also circulated to the Applicant accordingly. The Draft Conditions are included in Attachment 7.

Attachment 1: Site Photographs

Attachment 2: Development Plans

Attachment 5: Public Submissions (round 1 and 2)

Attachment 6: Agency Referral Responses

Attachment 7: Draft Conditions of Consent