

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	PPSWES-1
<b>DA Number</b>	DA0283/2019
<b>LGA</b>	Mid-Western Regional Council
<b>Proposed Development</b>	Electricity Generating Works (5MW) and Associated Infrastructure
<b>Street Address</b>	129 Old Mill Road, Gulgong
<b>Applicant/Owner</b>	Applicant: Mr Mishka Talent C/- IT Power Australia Pty Ltd Owner: Dr William Watt
<b>Date of DA lodgement</b>	7 June 2019
<b>Number of Submissions</b>	445 Submissions (439 Objections & 6 in Support)
<b>Recommendation</b>	Refusal
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011</b>	<p>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.</p> <p>The development application indicates a value of \$6,600,000 for all works.</p>
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>- State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>- State Environmental Planning Policy No. 44 – Koala Habitat Protection</li> <li>- State Environmental Planning Policy (Infrastructure) 2007</li> <li>- State Environmental Planning Policy (State and Regional Development) 2011</li> <li>- Mid-Western Regional Local Environmental Plan 2012</li> <li>- Mid-Western Regional Development Control Plan 2013</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>- Statement of Environmental Effects and Development Plans</li> <li>- Additional information provided by Applicant – submitted 18 October 2019</li> <li>- Essential Energy response – 2 July 2019</li> <li>- John Holland Rail response – 19 July 2019</li> <li>- Roads and Maritime Services response – 22 July 2019</li> <li>- Transgrid response – 29 August 2019</li> <li>- Rural Fire Service response – 27 August 2019</li> <li>- Health and Building response – 10 December 2019</li> <li>- Heritage Advisor response – 28 November 2019</li> <li>- Department of Primary Industries Agriculture response – 20 January 2020</li> <li>- Development Engineering initial and final responses – 30 March 2020 and 9 June 2020</li> <li>- Submissions from the Public Exhibition Period</li> </ul>
<b>Report prepared by</b>	Kayla Robson
<b>Report date</b>	June 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**

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**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 summarized, 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*

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**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**

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**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*

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**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 DA0283/2019 that seeks approval for a 5MW electricity generating works (Solar Farm) to be located at 'Arocka' - 129 Old Mill Road, Gulgong over land legally identified as Lots 460 - 464 DP 755434. The application was received by Council on 7 June 2019 however, further information was immediately requested pursuant to Clause 54 of the Environmental Planning and Assessment Regulations 2000.

The subject development site comprises 15.9 hectares of vacant, agricultural land used historically for cropping and the grazing of livestock with one (1) mature paddock tree located at the northern boundary. Two (2) dams are also located at the northern boundary of the site.

The site has an elevation of approximately 424mAHD with the township of Gulgong to the east of the site rising to an elevation of 450 - 524mAHD at the Flirtation Hill Lookout (being the highest point of the Gulgong township, 2.7km east of the site).

The residue of the holding 'Arocka', comprises 30.49 hectares over eleven (11) Lots also comprising of agricultural land, and is bisected by the Gulgong Maryvale Railway line. A local heritage listed dwelling-house with outbuildings are located at the corner of Caledonia Street and the Castlereagh Highway, being Lot 2 DP 607166 and Lot 3 DP 1107097, which forms part of the residual of the holding. See Figures 1 and 2 below depicting the subject site.

Surrounding the site, the following key features are noted:

- North of the site includes Old Mill Road, open plain / flat agricultural land and three (3) dwelling houses, the closest being 285 metres from the north eastern boundary;
- East of the site includes a Crown paper road, the residual agricultural land and dwelling of 'Arocka', Caledonia Street with a number of existing dwellings and the Gulgong Township;
- South of the site includes the Gulgong Maryvale Railway line that is not currently operational, the Castlereagh Highway and smaller rural residential holdings including multiple existing dwellings, the closest being 180 metres from the southern boundary;
- West of the site includes a Crown Reserve, a Council owned bore known as 'Fletchers Bore No. 3' and the intersection of the Castlereagh Highway and Old Mill Road.

It is importantly to highlight that the applicant states that there is an existing 'extractive industry' immediately to the south of the site. It is confirmed that the only extractive industry operating in the locality is located 5.2km to the south-west of the site.

Site photos are included as Attachment 1.



Figure 1: Site Plan



Figure 2: Location Map

***Proposed development***

The application documentation details the following key elements of the proposal;

1. 16,000 solar modules are to be installed with each photovoltaic (PV) panel placed on steel driven piles using a vibrating pile driver, typically driven 1.5 to 3.5 metres into the ground;
2. The proposal seeks to have a DC array capacity of 6.0MW and AC output of 5.0MW;
3. The trackers will be in rows comprising 84 modules of 88 metres long, 2 metres wide and 56 modules of 60 metres long and 2 metres wide, with trackers spaced 1 metre apart 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 towards the eastern end of the site;
7. Filling of one (1) existing dam located near the northern boundary, adjacent to the proposed main access from Old Mill Road,
8. Security fencing comprising chain-link and barb wire to a height of 2.1 metres with one (1) main access gateway onto Old Mill Road and three (3) emergency gates at the north east, south east and south western corners of the site;
9. Landscaping the boundary of the site with 'Acacia and Grevilleas' at 5 metre spacings; and
- 10.50 construction workers are required during a 3 to 6 month construction period.

A copy of the development plans are included within Attachment 2.

### ***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 7 June 2019 however, an assessment of the proposal against the relevant provisions of the Mid-Western Regional Development Control Plan 2013 was not included.

The application was advertised and neighbour notified, in accordance with Mid-Western Regional Development Control Plan 2013, from the 17 June 2019 to the 5 July 2019. During the public exhibition period, 445 submissions were received which included 439 objections and 6 in support of the proposal.

The proposed development is considered to generally comply with the applicable Statutory Environmental Planning Instruments however, significant variations are found to the setback requirements under the MWRDCP 2013. In addition, there are a number of concerns with the proposed development following a merits based assessment, and consequently cannot be supported by Council staff. These matters include:

- Compliance with the MWRLEP 2012 and the objectives of the RU1 Zone (4.15(1)(a)(i));
- Compliance with the MWRDCP 2013 specifically relating to setbacks of the development (4.15(1)(a)(iii));

- The likely impacts of the development including visual, natural hazard, 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 period objecting to the proposed development (4.15(1)(d));
- 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 \$6,600,000.

### ***Draft Conditions of Consent***

Despite the recommendation of refusal, draft conditions of consent were circulated to the Applicant and all government agencies involved in the application. The Applicant provided feedback in respect of the draft conditions and this has been included as Attachment 5.

### ***Recommendation***

That the Western Regional Planning Panel refuse DA0283/2019 for an electricity generating work and associated infrastructure proposed at 129 Old Mill Road, Gulgong 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 proposal is not considered to be for the orderly use or development of the land, and is to be located on a significantly prominent site on the immediate fringe of the Historic Gulgong Township. The development footprint will occupy a large proportion of the land and will cause a significant modification to the character of the area.

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

Furthermore and based upon the outcomes of the public exhibition process with a large volume of objections received, it is considered that an electricity generating works in the location proposed is not consistent with the objects of the Environmental Planning and Assessment Act.

