



Sam McLean
Executive Director - Secretariat
Independent Planning Commission
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Dear Ms McLean

Orange Grove Solar Farm (SSD 8882)

Thank you for your recent letter to the Department on the Orange Grove Solar Project, seeking further information on the rehabilitation of the site following the completion of operations.

I have attached a short note setting out the Department's approach to the rehabilitation of solar projects in general, and how these have been incorporated into the recommended conditions for the Orange Grove Solar Project.

I hope this information is helpful and will enable the Commission to determine the development application for the project.

However, if the Commission requires any further information on these matters, please contact me on [REDACTED]

Yours sincerely

David Kitto
Executive Director
Resource Assessment and Business Systems

PROPOSED APPROACH TO REHABILITATION - ORANGE GROVE SOLAR PROJECT

The requirements in the recommended conditions for the Orange Grove Solar Project were informed by the:

- detailed policy considerations which led to the publication of the *Wind Energy Guideline* in December 2016 and the *Large-Scale Solar Energy Guideline* in December 2018 following extensive consultation with industry, interest groups and affected communities; and
- Department's standard conditions for solar farms.

Policy Considerations

During the development of the *Wind Energy Guideline* considerable thought was given to determining the best approach for ensuring wind farms were decommissioned following operations and the site was suitably rehabilitated. This included detailed consideration of what, if any, role the State Government should play in such matters; and the statutory provisions that would be necessary to support it playing a major role (financial assurances, powers to enter private property and carry out work, ability to remove private property – such as solar panels – from sites, etc).

Ultimately, it was decided that the applicant should be solely responsible for decommissioning the wind farm and rehabilitating the site, and that the Department would ensure this occurred by imposing suitable conditions of consent and using its enforcement powers under the *Environmental Planning & Assessment Act 1979* (EP&A Act) to address any breaches of these conditions.

This approach is reflected in both the wind and solar guidelines.

The development of a solar farm is often a “joint venture” between the applicant and a host landowner or landowners, with the landowner often receiving substantial payments from the applicant for the use of their land.

While the Department's policy is that the applicant, not the host landowner, should be responsible for the decommissioning of a project and rehabilitation of the site, it is acknowledged that there may be situations where this obligation may ultimately fall to the landowner, principally because the conditions apply to the land rather than any party. This is not unreasonable given the landowner is a financial party to the project.

However, both the wind and solar guidelines make it clear that the applicant and the host landowner should expressly provide for the decommissioning of the project and rehabilitation of the site in any commercial agreement. They also require the applicant to ensure the landowner is properly informed of the implications of any agreement and to bear all reasonable costs associated with the landowner securing independent advice on these matters, including the rehabilitation of the site.

In other words, if a financial assurance is to be held for a project then it should be held by the host land owner, not the Department, and is essentially a commercial matter between the applicant and the landowner.

Section 4.17(4B) of the EP&A Act – Financial Assurances

While a power - see section 4.17(4B) - was introduced into the EP&A Act in March 2018 that allows a consent authority to impose a condition to secure financial assurances for a project, it was always envisaged that this power would only be exercised when there was express policy to support the imposition of such conditions; and that in these instances the EP&A Regulation would need to be amended to include specific provisions to give effect to the policy.

Given there is currently express policy saying any financial assurances for the rehabilitation of wind or solar projects should be dealt with in the commercial agreements for the project, rather than by requiring financial assurances under the conditions of consent, the Department does not support the use of this power on any solar project.

Further, at this stage there are currently no policies in place or provisions in the EP&A Regulation that would support the imposition of such a condition.

Consequently, there is no clear regulatory or policy framework in place to enable the imposition and enforcement of such conditions, including provisions to appeal against decisions on a financial assurance, including the manner in which it is held or the circumstances upon which it may be called upon by the consent authority. There is also uncertainty about what powers the consent authority would be able to rely on to enter private property and carry out any works or to remove private property (solar panels, fencing, etc.) from the site. Finally, the Department has no suitable governance or administrative arrangements in place to support the imposition of such conditions.

