



CONDITIONS ADVICE MEETING

This meeting is to support the Independent Planning Commission (Commission) Panel obtaining advice from the Department of Planning, Housing and Infrastructure (Department) on the workability, enforceability and any unintended consequences of conditions that, should the Panel decide to grant consent, the Panel for this case would consider imposing. Discussion at this meeting is informed by the Commission’s request for the Department’s advice on conditions under consideration, dated 13 September 2024.

Case: Spicers Creek Farm (SSD-41134610)
Date Wednesday 18 September 2024
Time: 2:30pm – 3:45pm
Meeting Location: MS Teams Videoconference

ATTENDEES

Commissioners:	Professor Neal Menzies Suellen Fitzgerald Michael Wright	Panel Chair
Office of the IPC:	Steve Barry Kendall Clydsdale Tahlia Hutchinson	Planning Director Principal Case Manager Senior Planning Officer
Department of Planning, Housing & Infrastructure:	Nicole Brewer Natasha Homsey	Director, Energy Assessments Team Leader

MEETING MINUTES

- Discussed recommended conditions of consent including:
 - subdivision timing;
 - community benefit programs and community consultation;
 - visual mitigation screening; and
 - various other minor changes to proposed conditions.
- Panel to consider advice provided and advise DPHI if any further information is required.

Table 1 – Summary of discussion on Commission’s proposed condition amendments

Proposed Condition No.	Department’s response to Commission’s request for advice	Any further matters raised by Commission
Definitions	The Department notes that the BCA is included in Department’s Consents, noting that the BCA is volumes 1 and 2 of the NCC. Updated Definitions: <u>Material harm:</u>	



	<p><i>Is harm that:</i></p> <ul style="list-style-type: none"> <i>involves actual harm to the environment that may include (but not be limited to) a leak, spill, emission other escape or deposit of a substance, and as a consequence of that environmental harm (pollution), may cause harm to the health or safety of people; or</i> <i>results in actual loss or property damage of an amount, or amounts in aggregate, exceeding \$10,000 (such loss includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent, mitigate or make good harm to the environment).</i> <p><i>Note: This definition excludes “harm” that is either authorised under this consent or any other statutory approval.</i></p> <p><i>Note: For the purposes of this definition, material harm excludes incidents captured by Work Health and Safety reporting requirements.</i></p> <p><u><i>Incident:</i></u></p> <p><i>An occurrence or set of circumstances that causes or threatens to cause material harm to the environment, and as a consequence of that environmental harm, may cause harm to the health and safety of human beings, and which may or may not be or cause a non-compliance.</i></p>	
A6	The Department notes that the existing wording ‘measured from above ground level to the blade tip height’ already achieves the intent of the IPC’s revision.	Suggested alternative wording such as from “footing height”.
A8	To address the intent of the IPC’s revision, the Condition can be revised as follows consistent with the Department’s clarification on Hills of Gold Wind Farm: <i>(d) the revised location of the blade tip of a wind turbine is at least 50 metres away from the canopy of existing native vegetation; or where the proposed location of the blade tip of a wind turbine is already within 50 metres of the canopy of existing native vegetation</i>	Agreed.
A10	Agreed noting comment above.	
A14	The Department considers this revision is not required, as the Condition states that the Applicant may subdivision <i>for the purpose of carrying out the development</i> . The proposed subdivision included in this development application is for the purpose of transferring the land on which the substation is constructed to the network operator. The IPC’s revisions could potentially impede the development that is undertaken by the network operator (i.e. construction of the substation) should they have a need for the subdivision to occur earlier. Further, Division 6.4 of Part 6 of the EP&A Act sets out the application requirements for subdivision work and certificates in relation to subdivision, which appropriately cover the intent of the IPC’s condition to only subdivide the land if the Applicant proceeds with the project.	Recommended the Department review Dubbo Regional Council’s comments to the IPC dated 16 August 2024 to provide context.