#### **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 a single paddock tree remaining at the northern boundary of the site. The site is not affected by any waterways, with two (2) dams also located at the northern boundary with one (1) dam to be backfilled as part of the proposal.

#### **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) and to the west, a 'forest' vegetation is present. Furthermore, the site is bound to the north and the south by public roads, including 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 provided a response to the application including a condition to manage the subject site as an inner protection area in accordance with the Planning for Bushfire Protection Guidelines 2006.

Furthermore, to ensure that the subject site has water available for firefighting purposes (as no water supply currently exists), a dedicated storage tank is to be installed along with a 10 meter defendable space provided around the perimeter of the solar array. As a minimum setback of 7 meters is proposed, a minimal increase to 10 meters is considered appropriate in the circumstances of the case. These matters can be conditioned accordingly, should the application be approved.

## **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 (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.*

Consequently, the repealed SEPP on 1 March 2020 being State Environmental Planning Policy No. 44 relating to Koala Habitat Protection has also 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. However, the proposal does not involve the clearing of any significant strands of native vegetation or core koala habitat and therefore no further consideration is warranted.

### **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 with all buildings and stock yards used as part of farming activities located outside of the development foot print, over the residual area of 'Arocka'. 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 RU1 Primary Production under MWRLEP 2012, which is identified as being a prescribed rural zone under the ISEPP. As such, the proposal is permissible with consent under Clause 34(1)(b) of the ISEPP.

In accordance with the provisions of Division 15, Subdivision 2, the subject site is bound to the south by a rail corridor which is not currently operating. A referral to Transport for NSW (John Holland Rail) occurred with a response provided including a significant number of conditions. It was highlighted in the response from John Holland Rail that there are investigations underway towards reopening the rail line and there could be future rail bridges or level crossings that the proposal must account for, along with impacts on the railway, should it become operational. These matters were considered to be conditional upon any consent issued.

The proposed development also has frontage to a classified road network to the south and in accordance with Clause 101 of the ISEPP, the application was referred to Roads and Maritime Services (now known as Transport for NSW (TfNSW)). A response was received which included specific conditions to ensure that all traffic movements, particularly heavy vehicles, utilise the eastern intersection of the Castlereagh Highway with Caledonia Street and Rouse Street to access Old Mill Road. As no new access crossing is proposed from the Castlereagh Highway into the subject site, the application is able to provide an alternative access route, away from the classified road network, deemed suitable to TfNSW. By utilising the eastern intersection from the Castlereagh Highway however, this leads to an additional generation of development related traffic impacting on the residential area of Gulgong, and also results in a greater length of Old Mill Road, a Council road, being utilised by the development. Council's Development Engineer has provided separate advice in relation to this matter which is addressed later in this assessment.

### **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 \$6,600,000. 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 a number of aims of the MWRLEP. This is based on the following:

- The proposal is to be located on 15.9ha of an existing primary production holding of 46.39ha containing class 3 soils, reducing future compatible agricultural production on the holding;
- The proposal does not appropriately consider the inclusion of the site upon the scenic values of the rural landscape from the Gulgong Township located 800m to the east, particularly given the elevated nature of the Township from the subject land;
- The proposal does not protect the settings of Gulgong, with the proposal to be closely located or abutting rural, rural residential and residential land on the immediate entry corridor to a Historic Township;
- The proposal generates land use conflicts and will have adverse amenity and visual impacts on surrounding land 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 RU1 Primary Production and is therefore subject to the Plan.

#### **Clause 2.3 Zone objectives and Land Use table**

The land is zoned RU1 Primary Production pursuant to the MWRLEP 2012. The proposal, being an electricity generating works is permitted with consent in the RU1

zone. The objectives of the RU1 Primary Production Zone with comments is provided below:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*

**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 on page 55 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 water to the vegetable crop, has not been provided. As such, the proposal does not achieve this objective of the RU1 zone.

- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*

**Comment:** The proposed development is considered to diversify the existing onsite land uses from primary production to an energy generating works however, the proposal is not considered to be appropriate for the area as discussed throughout this report.

- *To minimise the fragmentation and alienation of resource lands.*

**Comment:** It is considered that the proposal will contribute to the fragmentation of resource land, particularly given the sites location and limited scope included within the proposal to demonstrate the subject land will continue to be utilised for primary production purposes.

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

**Comment:** It is considered that the proposal will create land use conflicts within the existing RU1 Primary Production zone and will also impact and encroach upon the future development of the adjacent land to the east. This land has been identified in Council’s Comprehensive Land Use Strategy as a long term opportunity for residential development.

- *To maintain the visual amenity and landscape quality of Mid-Western Regional by preserving the area’s open rural landscapes and environmental and cultural heritage values.*

**Comment:** The proposed development fails to maintain the visual amenity and rural landscape of the subject site and the immediate rural area. The proposed development footprint, including hardstand areas to be used during construction will cover a significant proportion of the subject site, altering the existing rural and adjacent rural residential amenity of the area. Furthermore, fencing of the site boundaries with 2.1 metre high galvanized chain-link and barbwire material as proposed will result in an industrial form of development in a rural zone. This will therefore significantly alter the existing open rural landscape of the immediate area from surrounding properties, and from a primary tourist route (Castlereagh Highway) into the Township of Gulgong, which is known nationally for its significant cultural heritage values.

- *To promote the unique rural character of Mid-Western Regional and facilitate a variety of tourist land uses.*

**Comment:** The proposed development does not promote, but instead detracts from, the unique rural character of the Mid-Western Region and is not proposing a tourist land use.

On the basis of the above assessment, the proposed development is considered to be inconsistent with the objectives of the RU1 Primary Production 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:** The subject land is located within the vicinity of a Heritage listed item, identified under Schedule 5 of the Mid-Western Regional LEP 2012 as a “dwelling” (item number I222) to the east of the development site (see Figure 3). In accordance with Clause 5.10(5)(c) and upon provision of additional information to Council on 18 October 2019, a Statement of Heritage Impact report prepared by ‘Zenith Town Planning Pty Ltd’ was referred to Council’s Heritage Advisor.

Council’s Heritage Advisor advised that whilst the author of the statement does not appear to have heritage qualifications and it would have been preferable to include recent photographs of the item, not to rely simply on the inventory sheet from the c. 1985 Heritage Study, the statement is in the format recommended by the Heritage Council and does address the relevant issues, including the identification of a reasonable curtilage. Based on the assessment of the information provided to Council’s Heritage Advisor, there are no heritage-based objections to the proposal.

Furthermore, the proposed development site does not have any existing recorded archaeological sites or items of aboriginal significance. Notwithstanding, a condition would be required to be placed upon any consent ensuring that work is ceased should an item be discovered during construction.

Based on the above, it is considered that the proposed development will not have a significantly adverse impact upon the heritage listed dwelling or upon any recorded Aboriginal sites or objects, remaining consistent with the objectives of clause 5.10.



**Figure 3: 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 (limited to Lots 463 and 464) per Figure 4 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.

