

Mildura Rural City Council

Statutory Planning Department

Planning Delegation Report

Application Number

005.2018.00000053.001

Received Date

26 June 2018

Applicant

James Golsworthy Consulting Pty Ltd

Subject property (Parcel No/s 35387)

McKays Road BIRDWOODTON
(LOT: 2 Sec: A PS: 541858P)

Proposal

The application seeks approval for the use and development of a 7.5MW Renewable Energy Facility (REF) at 8 McKays Road, Birdwoodton

The development will comprise of flat photovoltaic panels which will cover the majority of the site. The panels will be situated on racks which have a height of approximately 1.7 metres. The development will also include 3 inverters and transformers housed in modified shipping containers.

Amended plans were lodged by the applicant on 26 June 2018. The amended plans provided significantly more detail in regard to the proposed landscaping to be undertaken on the land, the type of fencing proposed and a more detailed assessment against the relevant provisions of the Mildura Planning Scheme.

Zones/Overlays

Farming Zone

Relevant Provisions

Clause 11.01-1S: Settlement
Clause 13.01-1S: Natural Hazards and climate change
Clause 13.07-1S: Land use compatibility
Clause 14.01-1S: Protection of agricultural land
Clause 14.01-2S: Sustainable Agricultural land use
Clause 14.01-2R: Agricultural productivity - Loddon Mallee North
Clause 19.01-1S: Energy supply
Clause 19.01-2S: Renewable energy
Clause 21.03-1: Vision
Clause 21.06-1: Protection of Agricultural land
Clause 21.08-1: Agriculture
Clause 35.07: Farming Zone
Clause 52.06: Car Parking
Clause 53.13: Renewable Energy Facility (other than Wind Energy Facility and Geothermal Energy Extraction)

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Clause 65: Decision guidelines

Permit Triggers

Clause 35.01-1: Section 2 Use

Clause 35.07-4: Buildings and works associated with a Section 2 use

Statutory Days

The application has been in progress 46 days (in Council's hands)

Application received:	20 February 2018 and 26 June 2018 (Amended)
Application referred:	17 April 2018 and 9 July 2018 (Amended)
Notification fees letter issued:	17 April 2018 and 10 July 2018 (Amended)
Application notified:	20 April 2018 and 9 July 2018 (Amended)
Further information received:	9 April 2018

Benchmark

Level 3

Subject site & locality

A site inspection was undertaken 27 February 2018. The subject site is located south of the Merbein Township in an existing agricultural setting.

The locality contains agricultural land, with the majority being currently farmed for horticultural purposes. There are also a number of lots used for rural residential purposes (dwellings) that are not linked to any agricultural productivity.

The site is currently vacant, however Council aerial records indicate that the land was used for horticultural purposes in 2009 (image below).

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Image #1: Subject site (Highlighted)

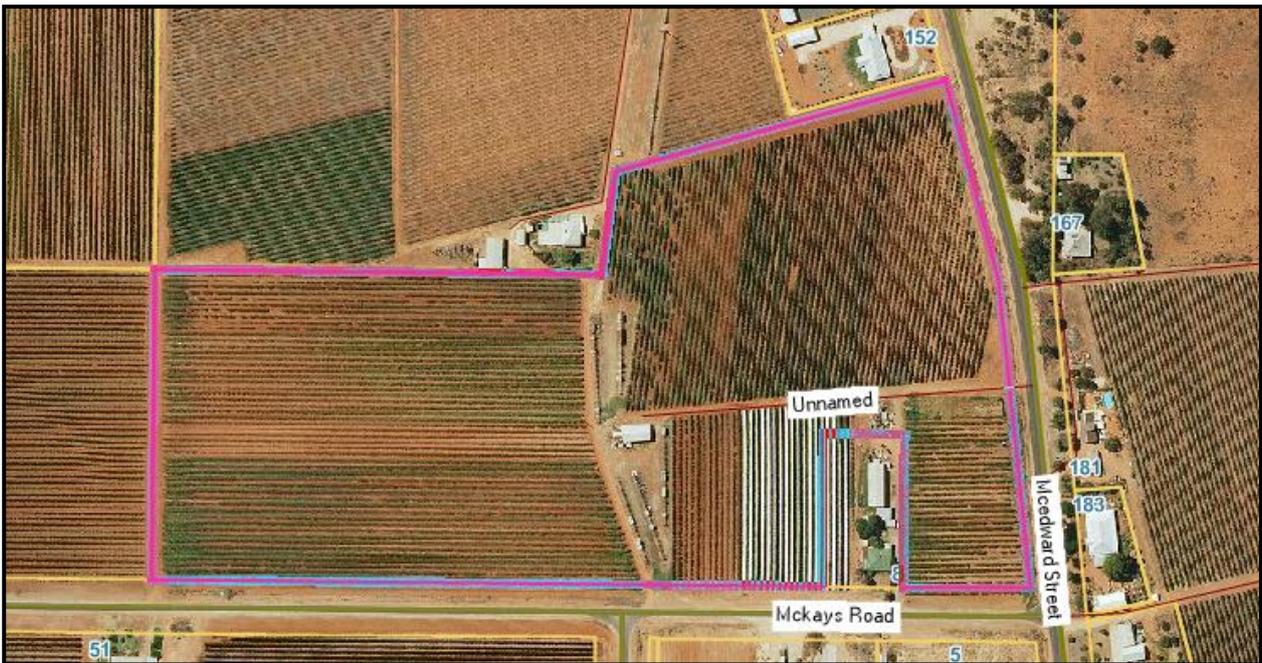


Image #2: 2009 Aerial demonstrating agricultural use of land

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Permit/Site History

There are no records found on Council's electronic records system that have relation to this application.

