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Dear Mr Davies

**RE: Wyalong Solar Farm (SSD 9564) – Exhibition of Environmental Impact Statement**

I refer to your email dated 16 November 2018 to the Office of Environment and Heritage (OEH) seeking comment on the Environmental Impact Statement (EIS) for the proposed Wyalong Solar Farm (SSD 9564).

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 18 September 2018.

OEH considers that the EIS **does** meet the Secretary's requirements for biodiversity and flooding.

The EIS **does not** meet the Secretary's requirements for Aboriginal cultural heritage (ACH).

The development footprint largely avoids remnant vegetation and an offset assessment for impacts on paddock trees is provided in the Biodiversity Development Assessment Report.

The flood assessment sufficiently demonstrates the flood impacts due to this development are expected to be minor.

The ACH assessment is a draft report. Aboriginal consultation is presently in Stage 4 of the consultation requirements and is ongoing and the impact assessment has not been finalised.

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

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](mailto:simon.stirrat@environment.nsw.gov.au).

Yours sincerely

**ANDREW FISHER**  
**Senior Team Leader Planning**  
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ATTACHMENT A – OEH Assessment Summary for Wyalong Solar Farm (SSD 9564)  
ATTACHMENT B – Detailed comments for Wyalong Solar Farm EIS (SSD 9564)

## ATTACHMENT A OEH Assessment Summary for Wyalong Solar Farm (SSD 9564)

### Key Issues

1	<i>Issue</i>	<u>ACHAR is Draft and consultation has not been finalised</u> <b>Recommended actions:</b> <ul style="list-style-type: none"> <li>Any comments from the Registered Aboriginal Parties (RAPs) on the draft ACHAR should be documented in the final ACHAR including how the proponent has considered any submissions.</li> <li>The consultation log needs to be finalised. A letter to Bland Shire Council seeking potential Aboriginal stakeholders and a letter to OEH and the LALC with a list of RAPs is not documented in the ACHAR or consultation log (Appendix 1).</li> </ul>
	<i>Extent and Timing</i>	Pre-determination
2	<i>Issue</i>	<u>Impact assessment for ACH is not finalised</u> <b>Recommended action:</b> <ul style="list-style-type: none"> <li>There are a number of issues to be addressed regarding ACH in the EIS and ACHAR, (refer to Attachment B).</li> </ul>
	<i>Extent and Timing</i>	Pre-determination
3	<i>Issue</i>	<u>Timing of salvage of Aboriginal objects proposed for harm</u> <ul style="list-style-type: none"> <li>Salvage may only occur following issue of development consent for State Significant Development.</li> </ul>
	<i>Extent and Timing</i>	Post-determination and pre-construction
4	<i>Issue</i>	<u>Aboriginal Site Impact Recording Forms</u> <ul style="list-style-type: none"> <li>An Aboriginal Site Impact Recording Form must be completed and submitted to AHIMS following harm for each site collected or destroyed from salvage and construction works.</li> </ul>
	<i>Extent and Timing</i>	Post-determination and post-salvage
5	<i>Issue</i>	<u>BDAR detail</u> <b>Recommended action:</b> <ul style="list-style-type: none"> <li>Detail required by the BAM to be addressed in the BDAR (refer to Attachment B)</li> </ul>
	<i>Extent and Timing</i>	Pre-determination

## **OEH Advice**

### **1.1 Is the 'baseline' for impact assessment reasonable?**

**Incomplete**

The baseline impact assessment for ACH is reasonable however the ACH assessment is a draft and consultation has not been completed. The consultation log needs to be finalised and any submissions and reporting comments addressed predetermination to meet the SEARs detailed in the table below. The following points from the SEARs need to be finalised.

<b>OEH response to SEARs request for Aboriginal cultural heritage for Sebastopol Solar Farm (9 March 2018)</b>	<b>Have these been addressed for ACH?</b>
6. The EIS must identify and describe the Aboriginal cultural heritage values that exist across the whole area that will be affected by the development and document these in an Aboriginal Cultural Heritage Assessment Report (ACHAR).	Mostly done with some further work required to meet the Code of Practice
7. Consultation with Aboriginal people must be undertaken and documented in accordance with the Aboriginal cultural heritage consultation requirements for proponents 2010 (DECCW). The significance of cultural heritage values for Aboriginal people who have a cultural association with the land must be documented in the ACHAR.	Consultation not finished see Attachment B. Proponent didn't write to Bland Council for list of potential stakeholders, nor provide a letter to OEHL and LALC with list of RAPs
8. Impacts on Aboriginal cultural heritage values are to be assessed and documented in the ACHAR. The ACHAR must demonstrate attempts to avoid impact upon cultural heritage values and identify any conservation outcomes. Where impacts are unavoidable, the EIS must outline measures proposed to mitigate impacts. Any objects recorded as part of the assessment must be documented and notified to OEHL.	Complete but the development footprint and impact assessment not finalised.