The design of the footings and the 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 4: 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. No further consideration is therefore necessary.

### 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 a slight fall from east to west 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. It is considered that this is able to be further addressed as conditional matters.

Whilst the works are likely to temporarily impact on the natural drainage patterns across the site, also including the filling of the dam located adjacent to the northern boundary, 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 800 metres of the residential area of Gulgong located to the east (also overlooking the site), is immediately adjacent to rural residential land with dwellings (located at a minimum of 180 metres from the site) who will have direct amenity impacts, such as noise and visual impacts as a result of the proposal (both to the north and south). As a result, there is considered to be limited measures that can be immediately implemented to avoid, minimise or mitigate the amenity impacts associated with the proposal.

#### **Clause 6.4 Groundwater vulnerability**

The site is partly identified as groundwater vulnerable in accordance with Council's mapping – see Figure 5 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 transformer stations with an oil banded

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.

It is noted that the existing groundwater bore (GW062243) located adjacent to the south-western boundary has been drilled to a depth of 40 metres (in 1983). Groundwater bores also drilled to the south of the site (GW054553 and GW019141) were drilled to 32 metres and 62.4 metres. Groundwater bores recorded to the north of the site (GW024719 and GW059019) were drilled to a depth of 45.8 metres and 43.5 metres. It is noted that two of these bores encountered saline water.

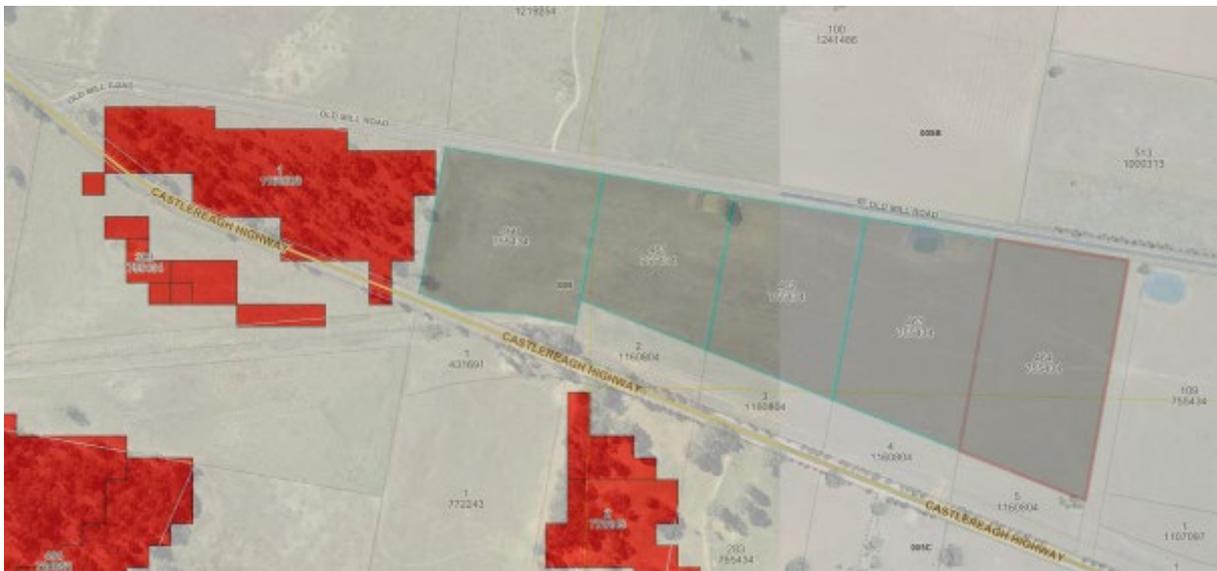
As a result of the above, it is considered that the natural level of standing water within the ground water table is unlikely to be significantly affected by the proposed drilling and excavation works and the existing water supplies in close proximity to the works are also unlikely to be significantly impacted.



Figure 5: 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’. The land located to the west (Crown Land reserve) is however mapped as ‘High Biodiversity Sensitivity’ – see Figure 6 below. Whilst the Applicant states no works are proposed over this land, Crown Land have advised that any work over the reserve or the paper road to the east of the land will be subject to separate approval of the Crown. No further consideration is therefore required on this basis.



**Figure 6: 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 unserviced, having no current Council services such as water or sewer. The land is burdened by an electrical easement with power poles to the northern boundary, and to the eastern boundary of Lot 464. 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 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, and with an existing raw water line identified to the north, running along Old Mill Road, and also groundwater (including existing bores) found adjacent to the subject site, a connect to the supply of water is therefore 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 to arrange for extensions and connections required.

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**

The land is not located within the area identified on the visually sensitive land map.

#### **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 highlight however, that the application was submitted to Council following the public exhibition of an Amendment to the DCP 2013 specifically relating to Solar Farm 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 7 June 2019.

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.

Subsequently and to enable a comprehensive and merits based assessment to occur, an assessment has been included against Amendment 3 and 4 of the DCP 2013.

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. No further assessment required.

#### **Part 4.6 Industrial Development**

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

#### **DEVELOPMENT CONTROL REQUIREMENT**

#### **COMPLIANCE / COMMENT**

##### **Setbacks**

**Less than 2000m<sup>2</sup>:**  
Front 6m to street; nil side/rear secondary frontage 4m; site coverage 60%

Site area = 16ha

The subject development has a minimum setback of 10 metres from the site boundary. This results in a

**DEVELOPMENT CONTROL REQUIREMENT****COMPLIANCE / COMMENT****2001m<sup>2</sup> 5,000<sup>2</sup>:**

Front 12m to street; nil side/rear; 10m secondary frontage; site coverage 55%

maximum variation of 33.3% to the front setback (being Old Mill Road). The secondary frontage is to the Castlereagh Highway which achieves a minimum of 12 metres (in the south-western corner of the site).

**Over 5,001m<sup>2</sup>:**

Front 15m to street; nil side/rear; 12m secondary frontage; site coverage 50%

The application also proposes a site coverage of greater than 50% based on the General Arrangements Plan submitted which is also a variation to Part 4.6 of the DCP 2013.

**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 (3 separate stations proposed) 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. Whilst the PV panels may be designed to be 'non-reflective' and 'absorb' light, the extensive steel utilised may present a glare to the nearby roads and adjacent properties. The Applicant has provided within the Statement of Environmental Effects a 'glare assessment and analysis' that concluded that there will be no 'green or yellow glare' impact on 'observation points' within a 2km radius of the site using a desktop assessment. The concerns raised by the assessment have been further considered within this report.

**Design**

- 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

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.

**Utilities**

**DEVELOPMENT CONTROL REQUIREMENT****COMPLIANCE / COMMENT**

- 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

The only service available over the site is electricity with easements already over the land. As per the assessment under the LEP 2012 provisions, it is considered that water to maintain landscaping in addition to firefighting supply with an onsite tank is required to be provided.

Conditions may be imposed in relation to stormwater runoff, waste management and easements.

**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

1 entry point provided from Old Mill Road.

**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**

- 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**

- 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/undergrou

Not applicable.