<p>A18</p>	<p>The Department is generally not supportive of this revision. The CCC Guideline identifies the structure and functions of the CCC's for State Significant projects.</p> <p>The terms of reference are set by the Committee in accordance with the CCC Guideline.</p> <p>The Applicant has entered a Voluntary Planning Agreement (VPA) with Dubbo Regional Council and has reached an agreement on the general terms of a VPA with Warrumbungle Shire Council.</p> <p>A VPA provides the appropriate governance and funding structure to administer funds for community benefit program, i.e. the functions outlined under Section 355 of the <i>Local Government Act 1993</i>, which would establish a committee including community representation.</p>	<p>Noted the intent was to capture matters outside of the VPA.</p> <p>Recommended removing the word 'benefit' from "community benefit programs".</p>
<p>B1</p>	<p>The proposed timing from the commencement of construction allows the receivers to request the landscaping early in the development of the project when there is the most benefit from mitigation measures such as vegetation screening being established by the time the turbines are erected and operating and provide sufficient time for receivers to realise the visual impacts and request screening after construction concludes (construction is anticipated to be approximately 40 months). The Department considers that 5 years from commencement of construction is sufficient time to understand the full extent of impact and request mitigation.</p> <p>'Commencement of construction' is an established point in time, that requires the Applicant to notify commencement. Commencement of construction 'of first wind turbine' is not a notifiable point in time.</p> <p>The Department is not supportive of the inclusion of "minor civil works" and notes that the current wording of the condition does not exclude a resident from requesting mitigation measures beyond landscaping and vegetation screening – "such as" is non-exhaustive. The condition requires the Applicant to consult with the owner when determining appropriate mitigation measures and therefore other options could be explored during this consultation.</p> <p>Minor civil works is not a defined term and not mentioned in either the current Wind Energy Framework, or the Draft Wind Energy Guideline and could create unintended expectations.</p> <p>Overall the Department considers that the condition as recommended by the Department adequately captures the IPC's intended outcome.</p>	<p>Noted potential to increase the timeframe to a 7-year period.</p>
<p>B3</p>	<p>Agreed</p>	
<p>B20</p>	<p>The Department does not consider water turbidity monitoring for the life of the development is required as the potential for pollution caused by the development would be managed through several different mechanisms under the conditions of consent as proposed by the Department and other regulatory mechanisms such as the Environment Protection Licence (EPL) issued by the Environment Protection Authority (EPA).</p> <p>Condition B19 requires the Applicant to comply with the <i>Protection of the Environment Operations Act 1997 (POEO Act)</i>, which makes it an offence to pollute any waters. Condition B20 provides specific requirements for implementing erosion and sediment control which</p>	<p>Noted the intention of the condition was to address concerns during the operational phase of the development, not construction.</p>



are considered to be sufficient to manage sedimentation on the site throughout all stages of the development. Condition B25 also requires the applicant to detail in a Biodiversity Management Plan the measures to control erosion and provide a detailed program to monitor and report on the effectiveness of the measures employed. Pollution, including monitoring where required, would be regulated by the EPA in an EPL for the project as required. The EPA undertakes risk assessments of all projects requiring an EPL to identify the site-specific risks posed by the project and any environmental issues that a licence needs to address and where the EPA needs to focus its regulatory attention. On recent EPLs for wind farms, the EPA has included a requirement to prepare and develop a Soil and Water Management Plan to manage impacts during construction. The EPA, as the appropriate regulatory authority for water pollution under the POEO Act, would consider whether such a condition is required when issuing an EPL. EPLs also require an Annual Return to be prepared providing a statement of complaints and monitoring and complaints summary.

Conditions C15 also requires the Applicant to undertake independent environmental audits in accordance with the *Independent Audit Post Approval Requirements (2020)*, and as requested by the Planning Secretary. The findings of these independent audits must be submitted to the Planning Secretary.

The Department's compliance team also conducts regular site inspections to ensure compliance with conditions of consent.

As a result, the Department considers that the existing conditions adequately address water pollution risk and enforce compliance and would be a requirement of the EPL if the EPA considers it is required when issuing an EPL, and there is no need for an additional condition requiring water monitoring for the life of the development. As an example, the EPL for the Bango Wind Farm that is operational does not include ongoing water monitoring, indicating that the EPA does not consider there to be any risk to water quality once a wind farm project is operational.

Should the EPA decide to include additional water monitoring, the EPL would be the best mechanism to include this requirement and would define the monitoring parameters and locations.

The Department also notes that relevant government agencies, including the EPA, the Water Group and BCS within NSW DCCEE, did not request this measure in their advice to the Department. Based on the advice received and the proposed conditions and compliance settings (Department and EPA) the Department considers the risk of pollution in the receiving environments to be appropriately managed.

The Department also has concerns about the enforceability of the IPC's proposed condition for several reasons:

- the phrase "to the extent necessary" and 'material negative impact' are open ended and undefined.
- The project site is located within the Macquarie Bogan River System Catchment. This catchment covers an area of approximately 74,800 square kilometres.
- The Department is also concerned about the ability to accurately attribute cause and effect to any monitored changes in turbidity levels. It is unclear how compliance would



