



BUSINESS PAPER

EXTRAORDINARY MEETING

Monday 10 April 2017

6.00pm

Council Chambers

Gunning

TABLELANDS REGIONAL COUNCIL'S VISION

To build and maintain sustainable communities while retaining the region's natural beauty.

COUNCIL'S MISSION

To provide services and facilities to enhance the quality of life and economic viability within the Council area.

COUNCIL'S AIMS

To perform services in a cost efficient, effective and friendly manner in order to achieve Council's Mission in meeting the annual objectives and performance targets of the principal activities Council undertakes on behalf of the community.

NOTICE OF EXTRAORDINARY MEETING

29 March 2017

Councillors

Dear Members


Extraordinary Meeting of Council

Notice is hereby given that an Extraordinary Meeting of Council will take place on **Monday, 10 April 2017** in the **Council Chambers, Gunning** commencing at **6.00 pm**.

This meeting has been called in accordance with Section 366 of the Local Government Act at the request of Clr John Searl and Clr Darren O'Brien to consider the attached Notice of Motion.

Your presence is requested.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'JK Bell', with a large, sweeping loop on the left side.

JK Bell
General Manager
Upper Lachlan Shire Council

EXTRAORDINARY MEETING OF COUNCIL

The following items are submitted for consideration -

- 1 PRESENTATIONS TO COUNCIL/PUBLIC**
 - 1.1 Presentation by Mr Alister Waine
- 2 NOTICES OF MOTION.....5**
 - 2.1 Notice of Motion - Dalton Gas Fired Power Station 6

2 NOTICES OF MOTION

The following item is submitted for consideration -

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Notices of Motion - 10 April 2017

ITEM 2.1

Notice of Motion - Dalton Gas Fired Power Station

I, Councillor John Searl hereby give notice that at the next Extraordinary Meeting of Council I will move the following motion:-

“Council, in response to the NSW Department of Planning’s invitation to provide submissions on AGL’s application for a two year extension to their approval to construct a gas fired power station at Dalton, submit an objection to such an extension on behalf of the residents in the nearby communities of Dalton and Gunning.”

BACKGROUND

- In 2012 AGL were granted approval to construct a gas fire power station approximately 4 km north of Dalton.
- This approval was for a period of 5 years, lapsing mid - 2017.
- Being an estimated \$1.5 billion project it was a State Significant Project and Council was therefore not the Consent Authority.
- In the five years since approval was granted no significant construction activity has occurred.
- AGL are now seeking a 2 year extension on their existing approval.
- NSW Department of Planning are seeking public comment of AGL's application up to Thursday, 13 April 2017.
- Notwithstanding that the proposed power station is a State Significant Project and Council is not the Consent Authority, residents of Dalton and Gunning are extremely worried about the proposed development, it's impacts upon environment, health, lifestyle, noise, pollution, and property values, and are looking to Council to support their opposition by way of a submission to NSW Department of Planning objecting to AGL's application for a 2 year extension to their current approval.
- Note that submissions to NSW Department of Planning are to be received by 13 April 2017.

GENERAL MANAGER’S COMMENT

The above background supplied by Councillor Searl summarises the current state of situation.



19 July 2012

DETERMINATION OF THE PROPOSED DALTON POWER PROJECT (MP10_0035)

EXECUTIVE SUMMARY

The application to construct and operate a 1500 megawatt (MW) open-cycle gas fired power station near Dalton was referred to the Planning Assessment Commission for determination as it meets Ministerial delegation.

Following careful consideration of the views expressed at the public meeting and the Department's Assessment Report and agency and public submissions, the Commission agrees with the Department's recommendation that the proposal should be approved subject to the recommended conditions as amended by the Commission.

The key amendments include limiting the project's generating capacity to 1000MW and if exceedance of environmental criteria occurs, operation will cease or be limited to a level where it will comply with the approval conditions. Full operation will recommence only when issues are resolved in a manner which can ensure compliance.

The report below provides further detail on the Commission's decision making process, and outlines the reasons for the amendments made to the recommended conditions.

1 PROJECT APPLICATION

AGL Energy Limited (the proponent) proposed to construct and operate a 1500 megawatt open-cycle gas fired power station about 4km north-east of Dalton. The proposed power station is intended to operate as a peaking facility to supply electricity at short notice during periods of peak demand, estimated to be between 2% and 15% of any year. When operational, it may operate 24 hours a day, seven days a week.

The project is to be developed in two stages. Stage 1 comprises 2 to 3 F Class turbines with a nominal maximum capacity of up to 750 megawatts. Stage 2 would increase the generating capacity to 1500 megawatts with a total of 6 turbines. The project also includes the construction of a 3km gas pipeline, a valve station, a communications tower and hut and access road.

2. DELEGATION TO THE COMMISSION

The application was referred to the Commission for determination under Ministerial delegation dated 14 September 2011 as the proponent has made a reportable political donation.

Mr Garry West (chair) and Mr Brian Gilligan were nominated to constitute the Commission to consider and determine the application. They visited the site on 27 June 2012.

3. DEPARTMENT'S ASSESSMENT REPORT

The Director-General's Environmental Assessment Report ('the Assessment Report') considered the proposal, its statutory context, public and agencies submissions, and the proponent's responses to submissions. The report identified the following key issues:

- Noise (both construction and operation);
- Air quality;
- Water demand and supply;
- Traffic and transport;

- Visual amenity; and
- Biodiversity.

The assessment report concludes that the potential impacts could be mitigated to an acceptable level of environmental performance. Some residual impacts may result, but, on balance, the project is assessed to be justified when considering the public benefit of having a reliable source of electricity to the State's energy supply system in times of peak demand. The application is recommended for approval with conditions.

