

## Appendix D – Aboriginal Heritage Letters



**RES Australia Pty Ltd**  
Suite 6.01  
Level 6, 165 Walker Street  
North Sydney NSW 2060 Australia  
T +61 (0)2 8440 7400  
E [info-australia@res-ltd.com](mailto:info-australia@res-ltd.com)  
[www.res-australia.com](http://www.res-australia.com)

26 May 2020

Email: [Nicole.Brewer@planning.nsw.gov.au](mailto:Nicole.Brewer@planning.nsw.gov.au)  
Cc: [Iwan.davies@planning.nsw.gov.au](mailto:Iwan.davies@planning.nsw.gov.au)

Nicole Brewer  
Director, Energy Assessments  
Department of Planning, Industry and Environment  
4 Parramatta Square, 12 Darcy Street  
Parramatta NSW 2150

Dear Ms Brewer

## **Springdale Solar Farm (SSD-8703) - Subsurface archaeological testing**

### **Status of the proposal**

As you are aware, in June 2018, Renew Estate Pty Ltd ACN 617 855 311 (**Renew Estate**) lodged an application with the then NSW Department of Planning and Environment (**DPE**) for the development of the Springdale Solar Farm (SSD-8703) in Sutton, NSW (**Project**), under Part 4 of the *Environmental Planning and Assessment Act 1979* (NSW). The Environmental Impact Statement (**EIS**) for the Project was duly placed on public exhibition and submissions were received from the public and government authorities in relation to the Project. However, Renew Estate did not prepare a Response to Submissions (**RtS**).

In March 2020, RES Australia Pty Ltd ABN 55 106 637 754 (**RES**) acquired the Project from Renew Estate. Following recent discussions with you and Mike Young in relation to the status of the Project, RES intends to submit the RtS to the NSW Department of Planning, Infrastructure and Environment (**DPIE**) by 31 May 2020.

### **Proposed subsurface archaeological testing**

RES understands that in late 2018, Renew Estate and DPE were engaged in discussions in relation to the timing for completion of subsurface archaeological testing (**SAT**) recommended by the NSW Office of Environment & Heritage (**OEH**) in its submission on the Project dated 16 August 2018. However, this issue was not resolved between Renew Estate and DPE and the SAT was not carried out by Renew Estate before the Project was acquired by RES.

OEH recommended that the SAT be undertaken prior to development consent for the Project being granted. In practical terms, if this recommendation were followed, RES understands that it would need to procure the results of the SAT before DPIE would undertake their assessment of the Project for provision of its recommendations to the Independent Planning Commission (**IPC**).

This presents a number of significant issues from RES' perspective, which are set out in detail below with further supporting information from Norton Rose Fulbright and Aecom as advisors to RES at **Annexure A** and **Annexure B** (respectively). Accordingly, I am writing to seek a resolution in relation to the pathway forward on this issue. It is RES' strong preference that the SAT be imposed as a condition to any development consent that may be granted by the IPC.

### **RES' concerns in relation to OEH's proposal**

RES is of the view that requiring the SAT to be carried out prior to DPIE's assessment of the project is impractical and unnecessary for the following reasons:

1. **Unacceptable delay in assessment** - The minimum time it would take for RES to procure the SAT is approximately four months (based on the consultation and notification requirements in relation to test excavations set out in the *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW* (State of NSW and the NSW Department of Environment, Climate Change and Water (as it then was), September 2010). This is especially the case given there are additional practical difficulties presented by the social distancing restrictions which have been put in place in light of the COVID-19 pandemic, meaning that it may be more difficult for contractors to attend the Project site at present. Accordingly, potentially delaying the Project approval process for a further four months or longer would represent an unacceptable delay for RES.
2. **No adverse impact on Aboriginal cultural heritage** - If the SAT were to be undertaken post-consent, it would be undertaken prior to commencement of construction and in accordance with a Aboriginal Cultural Heritage Management Plan (ACHMP) approved by OEH and DPIE. The ACHMP would include provisions where if a heritage site were to be identified during the testing, the detailed design of the Project would need to be modified to avoid or mitigate any impacts on that site.

In particular, the detailed design of the Project would be revised (if required) to achieve this. RES is also committed to ensuring that there would be appropriate mechanisms (whether in the conditions of consent or the ACHMP) to ensure that OEH and DPIE are satisfied with the management of any identified heritage sites before construction is allowed to commence. As a result, procuring the SAT post-consent will not have any adverse impacts on the management of heritage impacts associated with the Project.

