



Your reference: SSD 9515
Our reference: DOC19/355071
Contact: Simon Stirrat
Ph 03 5021 8930
Date: 17 May 2019

Elle Donnelley
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Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

Via email: elle.donnelley@planning.nsw.gov.au

Dear Ms Donnelley

RE: Yanco Solar Farm (SSD 9515) – Environmental Impact Statement

I refer to your email dated 18 April 2019 seeking input from the Office and Environment and Heritage (OEH) into the Environmental Impact Statement (EIS) for the proposed Yanco Solar Farm (SSD 9515). We have reviewed the exhibited EIS against the Secretary's Environmental Assessment Requirements (SEARs), issued by the Department of Planning and Environment to the proponent on 30 August 2018, and offer the following comments.

OEH considers that the EIS **does** meet the Secretary's requirements for biodiversity and Aboriginal cultural heritage (ACH) subject to amendments. An assessment summary is provided in **Attachment A** and detailed comments and recommendations are in **Attachment B**.

The initial Aboriginal cultural heritage (ACH) assessment included a site survey on 22 - 23 October 2018 which did not identify any constraints. An additional site survey (11 December 2018) following realignment of the proposed transmission line to the south side of Houghtons Road, identified the presence of an Aboriginal site/object (silcrete core flake). We note the ACHAR indicates that this isolated find (AHIMS Site 49-5-0211: YSF_IF_001) will be avoided by utilising the northern transmission line route and that no further mitigation is required. OEH considers this site is still at some risk (direct or indirect) through chance impacts associated with proposed construction of the transmission line and should be subject to further protection. OEH also considers some amendment to the Unanticipated Finds Protocol, with particular regard to skeletal remains, is required to ensure compliance with legislation in place to protect ACH in NSW.

All plans required as a Condition of Approval that relate to biodiversity or ACH should be developed in consultation and to the satisfaction of OEH, to ensure that issues identified in the consultation process are adequately addressed.

If you have any questions regarding this matter, please contact Simon Stirrat on (03) 5021 8930 or email simon.stirrat@environment.nsw.gov.au.

Yours sincerely

ANDREW FISHER
Senior Team Leader Planning
South West Branch
Conservation and Regional Delivery
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ATTACHMENT A - OEH Assessment Summary for Yanco Solar Farm EIS (SSD 9515)

ATTACHMENT B - Detailed comments for Yanco Solar Farm EIS (SSD 9515)

ATTACHMENT A OEH Assessment Summary for Yanco Solar Farm EIS (SSD 9515)

Key Issues

1	<i>Issue</i>	<p>Ground disturbance activities associated with the northern transmission line route is a potential risk of harm to AHIMS Site 49-5-0211</p> <p>Recommended action:</p> <ul style="list-style-type: none"> • Installation of visible barrier (fence) around the artefact prior to construction and decommissioning • Identify the artefact location on all maps and plans • Aboriginal heritage site induction for contractors and work crews
	<i>Extent and Timing</i>	Pre-determination
2	<i>Issue</i>	<p>Unexpected finds procedure for skeletal remains (AH3/Recommendation 5) is not entirely consistent with legislation in place to protect ACH in NSW</p> <p>Recommended action:</p> <ul style="list-style-type: none"> • Revise Recommendation 5 such that notification of RAPs and Aboriginal community should only occur once skeletal material is determined as being Aboriginal in origin
	<i>Extent and Timing</i>	Pre-determination
3	<i>Issue</i>	<p>A Cultural Heritage Management Plan (CHMP) should be developed in consultation with Registered Aboriginal Parties and OEH include updated protocols for unexpected finds (skeletal remains) prior to construction activity occurring.</p> <p>It should include an unexpected finds protocol and a clear mitigation strategy (including fencing) to ensure that the Aboriginal objects that are to be avoided during construction are not harmed.</p> <p>Recommended action:</p> <ul style="list-style-type: none"> • CHMP should include Unanticipated Finds Procedure and updated process for discovery of skeletal remains • CHMP to provide ACH site induction information for employees and contractors • CHMP should include a mitigation strategy (visible physical buffer) to ensure AHIMS Site 49-5-0211 is avoided during construction and not harmed
	<i>Extent and Timing</i>	Pre-construction
4	<i>Issue</i>	<p>Appendix D (Heritage Unexpected Finds Procedure) incorporates details relating to Historic Heritage with those of Aboriginal cultural heritage which is not appropriate.</p> <p>Recommended action:</p> <ul style="list-style-type: none"> • Remove procedure relating to historic heritage from the Aboriginal Unexpected Finds Procedure (and ACHAR) • Contact OEH's Heritage Division (heritage@heritage.nsw.gov.au) for appropriate advice regarding historic cultural heritage if a copy has not already been provided
	<i>Extent and Timing</i>	Pre-determination

<u>OEH Advice</u>		
1.1	Is the 'baseline' for impact assessment reasonable?	Yes
	The baseline impact assessment is generally reasonable however there are issues to be resolved as outlined in Attachment B.	
1.2	Are predictions of impact robust (and conservative) with suitable sensitivity testing?	
	Biodiversity	Yes
	ACH	Yes
1.3	Has the assessment considered how to avoid and minimise impacts?	
	Biodiversity	Yes
	ACH – further protection measures are recommended	No
1.4	Does the proposal include all reasonably feasible mitigation options?	
	Biodiversity	Yes
	ACH	No
1.5	Is the assessed impact acceptable within OEH's policy context?	
	The proponent is required to review OEH comments. Once these are considered and appropriate amendments are made OEH will review the responses and/or the revised reports.	
1.6	Confirmation of statements of fact	
	See minor points in attachment B.	
1.7	Elements of the project design that could be improved	
	See additional protection measures for ACH.	