4. MEETING WITH STAKEHOLDERS

4.1 Department of Planning and Infrastructure

The Department briefed the Commission on 20 June 2012. The meeting focused on the issue of noise, particularly tonality and low frequency noise; the operational differences between E and F class turbines and resultant noise impact; and the experience from the Uranquinty power station in relation to noise.

Following the meeting, the Department provided additional information to the Commission in relation to:

- The Uranquinty noise experience and run-time record for the past 2 years; and
- A paper titled *A Simple Criterion for Low Frequency Noise Emission Assessment* by N Broner, which recommended the low frequency noise criteria of 60dBC (night) and 65dBC (day), which have been adopted by the Department as recommended conditions of approval; and
- A correction to the street references in recommended conditions E38 and E46(c)(vi).

The Commission met with the Department again on 17 July 2012 to discuss specific amendments to the recommended conditions of consent.

4.2 Upper Lachlan Shire Council

The Commission met with Upper Lachlan Shire Council on 27 June 2012. Council outlined its response to the Department's recommendation as follows:

- Traffic and transport
 - Council has focused its attention on addressing the local traffic impacts especially during the construction phase of the project;
 - Most of RMS concerns have been considered in the traffic management plan;
 - The issue of over-size vehicles is manageable as they are well controlled and regulated; and
 - Certain local roads and intersection need improvements or widening for everyday traffic and safety.
- The VPA with the proponent is satisfactory and the recommended condition should reflect the signed agreement.
- AGL recently advised that Stage 1 would be for 500 MW, not 750MW. Council's concern is whether Stage 2 would be another 500MW or 1000MW (the balance of the 1500MW).
- Timing of Stage 2 is a concern, particularly in relation to advances in technology and turbine performance. Stage 1 was cited as an example as it has changed from 4 turbines to 2 during the course of the planning approval process.
- Issue of Water
 - Council prefers a pipeline to supply the site, rather than relying on bore water; and
 - The concern is if bore water quantity diminishes, the proponent can truck in water.
- Some of the conditions are open to interpretation.

On 28 June 2012 Council provided comments on the recommended conditions including the need to provide compensatory water supply to any affected landowners and/or operator of a public utility. "The compensatory water supply measures must provide an alternative long-term supply of water that is equivalent to the loss attributed to the project... by way of the installation of a pipeline and associated infrastructure from Gunning."

4.3 Proponents – AGL Energy Limited

The Commission met with the Proponent on 27 June 2012. The meeting discussed:

- The justification for the project;
- Operation time is expected to be between 2-15% per annum and mostly during the day and evening;
- Stage 1 is for 500MW. Stage 2 could be another 500MW. To develop to full capacity requires an upgrade to the transmission lines, which are not included in the current or the next Transgrid work program;
- The proponent has committed to switch off the plant if it does not comply with the environmental performance criteria;
- The Environmental Assessment was based on a worst case scenario;
- The turbines can run without water. But would produce less electricity. It should be noted that the recommended conditions do not allow water to be brought in to run the turbines.
- The proponent is finalising its purchase of a water access licence. It intends to surrender any excess volume that is not required for the running of the station.
- Council and the Traffic Committee have been involved in the preparation of traffic management plan. A commitment has been made that there will be no construction transport during peak school hours;
- In terms of visual impact, the station's visibility is reduced by the proposed reduction in stack height from 46 metres to 28 metres above ground level. The recommended conditions requiring landscaping working within 5km are considered unreasonable, but the proponent raised no objection;
- 195 hectares of land will be dedicated for conservation in perpetuity. They will be managed in accordance with the Offset Management Plan which is being reviewed by the OEH.
- An air monitoring station is to be located in Dalton Primary School. The station is not a requirement of the OEH/EPA, but agreed to by the proponent to address community concern;
- Reduced stack height will not change the outcome of the noise assessment as the model was based on stack height of 28m; and
- F class turbines are proven machines and 9FA turbines have been in operation in Australia since 1990s. They are not new technology.
- The proposal has been changed to address community concerns. The amendments include:
 - sealing Walshs and Loop Roads;
 - establishing an ambient air quality monitoring station;
 - designing transport routes to minimise impact;
 - making a commitment not to truck-in process water;
 - reducing stack height to 28m;
 - making a contribution to a community fund;
 - providing additional landscaping to minimise visual impact;
 - realigning the gas pipeline to minimise impact; and
 - using the F class turbines to reduce water usage.

4.4 Environment Protection Authority (EPA)

The Commission met with the EPA on 27 June 2012. The EPA considered air emissions would not be an issue. Biodiversity issues have been adequately dealt with. Water usage for this type of turbine is very low. Licence conditions would include a requirement for no discharge. The evaporation pond would be small and is not considered to be a cause for concern.

Noise is the main issue. Residences B, C and D are the closest neighbours. Based on assessment results, they are marginal to meet the noise criteria. Although modelling was based on a worst case scenario, the EPA is not confident that the proposal will meet the noise criteria for residences B and C.

The EPA advised that the noise issue in Uranquinty is different from Dalton. The proponent is confident that it will be able to contractually ensure the turbine manufacturer meets the noise criteria. The EPA also advised that the commissioning period (3 months) is critical as it would be apparent during that period whether the noise criteria could be met. Therefore intensive monitoring during the commissioning period is required.

The EPA also noted that its recommended 65/70dBC criteria for low frequency noise were not adopted by the Department. Instead, more stringent criteria (65dBC for day and 60dBC for night) are included in the recommended conditions.

4.5 Public Meeting

The public meeting was held on 28 June 2012 at the Gunning Shire Hall where 31 people spoke to the Commission. (Appendix 1) The following is a brief summary of the issues raised at the meeting.