It should also be noted that the express recommendation in OEH's submission in relation to the SAT is as follows: "*It is therefore recommended that subsurface archaeological test excavation be undertaken across all areas that will be impacted by the solar farm, including ancillary infrastructure, prior to the finalisation of the design of the solar farm and the commencement of construction*" (pages 1 and 3; emphasis added). This recommendation is at odds with the assertion that the SAT should be carried out prior to development consent for the Project being granted and, rather, is consistent with RES' position that there will be no adverse impact on Aboriginal cultural heritage if the SAT is carried out post-consent.

This position is explained further in the letter prepared by AECOM Australia at **Annexure B**.

3. **Disturbance area uncertain until detailed design phase** - As is typical for large-scale renewable energy developments, the detailed design for the Project will not be undertaken until development consent has been granted for the Project. Accordingly, the precise disturbance area of the Project is not yet known.

The development application identifies a development envelope which represents the maximum potential extent of disturbance. If a program of SAT was developed based on the maximum development envelope, it is inevitable that land would be disturbed for the investigations that would not otherwise be disturbed for construction of the Project. This would be potentially damaging for any subsurface archaeology, as well as the land generally. Unnecessary additional testing would also have substantial time and cost implications for RES.

4. **SAT requirement has previously been conditioned** - The requirement for SAT has been included as a condition of consent in relation to numerous other approved State significant development projects in NSW, including renewable energy developments. Examples of renewable energy developments that have recently had SAT conditioned are identified in the letter prepared by Norton Rose Fulbright Australia at **Annexure A**.

## RES' proposed pathway forward

As identified above, RES' strong preference is for the requirement to carry out the SAT to be imposed as a condition to any development consent granted by the IPC for the Project. This would enable RES to commit to the significant expenditure of commissioning the testing with the certainty that development consent for the Project has been granted.

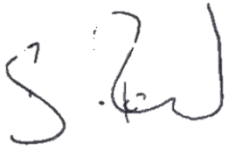
This approach would also meet OEH's objective of ensuring the SAT is undertaken, and that the results are known and taken into account, prior to the commencement of construction.

On that basis, I am requesting written confirmation from DPIE that the imposition of a condition in relation to the SAT is a satisfactory pathway forward and that it is prepared to make such a recommendation to the IPC in its assessment report in relation to the Project.

I would appreciate if you would review this request as a matter of urgency and I am available to meet with DPIE and OEH at your convenience early next week if you would like to discuss this matter further.

In the meantime, please do not hesitate to contact me on 0431 191 017 or via e-mail at [steven.reid@res-group.com](mailto:steven.reid@res-group.com).

Yours sincerely

A handwritten signature in dark ink, appearing to be 'S. Reid'.

Steven Reid  
Development Project Manager, APAC

## **Annexure A- Letter from Norton Rose Fulbright Australia**

26 May 2020

Email: [steven.reid@res-group.com](mailto:steven.reid@res-group.com)

Steven Reid  
Development Project Manager, APAC  
RES Australia Pty Ltd  
Suite 6.01, Level 6/165 Walker Street  
North Sydney NSW 2060

Norton Rose Fulbright Australia  
ABN 32 720 868 049  
Level 5, 60 Martin Place  
SYDNEY NSW 2000  
AUSTRALIA

Tel +61 2 9330 8000  
Fax +61 2 9330 8111  
GPO Box 3872, Sydney NSW 2001  
DX 368 Sydney  
[nortonrosefulbright.com](http://nortonrosefulbright.com)

**Direct line**  
+61 2 9330 8346

**Email**  
[noni.shannon@nortonrosefulbright.com](mailto:noni.shannon@nortonrosefulbright.com)

**Your reference:**  
SSD-8703

**Our reference:**  
4027418

Dear Steven

## Springdale Solar Farm (SSD-8703) – Subsurface archaeological testing

### Background

You have asked us to consider whether there is any legal requirement or other relevant NSW Government guidelines or policy documents which will require subsurface archaeological testing (**SAT**) to be carried out prior to the granting of any development consent for the Springdale Solar Farm (SSD-8703) in Sutton, NSW (**Project**).

