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## SECTION 4.55 – MODIFICATION OF CONSENT

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“Eugowra Solar Farm” 255 Casuarina Drive, Eugowra NSW 2806  
Lot 85 in Deposited Plan 870963

April 2025

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ABN 63 061 919 003

DOCUMENT CONTROL

Project Name	Eugowra Solar Farm	
Proponent	Cabonne Shire Council	
Project Reference	21-490	
Report Number	21-490 Section 4.55 Amendment application	
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Revision History			
Version Number	Date	Authority	Details
0	April 2025	Peter Taylor	Issued to Client
1			

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## 1 Introduction

The Applicant has engaged SMK Consultants to prepare a Section 4.55 Amendment Application for DA2023/0077. The consent was issued by Council to construction and operation of a 4 Megawatt Solar Farm at 255 Casuarina Drive near Eugowra.

The purpose of this application is to modify the layout of the solar farm.

The Modification application is requested under Part 4.55 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The appropriate determining authority is Cabonne Shire Council. This report includes an assessment of the proposed changes to the layout of the solar farm.

### 1.1 Authors

The persons involved in the preparation of this Amendment Application and its appendices are:

- **Peter Taylor** BSc MEIANZ CIAg LAA

### 1.2 Background

The Eugowra Solar Farm was approved by Cabonne Shire Council in March 2023. The approval enabled the development of a 4 MW Solar Farm at 255 Casuarina Drive, located south of Eugowra.

The project did not proceed on the basis that further investigations were undertaken. As a result of these further investigations, the layout of the solar farm has been slightly altered.

## 2 Development Modification

The approved plan of works for the solar farm is presented in figure 1. This shows the whole 4 MW solar farm on Lot 85 DP870963. This Lot is occupied by the Eugowra Sewage Treatment Ponds and a paddock that is used for cultivation and grazing.

The revised layout of the solar farm is presented in figure 2.

The intention of this modification is to move the solar farm approximately 100m south of the footprint of the approved solar farm location. This takes the solar farm further upslope of the original site. The advantages of this slightly higher site is to reduce the potential for flood inundation.

Moving the solar farm to the south also removes the development from existing infrastructure, mainly the buried rising main delivering sewage to the sewage pond system.

Figure 2 shows the whole footprint of the revised location. The plan shows stage 1 of the development which involves construction of approximately half of the solar panels. The resulting power output from Stage 1 is 2.18 MW DC.

Stage 2 is to be developed at a later stage once Stage 1 is completed and delivering electricity to the grid.