**DEVELOPMENT CONTROL  
REQUIREMENT**

**COMPLIANCE / COMMENT**

nd electricity  
–New roads constructed of  
bitumen

**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.

**Part 5.4 Environmental Controls**

All relevant considerations have been discussed elsewhere in this report.

**Part 6.1 Development in Rural Areas**

Whilst Part 6.1 discusses dwelling development in the rural zones, it is important to highlight that the minimum setback requirements applicable to development in the RU1 zone is as follows:

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

The proposed development seeks to provide a minimum setback of 10 metre from the boundary of the site to the solar panel arrays and a 3 metre setback from the boundary to the security fencing. This represents the following variations to the DCP 2013:

- o Old Mill Road – 60 metre setback required = a variation of 83.3% is proposed where a setback of 10 metres is provided.
- o Castlereagh Highway – 200 metres setback required = a variation of 95% is proposed where a 10 metre setback is provided.

**AMENDMENT 4 – Mid-Western Regional DCP 2013**

**Part 6.5 Solar Energy Farms**

<b>Visual Impact</b>	
–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 incorporate all surrounding sensitive receptors with a dwelling to the north east not considered within the assessment. The visual impacts of the proposal have been assessed later in this report.
<b>Siting to minimise impacts</b>	
–The development should be sited and carried out to minimise	Does not comply – site selection does not seek to avoid impacts on surrounding land.

<p>impacts on or restrictions to grazing, farming, residential, tourism, business and forestry practices.</p>	
<p><b>Physical adverse effects on adjoining land minimised</b></p>	
<p>– The development should be carried out that minimises any adverse physical effects on adjoining land and the development site.</p>	<p>Management of adverse physical impacts may be conditioned accordingly however it is considered that design changes are required to manage the risk of fire including a 10 metre defendable space and onsite static supply of water for firefighting purposes.</p>
<p><b>Cumulative impacts from other solar developments</b></p>	
<p>– Assessment to be included for existing built and approved but not constructed solar farms with identified cumulative impacts.</p>	<p>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 Gulgong area. This can create cumulative impacts associated with various issues including worker accommodation, traffic impacts, and social and economic impacts in the locality.</p>
<p><b>Consideration with the DPIE Solar Farm Guidelines, NPI and other Guidelines applicable to Solar Farms</b></p>	
<p>– Consideration with State Significant Development Guidelines for Solar Farm guidelines including site selection, NPI and other solar farm Acts, Rules or Regulations.</p>	<p>The assessment within the Statement of Environmental Effects does not address the DPIE Solar Farm Guidelines.</p>
<p><b>Within 5km of any township</b></p>	
<p>– 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.</p>	<p>The assessment within the Statement of Environmental Effects provides a visual impact assessment, along with a glare assessment however this only considers sensitive receptors within 500 metres of the site.</p>
<p><b>Locational requirements</b></p>	
<p>– 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</p>	<p>The proposal is located 170 metres from the nearest dwelling to the south – this represents a variation of 66%.           The proposal is located a minimum of 10 metres from Old Mill Road to the north and approximately 60 metres to the south from the Castlereagh Highway. This represents a variation of 95% and 88%, respectively.           The proposal is to be located in a visually</p>

<p>preferred method of minimising visual impact, solar arrays to be located in positions so as to have minimal visual impact on nearby properties.</p> <ul style="list-style-type: none"> <li>– Sensitive to existing related dwellings – noise and glare minimised.</li> <li>– Not surround a non-related property.</li> </ul>	<p>exposed and prominent location from nearby properties and the abutting road networks (local and state roads). 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>
<p><b>Construction Traffic shall only travel on approved route</b></p>	
<p>Assessment included in Traffic Report having regard to public safety, school bus hours and peak travel to work.</p>	<p>Traffic Assessment included notes the peak travel periods during construction and seeks to avoid other peak travel periods. There is no nominated transport route however, Transport for NSW and Development Engineering have confirmed the approved transport route is via the Castlereagh Highway, Caledonia Street/ Rouse Street and Old Mill Road. This is due to this route being an approved heavy vehicle route by Transport for NSW. This route would therefore require a condition to be imposed accordingly.</p>
<p><b>Road upgrades to support traffic movements</b></p>	
<p>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.</p>	<p>Traffic Assessment provided does not suggest upgrades are required. Development Engineering suggests that the pavement along Old Mill Road will require a dilapidation survey to be undertaken and all costs are to be borne by the developer should repairs be required.</p>
<p><b>Infrastructure including temporary facilities</b></p>	
<p>All infrastructure to be included in the application including temporary facilities. All infrastructure to be located in low visual impact locations.</p>	<p>Proposal seeks to provide portable facilities during construction for workers with no services to be provided (such as sewer or water). Raw water is located nearby. All cables are to be located underground to support the solar farm with container style metal inverters and transformer stations (three of) to be located on the site.</p>
<p><b>Rights of Carriageways</b></p>	
<p>Rights of carriageways to be extinguished within 6 months of the proposal ceasing to operate, unless otherwise agreed with the landowner.</p>	<p>Not Applicable.</p>
<p><b>Removal of infrastructure</b></p>	
<p>Within 12 months of the solar farm ceasing to operate, all</p>	<p>Conditional matter.</p>

infrastructure is to be dismantled and removed from the site

## Section 64/Section 7.12 Contributions

### **Mid-Western Regional Development Contributions Plan 2019**

Pursuant to Council's Development Contributions Plan 2019, the development is proposing an electricity generating works and has a proposed cost of development greater than \$200,000, therefore a levy of 1% applies and is payable to Council. Based on the submitted cost of \$6.6 Million, a contribution amount of \$66,000 will be required.

An appropriate condition will be required for payment of the contribution.

### **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.

Any augmentations required however will be however at the full cost of the developer.

### **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)<sup>1</sup>**

<sup>1</sup>Including 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**

The Applicant has provided a visual impact assessment, prepared by 'Zenith Town Planning Pty Ltd' which has utilized the RMS Guideline 'Environmental Impact Assessment Practice Note – Guideline for Landscape Character and Visual Impact Assessment'. The assessment states the character of the landscape near Gulgong is predominantly an open modified agricultural landscape shaped by farming. The assessment then proceeds to describe the surrounding land including the statement that an extractive industry operates to the south of the site. This statement has been

confirmed to be made in error however determines that *'the landscape is assessed to have moderate sensitivity to change'*. The assessment determines that the impact on landscape character is considered to be moderate for private property, low for the Castlereagh Highway and high for Old Mill Road.

The visual catchment has been limited to 500 metres, in comparison to the glare and glint assessment which utilised a 2km radius, and is stated to be due to *'the greater the distance from the development site, the less clear is the view of the solar farm'*. The assessment states that it is unlikely that the site will be visible from adjoining private properties and public roads beyond 500 metres, despite confirming that the Gulgong Township is elevated from the subject site.

It is important to also note that the assessment fails to identify all sensitive dwellings within 500 metres of the site and relies upon desktop identification from satellite imagery, rather than onsite validation. Notwithstanding this finding, dwelling number 5 which is located in closer proximity (285 metres north east), but less elevated from the subject site than the dwelling missed from the assessment, has been identified to have a 'moderate' impact.