### **1.2 Are predictions of impact robust (and conservative) with suitable sensitivity testing? Largely**

Predictions for Aboriginal cultural heritage are articulated in the Aboriginal cultural heritage assessment report (ACHAR) and are generally robust.

Potential impacts (direct and indirect) need to be fully described in the BDAR.

### **1.3 Has the assessment considered how to avoid and minimise impacts? Incomplete**

The ACH assessment has not been finalised with the report stating some sites may or may not be impacted by the proposal.

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

The management of Aboriginal sites proposed comprises one of two options: avoidance and fencing of sites or harm and collection of surface artefacts prior to construction works and reburial in protected location on site.

The report is currently with Registered Aboriginal Parties for comment, so their views on the management of the sites are not documented. The proponent should demonstrate in the final report how the views and wishes of Aboriginal people have been met regarding the management of ACH. A Cultural Heritage Management Plan is proposed to address the potential for finding additional Aboriginal artefacts during construction and the management of the artefact sites.

**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 implemented and the ACHAR finalised, the assessment for Aboriginal cultural heritage will be acceptable.

**1.6 Confirmation of statements of fact**

The EIS contains some outdated legislative references. Section 5.2.1 which states "Under Section 89J of the EP&A Act, an Aboriginal heritage impact permit under section 90 of the *National Parks and Wildlife Act 1974* would not be required for an SSD" (Assent Environmental, 2018:44). The EP&A Act has been amended and renumbered. This statement should be amended to under section 4.41 of the EP&A Act, an Aboriginal heritage impact permit under section 90 of the *National Parks and Wildlife Act 1974* would not be required for State significant development that is authorised by a development consent.

Section 5.2.19 refers to the Due Diligence Code of Practice for the protection of Aboriginal Objects in NSW. Due diligence is not the appropriate assessment process for ACH for SSD (refer to OEH input to the SEARS).

**1.7 Elements of the project design that could be improved**

The impact assessment should be finalised for Aboriginal cultural heritage. Avoidance of Aboriginal sites should be sought as a priority where feasible.

The proposed location requires the removal of 45 paddock trees. A site at which no native vegetation clearing was required would be preferable.

## **ATTACHMENT B Detailed comments for Wyalong Solar Farm EIS (SSD 9564)**

### **Biodiversity**

Overall the Biodiversity Development Assessment Report (BDAR) addresses the SEARs requirements. A reasonable assessment of impacts is provided, however lacks some of the detail and justification as required by the Biodiversity Assessment Method (BAM). These are as follows:

- Assessment of direct and indirect impacts does not include the detail outlined in Section 9.1 of the BAM
- The BDAR does not explicitly state there are no Serious and Irreversible Impacts.
- Percent cleared value of PCTs (BAM Section 5.2.1.16)
- Patch size area used in calculations not clearly identified (BAM Section 5.3.2)
- Table of current and future vegetation integrity scores for vegetation zones (BAM Section 5.3)
- Table of relevant habitat components and their sensitivity to loss or gain classes (PCT/TEC/Threatened species) (BAM Appendix 7)

The latter four of the above points relate to PCT 76 of which 0.16 ha will form the proposed entrance to the site. This detail needs to be provided and the BDAR amended accordingly.

Although this does not affect the outcome of the analysis, it is important that the proponent demonstrate that they have properly followed the BAM. Future assessments, particularly where there are greater impacts on PCTs, must include all of the detail required by the BAM. More complex assessments may be delayed if applications are lacking in detail.

The credit requirement generated from the assessment is appropriate, based on the values described at the site.

### **Conditions of approval**

#### *Management plans*

BDAR sections 6.3.2 and 6.3.3 refer to mitigation measures to manage impacts of the project. These commitments should be included as conditions of approval. This could potentially be limited to four conditions relating to the preparation of the following plans to be approved by relevant authorities:

- Biodiversity Management Plan
- Construction Environmental Management Plan
- Weed Management Plan
- Erosion and Sediment Control Plan.

The conditions can stipulate that the plans should include the relevant commitments from the above sections and Table 9.1 of the EIS report. In addition, these plans should include adaptive management strategies to monitor and respond to impacts on biodiversity values. This is alluded to in section 9.1 *Environmental Framework* of the EIS.

#### *Revegetation*

The EIS refers to potential indirect impacts of using inappropriate species in site rehabilitation and landscaping. OEH recommends that all 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*

We recommend that the Biodiversity 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 (Assent Environmental, 2018)**

Section 5.2.1 which states “Under Section 89J of the EP&A Act, an Aboriginal heritage impact permit under section 90 of the *National Parks and Wildlife Act 1974* would not be required for an SSD” (Assent Environmental, 2018:44). The EP&A Act has been amended and renumbered. This statement should be amended to read “Under section 4.41 of the EP&A Act, an Aboriginal heritage impact permit under section 90 of the *National Parks and Wildlife Act 1974* would not be required for State Significant Development that is authorised by a development consent.”