**Figure 1: 2023 Eugowra Solar Farm Site Plan.**

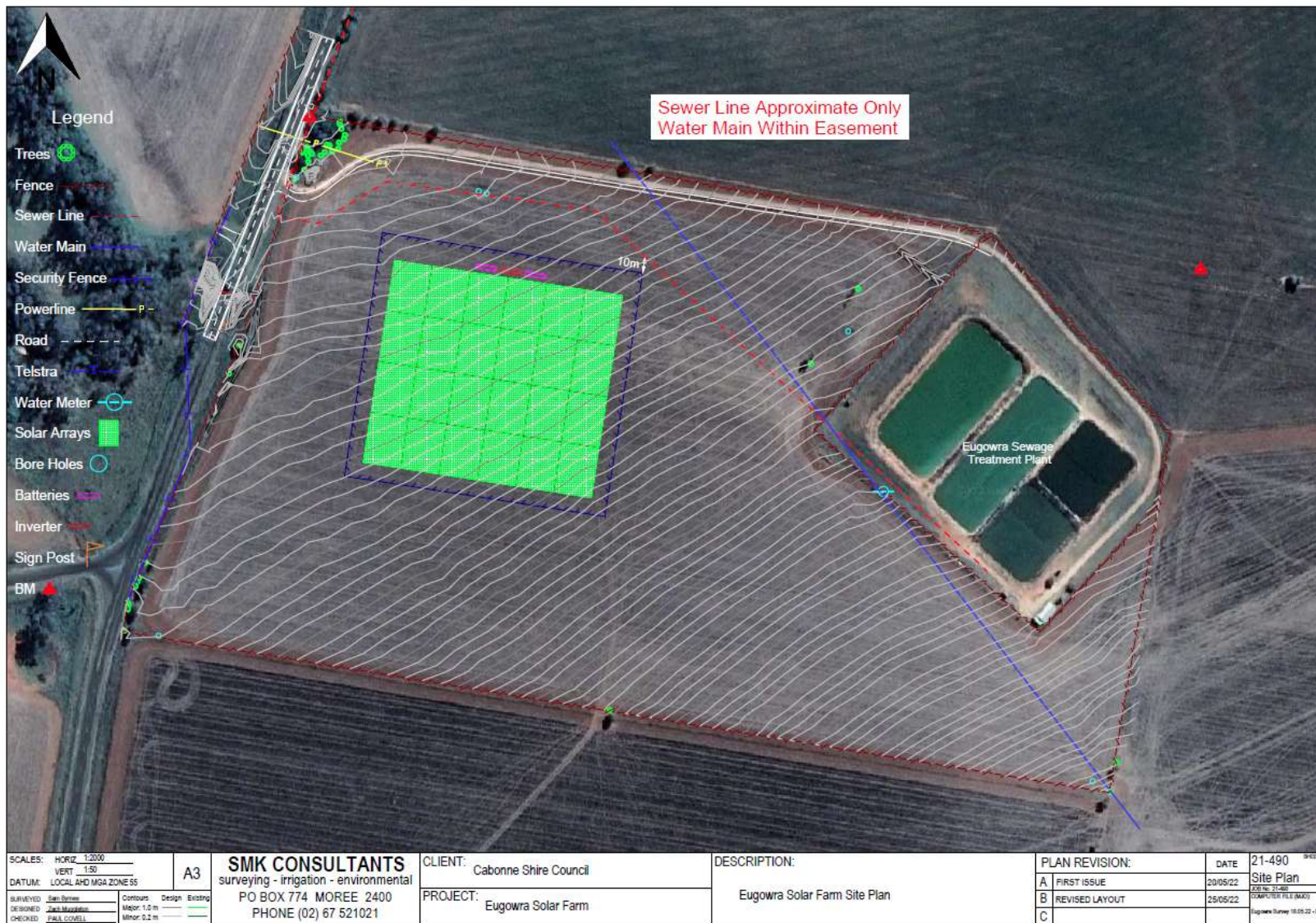
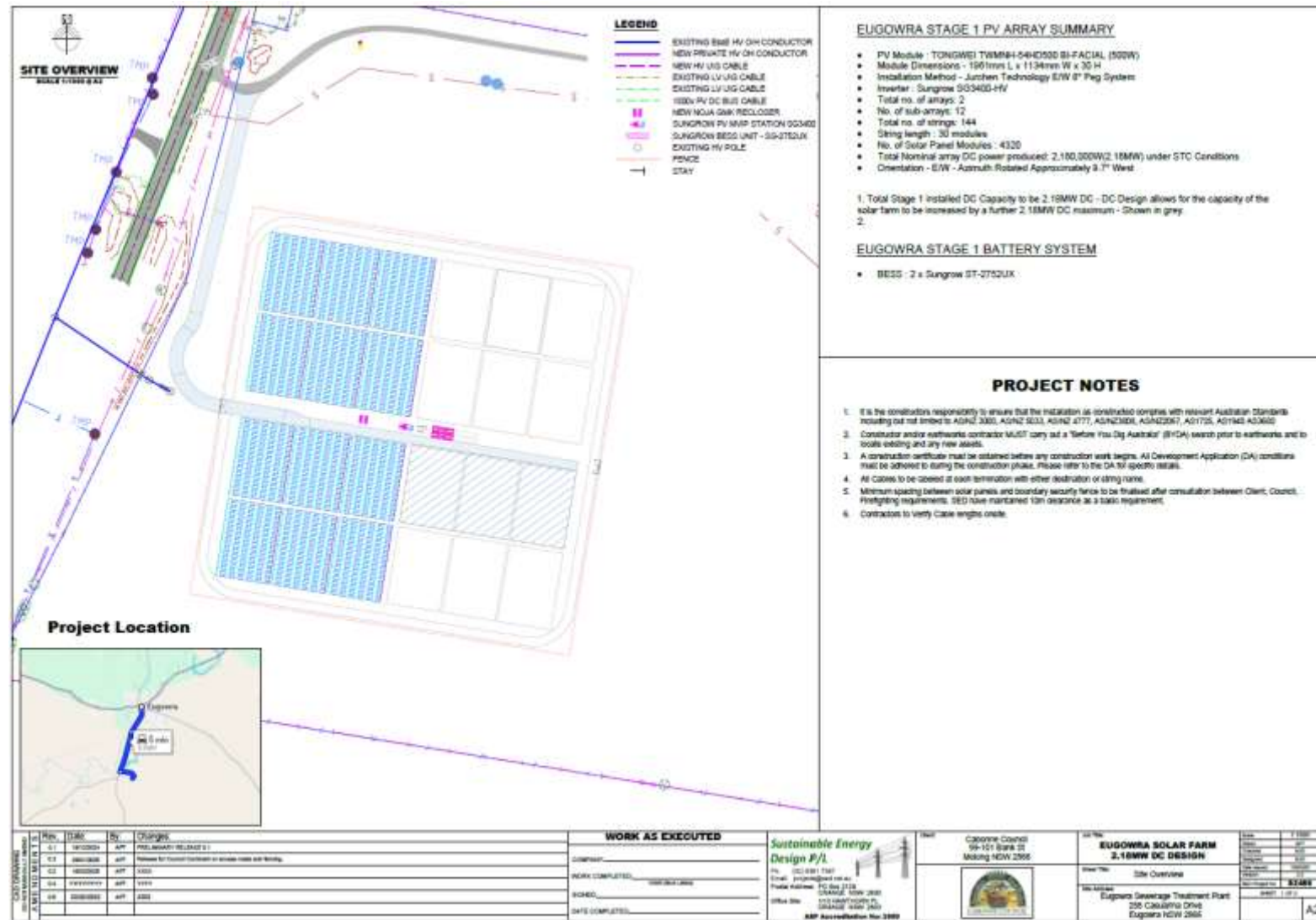