We understand that:

- 1 RES Australia Pty Ltd ACN 106 637 754 (**RES**) acquired the Project from Renew Estate Pty Ltd ACN 617 855 311 (**Renew Estate**) in April 2020;
- 2 the project is a State significant development (**SSD**) for the purposes of the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**) and the *State Environmental Planning Policy (State and Regional Development) 2011* (NSW); and
- 3 as the new owner of the Project, RES is committed to undertaking the SAT but prefers that the requirement for SAT be imposed as a condition of any consent that is granted.

### Legal and policy analysis

The EP&A Act is the key piece of legislation which governs the planning approval process in NSW. One of the express objects of the EP&A Act is to “*promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)*” (section 1.3(f)). Similarly, an express objective of the *Yass Valley Local Environmental Plan 2013* (NSW) (**Yass Valley LEP**) is to “*conserve Aboriginal objects and Aboriginal places of heritage significance*” (clause 5.10(1)(d)) and, under that planning instrument, development consent is required for certain activities with possible impacts to Aboriginal objects of places or Aboriginal heritage significance (clause 5.10(2)).

Relevantly, an Aboriginal heritage impact permit issued under section 90 of the *National Parks and Wildlife Act 1974* (NSW) is not required for the Project because it is a State significant development (EP&A Act, section 4.41(1)(d)). However, in line with the objectives of the EP&A Act and the Yass Valley LEP, possible

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impacts to Aboriginal cultural heritage must be taken into consideration by the decision-maker in determining the development application for the Project (EP&A Act, section 4.15).

The development application for the Project identified that there may be impacts to Aboriginal cultural heritage. However, the impacts (if any) will not be precisely known until SAT is carried out at the Project site. On that basis, the relevant legal question is whether the decision-maker can consider the impacts to Aboriginal cultural heritage associated with the Project based on the information that has already been provided to the NSW Department of Planning, Industry and Environment (**DPIE**) (i.e. without the results of the SAT).

In our view, it is possible for the decision-maker to do so. This is because:

- 1 based on the information that has already been provided to DPIE, it will be known to the decision-maker at the time of assessment of the Project that there may be impacts to Aboriginal cultural heritage; and
- 2 in consideration of that fact, the decision-maker can impose practical conditions on any development consent that may be granted for the Project that would effectively mitigate the impacts to Aboriginal cultural heritage.

In addition, there is nothing in the following NSW Government policy documents which requires SAT to be carried out prior to the granting of any development consent for the Project:

- 1 *Large-Scale Solar Energy Guideline for State Significant Development* (NSW Government, December 2018); and
- 2 *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW* (State of NSW and the NSW Department of Environment, Climate Change and Water (as it then was), September 2010).

### Historical use of conditions

In our experience, conditions of consent are often used by consent authorities in NSW as a tool to mitigate potential impacts associated with a proposed development where the precise nature and extent of those impacts (if any) is not precisely known at the time of the application. Relevantly, in the context of impacts to Aboriginal cultural heritage, we note that a number of recent SSD development consents for renewable energy projects in NSW have been granted on condition that SAT be carried out prior to the commencement of construction (please see **Annexure A**).

This supports our conclusion that there is no legal or policy requirement which would mean that SAT must be carried out prior to the granting of any development consent for the Project but can otherwise be adequately and appropriately managed by way of a condition of the development consent.