- Project justification and capacity
 - There is no strategic justification for the project;
 - Market demand forecasts have been significantly lower than the previous prediction and by 2020 there will be an oversupply of energy;
 - If the project were to be approved, only Stage 1 should be approved. A new environmental assessment for Stage 2 should be required to demonstrate Stage 1 complies with the environmental conditions; and
 - Recommended conditions leave open the potential to extend operation beyond peak periods;
- Noise impact
 - No confidence the Dalton project would be able to comply with the approval conditions given the Uranquinty experience;
 - The assessment underestimated adverse weather conditions;
 - Lack of on-site meteorology data; and
 - Questions on the accuracy of modelling data.
- Impact on air quality
 - Inadequate assessment of issues of air emissions, dust and odour;
 - No on-site meteorology monitoring station; and
 - Potential impact on health.
- Impact on water resources
 - Potential to deplete groundwater resources;
 - No safe guard or compensatory measures to protect adjacent landowners' water supply;
 - Impossible to prove that any depletion was caused by the proponent's extraction;
 - Impact on spring fed creeks; and
 - Impact on the interrelated ecosystems.
- Traffic impact
 - Issues concerning construction traffic, traffic route, road conditions, conflict with school traffic.
- Impact on property value and compensation
 - The proposal would significantly devalue surrounding properties as well as those along the traffic route; and
 - Landowners should be compensated for loss of land for landscape treatment to mitigate visual impact.
- Social and economic impacts
 - Cumulative negative impacts on the community's health and well being;
 - Forced acquisition would negatively impact on the community structure and provision of services;
 - Lack of social and economic impacts assessment and no social or economic benefits to the Dalton community. Any community enhancement fund should be spent in Dalton; and
 - The impact on the tourist industry has not been assessed. Businesses have not been consulted.
- Other issues
 - Visual amenity effect in a rural setting;
 - Inadequate public consultation, particularly with the closest neighbours and Aboriginal community;
 - No assessment on vibration effects;
 - General concern at the erosion of local biodiversity values;
 - Potential hazards including gas leaks, fire or explosion;
 - Lack of response to community concerns caused the community's distrust;
 - Lack of seismology assessment as the proposal would be built on a fault line; and
 - The proponent's commitment to shut down the facility if exceedance occurs should be included in the conditions of approval.

4.6 NSW Office of Water (NOW)

The Commission discussed the water extraction issue with the NSW Office of Water on 4 July 2012 via tele-conference. The discussion focused on:

- The Hydroilex report, the adequacy of 24 hour bore test to confirm potential impact on surrounding bores;
- The issue of connectivity of bores in the area and impact on springs in fractured rock environments;
- The need for contingency conditions in the Department of Planning and Infrastructure's recommended conditions of consent; and
- Whether residual uncertainty can be adequately addressed in the groundwater and water management plans and licence requirements, if the project proceeds.

The Commission's attention was directed to the NOW's response to the Department in relation to groundwater extraction dated 2 March 2012. NOW has reviewed the *Hydrogeological Assessment Incorporating 24Hr Pumping Test (Bore 1 and Bore 2)* dated 22 February 2012 and concluded that:

- The required water supply of 25ML/y can be sourced via groundwater extraction from on site bores provided water quality and quantity remain consistent with results of the Hydroilex 24 hour pumping test;
- The pumping test included water measurements collected from water users within a 4km radius of the site and had not identified impacts to water levels on these bores. Therefore it is not anticipated that other bore owners will be impacted by the proposed pumping at the site; and
- Based on the hydrogeological characteristics at the site and the volume of proposed water to be extracted, NOW does not anticipate significant impacts to the Lachlan River.

5 COMMISSION'S COMMENTS

The Commission has carefully reviewed the Department's assessment report and associated documents, including submissions from the Upper Lachlan Shire Council, agencies and the public. It has also considered the comments made by stakeholders at the Commission meetings including the public meeting. The Commission is satisfied that the assessment report has adequately canvassed most of the issues raised in public submissions, and where required, recommends conditions of consent to address/mitigate residual impacts. However, the Commission determined to amend some of the recommended conditions to improve the management of the project and its environmental performance.

5.1 Project justification and operating capacity

Most submitters believed there is insufficient strategic justification for the proposal. Particularly when considering the 2012 National Energy Market Report which stated that the "annual energy and maximum demand forecasts are significantly lower" than earlier predictions "signalling an expected delay for new generation and network investment". They pointed out that it is likely there will be a surplus of energy by 2020 instead of the earlier projected shortage, thus there is no need for the proposal.

If the project were to be approved, submitters are of the view that only Stage 1 should be approved. Stage 2 should be the subject of a new development application with relevant environmental assessment based on the performance of Stage 1.

At the meeting with the Commission, the proponent confirmed that Stage 1 will consist of two turbines with a total capacity of 500MW. Stage 2 is likely to be of similar size. The main reason for the reduced capacity (from 750MW to 500MW) is because it requires the upgrade of the transmission lines by Transgrid. There is no certainty when the transmission lines will be upgraded, if at all as they are not included in the current or next Transgrid work programs. There is also no confirmation when Stage 2 will be constructed.

The Department's Assessment Report in considering the justification for the project acknowledged the shift in actual and projected energy demands over recent years, but is of the view that it is "prudent to take a broad, strategic approach to the timing of additional generating capacity that may be required at any time in the period 2012-2020" to accommodate any potential demand arising from the establishment of major energy-intensive developments.

The Commission agrees with the Department that it is of critical importance to ensure the State's electricity supply system is reliable to support peak energy demand and additional capacity should be available for implementation, if required. In this regard, the Commission also notes that while there is evidence that overall energy demand is reducing with reference to earlier projections, perhaps most significantly as a result of anticipated reductions in demand from large industries within the manufacturing sector, the forecasts for peak demand, which is most relevant to this proposal, are indicating continuing increases in levels of demand from the domestic sector in peak periods.

Notwithstanding the Commission's support of the development of a peaking station to ensure security of energy supply to the State, the Commission considers it is reasonable to limit the maximum generating capacity of the development to 1000MW having regard to the proponent's latest plan of 500MW for Stage 1 and similar capacity for Stage 2. Any increase in generating capacity beyond this level should be the subject of a new development application with relevant environmental assessment based on the operational experience of the project.

