



Steve Barry  
Planning Director  
Independent Planning Commission  
GPO Box 3415  
Sydney NSW 2001

2/3/2020

Dear Mr Barry

**New England Solar Farm (SSD 9255)**

Thank you for your recent letter to the Department on the New England Solar Farm seeking comment on proposed changes to the conditions.

I have attached a short note setting out the Department's comments on these proposed changes. The Department has also consulted with UPC Renewables.

If you wish to discuss this matter, please contact me on 02 9274 6374 or at [nicole.brewer@planning.nsw.gov.au](mailto:nicole.brewer@planning.nsw.gov.au).

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Nicole Brewer', with a long horizontal line extending to the right.

Nicole Brewer  
**Director**  
**Energy Assessments**

## COMMENTS ON PROPOSED CHANGES TO CONDITIONS – NEW ENGLAND SOLAR (SSD 9255)

### Schedule 2

- new condition 5 - Final Layout Plans
- new condition 6 - Work as Executed Plans
- new condition 8 - Notification to Department

#### FINAL LAYOUT PLANS

5. Prior to commencing construction, the Applicant must submit detailed plans of the final layout of the development to the Secretary, including details on the siting and configuration of the solar panels and ancillary infrastructure.

#### WORK AS EXECUTED PLANS

6. Prior to commencing operations or initiating any upgrades of any solar panels or ancillary infrastructure, the Applicant must submit work as executed plans of the development to the Department.

#### UPGRADING OF SOLAR PANELS AND ANCILLARY INFRASTRUCTURE

7. Over time, the Applicant may upgrade the solar panels and ancillary infrastructure on site provided these upgrades remain within the approved development footprint of the site. Prior to carrying out any such upgrades, the Applicant must provide revised layout plans and project details of the development to the Secretary incorporating the proposed upgrades.

#### NOTIFICATION OF DEPARTMENT

8. Prior to commencing the construction, operations, upgrading or cessation of operations or decommissioning of the development, the Applicant must notify the Department in writing of the state of commencement, completion, or the resumption.

If any of these phases of the development are to be staged, then the Applicant must notify the Department in writing prior to commencing the stage, and clearly identify the development that would be carried out during the resumption.

The Department's recommended conditions include requirements relating to these plans and notifications in Schedule 4 under the heading of 'Notifications' (recommended condition 4, 5 and 6 respectively).

### Schedule 2 – amended condition 13 – Subdivision Plans

#### SUBDIVISION PLAN

9-13. The Applicant may subdivide the site to create new allotments for the proposed subdivision, in accordance with the layout approved in Condition 5 above, and with the requirements of the EPA Act and EPA Regulation, and generally in accordance with the figure in Appendix 3.

Prior to subdividing the site, the Applicant must prepare and submit detailed subdivision plans to the Secretary for approval.

#### Notes:

- Under Part 3 of the EPA Act, the Applicant is required to obtain a subdivision certificate for a plan of subdivision.
- Division 4 of Part 3 of the EPA Regulation sets out the application requirements for subdivision certificates.

The Department has no issue with this proposed change but it should reflect the correct cross reference for final layout plans.

### Schedule 3 – amended condition 1 - Transport

#### TRANSPORT

##### Over-Dimensional and Heavy Vehicle Restrictions

1. The Applicant must ensure that the:
  - (a) development does not generate more than:
    - 56 heavy vehicle movements a day during construction, upgrading and decommissioning;
    - 6 over-dimensional vehicle movements during construction, routine maintenance (requiring an over-dimensional vehicle), upgrading and decommissioning; and
    - 5 heavy vehicle movements a day during operations;
  - (b) length of any vehicles (excluding over-dimensional vehicles) used for the development does not exceed 26 metres, unless the Secretary agrees otherwise.
2. The Applicant must keep accurate records of the number of over-dimensional and heavy vehicles entering or leaving the site each day for the duration of the project.

