

# Attachment B – Draft proposed changes related to recommended conditions of consent as at 23 August 2024

Condition reference	Draft proposed condition (additions in <b>bold and underlined</b> , deletions in <del>strikethrough</del> )	Commission's comments and/or questions on draft proposed conditions	Department's response (including, where relevant, comment on workability, enforceability and unintended consequences)	Commission to consider:						
<p><b>ACQUISITION UPON REQUEST</b></p> <p><b>B1.</b></p>	<p>For a period of 5 years from the commencement of construction of any of the applicable wind turbines, the owner of the land listed in Table 1 may request the Applicant to acquire their land <b>at any time over the life of the development</b>.</p> <p>Upon receiving a written request from this owner, the Applicant must acquire the land in accordance with the procedures in conditions D1 and D2 of Schedule 2.</p> <p>However, this agreement does not apply if the Applicant has an agreement with the owner of the relevant land in regard to the visual impacts associated with the development, and the Applicant has advised the Department in writing of the terms of this agreement.</p> <p><b>Table 1: Receiver subject to acquisition upon request</b></p> <table border="1" data-bbox="285 476 879 580"> <thead> <tr> <th>Receiver</th> <th>Lot/DP</th> <th>Applicable Wind Turbines</th> </tr> </thead> <tbody> <tr> <td>DAD01</td> <td>47/753722</td> <td>53, 54, 55, 56, 57, 58, 59, 60, 61, 62</td> </tr> </tbody> </table> <p><i>Note: To identify the residence and wind turbines referred to in Table 1, see the applicable tables and figures in Appendix 2.</i></p>	Receiver	Lot/DP	Applicable Wind Turbines	DAD01	47/753722	53, 54, 55, 56, 57, 58, 59, 60, 61, 62	<ul style="list-style-type: none"> <li>To enable acquisition upon request for the life of the development, given that there are no further measures available to DAD01 to mitigate impacts of the development.</li> </ul> <p><b>Questions:</b></p> <ul style="list-style-type: none"> <li>Regarding the third paragraph, can the Department clarify what the "agreement with the owner of the relevant land in regard to the visual impacts associated with the development" is referring to? Should this also refer to the mitigation of noise and other impacts (such as blade and ice throw, and shadow flicker) as well?</li> </ul>	<p>The Department considers that these changes would have the unintended consequence of creating uncertainty for the applicant and it is not considered reasonable to require an applicant to be subject to acquisition for the life of the development. The Department notes that the life of the development could be substantially longer than 35 years if an applicant upgrades turbines as allowed by the consent. This would have an unintended consequence of acquisition being available to potential future owners for an extended undefined period of time. The relevant lot also does not currently have an existing dwelling but has been considered as it has a complying development certificate.</p> <p>The Department notes that a restricted time period of 5 years has been applied for the limited instances where acquisition has been applied on other wind farm projects.</p> <p>Condition B1 could be amended to</p> <p><i>However, this agreement does not apply if the Applicant has an agreement with the owner of the relevant land in regard to the visual impacts associated with the development (visual, noise, blade throw and ice throw and shadow flicker), and the Applicant has advised the Department in writing of the terms of this agreement.</i></p>	<p>For a period of 5 years from the commencement of construction of any of the applicable wind turbines <b>Up until 5 years from the commencement of operation</b>, the owner of the land listed in Table 1 may request the Applicant to acquire their land.</p> <p>.....</p> <p><i>However, this agreement <b>condition</b> does not apply if the Applicant has an agreement with the owner of the relevant land in regard to the visual impacts associated with the development, <b>and that agreement contains terms under which the landowner has waived their rights under this condition</b>, and the Applicant has advised the Department in writing of the terms of this agreement.</i></p>
Receiver	Lot/DP	Applicable Wind Turbines								
DAD01	47/753722	53, 54, 55, 56, 57, 58, 59, 60, 61, 62								
