

**COUNCIL ASSESSMENT REPORT**  
WESTERN REGIONAL PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PAN-367423, P16-23.18
<b>PROPOSAL</b>	Electricity generating facility – 5MW solar farm
<b>ADDRESS</b>	Lot 107 DP755276 130 Nevertire Bogan Road Nevertire
<b>APPLICANT</b>	Green Gold Energy Pty Ltd
<b>OWNER</b>	Mrs CM Waters
<b>DA LODGEMENT DATE</b>	21/09/2023
<b>APPLICATION TYPE</b>	Regionally significant developmentf
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	SEPP (Planning Systems) 2021 – Schedule 6 Regionally Significant Development 5 Private infrastructure and community facilities over \$5 million Development that has a capital investment value of more than \$5 million for any of the following purposes— (a) ..., electricity generating works, ... (b)
<b>CIV</b>	\$5,510,000.00 (excluding GST)
<b>CLAUSE 4.6 REQUESTS</b>	N/A
<b>KEY SEPP/LEP</b>	<ul style="list-style-type: none"> <li>○ State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>○ State Environmental Planning Policy (Planning Systems) 2021 – Section 5, Schedule 6 – electricity generating works CIV more then \$5 million</li> <li>○ State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>○ Warren Shire Council Local Environmental Plan 2012</li> </ul>
<b>TOTAL &amp; UNIQUE SUBMISSIONS ISSUES SUBMISSIONS</b> <b>UNIQUE KEY IN</b>	Nil
<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	Statement of Environmental Effects, Site plan and elevations, existing conditions plan, landscape plan, flood assessment, construction environmental management, ecological assessment, AHIMS search, traffic impact assessment, glint and glare assessment, CIV, Certificate of title, DP and easement details.

<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)</b>	Nil
<b>RECOMMENDATION</b>	Approval
<b>DRAFT CONDITIONS TO APPLICANT</b>	Yes
<b>SCHEDULED MEETING DATE</b>	12 March 2024
<b>PLAN VERSION</b>	24 February 2024 Version No 1
<b>PREPARED BY</b>	Maryanne Stephens
<b>DATE OF REPORT</b>	28 February 2024

## EXECUTIVE SUMMARY

- The proposal seeks consent for the establishment of a 5MW solar generations plant, infrastructure, and a battery storage system. The development “*electricity generating works*” is prohibited under the Warren LEP in the RU1 Primary Production zone however, Electricity Generating Works are permitted within Part 2.3, Division 4 of the SEPP – Transport and Infrastructure 2021.
- The site is natural grazing land and is deemed bushfire prone land. There is a watercourse “Boggy Cowal” to the northeast of the site.
- Key issues – flooding, visibility, bushfire, access, all addressed further on in the report.
- All issues were resolved with recommended conditions of consent.
- Pre-conditions/jurisdictional prerequisites satisfied prior to the grant of consent - Section 4.6 of SEPP (Resilience & Hazards); there is no evidence of contamination of the site, Clause 4.6(4) of the *Warren LEP* – no exceptions to development standards proposed.
- Consistent with the public interest
- Recommendation – approve development with recommended conditions of consent as it has minimal impact upon the environment and does not create a land use conflict
- Summary of s4.15(1) matters
  - o Not permissible under the Warren LEP, however is permissible under the State Environmental Planning Policy (Transport and Infrastructure) 2021
  - o The proposal is consistent with planning controls of the Warren DCP
  - o State Environmental Planning Policy (Biodiversity & Conservation) 2021 – no concerns, refer to desktop ecological assessment report completed by LENECO
  - o State Environmental Planning Policy (Planning Systems) 2021 – no concerns
  - o State Environmental Planning Policy (Primary Production) 2021 – no concerns
  - o SEPP (Resilience & Hazards) - no evidence of contamination, suitable for the current proposal.
  - o State Environmental Planning Policy (Transport and Infrastructure) 2021 – As required by Section 2.48 referred to Essential Energy seeking comment. Response received directly and not through portal. Copy will be provided with this assessment report. Comments will be included as conditions where necessary.
  - o Flooding – development located near a flood plain “Boggy Cowal”, addressed with infrastructure to be built above the flood height, with appropriate condition to apply.

- o Bushfire prone land – refer to Bushfire Assessment Report, conditions of consent to implement mitigation measures including an asset protection zone and static water supply
- o Glint and glare – not constituted or deemed nil result, landscaping proposed
- o Pistol Club – email received no safety concerns

The development application (DA P16-23.18) seeks consent for the use of land Lot 107 DP755279, 130 Nevertire Bogan Road and construction of a 5MW solar farm on land zoned RU1 Primary Production.

The subject site is Lot 107 DP755279, 130 Nevertire Bogan Road Nevertire, and is located approximately 1.8kms from the intersection with the Mitchell Highway, Nevertire. The land is natural grazing land for stock with the existing infrastructure being water troughs and fencing. The site is approximately 16.3ha in size. The site is subject to flooding (Boggy Cowal). Although flood studies are provided, local knowledge has confirmed that stormwater from rain events does back up along Nevertire Bogan Road to the east, as the culvert under the Nevertire Bogan Road may not be of a sufficient size. None the less, flooding of the site will be addressed with recommended conditions of consent. There is a transmission line that transverses the allotment in a west to eastly direction which contains an easement over. It should be noted that landscaping is not permitted in this easement.

The nearest dwelling is that of the land owner and is located approximately 700-800m to the north of the subject site. There is existing trees surrounding the dwelling that will limit glint and glare from the solar panels.

The subject land is zoned RU1 Primary Production and under Part 2 Land Use Table of Warren Local Environmental Plan 2012 an Electricity Generating Works is not listed as a development that is permitted with the consent of the Council. Nonetheless, Electricity Generating Works are permitted within Part 2.3, Division 4 of the SEPP – Transport and Infrastructure 2021.

