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Amended Statement of Facts and Contentions

COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2021/00361625

TITLE OF PROCEEDINGS

First Applicant	IT Power (Australia) Pty Ltd ABN 42107351673
First Respondent	Mid-Western Regional Council ABN 96149391332

FILING DETAILS

Filed for	Mid-Western Regional Council, Respondent 1
Legal representative	Lindsay Mark Taylor
Legal representative reference	
Telephone	02 8235 9714

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Amended Statement of Facts and Contentions (MWRC_MWRC21015_125.pdf)

[attach.]

Form A (version 1)

FURTHER AMENDED STATEMENT OF FACTS AND CONTENTIONSFollowing amendment of T&I SEPP**COURT DETAILS**

Court	Land and Environment Court of New South Wales
Class	1
Registry	Sydney
Case number	2021/00361625

TITLE OF PROCEEDINGS

Applicant	IT Power (Australia) Pty Ltd
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Respondent	Mid-Western Regional Council
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FILING DETAILS

Filed for	Mid-Western Regional Council, Respondent
Legal representative	Dr Lindsay Mark Taylor Lindsay Taylor Lawyers Level 9, Suite 3, 420 George Street, Sydney NSW 2000
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PART A - FACTS**1. The Proposal**

- 1.1 The proposed development consists of a 10MW electricity generating works (solar farm) including approximately 25,000 solar photovoltaic (**PV**) panels placed on steel driven piles, typically driven 1.2 to 3.5 metres into the ground.
- 1.2 The proposed development footprint seeks to occupy a total area of 26.9 hectares of the 67.33 hectare site in two (2) systems, each comprising 5MW of AC capacity and 12.1MW of DC capacity, separated by the existing dam and drainage line which bisects the site.

~~1.3 The proposed development, as amended, includes the following setbacks from the proposed security fencing surrounding the panels to boundaries:~~

~~i. Front setback from the Castlereagh Highway to the panels of 200 metres (parking and laydown area to be located within the setback);~~

~~ii. Eastern setback of 100 metres;~~

~~iii. Western setback of 45 metres;~~

~~iv. Southern setback of a minimum 100 metres to security fencing.~~

~~1.4 Each row of panel modules will reach an overall maximum height of 2.757 metres when fully tilted at 60 degrees during the early mornings and late evenings (tracking east to west).~~

~~1.5 Two (2) inverter and transformer stations are to be constructed, 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.~~

~~1.6 Trenching of underground cables is proposed from the inverter stations to an existing 22kV power line at the northern end of the site.~~

~~1.7 Security fencing is proposed around the arrays comprising chain-link and barb wire to a height of 2.1 metres.~~

~~1.8 Lay down areas and parking during construction are proposed to be located at the western and northern boundaries of the site, with access via the Castlereagh Highway.~~

~~1.9 It is proposed to landscape the boundary of the site with a mix of native trees and shrubs.~~

1.3 50 construction workers are proposed during a 6 month construction period and upon operation, maintenance will be carried out quarterly by 2 to 3 people.

1.4 The DA as amended in July 2022 seeks to retain an AC output of 10MW but otherwise proposes the following amended form of development:

1.4.1 Rotating solar modules with an array pitch of 6.25m are to be installed with each photovoltaic (PV) panel placed on galvanized steel driven piles up to a minimum 1.5m, with a maximum overall height of each row of panels shown to be approximately 2.75m from finished ground level;

1.4.2 Construction of two (2) 3MW inverters and transformer stations within the centre of each system arrangement, mounted on a skid base with an oil bund and have an overall maximum height of 2.77 metres, also incorporating high and medium voltage switch gear – it should also be noted the applicant now seeks to reserve area for future 'BESS Stations' adjacent to the proposed inverter locations;

1.4.3 Trenching of underground cables from the inverter stations to an existing 22kV power line at the northern end of the site;

- 1.4.4 Modified security fencing around the arrays comprising galvanized wire chain-link and barb wire toppers to a height of maximum 2.3 metres, with one (1) main access gateway from the Castlereagh Highway and one side access gate from the western side;
- 1.4.5 One (1) laydown and car parking area, reduced from 3, located outside of the security fencing and within the 200m front setback from the Castlereagh Highway;
- 1.4.6 Landscaping has been amended to include:
 - 1.4.6.1 '1. Native screen planting 10metres wide';
 - 1.4.6.2 '2. Mounding (max 1:5 slope to 3metres tall) with scattered trees in pasture' and
 - 1.4.6.3 '3. scattered trees in pasture';
- 1.4.7 Modified landscaping layout (dated 1 July 2022) incorporating 3 metre high earth mounds at specific locations on the site including within the front setback and south eastern side setback; and
- 1.4.8 Increasing the proposed life of the project from 30 years to 35 years.
- 1.5 Modified setbacks to boundaries and the Castlereagh Highway as follows:
 - 1.5.1 200m to the security fencing from the Highway, a minor increase from 190m;
 - 1.5.2 100m to the security fencing from the eastern boundary, an increase from 20m;
 - 1.5.3 50m to the security fencing from the western boundary, a minor reduction from 54m; and
 - 1.5.4 95m (area A) and 250.5m (area B) to the security fencing from the southern boundary, a reduction in area A from 125m.
- 1.6 The proposal now also seeks to rely on the extension to water supply from the adjoining land / existing Water Access Licence (held in common ownership with the site) – this generates the need for a Water Supply Works Approval to be obtained under section 90 of the *Water Management Act 2000*.
- 1.7 50 construction workers are still suggested to be required during a 6 month construction period and upon operation, maintenance will be carried out quarterly by a crew of 2 – 3 people;

2. The Site

- 2.1 The subject site is legally identified as Lot 6 DP1069441, 3B Burrundulla Road, Mudgee (**the site**).
- 2.2 The site comprises 67.33 hectares of vacant, gently undulating, agricultural land used historically for cropping activities and the grazing of livestock.
- 2.3 Scant mature paddock trees are located throughout the site, including a single row of mature eucalypts planted along the western boundary.
- 2.4 A large dam is also located over a portion of the northern section of the site.

3. The Locality

- 3.1 The site is situated to the south of the Castlereagh Highway, 2.4km south-east of Mudgee.
- 3.2 The Castlereagh Highway is the main entrance corridor to the township of Mudgee.
- 3.3 The site is surrounded by existing farm land with associated rural dwellings and smaller rural lifestyle holdings to the east and south. There are approximately 29 residential dwellings located within a 1 kilometre radius of the site from which the site can be viewed.
- 3.4 The closest dwelling to the project area is approximately 105 metres from the southern boundary.
- 3.5 To the immediate west of the land are grape vines and an existing cellar door and café located approximately 75 metres from the site boundary.

3.6 Further west are rural residential lands (R5 zoning of land is located 685 metres west of the site), single dwellings and Oak Creek, which runs in a north – south direction.

3.63.7 The Site and the surrounding locality are within an area designated as a 'regional city' under s 2.42 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 ('TI SEPP').