Figure 2: 2025 Proposed Layout of Eugowra Solar Farm.





### **3 Review of Layout Changes**

#### **3.1 Panel Layout**

The solar panels will consist of the same panels and foundations. The foundations will consist of a PEG system which is a system of steel rods driven into the ground. The framework for the solar panels is mounted on these rods and then the panels are fitted to the frame work.

For stage 1, the panels are to consist of two separate arrays that will be separate by an access road. The electrical converter units will be established in this access road.

Each array will consist of 12 sub-arrays laid out in six (6) rows of panels in each sub-array. Each row will include 30-separate solar panels.

The height of the solar panels is the same as the approved structure. The same construction method is to be used and the same materials will be installed.

The solar farm will be connected to the same point on Casuarina Drive.

#### **3.2 Modification to Internal Roads**

The approved solar farm will utilise the existing road entrance from Casuarina Drive. No works are proposed for this intersection or work within the road reserve outside of the property boundary. No occupancy of the road is required and therefore no traffic management plan is triggered by the change in the development footprint.

A new internal road is to be constructed. The original concept involved use of the existing road to the sewage ponds.

The new road will consist of a gravel paved road. It will be used for construction purposes and therefore will be constructed of a minimum of 150mm gravel pavement. As work onsite will not occur during wet weather, the road is not expected to carry heavy traffic during or after wet weather until the site dries out. The primary purpose of the road is to provide light vehicle access during construction and maintenance operations.

#### **3.3 Internal Fencing**

The approved development included a surrounding security fence. This is to be included around the new footprint for the purpose of providing site security and controlling who can enter the solar farm area.

#### **3.4 Site Management After Construction**

The original proposal involved minor treatment of the ground surface to establish suitable short pastures to provide soil stability. The revised project will utilise the same procedure to stabilise the soil during construction.

The management of the grass cover will involve various forms of mowing and grass management. The grass cover beneath the panels and surrounding area will remain short. An asset protection zone between the panels and the security fence is to be established and maintained as a grass cover less than 150mm in height. Further treatment in the form of slashing of the grass for a width of approximately 10m will occur outside of the security fence to extend the asset protection zone around the solar farm.