Public Notification

The application has been advertised pursuant to Section 52 of the *Planning and Environment Act 1987*, by:

- Sending notices to the owners and occupiers of adjoining land.
- Placing a sign on site.
- Notice in local paper (Mildura Weekly).

Council has received 79 objections to date. The key relevant issues that were raised in the objections are:

- Noise;
- Views (Glare and eyesore);
- Traffic;
- Increase of Temperature;
- Light spill;
- Radiation (Electromagnetic).

Mitigation to issues

Noise

Upon reviewing the proposed plan, it is evident that the proposed panels are stationary, therefore noise will not be generated by this portion of the development. The only noise that would be generated is from the proposed inverters. The inverters are located inside shipping containers, with the applicant claiming the closest dwelling is 85 metres from an inverter. If a permit was to be granted, a condition pertaining to providing an acoustic report to determine any acoustic recommendations would be required; thus removing any noise impacts on adjoining land.

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Views

The matter of views has been a well-tested at VCAT and it is considered that “there is no legal right to a view”, however consideration can be given to an objector’s view where it is possible to amend a proposal’s design to protect a view. The applicant has provided landscaping plans which demonstrate that the development will be effectively screened from all adjoining land. It is considered that this will be sufficient to obscure the views of the proposed development. The landscaping will also remove any glare issues that have been raised by adjoining dwellings and commuters using the surrounding roads.

Traffic

During the construction phase of the proposed development all local roads will have an increased amount of traffic. However like all renewable energy facilities, the traffic generated after construction is extremely low with the site only requiring minor maintenance. If a permit was to be issued, a construction management plan would be required which would include how traffic would be dealt with during the construction phase.

Increase in Temperature

The “*Heat Island Effect*” has been discussed by both objectors and applicant. The applicant notes that the increase in heat is generally found to be located directly around the solar panels. It is also noted that the application proposes significant vegetation to surround the development, which in turn may disrupt any increase of heat that protrudes towards other parcels of land.

Light Spill

A condition can be placed on any permit issued requiring all lighting to be baffled to not leave the subject site to the satisfaction of the Responsible Authority.

Radiation (Electromagnetic)

While this has been raised by numerous objectors, there are a number of requirements that a renewable energy facilities must meet in relation to other Acts/Regulations and Australian National Standards.

Drainage

Any requirements related to drainage would be pertained within a drainage design which would be required as part of any permit issued. It is noted that all stormwater would be required to be

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retained onsite to the satisfaction of the Responsible Authority; thus having no impacts on any adjoining land.

Other issues raised

There have been numerous planning-related issues raised by the objectors that do not demonstrate how they will be impacted by the application and are considered do not meet the requirements of Section 57(1). Nonetheless, all matters raised in the objections will be assessed against the Mildura Planning Scheme below.

Letters of support

Along with the large volume of objections, 1 letters of support to the proposal were received.

The supporting submissions discussed, but were not limited to:

- the employment benefits of the proposal
- the economic benefit to Merbein.
- site will be significantly landscaped
- issues regarding climate change
- the overall detriment to the environment caused by unsustainable farming techniques within the horticultural district
- the overall benefits of solar power to the environment.
- diversification of the use of agricultural land in the Mildura irrigated area.
- off site impacts significantly less than current operations in the area

As with the objectors, issues raised by submitters supporting the development have been considered in the overall assessment of the application.

Cultural Heritage Management Plan

Regulation 6 of the Aboriginal Heritage Regulations 2007, No.41 states:

A cultural heritage management plan is required for an activity if—

- (a) all or part of the activity area for the activity is an area of cultural heritage sensitivity and*
- (b) all or part of the activity is a high impact activity.*

A Cultural Heritage Management Plan is not required to be undertaken as the subject site is not within an area of cultural heritage sensitivity as required by Regulation 6

Consultation

A Mediation was undertaken at Council's Deakin Avenue Office on 24 May 2018 with the applicant and a number of objectors. While a number of issues were raised, a resolution was

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not reached between the parties present. It was noted that all objectors were not present at the meeting.

Due to the number of objections and the reasons raised, it is considered that a resolution could not be reached and it was decided that a second mediation would not be undertaken following the re-notification of the application.

Conflict of Interest

No conflicts of interest were declared during the preparation of this report

Referrals

External Referrals/Notices Required by the Planning Scheme:

Referrals/Notice	Advice/Response/Conditions
Section 55 Referrals	Nil
Section 52 notices	DELWP: No objection to planning permit. DELWP (State Planning): No comment. CFA: No objection to planning permit subject to conditions. CASA: No objections to planning permit. Lower Murray Water: No objections to planning permit subject to conditions.