4. The Statutory Controls

- 4.1 Section 2.19(1) and Schedule 6(5)(a) of the State Environmental Planning Policy (Planning Systems) 2021.
- 4.2 Section 3.1 and 3.12 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

- 4.3 Section 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021.
- 4.4 Schedule 1 of the State Environmental Planning Policy No. 44 – Koala Habitat Protection.
- 4.5 Sections 2.36, [2.42](#) and 2.118 of the [TI SEPP State Environmental Planning Policy \(Transport and Infrastructure\) 2021](#).
- 4.6 *Mid-Western Regional Local Environmental Plan 2012 (MWRLEP 2012)*.
- 4.7 *Mid-Western Regional Development Control Plan 2013 (MWRCDP)*.

5 Actions of the Respondent Consent Authority

Date of Application

- 5.1 DA0288/2019 was lodged on 14 June 2019.

Advertising and notification

- 5.2 The development was advertised and notified on two (2) separate occasions.
- 5.3 The application was first advertised and notified, in accordance with Mid-Western Regional Development Control Plan 2013, from the 19 June 2019 to the 5 July 2019.
- 5.4 During the first public exhibition period, 349 submissions were received, plus one (1) petition objecting to the development with 780 signatures. A total of 335 objections and 14 submissions in support of the proposal were received.
- 5.5 Following lodgement of a new site plan and traffic assessment in October 2020, a second public exhibition period occurred from the 22 October 2020 to 5 November 2020. 28 individual submissions of objection were received during this period.
- 5.6 The submissions raised the following issues:

1. Site Suitability
a. Prime agricultural land (class 3) located in a fertile valley and should be preserved – it is not industrial land.
b. The justification for the proposal due primarily to proximity to existing electricity infrastructure and favourable lease arrangements however all other site options considered are owned by the same individual – were any other sites further away from the main entrance and exists to a tourist mecca even considered.
c. Sets a precedent for other solar farms to be built nearby.
d. Suggest the solar farm be considered for the southern end of Lots 3 & 4 DP 1069441.
e. Entrance to Mudgee – must not allow future planning to continue to make the same mistakes as the past – protect the rural gateway entrance to Mudgee.

f. The site is not suitable for development of a solar farm as: <ul style="list-style-type: none"> i. It is too close to the existing town centre and boundary which will limit the ability for future residential development; ii. It will have adverse visual impacts on adjoining property owners, the rural landscape and scenic town entrance corridor; iii. It is inconsistent with the local character of Mudgee and its heritage and wine destination features which are highly valued by the community and well recognized by visitors.
g. Plenty of land surrounding Windemere dam not being used and \$100,000 a year they will be paying can go back into the community.
h. No details are included in relation to battery storage - further information needs to be provided – solar only works during the daylight hours.
i. No discussion regarding further security measures such as CCTV or lighting provided. Such infrastructure should be identified and considered by all parties – no night lighting should be utilized on the site due to impacts on the environment, distraction to drivers, the night sky and adjoining properties.
j. The proposal is not thorough and looks to be a “copy and paste” from an alternate site – it does not provide enough details and has clear errors.
k. Capacity of the grid for this proposal needs to be provided prior to construction.
l. Undertake a true assessment of alternative site consideration.
m. Studies undertaken overseas document health problems for people and animals that live close to a solar farm.

2. Land Use Conflict

a. Located within 10km of the township of Mudgee – 594m from the urban area of Mudgee which is too close to the town.
b. It is a conflicting land use to existing land uses in the vicinity and creates a conflict that the ‘Right to Farm Policy’ seeks to avoid.
c. Mudgee is a historically significant town and well known for the great vineyards, wine and food.
d. Long term effects of solar farms on prime agricultural land has not been studied enough to be able to determine or quantify the long term detriment – “food not solar”.
e. On 10 August 2018 DPE approved an amendment to the LEP to facilitate residential development on parts of Lot 3 and 4 DP 1069441 and part of Lot 4 DP 1206488 Spring Flat, effectively moving the urban footprint of the town to Oaky Creek, less than 600m from the site.
f. The panels will impact the use of the site for agriculture in terms of pasture and grass cover due to lack of rainfall or sunlight and also disrupts soil microbiology which becomes hard and compacted.
g. Impacts on Agri-tourism / B&B operations on adjoining lands which is used as a secondary income stream to many rural land holders engaged in agricultural production.
h. Fencing and solar panels 300m to the adjoining residence.

3. Visual Impacts and screening

a. Will have significant visual impacts as: <ul style="list-style-type: none"> i. It is on the main gateway to Mudgee (from Sydney);

ii. It will be visible from any elevated position in Mudgee;
iii. It is in close proximity to scenic and public locations.
b. The visual impact assessment does not consider all impacted residents and visual points – a comprehensive visual impact analysis needs to be undertaken including Castlereagh Highway, Spring Flat Road, Rocky Waterhole Road residents.
c. The fencing proposed is intrusive and inconsistent with surrounding dwellings, land uses and the natural environment – it is industrial like the Wellington correctional centre.
d. The proposed landscaping is unclear and there is not a sufficient screen plan to reduce the impact on surrounding property – landscaping should be at least 3m to the height of the inverters.
e. Lack of clarity with regard to maintenance and upkeep.
f. Its location will unfavourably impact on the character of our town.
g. Detracts from the rural nature of our tourist hub.
h. The development will have a significant visual, environmental and economic impact on the cellar door and café adjoining the site – the land use is on a separate lot and unless it is consolidated, the impact is relevant.
i. Site photos used to identify the visual catchment has not left the highway and are quite misleading – Mudgee is derived from the Wiradjuri term Moothi meaning “Nest in the Hills”. If screening is identified as required, then this would reinforce that this is not the right location for the project.
j. Loss of privacy with construction activities and ongoing maintenance working within 6.9m of family farm.
k. Mature landscaping should be installed prior to construction activities and the shade cloth is inappropriate for the local environment. – a landscape maintenance plan should be developed.

