



Michael Themis
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Via email: michael.themis@planning.nsw.gov.au

Dear Mr Themis

RE: West Wyalong Solar Farm (SSD 9504) – Exhibition of Environmental Impact Statement

I refer to your email dated 8 February 2019 to the Office of Environment and Heritage (OEH) seeking comment on the Environmental Impact Statement (EIS) for the proposed West Wyalong Solar Farm (SSD 9504).

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 8 November 2018, and offer the following comments.

OEH considers that the EIS **does** meet the Secretary's requirements for flooding. The EIS **does not** meet the Secretary's requirements for biodiversity or Aboriginal cultural heritage (ACH).

An assessment summary is provided in **Attachment A** and detailed comments and recommendations are in **Attachment B**.

The Biodiversity Development Assessment Report (BDAR) contains most of the information required from the Biodiversity Assessment Method (BAM). However, we consider that clearing associated for the project needs justification and that some parts of the BDAR and offset calculations require either amendment or clarification.

Regarding ACH, there are issues that need to be addressed in the Aboriginal Cultural Heritage Assessment Report (ACHAR) and Aboriginal archaeological survey report.

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

If you have any questions about this matter please contact Simon Stirrat on (03) 5051 6218 or at simon.stirrat@environment.nsw.gov.au.

Yours sincerely

ANDREW FISHER
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ATTACHMENT A – OEH Assessment Summary for West Wyalong Solar Farm (SSD 9504)
ATTACHMENT B – Detailed comments for West Wyalong Solar Farm EIS (SSD 9504)

ATTACHMENT A OEH Assessment Summary for West Wyalong Solar Farm (SSD 9504)

Key Issues

1	<i>Issue</i>	<u>Assessment for ACH is not finalised</u> Recommended action: <ul style="list-style-type: none"> There are issues that need to be addressed regarding ACH in the EIS, ACHAR and survey report (refer to Attachment B).
	<i>Extent and Timing</i>	Pre-determination
2	<i>Issue</i>	<u>Care Agreement for the management of salvaged Aboriginal Objects</u> Recommended action: <ul style="list-style-type: none"> If salvaged Aboriginal Objects are to be kept with an Aboriginal organisation, an Approved Care Agreement should be sought from OEH following project determination but prior to the salvage of artefacts.
	<i>Extent and Timing</i>	Post-determination and prior to salvage
3	<i>Issue</i>	<u>Aboriginal Site Impact Recording Forms</u> Recommended action: <ul style="list-style-type: none"> An Aboriginal Site Impact Recording Form must be completed and submitted to AHIMS following harm for each site salvaged or destroyed from works.
	<i>Extent and Timing</i>	Post-determination and post-salvage
4	<i>Issue</i>	<u>BAM calculator details</u> Recommended action: <ul style="list-style-type: none"> Check the patch size and number of large tree inputs into the BAM calculator and confirm correct details are in the BDAR.
	<i>Extent and Timing</i>	Pre-determination
5	<i>Issue</i>	<u>Site justification</u> Recommended action: <ul style="list-style-type: none"> Provide more details explaining why the solar array and grid connection impacts are necessary and update in the BDAR
	<i>Extent and Timing</i>	Pre-determination
6	<i>Issue</i>	<u>Direct and indirect impacts</u> Recommended action <ul style="list-style-type: none"> Provide details required in the BAM about indirect impacts and update in the BDAR
	<i>Extent and Timing</i>	Pre-determination

OEH Advice

1.1 Is the 'baseline' for impact assessment reasonable? Some revision of assessment required

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? Yes

1.3 Has the assessment considered how to avoid and minimise impacts? No

The location of grid connection infrastructure needs more justification given the proposed impacts on roadside vegetation.

1.4 Does the proposal include all reasonably feasible mitigation options? Largely

The management of Aboriginal sites proposed comprises three options:

- avoidance and fencing of sites preventing harm,
- collection of surface artefacts prior to construction works and reburial of artefacts in protected location on site" or
- a care agreement be put in place for the salvaged artefacts to remain with the West Wyalong Local Aboriginal Land Council.

There is a recommendation for a Heritage Interpretation Strategy in the ACHAR and EIS that does not relate to the rest of the report. Further consideration is required from the proponent on this (see Attachment B). A heritage interpretation strategy may be better incorporated into a cultural heritage management plan.