Whilst the maximum nominal generating capacity is limited to 1000MW, Stage 1 is approved up to a nominal capacity of 750MW to provide flexibility to meet unforeseen project design issues.

Concern was raised at the public meeting that condition B15 leaves open the potential for operation to extend beyond the peak periods. The Commission agrees and the condition has been amended to allow exceedance only if directed by the Australian Energy Market Operator under the National Electricity Rules.

5.2 Environmental Requirements and Compliance

a) Noise

Noise is a major issue raised in the public meeting and by the EPA. Community members expressed the view that they do not have confidence that the proposal will meet the noise criteria citing the Uranquinty power station as an example.

The Commission sought advice from the Department in relation to the Uranquinty power station. The Department advised that the main problem with the Uranquinty power station was the manufacturer of the turbines did not meet the specifications. The approval conditions also did not include low frequency noise criteria.

The Commission raised the community concern with the proponent and sought advice on how it will ensure the Uranquinty experience would not be repeated in Dalton. The proponent confirmed that it will include a condition in its contract with the manufacturer that the turbines must meet the noise criteria. It has also made a public commitment that if the operation of the station does not comply with the environmental criteria, the station will be shut down until the issue is rectified. Submitters believe such a commitment should be included in the conditions of approval to safeguard the community's noise amenity. The Commission agrees and has amended the relevant conditions that if environmental criteria are exceeded, operation shall be ceased or limited to ensure compliance. Full operation should not be recommenced until issues are resolved.

The Commission also notes that unlike the Uranquinty experience, the Department has, in this case, included low frequency noise criteria (65dBC for day and 60dBC for night) in the recommended conditions which are more stringent than those recommended by the EPA (70dBC for day and 65dBC for night). Further that, the noise assessment was based on the worst case scenario for a 1500MW station. As discussed in Section 5.1 above, the Commission considers the generating capacity should be reduced to 1000MW. As a result of the reduction in capacity, potential noise impact should be significantly reduced.

The Commission notes that the reduced noise impact should be realised at residences B and C. Notwithstanding this, they should be closely monitored to safeguard their noise amenity, otherwise mitigation measures should be implemented as soon as noise becomes an issue to these residents. Relevant conditions have also been amended to provide an appropriate process for a negotiated outcome when required.

In considering approval of the project, the Commission is mindful of the community's concern but notes that environmental assessment was carried out for the generating capacity of 1500MW and the performance criteria are set for the project as a whole inclusive of both Stages 1 and 2. The Commission is satisfied that the amendment to relevant conditions to require operation to cease or limit to a level where compliance of environmental criteria can be achieved will adequately address the community's concern.

b) Water resources

Speakers at the public meeting raised concern that the extraction of groundwater for the operation of the project may impact on adjacent landowners relying on bore water. There is no safeguard or compensatory measures to protect their water supply. The Commission discussed the issue with the NSW Office of Water, which advised that their review concluded that the proposed extraction is very small and is not expected to impact on adjacent bore owners.

The Commission also notes the issue is dealt with in detail in the Department's Assessment Report. The Commission agrees with the Department's conclusion that the implementation of the proponent's commitment and the Department's recommended conditions of approval should ensure the proposed development would avoid significant impact on water resources. Notwithstanding such assurance, the Commission has amended the recommended conditions (F25(c)) to include requirement of contingency planning and provisions for compensation in the Operational Groundwater Management Plan.

c) Traffic and transportation

This issue is dealt with in detail in the Department's Assessment Report. The Commission notes the concerns expressed in the public meeting. However, it shares Upper Lachlan Shire Council's view that the involvement of the Council and the Traffic Committee in the preparation of the Construction Traffic and Access Management Plan and the Traffic Management Plan will ensure the construction and operation traffic issues should be properly managed to meet environmental requirements.

The Commission agrees with the Department's assessment and conclusion that with the recommended conditions of approval, the issues of construction and operational traffic can be managed to minimise impacts and inconvenience to the community.

d) Compliance

Concern was raised in relation to non compliance of approval conditions, particularly, the exceedances of environmental performance criteria. Views expressed at the public meeting were that the proponent should carry the cost for any non compliance, not the community. The acquisition of properties in Uranquinty was used as an example to illustrate the community cost on non-compliance. As the proponent has made a public commitment that if the operation does not meet environmental criteria, it will be shut down until the issues are resolved, the community members called for the commitment to be included as a condition of approval to ensure compliance of approval conditions.

The Commission agrees and has amended the relevant conditions to reflect the commitment by requiring operation be ceased or limited to ensure compliance.

e) Other issues

Odour emission was an issue raised at the public meeting. The Commission notes that offensive odour emission is governed by the *Protection of the Environment Operations Act 1997* (PEOA). Any non compliance will be a breach of the PEOA and dealt with by the EPA accordingly.

At the meeting with the Commission, Council expressed the view that recommended condition B16 should reflect the signed Voluntary Planning Agreement (VPA) dated 17 May 2012. In response to the Commission's query, the Department advised that the signed VPA cannot be executed as the Minister for Planning has been incorrectly identified as a party to the agreement. The Commission notes the level of agreement reached between the Council and the Proponent and believes this can be formalised in due course as specified in condition B16.

Other issues raised at the public meeting are similar to those in the public submissions already considered by the Department. The Commission is satisfied that the Department's Assessment Report has adequately considered these issues and that they can be further considered as necessary.

by an appropriately constituted Community Consultative Committee. The conditions of approval will ensure any residual issues would be properly managed with impacts mitigated to an acceptable level of environmental performance.