ATTACHMENT B Detailed comments for Yanco Solar Farm EIS (SSD 9515)

Biodiversity

The Biodiversity Development Assessment Report (BDAR) contains most of the information required from the Biodiversity Assessment Method (BAM).

BAM comments

The exact area of the impact polygons in the shapefile provided to OEH in support of the EIS are slightly different to those used in the BAM calculator. This has a small effect on the total offset.

Also, the shapefile showing the small scurf pea species polygons has two areas totalling 1.1ha. The impact area for small scurf pea documented in the BDAR is 0.54ha (Table 4-5). OEH recommends adjusting the BAM calculation or clarifying the small scurf pea impact area in the BDAR.

The BDAR does not document or map the patch size as defined in section 5.3.2 of the BAM.

The full biodiversity credit report should also be presented in the BDAR, including the credit classes for ecosystem credits and species credits at the development site (table of credit classes and matching credit profiles).

Figures 4-1 and 4-2 of the BDAR are captioned as threatened species polygon maps but there are no polygons shown or described in the legends.

Conditions of approval

Management plans

Table 6-14 (Section 6.2.8 EIS main report) lists management plans to be developed and various mitigation measures to be implemented.

Commitments in the EIS to preparation of Construction and Operation Environmental Management Plans should be included as conditions of approval. The conditions can stipulate that the plans should include the relevant mitigation commitments identified in Table 6-14.

The EIS states in various places that vegetation screening will be done using species derived from local native plant communities. This should also be included as a condition of approval.

Fencing

The EIS identifies security fencing as a potential indirect impact on fauna (BDAR Section 7.1). We recommend that a Construction and Operational Environmental Management Plans include a fauna monitoring strategy for weekly monitoring of security/boundary fences during construction, and monthly during the first year of operation, implementing fauna management and rescue protocols including identification of mortalities with regular reporting to OEH.

Aboriginal Cultural Heritage Assessment

According to our assessment the information provided by Yanco Solar Farm Aboriginal Cultural Heritage Assessment Report (ACHAR) appears to be largely consistent with the requirements identified by the Code of Practice for Archaeological Investigation in NSW (OEH 2010) and SEARs issued for SSD 9515.

ACHAR Recommendations

OEH generally supports the recommendations outlined in the ACHAR (9. Recommendations) including a commitment to preparing a CHMP in consultation with the RAPs and OEH prior to any construction occurring. This should include an appropriate process for the discovery of ACH, including skeletal remains, should they be encountered during development works.

Recommendation 1

OEH supports the use of the northern transmission line route option to avoid the isolated find, however we consider a risk remains through unintentional harm (i.e. from heavy machinery). We recommend the proponent establish a temporary visible and physical barrier (a high visibility fence) around the object as an added precaution prior to construction and during decommissioning.

Recommendation 3

We note that Leeton and District Local Aboriginal Land Council request monitoring of ground disturbance activities as a mitigation measure (7.3 Avoiding or Mitigating Harm) while NGH Environmental does not consider monitoring warranted based on the ACH assessment. In NSW, monitoring cannot take the place of archaeological assessment and should the occurrence of ACH at the subject site be likely then further investigation and assessment would be required. Should the proponent reach an agreement with RAPs to undertake monitoring, this sits outside of the legislative requirements for ACH in NSW and OEH would not provide further advice on this.

Recommendation 5

OEH advise against notifying registered Aboriginal parties (RAPs) of the discovery of skeletal remains until the NSW Police and Coroner's Office have confirmed that the remains are Aboriginal in origin. OEH reiterate previous advice in relation to unexpected finds:

If any Aboriginal object is discovered and/or harmed in, or under the land, while undertaking the proposed development activities, the proponent must:

1. *Not further harm the object*
2. *Immediately cease all work at the particular location*
3. *Secure the area so as to avoid further harm to the Aboriginal object*
4. *Notify OEH as soon as practical on 131555, providing any details of the Aboriginal object and its location*
5. *Not recommence any work at the particular location unless authorised in writing by OEH.*

In the event that skeletal remains are unexpectedly encountered during the activity, work must stop immediately, the area secured to prevent unauthorised access and NSW Police and OEH contacted.

Conditions of approval

Cultural Heritage Management Plan

- A CHMP be developed for the site prior to the commencement of any construction works inclusive of protocols for encountering unexpected ACH (without steps for historic heritage)
 - The Unexpected Finds Protocol for skeletal be updated in accordance with OEH advice, and it is demonstrated that notification of RAPs only occurs following confirmation that remains are Aboriginal in origin (and protected under the National Parks and Wildlife Act 1974)
 - The CHMP should also include a plan of management for fencing works that clearly details mitigation measures for protecting AHIMS Site 49-5-0211 from unanticipated harm.

Protection of AHIMS Site 49-5-0211

- A temporary physical and visible barrier (protective fencing) is to be established around the known artefact prior to any construction in the vicinity