

Our Ref: DOC19/132679-23  
Your Ref: SSD 9255

Department of Planning and Environment  
GPO Box 39  
Sydney NSW 2001

Attention: Mr Iwan Davies

Dear Mr Davies

**Re: New England Solar Farm – SSD 9255 – EIS Exhibition**

Thank you for your email dated 19 February 2019 about the New England Solar Farm seeking comments from the Office of Environment and Heritage (OEH) on the exhibited Environmental Impact Statement (EIS) for the project. I appreciate the opportunity to provide input.

The OEH has statutory responsibilities relating to biodiversity (including threatened species, populations, ecological communities, or their habitats), Aboriginal and historic heritage, National Parks and Wildlife Service (NPWS) estate, flooding and estuary management.

We have reviewed the documents supplied, including the EIS and its associated appendices, and advise that, although we have no issues to raise about NPWS estate, historic heritage, estuaries or flooding several issues are apparent with respect to the assessments for biodiversity and Aboriginal cultural heritage. The main issues include:

- a) application of the Biodiversity Assessment Methodology (BAM) to some areas that should have been excluded from full assessment;
- b) errors in assessing ecosystem credit species;
- c) incomplete details of reference site inspections for the threatened flora species, hawkweed;
- d) lack of an unexpected finds procedure as a mitigation measure during construction; and
- e) no requirement for preparation of a biodiversity management plan.

With respect to Aboriginal cultural heritage matters, the OEH generally agrees with the archaeological survey results and supports the proposed management measures. However, we emphasise the importance of maintaining a representative sample of all site types and objects *in-situ* for preserving and effectively managing the complex and significant Aboriginal cultural values associated with the subject land and broader locality.

These issues are discussed in detail in **Attachment 1** to this letter.

The OEH recommends that, prior to finalising the EIS, the applicant should:

1. Determine if areas of planted native vegetation on the development site were established with the assistance of public funds granted for any purpose other than forestry purposes.
2. For any areas of planted native vegetation not established with the assistance of public funds, revise the Biodiversity Development Assessment Report (BDAR) to exclude biodiversity values associated with the assessment of the impacts of clearing of planted native vegetation, other than the additional biodiversity impacts specified in clause 6.1 of the *Biodiversity Conservation Regulation 2017*.
3. Revise the BDAR assessment of ecosystem credit species to:
  - a) exclude consideration of areas of planted native vegetation identified in Recommendation 2 above and vegetation zones with a vegetation integrity score less than 15; and
  - b) include swift parrot (*Lathamus discolor*) as a candidate ecosystem credit species for vegetation zone 4 (i.e. PCT 1174).
4. Revise the BDAR to detail the outcomes of sampling at the hawkweed (*Picric evae*) reference sites and if the species was detected at the reference sites, describe how hawkweed was detected (e.g. vegetative material, fruit and/or flowers).
5. If hawkweed was not detected at the reference sites at the time of targeted threatened species survey, then the accredited assessor should either:
  - a) assume the species is present in areas of potential habitat on the development site; or
  - b) undertake additional threatened species survey in accordance with Section 6.5 of the BAM; or
  - c) obtain an expert report in accordance with Subsection 6.5.2 of the BAM.
6. Amend the BDAR to include:
  - a) an unexpected finds procedure for threatened species; and
  - b) a requirement to prepare a Biodiversity Management Plan as part of the Construction Environmental Management Plan, which provides detailed procedures for implementing each proposed biodiversity management and mitigation measure.
7. Retain and protect all Aboriginal scar trees and quarry sites on the subject land.
8. Engage a qualified arborist to assess the nature of tree scars and determine which trees are Aboriginal objects.
9. Ensure that the management of both immediate harm and long-term preservation of Aboriginal scar trees, either *in-situ* or off-site, is determined by the project Registered Aboriginal Parties in consultation with the project archaeologist and OEH
10. Amend the Aboriginal Cultural Heritage Management Plan to incorporate the applicant's commitment to provide ongoing management opportunities and access for Aboriginal people to Site NE09, and access to NE68 following project construction.

If you have any further questions about these issues or recommendations, Mr Don Owner, Senior Conservation Planning Officer, Conservation and Regional Delivery, OEH, can be contacted on 6659 8233 or at [don.owner@environment.nsw.gov.au](mailto:don.owner@environment.nsw.gov.au).