6 COMMISSION'S DETERMINATION

Following careful consideration of the issues raised in written submission and at the public meeting and documents relevant to the application, the Commission has concluded that on balance, the project be approved subject to amendments to the conditions recommended by the Department. These include:

- limiting generating capacity to maximum 1000MW;
- exceedance of operating time limit may occur only if directed by the Australian Energy Market Operator under the National Electricity Rules;
- operation will be ceased or limited if monitoring indicates the environmental criteria are exceeded;
- contingency planning and measures to be included in the Operational Groundwater Management Plan to address the issue of compensatory water supply to affected landowners; and
- a community consultative committee to be established in general accordance with the *guidelines for Establishing and Operating Community consultative Committees for Mining Projects*.



Garry West
PAC Member (chair)



Brian Gilligan
PAC Member

Appendix 1

List of Speakers

List of Speakers**Planning Assessment Commission Meeting
Dalton Power Project**

Date: Thursday 28 June 2012
Place: Gunning Shire Hall, Copeland Street, Gunning

1. Minister Hodgkinson
2. Mr Alister Waine, Upper Lachlan Environment Association
3. Mr James Colman, Upper Lachlan Environment Association
4. Ms Andrea Strong, Community for Accurate Impact Assessment of Dalton Power Station
5. Mrs Jo Boyce, Gunning District and Community Health Service
6. Mr Douglas Darbyshire, Gunning and District Chamber of Commerce
7. Mr John Edwards
8. Mr Michael Coley
9. Ms Maryanne Johnstone
10. Ms Renee Andrews
11. Mr Allan Fowler
12. Mr Wayne Apps
13. Ms Helen Vooren
14. Mr Tony Walsh
15. Mrs Luoise Duncan
16. Mr Chris Morgan
17. Ms Carolynne Southwell
18. Mr Arthur Bollom
19. Mr Michael Ciszewski
20. Ms Karina Smith
21. Mrs Leslie Bush
22. Mrs Maureen Tumald
23. Mrs Margarita Georgiadis
24. Mr Max Cullen
25. Cr Malcolm Barlow
26. Mrs Kath Vivas
27. Mr Hector Vivas
28. Mr Bernard Boyce
29. Ms Ann Darbyshire
30. Mr Tony Medway
31. Mr Vince Heffernan

Project Approval

Section 75J of the *Environmental Planning and Assessment Act 1979*

As delegate of the Minister for Planning and Infrastructure under delegation dated 14 September 2011, the Planning Assessment Commission of New South Wales (**the Commission**) approves the project application referred to in Schedule A, subject to the conditions specified in Schedules B to G.

These conditions are required to:

- prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- set standards and performance measures for acceptable environmental performance;
- provide for regular monitoring and reporting; and
- provide for the ongoing environmental management of the development.



Garry West
Member of the Commission



Brian Gilligan
Member of the Commission

Sydney

19 July 2012

SCHEDULE A

Application No.:

MP10_0035

Proponent:

AGL Energy Limited

Approval Authority:

Planning Assessment Commission

Land:

Approximately 573 hectare site located off Walshs Road, approximately four kilometres north of the town of Dalton, in the Upper Lachlan Shire Council local government area. Lands include: Lots 115, 249, 252, 253, 305, 307 DP 754111 ("The Elms"); Lots 14, 183, 184, 187, 200, 283, 306 DP754111 and Lots 1 and 2 DP 126122 ("Holmes"); Lots 116, 162, 317, 318, 321, 322 DP 754111 ("Riverview") and Lots 21, 186, 251 DP 754111, and part lots 23, 27, 30, 31 DP754111 and Lot 1 DP 126119.

Project:

Construction and operation of a gas turbine power station and associated infrastructure known as the Dalton Power Project.

Major Project

The project was declared a Major Project under Section 75B(1)(a) of the *Environmental Planning and Assessment Act 1979*, because it is development of a kind described in the then Group 8, clause 24 of Schedule 1 of *State Environmental Planning Policy (Major Development) 2005*.

Critical Infrastructure:

The project is classified as critical infrastructure in accordance with section 75C of the *Environmental Planning and Assessment Act 1979*, as it meets the definition of development for the purposes of a facility for the generation of electricity that has a capacity to generate at least 250 megawatts and is the subject of an application lodged pursuant to Section 75E or 75M of the Act prior to January 2013, pursuant to the then Minister for Planning's critical infrastructure declaration dated 26 February 2008.

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DEFINITIONS

Act, the	<i>Environmental Planning and Assessment Act 1979</i>
Ancillary Facility	Temporary facility for construction, including for example an office and amenities compound, construction compound, batch plant (concrete or bitumen), materials storage compound, maintenance workshop, testing laboratory or material stockpile area.
Proponent	AGL Energy Limited
Conditions of Approval	The Minister's conditions of approval for the Project.
Construction	<p>Includes all work in respect of the Project other than:</p> <ul style="list-style-type: none"> a) survey, acquisitions, building/ road dilapidation surveys; b) investigative drilling, excavation, or salvage; c) minor clearing or translocation of native vegetation; d) establishing ancillary facilities/ construction work sites (in locations meeting the criteria identified in the Conditions of Approval); e) installation of environmental impact mitigation measures, fencing, enabling works; or f) other activities determined by the Environmental Representative to have minimal environmental impact (e.g. minor access roads, minor adjustments to services/ utilities, etc). <p>Note - work where heritage items, threatened species, populations or endangered ecological communities would be affected, that work is classified as construction, unless otherwise approved by the Director-General in consultation with the Office of Environment and Heritage.</p>
Department, the	Department of Planning and Infrastructure
Director-General, the	Director-General of the Department of Planning and Infrastructure.
Director-General's approval, agreement or satisfaction	<p>A written approval from the Director-General (or delegate).</p> <p>Where the Director-General's approval, agreement or satisfaction is required under a condition of this approval, the Director-General will endeavour to provide a response within one month of receiving an approval, agreement or satisfaction request. The Director-General may ask for additional information if the approval, agreement or satisfaction request is considered incomplete. When further information is requested, the time taken for the Proponent to respond in writing will be added to the one month period.</p>
Enabling Works	Works which allow isolation of the site so that access for construction can be provided.
EPA	NSW Environment Protection Authority
Feasible and Reasonable	<p>Consideration of best practice taking into account the benefit of proposed measures and their technological and associated operational application in the NSW and Australian context. Feasible relates to engineering considerations and what is practical to build. Reasonable relates to the application of judgement in arriving at a decision, taking into account mitigation benefits and cost of mitigation versus benefits provided, community views and nature and extent of potential improvements.</p> <p>Where requested by the Director-General, the Proponent shall provide evidence as to how feasible and reasonable measures were considered and taken into account.</p>
Heritage	Encompasses both Aboriginal and historic heritage including sites that predate European settlement, and a shared history since European settlement such as a shared associations in pastoral landscapes as well as associations linked with the mission period.