Yours sincerely



Noni Shannon  
Partner  
Norton Rose Fulbright Australia

## Schedule 1 – Post-consent SAT conditions imposed in relation to renewable energy projects

Item	Project	Approved	Condition
1.	Hay Solar Farm (SSD-8113)	2017	<p><b>Aboriginal Cultural Heritage Management Plan</b></p> <p>18. Prior to carrying out any development under this consent, unless the Secretary agrees otherwise, the Applicant must prepare an Aboriginal Cultural Heritage Management Plan for the development to the satisfaction of the Secretary. This plan must:</p> <p>...</p> <p>(c) include a methodology for test excavations of sites HSF 1 and HSF 2 in accordance with Code of Practice for Archaeological Investigation of Aboriginal Objects (DECCW, 2010);</p> <p>...</p>
2.	Limondale Solar Farm (SSD-8025)	2017	<p><b>Operating Conditions</b></p> <p>19. The Applicant must:</p> <p>...</p> <p>(c) carry out detailed test excavations and salvage (if required) for potential Archaeological deposits 47-6-0605 and 47-6-0606 prior to construction of the transmission line between the project site and Balranald substation.</p> <p>...</p> <p><b>Heritage Management Plan</b></p> <p>20. Prior to the commencement of construction, the Applicant must prepare a Heritage Management Plan for the development to the satisfaction of the Secretary. This plan must:</p> <p>...</p> <p>(d) include a methodology for test excavations of potential Archaeological deposits 47-6-0605 and 47-6-0606 in accordance with Code of Practice for Archaeological Investigation of Aboriginal Objects (DECCW, 2010) and including a description of the measures that would be implemented to manage the impacts of the development;</p> <p>(e) include a description of the measures that would be implemented for:</p> <ul style="list-style-type: none"> <li>• minimising and managing the impacts of the development on heritage items within the disturbance footprint, including: <ul style="list-style-type: none"> <li>- a strategy for the long term management of any Aboriginal heritage items or material collected during the test excavation or salvage works;</li> </ul> </li> </ul> <p>...</p>
3.	Biala Wind Farm	2017	<p><b>Protection of Aboriginal Heritage Sites</b></p>



Item	Project	Approved	Condition
	(SSD-6039)		<p>22. The Applicant must:</p> <p>...</p> <p>(b) minimise any impacts on BWF PAD1, and carry out detailed test excavations and salvage of potential archaeological deposits at this site if impacts cannot be avoided.</p> <p>...</p> <p><b>Heritage Management Plan</b></p> <p>23. Prior to the commencement of construction, the Applicant must prepare a Heritage Management Plan for the development to the satisfaction of the Secretary. This plan must:</p> <p>...</p> <p>(d) include a description of the measures that would be implemented for:</p> <p>...</p> <ul style="list-style-type: none"> <li>• minimising and managing the impacts of the development on heritage items within the disturbance footprint, including:             <ul style="list-style-type: none"> <li>- test excavations and salvage (if required) of potential Archaeological deposits that will be impacted by the development (including heritage item BWF PAD 1);</li> </ul> </li> </ul> <p>...</p> <p>- a strategy for the long term management of any Aboriginal heritage items or material collected during the test excavation or salvage works</p> <p>...</p>
4.	Rye Park Wind Farm (SSD 6693)	2017	<p><b>Protection of Aboriginal Heritage Items</b></p> <p>24. The Applicant must:</p> <p>...</p> <p>(c) minimise any impacts on the Aboriginal heritage items identified in Table 3 in Appendix 5, and carry out detailed test excavations and salvage of potential archaeological deposits at these sites if impacts cannot be avoided.</p> <p>...</p> <p><b>Heritage Management Plan</b></p> <p>25. Prior to the commencement of construction, the Applicant must prepare a Heritage Management Plan for the development to the satisfaction of the Secretary. This plan must:</p> <p>...</p> <p>(d) include a description of the measures that would be implemented for:</p>

Item	Project	Approved	Condition
			<p>...</p> <ul style="list-style-type: none"> <li>• minimising and managing the impacts of the development on heritage items within the disturbance area, including:               <ul style="list-style-type: none"> <li>- test excavations and salvage (if required) at the Aboriginal heritage items identified in Table 3 in Appendix 5; and</li> <li>- a strategy for the long term management of any Aboriginal heritage items or material collected during the test excavation or salvage works;</li> </ul> </li> </ul> <p>...</p>
5.	Wellington Solar Farm (SSD-8573)	2017	<p><b>Protection of Heritage Items</b></p> <p>18. The Applicant must:</p> <p>...</p> <p>(c) undertake a program of test excavation and salvage at the potential archaeological deposits located within the approved development footprint, in accordance with the Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (DECCW, 2010), or its latest version.</p> <p>...</p> <p><b>Heritage Management Plan</b></p> <p>19. Prior to the commencement of construction, the Applicant must prepare a Heritage Management Plan for the development to the satisfaction of the Secretary. This plan must:</p> <p>...</p> <p>(c) include a description of the measures that would be implemented for:</p> <p>...</p> <ul style="list-style-type: none"> <li>• minimising and managing the impacts of the development on the historic heritage item, and the potential archaeological deposits located within the development footprint, including:               <ul style="list-style-type: none"> <li>- undertaking test excavation and salvage at the potential archaeological deposits, and</li> </ul> </li> </ul> <p>...</p>
6.	Liverpool Range Wind Farm (SSD-6696)	2018	<p><b>Heritage Management Plan</b></p> <p>24. Prior to the commencement of construction, the Applicant must prepare a Heritage Management Plan for the development to the satisfaction of the Secretary. This plan must:</p> <p>(d) include a description of the measures that would be implemented for:</p> <ul style="list-style-type: none"> <li>□ minimising and managing the impacts of the development on Aboriginal heritage items within the development corridor, including:               <ul style="list-style-type: none"> <li>- undertaking test excavations and salvage (if required) at the landform units identified in Table 3 in Appendix 5,</li> </ul> </li> </ul>