4. Social and Economic Impacts including workforce accommodation
a. The negative social and economic impact it will have on neighbouring properties, tourism reliant business and the Mudgee region generally – loss of the ‘country feel’ sought by tourists.
b. The proposal does not provide any ongoing employment opportunities – no discussion on how the 50 construction jobs will be filled – transient workers are highly likely due to short timeframes during construction
c. Poor community engagement has taken place in preparation of the Development application that has significant impact on the broader community.
d. High risk of devaluation of properties.
e. The applicants have not kept the community informed during the design process.
f. The cumulative social, environmental, economic and visual impact must be considered for both the Gulgong and Mudgee Solar Farms.
g. The proposal is causing stress and other health issues amongst residents.
h. The applicant proposes no toilets onsite for staff (cleaning crew, gardeners, general maintenance) - refer to the regulations of Safe Work Australia for adequate facilities for workers – clean toilets must be provided for all workers while they are work.

i.	No compensation for the losses by affected parties – proponent should be advising on what support will be provided to landowners due to this loss – mortgage memorandums require compulsory disclosure of a significant event or change impacting a property; a financial institution may revalue the property and if a reduction in the value is identified, they may call-in outstanding debts and result in bankruptcy of local farmers.
j.	Unsure investment climate for potential property purchasers in our region – detracts new investors or tree changers to the region.
k.	A significant monetary bond needs to be held on behalf of the community to ensure that the screening is maintain in the intended state throughout the life of the project. A bond should also be taken for decommissioning costs if the company becomes insolvent and to avoid abandonment of the site.
l.	Increase in unskilled back packer style labour will be imported, as displayed and evident at the Beryl Solar Farm.
m.	Residents of Mudgee will see no reduction in bills from utility companies.
n.	Impact on accommodation and health services as a result of a short term temporary work force has not been considered - Negative social impacts from the transient workforce on the community.
o.	Applicant has not advised if the 2-3 personnel who will carry out maintenance will be local positions or travelling workers.
p.	The impact on properties public liability insurance as a result of the development – the application should include a clause that the developer covers any increased cost of public liability insurance for all impacted properties
q.	The economic impact on the Mudgee region - the 1% decrease in tourism would result in a reduction of output of \$1.6m, loss of 10 direct jobs and 2 indirect jobs – it is a significant risk to the region.
r.	Mental health concerns, anxiety and stress caused – landowners committed to the rural way of life and amenity – significantly impacted by the proposal.
s.	Solar and wind farms are owned by overseas investors and subsidized by Australians.

5. Compliance with Legislation and State and Local Government Requirements	
a.	The setbacks are not appropriate for a development of this size and scale. Low impact development such as dwellings are required to be 100m from the Highway – 500m should be considered.
b.	The proposed screening is not effective and should be installed at the mature height and a minimum of 2 rows.
c.	The development is not consistent with the MWR LEP objectives of RU4 Zoned land.
d.	The development is not consistent with the General Amendment to the MWR DCP 2019.
e.	The development fails to consider the Amendment to the MWR LEP 2012 for Visually Sensitive Land Map with a specific focus on southern gateway to Mudgee. The amended mapping was in the public domain since April 2019 Council meeting, the proponent was aware of the intensions of MWRC.

f.	Fails to adequately address the key issues established in the Large Scale Solar Energy Guidelines for State Significant Development published by the NSW Government in December 2018.
g.	The application fails to maintain development standards under the Environmental Planning and Assessment Act - the character, location, sitting, bulk, scale, shape, size, height, density, design or external appearance of a building or work.
h.	SEE fails to address the consistency of the proposal with the objects of the EP&A Act.
i.	SEE refers to SEPP (Rural Lands) 2008 which has been repealed.

6. Strategic Impacts	
a.	The development does not align with key strategic economic objectives or strategies of the Mid-Western region, including promoting and supporting tourism and is inconsistent with the Mudgee Region Destination Management Plan 2018, the Destination Country and Outback Destination Management Plan 2019, the NSW Visitor Economy Industry action Plan 2030, the NSW Food and Wine Tourism Strategy 2018-2022
b.	The development is not consistent with the Mid-Western Regional Comprehensive Land Use Strategy: <ul style="list-style-type: none"> i. Item 1.4.1 – Economic Prosperity; ii. Item 1.4.4 – Avoiding adhoc development, particularly in rural areas; iii. Item 2.1 – Rural land protection and support; iv. Item 2.2.2 – Protection and the important role of Town Gateways; v. Item 2.3.9 – Supporting ridgelines and rural views.
c.	The Central West and Orana Regional Plan does not identify the Mudgee region as suitable for large scale solar power and geothermal energy generation. Towns included were Warren Coonamble and Bogan.
d.	Action 9.3 of the CW&O Regional Plan - Promote best practice community engagement and maximize community benefits from all utility scale renewable energy projects was ignored.
e.	Direction 4 of the CW&O Regional Plan is to “promote and diversity regional tourism markets” – the proposal on the main approach into Mudgee is not in congruence with this strategy.

7. Glint and Glare Impacts	
a.	The Glare and Glint Study are unclear with no address details in the report and appears to be a desktop report, rather than actual physical study. Page 64 states that the Glare Gauge tool used to identify potential glare does not take into account topography. Homes are built at higher elevations to the site need to be assessed – a clearer report should be provided to the community so property owners can understand the proposed impacts to their home and lifestyle.
b.	The proposal poses a risk to aviation and road safety with glare and glint from solar panels (both the metal frames and the glazed surfaces). The Highway is elevated from the site drivers will be overlooking the panels in both directions.

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| c. Application should have included a reflectivity assessment. |
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8. Traffic Impacts

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| a. Further traffic impacts need to be assessed as data has been used from 2014 and significantly understates traffic movements – undertake a current traffic study including buses and ‘Friday’ traffic due to the increase in number of visitors to the Region via the Castlereagh Highway on Fridays. |
| b. The traffic interactions during construction of this project on a busy highway with 100km speed limits. |
| c. Use of other local roads for construction traffic off the Castlereagh Highway has not been considered. |
| d. Modify the roadway into System B – too close to neighbouring property. |

9. Cumulative Impacts of projects
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| a. Cumulative impact of many major projects and development in the region that will increase demand on social and physical resources of the region. Other proposed major renewable projects include Wollar Solar, and the Ungula Wind Farm in addition to the existing Beryl Solar and Crudine Ridge Wind Farm. |
| b. Cumulative impacts from solar within the Orana and Central west region must be included in the assessment – Mudgee is a drive destination for visitors, and visitors will be impacted by all proposals within the region and beyond. |

10. Decommissioning and rehabilitation

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| a. The DA does not clearly lay out decommissioning plan. |
| b. The condition of the soil during and after the solar farm is decommissioned. A rehabilitation and decommissioning plan should be submitted. |

11. Bushfire Impacts

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| a. Increase fire risk to neighbouring properties and surrounding area – consult with the RFS and develop an emergency response plan. |
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12. Environmental Impacts

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| a. Environmental degradation and habitat loss burnt by the heat from the solar mirrors and beam on concentrated sunlight. |
| b. Leaks of toxic materials and chemicals could be harmful to the environment. |
| c. Indigenous heritage – remaining artefacts or tree markings – a Cultural Heritage Assessment should be undertaken. |
| d. Solar farms give off carbon. |
| e. Increase weeds and use of herbicide to manage broadleaf weeds under the panels – A weed management plan needs to be provided. |
| f. Biodiversity in the SEE fails to provide a report by a qualified ecologist. |

g. Natural hazards, the SEE fails to adequately consider how the watercourse will be managed and rehabilitated to avoid impacts by the development, particularly during the construction stage.
h. Stormwater controls are stated will be inspected on a regular basis but with the site unmanned by unskilled workers how will these controls be monitored and timeframes for inspections need to be identified.
i. Nearest air quality monitoring station is located at Dubbo, 129km from the site. It is not a good enough mitigation measure to considering readings so far away from a construction site.
j. Potential landslides onto driveway of adjoining land due to existing erosion concerns and significant runoff onto adjoining property from the development site. Sediment and erosion control plan to be developed to reduce impacts.
k. A geotechnical assessment should be provided to assess the impacts of the piles being driven 3.5m and the impacts on surrounding areas - the application fails to address clause 6.3 Earthworks of the LEP.
l. Removal of native paddock trees on the site.
m. Clause 5.10 Heritage impacts on 'Old Wallinga' homestead – item 401 under the LEP 2012 has not been assessed – Lot 1 DP 578659
n. Newly designed coal stations are in fact more efficient, can produce power 24/7 and are quiet low in carbon emissions.