Internal Council Referrals	Advice/Response/Conditions
Asset Services	<p><u>COMMENTS</u></p> <p>The application states that access to the site will be off McKays Road. McKays Road currently only has a 3.80m wide sealed surface which is unsatisfactory to allow for the Solar Farm Construction traffic to access. The road will require an upgrade to a 7.00m seal with 1.00m shoulders from McEdward Street approximately 230m to the access point off McKays Road to the site.</p> <p>AMENDED REQUIREMENTS</p> <ol style="list-style-type: none">1. Prior to plans being endorsed a road design for the widening of McKays Road from McEdward St to the western side of Hockings Road intersection must be submitted Road must be widened to a min. 7.00m seal with 1.00m shoulders. <ul style="list-style-type: none">• Plans must also include the access driveway to the site. Access driveway must be an all weather sealed surface from the edge of the existing seal to the property boundary and must include the swept turning paths of the largest vehicle expected to enter the site.• Prior to the plans being endorsed a drainage design for the whole site must be submitted. Plan must demonstrate how stormwater runoff will be maintained on the site without detriment to adjoining properties.

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	<ol style="list-style-type: none">2. All works required as per the endorsed road design and drainage plans must be completed prior to commencement of use.3. Only one access to the site will be permitted.4. All construction traffic must access the site via the Calder Highway, McEdwards Street and McKays Road only.5. Prior to any road works commencing on McKays Road, a meeting with Council and the principle contractors will be required.
Strategic Department	<p><u>Key Strategic Issues</u></p> <ul style="list-style-type: none">• Protection of Horticultural Land. <p><u>Comments from Strategic Planning</u></p> <p>In accordance with the MPS a permit may be issued for a renewable energy facility within the FZ subject to conditions.</p> <p>Notwithstanding a permit being able to be issued in accordance with the zone, within the Local Policy Framework of the MPS there is no specific guidance for development of that nature but rather, policy directions seeks to discourage the use or development of rural land for purposes other than agriculture or horticulture. In particular where the land is irrigated, the weight of local policy objectives seeking to protect the land for horticulture would indicate permits for development of this nature should not be issued.</p>

Assessment

Clause 35.07 Farming Zone

Purpose

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To provide for the use of land for agriculture.

To encourage the retention of productive agricultural land.

To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.

To encourage the retention of employment and population to support rural communities.

To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

To provide for the use and development of land for the specific purposes identified in a schedule to this zone.

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Clause 35.07-6 Decision guidelines

Before deciding on an application to use or subdivide land, construct a building or construct or carry out works, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

General issues

- *The Municipal Planning Strategy and the Planning Policy Framework.*
- *Any Regional Catchment Strategy and associated plan applying to the land.*
- *The capability of the land to accommodate the proposed use or development, including the disposal of effluent.*
- *How the use or development relates to sustainable land management.*
- *Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.*
- *How the use and development makes use of existing infrastructure and services.*

Agricultural issues and the impacts from non-agricultural uses

- *Whether the use or development will support and enhance agricultural production.*
- *Whether the use or development will adversely affect soil quality or permanently remove land from agricultural production.*
- *The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.*
- *The capacity of the site to sustain the agricultural use.*
- *The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.*
- *Any integrated land management plan prepared for the site.*

Environmental issues

- *The impact of the proposal on the natural physical features and resources of the area, in particular on soil and water quality.*

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- *The impact of the use or development on the flora and fauna on the site and its surrounds.*
- *The need to protect and enhance the biodiversity of the area, including the retention of vegetation and faunal habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge area.*
- *The location of on-site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation.*

Design and siting issues

- *The need to locate buildings in one area to avoid any adverse impacts on surrounding agricultural uses and to minimise the loss of productive agricultural land.*
- *The impact of the siting, design, height, bulk, colours and materials to be used, on the natural environment, major roads, vistas and water features and the measures to be undertaken to minimise any adverse impacts.*
- *The impact on the character and appearance of the area or features of architectural, historic or scientific significance or of natural scenic beauty or importance.*
- *The location and design of existing and proposed infrastructure including roads, gas, water, drainage, telecommunications and sewerage facilities.*
- *Whether the use and development will require traffic management measures.*

Comments:

The plans submitted with the application do not demonstrate area for effluent creation (toilets, bathrooms ect). It is envisaged that during the construction phase portable toilets will be implemented which require all effluent to be disposed of offsite.

The application cannot be considered as sustainable land management as it represents the development of a vacant agriculturally zoned greenfield site for a use and development that has no link to agriculture.

Whilst it is acknowledged that the subject land is located within a predominately agricultural area, over time numerous dwellings have been constructed; with some having no intrinsic link to horticulture and are a stand-alone use. It is considered that while use of a renewable energy facility is not necessarily compatible with the adjoining dwellings; the applicants have proposed mitigation measures that would be significantly lower the incompatibility between the uses.

The proposed use will remove a significant portion of land that could be used for agricultural purposes. As the supplied plans clearly demonstrate, all land will be developed to be associated with the proposed use. It is considered that the land will be permanently removed from any

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possible future horticultural production, an unwanted outcome for viable agricultural land within the irrigation district of Mildura.

Due to the site being previously farmed 10 years ago, it is considered the soil is an acceptable quality to undertake the proposed works.

Access to the site will be achieved via McKays Road, this is clearly reinforced with all boundaries of the site containing landscaping and fencing. The application was referred to Council's Asset Services Department which have made requirements regarding upgrade-works to be undertaken along McKays Road.