26 May 2020

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Item	Project	Approved	Condition
			<i>where impacts cannot be avoided;</i>  <i>- a strategy for the long-term management of any Aboriginal and European heritage items or material collected during the test excavation or salvage works;</i>  ...

## **Annexure B- Letter from AECOM**

26 May 2020

Steven Reid  
Development Project Manager, APAC  
RES Group  
Level 6, 165 Walker Street  
North Sydney, NSW 2060

Dear Steven,

**RE: Timing of subsurface archaeological test excavation at Springdale Solar Farm**

Thank you for your time on the phone yesterday. Following on from our discussion, please find below AECOM's position with regard to the timing of the subsurface archaeological test excavation program required for the Springdale Solar Farm Project (the Project).

For context, archaeological survey for the Project, undertaken over a three day period in November 2017, resulted in the identification of a total of 15 Aboriginal archaeological sites within the Project site comprising 12 open artefact sites and three potential Aboriginal scarred trees. The archaeological survey also provided an opportunity to assess the subsurface archaeological potential of land within the Project site.

On the basis of field observations and existing archaeological datasets for the greater Springdale area, it was concluded by attending Registered Aboriginal Party (RAP) field representatives and AECOM archaeologists (myself included) that, outside of severely disturbed areas, land within the Project site retains potential for subsurface archaeological deposits, likely of comparable character and significance to those identified in surface contexts. Documented surface sites suggest the presence of low to moderate subsurface artefact densities across the Project site. In view of the above, and generally poor ground surface visibility conditions across the Project site, the utility of a complimentary landscape-based test excavation program for the Project was discussed in field between attending RAP representatives and AECOM archaeologists, with both parties acknowledging the significant interpretive potential of such a program with respect to understanding Aboriginal peoples' use of the Project site as a whole.

As to the timing of the archaeological test excavation program, AECOM considers it appropriate for this to be undertaken following Project Approval on the basis of the following key points:

- AECOM anticipates that sites identified during the archaeological test excavation will be consistent with those identified during the archaeological survey for the project (i.e., low to moderate density artefact sites).
- AECOM does not anticipate the presence of sites of high significance within the Project site, such as burials, stone arrangements or regionally rare artefact scatters that warrant *in-situ* conservation. While such sites are not anticipated, AECOM notes that RES has committed to the *in-situ* conservation of any such sites, should they be identified. AECOM understands that RES has agreed to include this commitment as part of the project's statement of commitments and that it will also be included in the project's Aboriginal Cultural Heritage Management Plan (ACHMP), to be developed in consultation with RAPs for the project. This process and commitment would be included regardless of whether test excavation was completed pre-approval or post-approval.
- AECOM notes that should any subsurface sites be identified through the test excavation program that warrant mitigation through archaeological salvage (i.e., open area excavations) the triggers and provisions for this will be detailed within the ACHMP.
- The primary purpose of the test excavation program, which would employ a stratified systematic sampling design based on landform type within areas of proposed disturbance, is to understand past Aboriginal people's use of the Project site as a whole, not for the purposes of significance assessment and associated Project Approval. It is noted that the proposed methodology to be employed has been reviewed and approved by Department of Planning (10 December 2018).

- Details for the test excavation program and any associated mitigation measures, including conservation policies, will be included in the Project's ACHMP. RAPs will be provided with an opportunity to review and contribute to the ACHMP prior to its assessment and approval by DPIE.
- Completion of the test excavation post-approval provides an opportunity for detailed design to occur, allowing for a more targeted test excavation program, should impact areas be reduced, that can be focused on areas that will be subject to ground disturbances as a result of the Project.

Should you require any further assistance, please let me know.

Yours faithfully



Geordie Oakes  
Principal Heritage Specialist  
geordie.oakes@aecom.com

Direct Dial: +64 2 89340610  
Direct Fax: +64 2 89340001