The principle planning controls relevant to the proposal include *State Environmental Planning Policy – Transport and Infrastructure 2021*, the *Warren Shire Council Local Environmental Plan 2012* and the *Warren Shire Council Development Control Plan No.1* ('DCP'). The proposal is consistent with various provisions of the planning controls including:

- Design quality principles of SEPP 65 including Principle 1: Context and neighbourhood character, Principle 2: Built form and scale, Principle 3: Density and Principle 9: Aesthetics;

There were no concurrence requirements from agencies for the proposal and the application is not integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act').

Jurisdictional prerequisites to the grant of consent imposed by the following controls have been satisfied including Section 4.6 of the Transport and Infrastructure SEPP for consideration of whether the land is contaminated as the land is natural grazing land and does not present any evidence to suggest contamination.

The application was placed on public exhibition from 29<sup>th</sup> November 2023 to 14 December 2023, with nil (0) submissions being received. The adjoining neighbours were also notified in writing and nil (0) submissions were received.

The application is referred to the Western Region Planning Panel ('the Panel') as the development is '*regionally significant development*', pursuant to Section 2.19(1) and Clause

(5)(b) of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021* as the proposal is development for *electricity generating facility* with a CIV over \$5 million.

The key issues associated with the proposal include:

1. *Flooding* - The proposed electricity generating facility may be inundated with flood waters however the depth and velocity is not of concern. The following recommended condition should be applied to the development to ensure that any vital infrastructure is above the flood height:

Building and any critical infrastructure are to be at a level of at least 450mm above the 1955 flood height as indicated by the Department of Natural Resources or as evidenced by a Registered Surveyor's Level Certificate using known flood marks and the 1955 flood slope to calculate flood height at the development site. This information is to be provided prior to the commencement of building works.

**Reason:** To ensure the susceptible infrastructure is not inundated by flood waters.

2. *Bushfire* - The proposed development site is bushfire prone land. The bushfire report recommends an 10m asset protection zone between the solar arrays and perimeter fence. Although the site is located only 1.8km's from the village of Nevertire, the supply of static water would assist with a fire event and supports the Planning for Bushfire Protection guidelines development standards. Therefore, the following recommended condition should be applied to the development to ensure that adequate water supplies are provided for the purposes of fire fighting:

An onsite static water supply - storage tank of 20,000L is to be provided on-site, dedicated for fire fighting purposes only. A 65 mm storz fitting and ball or gate valve shall be installed in the tank to allow full utilisation of the supply.

- (a) above-ground water storage tanks shall be of concrete or metal.
- (b) The tank is to be located at least 10 metres away from ALL buildings and located within the property.
- (c) The area around the tank is to be provided with a gravel or similar hardstand area and a clear unobstructed path is to be maintained to permit fire brigade personnel to draw water from that source.

**Reason:** To ensure adequate water supply and access for emergency fire personnel.

3. *Traffic and Car Parking* – The traffic impact assessment report has 3 recommendations being;

**Recommendation 1:** The subject site plan includes a designated parking area with a minimum of 20 parking spaces. Agreed.

**Recommendation 2:** During detailed design the proposed site access along Nevertire-Bogan Road is checked to confirm that the ESD requirement of 139 m stipulated in AS/NZS 2890.1 is maintained. Site distances were confirmed onsite during the site inspection, no concerns.

**Recommendation 3:** The subject site access be constructed per AS/NZS 2890.2 to the satisfaction of the Council. Following consultation with the Engineering Department within Council, the following recommended conditions will apply; The subject site access be constructed per Council's Rural Vehicular Access Policy and AS/NZS 2890.2, to the satisfaction of Council. Section 138 approval must be obtained from Council prior to any site works commencing.

Additionally, in other similar developments, it is not the development itself that increases traffic, but rather during construction. Council will apply the following condition in relation to this concern.

Prior to the handover of road works and commencement of haulage, the installation of “Advance Truck” warning signs (W5-22 Size B) with a distance plate (W8-5 Size B) below the warning sign, must be installed 250 metres in advance of the intersection of Castlebar Lane and Oxley Highway Roads at no cost to Council.

REASON: To ensure road safety signage is installed.

NOTE: Signage installation is to be included in the approval pursuant to s138 Roads Act.

Following consideration of the matters for consideration under Section 4.15(1) of the EP&A Act, the provisions of the relevant State environmental planning policies, the proposal should be supported.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the *EP&A Act*, DA P16-23.18 is recommended for approval subject to the reasons contained at **Attachment A** of this report.

## 1. THE SITE AND LOCALITY

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### 1.1 The Site

- The site is flat natural grazing grass lands, subject to flooding with the “Boggy Cowal” located near by.
- The site is located 1.8kms from the intersection with the Mitchell Highway



Figure 2-1: 130 Nevertire-Bogan Road

Source: ePlanning Spatial Viewer

Location map



Photo from Bogan Nevertire road looking north west



Photo looking south east



Photo from Bogan Nevertire road looking west

## 1.2 The Locality

- Surrounding land use is grazing, agricultural.
- The context of the site – a low density residential area, town centre location, industrial, rural??
- There are two other solar farms, the larger of the two, 2.2kms to the north and another proposed solar farm 2.5kms to the south east.
- The location has been chosen for its proximity to the 132kV transmission line