1.5 Is the assessed impact acceptable within OEH's policy context? No

The proponent is required to review OEH comments. Once these are considered and the BDAR, ACHAR and ACH Survey Report revised, OEH will review the responses and/or the reports again.

1.6 Confirmation of statements of fact

"Aboriginal Places gazetted under the NPW Act are listed on the State Heritage Register established under the Heritage Act 1977" (Artefact, 2019a:3). This is not correct.

- Aboriginal Places are declared by the minister under Section 84 of the NPW Act by order of publishing in the Government Gazette. Aboriginal Places are listed on the NSW Heritage Database also known as the NSW Heritage Inventory. Aboriginal Places are not listed on the State Heritage Register unless they have also been through a State Heritage Register nomination and listing process with the Heritage Council and Minister for Heritage. In reality, because there is a different listing process, most Aboriginal Places gazetted under the NPW Act are not listed on the State Heritage Register.

"The West Wyalong Solar Farm has been designated SSD_ (18_9504) and under Part 4, Division 4.7, section 4.41 of the Environmental Planning and Assessment Act 1979 an AHIP is not required (Artefact, 2019a:4)."

- This should be clarified that an AHIP is not required for SSD that is authorised by a development consent.

1.7 Elements of the project design that could be improved

The project could be improved by avoiding impacts on remnant vegetation and habitat connections.

ATTACHMENT B Detailed comments for West Wyalong Solar Farm EIS (SSD 9504)

Biodiversity

Justification for clearing

Section 8 of the BAM outlines ways to avoid and minimise impacts on biodiversity values, one of which is locating a project such that 'connectivity enabling movement of species and genetic material between areas of adjacent or nearby habitat is maintained'. The BDAR requires a justification for the proposed clearing along Myers Lane that will have a significant effect on one of the few east-west vegetation connections in the area.

While section 2.2.2 of the main EIS document states the whole site was selected using four criteria including grid connection feasibility, it does not state why the proposed grid connection alignment, through 650m of linear vegetation, was the only option or why other options were ruled out. The EIS also does not justify why clearing in the road corridor is necessary given the space available in and around the corridor that is already devoid of vegetation.

Linear remnants, regardless of overall condition, are important in this landscape context. Several threatened species were detected on site and at least one, the Grey-crowned Babbler, regularly uses linear remnants in this landscape. The BDAR states that the Grey-crowned Babbler was recorded in the proposed area of impact.

BAM calculator details.

Large tree data - the BAM calculator assessment for PCT 26 has one large tree entered into the calculator in the Function section. The data sheet provided has one tree greater than 30cm and one greater than 50cm. This makes a difference to the credit calculation. This discrepancy needs to be clarified and the BDAR updated accordingly.

Impact area – the areas of PCT 26 and 55 in the shapefile provided with the EIS (SLR61018343_SurveyedVegetation_Impacts) are 0.2 ha and 1.24 ha respectively. These values are different to the those entered into the calculator. If the differences are due to other areas of clearing the values need to be rechecked and the calculator and BDAR updated. This is dependent on the justification of clearing discussed above.

Patch size – based on the PCT data in the shapefile provided (SLR61018343_SurveyedVegetation) it is not clear what the patch size values in Table 18 of the BDAR represent. Table 18 values have been used in the BAM calculator. The patch size values derived from the BAM are based on grouping areas of woody vegetation that are less than 100m apart into single patches. The BDAR needs to explain how the patch information is derived.

Direct and indirect impacts

Section 4.7 of the BDAR describes some potential indirect impacts of the project. However, the BAM (Table 26, Appendix 10) requires that direct and indirect impacts be assessed in terms of type, frequency, intensity, duration and consequence.

Where impacts are not relevant to a project the BDAR should give reasons why they are not relevant, and where impacts apply the BDAR should provide in the information detailed in Table 26 of the BAM.

Conditions of approval

Management plans

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 19 (Section 7.3.4) of the main EIS report.

Revegetation

If relevant, OEH recommends that any landscape plantings associated with the project, including screening vegetation, should be with locally occurring native species. DPE's standard conditions of consent for solar farms include a requirement for planting with local species.