Issues were also raised regarding the commuters using both McKays Road and McEdwards Street may be impacted on from light that is not absorbed by the solar panels. It is considered that the significant landscaping proposed would result in this issue being mitigated. Conditions requiring the proposed landscaping to be implemented at the commencement of development would be placed on any permit issued.

The State Planning Policy Framework (SPPF)

Clause 11.01-1S: Settlement

Objective: *To promote the sustainable growth and development of Victoria and deliver choice and opportunity for all Victorians through a network of settlements.*

Relevant Strategies:

- *Focus investment and growth in places of state significance in Metropolitan Melbourne and the major regional cities of Ballarat, Bendigo, Geelong, Horsham, Latrobe City, Mildura, Shepparton, Wangaratta, Warrnambool and Wodonga.*

Comments:

The proposed development is viewed as a major project for the Municipality with the application stating a total investment of 10 million dollars. However future strategic work has not been undertaken to determine if this development is appropriate given the possible eventual expansion of rural-residential land within the locality. At this current time the subject site has only been envisaged for continual use of primary production.

Clause 13.01-1S: Natural Hazards and climate change

Objective: *To minimise the impacts of natural hazards and adapt to the impacts of climate change through risk-based planning.*

Relevant Strategies:

- *Consider the risks associated with climate change in planning and management decision making processes.*

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Comments:

It is considered allowing a renewable energy facility to be developed on the subject site would meet this objective by creating a generating solar farm which essentially collects free power emitted from the sun rays. The proposed development supports the State Government's aim to generate renewable energy; which in turn lowers the amount fossil fuels required to be used to power Victoria.

Clause 13.07-1S: Land use compatibility

Objective: *To safeguard community amenity while facilitating appropriate commercial, industrial or other uses with potential off-site effects.*

Relevant Strategies:

Ensure the compatibility of a use or development as appropriate to the land use functions and character of the area by:

- *Directing land uses to appropriate locations.*
- *Using a range of building design, urban design, operational and land use separation measures.*

Comments:

As discussed previously, this application has demonstrated a clear view from adjoining land owners that this application is inappropriate when solely viewing the amenity impacts that may occur from the proposed development.

It is considered that the applicant has undertaken work to mediate concerns raised by the objectors and the detrimental impacts via alterations of the development design and including significant landscaping along the whole boundary of the site.

Clause 14.01-1S: Protection of agricultural land

Objective: *To protect the state's agricultural base by preserving productive farmland.*

Relevant Strategies:

- *Identify areas of productive agricultural land, including land for primary production and intensive agriculture.*
- *Avoid permanent removal of productive agricultural land from the state's agricultural base without consideration of the economic importance of the land for the agricultural production and processing sectors.*

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- *Protect productive farmland that is of strategic significance in the local or regional context.*
- *Protect productive agricultural land from unplanned loss due to permanent changes in land use.*
- *Prevent inappropriately dispersed urban activities in rural areas.*
- *In considering a proposal to use, subdivide or develop agricultural land, consider the:*
 - *Desirability and impacts of removing the land from primary production, given its agricultural productivity.*
 - *Impacts on the continuation of primary production on adjacent land, with particular regard to land values and the viability of infrastructure for such production.*
 - *Compatibility between the proposed or likely development and the existing use of the surrounding land.*
 - *The potential impacts of land use and development on the spread of plant and animal pests from areas of known infestation into agricultural areas.*
 - *Land capability.*
- *Avoid the subdivision of productive agricultural land from diminishing the long-term productive capacity of the land.*

Comments:

The application is inconsistent with the intent of this policy given that the proposal has no demonstrated link to agriculture and it is considered that the use and development will permanently remove any ability for the land to be used for future agricultural purposes.

This policy does take into consideration the concept of having other uses within farming areas; however it viewed that the proposed use must have a considerable link to agriculture in general. An example being an Intensive Animal Husbandry or Rural Industry, which may be removing portions of land from agriculture; those uses are conjoined and cannot exist without each other. It is considered that the proposed use has no fundamental connection to agriculture.

Protecting all agricultural land within the irrigation district of Mildura is seen as a major objective given the strength from state and local polices which are discussed below.

Clause 14.01-2S: Sustainable Agricultural land use

Objective: *To encourage sustainable agricultural land use.*

Relevant Strategies:

- *Ensure agricultural and productive rural land use activities are managed to maintain the long-term sustainable use and management of existing natural resources.*
- *Support the development of innovative and sustainable approaches to agricultural and associated rural land use practices.*

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Comments:

It is considered that the application does not encourage the sustainable use of agricultural land as the proposal will result in a renewable energy facility which has no link to agriculture.

The applicants make the following statement in their submission:

“The REF will consist of:....

... Reconnection of the land to the irrigation system (currently not connected due to the land benefitting from the State Government grant) and installation of an internal irrigation system.”

It is noted that the applicant propose to undertake work related to agricultural production to allow future possible production to be commenced, which can be seen as a positive outcome for the horticultural land. However this should hold little weight in assessing the proposed application as any use or works associated with agriculture does not require a permit and should be promoted regardless on a parcel of land within the Farming Zone.