13. Groundwater and Water Use Impacts

a. The growth rates of the vegetation proposed will be dependent on regular attention and watering / maintenance – based on an estimated 700 screening shrubs, minimum of 10lt of water per plant per month in the first 12 months, the water required for this would be 84,000 litres in the first year. The application does not address the source of water.
b. The water to be used to attend to washing the panels 4 times per year would equate to 124,000litres of water – where is the water supply coming from – Beryl Solar used significant tankers for dust suppression alone.
c. Earthwork impacts on bores used by the adjoining neighbours as a result of the piles driven 1.2m-3.5m into the ground – the site is mapped as groundwater vulnerable – the report provided was a desktop assessment there are 3 bores within 200m of the site licensed for irrigation and are at depths of 30m –the application does not address clause 6.4 Groundwater Vulnerability of the LEP.

14. Acoustic Impacts

a. Noise impacts on the dwelling 97m from the proposal. Constant 30 decibel intrusion on their life cannot be overlooked. The desktop assessment needs to consider the greater noise impacts during construction on homes due to the sound travelling and wind direction and the low humming sound during operation from inverters or other equipment.
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15. Public Interest

a. The application is not within the public interest.

16. Waste Management

- a. A waste management plan should be developed to ensure that construction and demolition waste does not increase landfill for the local region.

Consultation

5.7 Consultations were held with the following internal and external departments with comments and conditions provided for assessment:

- Mid-Western Regional Council Development Engineering Department;
- Mid-Western Regional Council Health and Building Department;
- Roads and Maritime Services (now Transport for NSW);
- Essential Energy;
- Transgrid;
- Department of Primary Industries;
- NSW Rural Fire Service.

Date of determination

5.8 The development application was determined by refusal on the 21 December 2020 by the Western Regional Planning Panel.

Post determination

5.9 Following the lodgement of the appeal, on 4 February 2022, the Court granted leave to the applicant to rely on an amended development application. The amendments to the application included, in summary:

- 5.9.1 relocation of some solar panels from the east of System B to the southern part of System A;
- 5.9.2 increased setback and screen planting at the eastern boundary, from 6m to 100m (including 50m of screen planting);
- 5.9.3 increase in setback and planting at the southern extent of the site from 6m to between 50m-250m;
- 5.9.4 increased setback and screen planting at the western boundary from 6m to 10m;
- 5.9.5 relocation of the screen planting at the northern boundary away from the highway and towards the solar array, as well as an increase in the area of screen planting from 6m to 10m.

- 5.10 The amended application was placed on public exhibition from 11 February 2022 to 25 February 2022, in accordance with the *Mid-Western Regional Community Participation Plan*.
- 5.11 During the public exhibition period, a total of 41 submissions of objection were received.
- 5.12 The submissions raised the following key issues:
- a) Site Suitability
 - b) Land use conflicts
 - c) Impacts on Prime Agricultural Land / State Significant Agricultural Land
 - d) Inconsistent with RU4 Zone Objectives and no intensive plant agriculture proposed
 - e) Visual and Character Impacts
 - f) Inadequate and ineffective landscape screening
 - g) Cumulative impacts of solar farms
 - h) Traffic Impacts
 - i) Strategic Impacts
 - j) Tourism Impacts
 - k) Poor community engagement by Applicant
 - l) Non-compliance with DCP and LEP including setbacks
 - m) Glint and Glare
 - n) Bushfire Risks / fire risks / loss of life and property
 - o) Environmental Impacts including greenhouse gas emissions
 - p) Dust Impacts
 - q) Waste Management / hazards from toxic waste materials
 - r) Noise impacts
 - s) Lack of proposed maintenance during operation
 - t) Social and economic impacts / devaluation of property values / mental health impacts
 - u) Amenity impacts
 - v) Weed and vegetation management / maintenance
 - w) Groundwater and use of water impacts
 - x) Contamination of soil / rehabilitation cannot return land back to former state

- y) Decommissioning impacts
- z) Lack of ongoing employment for the region
- aa) No consideration to intergenerational equity

Proceedings

5.13 These proceedings were commenced on 21 December 2021.

5.14 On 4 February 2022, the Applicant was granted leave to rely on amended DA plans, which made the following amendments to the application:

- a) relocation of solar panels from System B to System A,
- b) increased setback and screen planting at the eastern, southern and western boundaries,
- c) relocation of the screen planting at the northern boundary, away from the highway and towards the solar array, as well as increasing the area of screen planting.

5.15 On 14 July 2022, the Applicant was granted leave to rely upon further amended plans.

~~5.13~~5.16 On 5 August 2022, the Applicant filed a complete amended application, comprised of:

- a) Amended Development Application Plans
- b) Amended Landscape Concept Plans
- c) Water Management Plan
- d) Workforce Management Plan
- e) Amended Glare Assessment Report
- f) Vegetation Management Plan
- g) Decommissioning Plan
- h) Noise Assessment
- i) Groundwater Assessment Report
- j) Amended Visual Impact Assessment Report

~~5.14~~5.17 The further amendments made include:

- a) decrease in the extent of the proposed screen planting,

- b) the addition of mounding and landscaping to a height of three metres across the site,
- c) changes to the density and species of the plantings,
- d) removal of the proposed stock proof fence around the whole site, and replacement with two sections of stock proof fence around the 10 metre wide native planting strips to the southwest and northwest of System A.
- ~~a)e)~~ amendment to the course of the road, to travel southwest of the proposed mounding,
- f) removal of the proposed laydown area and car parks near System A,
- g) amendments to the location and size of the proposed laydown area and car parks near System B.

5.18 The amended application was re-notified to surrounding properties from 8 August 2022 to 22 August 2022.

5.19 14 submissions were received in response to the re-notification period, 13 objections and one submission in support of the DA.

5.20 The objections raised the following issues:

5.20.1 impacts on visual amenity;

5.20.2 impact on neighbouring property valuations;

5.20.3 impact on neighbours' mental health;

5.20.4 noise/dust generated during construction;

5.20.5 potential glare impacts;

5.20.6 loss of valuable agricultural land;

5.20.7 restricting potential agricultural use;

5.20.8 traffic concerns;

5.20.9 conflicts with zoning objectives;

5.20.10 scale of development;

5.20.11 that the facility is not large enough to sufficiently contribute to renewable energy in NSW;

5.20.12 fire risk; and

~~5.14.1~~ 5.20.13 that the updated DA does not include material to address outstanding concerns.