Heritage Item	An item as defined under the <i>Heritage Act 1977</i> , and assessed as being of local, State and/or National heritage significance, and/or an Aboriginal Object or Aboriginal Place as defined under the <i>National Parks and Wildlife Act 1974</i> .
Minister, the	Minister for Planning and Infrastructure
OEH	NSW Office of Environment and Heritage
Operation (of the power station)	When the power station commences contributing electricity to the grid but excluding commissioning activities.
Project	The project that is approved by this Project approval and as generally described in Schedule A.
Proponent	AGL Energy Limited
Publicly available	Available for inspection by a member of the general public (for example, available on an internet website).
Relevant council	Upper Lachlan Shire Council
Sensitive receiver	Residence, education institution (e.g. school, university, TAFE college), health care facility (e.g. nursing home, hospital), religious facility (e.g. church) and children's day care facility.
Shut-down period	The period during which a turbine is being taken out of service from normal operation to inactivity.
Start-up period	The period during which a turbine is brought up to normal operation following a period of inactivity.
Significant period of time	At least 30 percent of the total night-time period during the winter months.

SCHEDULE B**ADMINISTRATIVE CONDITIONS****TERMS OF APPROVAL**

- B1. The Proponent shall carry out the Project generally in accordance with:
- (a) Major Project Application 10_0035;
 - (b) Environmental Assessment titled *AGL Dalton Power Project Environmental Assessment, Volumes 1 and 2* prepared by URS Australia Pty Ltd and dated July 2011;
 - (c) Response to submissions titled *Submission Report – AGL Dalton Power Project*, prepared by URS Australia Pty Ltd and dated April 2012; and
 - (d) conditions of this approval.
- B2. In the event of an inconsistency between:
- (a) the conditions of this approval and any document listed from condition B1(a) to B1(c) inclusive, the conditions of this approval shall prevail to the extent of the inconsistency; and
 - (b) any document listed from condition B1(a) to B1(c) inclusive, the most recent document shall prevail to the extent of the inconsistency.
- B3. The Proponent shall comply with any reasonable requirement(s) of the Director-General arising from the Department's assessment of:
- (a) any reports, plans or correspondence that are submitted in accordance with this approval; and
 - (b) the implementation of any actions or measures contained within these reports, plans or correspondence.
- B4. Subject to confidentiality, the Proponent shall make all documents required under this approval available for public inspection on request.

STATUTORY REQUIREMENTS

- B5. The Proponent shall ensure that all licences, permits and consents are obtained as required by law and maintained as required throughout the life of the Project. No condition of this approval removes the obligation for the Proponent to obtain, renew or comply with such licences, permits, approvals or consents.
- B6. For the purpose of section 75S(2)(b) of the *Environmental Planning and Assessment Act 1979*, the relevant provisions, as defined in section 75S(1A) of the Act, apply to this approval.

STAGING

- B7. The Project shall be constructed in two stages. The Stage 1 power station is not to exceed a nominal generating capacity of 750 megawatts. The total nominal generating capacity of the power station after completion of Stage 2 is not to exceed 1000 megawatts. The Proponent shall submit a Staging Report to the Director-General six months prior to the commencement of construction of Stage 2, detailing the nature and timing of the activities to be undertaken.
- B8. The Proponent shall ensure that all plans, sub-plans and other management documents required by the conditions of this approval and relevant to each stage are submitted to the Director-General no later than one month prior to the commencement of construction of each stage, unless otherwise agreed by the Director-General or specified in a condition of this approval.

COMPLIANCE

- B9. Construction of Stage 2 of the Project shall not commence unless Stage 1 demonstrates ongoing compliance with the air quality and noise criteria detailed in conditions F3 and F10 and the provisions of the Operational Groundwater Management Plan and Operational Water and Wastewater Management Plan as required by Condition F25 of this approval. The Proponent shall demonstrate such compliance to the satisfaction of the Director-General, no later than 12 months prior to the construction of Stage 2.
- B10. The Proponent shall ensure that employees, contractors and sub-contractors are aware of, and comply with, the conditions of this approval relevant to their respective activities.

- B11. The Proponent shall be responsible for environmental impacts resulting from the actions of all persons that it invites onto the site, including contractors, sub-contractors and visitors.
- B12. In the event of a dispute between the Proponent and a public authority, in relation to an applicable requirement in this approval or relevant matter relating to the Project, either party may refer the matter to the Director-General for resolution. The Director-General's determination of any such dispute shall be final and binding on the parties.

LIMITS OF APPROVAL

- B13. This project approval shall lapse five years after the date on which it is granted, unless the works subject of this approval have been commenced before that time.

