

Department of Planning, Housing and Infrastructure

Our ref: SSD 28088034

Mr Stephen Barry
 Planning Director
 NSW Independent Planning Commission

Via email: [REDACTED]

10 May 2024

Subject: Dubbo Firming Power Station – Comments on Draft Conditions

Dear Mr Barry

I refer to your letter dated 29 April 2024, seeking the Department’s advice on the proposed conditions of consent for the Dubbo Firming Power Station (the project) currently before the NSW Independent Planning Commission for determination.

I also note that the applicant has amended the development application since the department finalised its assessment. The amendment involves the removal of the electricity transmission line connecting the project site to the Yarrandale Substation. The department considers that the amendment would not increase the environmental impacts of the project, and the recommended conditions remain fit for purpose.

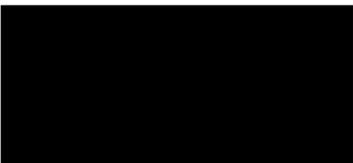
The department has no concerns regarding most of the proposed changes to the conditions but provides the following comments in respect of some proposed changes:

| Proposed condition | Summary of Commission’s comments | Department’s response |
|-----------------------|--|---|
| A2 (d) and Appendix 1 | Updated to include “amended Project Description and Revised Development Layout” | The Department suggests amending the definition of EIS and using an amended layout plan in Appendix 1 instead of the proposed changes to condition A2(d) (see highlighted edits in the draft conditions). This is more consistent with the approach adopted in other development consents. |
| B11 | Should management plans be "submitted ... for approval" or "submitted to the satisfaction of"? | The Department suggests “submitted for approval” to make it clear that it is the plan that must be approved, not the act of submitting the plan that must be approved |
| B21 | Following request from Applicant, operational noise limits adjusted to reflect | The recommended noise limits were based on the Environment Protection Authority’s (EPA) recommendations. The department |

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|-------------------|---|---|
| | <p>project noise trigger levels instead of predicted noise levels</p> | <p>sought further advice from the EPA, which confirmed that the lower predicted noise limits are appropriate and consistent with the EPA’s approach to setting noise limits, which is to set limits based “on achievable noise levels which the proponent has predicted can be met during the environmental assessment”. This is also consistent with the guidance in the <i>NSW Noise Policy for Industry</i> (EPA, 2017). The EPA’s advice on this matter is attached. The department also notes that the EPA will regulate noise emissions through an environment protection licence issued under the <i>Protection of the Environment Operations Act 1997</i>.</p> |
| <p>Appendix 2</p> | <p>Updating the terms of the VPA to allow option for upfront payment of alternative amount to reflect revised offer to Dubbo Regional Council (Council), and seeking confirmation about whether the Department has received any further correspondence from Council on this matter.</p> | <p>The Department has not received any further communication regarding the VPA offer made to Council. However, if Council has indicated to the Commission that the revised offer is acceptable, the Department does not have concerns about updating the offer to include both options.</p> <p>As an alternative to the words “unless the Planning Secretary agrees otherwise” proposed by the Commission in condition A11, the Commission could also consider including flexibility regarding the amount and timing of VPA payments in Appendix 2. Suggested wording could be:</p> <ul style="list-style-type: none"> - A payment of \$950,000, with payment of all funds prior to the commencement of construction; or - An annual payment of \$71,250 and total payment of \$1,425,000 over the life of the project (adjusted annually for CPI) from the commencement of construction; or - alternative amount and timing agreed by Council |

If you have any questions, please contact me on [redacted] or at [redacted]

Yours sincerely,



Steve O'Donoghue
Director Resource Assessments
as nominee of the Secretary



DOC24/59193-4

9 May 2024

Brittany Golding
Environmental Assessment Officer
Department of Planning, Housing and Infrastructure

By email: [REDACTED]

Dear Brittany

Thank you for your email regarding Dubbo Firing Power Station. We appreciate you bringing the Independent Planning Commission's (IPC) request for higher noise levels in the consent conditions to my attention. We are specifically referencing *Insert 1- noise criteria recommended by the IPC* and *Insert 2 – noise criteria recommended by DPHI* in your email dated 30 April 2024.