The assessment concludes that the visual impacts of the proposal are low to moderate for the residential viewpoints identified in the assessment with the existing vegetation, proposed vegetation 'screening' and fencing measures *'would serve to distract visual interest away from the development'*. The assessment states that *'these impacts are considered acceptable given the nature of the proposed development and that it will contribute to renewable energy generation'*. Despite this statement, the assessment proposes mitigation measures including a vegetated buffer to 'screen' the development from Old Mill Road, the property to the east and the Castlereagh Highway which is to include large shrubs planted on the outside of the perimeter fencing and, if Council deems necessary, recommends shade screen material be placed until the shrubs are mature.

Based on an assessment of the site in the context of the surrounding character of the area, it is considered that the visual impact assessment has failed to adequately and objectively identify the existing landscape character and the scenic qualities of the area, and has not considered key elevated view points as part of the assessment. This should consider views from elevated dwellings to the east, from the Gulgong Village and from areas such as Flirtation Hill Lookout, which are outside the '500 metres radius' applied in the assessment. 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.

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 metre 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 existing surrounding residential development and proximity to the Historic Gulgong Village. The proposal is to be located on effectively a triangular landholding that is wedged between a Local and State Road with direct views of the site immediately available from all surrounding locations and nearby dwellings. The

Gulgong Village, including the residential area of Caledonia Street to the east is also elevated from the subject site therefore significantly contributing to the visual dominance of the proposal, whilst also significantly altering the rural landscape and amenity of the area on the immediate entry and exit of the Gulgong Township.

In addition, historic documents such as the Gulgong Environmental Study (1981) states that Gulgong is one of the most unique towns in NSW with excellent internal and external views and vistas. Tourism, as a result of the historic preservation of Gulgong and the nature of the undulating surrounding rural landscape, is a significantly import sector to the towns economy.

### **(b) Access, Transport and Traffic**

The application was supported by a Traffic Report, with the application also considered by Transport for NSW and Council's Development Engineer. It was determined that the transport route to service the proposal during the construction phase should be restricted to the existing heavy vehicle route via Caledonia Street/ Rouse Street/ Old Mill Road rather than via the Castlereagh Highway and Old Mill Road intersection. This route would eliminate the requirement for a heavy vehicle permit, however upgrades to the access crossing into the property along with a dilapidation survey would be a requirement of Old Mill Road.

Transporting up to 50 workers to the site via bus was also recommended to reduce the traffic impacts of increased single vehicles however, concern was raised in relation to 'pick up and drop off point/s' – locations were not confirmed in the traffic assessment. It is considered that these matters may be able to be conditioned accordingly.

In addition and as the site is also adjacent to a railway, referral to John Holland Rail (Transport for NSW) resulted in additional matters for consideration. Whilst the rail line is not currently operational, feasibility work is currently underway into reopening the line. This would therefore result in the railway operating immediately adjacent to the project site and new level crossings may also be required which may have impact on the proposal's operations in the future. The requirement for a level crossing feasibility was a specific requirement of the referral response from Transport for NSW – John Holland Rail, amongst a number of other specific matters raised by this agency which may 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 two (2) electrical easements. One is located at the northern boundary of the lots and the second is located on the eastern side of current Lot 464. 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, the nearby raw water supply located in Old Mill Road may support the proposal and such investigations are recommended. This may be conditioned accordingly.

### **(e) Heritage**

As noted from the assessment under Clause 5.10 of the LEP 2012, there are no specific grounds of objection raised by Council's Heritage Advisor in relation to the proximity of the proposal from the 'Arocka' Heritage listed dwelling or impact on the Gulgong Heritage Conservation area. 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 of 15.9ha 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 or provision of water for stock, particularly given the existing dam located on the northern boundary is to be backfilled.

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 as the site has close proximity to a raw water supply, this should be investigated as part of the project and onsite static water supply also be provided for firefighting activities.

## (h) Soils

The Gulgong Township is historically known for previous gold mining activities in the area, dating back to 1870 where the population quickly grew to 20,000 people as a result of numerous finds. Resources and Geosciences have confirmed in published studies undertaken that there are a number of 'worked' and 'unworked' gold mines in the area. As a result, there is potential for the site to be affected by subsidence and therefore detailed investigations will be required by a competent engineer.

Additionally and as noted from Clause 6.1 of the LEP 2012 and Figure 4 above, the subject site is also identified to be affected partly by salinity in the north eastern portion of 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.



Figure 7: Gulgong Gold Mines – Resources and Energy

## (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.

#### **(j) flora and fauna**

The proposal is unlikely to impact on significant flora or fauna, with the existing site cleared land and a single paddock tree located at the northern boundary of the 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 which cannot be disposed of at the local Gulgong Transfer Station. The developer will therefore 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 5MW electricity generating works via 16,000 PV panels on a 15.9ha vacant site on the immediate fringe of the Gulgong Village. The proposal seeks to connect to an existing 22kV electricity line located on the site which feeds to the Gulgong Zone Substation, with all residual electricity fed to the nearby Beryl Substation (where an existing 87MW solar farm has been constructed). The 87MW Beryl Solar Farm, 5km from the Gulgong Village, reached full output in May 2019 and is currently contracted to the NSW State Government for the Sydney North West Metro Project. This contract removes up to 69% of its electricity output from the market and future plans involve the addition of battery storage.

As a result, concern is raised by the proposal, being a smaller scale renewable development with identified significant local 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 onsite using machinery and traffic volumes which at 4 heavy vehicles per hour and 20 light vehicles or the equivalent mini buses during the morning and afternoon peak periods. 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 15 sensitive receivers surrounding the project site. It is noted, however, that the assessment has missed a dwelling located off Shepherds Lane to the north of R1 and has also included a shed (R15).

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 which is extremely common in mining communities.

The assessment criteria used has not included background noise monitoring however, in accordance with the Noise Policy for Industry Guidelines, the minimum Rating Background Levels of 35dBA for the day time period and 30dBA for the night time period has been applied. Utilising a computer model, it was determined that three (3) 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 – 13 Shepherds Lane, R8 - 12 Slaughter Yards Road and R10 – 105 Castlereagh Highway. As a dwelling has been missed within the assessment and is immediately North West of 13 Shepherds Lane, it is highly likely that this additional sensitive receiver would also be impacted by construction noise. From an operational perspective, the assessment finds that the noise levels are able to comply at all residential receivers.

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 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 forest vegetation to the western boundary of the site, roads to the north and south, with grassland and residential dwellings to the east. As the subject site is not able to achieve a sufficient defendable space around the asset, a 10 metre defendable space is recommended and the internal area of the site shall be managed in accordance with the Rural Fire Service requirements as an 'Inner Protection Area'. As no onsite water supply exists, a static supply is also to be provided.

### **(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, 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.

### **(p) Safety, Security and Crime Prevention**

The propose 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 and the Township of Gulgong.