Once constructed, the solar farm will require minimal maintenance work. The approved documents include the occasional inspection by service personal to check panels and undertake minor maintenance of the panels, wiring and equipment onsite. No permanent building is to be established on the site.

### **3.5 Waste Management**

A waste management plan was submitted with the original development application. No changes are required to this plan that is approved under condition 15 of DA 2023/0077.

## **4 Policy and Legislation Assessment**

### **4.1 Permissibility**

The site has operated as a feedlot since the Gwydir Shire issued development approval 24-2012 and the site received Environment Protection Licence 20463 by NSW EPA. The feedlot was initially developed for 5,000-head of cattle.

Development Consent 12-2016 issued in 2018 remains active as the development was substantially developed once the pens and associated infrastructure for 5,000-head was completed and a 2,000-head extension occurred to enable feeding of 7,000-head of cattle.

The land remains zoned as RU-1 under the Gwydir Local Environmental Plan 2013. Intensive livestock agriculture remains permissible within this zoning with consent.

No changes have occurred to alter this development consent.

### **4.2 Commonwealth Legislation and Regulations**

#### **4.2.1 Environmental Protection and Biodiversity Conservation Act 1999**

The Commonwealth *Environment Protection and Biodiversity Conservation Act, 1999* (EPBC Act) requires the approval of the Commonwealth Minister for the Environment for actions on Commonwealth land or those that may have a significant impact on matters of national environmental significance.

The original proposal was assessed in accordance with criteria specified in Matters of National Environmental Significance – Significant Impact guidelines 1.1 (DoE 2013). The assessment concluded that the proposal does not have a significant impact on any Matters of National Environmental Significance.

The footprint of the proposed development will remain over cultivated land. The area to be impacted has previously been cleared and developed for farming operations. The solar farm

development will remain within this farmed land and therefore no new or significant impacts will occur.

### 4.3 State Legislation, Regulations and Policies

#### 4.3.1 Environmental Planning and Assessment Act 1979

The *Environmental Planning and Assessment Act 1979* provides the framework for NSW Planning Legislation. Under this Act, local councils prepare Local Environmental Plans (LEPs) that specify planning controls for specific parcels of land. The Act also provides for State Environmental Planning Policies (SEPPs) and Regional Environmental Plans (REPs). Applicable SEPPs are discussed in Section 3.4.

#### 4.3.2 EP&A Act 1979 – Section 4.55 Clause 2 - Modification of Consents

Section 4.55 of the EP&A Act includes provisions which allow a Planning Authority, such as Council, to receive an application to modify a development consent issued by that Authority. Clause 1A of Section 4.55 of the EP&A Act states:

*(1A) Modifications involving minimal environmental impact: A [consent authority](#) may, on application being made by the applicant or any other [person](#) entitled to act on a consent granted by the [consent authority](#) and subject to and in accordance with the regulations, modify the consent if--*

- a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- b) (b) it is satisfied that the [development](#) to which the consent as modified relates is substantially the same [development](#) as the [development](#) for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- c) (c) it has notified the application in accordance with--*
  - I. the regulations, if the regulations so require, or*
  - II. a [development control plan](#), if the [consent authority](#) is a [council](#) that has made a [development control plan](#) that requires the notification or advertising of applications for modification of a [development consent](#), and*
- d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the [development control plan](#), as the case may be.*

The following sections address the matters for consideration as outlined under Section 4.55 (1A) of the Act. It reviews the relevant planning instruments and guidelines that apply to the application, and the potential environmental impacts of the proposed modification. The following provides comment on the sub-clauses within this section of the Act.

#### **4.3.2.1 Substantially the Same**

The ‘substantially the same’ test has been the subject of case law and is relatively settled. It requires the consent authority to undertake both a quantitative and qualitative analysis of the consent before the proposed modification and after the modification.

In relation to purpose, the purpose of the solar farm is the same.

#### **4.3.2.2 Quantitative Differences**

The amended proposal still involves construction of a solar farm on the same Lot. The solar farm will generate electricity which will be fed into the local electrical grid.