The Department proposes an alternate change:

1. The Applicant must ensure that the:
  - (a) development does not generate more than:
    - 56 heavy vehicle movements a day during construction, upgrading and decommissioning;
    - 6 over-dimensional vehicle movements during construction, routine maintenance (requiring an over-dimensional vehicle), upgrading, and decommissioning and operations; and

- 5 heavy vehicle movements a day during operations; on the public road network;
- (b) length of any vehicles (excluding over-dimensional vehicles) used for the development does not exceed 26 metres, unless the Secretary agrees otherwise.

The Department considers that routine maintenance sits within the operations phase and its recommended alternate change supports the current definitions in the recommended consent (as routine maintenance is not currently defined in the consent).

In addition, the over dimensional vehicle movements allow for the four transformers to be delivered to site. In the unlikely event that maintenance identifies issues with all transformers, more than one delivery would be required.

### Schedule 3 – new condition Landscaping

#### LANDSCAPING

7. ~~Within 3 years of commencement of construction, the owner of N1 may request the Applicant to plant a vegetation screen along the length of the southern common boundary with the development to minimise the visual impacts from the northern array from within the N1 property. The vegetation screen must:~~
- ~~(a) be wholly contained within the land leased by the Applicant for the purposes of the project;~~
  - ~~(b) consist of native species that facilitate the best possible outcome in terms of screening the view of the solar panels and ancillary infrastructure from within the N1 property;~~
  - ~~(c) be effective at screening views within 3 years of the date of the review land;~~
  - ~~(d) be properly maintained with appropriate weed management.~~

The Department considers that mitigation at this location for residence N1 is not required based on the nature of the impact from the residence (distance from solar arrays and visibility of project infrastructure), and the Department has concerns about the enforceability of the condition. The Department notes that the applicant also has expressed concern about this proposed condition.

The Department has assessed the nature of the impact from residence N1 and considers that views to the south are not the primary views (consistent with Land and Environmental Court Planning Principles<sup>1</sup> on view sharing). The primary views for residence N1 are to the north and north west as the living areas face this direction.

In addition, the Department notes that with the exclusion zones proposed by UPC, the development footprint is about 350 m from the boundary and about 450 m from the residence.

The visual impact assessment prepared by the applicant in the EIS provided a viewshed analysis (see **Figure 1**). The Department notes that this viewshed was prepared on the basis of the layout proposed in the EIS which had the array located 350 m from the residence but was later amended by the applicant to set back the solar array 450 m from the residence.