Amendment of T&I SEPP in December 2022

- ~~5.15~~5.21 On 16 December 2022, whilst judgment in these proceedings was reserved, the *Mid-Western Regional Local Environmental Plan (Transport and Infrastructure) (Map Amendment No 1)* (**'Map Amendment'**) was published on the NSW Legislation website and took effect.
- ~~5.16~~5.22 The effect of the Map Amendment is that Mudgee, and the surrounding land shown on the relevant map, is now a '*regional city*' for the purposes of section 2.42 of the TI SEPP.
- ~~5.17~~5.23 The Map Amendment contained no savings provision and, accordingly, 2.42 of the TI SEPP applies to the DA.
- ~~5.18~~5.24 Section 2.42 of the TI SEPP sets out matters for consideration before development consent can be granted for development the purposes of electricity generating works using a solar energy source, where that development is (relevantly in this case) regionally significant development.
- ~~5.19~~5.25 Section 2.42(2) sets out additional matters about which the consent authority must be satisfied before it can grant consent, and section 2.42(3) sets out additional matters which the consent authority must consider in determining whether to grant consent.

PART B - CONTENTIONS

1. Respondent's contentions

The Council contends that the following facts, matters and circumstances require or should cause the Court, in exercising the functions of the consent authority, to refuse the application or to impose certain conditions if consent is granted.

Impact on visually sensitive land

- 1.1 The development application must be refused as the Court cannot be satisfied that the proposal will complement the visual setting forming the backdrop to Mudgee, respond sympathetically to the landform of the site and minimise visual intrusion as required by clause 6.10 of the MWRLEP.

Particulars

- (a) Clause 6.10 '*Visually sensitive land near Mudgee*' of the MWRLEP 2012 relates to land located on the urban fringe of the town of Mudgee. Clause 6.10 states:

6.10 Visually sensitive land near Mudgee

- (1) *The objective of this clause is to protect the visually and environmentally significant land on the urban fringe of the town of Mudgee."*
 - (2) *This clause applies to land shown as "Visually Sensitive Land" on the Visually Sensitive Land Map.*
 - (3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—*
 - (a) *will complement the visual setting forming the backdrop to Mudgee, and*
 - (b) *will be designed, set back and sited to respond sympathetically to the landform of the site on which the development is proposed to be carried out and will minimise visual intrusion.*
- (b) The site is identified as 'Visually Sensitive Land' pursuant to the Visually Sensitive Land Map referred to in clause 6.10(2) of the MWRLEP 2012.
- (c) The site forms part of the visual backdrop to Mudgee, as the character of the landscape is visually appreciated from the southeast approach to Mudgee via the Castlereagh Highway. The Castlereagh Highway is identified as a 'main entrance corridor' to Mudgee in the "Mudgee Town Structure Plan" (Figure 3-1, Page 42) of the *Mid-Western Regional Comprehensive Land Use Strategy 2017* and in the *Mudgee Town*

Structure Plan (Figure 4, Page 13). The Land Use Strategy seeks to protect the main entrance corridor to the town centre.

- (d) Due to the length and height of the solar panel arrays and security fencing, as well as the now proposed earthwork mounds, the development will present as a large contiguous mass. The proposed development footprint occupies a significant proportion of the site (26 hectares or 40.75%). The overall scale of the development is therefore excessive and incongruous with the surrounding landscape, which comprises low scale individual buildings, disconnected built form, separated by expanses of rural, open land.
- (e) The development does not provide adequate separation and visual relief to residential dwellings on adjoining lots and to the main entrance corridor to Mudgee. The design, setbacks and siting of the development does not sympathetically respond to the landform of the site and surrounding rural and landscape character.
- (f) The proposed solar arrays do not complement the surrounding visual setting forming the backdrop to Mudgee.
- (g) Due to the visibility of the site from various visually sensitive locations including the main entrance corridor to Mudgee and residential dwellings, the development will be visually prominent and adversely impact the scenic qualities of the surrounding rural setting.
- (h) The visual intrusion to the landscape is not minimised by the development and the development relies principally on landscaping (in the form of earthwork mounds) and plantings to minimise its visual impacts.
- ~~(h)~~(i) The proposed mounding is of a uniform height and alignment, which is not in keeping with the surrounding undulating landforms including the existing landform of the site. The mounds are likely to read as a manmade barrier rather than being sympathetic to the site. The mounds therefore do not achieve the mandatory requirements of cl. 6.10(3)(a) and (b) in the MWRLEP.
- ~~(i)~~(i) Accordingly, the Court must refuse the development application as it could not be satisfied that the development:
 - i. complements the visual setting forming the backdrop to Mudgee, and
 - ii. has been designed, set back and sited to respond sympathetically to the landform of the site, or to minimise visual intrusion.

Visual Impacts

- 1.2 Further, or in the alternative to contention 1.1, the development application should be refused as the proposed development results in an unreasonable visual impact on the scenic and landscape qualities of the locality and the entry to Mudgee, when viewed from both public and private vantage points. Due to the visibility of the site from the public domain, the number of residential properties visually impacted and the extent of these impacts, the impacts of the proposed development are unreasonable and unacceptable.

Particulars

- (a) The Respondent repeats particulars (c)-(h) in contention 1.1.
- (b) The development will be viewed from both public and private vantage spots and does not result in minimal visual intrusion given the proposed form and massing.
- (c) The development application relies on vegetation, mounding and plantings to mitigate the visual impacts of the proposed development. A mix of native trees and shrub plantings along sections of the south-west and north-west all site boundaries, and mounding with native tree planting to the east and south of the solar arrays and existing vegetation to the north-west ~~native bushland revegetation concentrated within southern portion of the site~~ is proposed to screen the development as identified in Figure 2, Landscape Plan, dated ~~December~~ July 20224.
- (d) The use of vegetation to screen the visual impacts of the development is not acceptable generally, and the particular planting proposed in this case is not acceptable because:
 - i. The effectiveness of the proposed mitigation measures cannot be determined as the likely timeframe required for the proposed species to reach mature heights has not been identified. Given the tree species proposed, the screen plantings are likely to require several years to reach mature tree height and are considered unacceptable on this basis.
 - ii. A number of tree species are noted as short lived 7-12 years (refer Figure 3: Native Screen Planting) thereby not providing a continual landscape screen for the life of the project.

iii. In addition to the on-site screen planting, the development relies upon existing vegetation located on adjoining and other surrounding properties to mitigate visual impacts. Such measures are not guaranteed in perpetuity of the development and are therefore unacceptable as mitigation measures to the visual impact arising from this development.