The issue of achieving the outcomes demonstrated in the state agricultural polices has been discussed countless times at the Tribunal. A particular case to mention is Bourke-Finn v Ballarat CC & Anor [2013] VCAT 908 . Member Ian Potts states;

“State planning policy supports these outcomes by seeking to:

Prevent inappropriate dispersal of urban activity by limiting new housing and encouraging consolidation of small lots in rural zones.

Protect productive farmland of state or local strategic significance by preventing loss through permanent land use changes.

Address the impact of a non-agricultural development in farming areas that conflict with the productive use of such land.

In short having regard to the first three of the above points, it can be seen that State policy seeks to avoid the use of agricultural/farming land from rural lifestyle living.”

While the above case was in relation to the use and development of a dwelling, the Tribunal acknowledged the agricultural policies hold significant weight.

Clause 14.01-2R: Agricultural productivity - Loddon Mallee North

Strategies:

- *Support emerging agribusinesses and location clusters, including intensive animal industries.*

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- *Protect and maintain productive irrigation assets necessary to help grow the region as an important food bowl for domestic and international exports.*

Comments:

This application seeks to remove land that could be used for agricultural purposes. Significant funding has been recently granted to Lower Murray Water, the relevant water authority for this area, to significantly upgrade major and minor utilities installations within the irrigation districts of Mildura. The funding was partly justified due to the volume of land used for intensive agriculture in the area. By allowing the proposed use and development it will result in further horticultural land being removed from the irrigation district; thus lowering potential opportunities for receiving additional funding for future existing irrigation upgrades. The retention of all farming land located within the irrigation district should be seen as a major priority.

Clause 19.01-1S: Energy supply

Objective: *To facilitate appropriate development of energy supply infrastructure.*

Relevant Strategies:

- *Support the development of energy facilities in appropriate locations where they take advantage of existing infrastructure and provide benefits to industry and the community.*
- *Support transition to a low-carbon economy with renewable energy and greenhouse emission reductions including geothermal, clean coal processing and carbon capture and storage.*

Comments:

The applicant states in their submission:

“The project design has been coupled with the capacity of the Merbein substation in accordance with the design parameters of Powercor.”

The subject site has been selected due to its close proximity to the Merbein substation (approximately 1400 metres north-west from site) and ability to have connection to the power grid via a 22kv transmission line that is located on the subject site.

The applicant correctly argues that the subject land is relatively flat, resulting in the land being ideal for solar panels with overshadowing unable to occur.

Clause 19.01-2S: Renewable energy

Objective: *To promote the provision of renewable energy in a manner that ensures appropriate siting and design considerations are met.*

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Relevant Strategies:

- *Facilitate renewable energy development in appropriate locations.*
- *Develop appropriate infrastructure to meet community demand for energy services.*
- *Consider the economic and environmental benefits to the broader community of renewable energy generation while also considering the need to minimise the effects of a proposal on the local community and environment.*

Comments:

As mentioned previously, the subject site has been primarily chosen due to the proximity to the existing Merbein substation. It should also be noted that this area of Victoria is an ideal location for solar systems given the high percentage of “clear days”, which is primary factor when assessing locations of solar facilities.

The proposed REF supports the State Governments’ target to eventually generate 25% of all of Victoria’s electricity requirements from renewable energy, which has been reinforced by the applicant’s submission which also mentions the Federal Government’s general aim to reduce greenhouse emissions.

The Local Planning Policy Framework (LPPF) - including the Municipal Strategic Statement (MSS) and local planning policies

Clause 21.03-1 Vision

Economic development

Target: *Mildura will be the centre of Australia’s solar industry*

Comments:

The proposed use and development supports this Municipal target as it would allow a renewable energy facility to be constructed and operated within the Sunraysia Area.

Clause 21.06-1: Protection of Agricultural land

Objective: *To protect rural land for agriculture and horticulture*

Relevant Strategies:

- *Strategy 1.1 Ensure new dwellings and subdivision are associated with and assist in growing the agricultural enterprise.*
- *Strategy 1.2 Discourage the use or development of rural land for purposes other than agriculture, extractive industry, leisure and recreation, mining or natural systems that are not directly required to support the agricultural or horticultural use of the land.*

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- *Strategy 1.5 In the Mildura Older Irrigated Areas (MOIA):*
 - *minimise unplanned urban intrusion into horticultural areas by prohibiting new dwellings on lots under 10 hectares (except where permitted by the Mildura Older Irrigated Area Incorporated Document August 2016);*
 - *discourage non agricultural use and development within the MOIA; and*
 - *ensure subdivision and new dwellings are consistent with the Mildura Older Irrigation Area Incorporated Document August 2016.*

Comments:

The proposed use and development conflicts with the above-mentioned objective and relevant strategies.

The buildings and works essentially covers the whole land in its entirety, with the exception of areas used for access and Lower Murray Water assets.

The issues regarding the above clause and retention of horticultural land have been heavily scrutinised in recent VCAT cases. In *Keen v Mildura RCC* [2017] VCAT 219, Member Cimino highlights the protection of agricultural land within the Mildura Older Irrigated Area;

“It is my observation that Mildura’s agricultural land base, particularly in the MOIA, is very fragmented, not just because of the intrusion of small lot subdivisions sought to established rural lifestyle living properties, but by the very nature of the small 4 hectare lots often found. The fragmented and small size of properties makes them vulnerable as viable parcels for agricultural use. This is because with the continued introduction of other land uses brings with it an inflationary pressure due to heightened expectations as to how land in the area can be used ... My conclusion is that the benefit derived from the protection of agricultural land outweigh the benefit derived from the establishment of a service station on this site. As planning policy currently stands, the strong unequivocal support for the protection of agricultural land from small incremental loss, outweighs the benefit derived from the potentially incidental use of a service station by some heavy vehicles. This finding alone warrants refusal of the permit application.”