## 2. THE PROPOSAL AND BACKGROUND

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### 2.1 The Proposal

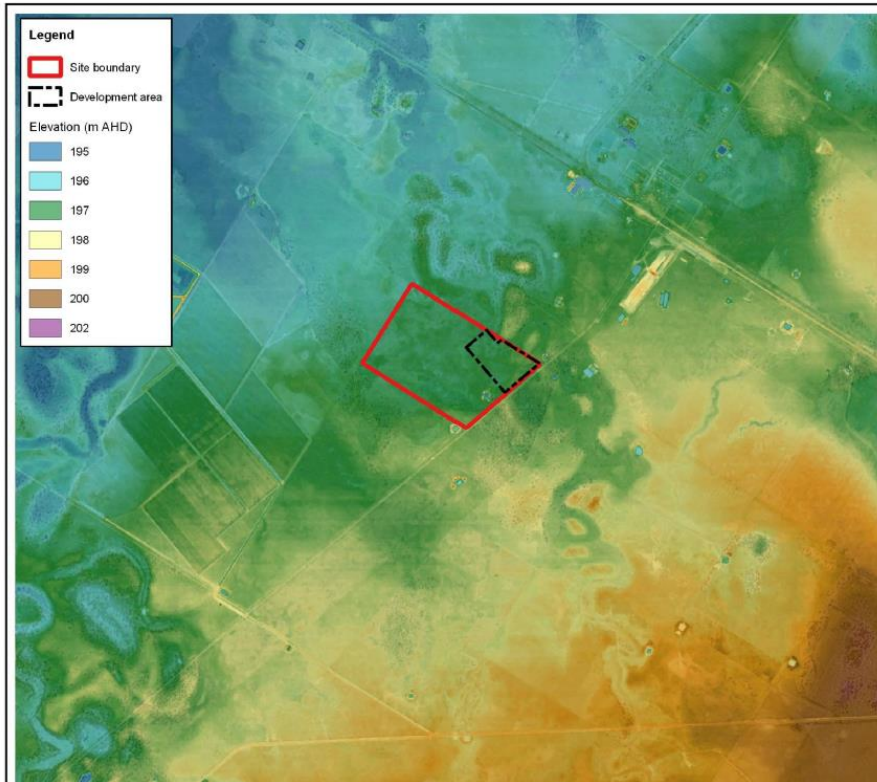
- The proposal involves the installation of approximately 11,000 solar panels mounted onto a single axis tracker (SAT) system.
- One (1) Medium Voltage Power Station (MVPS) consisting of an inverter, transformer, and switchgear.
- One (1) High Voltage Switchboard (HVSb).
- One (1) new pole and transmission line to connect to the transmission line on Nevertire-Bogan Road.
- Approximately 2.4 m high chain mesh fence around the perimeter of the facility, including a single gate positioned along the Nevertire-Bogan Road frontage.
- Landscaping buffer along the Nevertire-Bogan Road frontage, inside the perimeter fence.
- The proposal does not involve the removal of any vegetation. A landscape plan is proposed and after reviewing the species of flora, is considered appropriate.



Figure 2-2: Existing 22 kV (blue) and 132 kV (orange) transmission lines

Source: (Essential Energy, 2023)





Topography - flooding

Table 1: Development Data

Control	Proposal
Site area	16.3Ha
GFA	N/A
FSR (retail/residential)	N/A
Clause 4.6 Requests	No
No of apartments	N/A
Max Height	N/A
Landscaped area	Yes, refer to plan
Car Parking spaces	20
Setbacks	10m APZ

## 2.2 Background

A pre-lodgement meeting was held prior to the lodgement of the applicant on 15 March 2023 where various issues were discussed. A summary of the key issues and how they have been addressed by the proposal is outlined below:

- Flooding
- Bushfire
- Traffic impact
- Landscaping

The development application was lodged on **21 September 2023**. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

**Table 2: Chronology of the DA**

Date	Event
<b>21 September 2023</b>	DA lodged
<b>23 November 2023</b>	Exhibition of the application
<b>1 February 2024</b>	DA referred to external agencies (Essential Energy)

## 2.3 Site History

- The site does not suggest any evidence of contamination. The DP could be of original settlement of the area back in the day.
- Council is aware of the site being subject to flooding.

## 3. STATUTORY CONSIDERATIONS

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

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
- (i) *any environmental planning instrument, and*
- (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
- (iii) *any development control plan, and*

- (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

It is noted that the proposal is considered to be (which are considered further in this report):

- Requiring concurrence/referral (s4.13)

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

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

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

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Primary Production) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Resources and Energy) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Warren Shire Council Local Environmental Plan 2012;*

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

**Table 3: Summary of Applicable Environmental Planning Instruments**

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 3: Koala Habitat Protection 2020 Chapter 4: Koala Habitat Protection 2021 (no clearing of trees involved)	Y

State Environmental Planning Policy (Planning Systems) 2021	<p>Chapter 2: State and Regional Development</p> <ul style="list-style-type: none"> <li>Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 5 of Schedule 6 as it comprises Private infrastructure and community facilities over \$5 million</li> </ul> <p>Development that has a capital investment value of more than \$5 million for any of the following purposes—</p> <p>(a) ..., electricity generating works, ...</p>	Y
State Environmental Planning Policy (Primary Production) 2021	<ul style="list-style-type: none"> <li>Chapter 2: Primary Production and rural development</li> </ul> <p>Proposed development still allows grazing of the land, does not create a land use conflict.</p>	Y
SEPP (Resilience & Hazards)	<p>Chapter 4: Remediation of Land</p> <ul style="list-style-type: none"> <li>Section 4.6 - Contamination and remediation have been considered in the statement of environmental effects. The proposed development is satisfactory subject to appropriate conditions.</li> </ul>	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p>Chapter 2: Infrastructure</p> <ul style="list-style-type: none"> <li>Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions as recommended by Essential Energy.</li> <li>Section 2.121(4) - Traffic-generating development, Traffic impact assessment report dated 12/07/2023 by Traffic Works, deems that the traffic volume is low. Council will address the traffic movements during construction with appropriate conditions, specifically in relation to signage.</li> </ul>	Y
Proposed Instruments		
LEP	<ul style="list-style-type: none"> <li>Clause 2.3 – Permissibility and zone objectives</li> </ul>	Y
DCP	<p>Clause 6(e)iii - Permitting other primary production uses such as energy generation that complement the primary role of the zone</p>	Y/N

***State Environmental Planning Policy (Biodiversity and Conservation) 2021***

**Chapter 2: Vegetation in non-rural areas**

The proposed solar panels and infrastructure are located on Lot 107 DP755276. No trees or other vegetation are proposed to be removed or contain high biological value. The site does not contain any BV mapped area.