OPERATIONAL LIMITS

- B14. Subject to condition B15, operation of the power station turbines shall not exceed a total of 15 percent of any twelve-month period. A report verifying compliance with this condition shall be made available on the dedicated website for the project within two months of every 12 month period following commissioning.
- B15. The Proponent is permitted to exceed the operating time limit referred to under condition B14 in the event that operation, or continued operation, is required at the direction of the Australian Energy Market Operator under the National Electricity Rules to provide, maintain, increase or be available to increase power generation for system security/reliability.

PLANNING AGREEMENT

- B16. Within 12 months of the date of this approval, unless otherwise agreed by the Director-General, the Proponent shall enter into a Planning Agreement with Council in accordance with Division 6 of Part 4 of the Act, to provide contributions to Council for a Community Enhancement Fund.

The contributions shall be consistent with those contributions identified in the letter from the Proponent to the Department dated 30 May 2012 titled "Dalton Power Station Planning Agreement with Upper Lachlan Shire Council".

End of Schedule B

SCHEDULE C

ENVIRONMENTAL PERFORMANCE

AIR QUALITY

Manufacturer's Performance Guarantee

- C1. Prior to the installation of any fuel burning equipment associated with the Project, the manufacturer's performance guarantee for that equipment shall be submitted to the EPA. The documentation shall demonstrate to the EPA's satisfaction that the equipment, when operating at design load, will comply with the air discharge limits specified in this approval in condition F3, Table 3 and the noise limits specified for all sensitive receivers specified in condition F10, Tables 7 and 8.

Odour

- C2. Any offensive odour, as defined under section 129 of the *Protection of the Environment Operations Act 1997*, shall not be emitted beyond the boundary of the site.

TURBINES

- C3. F class turbines are to be installed at the power station.

FUELS

- C4. Natural Gas is the only approved fuel for firing of the power station turbines. Diesel fuel is not permitted to be used in the firing of the turbines under any circumstances.

AVIATION SAFETY

- C5. At least six months prior to the operation of the Project, the Proponent shall consult with the Civil Aviation Safety Authority and Airservices Australia in relation to the management of aviation hazards associated with the Project and provide written evidence to the Director-General that the following matters have been addressed to the satisfaction of these agencies:
- (a) updates to navigational aids including flight plans, maps and other relevant documentation to identify the Project as a potential aviation hazard;
 - (b) aviation hazard lighting requirements; and
 - (c) such other matters as the agencies may consider relevant.
- C6. The stacks associated with the proposal shall be marked and lit in accordance with the requirements of the Civil Aviation Safety Authority and the requirements of condition C17.

BIODIVERSITY

Ecological Monitoring

- C7. An **Ecological Monitoring Program** shall be developed to monitor the effectiveness of the ecological mitigation measures implemented as part of the Project. The Program shall be developed by a suitably qualified and experienced ecologist(s) in consultation with the OEH and shall include, but not necessarily be limited to:
- (a) an adaptive monitoring program to assess the effectiveness of the mitigation measures identified in conditions, E45(f) and F24 and allow amendment to the measures if necessary;
 - (b) nomination of appropriate and justified monitoring periods and performance targets against which effectiveness of the mitigation measures will be measured;
 - (c) mechanisms for developing additional monitoring protocols to assess the effectiveness of any additional mitigation measures implemented;
 - (d) provision for the assessment of the data to identify changes to habitat usage and whether this can be directly attributed to the Project;
 - (e) details of contingency measures that would be implemented in the event of changes to habitat usage patterns directly attributable to the construction or operation of the Project; and
 - (f) provision for annual reporting of monitoring results to the Director-General and the OEH, or as otherwise agreed by those agencies.

The Program shall be submitted to the Director-General for approval no later than one month prior to the commencement of any clearing or construction that would result in the disturbance of native vegetation, unless otherwise agreed by the Director-General.

The Program may be submitted in stages to suit the staged construction program of the Project.

- C8. Monitoring shall be undertaken during construction (for construction-related impacts) and during operation of the Project (for operation/ ongoing impacts) until such time as the effectiveness of mitigation measures are demonstrated to have been achieved over a minimum of three successive monitoring periods, unless otherwise agreed by the Director-General. The monitoring period may be reduced with the agreement of the Director-General in consultation with the OEH, depending on the outcomes of the monitoring.

- C9. Ongoing monitoring of offset measures shall be in accordance with condition C11.

Biodiversity Offset Strategy

- C10. The Proponent shall develop a **Biodiversity Offset Strategy** to outline how the ecological values lost as a result of the Project will be offset in perpetuity, with consideration to the *Principles for the Use of Biodiversity Offsets in NSW* (Office of Environment & Heritage website, dated June 2011). The Strategy shall be developed in consultation with the OEH and shall include, but not necessarily be limited to:

- (a) the aims and objectives of the biodiversity offset strategy;
- (b) confirmation of the extent and types of vegetation communities/habitat that would be lost or degraded and are to be offset;
- (c) a description of the methodology to be used to determine the offsets required;
- (d) details of the available offset measures that have been selected to compensate for the loss of existing native vegetation, threatened species and/or their habitats (including the loss of hollow-bearing trees) and endangered ecological communities. The measures shall achieve a neutral or net beneficial outcome for all the biodiversity values likely to be impacted directly or indirectly during both the construction and operational phases of the project;
- (e) a process for addressing and incorporating offset measures arising from changes in biodiversity impacts (where these changes are generally consistent with the biodiversity impacts identified for the project in the documents listed under condition B1) resulting from—
 - (i) changes to the footprint due to design changes,
 - (ii) changes to predicted impacts as a result of changes to mitigation measures, and
 - (iii) identification of additional species/specimens and/or habitat during pre-clearing surveys, construction or the establishment of ancillary facilities;
- (f) identification of the mechanisms that will be used to secure the offset measures in perpetuity; and
- (g) the decision-making framework that would be used to select the final suite of offset measures to achieve the objectives and outcomes established within the Strategy, including the ranking of offset measures.

