

Darlington Point Solar Farm Pty Ltd

C/- Octopus Investments Aust Pty Ltd
Como Centre, 644 Chapel St
South Yarra, Melbourne, VIC 3141

9 February 2021

Mr Jim Betts
Secretary
Department of Planning, Industry & Environment
Locked Bag 5022
Parramatta NSW 2124

Dear Secretary

**Darlington Point Solar Farm – Development Consent No. SSD 8392
Schedule 3, Condition 9: Biodiversity Offsets**

We refer to the State Significant Development Consent granted on 7 December 2018 by a delegate of the Minister for the Darlington Point Solar Farm (SSD 8392) (**Consent**).

Darlington Point Solar Farm Pty Ltd (**DPSF**) is the company that owns the Darlington Point Solar Farm and is carrying out the development pursuant to the Consent.

The purpose of this letter is to request the Secretary's agreement to an alternative timeframe for satisfaction of Condition 9 of Schedule 3 of the Consent which requires biodiversity credits to be retired.

Condition 9 of Schedule 3 relevantly provides as follows:

'Biodiversity Offsets

Within two years of commencing construction under this consent, unless the Secretary agrees otherwise, the Applicant must retire biodiversity credits of a number and class specified in Column (a) in Table 1 below, to the satisfaction of OEH.

...'

Since construction commenced pursuant to the Consent on 22 March 2019, DPSF has been working diligently to procure the biodiversity credits required by Condition 9. As you are aware, there are three options available to DPSF to acquire the necessary biodiversity credits, being

- (a) Retiring credits under the Biodiversity Offsets Scheme (**BOS**) (either by purchase from the credit market or generating credits at a purposefully selected Stewardship site), or
- (b) Making payments into the Biodiversity Conservation Fund using the offset payments calculator, or
- (c) Funding a biodiversity action that benefits the threatened entity impacted by the development.

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Considering the significant number of biodiversity credits that are required to be retired pursuant to Condition 9 of the Consent, establishing a biodiversity stewardship site is the most viable option available to DPSF and is also the preferred option under the *Biodiversity Conservation Act 2016 (BC Act)*. The open credit market is not sufficiently liquid to enable DPSF to direct purchase the required biodiversity credits from proponents in the Riverina region. The alternative would be to direct purchase biodiversity credits from the BCD which is the most expensive and least preferred option for DPSF and BCD and ultimately is not the intent of the BC Act.

While a biodiversity stewardship site is the preferred approach, it is the most time consuming of the three options. Notwithstanding this, DPSF has made significant progress to this end and are nearing the final stages of this process. Below is a summary of the current status:

1. Extensive work has been undertaken to identify suitable sites and consult with interested landholders. This includes an initial desktop assessment to identify suitable properties in the region, a generic mail out followed by a number of "rapid site surveys" carried out throughout 2019 and 2020 including discussing the BOS with a number of landowners.
2. 3 sites were determined by DPSF to be the most suitable stewardship sites warranting further investigation. DPSF were keen to ensure more than one site was investigated given the need for compliance with Condition 9. Further detailed surveys were undertaken, including PCT identification, initial vegetation integrity plots indicating vegetation condition and detailed discussions were had with the landholders at these 3 sites.
3. 2 sites were considered by DPSF to be satisfactory and had landholder interest. Total fund deposits and management plans were prepared for these two sites and negotiations were entered into with the landholders.
4. 1 site has now been confirmed as the preferred stewardship site. An in-principal agreement has been reached between DPSF and the landholder for an application to be made to the Biodiversity Conservation Trust for a biodiversity stewardship site to be created over the relevant land, which will generate the majority of the biodiversity credits required to satisfy Condition 9 of the Consent and result in entering in to a Biodiversity Stewardship Agreement.
5. A land management plan has been prepared and in-principal agreed with the landholder. A final survey has been completed and the land area agreed with the landholder.
6. A Draft biodiversity stewardship site assessment report, total fund deposit and management plan have been prepared for a suitable stewardship property that meets the majority of the ecosystem credit requirements. The documents are expected to be finalised for submission to the Biodiversity Conservation Trust accompanied by a biodiversity stewardship application form by the end of March 2021.

This progress has been slowed by seasonal conditions. The drought conditions in regional NSW through much of 2019 and early 2020 made PCT 45 very difficult to identify. Now that the drought conditions have been relieved, DPSF has been able to complete surveys and locate a suitable landholding which contains the required number and class of PCT 44 credits (which are equivalent PCT 45 credits), which has been confirmed by final ecological surveys. In addition, the very large area of land which is required to generate sufficient credits to comply with Condition 9 of the Consent (c. 500ha) necessitated a significant number of surveys and discussions with landowners. It is anticipated that DPSF will enter into a binding written agreement with the landholder within the next few weeks which will then enable a biodiversity stewardship application to be made to the Biodiversity Conservation Trust shortly thereafter.

Three processes out of DPSF's control also affect the timing:

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1. Seeking reasonable equivalence
2. Retiring residual credits
3. Lodgement and endorsement of the BSSAR

In relation to the number of biodiversity credits required to be retired pursuant to Condition 9, we note that the number of credits specified in Condition 9 was calculated in accordance with the now-repealed *Threatened Species Conservation Act 1995 (TSC Act)*. In accordance with clause 22(3) of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*, on 20 December 2018 a delegate of the Chief Executive of the Office of Environment & Heritage provided a Statement of Equivalence which determines the biodiversity credits under the current BC Act that are reasonably equivalent to the remaining biodiversity credits under the TSC Act that remain to be retired pursuant to the Consent. DPSF intends to retire credits in accordance with the Statement of Equivalence, a copy of which is **enclosed**. This process has added time to assessing and securing the credits.


Notwithstanding the progress made to date, residual credits will be required to be purchased. This will be undertaken in the most expedient manner, likely via the BCT, having fully investigated the potential to secure them through the stewardship site.

Based on our enquiries, we understand that once an application for creation of a Biodiversity Stewardship Site is made to the Biodiversity Conservation Trust, it can take several months for that application to be determined and a Biodiversity Stewardship Agreement to be executed. While this process is now in train, these steps need to be completed before DPSF will be in a position to retire the biodiversity credits required under Condition 9.

Given the above, it will not be possible for DPSF to retire the required biodiversity credits by March 2021. We therefore request that the Secretary agree to extend the time for satisfaction of Condition 9 of the Consent until 30 September 2021.

We would be pleased to discuss any aspect of this request with you further, if that would be of assistance. Otherwise, we would be grateful to receive your written agreement to extending the date for compliance with Condition 9, which is a process contemplated by that condition.

Yours sincerely

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Director

Darlington Point Solar Farm Pty Ltd