Mr Lochie Gittoes

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Via email: lochieg@rmblawyers.com.au

12 September 2025

Dear Colleagues,

Re: Neighbour Agreements – Coles, Dwyer, Foxton and Webster

Project: Merino Solar Farm

We refer to your correspondence dated 4 September 2025 with respect to the above matter, in which you act for Joseph and Michelle Coles, Ashley Dwyer, Geoffrey and Denise Foxton, and Karen and Wayne Webster, and confirm that we are writing on behalf of the Merino Solar Farm project developer and proponent, Merino Solar Farm Pty Ltd as trustee for the Merino Solar Farm Trust (**Developer**), a subsidiary of EDPR Australia Pty Ltd and member of the EDP Group.

Benefit sharing

Under Part 8 of the *Environmental Planning and Assessment Regulation 2021* (NSW), any environmental impact statement (**EIS**) accompanying a development application for a State significant development must have regard to the *State Significant Development Guidelines 2024*.

The *State Significant Development Guidelines 2024* require the inclusion in the EIS of a section identifying the key strategic issues that are relevant to the assessment of the Project. This section may, but is not required to, state whether the Developer has entered into any benefit-sharing schemes, negotiated agreements with landowners, or voluntary planning agreements under Division 7.1 of the EPA Act.

On the other hand, the *Benefit Sharing Guideline 2024* provides general advice and best-practice guidance for the coordination of benefit-sharing programs in local communities, and need only be considered where it is referenced in the Planning Secretary's environmental assessment requirements.

The Neighbour Agreement proposed by the Developer is a genuine attempt on the Developer's part to incorporate your clients into the Project's benefit-sharing arrangement. The offer to your clients is not a statutory or planning requirement, and should your clients wish not to participate in any benefit-sharing scheme associated with the Project, then the Developer may elect instead to distribute those benefits to other neighbouring landholders and/or enter into a planning agreement with the relevant planning authorities for the provision of a monetary contribution or material public benefit to the local community.

Impacts

Under the *Large-Scale Solar Energy Guideline 2022*, the Developer is required to adopt strategies to reduce or manage 'moderate' or 'high' visual or noise impacts. Such mitigation strategies may include, *inter alia*, entry into private agreements with impacted landholders to manage impacts from the development. For landholders who are assessed as having 'very low' or 'low' impacts, no such mitigation strategies are required.

As your clients' neighbouring residences have been assessed as experiencing 'very low' or 'low' impacts, the Developer is not seeking to enter into a private agreement with your clients for the purposes of the *Private Agreement Guideline 2024*.

Alleged representations

No employee, representative or consultant of EDP or the Developer has represented to your clients or any other person that the NSW Department of Planning and Environment (**DPE**) *'are supportive of what EDPR are seeking to do with these agreements'* as alleged by you.

We confirm that DPE is aware that the Developer has made individual time-limited offers of financial benefits from the Project to neighbouring landholders, and that DPE will review the benefit-sharing arrangements and total amount to be distributed as part of the Developer's EIS submission.

Draft agreements

It is acknowledged and agreed that transparency is a guiding principle under the *Benefit Sharing Guideline 2024*. In accordance with this principle, developers are encouraged to disclose aggregate information about benefit-sharing contributions in public-facing documents such as the EIS. However, disclosure of individual landholder agreements or identifying details are not subject to disclosure, in recognition of privacy and commercial confidentiality considerations.

We further note that provision has been made for a 'Sign-on Payment' to contribute towards your clients' legal costs, and this has been conveyed verbally to your clients on several occasions. To provide further clarity, we would have been amenable to removing the 'Sign-on Payment' from the Neighbour Agreement and amending clause 8.3 (*Costs*) accordingly.

We would also have had no objection to renaming the agreements if the title caused confusion with similar naming in the *Private Agreement Guideline 2024*.

We note with disappointment that the specific concerns referenced above were not expressly requested as proposed amendments in your correspondence. Had these been raised earlier, we may have bene prepared to implement the changes prior to the stated due date for execution.

Final observations

We take this opportunity to remind you of your obligations under the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* (NSW) to maintain honesty and courtesy in all dealings, and to avoid conduct that grossly exceeds the legitimate assertion of your clients' entitlements or involves threats of disciplinary action beyond legitimate advocacy.

We otherwise wish to sincerely thank your clients for their time and engagement throughout the parties' discussions. While it is regrettable that agreement could not be reached within the desired timeframe, we acknowledge and appreciate the effort and openness shown during the process, and extend our best wishes to your clients for the future.

Kind regards,

Eunice Wells
Legal Counsel