<p><b>VISUAL</b></p> <p><b>Visual impact mitigation</b></p> <p><b>B2.</b></p>	<p>For a period of 5 years from the commencement of construction <b>Over the life of the development</b>, the landowners of any <del>other</del> non-associated residence (<del>excluding DAD01</del>) within 5 km of any wind turbine identified in the Final Layout Plan (<b>but also including NAD33</b>) may ask the Applicant to implement visual impact mitigation measures on their land to minimise the visual impacts of the development on their residence (including its curtilage). Upon receiving such a written request from the owner of these residences, the Applicant must implement appropriate mitigation measures (such as landscaping and vegetation screening) in consultation with the owner.</p>	<ul style="list-style-type: none"> <li>Delete exclusion of DAD01 to enable opportunity for additional measures of visual mitigation.</li> <li>Inclusion of NAD33 given it may be excluded by the requirement to be 5km from a wind turbine.</li> <li>Included wording 'for the life of the development' to:             <ul style="list-style-type: none"> <li>capture future dwellings on sites within 5km of a wind turbine (including NAD33).</li> <li>enable landowners sufficient time to request visual mitigation after a period of the development's operation.</li> <li>support ongoing visual impact mitigation especially, for example, where mitigation is reliant on existing vegetation located on neighbouring properties.</li> </ul> </li> </ul> <p><b>Questions:</b></p> <ul style="list-style-type: none"> <li>In regards to the reference to 'residence', would it be more appropriate to define this in the Definitions table to include existing and new dwellings that may be built within 5km?</li> </ul>	<p>The Department considers that these changes to extend the ability to request mitigation measures for the life of the project would have the unintended consequence of uncertainty for the applicant and it is not reasonable to require an applicant to be subject to requirements for landscaping for the life of a project.</p> <p>The proposed timing from the commencement of construction allows 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 24 months).</p> <p>The Department considers that the exclusion of DAD01 should be retained as there is provision for the landowner to be acquired.</p> <p>The Department has considered the impact to NAD 33 in its revised recommendation as low with no mitigation required. The approach for other wind farm approvals has been for landscaping to be offered to receivers within the blue line of the Visual Bulletin for the proposed turbine height and including a receiver that is beyond the blue line and with a low visual impact is not consistent with the assessment of the impact at that receiver.</p> <p>The Department does not agree with the inclusion of future dwellings as this has unintended consequences of the lack of certainty for an applicant and is not reasonable to require an applicant to provide landscaping to an unknown number of future dwellings that may be constructed once an approval is given.</p> <p>The recommended Development Consent includes the following definition of 'residence':</p> <p><b>Residence - Existing or approved dwelling at the date of grant of this consent.</b></p> <p>This definition is consistent with other SSD and SSI renewable energy projects and changing it would set a precedent across the industry.</p>	<p>For a period of 5 years from the commencement of construction <b>Up until 5 years from the commencement of operation</b>, the landowners of any <del>other</del> non-associated residence (<del>excluding DAD01</del>) within 5 km of any wind turbine identified in the Final Layout Plan (<b>but also including NAD33</b>) may ask the Applicant to implement visual impact mitigation measures on their land to minimise the visual impacts of the development on their residence (including its curtilage).</p>						
	<p>These mitigation measures must:</p> <ol style="list-style-type: none"> <li>be reasonable and feasible;</li> <li>be aimed at reducing the visibility of the <del>turbines</del> <b>development</b> from the residence and its curtilage, <del>and commensurate with the level of visual impact on the residence;</del></li> <li>consider <b>address</b> bushfire risk (including the provisions of Planning for Bushfire Protection 2019);</li> <li>be implemented within 12 months of receiving the written request unless the Planning Secretary agrees otherwise.</li> </ol>	<ul style="list-style-type: none"> <li>Updated to capture visual mitigation of the development, not just wind turbines.</li> <li>Consideration is being given to deleting parts of the recommended condition that are not necessary for the condition to address the Panel's concerns and that might be difficult to implement, or give rise to conflicting interpretations (e.g. what is the practical meaning of "commensurate" in this context – does it mean that the mitigation measure must completely mitigate the visual impact or that there is some scale of reduction and mitigation measure? Who decides what level of visual impact with which the measures must be commensurate?)</li> </ul>	<p>The Department considers that the proposed changes have unintended consequences that any part of the development (even elements with very low visual impact such as permanent site offices, internal access roads) would require mitigation and the intent of mitigation is to prioritise mitigation measures that would reduce visual impacts of the turbines as the most dominant infrastructure of the project.