**Chapter 3: Koala Habitat Protection 2020**

The proposed development site does not contain any trees and therefore will not be affected.

**Chapter 4: Koala Habitat Protection 2021**

The proposed development site does not contain any trees and therefore will not be affected.

***State Environmental Planning Policy (Planning Systems) 2021 ('Planning Systems SEPP')***

**Chapter 2: State and Regional Development**

The proposal is regionally significant development pursuant to Section 2.19(1) as it satisfies the criteria in Clause 5 of Schedule 6 of the Planning Systems SEPP. The proposed solar farm is defined as 'electricity generating works' which is 'private infrastructure' and has a CIV over \$5 million (\$6,061,000), and is therefore 'regionally significant development'.

Accordingly, the Western Regional Planning Panel is the consent authority for the application.

***State Environmental Planning Policy (Primary Production) 2021***

**Chapter 2: Primary Production and rural development**

Electricity generating works ('solar energy systems') are not specifically mentioned in the policy. However, the proposal is generally consistent with the broad aims of the policy as the area involved, 16.3ha, is not of significant size relative to surrounding agricultural land and will not permanently 'sterilise' rural land as it still permits the grazing of land ancillary to the use as a solar farm or it could revert back to grazing land in the future, should the need arise.

Further, the generation of clean energy will contribute to sustainable agriculture in the area providing a reliable power source.

***State Environmental Planning Policy (Resilience and Hazards) 2021***

**Chapter 4: Remediation of Land**

With regard to the remediation of land, the land has previously been used for grazing with no known uses that would be likely to have substantially contaminated the site.

It is considered on the basis of the available information, the site is suitable for the solar farm use which will neither involve significant excavation, nor staff permanently on site - except during the construction phase. If a different, more intensive use is proposed in the future, a comprehensive site investigation may be required.

The proposal is consistent with the SEPP, subject to imposition of relevant conditions of consent in relation to remediation works during construction on any consent granted.

A condition will be imposed regarding the decommissioning of the site to enable remediation of the site as required.

## ***State Environmental Planning Policy (Transport and Infrastructure) 2021***

### **Chapter 2: Infrastructure**

Part 2(3) Development Controls:-

Division 4 Electricity generating works or solar energy systems. The proposed development is defined as a :- '*solar energy system*'. Clause 2.36 further states that:-

Development permitted with consent:-

*'(9) solar energy systems - Development for the purpose of a solar energy system may be carried out by any person with consent on any land.'*

The proposal is permitted with consent by the SEPP regardless of the Warren LEP 2012.

Division 5 - Electricity transmission or distribution.

Subdivision 2 - Development likely to affect an electricity transmission or distribution network.

Section 2.48 required statutory referral to Essential Energy

Division 17 - Roads and traffic. Subdivision 2 - Development in or adjacent to road corridors and road reservations

2.122 Traffic-generating development

The proposed solar farm ('*solar energy system*') is not specifically defined in Schedule 3 of the SEPP as Traffic-generating development and as such would be classified as 'Any other purpose' which requires referral to TfNSW if it involves a development that generates '50 or more motor vehicles per hour' in the case of it having 'access to classified road or to road that connects to classified road (if access within 90m of connection, measured along alignment of connecting road)'. The access is not within 90m of connection and therefore, does not meet the criteria for referral to TfNSW.

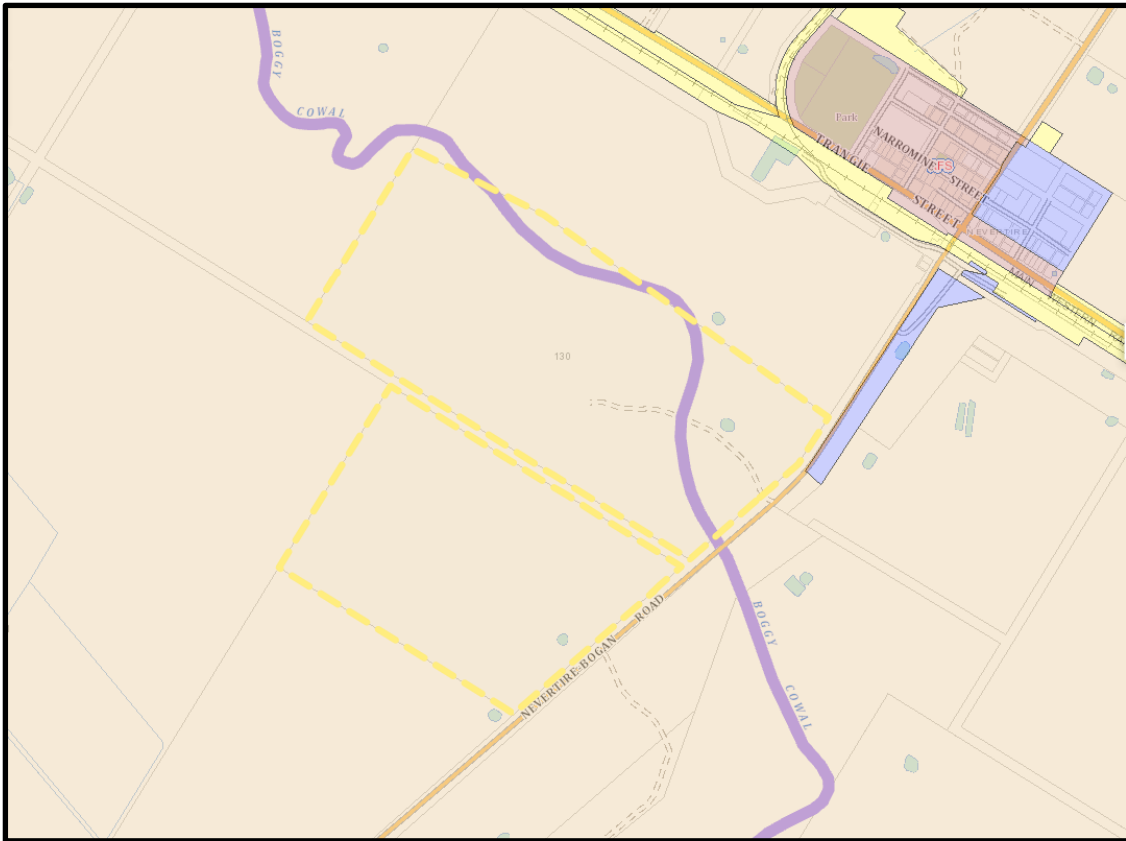
The access and traffic during construction will be addressed with conditions of consent. The Traffic Impact Assessment (TIA) also states that all road works will be to the satisfaction of Council.

