

The General Manager
Carrathool Shire Council
PO Box 12
Goolgowi NSW 2652

19 February 2021

Dear Sir/Madam

REQUEST BY THE WESTERN REGIONAL PLANNING PANEL FOR AN EXCEPTION TO DEVELOPMENT STANDARD – PROPOSED DAISY HILL SOLAR FARM (DA2020/017, PPSWES-26)

The Western Regional Planning Panel considered the above development application on 7 December 2020. The resolution of the panel was to defer the matter pending a supplementary assessment report that addressed a number of items including:

Submission of a Clause 4.6 written request addressing the proposed contravention of the 40 hectare minimum lot size development standard applying to the subject land under LEP 2012.

This submission has been prepared in response to the reason for deferral and for consideration by Carrathool Shire Council and the Western Regional Planning Panel. It has been revised to update details of the proposed subdivision.

The proposed development

The proposed development comprises a solar farm and ancillary facilities with an AC output of 10.0MW at Lot 103 DP 755189 Kidman Way, Hillston. The site has a total area of 67.87 hectares. The solar farm will occupy approximately 23.5 hectares of the total site. The array is proposed to be placed within two sections of 5MW each covering the south-western quarter of Lot 103. It is proposed to excise part of the development area from the parent lot to create proposed Lot 1 of 12.53 hectares that is occupied by Stage 1 being half of the array generating 5MW. Proposed Lot 2 is the residue of 55.34 hectares which will be occupied by Stage 2 being the northern section of the array that also generates 5MW. A Plan of Proposed Subdivision has been prepared by Price Merrett Consulting dated 6 December 2019 and was submitted with the development application. This plan has been updated to reflect amendments to the General Arrangement Plan (HIL1A-G-210) prepared on 15 January 2021.

Statutory framework

The land is zoned RU1 Primary Production under *Carrathool LEP 2012*. The development is defined as **electricity generating works** which means a building or place used for the purpose of making or generating electricity. This use is prohibited in zone RU1. However, *SEPP (Infrastructure) 2007* prevails over *Carrathool LEP 2012* to the extent of an inconsistency meaning that the use is permitted with consent in zone RU1 by way of *SEPP (Infrastructure)*.

sustainable thinking

Clause 4.1 *Minimum subdivision lot size* applies to the site and a minimum lot size of 40 hectares applies as shown on the Lot Size Map. The objectives of clause 4.1 *Minimum subdivision lot size* are:

- (a) *to ensure subdivision of land occurs in a manner that promotes suitable land uses and development,*
- (b) *to ensure subdivision occurs in a staged manner that minimises the cost to the community from the provision of public infrastructure and services,*
- (c) *to ensure rural lands are not fragmented in a manner that threatens their future use for agricultural or primary production,*
- (d) *to ensure that subdivision is not likely to result in inappropriate impacts on the natural environment including native vegetation, natural watercourses and habitats for threatened species and populations and endangered ecological communities,*
- (e) *to maximise the economic potential of, and provide for more intensive agricultural uses in areas able to access commercial quantities of irrigation water.*

Clause 4.2 *Rural subdivision* also applies to the land. The objective of clause 4.2 is to provide flexibility in the application of standards for subdivision in rural zones to allow land owners a greater chance to achieve the objectives for development in the relevant zone. Under clause 4.2(3) land that is zoned RU1 Primary Production may be subdivided for the purpose of primary production to create a lot of a size that is less than the minimum size of 40 hectares so long as a dwelling would not exist on the newly-created lot.

The objectives of zone RU1 primary Production are:

- *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 facilitate farm adjustments.*
- *To enable agricultural support facilities to be carried out on land within the zone in a manner which does not significantly reduce the agricultural and horticultural production potential of land in the locality.*
- *To encourage eco-tourist facilities and tourist and visitor accommodation that minimise any adverse effect on primary industry production and scenic amenity of the area.*

The aim of *State Environmental Planning Policy (Infrastructure) 2007* is to facilitate the effective delivery of infrastructure across the State by:

- (a) *improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services, and*
- (b) *providing greater flexibility in the location of infrastructure and service facilities, and*
- (c) *allowing for the efficient development, redevelopment or disposal of surplus government owned land, and*

- (d) *identifying the environmental assessment category into which different types of infrastructure and services development fall (including identifying certain development of minimal environmental impact as exempt development), and*
- (e) *identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and*
- (f) *providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing, and*
- (g) *providing opportunities for infrastructure to demonstrate good design outcomes.*

Justification

It is proposed to subdivide the existing allotment which is 67.87 hectares into two allotments comprising proposed Lot 1 of 12.53 hectares and proposed Lot 2 of 55.34 hectares. Subdivision to a lot size less than the development standard of 40 hectares can be justified on the following basis:

1. The proposed subdivision which will accommodate two solar farms on separate lots is not expected to impact on the quantum of agricultural output in the area and will not create conflicts with land uses on adjoining land which are occupied by the Essential Energy sub-station, a vegetated road reserve and rail line reserve along Kidman Way, rural properties and an unformed road reserve,
2. Essential energy only allows connection to a sub-station from a single property occupied by a solar photovoltaic facility up to a maximum of 5MW. To connect a 10MW system requires that two systems each of 5MW be located on separate lots. In this case, proposed Lot 1 will be occupied by the Stage 1 of the solar farm and Lot 2 by Stage 2,
3. It is contended that energy production by way of solar photovoltaic panels is a type of primary production. Primary industries are those that harvest or extract raw material from nature. Various jurisdictions include oil and gas extraction and mining as well as agriculture as primary production. By extension this would include harnessing solar radiation for conversion to electricity. It cannot be classified as a secondary industry as there is no manufacturing or processing involved. The *Australian Energy Update 2018*, prepared by the Australian Government Department of Environment and Energy, makes reference to forms of renewable energy that produce electricity directly without a thermal component, such as wind, hydro and solar PV as primary energy production,
4. Should there be any doubt that primary production includes electricity generation through the capture of solar radiation and refers only to agriculture, then livestock grazing with sheep is proposed to take place beneath and around the arrays to continue farming of the property. This may happen at any time without the need for development consent, and
5. Although not a permitted use in zone RU1, the proposed development is not inconsistent with relevant RU1 zone objectives. Given the position that renewable energy through the harnessing of sunlight is a form of primary industry, the development is a sustainable means to utilise a source of infinite energy that does not reduce the natural resource base, i.e. sunlight is not a finite resource.

It will diversify rural activities and provide an alternative means of income thereby supporting other on-farm activities. It will not cause fragmentation or alienation of resource land as grazing may continue beneath and around the solar arrays when the facility is constructed and operating. It will not lead to land use conflict with other rural activities as it will not produce noise, odour, dust or other emissions. Through being permissible by *SEPP (Infrastructure) 2007* the proposed development satisfies the aims of that policy in providing greater flexibility in the location of infrastructure and opportunities to demonstrate good design outcomes. The objective of clause 4.2 of *Carrathool LEP 2012* to provide flexibility in the application of standards for subdivision in rural zones is being utilised in this case to facilitate development in the RU1 zone that is not inconsistent with relevant zone objectives.

Conclusion

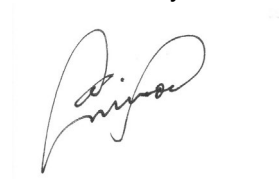
Despite the fact that the use of the land for electricity generating works is prohibited in zone RU1 but permitted by *SEPP (Infrastructure) 2007*, power generation using solar photovoltaic panels is essentially a primary production use that meets the objectives of zone RU1 and that requires a rural location. The solar panels simply harvest sunlight (solar radiation) and convert that resource to electricity in the same way that farming harvests sunlight and water to grow crops. There is no secondary industry or manufacturing involved in the generation of power by sunlight. It is considered that the minimum lot size may be disregarded in this instance and subdivision to less than 40 hectares permitted. Importantly, it is not proposed to erect a dwelling on the newly-created lot.

As the proposed development includes subdivision to less than the minimum lot size and is reliant on sub-clause (3) of clause 4.2 *Rural subdivision*, it is considered that the use of clause 4.6 *Exceptions to development standards* is not required to vary the minimum lot size prescribed by *Carrathool LEP 2012*. The intent of clause 4.2(3) is to achieve the same results as clause 4.6, that is, to provide flexibility in applying certain development standards and to achieve better development outcomes by allowing that flexibility.

This justification for the use of clause 4.2(3) of *Carrathool LEP 2012* was provided in the case of development application PPSWES-23 (DA2020/029) for a solar farm and subdivision at Lot 110 DP 1187931 Mid Western Highway, Hay NSW. Consent was granted for that development by the Western Regional Planning Panel on 10 June 2020. The consent was issued on the basis of sub-clause (3) of clause 4.2 *Rural subdivision* and did not rely upon the use of clause 4.6 *Exceptions to development standards* of *Hay LEP 2011*.

For these reasons it is considered that a request to vary the minimum lot size using clause 4.6 *Exceptions to development standards* is not necessary as subdivision to create a lot less than the minimum lot size for the purposes of primary production is permitted by clause 4.2(3).

Yours faithfully,

A handwritten signature in black ink, appearing to read 'A. Grimwood', is written over a faint, light blue rectangular grid background.

Allen Grimwood RPIA
Director