	<p>be able to confidently determine that any impact to the turbidity levels of local waterways could be directly attributed to the wind farm development and appropriately rule out confounding variables such as natural variation from rainfall events and other upstream factors.</p> <p>The Department therefore reiterates that the EPL would be the more appropriate mechanism (if required) for identifying relevant locations for monitoring, setting relevant limits or criteria if considered necessary by the appropriate regulating authority.</p>	
B33	Agreed	
B36	Agreed	
B37	<p>The Department notes that the purpose of this condition is to notify Aviation Authorities, who are responsible for managing air navigation tools that are utilised by all parties navigating airspace in Australia, including NSW RFS and NSW Police.</p> <p>NPWS was included as they are the aviation authority over the National Parks estate, which is adjacent to the site.</p> <p>The Department considers the recommended condition to notify the aviation authorities would mean that turbines are adequately mapped and chartered for the information of all airspace uses.</p> <p>NSW Police have confirmed that there is no need to consult with them regarding wind farms as potential aviation hazards as they are notified by CASA of locations that may present an aviation risk. Similarly, NSW Rural Fire Service would also rely on CASA and Airservices Australia data and mapping for potential aviation hazards.</p>	Panel suggested that NSW Police be asked if they require notification for such developments.
B45	<p>The Department understands that in accordance with section 3.5 of Planning for Bushfire Protection 2019 "NSW RFS prefers that water is solely dedicated for firefighting purposes", as opposed to a 'static water supply' which generally refers to existing water supplies (such as dams, tanks or swimming pools) on properties that could be incidentally used for firefighting purposes.</p> <p>The Department therefore considers that the use of the term 'dedicated' is appropriate in this condition, however 'static' is not.</p> <p>The Department also notes that the relevant government agencies, namely NSW RFS and FRNSW did not include 'dedicated static' in their advice to the Department.</p>	
C8	<p>Agree to providing a copy to the Councils for information. The Department considers the additional sub-condition (b) is going beyond the scope of the intent of this condition, to provide Final Layout Plans, for a wind farm development. Architectural plans for building works are not relevant to this type of development. The Department suggests that (b) is reworded to:</p> <p><i>(b) final design drawings where buildings are being erected</i></p>	Noted matter came from Dubbo Regional Council to assist with any subsequent certification process. Noted that terminology such as 'design details' could be used.
C10	<p>Replace the existing Condition with:</p> <p><i>The Applicant must notify the Department within 24 hours of becoming aware of an incident. The notification must be made via the NSW planning portal (Major Projects) and address details of the incident including:</i></p> <p><i>(a) date, time and location;</i></p>	



	<p>(b) a brief description of what occurred and why it has been classified as an incident;</p> <p>(c) a description of what immediate steps were taken in relation to the incident; and</p> <p>(d) identifying a contact person for further communication regarding the incident</p> <p>Updated based on recent advice from DPHI's Compliance Branch.</p>	
C11	<p>New Condition C11:</p> <p>The Applicant must provide the Department with a subsequent incident report in accordance with Appendix 8 [Incident Notification and Reporting Requirements].</p>	
C11-C13	<p>Replace these Conditions with C12:</p> <p><i>Within seven days of becoming aware of a non-compliance, the Applicant must notify the Department of the non-compliance. The notification must be in writing and must be submitted via the NSW planning portal (Major Projects). The notification must identify the development (including the development application number and name), set out the condition of this consent that the development is non-compliant with, why it does not comply, the reasons for the non-compliance (if known), and what actions have been undertaken, or will be undertaken, and when, to address the non-compliance.</i></p> <p><i>Note: A non-compliance which has been notified as an incident does not need to also be notified as a non-compliance.</i></p>	
C15	<p><i>Independent Environmental Audits of the development must be conducted and carried out in accordance with the Independent Audit Post Approval Requirements (2020) or as updated from time to time and published on the Department's website.</i></p> <p>Updated based on recent advice from DPHI's Compliance Branch.</p>	
C16	Agreed	
Appendix 1	Replacement Figure to be provided by the Applicant to reflect the correct final layout.	
Appendix 2	Agreed	
Appendix 6	This final figure was provided by the Applicant prior to referral from DPHI and should be used for the conditions.	
Appendix 8	<p>Replace the text in the existing Appendix with the following:</p> <p>INCIDENT NOTIFICATION REQUIREMENTS</p> <ol style="list-style-type: none">1. All incident notifications and reports must be submitted via the NSW planning portal (Major Projects).2. The Applicant must provide notification as required under these requirements, even if the Applicant fails to give the notification required under condition C10 or, having given such notification, subsequently forms the view that an incident has not occurred.3. Within 7 days (or as otherwise agreed by the Planning Secretary) of the Applicant making the immediate incident notification (in accordance with condition D10), the Applicant is required to submit a subsequent incident report that:	



	<ul style="list-style-type: none">(a) identifies how the incident was detected;(b) identifies when the Applicant became aware of the incident;(c) identifies any actual or potential non-compliance with conditions of consent;(d) identifies further action(s) that will be taken in relation to the incident; and(e) a summary of the incident;(f) outcomes of an incident investigation, including identification of the cause of the incident;(g) details of the corrective and preventative actions that have been, or will be, implemented to address the incident and prevent recurrence, including the period for implementing any corrective and/or preventative actions; and(h) details of any communication with other stakeholders regarding the incident. <p>4. The Applicant must submit any further reports as directed by the Planning Secretary.</p>	
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The above meeting minutes have been endorsed by:

Neal Menzies AM
Panel Chair
Date: 30 October 2024

Nicole Brewer
Director, Energy Assessments
Date: 30 October 2024