### **Warren Local Environmental Plan 2012**

#### *Zoning and Permissibility*

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

The subject land is zoned RU1 Primary Production and under Part 2 Land Use Table of Warren Local Environmental Plan 2012 an Electricity Generating Works is not listed as a development that is permitted with the consent of the Council. Nonetheless, Electricity Generating Works are permitted within Part 2.3, Division 4 of the SEPP – Transport and Infrastructure 2021.



The relevant local environmental plan applying to the site is the *Warren Shire Council Local Environmental Plan 2012* ('the LEP'). The aims of the LEP include

(2) *The particular aims of this Plan are as follows:*

(a) *to realise the economic potential of rural land in Warren by following the principles of sustainable natural resource management,*

(b) *to encourage the proper management, development and conservation of natural and man-made resources in Warren by protecting, enhancing and conserving:*

(i) *agricultural land, and*

(ii) *timber, minerals, soil, water and other natural resources, and*

(iii) *the Macquarie Marshes Nature Reserve, and*

(iv) *areas of significance for nature conservation, and*

(v) *areas of high scenic or recreational value, and*

(vi) *places and buildings of archaeological or heritage significance, including relics and Aboriginal places of heritage significance,*

(c) *to ensure that development is permitted on land with due regard to environmental constraints, accessibility and existing land use patterns,*

(d) *to allow for the equitable provision of social services and facilities for the community,*

(e) *to minimise land use conflicts and adverse environmental impacts,*

(f) *to promote ecologically sustainable development.*

The proposal is consistent with these aims as the proposal does not create a land use conflict, is not located near the Macquarie Marshes, and does not impact on the natural resources.

### *Zoning and Permissibility (Part 2)*

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

The subject land is zoned RU1 Primary Production and under Part 2 Land Use Table of Warren Local Environmental Plan 2012 an Electricity Generating Works is not listed as a development

that is permitted with the consent of the Council. Nonetheless, Electricity Generating Works are permitted within Part 2.3, Division 4 of the SEPP – Transport and Infrastructure 2021.

The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To protect, enhance and conserve agricultural land in a manner that ensures that the primary role of land is for efficient and effective agricultural pursuits, managed in accordance with sustainable natural resource management principles.*
- *To protect water resources in the public interest.*
- *To protect areas of local, state, national and international significance for nature conservation, including areas with rare plants, wetlands and significant habitat.*
- *To permit rural industries that do not have a significant adverse impact on existing or potential agricultural production on adjoining land.*
- *To conserve and protect the Macquarie Marshes by encouraging and managing appropriate land uses and agricultural activities.*

The proposal is considered to be consistent with these zone objectives for the following reasons:

- The natural resource base is not being diminished, the site is only 16.3Ha in size and the grazing of the land can still be permitted
- The area is suitable for the proposed development as it is located near suitable infrastructure
- The proposed development will not create a land use conflict as it will not impact on the existing surrounding land use of grazing
- The proposed development is not located near the Macquarie Marshes.

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

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

**Table 4: Consideration of the LEP Controls**

<b>Control</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Comply</b>
Minimum subdivision Lot size (Cl 4.1)	1,000Ha for dwelling, no dwelling proposed	No subdivision proposed	N/A
Height of buildings (Cl 4.3(2))	The development control has not been adopted		N/A



FSR (CI 4.4(2))	The development control has not been adopted.		N/A
Land acquisition (CI 5.1/5.1A)	No land acquisition proposed.		N/A
Heritage (CI 5.10)	AHIMS completed.		Yes
Acid sulphate soils (CI 6.1)	The development control has not been adopted.		N/A
Flood planning (CI 6.3)	Consideration of flood impacts on the development site, riparian systems, other properties, and persons.	Appropriate condition of consent to be applied to development.	Yes
Stormwater Management (CI 6.4)	In close proximity to natural water way.	Appropriate condition of consent to be applied to development.	Yes

The proposal is considered to be generally consistent with the LEP.

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

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

- Draft Remediation of Land SEPP – the greatest risk of contamination is from the oil within the transformer. There is a bund to contain and spills or leakages, which is deemed acceptable to manage the contamination risk.

The following condition has been recommended;

The substation shall be provided with appropriate bunding or similar containment systems with a capacity that will exceed the oil storage volume of the transformers and must be demonstrated on the Construction Certificate plans.

The proposal is generally consistent with these proposed instruments.