Yours sincerely

*Dimitri Young 21 March 2019*

**DIMITRI YOUNG**  
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**Conservation and Regional Delivery**

Contact officer: DON OWNER  
6659 8233

Enclosure: Attachment 1: Detailed OEH Comments – New England Solar Farm SSD 9255





## Attachment 1: Detailed OEH Comments – New England Solar Farm SSD 9255

### Biodiversity

#### Planted Native Vegetation

The accredited assessor applying the Biodiversity Assessment Methodology (BAM) has identified 15.26 hectares of planted native vegetation on the development site (i.e. vegetation zone 3), which has generated an ecosystem credit requirement of 252 credits. However, if the areas of planted native vegetation were established by the landholder without the use of public funds, then these areas should have been assessed as Category 1 – exempt land (within the meaning of Part 5A of the *Local Land Services Act 2013*). Consequently, the assessor should have excluded assessment of biodiversity values associated with the impacts of the project of clearing in areas of planted native vegetation (other than prescribed impacts) in accordance with Section 2.3.1.1(d) of the BAM.

#### *OEH Recommendations:*

1. The accredited assessor should determine if the areas of planted native vegetation on the development site were established with the assistance of public funds granted for any purpose other than forestry purposes.
2. For any areas of planted native vegetation not established with the assistance of public funds, revise the Biodiversity Development Assessment Report (BDAR) to exclude biodiversity values associated with the assessment of the impacts of clearing of planted native vegetation, other than the additional biodiversity impacts specified in clause 6.1 of the *Biodiversity Conservation Regulation 2017*.

#### Assessment of Ecosystem Credit Species

The BDAR assessment of ecosystem credit species should not have included areas of planted native vegetation (i.e. vegetation zone 3) for the reason specified above. Furthermore, to accord with Section 3.1.1.3(f) of the BAM, the assessment of ecosystem credit species should not have considered vegetation zones with a vegetation integrity score less than 15 (e.g. vegetation zones 1 and 2).

#### *OEH Recommendation:*

3. Revise the BDAR assessment of ecosystem credit species to exclude consideration of areas of planted native vegetation and vegetation zones with a vegetation integrity score less than 15.

#### Swift Parrot

The BDAR assessment of ecosystem credit species excluded swift parrot (*Lathamus discolor*) from vegetation zone 4 (i.e. PCT 1174) on the premise that preferred feed tree species were absent. However, PCT 1174 contained silvertop stringybark (*Eucalyptus laevopinea*), which is a winter-flowering species likely to provide a suitable foraging resource for the swift parrot. Furthermore, swift parrots may forage on lerp-infested yellow box (*Eucalyptus melliodora*) in PCT 1174.

#### *OEH Recommendation:*

4. Revise the BDAR assessment of ecosystem credit species to include swift parrot (*Lathamus discolor*) as a candidate ecosystem credit species for vegetation zone 4 (i.e. PCT 1174).

### Hawkweed

It is indicated in Section 5.3.3 (page 58) of the BDAR that two potential reference sites known to contain the threatened species, hawkweed (*Picric evae*), were inspected in September 2018 as part of the targeted threatened flora species survey. However, the assessor did not confirm hawkweed was recorded at the reference sites or detail the means by which the species was detected there (e.g. vegetative material, fruit, buds and/or flowers).

Given the locality was experiencing drought conditions during mid to late 2018, inability to reliably detect hawkweed at the reference sites would have indicated sub-optimal conditions for undertaking targeted surveys for hawkweed at the development site.

#### *OEH Recommendations:*

5. Revise the BDAR to detail the outcomes of sampling at the hawkweed reference sites. If the species was detected at the reference sites, then describe the means by which hawkweed was detected (e.g. vegetative material, fruit and/or flowers).
6. If hawkweed was not detected at the reference sites at the time of targeted threatened species survey, then the assessor should either:
  - a) assume the species is present in areas of potential habitat on the development site; or
  - b) undertake additional threatened species survey in accordance with Section 6.5 of the BAM; or
  - c) obtain an expert report in accordance with Subsection 6.5.2 of the BAM.

### Mitigation Measures

The OEH generally supports the proposed mitigation measures detailed in Table 6.1 of the BDAR. However, the proposed mitigation measures do not include an “unexpected finds procedure” to be implemented if a threatened species not considered in the EIS is detected on site during the construction phase of the project. Although uncommon, such occurrences have happened in the past, which have triggered a requirement for further impact assessment.

The proposed mitigation measures do not include a requirement for preparation of a biodiversity management plan (BMP). A BMP is typically prepared as a sub-plan of the Construction Environmental Management Plan (CEMP) for large-scale projects, to ensure all components of each proposed mitigation measure are consolidated and clearly specified in one primary resource or reference document.