Fencing

The EIS identifies security fencing as a potential indirect impact on fauna (BDAR Section 4.7.2). We recommend that a Construction and Operation Management Plan 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

Comments on Aboriginal cultural heritage assessment in the EIS (Urbis, 24 January 2019)

Executive Summary: “*Recommendations have been made but are yet to be ratified with the registered Aboriginal parties under the ACHAR process*” (Urbis, 2019:x).

- Please provide the outcome of consultation with RAPs on the management of ACH.

Sec 7.4.1: “*Environment Protection and Diversity Conservation Act 1999*”

- Error, should read *Environment Protection and Biodiversity Conservation Act 1999*

Sec 7.4.4: “*Pending endorsement by the RAPs it is intended that the salvaged items WWS IF01, WWSF IF02 and WWSF AS01 will be retained by the West Wyalong LALC under a Care Agreement.*”

- As above, please provide the outcome of consultation with RAPs on the management of ACH.

Sec 7.4.4:

- To include completion and submission of Aboriginal Site Impact Recording Forms (ASIRFs) to AHIMS for each site salvaged or harmed.

Comments on EIS: Appendix F – Aboriginal Archaeological Survey Report (Artefact Heritage, 21 January 2019a)

Executive Summary:

- To include completion and submission of ASIRFs to AHIMS for each site salvaged or harmed.

Abbreviations

- AHIMS is not written correctly, it should read Aboriginal Heritage Information Management System.
- Not clear of relevance of Blacktown City Council to the current project.

Sec 2.1.1: “Aboriginal Places gazetted under the NPW Act are listed on the State Heritage Register established under the Heritage Act 1977” (Artefact, 2019a:3). This is not correct.

- Aboriginal Places are declared by the minister under Section 84 of the NPW Act by order of publishing in the Government Gazette. Aboriginal Places are listed on the NSW Heritage Database also known as the NSW Heritage Inventory. Aboriginal Places are not listed on the State Heritage Register unless they have also been through a State Heritage Register nomination and listing process with the Heritage Council and Minister for Heritage.

Sec 2.1.1: “The West Wyalong Solar Farm has been designated SSD_ (18_9504) and under Part 4, Division 4.7, section 4.41 of the Environmental Planning and Assessment Act 1979 an AHIP is not required (Artefact, 2019a:4).”

- This should be clarified to state that an AHIP is not required for SSD that is authorised by a development consent.

Sec 2.2.1: Environment Protection and Diversity Conservation Act 1999

- Error, should read *Environment Protection and Biodiversity Conservation Act 1999*

Sec 8.3: says AHIMS ID pending (2019a:40).

- AHIMS numbers are provided elsewhere in the report.

Sec 10.1.2: Refers to the sponsor.

- ‘Sponsor’ is the term is used in the *Aboriginal Heritage Act 2006 (Vic)* and not used in NSW. ‘Proponent’ is the correct term to be used for assessments under the NSW NPW Act and regulations.

Sec 10.1:

- Reburial of artefacts is to be conducted in accordance with Requirement 26 of the Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales (DECCW 2010:35-36)

Sec 11.0:

- Surface collection or salvage of surface artefacts may only occur following development consent for the West Wyalong Solar Farm
- To include completion and submission of ASIRFs to AHIMS for each site salvaged or harmed.

Comments on EIS: Appendix G – Aboriginal Cultural Heritage Assessment Report (Artefact Heritage, 8 February 2019b)

Executive summary:

- It states the artefacts salvaged from site will be held by West Wyalong LALC under a care agreement. The survey report states artefacts will be reburied on site. These are two different management arrangements. Please advise the proposed artefact management, ensuring RAPs have been consulted regarding the management and their responses have been considered and update reports as necessary.
- To include completion and submission of ASIRFs to AHIMS for each site salvaged or harmed.

Sec 2.1.1: “Aboriginal Places gazetted under the NPW Act are listed on the State Heritage Register established under the Heritage Act 1977” (Artefact, 2019:3b). This is not correct.

- See earlier comment regarding Aboriginal Places gazetted under the NPW Act are not listed on the SHR.

Sec 2.1.1: “The West Wyalong Solar Farm has been designated SSD_ (18_9504) and under Part 4, Division 4.7, section 4.41 of the Environmental Planning and Assessment Act 1979 an AHIP is not required (Artefact, 2019b:4).”