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

The following Development Control Plan is relevant to this application:

- *Warren Shire Council Development Control Plan 2012* ('the DCP')

*Clause 6*

*General Objectives for Zone RU1 Primary Production*

*6. Council's objectives for the Zone RU1 Primary Production are to promote the proper management and utilisation of resources by:*

a) *Protecting, enhancing and conserving:*

i. *Agricultural land in a manner that ensures the primary role of land within the zone is for efficient and effective agricultural pursuits, managed within sustainable natural resource management principles, and.....*

e) *Enhancing the economic value of land for agriculture by:*

iii. *Permitting other primary production uses such as energy generation that complement the primary role of the zone, and*

*General considerations for development in Zone RU1 Primary Production*

*7. The consent authority may consent to development on land in Zone RU1 Primary Production only if it has taken into consideration the effect of that development on the following:*

a) *The present use of the land, the potential use of the land for the purposes of agriculture and the potential of the land for sustainable agricultural production,*

b) *Vegetation, timber production, land capability, flood water behaviour and water resource availability and quality,*

c) *The future recovery of known or prospective areas of valuable deposits of minerals, coal, petroleum, sand, gravel or other extractive materials,*

d) *The protection of areas of significance for nature conservation or of high scenic or recreational value, and places and buildings of archaeological or heritage significance including Aboriginal relics and places,*

e) *Whether adequate environmental safeguards and rehabilitation measures have been, or will be, made to protect the environment,*

f) *The cumulative impact of development on the integrity of the environmental characteristics of the area, water resource management and native wildlife,*

g) *The effect of the removal of agricultural land from production and potential land use conflict,*

h) *The cost of providing, extending and maintaining public amenities and services to the development,*

i) *Any proposals for future expansion of settlements in the locality.*

*8. Clause (7) does not apply to development that is an addition to a building or work.*

The proposal is consistent with the general objectives and the considerations have been addressed.

NOTE; Warren LEP and DCP areas of interest are the Macquarie Marshes and effectively keeping “farms as farms”. The proposal is not located within the Macquarie Marshes and the land area being 14.8Ha in size will not impact on the normal operations of the farm on which the proposal is located.

Warren Shire Council does NOT have a contributions plan that is relevant pursuant to Section 7.18 of the EP&A Act.

**(d) Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act**

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

The proposal is consistent with this Planning Agreement as discussed in this report.

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

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

- The proposal is able to satisfy either the deemed-to-satisfy provisions and/or the performance requirements of the National Construction Code (NCC).

Section 62 (consideration of fire safety) and Section 64 (consent authority may require upgrade of buildings) of the 2021 EP&A Regulation are not relevant to the proposal.

These provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended draft conditions (where necessary).

### **3.2 Section 4.15(1)(b) - Likely Impacts of Development**

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

- The proposed development will result in an increase in traffic mainly during construction, this will be addressed with appropriate conditions of consent. The design of the access will also be to the satisfaction of Council. Once construction is finished, the additional traffic is minimal and is not a concern.
- The site is subject to flooding. Refer to report completed by Torrent Consulting reference DJW: L.T2400.003.docx dated 4<sup>th</sup> September 2023. This will be addressed with an appropriate condition of consent requiring infrastructure susceptible to damage from flood inundated should be installed 500mm above the 1955 flood height, as per Council's flood policy. The report suggests that the height should be above ground height however this is not consistent with Council's policy.
- The site is bushfire prone. This will be addressed with additional control measures via conditions of consent, specially in relation to a static water supply.
- The proposed development has the potential to produce glint and glare. The applicant has provided a landscape plan that will be included in the approved plans.
- Noise will be produced during construction. This will be addressed with the standard condition of consent addressing the production of construction noise.
- The site does not contain any evidence to suggest that it is contaminated, however, to ensure that the development does not pollute the environment, with specific reference to the locality of Boggy Cowal and the site being flood prone land, the appropriate control measures, (bundling etc) will be included as standard conditions of consent, as well as rehabilitation and decommissioning post operation.
- Biodiversity study – the development does not involve the removal of any trees and is not located on biodiversity mapped land.
- The development is located southeast of the Macquarie Valley Pistol Club. Consultation with the Pistol Club has determined that the Club does not have any safety concerns due to the location and distance of the proposed development.

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

- Context and setting – The proposal is considered to be generally consistent with the context of the site, in that the proposed solar farm and battery storage system is appropriate as a result of the Central West and Orana Regional Plan 2041 Objective

2 and Objective 7 supporting the renewal energy projects. The development will not create a land use conflict as it has minimal impact upon the surrounding land use and its location minimises the likely impacts of visual and glint and glare. The site is subject to bushfire however this does not restrict the site for this use. Mitigation measures including static water supply and asset protection zone will be applied upon the development.

- Access and traffic – The proposed development utilises the existing Nevertire Bogan Road. The increase in traffic is mainly during construction. Post construction, traffic will be minimal. This impact will be addressed with suitable signage requirements. The site is acceptable for minimum sight distances requirements. The access will be to Council’s satisfaction.
- Public Domain – the development is located approximately 1.8km from the intersection with Mitchell Highway, Nevertire and is located on private land. The Macquarie Valley Pistol Club is located approximately 2.5kms from the development site. The Macquarie Valley Pistol Club have been consulted with and the Club does not have any safety concerns due to the location and distance of the proposed development.
- Utilities – the necessary approvals will need to be obtained from the appropriate electricity provider. This will be addressed with a condition of consent.
- Heritage – an AHIMS search was completed with nil results.

**NSW GOVERNMENT** AHIMS Web Services (AWS) Search Result

Your Ref/PO Number : GGE Nevertire  
Client Service ID : 689951  
Date: 09 June 2022

Duncan Lewis  
Level 1, 135 Fryers Street  
Shepparton Victoria 3630  
Attention: Duncan Lewis  
Email: duncan.lewis@csmith.com.au

Dear Sir or Madam:

AHIMS Web Service search for the following area at Lot : 107, DP:DP755276, Section 1 - with a Buffer of 1000 meters, conducted by Duncan Lewis on 09 June 2022.