<sup>1</sup> Tenacity Consulting v Waringah [2004] NSWLEC 140

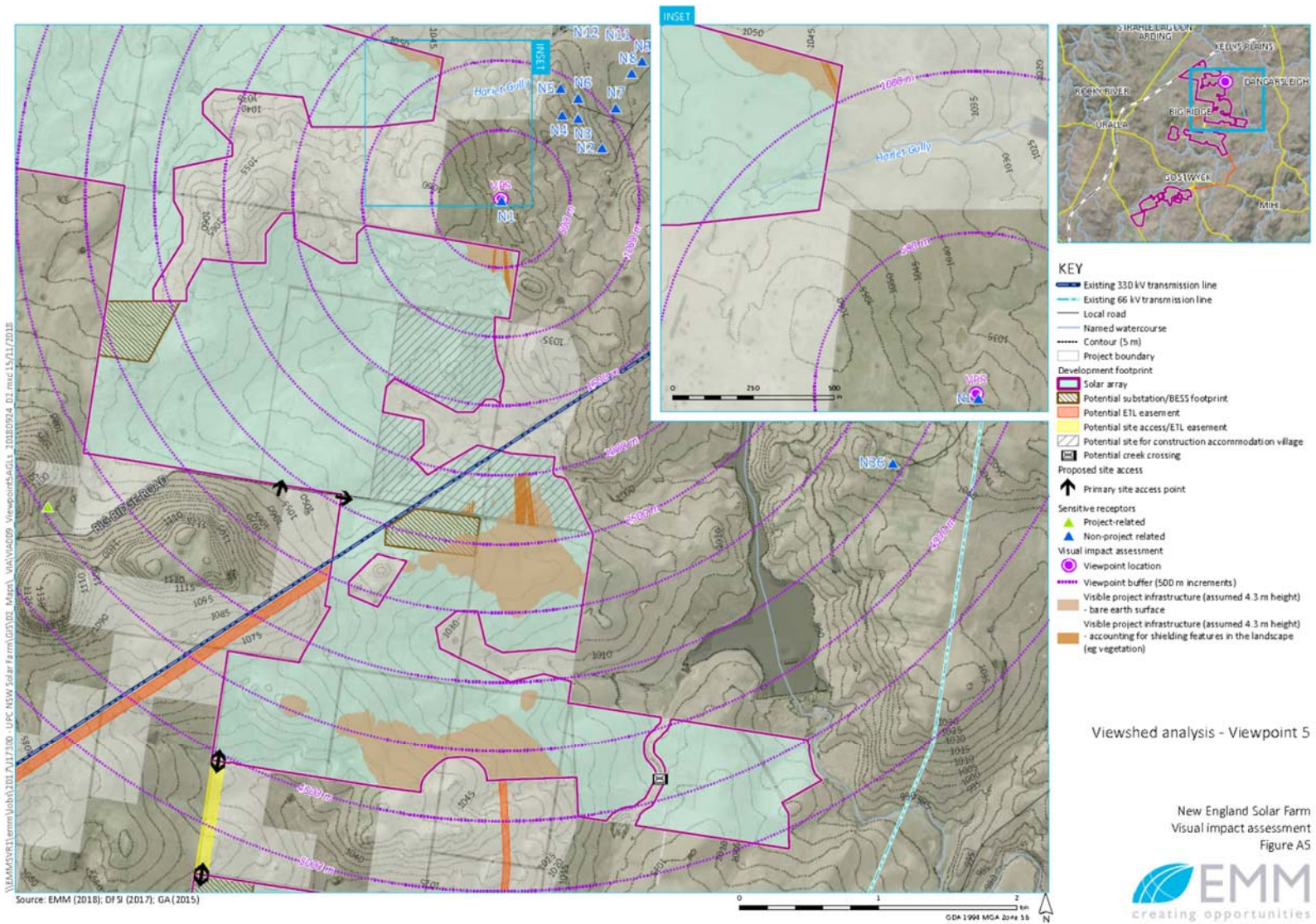


Figure 1 – Viewshed analysis (Source Appendix I – Landscape and Visual Assessment)



The viewshed analysis (prepared for the project infrastructure and included consideration of shielding features in the landscape such as vegetation) showed a small confined area to the south of the residence where infrastructure would be visible.

The Department notes that this is in contrast to the proposed change which requires landscaping along the entire length of the southern boundary with the development to screen views from the property (rather than the residence and curtilage).

The Department also considers that if the Commission maintains that this condition is warranted then further consideration is required of:

- the extent of the landscaping which appears to seek to minimise views from the property rather than the residence and curtilage;
- the extent of the landscaping which is not defined or limited to reasonable and feasible and leaves the nature of landscaping (width and extent) up to the owner of N1 (which may have implications for the location of project infrastructure);
- the need for a dispute mechanism to resolve any potential disagreements between the applicant and owner of N1 including an avenue for either party to refer the matter to the Secretary;
- timing of the condition being within 3 years of commencing construction, meaning that with a proposed construction period of around 3 years (40 months), construction may be complete or almost complete with the ability for the owner of N1 to request landscaping be implemented;
- typographical error referencing N! rather than N1.

### Schedule 3 – amended condition 8 – land management

LAND MANAGEMENT

7.5. Following any construction or upgrading on the site, the Applicant must:

- (a) restore the ground cover of the site as soon as practicable;
- (b) maintain the ground cover with appropriate perennial species; and
- (c) manage weeds within the ground cover; and
- (d) manage tree species.

The Department has no issue with this proposed change.

### Schedule 3 – amended condition 12 – construction, upgrading and decommissioning hours

AMENITY

Construction, Upgrading and Decommissioning Hours

14.12. Unless the Secretary agrees otherwise, the Applicant may only undertake construction, upgrading or decommissioning activities on site between:

- (a) 7 am to 6 pm Monday to Friday;
- (b) 8 am to 1 pm Saturdays; and
- (c) at no time on Sundays and NSW public holidays.