- This should be clarified to state that an AHIP is not required for SSD that is authorised by a development consent.

Sec 10.2:

- To include completion and submission of ASIRFs to AHIMS for each site salvaged or harmed.

Sec 10.5: “Management of Aboriginal objects. At the time that this report was prepared, consultation with the RAPs regarding the long-term management of the collected material had not been completed.”

- Please provide outcomes of consultation with RAPs regarding the long term management of Aboriginal Objects. This must be done prior to project determination.

Sec 11.0:

- Surface collection or salvage of surface artefacts may only occur following development consent for the West Wyalong Solar Farm.
- To include completion and submission of ASIRFs to AHIMS for each site salvaged or harmed.
- Site WWSF AS01 is referred to in the last two dot points as AHIMS ID 43-4-0058. Elsewhere in the report WWSF AS01 is AHIMS ID 43-4-0057.

Recommendation that “A Heritage Interpretation Strategy must be implemented. This strategy should seek to mitigate the physical and aesthetic changes that the proposed development will entail to the identified Aboriginal sites”. (2019b:45).

- This recommendation does not appear to relate to any part of the three reports or consultation. It was not a raised by the RAPs through consultation nor in the notes on the outcomes from the

Aboriginal Focus Group meetings. While a Heritage Interpretation Strategy can be an effective measure for mitigation for some projects, it is not a requirement of the SEARs and it is not clear how it relates to other aspects of the report or project. The SEARs state “where impacts are unavoidable, the EIS must outline measures proposed to mitigate impacts.” The mitigation measures have been proposed in the ACHAR and EIS.

We ask the proponent to consider the purpose of a Heritage Interpretation Strategy in relation to the project and SEARs. An interpretation strategy could be part of a wider Cultural Heritage Management Plan which are commonplace for SSD.

Appendix 3: WEST WYALONG SOLAR FARM AFG – MINUTES

“Asked whether a section 42 permit was required for the surface collection of artefacts.”

- Please clarify the reference to the section 42 permit. This does not sit within the NPW Act.

Conditions of approval

We recommend including the following conditions if development consent is granted to ensure compliance with legislation in place to protect Aboriginal sites and objects in NSW and ensure that no additional harm is caused if ACH is encountered:

Management of WWSF Bee Tree and part of WWSF AS01

The site WWSF Bee Tree (43-4-0058) and part of site WWSF AS01 (part of 43-4-0057) are to be conserved and protected through fencing and signage.

Management of Salvaged Aboriginal Objects

If salvaged Aboriginal Objects from sites WWSF IF01 (43-4-0056) and WWSF IF02 (43-4-0071) and part of site WWSF AS01 (43-4-0057) are to go to an Aboriginal organisation, a Care Agreement under Section 85A of the NPW Act must be sought in advance. A Care Agreement application form, also known as an application for the transfer of Aboriginal objects for safekeeping can be found at the following link: <https://www.environment.nsw.gov.au/resources/cultureheritage/140791trsobjectform.pdf>

If salvaged Aboriginal objects are reburied on site, this must be conducted in accordance with Requirement 26 of the Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales (DECCW 2010).

Aboriginal Site Impact Recording Forms

Aboriginal Site Impact Recording Forms must be completed and submitted to AHIMS for each site salvaged or harmed.

Discovery of Human Remains

If human remains are discovered on site, then all work surrounding the area must cease, and the area must be secured. The Applicant must notify the NSW Police and OEH as soon as possible following the discovery, and work must not recommence in the area until this is authorised by OEH.

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:

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

Historic Heritage

We are unable to comment on the Historic Heritage Assessment provided within the EIS. OEH's Heritage Division are the appropriate contact for historic cultural heritage. Please forward the relevant sections to heritage@heritage.nsw.gov.au, if a copy of the assessment has not already been provided.

Flooding

OEH accepts the EIS conclusion that the development site is in a low risk area for flooding because it is not near any major drainage path and only subject to local overland flow type flooding. The flood assessment presented sufficiently demonstrates the impacts due to this development are expected to be minor. The flood assessment also identified areas of higher hazard due to deeper flows, primarily located in the eastern portion of the project site, which will assist in the appropriate design and location of sensitive infrastructure, as well as for the development of future emergency management procedures.