This is in stark contrast to the rehabilitation of mines in NSW, which is expressly covered under the relevant mining legislation. Further, in mining projects the State Government usually owns the resource and is therefore party to a lease with the relevant mining company, and mining often involves a significant transformation of the landforms and natural systems on-site which could result in significant risks of adverse off-site impacts unless the site is properly rehabilitated. Consequently, there are good reasons for the State Government to be heavily involved in the rehabilitation of mining projects.

Standard Conditions

The Department developed standard conditions of consent for solar projects in 2017, and these conditions reflect the proposed approach to the decommissioning and rehabilitation in the guidelines.

They also reflect a policy decision by the Department to increase the use of outcomes-based conditions and reduce the reliance on management plans.

The key reasons for this decision were to:

- focus more on setting clear standards or outcomes to be achieved;
- make the applicant – not the Department - responsible for working out the best way to achieve these outcomes while complying with all the other requirements in the conditions of consent;
- reflect the case that these management arrangements are often addressed by the applicant through private contracts; and
- reduce the costs associated administering management plans, particularly if they were unnecessary.

However, it was acknowledged that in some cases management plans would continue to be useful tools to manage certain matters, particularly if they were complex or required consultation with several parties.

The standard conditions for solar projects require very few management plans. At this stage, they only require Traffic Management Plans, a Landscape Plan, and a Fire Hazard and Emergency Plan. This is reflective of the relatively straightforward nature of these projects.

In relation to decommissioning and rehabilitation, the standard conditions assume the solar project could operate for a very long time, with regular refurbishment of the solar panels over time, and consequently may never need to be decommissioned. If operations cease, however, the applicant is required to:

- decommission the project and rehabilitate the site to the satisfaction of the Secretary within 18 months of the cessation of operations;
- comply with clear rehabilitation objectives; and
- comply with all the other requirements of the conditions of consent while undertaking the decommissioning and rehabilitation works.

They do not require the applicant to prepare and implement a Rehabilitation Management Plan for the project, primarily because this is normally straightforward and involves removing all the infrastructure from the site and restoring the land to its former use.

Since 2017, the Department has applied these standard conditions consistently to over 26 solar projects.

Recommended Conditions for the Orange Grove Solar Project

The recommended conditions for the Orange Grove Solar Project are consistent with the standard conditions.

In practice, the Department would expect these conditions to work in the following way:

- applicant ceases operations, and has 18 months to rehabilitate the site;
- applicant notifies the Department when it commences decommissioning the project;
- applicant undertakes decommissioning and rehabilitation works, including:
 - removing all the infrastructure from the site, including the removal of panels, footings, underground pipes and cables and access roads as envisaged in the solar guideline; and if some infrastructure is to be kept in place, then seeking the Secretary's agreement for the retention of the infrastructure;
 - restoring the capability of the land, including ripping the land, reinstating drainage lines and revegetating or planting crops on the site; and
 - resuming the current use of the land;
- applicant to comply with all the other conditions of consent during the carrying out of any decommissioning and rehabilitation works, including causing no water pollution; minimising dust, noise and visual impacts; and minimising and properly disposing of any waste;
- the Department's compliance officers would regularly check the progress of the decommissioning and rehabilitation works and compliance with any conditions of consent;
- the applicant can be made to commission an independent audit of compliance at any stage by the Secretary;

- once the works are completed, the Department would inspect the site and either sign off the completion of the works against the relevant conditions or require further works to be carried out before signing off the works;
- if a breach has occurred (for instance, the works are not completed on time or to the right standard), then the Department would use its enforcement powers under Part 9 of the EP&A Act to rectify the breach, including issuing orders and accepting enforceable undertakings;
- this is likely to involve taking enforcement action against the applicant to complete the decommissioning works to the required standard;
- however, in some cases, it may involve taking enforcement action against the relevant landowner to complete the works;
- in these circumstances, the landowner should be able to call on a financial assurance under the commercial agreement with the applicant to help complete these works.

In the Department's view, these conditions provide a robust framework for ensuring the site used for the Orange Grove Solar Project will be appropriately rehabilitated and returned to its current agricultural use.