(e) The proposed mounding is of a uniform height and alignment, which is not in keeping with the surrounding undulating landforms, including the existing landform of the site. The mounds are likely to read as a manmade barrier rather than being sympathetic to the site. The mounds will therefore have an adverse and unacceptable visual impact on the scenic and landscape qualities of the locality and the entry to Mudgee, when viewed from both public and private vantage points.

~~(e)~~(f) Pursuant to s 2.42(2)(b) of the TI SEPP, the DA must be refused because the Court could not be satisfied that DA is unlikely to have a significant adverse impact on the scenic quality and landscape character of land mapped as 'regional city' on the Map Amendment, for the reasons set out at 1.1(c)-(h) and 1.2(b)-(e). In particular, the DA will have adverse impacts on the landscape character and scenic quality of the Site and the land in the vicinity of the Site. This includes significant adverse impacts on the landscape character of the regional city as perceived from the residential properties adjoining the Site, and residences in the locality of the Site.

~~(f)~~(g) Pursuant to s 2.42(3) of the TI SEPP, the DA should be refused because the mitigation measures proposed in the DA – being large earthwork mounds of uniform height and alignment, as well as significant bulk and scale – will themselves have significant adverse impacts on the scenic quality and landscape character of the regional city.

Glare impacts

1.3 ~~The development application should be refused as the glare impacts of the development have not been properly assessed. The Glare Report that has been provided is an inadequate and flawed assessment of the potential glare impacts of the development.~~ Conditions of consent will be proposed by the Respondent to manage the glint and glare impacts of the development and to ensure that the actual impacts of the development reflect those modelled by the Applicant in the Amended Glare Assessment Report.

Particulars

- (a) ~~The applicant has provided a glare assessment at section 7 of the Landscape and Visual Impact Assessment dated March 2022 (**Glare Report**). The assessment uses the Solar Glare Hazard Assessment Tool ('**SGHAT**'), a software suite which is currently the industry standard software for such assessment in Australia.~~
- (b) ~~There is a serious discrepancy in the Glare Report, between the SGHAT output results found in Attachment G and the purportedly same results used in the key assessment table (Table 7-3). By way of example only and without limitation:~~
- ~~i. in Attachment G, dwelling "Op-3" receives 1,454 minutes of "Yellow" glare from PV Array System A, yet in Table 7-3, the same dwelling receives 1,117 minutes of "Yellow" glare from PV Array System A;~~
 - ~~ii. in Attachment G, dwelling "Op-7" receives 1,023 minutes of "Yellow" glare from PV Array System B, yet in Table 7-3, the same dwelling receives 530 minutes of "Yellow" glare from PV Array System B.~~
- ~~This discrepancy appears to be repeated for the results of every single dwelling assessed in the Glare Report. With no correlation between the key output numbers in these two parts of the Glare Report, a proper review of the SGHAT results is not possible.~~
- (c) ~~The Glare Report does not include an assessment of potential glint and glare impacts on surrounding aviation operations (including helicopter operations), nor an assessment of potential motorist disability glare on surrounding road carriageways, especially the Castlereagh Highway.~~
- (d) ~~In relation to the assessment of residential discomfort glare, there is a discrepancy between the 42 dwellings identified within the "Visual Catchment" area used in the Glare Report (refer Figure 4-3) and the 40 observer points (representing dwellings) referenced in the SGHAT glare analysis. In the absence of an explanation as to how these two dwelling groups relate to each other the Glare Report cannot be assessed.~~
- (e) ~~The Glare Report adopts a cut-off distance field of approximately 1.5 km from the site in each direction to define surrounding dwellings of concern. The *Draft Revised Guidelines for Large Scale Solar Energy Guideline*~~

~~(Revised Guideline) published by the Department of Planning and Environment (DPE) in December 2021 recommend a field of analysis extending 4 km from the site. The Glare Report must be updated to include an analysis of impacts up to 4km from the site, in accordance with the Revised Guideline and must include not only dwellings but also key viewpoints from within the public domain.~~

- ~~(f) The Glare Report adopts a solar panel pivot height of 1.78 m for the SGHAT computations. This is very close to the maximum height that the panels would be located, which is stated in the Glare Report to be in the range 1.3 m to 1.8 m. Placing the panels at the maximum height is not a conservative assumption, as a lowering of the panel height above ground would make the panels more visible to surrounding receivers. The SGHAT analysis must be re-run at either the average height range of 1.55 m or, at two heights (being the minimum and maximum possible values of 1.3 m and 1.8 m) to capture the worst case scenario.~~
- ~~(g) In relation to motorist disability glare, the industry standard parameter used by Australian public authorities to assess the acceptability or otherwise of adverse reflections onto surrounding roadways is the Threshold Increment (TI) Value (defined in AS/NZS 4282:2019 and CIE 140:2019). The Glare Report must be revised to consider a TI Value analysis for the assessment of motorist disability glare.~~
- ~~(h) The Glare Report's proposed "acceptance" criteria for glare are detailed in Table 7-1 of the report. The criteria use the incidence of SGHAT "Yellow" glare and occurrence in terms of minutes per day. The definitions contain grammatical and logic errors which should be corrected:

 - ~~i. in the section relating to "Low glare", the words "and/or" should be replaced with "or";~~
 - ~~ii. in the section relating to Moderate, High glare, the words "30 minutes or less" should be replaced with "30 minutes".~~~~
- ~~(i) The Glare Report's acceptance criteria do not align with the Revised Guideline's recommended criteria for residential discomfort glare. The Glare Report must be amended to provide further information justifying the proposed acceptance criteria (refer Table 7-1), including the reasons for excluding the occurrence of glare in terms of hours per year and the relevance of SGHAT "Yellow" glare (originally developed for pilot after-image incidence) to residential discomfort glare. In the absence of such~~

~~information the criteria in the Revised Guideline should be adopted for residential discomfort glare and the above mentioned TI Value adopted for motorist disability glare. Aviation-related glare criteria are already embedded within the SGHAT software tool.~~

~~(j) — Once the matters raised in particulars (b)-(i) have been resolved, the SGHAT analysis must be undertaken once again, and an amended Glare Report provided to the Council for further assessment. In the absence of such a report the glare impacts of the development cannot be assessed.~~

Site Suitability

- 1.4 The development application should be refused because the site comprises high capability soils, is located within a highly visible and visually sensitive rural landscape adjoining the main entrance corridor to Mudgee, and is therefore unsuitable to accommodate the proposed development.