#### *OEH Recommendations:*

7. Amend the BDAR to include:
  - a) an unexpected finds procedure for threatened species; and
  - b) a requirement to prepare a BMP as part of the CEMP, which provides detailed procedures for implementing each proposed biodiversity management and mitigation measure.



## Aboriginal Cultural Heritage

Despite high levels of historical disturbance in the locality, available archaeological and cultural information indicate the subject land constitutes a highly significant Aboriginal cultural heritage area.

The subject land contains at least one site of extremely high regional significance and several other highly significant sites. Furthermore, the subject land contains additional sites, which although not usually considered of high significance, are likely to have direct contextual relationships with the sites of higher significance. Hence, they should be provided a higher significance rating than similar sites located in different contexts.

Importantly, the subject land is situated in an area known to represent traditional Aboriginal gathering and meeting grounds. Hence, the archaeological sites recorded on the subject land are highly likely to contain objects from widespread parts of NSW, particularly from the western and southern parts of the state.

The OEH has reviewed the proposed management protocols for the known Aboriginal objects on the subject land and concurs with the decision to avoid impacting all grinding groove sites.

It is stated in the Environmental Impact Statement (EIS) that *"No sites of moderate significance are currently designated for impact by the project. However, there are seven sites of moderate significance (namely NE15 [artefact scatter], NE27 [artefact scatter, PAD], NE33 [quarry, PAD], NE45 [scarred tree], NE61 [scarred tree], NE70 [artefact scatter, PAD] and NE83 [isolated find, PAD]) where impacts are currently undetermined. UPC are exploring opportunities to maximise the flexibility of the final PV array layout and associated infrastructure and therefore are in the process of investigating whether impacts to one or more of these sites is appropriate (refer to Section 9.4). The final outcomes for these sites will be determined prior to project approval in accordance with the assessment approach described in Section 9.4 of this ACHA"*.

The OEH strongly recommends all scar trees and quarry sites be retained and protected as part of proposed development. Given the contextual complexity of the identified archaeological sites on the subject land, the significance of the quarry sites has yet to be determined and would require extensive research throughout NSW and possibly further afield to accurately ascertain.

The subject land also represents a traditional gathering place and exchange ground for materials and culture. Hence, the extent of trade and regional transfer of raw materials is possibly very high and the potential for these sites to inform our understanding of regional, and even continental trade and subsistence, should be considered as high. As well as the scientific significance, these sites are also of very high intangible cultural value to the local Aboriginal community and possibly to different Aboriginal communities throughout NSW and further afield.

The OEH understands not all possible scar trees identified on the subject land have been confirmed as being Aboriginal scar trees. Therefore, we recommend the proponent engage a qualified arborist to assess the nature of the scarring and determine which trees are Aboriginal objects.

It is stated in the EIS that *"the 37 sites currently designated for impact by the project are all of low scientific significance"*. However, in addition to scientific values, consideration of the intangible cultural significance of objects, sites and landscape features is equally important for effectively managing Aboriginal cultural values. We note several of the scar trees identified as of Aboriginal cultural origin are in poor condition and in danger of harm from natural causes such as wind. We also note several identified scar trees on the subject land have been damaged most likely by historical land management practices. Therefore, given the identified Aboriginal scars are on dead trees, management of both immediate harm and long-term preservation, either *in-situ* or off-site should be determined by the project Registered Aboriginal Parties (RAPs) in consultation with the project archaeologist and OEH.

The OEH supports the commitment of the proponent to provide ongoing management opportunities and access for Aboriginal people to Site NE09, and access to NE68 following project construction. However, given the very high cultural and scientific values represented at these sites, it would be appropriate for this commitment to be incorporated into the project Aboriginal Cultural Heritage Management Plan (ACHMP).

In summary, the OEH generally agrees with the survey results and supports the proposed management measures. However, we emphasise the importance of maintaining a representative sample of all site types and objects *in-situ* for preserving and effectively managing the complex and significant Aboriginal cultural values associated with the subject land and broader locality.

*OEH Recommendations:*

8. Retain and protect all Aboriginal scar trees and quarry sites on the subject land.
9. Engage a qualified arborist to assess the nature of tree scars and determine which trees are Aboriginal objects.
10. Ensure management of both immediate harm and long-term preservation of Aboriginal scar trees, either *in-situ* or off-site, be determined by the project RAPs in consultation with the project archaeologist and OEH
11. Amend the ACHMP to incorporate the applicant's commitment to provide ongoing management opportunities and access for Aboriginal people to Site NE09 to, and access to NE68 following project construction.