We have reviewed the proposed noise conditions from the IPC. The Environment Protection Authority (EPA) is concerned that these noise limits are higher than the proponent's predicted levels that can be achieved from their premise based on their environmental assessment. This approach is not aligned with the noise criteria recommended by DPHI, nor with the regulatory and legislative factors that must be considered by the EPA when selecting noise criteria.

The proponent's Noise Impact Assessment (Prepared for Energy Transition Solutions 28L Yarandale Road, Dubbo NSW 2830 by Benbow Environmental (ref 221118_NIA_Rev6 dated 31 October 2023) indicates that the proposal can meet the noise criteria recommended by DPHI with the inclusion of feasible and reasonable mitigation measures.

The criteria recommended by DPHI are based on EPA's recommended conditions that were provided to DPHI dated 14 March 2024. These conditions were developed based on EPA's review of the EIS and supporting information including the Noise Impact Assessment.

It appears the recommended conditions from the IPC are based on the Project Noise Trigger Levels (PNTLs) derived for the project under the *Noise Policy for Industry, 2017* (NPfl), whereas those recommended by the EPA and DPHI are indicative of the proponent's predicted noise levels. No information has been provided on the justification for the IPC wishing to increase the noise limits above those predicted by the proponent.

It is the view of the EPA that the noise limits should not be increased to the PNTLs but should remain as noise levels predicted under the Noise Impact Assessment. There are regulatory and legislative factors that must be considered when selecting noise criteria that should be applied to this project.

Consent and licence conditions relevant to noise emissions can take various forms such as noise limits, hours of operation and activity restrictions. When it comes to noise limits, the term is defined in the NPfl Glossary as follows:

Enforceable noise levels that appear in conditions on consents and licences. The noise limits are based on achievable noise levels which the proponent has predicted can be met during the environmental assessment.

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This definition in combination with the guidance contained in Section 5 of the NPfl, and the section 45 considerations in the *Protection of the Environment Operations Act 1997* (POEO) justifies why the EPA uses environmental assessments to inform appropriate noise limits.

The basis of noise limits adopted by the EPA relies upon good quality and transparent information that identifies and describes the noise impacts, and what measures will be taken to manage and mitigate those impacts.

Importantly, the NPfl should not be interpreted to mean that PNTLs will be applied as direct regulatory limits without consideration of the following:

- requirements of the relevant legislation, such as the EPA's objectives under the POEO Act which includes opportunities to protect, restore and enhance the quality of the environment,
- the EPA's regulatory strategy and policy,
- whether feasible and reasonable measures to mitigate noise pollution have been considered,
- identification of a practical (achievable) noise level after adopting all feasible and reasonable mitigation measures,
- the significance of any residual noise impacts and the number of receivers affected; and
- whether the final noise level proposed is acceptable to achieve regulatory objectives.

In consideration of these factors and consistent with the EPA's objectives, where a proponent states a level of performance in an environmental assessment based on what can feasibly and reasonably be achieved, the EPA generally sets noise limits at the predicted level of performance.

It is worth noting that sections 139 and 140 of the POEO Act provides offences where noise emitted from a premises is caused by the occupier's failure to:

- maintain plant in an efficient condition, or
- to operate plant in a proper and efficient manner, or
- deal with materials in a proper and efficient manner.

Therefore, noise limits that reflect what can be achieved based on undertaking an activity in a proper and efficient manner is consistent with the EPA's legislative responsibilities and is reflected as a mandatory condition in all Environment Protection Licences.

If you have any further questions about this issue, please contact Justin Hillis, acting Unit Head Environment Protection Planning, at [REDACTED].

Yours sincerely

[REDACTED]

DARREN WALLETT
Manager-Environment Protection Planning
NSW Environment Protection Authority