The abovementioned case involved the removal of 3 hectares of agricultural land; with the tribunal viewing this amount a justifiable amount to warrant refusal alone. It is noted that this application proposed the removal of 9 hectares of viable agricultural land.

Clause 21.08-1: Agriculture

Objective 1: *To support the continued development of sustainable agricultural and horticultural industries as the foundation of a strong and prosperous economy.*

Relevant Strategies:

- *Strategy 1.1 Minimise unplanned urban intrusion into horticultural areas.*

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- *Strategy 1.2 Support the development of new horticultural areas.*
- *Strategy 1.3 Support horticultural and agricultural diversification and value adding.*

Comments:

The policy identifies the municipality of Mildura Rural City is nationally and internationally significant in terms of its horticultural output. The local economy is mainly driven by horticultural industries and their value added activities, such as packaging and processing.

The policy goes on to recognise that there is potential to expand agricultural and horticultural production throughout the municipality. Realising this potential in a responsible manner by ensuring ecological and agricultural sustainability will bring added and continued wealth to the local economy and residents of the municipality. The protection of agricultural land from urban encroachment including the small lot subdivision of horticultural properties is important.

The subject use is not necessarily considered an “urban intrusion” due to the fact that all renewable energy facilities are promoted in farming areas as a significant amount of land is required to allow the facilities to be viable. However the majority of facilities are located in the Municipality's extensive agriculture area where land is vast and the percentage of land lost has a greater justification. The proposed use and development provides no support to agriculture and as discussed previously, causes possible friction when justifying further intensive irrigation infrastructure in the future.

Relevant Particular Provisions

Clause 52.06 Car Parking

Purpose

- *To ensure that car parking is provided in accordance with the State Planning Policy Framework and Local Planning Policy Framework.*
- *To ensure the provision of an appropriate number of car parking spaces having regard to the demand likely to be generated, the activities on the land and the nature of the locality.*
- *To support sustainable transport alternatives to the motor car.*
- *To promote the efficient use of car parking spaces through the consolidation of car parking facilities.*
- *To ensure that car parking does not adversely affect the amenity of the locality.*
- *To ensure that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.*

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Clause 52.06-6 Number of car parking spaces required under Table 1

Comments:

The use of a renewable energy facility is not found within Table 1, therefore the number of car parks must be provided to the satisfaction of the Responsible Authority.

During the construction phase, the site will contain a high level of traffic, however due to the continual moving of vehicles on the land constructing the development, formal parking is not seen to be necessary. To alleviate any concerns regarding traffic management of both McKays Road and McEdwards Road, a traffic management plan would be required to determine how safe traffic movement would occur during the construction phase.

A renewable energy facility is considered a use that does not generate a demand for parking due to the development only requiring maintenance routinely; which generally only involves single small or large vehicles. The need to create formal parking on the subject site is considered unnecessary.

Clause 52.06-8 Requirement of a car parking plan

Plans must be prepared to the satisfaction of the responsible authority before any of the following occurs:

- *a new use commences; or*
- *the floor area or site area of an existing use is increased; or*
- *an existing use is increased by the measure specified in Column C of Table 1 in Clause 52.06-5 for that use.*

The plans must show, as appropriate:

- *All car parking spaces that are proposed to be provided (whether on the land or on other land).*
- *Access lanes, driveways and associated works.*
- *Allocation of car parking spaces to different uses or tenancies, if applicable.*
- *Any landscaping and water sensitive urban design treatments.*
- *Finished levels, if required by the responsible authority.*
- *Any other matter specified in a schedule to the Parking Overlay.*

Plans must be provided to the responsible authority under Clause 52.06-8 wherever Clause

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52.06 applies, whether or not a permit application is being made under Clause 52.06-3 or any other provision of the planning scheme.

Where an application is being made for a permit under Clause 52.06-3 or another provision of the planning scheme, the information required under Clause 52.06-8 may be included in other plans submitted with the application.

Clause 52.06-8 does not apply where no car parking spaces are proposed to be provided.

Comments:

The application does not propose any car parking, thus this clause will not be discussed any further.

Clause 53.13: Renewable Energy Facility (other than Wind Energy Facility and Geothermal Energy Extraction)

Purpose

- *To facilitate the establishment and expansion of renewable energy facilities, in appropriate locations, with minimal impact on the amenity of the area.*

Clause 53.13-2 Application Requirements

An application must be accompanied by the following information, as appropriate:

- *A site and context analysis, including:*
 - *A site plan, photographs or other techniques to accurately describe the site and the surrounding area.*
 - *A location plan showing the full site area, local electricity grid, access roads to the site and direction and distance to nearby accommodation, hospital or education centre.*
- *A design response, including:*
 - *Detailed plans of the proposed development including, the layout and height of the facility and associated building and works, materials, reflectivity, colour, lighting, landscaping, the electricity distribution starting point (where the electricity will enter the distribution system), access roads and parking areas.*
 - *Accurate visual simulations illustrating the development in the context of the surrounding area and from key public view points.*
 - *The extent of vegetation removal and a rehabilitation plan for the site.*
 - *Written report and assessment, including:*
 - *An explanation of how the proposed design derives from and responds to the site analysis.*
 - *A description of the proposal, including the types of process to be utilised, materials to be stored and the treatment of waste.*
 - *Whether a Works Approval or Licence is required from the Environment Protection Authority.*

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- *the potential amenity impacts such as noise, glint, light spill, emissions to air, land or water, vibration, smell and electromagnetic interference.*
- *the effect of traffic to be generated on roads.*
- *the impact upon Aboriginal or non-Aboriginal cultural heritage.*
- *the impact of the proposal on any species listed under the Flora and Fauna Guarantee Act 1988 or Environment Protection and Biodiversity Conservation Act 1999.*
- *A statement of why the site is suitable for a renewable energy facility including, a calculation of the greenhouse benefits.*
- *An environmental management plan including, a construction management plan, any rehabilitation and monitoring.*

Comments:

The application supplied all the appropriate information to make a proper assessment of this use and development.

It is noted that the applicant did not provide an environmental or construction management plan to assess. If a permit were to be issued, a management plan would be required which would also include onsite parking during the construction phase (as discussed previously).

Clause 53.13-3 Decision guidelines

Before deciding on an application, in addition to the decision guidelines of Clause 65, the responsible authority must consider, as appropriate:

- *The effect of the proposal on the surrounding area in terms of noise, glint, light spill, vibration, smell and electromagnetic interference*
- *The impact of the proposal on significant views, including visual corridors and sightlines.*
- *The impact of the proposal on the natural environment and natural systems.*
- *Whether the proposal will require traffic management measures.*

Comments:

The argument of placing the proposed use in extensive agricultural areas is valid when the above impacts are normally mitigated as the amount on sensitive uses in pastoral areas is extremely low. The image below demonstrates the number of dwellings within close proximity to the site.

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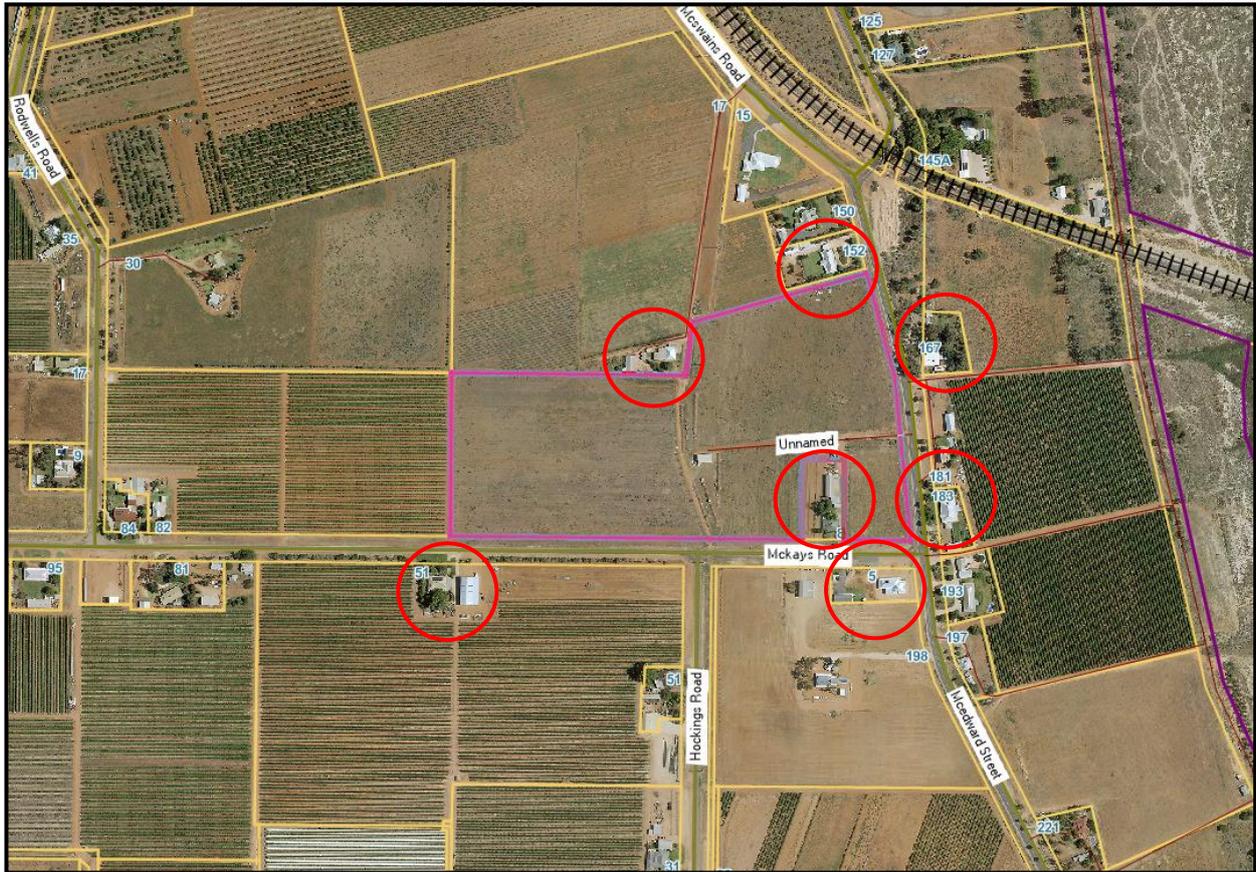


Image # 3: Dwellings within close proximity

Objections have been received regarding a number of the above issues (noise, glint, light spill and electromagnetic interference). However as previously discussed, it is considered that the above issues can be effectively mitigated through conditions on any permit issued.