### **(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. Gulgong also benefits from a large tourist and mining employment sector to

support the Village and during peak seasons, accommodation can become significantly limited. Shortage of accommodation has been a historic problem and is noted also within the Gulgong Environmental Study undertaken in 1981, confirming that surplus accommodation demand came from tourists who visited Gulgong within the peak tourist season being in April, May and August rather than from business people.

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 Gulgong area. This generates further concern that up to 50 workers would therefore look to be accommodated in the Mudgee, 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 Gulgong area alone. As there are limited resources in the Village to service existing residents, it would be anticipated that bulk supplies of materials would be outsourced from the Gulgong area, however day to day purchases such as meals and general goods would see a short-term economic stimulus for the retail sector of Gulgong. The economic stimulus would also occur should accommodation be found in the Gulgong area for workers.

#### **(s) Site Design and Internal Design**

Upon review of the design, noting the significant non-compliance with the setback provisions of the Development Control Plan 2013, there is 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 is recommended to all boundaries and the PV panels along with a dedicated onsite storage tank capable of being accessed by emergency services or onsite personnel. This is particularly important given the proximity of the development from residential properties and to the Village of Gulgong. These matters 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 residential fringe of the Gulgong Village in a prominent and open landscape
2. The site is located on a primary tourist route into and out of the Village which is readily visible to passing traffic
3. The proposal seeks to construct PV panels on over 50% of the 15.9ha vacant agricultural site
4. The proposal seeks to 'screen' the infrastructure from the boundaries in order to reduce visual impacts
5. The proposal will have construction noise exceedances at 3, possibly 4, of the nearby sensitive receivers
6. The proposal has been public exhibited and a significant number of objections have been received
7. The proposal does not seek to provide any form of onsite 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
8. The proposal increases the risk of fire occurrence on the subject site and onto surrounding properties
9. The proposal is to be partly located in a saline environment which can be corrosive to metal structures
10. The proposal is to be located in an area where underground mining has historically occurred and salinity is identified which may result in structural defects

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 advertised and neighbour notified, in accordance with Mid-Western Regional Development Control Plan 2013, from the 17 June 2019 to the 5 July 2019. During the public exhibition period, 445 submissions were received which included 439 objections and 6 in support of the proposal.

The Applicant was forwarded a copy of all submissions received and provided an opportunity to address the matters raised. 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.

A summary of the matters raised by the submissions is provided below with a copy of the submissions included as Attachment 3.

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>Concerns Raised</b>
Development does not achieve the objectives of the RU1 Primary Production Zone of the MWR LEP 2012.
Development does not address the community impact.
The development does not complement the current use and surrounding land in that Gulgong is a historic town thriving on tourism.
The development will destroy the rural landscape and historic character of Gulgong.
Development does not comply with Clause 6.4 of the LEP 2012 in regard to protection of groundwater vulnerability and impact on nearby town bore water reserve.
No contingent measures proposed for any possible spillages of materials during installation or decommissioning or when the area floods as it does when it rains.
No details provided regarding rainwater run off control from the solar panels.
No details or solutions provided on erosion control measures at the base of the panels as suggested on Page 34, paragraph 3.
Eroded soil will clog the drainage infrastructure and natural water flow to the Wylandra Creek, increasing existing flood risk to surrounding properties.
Inaccuracies within the Statement including: <ul style="list-style-type: none"> <li>a) Extractive industry in the vicinity of the proposed development – no such industry licensed or operating</li> <li>b) Aerial imagery is 7 years old and the reports excludes homes within the assessments (noise, visual etc.) particularly the dwelling located at 21 Shepherds Lane which is on elevated ground from the site</li> <li>c) House located at 164 Old Mill Road that faces the development and is on a higher elevation, yet not included in the visually affected homes</li> </ul>
Proposed screening is grossly inadequate with 5m spacings which does not screen the development and which takes years to establish and grow to mitigate visual and glare impacts. Landscaping should be at minimum: <ul style="list-style-type: none"> <li>a) Shrubs should be planted that are already 3m tall, minimum 1.5m apart and prior to construction commencing.</li> <li>b) Irrigation installed to water the trees</li> <li>c) No seedlings should be allowed to be planted</li> </ul>
No definite confirmation on the effects of the sound and noise impacts and no mitigation factors or compensation to affected residents. Inverter noise forever humming or buzzing for more than 20 years with existing homestead less than 200m away.
Setbacks should be in accordance with the DCP, should the applicant see to use the pre 19 June DCP Plan, Council has the option to impose setbacks required for windfarm constructions in RU1.
Council should ensure that Solar Farms are not to be constructed on high value agricultural land.

Location is between 2 major roads – glare and reflection impacts would cause distraction to the drivers – safety concerns are raised when panels are facing west.
Serious potential land use conflicts with surrounding farm land.
High, unacceptable and unreasonable interference with the comfort or response of adjoining land users.
High impacts on agricultural land, businesses and tourism.
Reduces the value and allows for fragmentation of surrounding properties.
No contact was made by the developer to discuss impacts with surrounding landowners and business owners.
Find a location on a larger farm, screened from public roads and away from unrelated households.
The heritage landscape of Gulgong deserves preservation and a solar farm within 1km has a negative impact on this preservation.
Visual impact on the approach to town has not been addressed in the SEE. The fence and landscaping do not offer a suitable solution to the distasteful appearance of the solar farm.
The glare and glint assessment in the SEE states there is no solar glare hazard, no confidence in the accuracy of this report, requests further investigations be conducted to clarify this claim.
Solar farms need to be located in a suitable area that preserves tourist town vista/outlook of the area.
Scenic value and character of the locality – the proponent does not address the impact that the development will have on the visual approach to a historical town.
Description of adjoining properties as rural farm dwellings are better described as rural lifestyle as they are largely smaller holdings – appeal of these properties is likely to be reduced with a solar farm within 200m of their front door.
The proposed fencing surrounding the site (2.1m high security fence) will detract from the scenic value at the entrance to a historically significant township. A 5km radius / buffer of the township and residents should be adopted for industrial forms of development.
The solar farm is just on the edge of town and very close to our heritage conservation area.
A more suitable location could be found further away from the town which will have less impact on the population of Gulgong.
Development will have a negative effect (glare and unsightly view) on existing rural lifestyle blocks neighboring the site and possible residential homes on the edge of town.
The site is not suitable for development of a solar farm as: <ul style="list-style-type: none"> <li>a) It is too close to the existing town centre and boundary which will limit the ability for future residential development</li> <li>b) It will have adverse visual impacts on adjoining property owners , the rural landscape and scenic town entrance</li> <li>c) It is inconsistent with the local character of Gulgong and its heritage features which are highly valued by the community and well recognized by visitors</li> </ul>
The location of the development needs to consider those elevated viewpoints greater than included in the SEE.
The selection of the site on the basis of the existing infrastructure (66kV powerline) running through the property is not an adequate reason to construct it so close to town, as well as the impact it has on neighboring farms or properties close to the facility.
The development is located within 600m from the edge of homes in town and 1.8km from the centre of town – this detracts from the scenic value Gulgong has on approach to the town and outlook of homes on the edge of the town.
The land has been recently tilled in preparation for new harvest. The assumption

