

Our ref: Black Gully Road - 6649  
Your ref: DA 48/2020 PPSNTH-66

7 September 2023

The General Manager  
Liverpool Plains Shire Council  
Via NSW Planning Portal

Attn: Elizabeth Cumming

Dear Libby,

**RE: DA48/2022 – 962 Black Gully Road, Werris Creek, Electric Generating Facility.**

I am writing to confirm our discussions of even date regarding the amendments. I have given further consideration to the modification, and confirm that, in my view, it is now better dealt with under Section (2).

## Type of Modification

### Section (2)

(2) **Other modifications** 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 development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the **modification** of that consent, and
- (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 the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a **modification**.

We are of the opinion that the development is substantially the same development, as it is within the original overall development footprint, although it is of smaller scale. Issues of access etc remain the same.

Nevertheless because of the change in impacts including the overall shift northwards within the site of what is, effectively, stage 1 of the original proposal (Stage 2 now not being proceeded with) in our view Section (2) is appropriate.

We further note the consultations that are being undertaken with relevant state agencies and understand that the Council will give consideration to submissions in advising the Regional Planning Panel.

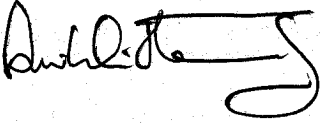
### **Panel Conditions**

I also provide advice regarding the conditions which in themselves are a trigger for the modification being dealt with by the Panel. This follows a review of the Instructions. In this respect I note that the requested amendments to conditions include the following conditions which were amended by the Panel:

- Condition 10a
- Condition 38
- Condition 45a

On this basis it is my conclusion that the matter is one that is NOT to be determined by Council.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Angus Witherby', with a stylized flourish at the end.

Angus Witherby  
*Director*