The following construction, upgrading or decommissioning activities may be undertaken outside these hours without the approval of the Secretary:

- ~~the delivery of materials to the site;~~
- the delivery of materials as requested by the NSW Police Force or other authorities for safety reasons; or
- emergency work to avoid the loss of life, property and/or material harm to the environment.

The Department considers that its recommended condition allows constructability for the applicant where there is no material impact on non-associated receivers (i.e. inaudible).

The applicant has requested construction outside standard hours (with measures such as exclusion zones and restricted activities) and proposes monitoring at the closest sensitive receptors during these periods for the duration of construction to ensure that  $L_{Aeq15min}$  noise levels from construction activities do not exceed the background noise level by more than 5 dB(A) or an  $L_{Amax}$  level of 45dB(A).

The applicant's proposed level is higher than the recommended condition of 'inaudible'.

The Department does not support the applicant's request to carry out activities to those proposed noise levels but it maintains the more stringent recommended condition for any noise outside construction hours to be inaudible.

### Schedule 3 amended condition 14 - dust

#### Dust

~~49-14. The Applicant must minimise the dust generated by the development ensure all operations and activities occurring at the premises are carried out in a manner that minimises dust including the emission of wind-blown or traffic generated dust.~~

The Department has no issue with this proposed change but suggests that 'premises' is replaced with 'site' as it is defined in the consent.

### Schedule 3 amended condition 20 – Water supply

#### Water Supply

~~49-20. Prior to the commencement of construction the Applicant must demonstrate to the satisfaction of the Secretary that ~~enough~~ the Applicant has sufficient water for all stages of the development, and if necessary, adjust the scale of the development to match its available water supply.~~

~~Note: Under the Water Act 1972 and/or the Water Management Act 2000, the Applicant is required to obtain the necessary water licences for the development.~~

The Department considers that the proposed change is less stringent than the current proposed condition and increases administrative burden.

The Department's recommended condition requires the applicant to have sufficient water for all stages and if it does not, then this becomes a matter for compliance. The proposed change does not provide additional certainty by needing to demonstrate this prior to construction commencing.

In addition, water for the project is a relatively small quantity (220 megalitres (ML)) required during the construction period (mainly for dust suppression) and 5 ML annually during operation (mainly for cleaning panels).

The Department also notes that if the applicant is unable to source water in particular during construction for dust suppression, then the Department's recommended conditions of consent include a requirement to minimise dust generated by the development and the applicant would be unable to comply with this condition.

Lastly, the Department notes that its approach to the recommended condition is consistent with water supply conditions for mining projects where water use is much higher.

### Schedule 3 amended condition 27 - waste

#### WASTE

~~49-27. The Applicant must:~~

- ~~(a) minimise and manage the waste generated by the development in accordance with the EPA's waste hierarchy objectives of avoidance, resource recovery and then disposal;~~
- ~~(b) classify all waste generated on site in accordance with the EPA's Waste Classification Guidelines 2014 (or its latest version);~~
- ~~(c) store and handle all waste on site in accordance with its classification;~~
- ~~(d) not recycle or dispose of any waste on site; and~~
- ~~(e) remove all waste from the site as soon as practicable, and ensure it is sent to an appropriately licensed waste facility for disposal.~~

The Department has no issue with this proposed change.

### Schedule 3 amended condition 30 – decommissioning and rehabilitation

30. Within 3 years of commencement of operations, the Applicant must prepare a Decommissioning & Rehabilitation Plan for the development which shall be reviewed by the Applicant 2 years prior to the cessation of operations, to the satisfaction of the Secretary. The plan must:

(a) include detailed completion criteria for evaluating compliance with the rehabilitation objectives in Table 3 above;

(b) describe the measures that would be implemented to:

- decommission the development and rehabilitate the site in accordance with the objectives in Table 3;
- minimise and manage the waste generated by the decommissioning of the development in accordance with the obligations in condition 27 above; and

(c) include a program to monitor and report on the implementation of these measures against the detailed completion criteria.

The Applicant must decommission and rehabilitate the site in accordance with the approved Decommissioning & Rehabilitation Plan.