that this land is only moderately good for agricultural purposes is an understatement.
The site is located parallel to the Sandy Hollows remains of the railway line which was constructed during the Great Depression.
Old Mill Road is a sub-arterial road and not as wide as it would need to be for the projected B-Double trucks entering and exiting the site, raises safety concerns.
The intersection at the Old Mill Road and Castlereagh Highway has significant obstruction of view and there has already been fatal accidents at this location – concerns with heavy haul trucks being increased at this already dangerous intersection.
Experience during the construction of the Beryl Solar Farm, the pile driver used was unrelenting 1000m away – the noise will be unbearable at the construction stage and will impact on many residential properties in Gulgong.
The native shrubs to cover the 2.5m fencing will take 2-3 years to reach maturity and will require loads of water which is not available onsite.
DA states the proposal will remain in operation indefinitely, which contradicts the later statement it will operate for 25 years and then reassess and decommission the plant if necessary.
The returning of the land to agricultural purpose is more than unlikely after 25 years as the long term application of herbicides to keep weeds clear spoils the land for future farming.
The biodiversity assessment fails to assess the pair of wedge tail eagles that have for many years lived nested onto of Salvation Hill located at the end of Old Mill Road and Castlereagh Highway.
Though it is not classed a bushfire zone, the risk of a solar farm so close to a town is unacceptable. If a fire did start, there is no water source on the site to put it out and it could easily make it to town within minutes with a strong westerly wind that is common in summer. Further should we be slashing our property, and fire starts, public liability insurance in excess of 60 million would be required and could not be afforded by small hobby farms.
The noise assessment was not comprehensively undertaken - excludes residents that were considered as part of the in the visual assessment (e.g. OP16 in Figure 15 not included in Figure 13).
Fails to sufficiently report on indigenous heritage impacts.
Encourage the location of a solar farm on local coal mine rehabilitation areas where there is substantial power infrastructure already in situ and large buffer zones in place.
Development is setting a precedent for future developments of this nature.
Proposal stops valuable farming land from being utilized forever.
The proposal will affect the prices of property in the area.
The proposal prevents the future growth of the town and restrict the ability for the town to have future residential lifestyle blocks in this area.
The solar farm will not provide additional employment to the local community and any employment will be short spanning.
The solar farm already constructed in the area sourced labour from out of the area who temporarily booked out all accommodation in the area leaving many local long term workers without accommodation.
The subject of grid stability must be addressed.
The high visibility of the development from the township and both the Castlereagh Highway and Mill Road, both which are heavily used roads would add to the blight on our landscape.
Cumulative impacts of many panels and solar farms within the region.
Gulgong has one solar farm, and that is enough.
The last time solar workers were here, residents were getting robbed, houses broken into and workers causing fights.

The proposals are already causing stress and mental health issues among residents.
Consideration of the overall impact of these farms on the health of humans, animals and the impact on land and the environment.
Toxins leaking to the ground, weeds and grass controlled, chemicals onto adjoining properties, panels create extra UV/radiation, noise, glare, heat, toxic waste.
The proposal will cause a 'heat island' which lifts the temperatures in the area by 3-4 degrees.
Council's Land Use Strategy has already identified that the proposed solar farm borders upon land identified as short term housing development and 'should be prioritized for rural lifestyle development (page 59)'. The intermittent nature of the power produced by solar farms will lead to more expensive power.
The land use will lead to an expansion of noxious weeds (biosecurity issues), feral animals and bushfires.
Better consultation with the community about the proposal.
The scenic vista from Flirtation Hill lookout, Church Hill and Red Hill will be impacted and any residences with elevated views similarly.
The proposal will result in the change in land use from Rural to "the more industrial nature of solar farms" will surely have a negative impact on the scenic values and character of the locality.
From Flirtation Hill lookout in the late afternoon, the Beryl Solar Farm reflects like a 'mirror' - the Glare Analysis on pages 94 and 95 is not convincing that it is nil glare impact for the site.
The application fails to address the key issues raised in the well-established Large Scale Solar Energy Guideline for State Significant development published by the NSW Government. <i>Applications are encouraged to consider the site selection and impact assessment matters in the guideline when determining local and regional solar development applications.</i>
The methodology adopted for the visual impact assessment of the DA is inadequate and the area of impact too limited.
A Heritage Impact Assessment should have been included as part of the proposal.
A sites constraints assessment should have been provided to include the following: <ul style="list-style-type: none"> <li>a) Visibility and topography</li> <li>b) Biodiversity</li> <li>c) Proximity to Gulgong and the Heritage Conservation Area</li> <li>d) Bushfire</li> </ul>
The Setbacks provided (less than 10m from the Highway and Old Mill Road) has no basis for this distance. The minimum setback for low impact development such as dwellings is 100m – a minimum setback of 500m should be considered for any solar project on a classified road.
A decommissioning plan as a condition of consent does not overcome the issue in terms of removal of infrastructure if the company becomes insolvent. Some form of bond is required to cover the costs of decommissioning.
The SEE fails to address the consistency of the proposal with the objects of the EP&A Act.
The SEE refers to SEPP (Rural lands) 2008 that has been repealed.
The proposal is inconsistent with the objectives of the RU1 zone and the SEE does not address this inconsistency.
If the MWRC has the second highest solar exposure, why would the developers not choose to place the solar farm in the highest solar exposure areas, western NSW – further west of Dubbo where population density is lesser.
The 2.1m chair wire fencing at the boundary of the site will be more visually disturbing than the solar panels.

The photos used are a biased view to the location and surrounding development to which the proposal will impact. For example, the views to the site from the veranda of the property to the south of the site has not been included, only the roadside.
The content of the SEE and supporting reports are misleading. The site is 1.1km from the post office.
Old Mill Road is not an approved B-Double Route.
The traffic counts undertaken at 8am to 9am are irrelevant as workers travelling for shift work starts anywhere between 5am to 7am. The construction times proposed are from 7am and deliveries to occur from 10am in which the May 18 Traffic Study is not considering in the traffic counts that are a current possibility.
Where is the water to come from to cover the construction phase and ongoing washing of the panels? E.g. dust control, hydration of construction personnel, amenities, ongoing maintenance of the landscaping and bushfire management.
Noise will impact on night shift workers who reside less than 1km from the site resulting in fatigue.
The impact on sensitive biodiversity living in the adjacent reserve and the heat effect on this wildlife – it is not addressed in the reports.
The solar panels are made in china producing more carbon emissions than solar panels will ever save by producing renewable energy.
Solar only works in daylight hours and is not effective in cloudy time or in high / low temperatures which is a large amount of time per the year in this area.
There is nowhere for surplus power to be stored or used to create power when the sun has set.
In the time of drought and the layer of dust covering the panels will make them less efficient.
The Beryl Solar Farm also claimed they needed little water but there were semi's and rigid tankers used for most of the construction time for dust suppression.
Increased volume of heavy plant machinery and traffic so close to town and on a main thoroughfare is not acceptable.
The proposal will have negative social and economic impacts on surrounding properties and the Mid-Western Council area.
The Crown Land to the west of the site is mapped a High Biodiversity sensitivity.
The shade cloth proposed is inadequate and would further compound the negative visual effects of the development. Who will maintain this and how would it be affixed to the fence.
The 5MW supply generated is not worth the detrimental effect on the townships residents with regard to tourism and town uniqueness.
The proponent has not attached any supporting documentation with respect to option and lease agreements with the owner, connection and supply with Essential Energy that existing infrastructure and electricity network can support this proposal.
The grazing of animals during operation is not currently an option on the site as the intention is to have no reticulated water onsite – existing dams are to be demolished and surface graded.
A bushfire assessment must be prepared to assess the risks to the Gulgong and broader community.
The landscaping plan does not include the size of the shrubs to be planted at the time of planting – no specialist report provided for landscaping including maintenance – a landscaping bond should be paid to Council each year to cover shortfalls in maintenance by the operators.
A comprehensive hydrology flood study utilising fully dynamic two dimensional computer model is necessary to demonstrate the cumulative impact of the development on the flood levels for and downstream properties.
The development is located in a salinity vulnerable area.
The development will threaten the inland semi-permanent wetland located on the