This modified proposal involves construction of the first stage of the solar farm to generate 2.18 MW of DC electricity. The approved development involved the whole solar farm that would generate up to 4 MW of electricity. The second stage of the proposed relocated solar farm is marked on the plan. Once the second stage is constructed, the site is approved to generate 4 MW.

The proposal is therefore within the approved quantity of electricity to be generated.

The solar farm is to be moved approximately 100m to the south of the approved location. This does not impact any new neighbouring properties or cause any additional impacts.

#### **4.3.2.3 Qualitative Differences**

Qualitative differences relate to the quality of the development.

The development will involve the same form of solar panels which are to be mounted on a steel rod (Peg system) framework. The plans and typical sections included with the approved development documentation will not be altered.

The same standard of solar panel will be installed.

Management of the site during construction will involve the same procedures. These management procedures include erosion control, waste management and working hours.

#### **4.3.3 Biodiversity Conservation Act 2016**

The BC Act outlines requirements in relation to the listing of threatened species, biodiversity impact assessment, offsetting and related offences. The assessment of biodiversity values on land and the impacts of activities on those biodiversity values are to be carried out in accordance with the Biodiversity Assessment Method (BAM). The objective of the BAM is to adopt a standard approach that will result in no net loss of biodiversity in NSW.

The solar farm will be contained within an area that has been cleared of native vegetation and used for cultivation. No native vegetation would be impacted by the revised site location or

changes to the entrance road. The proposed development will continue to avoid clearing of native vegetation.

The Biodiversity Mapping of the site has not changed since the original approval was issued. A copy of the current Biodiversity Values Map of the site is presented in appendix 1. No new area of high biodiversity value are present within the development site.

#### 4.4 State Environmental Planning Policies

The following table presents the State Environmental Planning Policies and a comment on their relevance to the proposed development.

**Table 1: State Environmental Planning Policies**

SEPP Title	Relevance
State Environmental Planning Policy (Planning Systems) 2021	Not Relevant
State Environmental Planning Policy (Biodiversity and Conservation) 2021	No clearing involved
State Environmental Planning Policy (Resilience and Hazards) 2021	Review provided below
State Environmental Planning Policy (Transport and Infrastructure) 2021	No change to the development approved.
State Environmental Planning Policy (Industry and Employment) 2021	Not Relevant
State Environmental Planning Policy (Resources and Energy) 2021	Not Relevant
State Environmental Planning Policy (Primary Production) 2021	Review provided below
State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021	Not Relevant
State Environmental Planning Policy (Precincts – Central River City) 2021	Not Relevant
State Environmental Planning Policy (Precincts – Western Parkland City) 2021	Not Relevant
State Environmental Planning Policy (Precincts – Regional) 2021	Not Relevant

##### 4.4.1 State Environmental Planning Policy (Resilience and Hazards) 2021

This Policy provides for the control and proper consideration of development that is either hazardous or offensive, and without adequate mitigation measures, would pose a significant risk to, or have a significant impact on, the locality in relation to human health, life or property or the biophysical environment.

##### Hazardous Development

The proposed development of a solar farm does not involve the use of any hazardous materials or result in the production of hazardous materials.



Construction works will involve a range of vehicles travelling to and from the site on a daily basis. No fuel products will be stored onsite for refuelling purposes. If fuel is brought to the site, it will be in minor quantities only.

### **Offensive Development**

Offensive industries and potentially offensive industries are defined under Clause 4 of the original SEPP 33 as follows:

- *Offensive Industry: a development which, when all measures proposed to reduce or minimise its impact on the locality have been employed, would emit a polluting discharge in a manner which would have a significant adverse impact.*
- *Potentially Offensive Industry: a development which, if it were to operate without employing any measures to reduce or minimise its impact, would emit a polluting discharge in a manner which would have a significant adverse impact in the locality or on the existing or likely future development on other land.*

The solar farm will not create odour emissions or have the potential to pollute.

#### **4.4.2 State Environmental Planning Policy – Infrastructure & the State Environmental Planning Policy (Transport and Infrastructure) 2021**

This planning policy provides a consistent planning regime for infrastructure and the provision of services and public works across NSW, along with providing for consultation with relevant public authorities during the assessment process.