The context area of your search is shown in the map below. Please note that the map does not accurately display the exact boundaries of the search as defined in the paragraph above. The map is to be used for general reference purposes only.



A search of Heritage NSW AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

0	Aboriginal sites are recorded in or near the above location.
0	Aboriginal places have been declared in or near the above location. *

- Other land resources – as the site is only 16.3ha in size it is not considered that it will impact on the existing grazing use of the agricultural land of the site. Boggy Cowal is in close proximity to the site and will be protected with bunding of possible sources of contamination.
- Water/soils impacts – the greatest risk of contamination is from the oil within the transformer. There is a bund to contain and spills or leakages, which is deemed acceptable to manage the contamination risk.
- Flora and fauna impacts – the site doesn't contain trees and no tree removal is proposed. The site was used as a grazing paddock at the time of inspection. Although the biodiversity study identified 3 threatened plant species and 19 threatened animal species however no clearing of land is proposed, therefore minimal impact upon the surrounding environment. The proposed development is located far enough away from Boggy Cowal to not impact adversely on the water course.
- Natural environment – minimal impact upon the environment. No contour banks proposed.
- Noise and vibration – during construction noise and vibration will be generated. This has been addressed with a condition restricting the days and times construction can occur to ensure the amenity of the area is not impacted upon.
- Natural hazards – the site is subject to flooding and bushfire with both hazards being addressed with corresponding reports. The risk will be minimised by applying appropriate mitigation measures such as building above the flood height, static water supply and asset protection zone.
- Safety, security and crime prevention – prevention – the site is secured with chain link fencing and top barb.
- Social impact – the proposed development was placed on public exhibition and the adjoining neighbours were notified, with nil submissions received. Glint and glare was assessed and determined to either be a nil impact or not constituted. Noise will only be created during construction, and this has been addressed with conditions limiting days and times of construction. The Macquarie Valley Pistol Club was consulted with and the Pistol Club has determined that the Club does not have any safety concerns due to the location and distance of the proposed development.
- Economic impact – the proposed development may see a increase in demand for goods and services such as accommodation, food, construction materials, freight and local labour. It is suggested in the SEE that the production of solar power will provide power for homes, businesses, farms and local industries in the locality. This has not been confirmed. The proposed solar farm will contribute to the energy resilience of the area by providing locally produced renewable energy.
- Site design and internal design – the development is set out appropriately on the site to mitigate potential impacts. The landscape plan has been taken into consideration in the design. Additionally, the 4m wide access track that is circular in design, allows for delivery trucks and the like, amble room to unload and turn around to then exit the site. The reference to this track is that it will not be maintained after construction is complete. This is considered appropriate.

- Construction – Noise will only be created during construction, and this has been addressed with conditions limiting days and times of construction.
- Cumulative impacts – the proposed solar farm, associated infrastructure and battery storage system are consistent with the planning controls and will have minimal impact in the proposed location.

Accordingly, it is considered that the proposal will not result in any significant adverse impacts in the locality as outlined above.

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

- the proposed solar farm, associated infrastructure and battery storage system fit within the locality as it is located close to existing overhead power lines, and will permit the grazing of land.
- The development will require a new all-weather access and cross over to be installed. This has been addressed with conditions of consent.
- The development does not involve the removal of any trees or vegetation in the proposed location.
- Although the site is bushfire prone land, there will be mitigation measures implemented to reduce the risk and manage the site.
- The proposed development does not create a land use conflict with the existing grazing use.

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

These submissions are considered in Section 5 of this report.

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

It is considered that the proposal for a solar farm is in the public interest as;

- the proposed development was placed on public exhibition and the adjoining neighbours were notified, with nil submissions received.
- The proposed development is consistent with planning control of the Warren LEP and DCP.
- The proposal will not have any adverse impact in the normal course of operations.
- The proposal will provide economic benefit to the local community during the construction phase and possibly result in one permanent local job during operation.
- The proposed development will contribute to the energy resilience of the area by providing locally produced renewable energy
- Noise will only be created during construction, and this has been addressed with conditions limiting days and times of construction.
- The proposed development will not impact on flooding or the environment
- Bushfire has been addressed with appropriate conditions.
- The proposed solar farm and battery storage system is consistent with the Central West and Orana Regional Plan 2041 Objective 2 and Objective 7 supporting the renewal energy projects.
- The Macquarie Valley Pistol Club was consulted with and the Pistol Club has determined that the Club does not have any safety concerns due to the location and distance of the proposed development.

## 4. REFERRALS AND SUBMISSIONS

### 4.1 Agency Referrals and Concurrence

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

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

**Table 5: Concurrence and Referrals to agencies**

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
<b>Concurrence Requirements (s4.13 of EP&amp;A Act)</b>			
Environment Agency Head (Environment, Energy & Science Group within DPIE)	S7.12(2) - <i>Biodiversity Conservation Act 2016</i>	The proposal is likely to significantly affect threatened species and accordingly, the proposal has provided a biodiversity development assessment report. This report concluded.....  Concurrence has not/has been granted.	N/A
Rail authority for the rail corridor	Section 2.98(3) - <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	The proposal involves the excavation of ground to a depth of at least 2m below ground level (existing) on land within, below or above a rail corridor.  Concurrence has not/has been granted.	N/A
<b>Referral/Consultation Agencies</b>			
RFS	S4.14 – EP&A Act Development on bushfire prone land		N/A
Electricity supply authority	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	Comments received, appropriate conditions recommended within draft conditions.	Y
Rail authority	Section 2.97 – <i>State Environmental Planning Policy</i>		N/A