</p> <p>The Department considers that the deletion of '<i>and commensurate with the level of visual impact on the residence</i>' would not be workable and it should not be deleted from condition B2(b). The condition if modified as proposed would have the unintended consequence of significant mitigation such as landscaping being required for a receiver where the visual impact at that receiver may be already low. The visual impacts are assessed in accordance with the Wind Energy Guideline and Visual Bulletin. There is no expectation that the mitigation should eliminate the view of the development entirely but it must reduce the impact to an acceptable level.</p> <p>Condition B2 also notes that if the Applicant and the owner cannot agree on the measures to be implemented either party may refer the matter to the Planning Secretary for resolution.</p>	<ol style="list-style-type: none"> <li>be aimed at reducing the visibility of the <del>turbines</del> <b>visually dominant aspects of the development</b> from the residence and its curtilage, and be commensurate with the level of visual impact on the residence;</li> </ol>						
<p><b>BIODIVERSITY</b></p> <p><b>Biodiversity management plan</b></p> <p><b>B26.</b></p>	<p>Prior to carrying out any development that could impact biodiversity values, unless the Planning Secretary agrees otherwise, the Proponent must prepare a Biodiversity Management Plan for the development to the satisfaction of the Planning Secretary. This plan must:</p> <ol style="list-style-type: none"> <li>be prepared by a suitably qualified and experienced biodiversity expert/s in consultation with BCS, NPWS and DCCEEW;</li> <li><b>minimise the disturbance footprint;</b></li> <li>be prepared in accordance with the Biodiversity Development Assessment Report (Revision 11, 25 May 2023);</li> <li>include a description of the measures that would be implemented to:             <ol style="list-style-type: none"> <li>minimise the impacts of the development on threatened flora and fauna species, <b>including habitat</b>, within the disturbance footprint and its surrounds, including the:                 <p>.....</p> </li> <li>a detailed program to monitor and report on the effectiveness of these measures <b>and implement improvements;</b></li> </ol> </li> </ol>	<ul style="list-style-type: none"> <li>Updated to ensure impacts to habitats and the disturbance footprint are minimised.</li> </ul> <p><b>Questions:</b></p> <ul style="list-style-type: none"> <li>With regard to the list of threatened flora and fauna listed in (d)(iv), can the Department clarify whether this is an exhaustive list? In the event that there is a change to the list of threatened species, how can this condition be adapted to include such changes? Can the biodiversity management plan be required to be updated periodically?</li> </ul>	<p>The comment relates to <b>Condition B27</b></p> <p>The Department considers that the proposed change to add (b) <i>Minimise the disturbance footprint</i> would not materially change the outcome and it is already required under condition B27(d)(iii) (<i>minimise the clearing of native vegetation and habitat within the disturbance footprint</i>).</p> <p>The addition of <i>implementing improvements</i> to B27(d)(xii) is unenforceable. The nature of the improvements is not reasonable on an applicant and what is required for an improvement is undefined. Wind farm applicants have a long term lease over the development corridor but generally does not extend over the whole project site. The proposed change would have an unintended consequence of requiring improvements over an area that an applicant may not have access to and imposing an action that impacts the operation over activities on the remaining land by a landholder.</p> <p>The threatened flora and fauna species list in condition B27(c)(iv) is exhaustive and includes species that are likely to occur or being recorded on site during relevant biodiversity surveys and assessments.</p> <p>The BMP is required to be prepared by a suitably qualified and experienced biodiversity expert/s in consultation with BCS, NPWS and DCCEEW. Relevant agencies reviewed the recommended conditions and are happy with them.</p>	<ol style="list-style-type: none"> <li><b>minimise the clearing of native vegetation and habitat within the disturbance footprint;</b></li> <li>include a description of the measures that would be implemented to:             <ol style="list-style-type: none"> <li>a detailed program to monitor and report on the effectiveness of these measures <b>and the implementation of any improvements to those measures;</b></li> </ol> </li> </ol>						