The Department has previously provided advice to the Commission regarding its approach to rehabilitation and decommissioning.

In summary, the Department has developed standard conditions of consent that reflects 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:

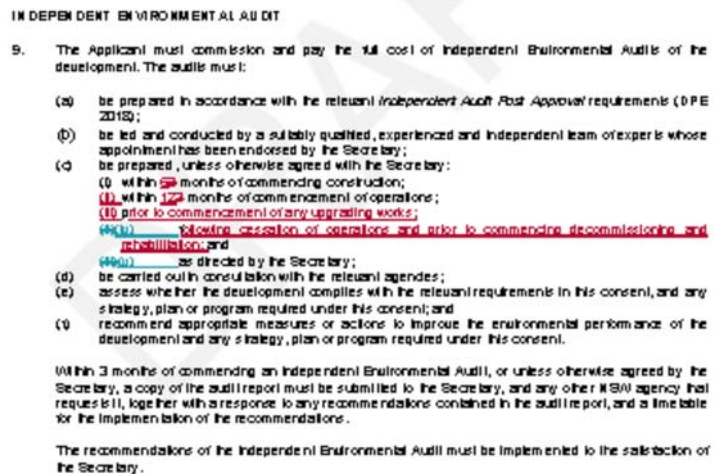
- focus more on setting clear standards or outcomes to be achieved;
- make the applicant – not the Department - responsible for working out the best way to achieve these outcomes while complying with all the other requirements in the conditions of consent;
- reflect the case that these management arrangements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

The standard conditions for solar projects (and the Department’s recommended conditions for this project) do not require the applicant to prepare and implement a Decommissioning and 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.

The proposed condition includes preparation of a plan that may not be used for many years, if at all, if the solar farm is upgraded (as allowed by the Department’s recommended conditions) and continues to operate.

If the Commission considers that a Rehabilitation and Decommissioning Plan condition is warranted then further consideration is required of the proposed timing. The proposed condition requires a review 2 years prior to the cessation of operations where ‘cessation of operations’ is defined as “*Operation of the development has ceased for a continuous period of 12 months*”. In practice this means that 12 months prior to the development ceasing operating (a point which may not be able to be predicted) the plan needs to be updated.

## Schedule 4 amended condition 9 –Independent Audit



The Department considers that the proposed change is less stringent than the current proposed condition.

For clarity, the *Independent Audit Post Approval Requirements* (DPE June 2018, Audit Guideline) note that the purpose of an Independent Audit is to obtain an independent and objective assessment of the environmental performance and compliance status of a project. The Independent Audit is not intended to replace the Department's compliance function but assist the Department in regulating a development by placing the onus on the applicant to commission the audit and rectify any issues raised in the audit.

The Department considered the proposed audit frequency in the Audit Guideline and considers its recommended conditions are commensurate with potential impacts for this type of development with shorter construction periods and where, once operating, the potential impacts are unlikely to change.

The Department's recommended conditions include an audit to be prepared within 3 months of construction or operation commencing and the audit report be provided to the Department within 3 months of the audit commencing.

The Department's recommended conditions were developed in consultation with its compliance team and propose a schedule that means that the Department is aware shortly after construction or operation commencing of any potential issues to ensure the stage is being managed appropriately and any issues can be rectified quickly and are commensurate with the length of proposed solar farm construction periods.

The proposed changes mean that an audit report would be provided to the Department 9 months after construction and 15 months after operation.

The Department also notes that Schedule 2 condition 4 includes a requirement that the applicant comply with any requirements of the Secretary and could include an additional audit if the Department considers it necessary.

The Department considers that a requirement for an audit prior to commencing an upgrade or following cessation of operations prior to commencing decommissioning would not provide benefit or assist the Department in regulating the project and is not consistent with the Department's guidelines.



In addition, the Department's compliance team would inspect the site at the completion of decommissioning and rehabilitation to confirm compliance with the rehabilitation objectives in the recommended conditions.

### **Figures**

Lastly, the Department notes that the figures in the appendices in the track change version have lost some detail and would need to be updated.