

DETERMINATION AND STATEMENT OF REASONS

WESTERN REGIONAL PLANNING PANEL

DATE OF DETERMINATION	22 December 2021
DATE OF PANEL DECISION	22 December 2021
DATE OF PANEL MEETING	7 December 2021
PANEL MEMBERS	Sandra Hutton (Acting Chair), Clare Brown, Allan Renike
APOLOGIES	Garry Fielding, Graham Brown
DECLARATIONS OF INTEREST	None

Public meeting held by teleconference on 7 December 2021, opened at 1pm and closed at 2.25pm.

MATTER DETERMINED

PPSWES-91 – Orange – DA423/2019(3) at 643 Mitchell Highway Orange for modifications to an approved solar farm (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

The panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

The modification relates to a very specific component of the approved solar farm, being the length of time, it may operate. This suitability of the site, including the potential effect on future housing supply for Orange, was a central matter to the original application. The limitation of operations to 25 years was the Panel's response to that matter at the time, as the majority of the Panel was not satisfied it would be a ground for refusal. The consideration and condition uniquely arose due to the applicants site selection on land that had been strategically identified in some capacity for longer term urban expansion, as well as surrounding lands. The Panel selected the shorter timeframe reported by Council as when no impact on the future housing supply for Orange was anticipated.

Council's assessment report on the modification has provided additional detail on future housing supply for Orange, to support the recommendation for a 35-year operational life. The Panel is satisfied of the merits of the modification and is satisfied that the future housing supply of Orange, across a reasonable strategic planning horizon, can be accommodated excluding the solar farm site. This decision can be reflected into the current Council work on the City's Housing Strategy.

The Panel is satisfied that the proposal as modified meets the substantially the same test under Section 4.55(2)(a) on the basis that there is no radical transformation and it retains the material essence.

The Panel is satisfied that the minimal potential impacts arising from the change in operational life are acceptable, including the extension of the anticipated impacts considered and mitigated by the original determination by a further ten (10) years. The Panel questioned Council on the interface of the solar farm to surrounding lands, given those lands may themselves be subject to change in land use as part of Orange's future housing supply over the longer operational timeframe sought. The Panel was ultimately satisfied with Council's response that the solar farm would not impact on those adjoining lands to the extent that would prevent their change of use over time, and that no additional mitigation such as expanded buffer landscaping was required.

The Panel deliberated on whether the modification effects some change to the development such that the Panel has the power to modify, as it relates to *Ku-Ring-Gai Council v Buyozo Pty Ltd* [2021] NSWCA 177, and

considered that the extension of the operational period resulted in a change to the development and as such the decision could be made.

Development application

The panel determined to approve the modification to the development application pursuant to section 4.55 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The panel determined to approve the modification application for the reasons outlined in the council assessment report and as reported above.

CONDITIONS




The modification to the development application was approved subject to the conditions in the council assessment report.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition and heard from all those wishing to address the panel at the public meeting. The panel notes that issues of concern included:

- Site Suitability and Urban Settlement Plan
- Decommissioning
- Rehabilitation and Waste Management
- Vehicle Access Upgrades and Road safety
- Capital Investment Value and Financial Viability
- Safety Risk and Technology advances and long-term energy efficiency

The panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS	
 Sandra Hutton (Acting Chair)	 Clare Brown
 Allan Renike	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSWES-91 – Orange – DA423/2019(3)
2	PROPOSED DEVELOPMENT	Electricity Generating Works (solar farm)
3	STREET ADDRESS	643 Mitchell Highway, Orange
4	APPLICANT/OWNER	ITP Development Pty Ltd (Applicant) Mr A and Mrs EB Ruggiero (Owner)
5	TYPE OF REGIONAL DEVELOPMENT	Section 4.55(2) Modification Application
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Infrastructure) 2007 State Environmental Planning Policy (State and Regional Development) 2011 State Environmental Planning Policy No 33—Hazardous and Offensive Development State Environmental Planning Policy No 55—Remediation of Land Orange Local Environmental Plan 2011 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Orange Development Control Plan 2004 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council assessment report: 30 November 2021 Written submissions during public exhibition: 22 Total unique submissions received by way of objection: 22 Verbal submissions at the public meeting 7 December 2021: <ul style="list-style-type: none"> Community members: Neil Jones on behalf of the Environmentally Concerned Citizens of Orange, John Dowler on behalf of Save our Surroundings Orange group, Mayor Reg Kidd on behalf of Orange City Council, Granton Smith, Lisa Jones, Doug Palmer, Ryan Smith, Robert Green, Jane Lawrence, John Dowler on behalf of Deborah Smith, Ryan Morris, Robert Green, Jane Lawrence. On behalf of the applicant – Mel Krzus
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Final briefing to discuss council's recommendation: 7 December 2021 <ul style="list-style-type: none"> <u>Panel members</u>: Sandra Hutton (Acting Chair), Clare Brown, Allan Renike <u>Council assessment staff</u>: Ben Hicks, Craig Mortell <u>Panel Secretariat</u>: Carolyn Hunt, Kim Holt
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report