Particulars

- (a) Due to the flat topography of the land within a low-lying valley, and its location adjacent to the main entrance corridor to Mudgee, the site and the scenic qualities of the surrounding rural landscape are highly visible to visitors and residences within the southeast urban fringe area of the town.
- (b) The site is identified as 'Visually Sensitive Land' pursuant to the Visually Sensitive Land Map referred to in clause 6.10(2) of the MWRLEP 2012 and the development results in an unreasonable visual intrusion to the surrounding visually sensitive rural landscape for the reasons identified in Contention 1.
- (c) The site is identified as being located on land with Land and Soil Capability 'Class 3 – High Capability land' pursuant to the NSW (Office of Environment and Heritage) *Land and Soil Compatibility Scheme 2012*. This comprises important agricultural land. The proposed use would alienate the site for productive agricultural use.
- (d) The development is inconsistent with the objectives for the *RU4 Primary Production* zone, in which the site is located, which are:

"Zone RU4 Primary Production Small Lots

1 Objectives of zone

- *To enable sustainable primary industry and other compatible land uses.*
- *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To ensure that land is available for intensive plant agriculture.*
- *To encourage diversity and promote employment opportunities related to primary industry enterprises, particularly those that require smaller holdings or are more intensive in nature."*

- (e) The proposed development fails to comply with a number of controls under clause 6.5 *Solar Energy Farms* of the MWRCDGP in that:
- i. the proposal is not sited to minimise impact on, or restrictions to, grazing and farming land;
 - ii. the proposal does not demonstrate that it will not impact on the scenic value and character of the locality;
 - iii. the proximity of the development to dwelling houses does not meet setback requirements (to the dwelling at the western boundary);
 - iv. the proposed car parking and laydown area encroach within setback requirements as they are within 500m of the Castlereagh Highway.
- (f) The site is located within the vicinity of two urban release areas situated to the southeast of Mudgee identified within the *Mudgee and Gulgong Urban Release Strategy 2014*, including land that has been rezoned to R5 Large Lot Residential pursuant to MWRLEP 2012 and therefore does not minimise potential land-use conflicts.
- (g) The revised study corridor considered for potential future renewable energy developments as part of the *Central West-Orana Renewable Energy Zone ('REZ')*, as identified within the NSW Government *Central-West Orana REZ 'Project Overview' 2022*, does not include this land and is further removed from Mudgee and the surrounding visually sensitive urban fringe area.
- (h) The development is inconsistent with the directions and priorities of the following strategic documents:

- i. the *Comprehensive Land Use Strategy 2017*, as a guiding principle of the strategy is to protect areas of high scenic and/or conservation value and is located in proximity to potential urban release areas,
 - ii. the *Mid-Western Regional Local Strategic Planning Statement 2040*, as the proposal will not maintain and promote the aesthetic appeal of the towns and villages within the Region, (Priority 3). Renewable energy projects are to avoid impacts on scenic and rural landscape and preserve valuable agricultural land (Priority 7 Land use Action (e)),
 - iii. the *Central West and Orana Regional Plan 2036* – Direction 1 requires the protection of the Regions diversity and productive agricultural land. New renewable developments require a strategic approach – the site is not a suitable location (Direction 9), and
 - iv. *Mudgee and Gulgong Urban Release Strategy*, in that it undermines an orderly and coordinated approach to residential growth and does not protect high value agricultural land.
- (i) The excessive scale of the proposed solar arrays, located on a site that is within a low-lying, visually sensitive rural landscape setting adjoining the main entrance corridor to Mudgee, and inconsistencies with the relevant strategic documents, demonstrates that the development as proposed is not suitable for the site.
- (j) Pursuant to s 2.42(2)(a) of the TI SEPP, the DA must be refused because the Court could not be satisfied that the development is located so as to avoid significant conflict with the existing approved residential and commercial uses of the land surrounding the development, including the use of some of those properties as farm stay accommodation. In particular, the development would result in a significant conflict with:
- i. the residential dwelling at 312 Castlereagh Highway (Rusten);
 - ii. the residential dwelling and farm stay accommodation at 344 Castlereagh Highway (Azar);
 - iii. the residential dwelling at 446 Rocky Waterhole Road, Burrundulla (Stewart); and

- iv. [the commercial use of 345 Spring Flat Road as a wedding venue \(Goble and Reece property\).](#)

Essential Services – Water Supply

- 1.5 The development application must be refused as the Court cannot be satisfied that a supply of water will be available, or that adequate arrangements have been made to make it available when required.

Particulars

- (a) Clause 6.9 of the MWRLEP 2012 provides that development consent must not be granted to development unless the consent authority is satisfied that any of the specified services, including the supply of water, that are essential for the proposed development, are available or that adequate arrangements have been made to make them available when required.
- (b) The *Statement of Environmental Effects* prepared by Zenith Town Planning (Page 10) states the following in relation to the proposed construction period:

“During construction there is expected to be 50 personnel on site working from 7.00am – 4.00pm Monday to Friday. The construction is expected to take six months.”

- (c) [The Landscape and Visual Impact Assessment dated ~~March~~ July 2022 at Part 4 identifies an establishment period of 3 months, followed by a monitoring period of a minimum of 21 months, which is to include ongoing watering.](#)

- (d) [The proposed landscape screening is presented as an integral component of the mitigation of visual impacts, however security of access to water supply has not been demonstrated.](#)

- (e) [The water management plan confirms that Lot 6 DP1069441 currently has no reticulated water supply. The proposal is to utilise an existing licence to take water from the Cudgegong River.](#)

- (f) [The proponent should provide details of:](#)

- i. [The current Statement of Approval from Water NSW, including the terms and restrictions on the use of the water allocation;](#)

- ii. Quantify what are the “other water use needs from that supply source” are which need to be accounted for; and
- i. ~~Confirmation from the water regulator that the existing license allocations are able to be shared. (Page 1) states the following in relation to the establishment of the proposed screen plantings:~~
 - ~~“The plan includes a 12-month establishment and 24 months monitoring period to ensure establishment of the proposed planting areas”...~~
 - ~~“The plantings would be subject to ongoing maintenance as part of the operations of the solar farm.”~~
 - ~~Based on the extent of construction and landscape maintenance works associated with the development, the proposed portable water storage facilities (tanks) are inadequate.~~
- ~~(e)~~(g) The application also fails to identify whether there is a need (or the extent of such need) for the provision of on-site worker amenities. If on-site worker amenities are proposed, the application fails to address and consider effluent disposal methods for the establishment or maintenance periods of the proposed use.

Earthworks

- 1.6 The development application should be refused as it proposes extensive earthworks on the Site and the consent authority could not be satisfied that those earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, or features of the surrounding land.

Particulars

- (a) The application proposes the establishment of a series of landscaped mounds to provide visual screening. The mounds are to a height of 3m and 30m wide with a total length of mounds proposed of approximately 1,000m. This equates to a volume of material required to create the mounds of approximately 45,000m³ - 50,000m³.
- (b) Development consent is required for the proposed earthworks on the Site under clause 6.3(2) of MWRLEP 2012.
- (c) The Applicant has not provided civil plans, or a cut/fill plan, to support the establishment of the proposed mounds.

- (d) The application does not specify whether the mounds will be established via cut and fill on the site or the importation of fill.
- (e) If fill is to be imported, there is no indication of the source of the material or an assessment of the vehicle impacts of importing these volumes of materials
- (f) The absence of any civil plans also means that it has not been demonstrated if over land flow paths are affected which may divert stormwater run-off onto other properties or if erosion and sedimentation can be appropriately managed.
- (g) In those circumstances there is insufficient information on which to assess the proposed earthworks and to allow a proper consideration of the mandatory considerations in cl. 6.3(3)(a)-(h) of the MWRLEP.