The proposed development does not trigger the provisions set out in Schedule 3 of the SEPP as a traffic generating development that requires referral to the Transport for NSW as the proposal is defined as ‘any other purpose’ and will not generate two hundred or more motor vehicle movements per day.

#### **4.4.3 State Environmental Planning Policy – Primary Production and Rural Development 2019 & the State Environmental Planning Policy (Primary Production) 2021**

This policy aims to support the orderly, environmentally sustainable and economic use and development of land for primary production and development. It also facilitates the future recognition and protection of significant agricultural lands.

The purpose of the development will remain as approved by the Council in 2023. The purpose is for the production of solar energy.

## **5 Environmental Considerations**

Items to be considered include matters set out under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. A summary of the major points of consideration follows:

## 5.1 Land Use Conflict

The proposed development is permissible with consent under the Local Environmental Plan.

The solar farm will have some visual impact to residents from the north. These were assessed as part of the 2023 approval and were considered acceptable. The revised solar farm location will present the same visual impact as the original site and therefore no significant change will occur in regard to land use conflict with residents to the north.

## 5.2 Water

The solar farm will not require water for construction or operation.

Soil erosion measures as outlined in the approved development will form part of the revised site preparation and management. No additional risk of soil erosion and impact on local surface waters will occur as a result of relocation of the site.

## 5.3 Cultural Heritage

### 5.3.1 Indigenous Heritage

A Due Diligence Archaeological assessment of the property did not identify any sites of archaeological significance or artefacts. The cultivated paddock is highly disturbed and therefore the risk of finding a cultural heritage site during construction of the solar farm is low.

The construction project will adopt the standard unanticipated finds protocol during construction. This protocol is outlined below:

#### **Unanticipated finds Protocol:**

- If any Aboriginal object is discovered and/or harmed in, or under the land, while undertaking the proposed development activities, the proponent must;
- Not further harm the object;
- Immediately cease all work at the particular location;
- Secure the area to avoid further harm to the Aboriginal object;
- Notify NSW Heritage as soon as possible on 02 9873 8500, providing detail of the Aboriginal object and its location;
- If advised by OEH, notify the Local Aboriginal Land Council's sites officer;
- Not recommence any work at the particular location unless authorised in writing by OEH.

Adoption of this protocol is considered to meet condition 16 of the current approval.

### 5.3.2 Non-Indigenous Heritage

No non-indigenous heritage items are present within or near the development site according to the NSW Government State Heritage Inventory and inspections of the property.

## 5.4 Social and Economic Impacts

The social and economic impacts of this proposal will remain the same as discussed in 2022/23.

The applicant being Council, aims to benefit from the green energy generated by the solar farm which aims to offset electricity costs to Council for operation of infrastructure in the Shire.

The project will employ a similar number of people, including locals who are available to work. The presence of outside workers in the district during construction will provide an economic benefit to the local community.

## 5.5 Cumulative Impacts

A review of Council approvals and advertised developments have not identified any new developments in the local area that may cause cumulative impacts such as traffic or extensive use of available resources.

No new cumulative impacts have been identified.

## 6 Conclusion and Recommendations

This amendment submission involves a change to the location of the Eugowra Solar farm as approved by Cabonne Shire Council in 2023. The proposal involves relocation of the solar farm approximately 100m south of the original site. The site remains within the cultivated paddock which also supports the Eugowra Sewage pond system.

As a result of the change in location, a new internal road is to be constructed and the connection to the adjacent electrical network is being relocated. These items were included in the original development proposal.

The feedlot obtained approval to expand to 20,000-head through DA 12-2016. This application does not seek to modify this capacity limit or the intended management of the feedlot operation.

No new impacts would be triggered as a result of moving the solar farm. The same construction and management techniques are to be adopted. The same protocols will be adopted in relation to waste management, cultural heritage and discovery of any contamination.

The plans of the solar farm provided include solar panels for stage 1 and stage 2 will be constructed at a later date. Stage 1 will generate 2.18 MW of DC electricity. Stage 2 will be constructed to generate the approved 4 MW in total.

The change in layout is not considered to create any new or additional environmental impact that has not been previously assessed. The proposal is therefore considered substantially the same development proposal.

## Appendix 1: Biodiversity Value Map 2025