<p><b>TRANSPORT</b></p> <p><b>Traffic management plan</b></p>	<p>Prior to commencing construction, the Applicant must prepare a Traffic Management Plan for the development in consultation with TfNSW, WaterNSW, and Councils (<b>including Muswellbrook Shire and Newcastle City</b></p>	<ul style="list-style-type: none"> <li>Inclusion of other Councils with roads subject to use and the CCC to address potential local transport and access issues.</li> </ul>	<p>The comment relates to <b>Condition B36</b></p> <p>The Department considered the changes would not materially change the outcome.</p>	<ul style="list-style-type: none"> <li>Prior to commencing construction, the Applicant must prepare a Traffic Management Plan for the development in consultation with TfNSW, WaterNSW, and Councils (<b>including Muswellbrook Shire and Newcastle City Councils</b>) and, where relevant, the CCC.</li> </ul>						

Condition reference	Draft proposed condition (additions in <b>bold and underlined</b> , deletions in <del>strike through</del> )	Commission's comments and/or questions on draft proposed conditions	Department's response (including, where relevant, comment on workability, enforceability and unintended consequences)	Commission to consider:
B35.	<p><b>Councils) and CCC</b>, and to the satisfaction of the Planning Secretary. This plan must include:</p> <p>(c) details of the measures that would be implemented to minimise traffic impacts during construction, upgrading or decommissioning works, including:</p> <p>(v) procedures for receiving and addressing complaints from the community about development-related traffic;</p> <p>(vi) <b>site access and emergency access routes and use</b>;</p> <p>(vii) minimising potential cumulative traffic impacts with other projects <b>and existing uses</b> along the transport route, including consultation with TfNSW regarding their projects;</p> <p>....</p> <p>(e) a detailed program to monitor, <b>review</b> and report on the effectiveness of these measures and the code of conduct, <b>as well as actions to achieve or improve any measures as required</b>.</p>	<ul style="list-style-type: none"> <li>Wording to clarify the requirement of clear site and emergency access routes.</li> </ul>	<p>The Department considers that wording in the recommended Development Consent already includes a requirement for the Applicant to consult with all relevant road authorities, including relevant Councils. Inserting a requirement to consult with CCC on the TMP may have unintended consequences about the role of the CCC in this measure. The Department notes that the CCC would be unlikely to have technical expertise to provide feedback.</p> <p>The Department considers that the proposed additions in (vi), (vii) and (e) are already covered by the recommended conditions.</p>	
HAZARDS Emergency plan B45.	<p>Prior to commencing construction, the Applicant must develop and implement a comprehensive Emergency Plan and detailed emergency procedures for the development, in consultation with NPWS, FCNSW and RFS and provide a copy of the plan to the local Fire Control Centre. The Applicant must keep two copies of the plan on-site in a prominent position adjacent to the site entry point at all times. The plan must:</p> <p>(c) include <del>bushfire</del> emergency management planning, including:</p> <p>(i) details of the location, management and maintenance of the Asset Protection Zone and on-site water supply tanks;</p> <p>(ii) a list of works <b>and operations</b> that should not be carried out during a total fire ban;</p> <p>.....</p> <p>(vi) operational procedures in the event of bushfires, such as shutting down turbines and the positioning of turbine blades to minimise <b>impact to bushfire and/or</b> interference with <del>aerial</del>-firefighting operations;</p> <p>(vii) detail the measures that would be implemented to evacuate the site in an emergency; <b>and</b></p> <p>(viii) <b>include details of how the Applicant would support the emergency response by others, such as hazard prevention, operator training and education, and access to plant and equipment.</b></p>	<ul style="list-style-type: none"> <li>Included wording to require consideration of how the Applicant can assist with emergency response by others in the event of a hazard.</li> </ul> <p><b>Questions:</b></p> <ul style="list-style-type: none"> <li>It is noted that this emergency plan condition is focused on bushfire response. Can the Department provide advice on whether other substantial emergency risks should be addressed here as well, such as structural failure, landslip etc?