	<i>(Transport and Infrastructure) 2021</i> Development land that is in or adjacent to a rail corridor.		
Transport for NSW	Section 2.121 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development that is deemed to be traffic generating development in Schedule 3.		N/A
Design Review Panel	CI 28(2)(a) – SEPP 65 Advice of the Design Review Panel ('DRP')		N/A
<b>Integrated Development (S 4.46 of the EP&amp;A Act)</b>			
RFS	S100B - <i>Rural Fires Act 1997</i> bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes		N/A
Natural Resources Access Regulator	S89-91 – <i>Water Management Act 2000</i> water use approval, water management work approval or activity approval under Part 3 of Chapter 3		N/A

#### 4.2 Council Officer Referrals

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

**Table 6: Consideration of Council Referrals**

<b>Officer</b>	<b>Comments</b>	<b>Resolved</b>
Engineering	Council's Engineering Officer reviewed the submitted stormwater concept plan and considered that there were no objections subject to conditions.	Y
Traffic	Council's Engineering Officer reviewed the proposal and recommended the development access conditions and S138 approval required.	Y
Building	Bunding of transformer.	Y
Health	Glint and glare addressed with landscaping.	Y



Waste	Volume of waste a concern. Condition requiring waste disposal at alternative facility.	Y
Public Domain/ Assets	Pistol Club consulted, no safety concerns.	Y
Heritage	No known items of value.	Y

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

### 4.3 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan from 29 November 2023 until 14 December 2023. The notification included the following:

- An advertisement in the local newspaper Warren Star; and
- Notification letters sent to adjoining and adjacent properties (4 letters sent).

Council did not receive any submissions in response to the advertising.

## 5. KEY ISSUES

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

The key issues associated with the proposal include:

*Flooding* - The proposed electricity generating facility may be inundated with flood waters however the depth and velocity is not of concern.

Resolution: The issue has been resolved through recommended conditions of consent;

The following recommended condition should be applied to the development to ensure that any vital infrastructure is above the flood height;

Building and any critical infrastructure are to be at a level of at least 450mm above the 1955 flood height as indicated by the Department of Natural Resources or as evidenced by a Registered Surveyor's Level Certificate using known flood marks and the 1955 flood slope to calculate flood height at the development site. This information is to be provided prior to the commencement of building works.

**Reason:** To ensure the susceptible infrastructure is not inundated by flood waters.

*Bushfire* - The proposed development site is bushfire prone land. The bushfire report recommends an 10m asset protection zone between the solar arrays and perimeter fence. Although the site is located only 1.8km's from the village of Nevertire, the supply of static water would assist with a fire event and supports the Planning for Bushfire Protection guidelines development standards.

Resolution: The issue has been resolved through recommended conditions of consent:

An onsite static water supply - storage tank of 20,000L is to be provided on-site, dedicated for fire fighting purposes only. A 65 mm storz fitting and ball or gate valve shall be installed in the tank to allow full utilisation of the supply.

- (d) above-ground water storage tanks shall be of concrete or metal.
- (e) The tank is to be located at least 10 metres away from ALL buildings and located within the property.
- (f) The area around the tank is to be provided with a gravel or similar hardstand area and a clear unobstructed path is to be maintained to permit fire brigade personnel to draw water from that source.

**Reason:** To ensure adequate water supply and access for emergency fire personnel.

*Traffic and Car Parking* – The traffic impact assessment report has 3 recommendations being;

**Recommendation 1:** The subject site plan includes a designated parking area with a minimum of 20 parking spaces. Agreed.

**Recommendation 2:** During detailed design the proposed site access along Nevertire-Bogan Road is checked to confirm that the ESD requirement of 139 m stipulated in AS/NZS 2890.1 is maintained. Site distances were confirmed onsite during the site inspection, no concerns.

— **Recommendation 3:** The subject site access be constructed per AS/NZS 2890.2 to the satisfaction of the Council. Following consultation with the Engineering Department within Council, the following recommended conditions will apply; The subject site access be constructed per Council's Rural Vehicular Access Policy and AS/NZS 2890.2, to the satisfaction of Council. Section 138 approval must be obtained from Council prior to any site works commencing.

Additionally, in other similar developments, it is not the development itself that increases traffic, but rather during construction.

Resolution: The issue has been resolved through recommended conditions of consent:

Prior to the handover of road works and commencement of haulage, the installation of "Advance Truck" warning signs (W5-22 Size B) with a distance plate (W8-5 Size B) below the warning sign, must be installed 250 metres in advance of the intersection of Castlebar Lane and Oxley Highway Roads at no cost to Council.

**Reason:** To ensure road safety signage is installed.

NOTE: Signage installation is to be included in the approval pursuant to s138 Roads Act.

## 5.1 Urban Design

The proposed solar farm does pose some glint and glare production.

Resolution: The issue has been addressed with landscaping.

The development is located southeast of the Macquarie Valley Pistol Club. Consultation with the Pistol Club has determined that the Club does not have any safety concerns due to the location and distance of the proposed development.

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

## 5.2 Noise and vibration Assessment

The potential for noise production is likely during construction.

Resolution: The issue has been resolved through recommended conditions of consent as outlined in **Attachment A**.

## 6. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

The key issues have been assessed and addressed with appropriate conditions of consent where necessary. The site is suitable and the proposal is compatible with the locality.

It is considered that the key issues as outlined in Section 6 have been resolved satisfactorily through the recommended draft conditions at **Attachment A**.

## 7. RECOMMENDATION

That the Development Application P16-23.18 for the establishment of a 5MW solar generations plant, infrastructure, and a battery storage system at Lot 107 DP755276, 130 Nevertire Bogan Road Nevertire be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Email of Approval from the Macquarie Valley Pistol Club.