property to the north of the site “The Lagoon” which is habitat to many migratory bird species, frogs, tadpoles and other plant and animal species for extended periods of time.
The statement used regarding “ <i>the large open plains of Orana provide the best access for solar energy generation</i> ” is misleading when taken out of context. Page 15 of the Central West Orana and Regional Plan 2036 under Tourism it states: “ <i>tourist attractions including the natural assets of the Greater Blue Mountains World Heritage Area and the internationally recognized Macquarie Marshes, national attractions of Siding Spring Observatory and Taronga Western Plains Zoo; and attractive historical towns and villages, such as Gulgong and Millthorpe</i> ”. Direction 9: Increase renewable energy generation clarifies “...while areas in the Orana, such as Warren, Coonamble and Bogan, are suitable for large-scale solar power and geothermal energy generation”.
Welfare of animals and landowners checking stock - suffer blindness and stress due to the glare and glint from the proposed solar farm.
The glint and glare from the solar farm will affect the operational use of the airstrip located on “The Lagoon” used by small planes for fertilizer spreading when required.
The application has been rushed to “beat the clock” of the MWRC draft DCP. An example of this is the clearance report from the Mudgee Local Aboriginal Council not lodged at the time of submission.
The 22kv connection point appears to be outside the development site – are any proposed easements required over adjoining properties or over the Crown Road.
Any connection of reticulated water supply from the Castlereagh Highway would require crossing of the railway land to service the site.
There are 45 B-Double truck movements accounted for, what are the number of movements of other trucks for instance cement trucks, water carts for dust suppression, floats for earthmoving and construction equipment on and off site during construction.
The traffic assessment does not consider other existing daily traffic utilizing the road during the proposed construction period.
What measures are in place to ensure any damage to Old Mill Road or other local roads generated by the development are fixed at no cost to Council.
Air quality and dust during construction. At what stage will work stop if its dry and windy – how is this monitored.
Waste management from the project how many truck movements will this create and is there a plan to recycle the waste.
Upskilling, further education and training should be expanded to suggest what is going to be enhanced.
The development is closer than 1.4km from a heritage item. Item Number I222 is a local heritage item which has clearly been neglected in the SEE.
Has the glare and glint report been carried out by a recognized specialist, where is the detailed report.
The proposed solar farm is to serve Sydney and Canberra which is over 300 and 400km from Gulgong.
It is widely documented that these projects attract lightening.

#### **(b) Submissions from Public Authorities**

The application was also referred to the following authorities:

- Transport for NSW – John Holland Rail
- Roads and Maritime Services (now Transport for NSW)
- Crown Land
- Essential Energy
- Transgrid

- Department of Primary Industries
- NSW Rural Fire Service

The 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 as Attachment 4.

#### 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.

Whilst the NSW State Government is seeking to develop 'Renewable Energy Zones' (REZ) to enable a streamlined approach to renewable energy development into the future, the zones do not assist with the strategic planning objectives that are required for such significant projects. Furthermore, the need for greater investment into electrical infrastructure to support such projects is required to ensure that smaller towns and villages are not significantly burdened by developments that only seek to utilise existing assets as justification to encroach on regional areas, and in particular residential areas of any township.

#### 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 as Attachment 4.

##### **(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 provided on 10 December 2019.

##### **(b) Technical Services**

Council's Development Engineering Department has provided a referral response on the 30 March 2020 however, this response had not considered Transport for NSW requirements for the transport route. An amended response was provided on the 9 June 2020, stating:

*Previous Engineering assessment has reviewed all available information and recommended REFUSAL.*

*From an engineering perspective the grounds for refusal included:*

##### **Reasons for Refusal**

- A     *The use of the majority of Old Mill Road for access to the site is not supported and the issue of a permit for use of the road by OMOS vehicles is not likely to be given.*

- B Any proposed use of the Old Mill Road / Rouse Street / Caledonian Street intersection is considered to create unacceptable safety issues due to the significant number of large vehicles.*

*Additional reasons for refusal might also include:*

- C The reflectivity of the panels on the urban environment of Gulgong.*
- D The fire risk from the solar farm poses to the township.*

Conditions of consent were however provided in event that the application is to be approved.

### **(c) Heritage Advisor**

Council's Heritage Advisor was referred the application including the Heritage Impact Statement submitted with the revised and additional information in October 2019.

The following advice was provided on the 28 November 2019:

*The proposal is for a solar farm on a lot abutting the site of item 122, a house on Caledonian Road. The site is distant from the Gulgong Conservation Area.*

*Council sought a Statement of Heritage Impact prepared by a suitably qualified heritage consultant. The author of the statement does not appear to have heritage qualifications. It would have been preferable to include recent photographs of the item, and not to rely simply on the inventory sheet from the c. 1985 Heritage Study. However the statement is in the format recommended by the Heritage Council and does address the relevant issues, including the identification of a reasonable curtilage. It is adequate for present purposes.*

*The item will be over 750m from the nearest point of the perimeter fence around the solar farm, well outside the curtilage and the visual catchment of the item. It will have no physical impact on the item and no impact on views towards it. It will arguably be visible from the item, but only in the distance, and this is not a significant view.*

*It is similarly distant from the Conservation Area.*

*Consequently there are no heritage-based objections to the proposal.*

### **(D) Access committee**

No consultation necessary.

## **SUMMARY AND RECOMMENDATION**

Development Application (DA0283/2019) for an electricity generating works at 129 Old Mill Road, Gulgong 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:

- Non-compliance with the MWRLEP 2012 and the objectives of the RU1 Zone (4.15(1)(a)(i));

- Significant non-compliance with the MWRDCP 2013 (4.15(1)(a)(iii));
- The significant likely impacts of the development including visual, natural hazard, social and economic impacts on the locality (4.15(1)(b));
- The unsuitable location and siting of the development (4.15(1)(c));
- The large number of submissions received during the public exhibition period objecting to the proposed development (4.15(1)(d));
- 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 \$6,600,000.

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 including response received to the draft conditions from the Applicant is included as Attachment 5.