Section 5.2.19 refers to the Due Diligence Code of Practice for the protection of Aboriginal Objects in NSW. Due diligence is not the appropriate assessment process for ACH for SSD (refer to OEH input to the SEARs; letter dated 7 Sept. 2018, included in Appendix A).

Section 8.2.3 states “a series of guidelines have been developed by DPE to quantify and standardise impact assessments (DPE 2016). All impacts have been graded based on the matrix outlined in DPE 2016” (Assent Environmental, 2018:100). The reference needs to be provided in the bibliography for the EIS.

Section 8.2.4 – impacted sites may only be salvaged following project approval and not before.

The impact assessment for sites has not been finalised, which is also evident from the Executive Summary of the EIS. We request the impact assessment be finalised. If this is not achievable, provide a response explaining why and a timeframe of when this impact assessment will be finalised.

Comments on the proposed management by the RAPs have not been documented. Copies of RAP responses on the draft ACHAR and proposed management are required as well as a response stating how these have been addressed.

Section 9.2, Table 9.1. AH.1.1 The ACHMP should be developed in consultation with the RAPs, OEH and DPE. AH.1.4 Aboriginal sites can be salvaged only after development consent is issued for SSD.

### **Comments on EIS: Appendix D - ACHAR (OzArk, 2018)**

Section 2.3.1 – The ‘ACH Consultation Requirements for Proponents’ (DECCW 2010:10) as referred to in the OEH SEARs input letter require that the proponent write the local council (in this case Bland Shire Council) as part of identifying stakeholders. This is also absent from the consultation log. The ACHAR needs to indicate if this has been done and if any response was received from Bland Shire Council.

Section 2.3.3 does not state when the draft ACHAR was sent to the RAPs. This section is to be updated including a summary of RAP responses and how the proponent has responded to and/or propose to implement the RAP comments.

Table 5-3 Survey Results – update with AHIMS ID.

Tables 5-4, 5-5 and 5-6 provide a single range of measurement of artefacts in cm (e.g. 0-2cm). Requirements 7a and 19 in the Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW states the attributes that must be recorded in accordance with the AHIMS site recording form which has length, width and thickness in mm. These tables should be amended with the length, width and thickness (in mm) of the artefacts.

Table 5-7 Significance Assessment. This needs to be updated with social or cultural values, by seeking comment from the RAPs. Update Table 5-7 with AHIMS ID.

Table 5-8 Impact assessment – update with AHIMS ID.

It is unclear if the final design known? If so the impact assessment needs to be finalised. If not, provide a response as to why and a timeframe of when the impact assessment will be completed.

Table 5-9 states that 6 Aboriginal sites will be impacted, but elsewhere (Table 5-8 and Table 6-1 of the ACHAR) and in the EIS it says 7 sites will be impacted. Confirm the number of sites that will be impacted and amend text and tables accordingly to be consistent across both reports.

Table 6-1 – update with AHIMS ID.

Section 6.3.1 – Aboriginal Site Impact Recording Forms (ASIRFs) will need to be completed and submitted to AHIMS for each site harmed.

Section 6.4 – the meaning of the following sentence is not clear and should be revised for clarity “If approval of the project determines that these sites will be directly impacted they will be managed in accordance with item 4 below”. Further, should “item 4 below” be changed to “item 7 below”?

Section 6-4 it says sites Glenroy-OS1 and Glenroy-IF6 are described as no harm and fenced in Table 6-1 yet in Section 6.4 Statement of Commitments it says efforts will be made to avoid these sites. This inconsistency needs to be clarified and the ACHAR amended.

Section 6-4 – if artefacts are reburied, this must be done in accordance with requirement 26 of the Code of Practice. If this not achievable, then a Care Agreement may be sought.

Appendix 1 Log of Aboriginal community consultation – this is to be updated following comments received from RAPs on draft ACHAR. Update if a letter was sent to and response received from Bland Shire Council regarding a list of potential stakeholders. The consultation log does not document if a letter was sent to OEH and the Local Aboriginal Land Council (LALC) with a list of stakeholders within 28 days from the closing date of registration as required under stage 1 of the ‘ACH Consultation Requirements for Proponents’ (DECCW 2010:11). It needs to be stated if this if this was done and if so a copy of the letters provided in the ACHAR.

### **Conditions of approval**

We recommend that prior to the commencement of construction, the Aboriginal Cultural Heritage Management Plan be prepared to the satisfaction of DPE, in consultation with 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](mailto:heritage@heritage.nsw.gov.au) , if a copy of the assessment has not already been provided.

### **Flooding**

OEH accepts that this development site represents a low flood risk due to it being located away from any major drainage path, and only subject to local overland flow type flooding. The flood assessment presented sufficiently demonstrates the flood impacts due to this development are expected to be minor and given this OEH have no objections to this development progressing from a flooding perspective. This flooding assessment has also identified areas of higher hazard which will assist in the appropriate design and location of sensitive infrastructure as well as for the development of future emergency management procedures for the development site.