Vegetation

- 1.7 The application should be refused as the proposal relies, at least in part, on the establishment of vegetation to screen the development and there is insufficient information to demonstrate how the vegetated barrier will be established.

Particulars

- (a) The Respondent repeats the remaining particulars at contention 2.2 below.

Public Interest

- ~~4.6~~1.8 The development application should be refused because it is not in the public interest.

Particulars

- (a) The development application should be refused having regard to the broader public interest of protecting the visually sensitive land located within the urban fringe area of Mudgee and the landscape character of the area surrounding the main entrance corridor to the town.
- (b) The proposed development will establish an undesirable precedent for future development in the urban fringe area of Mudgee.

2. Insufficient information

Groundwater Assessment

2.1 The applicant has not provided sufficient information to allow the potential groundwater impacts of the proposed earthworks to be properly assessed.

Particulars

- (a) Pursuant to the Groundwater Vulnerability Map referred to in clause 6.4(2) of the MWRLEP 2012, the site is identified as being affected by groundwater vulnerability.
- (b) The proposed construction methods associated with the solar panel mounting system includes the installation of piles that will be driven into the ground at a depth of up to 3.5 metres, and the construction of mounds.
- ~~(c) The application does not provide a groundwater assessment which is based on bore hole testing conducted on the site.~~
- (c) The Groundwater Assessment dated July 2022 does not assess the impacts that the proposed mounds will have upon the drainage flow patterns over the Site.

~~Landscape and Visual Impact Assessment~~

~~2.2 The applicant has not provided sufficient information to allow the potential landscape character impacts and view impacts to be properly assessed.~~

~~Particulars~~

- ~~(a) The Landscape and Visual Impact Assessment dated March 2022 is deficient for the following reasons:~~
 - ~~1. Photographs taken from within the surrounding private properties (**Observer Points**) and associated dwellings and/or buildings, to accurately demonstrate views to the site from these properties, have not been provided.~~
 - ~~2. Photomontages for Viewpoints 2, 3, 4 and 5 have not been provided. This accounts for 4 out of the 6 Viewpoints located on Castlereagh Highway from which views to the site are available, including those~~

~~that are unobstructed as illustrated in Viewpoint 5 (Figure 5-7, Page 17).~~

- ~~3. The view impact assessment of private views relies on images contained in Section 6.3 (Figure 6-4 to 6-10, Page 28, 29, 31, 32, 33 and 34) which are taken from within the development site 'towards' the potential affected properties and photographs taken 'near' the properties. The exact location of where these photographs were taken has not been identified.~~
- ~~4. Photographs taken from within the local heritage item (Wallinga Homestead, Item 1401) located on the lot immediately adjoining the site to the east site have not been provided to accurately demonstrate view impacts to the item.~~
- ~~5. The description of views from dwelling houses within the surrounding private properties, identified as Observer Points, are based on assumptions made regarding the orientation of the dwellings (i.e. location of front dwelling entrance and rear yard).~~
- ~~6. Potential view impacts to private properties and areas within the public domain located on the upper slopes of the surrounding hills and mountains to the south, east, west and north of the site (above AHD 503.66) have not been identified or assessed.~~

Decommissioning Plan

- ~~2.3 A decommissioning and site restoration plan has not been provided, as required under cl. 6.5 of the MWRCDP. A decommissioning and site restoration plan should be provided so that the impacts of the development can be properly assessed, whether or not the DCP requires one to be provided.~~

Vegetation

- 2.2 ~~The following information regarding the proposed revegetation and screen planting is required~~[Vegetation Management Plan](#):

- ~~2.3.1~~2.2.1 [provides no details as to the proposed method for the watering of vegetation and as outlined in contention 1.5 the security of access to a water supply.](#)

~~2.3.2 A Vegetation Management Plan demonstrating how vegetation will be maintained over the life of the project.~~

~~2.3.3~~ 2.2.2 ~~Details provides no details~~ of proposed mitigation measures to be installed during construction and operation, and until vegetation reaches maturity where mounding is not proposed ~~has not been provided.~~

~~2.4~~ 2.3 The Applicant has provided concept plans only. Detailed vegetation plans, including a detailed analysis of the effectiveness of the proposed landscape screening, or a clear vegetation management plan to ensure the ongoing viability and effectiveness of the landscape buffers and scattered plantings is required.

~~2.5~~ 2.4 The vegetation plan should make provision for screen planting to be installed into soil that has been tested and ameliorated to Australian Standard.

~~2.6 The vegetation plan should demonstrate that planting areas are to be ripped to a depth of 500mm then cultivated to a depth of 150mm prior to planting. Screen planting areas are to be mulched with a well composted forest blend/straw mulch to a depth of 75mm.~~

~~2.7~~ 2.5 The vegetation plan should set out procedures for the management of screen planting to be managed for the life of the project to control weeds and for fuel management to reduce fire hazard.

~~2.8~~ 2.6 A full implementation specification, performance specification and maintenance programme should be provided for all proposed screen planting and scattered tree planting on mounding and in pasture.

Workforce management plan

~~2.9 A Workforce Management Plan (WMP) must be provided, which includes consideration of workforce accommodation requirements for the construction and operation phases of the development.~~

~~2.10 The WMP must:~~

~~2.10.1 propose measures to ensure there is sufficient accommodation for the workforce associated with the development;~~

~~2.10.2 consider the cumulative impacts associated with other infrastructure projects in the area, including other solar farms;~~

~~2.10.3 investigate options for prioritising the employment of local workers for the construction of the development where feasible; and~~

~~include a program to monitor and review the WMP for effectiveness over the life of the project.~~

~~Amended acoustic report~~

~~The Noise Assessment prepared by Muller Acoustic Consulting dated 22 May 2019 is to be amended to take into account the amended plans.~~

Proposed Earthworks

2.7 The Respondent repeats the particulars at contention 1.6 above.

Proposed Bushfire Water Supply

2.8 The application proposes the provision of a 20,000 litre standing water supply for bushfire fighting purposes.

~~2.14~~2.9 It is not clear on what basis this is deemed to be an appropriate storage volume for the proposed use, where the tank would be provided and where, relative to contention 1.5, the water supply would be secured.

Contentions that can be resolved by conditions of consent

Contention 1.3 – glare impacts

The Respondent would propose the following condition of consent to resolve the contention:

In order to minimise the potential for any glare or reflection causing annoyance or adverse impacts on any sensitive receivers, a minimum rest angle of 3 degrees for arrays facing to the west, and 3.5 degrees for arrays facing to the east (under solar panel back-tracking mode) must be implemented.

SIGNATURES**Authorised officer of the Respondent**

Signature of authorised officer of
the Respondent



Name in full

Bradley Cam

Capacity

General Manager

Date of signature

20 February 2023