</li> </ul>	<p>The comment relates to Condition <b>B46</b></p> <p>The Department does not consider that the proposed changes are needed and considers the recommended conditions already require the Applicant to prepare a comprehensive Emergency Plan that is consistent with the Department's <i>Hazardous Industry Planning Advisory Paper (HIPAP) No. 1, 'Emergency Planning'</i> to cover all the operational related emergencies and RFS's <i>Planning for Bushfire Protection 2019</i> to address emergency situations due to bushfire events. The Emergency Plan is required to be prepared in consultation with NPWS, FCNSW and RFS. In relation to the addition to (c)(ii) and (vi), the Department has no further comments and considers it can be accepted. For (c)(viii), it is already covered in the requirement under HIPAP No. 1 and therefore considered not necessary.</p>	<p>(c) include <del>bushfire</del> emergency management planning, including:</p> <p>(ii) a list of works <b>and operations</b> that should not be carried out during a total fire ban;</p> <p>.....</p> <p>(vi) operational procedures in the event of bushfires, such as shutting down turbines and the positioning of turbine blades to minimise <b>impact to bushfire and/or</b> interference with aerial firefighting operations;</p>
DECOMMISSIONING & REHABILITATION Decommissioning and rehabilitation plan New condition.	<p><b>Within 3 years of the commencement of operation, the Applicant must prepare a Decommissioning and Rehabilitation Plan for the development, including progressive rehabilitation in accordance with condition B53. At a minimum, this Plan shall be updated by the Applicant half-way through the operational life of the project and within 2 years prior to decommissioning. The Plan must:</b></p> <p>(a) <b>include detailed completion criteria for evaluating compliance with the rehabilitation objectives in Table 3 below; and</b></p> <p>(b) <b>describe the measures that would be implemented to:</b></p> <p>(i) <b>decommission the development and rehabilitate the site in accordance with the objectives in Table 3;</b></p> <p>(ii) <b>minimise and manage the waste generated by the decommissioning of the development;</b></p> <p>(iii) <b>include a program to monitor and report on the implementation of these measures against the detailed completion criteria; and</b></p> <p>(iv) <b>ensure that best practice is employed in respect of utilising available recycling technologies.</b></p>	<ul style="list-style-type: none"> <li>Requirement for the Applicant to prepare a Decommissioning and Rehabilitation Plan early on in the operation phase to provide clear planning for future decommissioning and rehabilitation activities.</li> </ul>	<p>The recommended conditions require the applicant to rehabilitate the site in accordance with a number of objectives listed in Table 3 of condition B49. With the implementation of objective-based conditions and monitoring requirements, the Department considers that the project would be suitably decommissioned at the end of the project life and that the site will be appropriately rehabilitated.</p> <p>The Department does not consider that a Decommissioning and Rehabilitation Plan is required.</p>	<p>The Commission intends to impose this condition as drafted.</p>
ACCESS TO INFORMATION C22.	<p><b>To ensure transparency and timely information</b>, the Applicant must:</p> <p>(a) make the following information publicly available on its website as relevant to the stage of the development as soon <b>as possible and within 5 business days</b>:</p> <p>(vi) a comprehensive summary of the monitoring results of the development, which have been reported in accordance with the various plans and programs approved under the conditions of this consent;</p> <p>(vii) <b>procedures for receiving, handling, responding, and recording of</b> <del>how</del>-complaints about the development <del>can be</del> <b>made</b>;</p> <p>....</p> <p>(b) keep this information up to date <b>within 5 business days of any changes</b>.</p>	<ul style="list-style-type: none"> <li>To ensure information is provided in a transparent and timely manner.</li> </ul>	<p>Agreed</p> <p>The definition of 'development' includes 'operation'.</p> <p>The Department does not consider that '<i>To ensure transparency and timely information</i>' is required if the condition specifies what the actions an applicant must take.</p> <p>The period of 5 days may not be workable for the applicant. A short timeframe for any '<i>changes</i>' in C22(b) could have unintended consequences in a situation where a management plan is 'changed' to then be submitted to the Department but is not yet approved.</p>	<p><b>To ensure transparency and timely access to information</b>, the Applicant must:</p> <p>(a) make the following information publicly available on its website as relevant to the stage of the development <b>as soon as practicable</b>:</p> <p>(vi) a comprehensive summary of the monitoring results of the development, which have been reported in accordance with the various plans and programs approved under the conditions of this consent;</p> <p>(vii) <b>procedures for receiving, handling, responding, and recording of</b> <del>how</del>-complaints about the development <del>can be</del> <b>made</b>;</p> <p>....</p> <p>(b) keep this information up to date.</p>