

10 November 2017



Attention: Mr Clay Preshaw
Director, Resource and Energy Assessments

Department of Planning and Environment
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Sydney NSW 2000

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Your reference:	Our reference:
SSD 6588	2855340

Dear Mr Preshaw

Re: Jemalong Hybrid Solar Park, Development Applications SSD 6588 and SSD 8803

Property: Part Lot 13 DP753118

We act for Vast Solar Pty Limited (**Vast Solar**), the proponent of development application SSD 6588 which was lodged with the Department of Planning and Environment (**DPE**) on 16 August 2016 for the construction, operation and decommissioning of Jemalong Solar Station, being a 30MW concentrating solar thermal power (**CSP**) plant at the Property (**CSP Plant**).

The purpose of this letter is to provide DPE with an update on the status of Vast Solar's progression of the SSD 6588 application for the CSP Plant and to request DPE's approval and direction for the proposed modification of that application.

Dual applications for Jemalong Hybrid Solar Park

As you know, Vast Solar has commissioned a 1.1 MW CSP pilot plant (**Pilot Plant**) at Jemalong, near Forbes, NSW. Electricity was first sent to the grid in 2017, demonstrating that Vast Solar's CSP technology has the capacity to deliver affordable, dispatchable renewable energy. Testing and performance validation of the technology at the Pilot Plant is ongoing, as is detailed engineering of the CSP Plant including planning and design work to complete the response to agency submissions.

In parallel with continuing work on the CSP Plant, Vast Solar is developing a solar photovoltaic plant (**PV Plant**) comprising traditional solar arrays. It is proposed that the PV Plant will ultimately be co-located with the CSP Plant to form the Jemalong Hybrid Solar Park.

Vast Solar lodged a request for Secretary's Environmental Assessment Requirements (**SEARs**) with DPE for the PV Plant on 9 October 2017 and SEARs were issued on 26 October 2017 as SSD 8803. Vast Solar is currently working with a number of consultants to prepare an EIS in response to these SEARs.

In response to concerns raised in agency submissions, the advice of those consultants and the studies that have been undertaken to date for both the CSP Plant and the PV Plant, Vast Solar has determined that the optimal location for the PV Plant within the Jemalong Station is on the Hallidays paddock, while the optimal location for the CSP Plant is in the paddock immediately south-east of Hallidays, but with shared infrastructure remaining in the Hallidays paddock.

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Proposed Timing

On the basis that project timelines for the PV Plant are significantly shorter and that the planning and design work for the CSP Plant is ongoing, Vast Solar proposes the following steps and timing for the assessment and determination of each of the development applications for the Jemalong Hybrid Solar Park:

1. *PV Plant SSD 8803 standalone*: the PV Plant application SSD 8803 progress to be completed and assessed on its own merits as a standalone development. This means that the EIS for the PV Plant will contain an assessment of the PV Plant, its associated infrastructure, transmission and connection assets without reference to the CSP Plant, including without reference to any potential cumulative impacts associated with both components of the Jemalong Hybrid Solar Park. We consider this to be a proper and lawful approach, as the impacts of the CSP Plant can only be identified once the final design has been determined;
2. *CSP Plant SSD 6588 modification*: the CSP Plant application be modified to relocate the CSP Plant to a site immediately south-east of Hallidays, that still includes part of Lot 13 DP 753118 but also includes part of the immediately adjacent lots;
3. *CSP Plant SSD 6588 revised EIS and re-notification*: the previous EIS for the CSP Plant will be revised to accommodate the new location and the final design and technology of the CSP Plant, as well as the nature and scope of the shared assets (primarily transmission and connection infrastructure and shared civil works) and the cumulative impacts arising from co-location and operation as the Jemalong Hybrid Solar Park. We submit that the cumulative impacts of the Jemalong Hybrid Solar Park can only be assessed once the PV Plant SSD 8803 application has been assessed and determined and the design of the CSP Plant has been finalised; and
4. *CSP Plant SSD 6588 response to submissions*: the response to agency submissions that is currently due be deferred and, instead, be prepared in response to the submissions that will be received on the revised EIS for the finalised design and location of the CSP Plant.

Modification of CSP Plant SSD 6588

As noted above, Vast Solar proposes to modify development application SSD 6588 to relocate the proposed CSP Plant to a site immediately south-east of Hallidays. Attached is an indicative layout for the Jemalong Hybrid Solar Park.

We consider that DPE has broad power under clause 55 of the *Environmental Planning and Assessment Regulation 2000* to amend an application for SSD, and if it is so minded, can accept an amended EIS in its discretion which relocates the CSP Plant so as to extend into part of an adjoining property. This view is based on a consideration of the case law in relation to a consent authority's scope of power under clause 55. In this regard, the Courts have held that each case will depend on its particular facts, however, clause 55 is to be given "the widest interpretation which its language will permit" having regard to the "beneficial purposes of the provision": *Radray Constructions Pty Ltd v Hornsby Shire Council* (2006) 145 LGERA 292 at 295-296. The NSW Land and Environment Court has held that the "essential character" of the development must remain (see *Ebsworth v Sutherland Shire Council* [2005] NSWLEC 603). We note there have been a number of cases where significant changes to a development application were amended lawfully under clause 55, in particular *Radray Constructions Pty Limited v Hornsby Shire Council*.

We note that the threshold of a modification being required to be "substantially the same" arises in the context of section 96 of the *Environmental Planning and Assessment Act 1979*, being the modification of a development consent, and does not relate to the modification of an SSD application. In any event, we note that more limited power under section 96 has been held to extend to expanding a development to a new parcel of land by a long line of case law, starting with *Scrap Realty Pty Limited v Botany Bay City Council* [2008] NSWLEC 333.

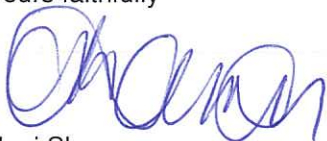
On the basis that the primary modification envisaged to development application SSD 6588 is the change of location of the CSP Plant to include part of a neighbouring parcel of land, thus retaining the essential character of the development set out in the original application, we are of the view that the modification will fall within the parameters of the application modification power under clause 55.



We trust that the above is clear but please do not hesitate to contact us if you have any questions or require further information regarding the proposed application pathway for the combined Jemalong Hybrid Solar Park.

We look forward to receiving your response to this proposal.

Yours faithfully



Noni Shannon
Partner
Norton Rose Fulbright Australia



Scale of A3	1:25000
Discipline	CIVIL
Job No	602094-72
Drawing No	C-
Issue	01
Drawing Status	INFORMATION

JEMALONG HYBRID SOLAR PARK

JEMALONG HYBRID SOLAR PARK: PHOTOVOLTAIC (PV) PROJECT

Client: **VAST SOLAR**

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