Dust is a common issue that arises in most significant applications throughout this municipality. The site is located within the farming zone and it is considered that dust generation is a common occurrence to an extent. While there may be a small amount of dust generated during the construction phase, once development is completed it is envisaged that dust emission would be normal to the area.

Traffic management will be required to be included in any management plan approved during the construction phase of the development, due to the subject site being located within an area that contains a low volume of traffic (less than 1000 vehicle movement per day for both roads).

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Clause 65.01 Approval of an Application or Plan

Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:

- *The matters set out in Section 60 of the Act.*
- *The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *The purpose of the zone, overlay or other provision.*
- *Any matter required to be considered in the zone, overlay or other provision.*
- *The orderly planning of the area.*
- *The effect on the amenity of the area.*
- *The proximity of the land to any public land.*
- *Factors likely to cause or contribute to land degradation, salinity or reduce water quality.*
- *Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.*
- *The extent and character of native vegetation and the likelihood of its destruction.*
- *Whether native vegetation is to be or can be protected, planted or allowed to regenerate.*
- *The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.*
- *The adequacy of loading and unloading*

Comments:

A number of properties adjoining the subject site contain dwellings that are not in the same ownership as the proponent. Although dwellings are discouraged within the Farming Zone, they are an existing use and must be considered in the assessment of this application. As previously discussed, with the significant amount of landscaping proposed and conditions that can be placed on any permit issued, the effect on the amenity of the area is seen to be minimal.

The application is not considered an example of orderly planning as it would support a use to be located within the Farming Zone that has no material benefits for agriculture. While there may be positives for locating the facility close to the Merbein substation, the applicant has provided

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insufficient justification to outweigh the negatives of permanently removing viable agricultural land within the Mildura Older Irrigation district.

After reviewing the application against relevant VCAT decisions, assessing the application against the Mildura Planning Scheme; it is considered that the proposed renewable energy facility will have a detrimental impact on the current agricultural land located within the Irrigation District.

Other relevant adopted State policies/strategies – (e.g. Melbourne 2030.)

None relevant for this application.

Relevant incorporated or reference documents

None relevant for this application.

Relevant Planning Scheme amendments

None relevant for this application.

Summary of Key Issues

Use and development have a positive outcome for renewable energy state targets.

Location of use and development within close proximity to the Merbein substation.

Losing viable agricultural land located within the Mildura Older Irrigation Area.

Detrimental impacts raised by adjoining land owners.

Conclusion

This application proposes the use and development of a renewable energy facility at the site known as 8 McKays Road, Birdwoodton. It is considered that the use and development is not an appropriate use for the subject site. While the use is considered to have significant benefits to the Municipality and is supported by relevant renewable energy state policies, the application fails to be supported by numerous state and local agricultural policies; nor the Farming Zone's purpose and appropriate decision guidelines. The application fails to justify its merit for approval when considering recent VCAT decisions relating to uses and development within the Mildura Older Irrigation District without direct link to horticultural production.

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Mr Cimino concludes in the Keen VCAT Matter:

“My conclusion is that the benefit derived from the protection of agricultural land outweigh the benefit derived from the establishment of a service station on this site. As planning policy currently stands, the strong unequivocal support for the protection of agricultural land from small incremental loss, outweighs the benefit derived from the potentially incidental use of a service station by some heavy vehicles.”

Recommendation

That Council having caused notice of Planning Application No. 005.2018.00000053.001 to be given under Section 52 of the *Planning and Environment Act 1987* and or the planning scheme and having considered all the matters required under Section 60 of the *Planning and Environment Act 1987* decides to issue a Notice of Decision to Refuse to Grant a Permit in respect of the land known and described as Lot 2 PS: 541858P for the Use and Development of a Renewable Energy Facility with the application dated 26 June 2018, subject to the following conditions:

- (1) The application does not meet the objective of Clause 14.01-1S (Protection of agricultural land). There are no positive outcomes for agriculture.
- (2) The application does not meet the objective of Clause 14.01-2R (Agricultural productivity - Loddon Mallee North). The proposed use and development will result in further land being removed from Mildura’s Irrigation District.
- (3) The application does not meet the objective of Clause 14.01-2S (Sustainable agricultural land use). The use is not directly associated with agriculture.
- (4) The application does not meet the objective of Clause 21.06-1 (Protection of rural land). A significant portion of land will be removed from potential agricultural production.
- (5) The application does not meet the objective of Clause 21.08-1 (Agriculture). The application would allow for a use with no link to agriculture to occur within the horticultural area of Mildura.
- (6) The purposes and decision guidelines of Clause 35.07 (Farming Zone) are not met. The proposed use is not intrinsically linked to agriculture. The land would be removed from potential agricultural production.