The Biodiversity Offset Strategy shall be submitted to the Director-General for approval at least one month prior to the commencement of any construction work that would result in the disturbance of any existing native vegetation, threatened species and/or their habitats and endangered ecological communities, unless otherwise agreed by the Director-General.

Biodiversity Offset Package

- C11. The Proponent shall develop a **Biodiversity Offset Package** in consultation with the OEH. The Package shall (unless otherwise agreed by the Director-General) include, but not necessarily be limited to:

- (a) the objectives and biodiversity outcomes to be achieved;
- (b) the final suite of biodiversity offset measures selected and secured in accordance with the Biodiversity Offset Strategy;
- (c) the ongoing management and monitoring requirements for compensatory habitat works and other biodiversity offset measures proposed to ensure the outcomes of the package are achieved, including -
 - (i) an adaptive monitoring program to assess the effectiveness of the offset measures and any additional measures implemented to address additional impacts that may

- arise such as design amendments or unexpected threatened species finds during construction;
- (ii) the monitoring of the condition of species and ecological communities at offset locations;
- (iii) the methodology for the monitoring program(s), including the number and location of offset monitoring sites, and the sampling frequency at these sites;
- (iv) process for responding to any threats to the success of the offset measures;
- (v) provisions for the annual reporting of the monitoring results for a set period of time as determined in consultation with the OEH; and
- (d) timing (including frequency) and responsibilities for the implementation of the provisions of the Package.

Land offsets shall be consistent with the *Principles for the Use of Biodiversity Offsets in NSW*. Any land offset shall be enduring and be secured by a conservation mechanism which protects and manages the land in perpetuity within 2 years of this approval, unless otherwise agreed by the Director-General. Where land offsets cannot solely achieve compensation for the loss of habitat, additional measures shall be provided to collectively deliver an improved or maintained biodiversity outcome for the region.

Where monitoring indicates that biodiversity outcomes are not being achieved, remedial actions shall be undertaken to ensure that the objectives of the Biodiversity Offset Package are achieved.

The Biodiversity Offset Package shall be submitted to the Director-General for approval. Construction of the Project shall not commence until such time that the Biodiversity Offset Package has been approved by the Director-General, unless otherwise agreed by the Director-General.

HAZARDS AND RISK

- C12. Dangerous goods, as defined by the *Australian Dangerous Goods Code*, shall be stored and handled strictly in accordance with:
- (a) all relevant Australian Standards;
 - (b) for liquids, a minimum bund volume requirement of 110 percent of the volume of the largest single stored volume within the bund; and
 - (c) the *Environment Protection Manual for Authorised Officers: Bunding and Spill Management, technical bulletin* (Environment Protection Authority, 1997).

In the event of an inconsistency between the requirements listed from (a) to (c) above, the most stringent requirement shall prevail to the extent of the inconsistency.

Hazards Studies

- C13. Prior to the commencement of construction of the Project, (except for construction of those preliminary works that are outside the scope of the hazard studies) or as otherwise agreed by the Director-General, the following studies shall be prepared:
- (a) a **Fire Safety Study** for the Project, covering relevant aspects detailed in the Department's publication *Hazardous Industry Planning Advisory Paper No. 2 - Fire Safety Guidelines* and the New South Wales Government's *Best Practice Guidelines for Contaminated Water Retention and Treatment Systems*. The Study shall include a strict maintenance schedule for essential services and other safety measures. The fire protection inside the turbine housing must be determined. The Study shall be submitted for approval to Fire and Rescue NSW and the Rural Fire Services;
 - (b) a **Hazard and Operability Study (HAZOP)** for the Project, chaired by an independent, qualified person or team. The Study shall be carried out in accordance with the Department's publication *Hazardous Industry Planning Advisory Paper No. 8 - HAZOP Guidelines* and shall, in particular, address the early shut-down procedures and systems in the event of a gas leak and recommended measures for early shut-down in the event of an incident. The HAZOP report shall be accompanied by a program for the implementation of all recommendations made in the HAZOP report. If the Proponent intends to defer the implementation of a recommendation, justification shall be included;
 - (c) a **Final Hazard Analysis** consistent with the Department's *Hazardous Industry Planning Advisory Paper No.6 - Guidelines for Hazard Analysis*. The Analysis shall report on the

implementation of the recommendations of the Preliminary Hazard Analysis detailed in the document referred to in condition B1(b) and should confirm the safety integrity levels of the automatic protection of the pipeline and the on-site equipment; and

- (d) a **Construction Safety Study** for the Project, prepared in accordance with the Department's *Hazardous Industry Planning Advisory Paper No. 7 - Construction Safety Study Guidelines*.

C14. Prior to the commencement of commissioning of the Project, the following studies shall be prepared:

- (a) a comprehensive **Emergency Plan** and detailed emergency procedures for the Project. The Plan shall be consistent with the Department's publication *Hazardous Industry Planning Advisory Paper No. 1 - Industry Emergency Planning Guidelines*. The Plan shall include consideration of the safety of all people outside of the project who may be at risk from the project; and
- (b) a **Safety Management System**, covering all on-site operations and any associated transport activities involving hazardous materials. The System shall clearly specify all safety-related procedures, responsibilities and policies, along with details of mechanisms for ensuring adherence to safety procedures. Records shall be kept on site and shall be available for inspection by the Director-General upon request. The System shall be consistent with the Department's publication *Hazardous Industry Planning Advisory Paper No. 9 - Safety Management*.

Post-Startup Compliance Hazard Report

C15. Three months after the commencement of operation of the Project, the Proponent shall submit to the Director-General, a report verifying that:

- (a) the Emergency Plan required under condition C14(a) is effectively in place and that at least one emergency exercise has been conducted; and
- (b) the Safety Management System required under condition C14(b) has been fully implemented and that records required by the system are being kept.

URBAN DESIGN AND LANDSCAPING

Lighting

C16. All external lighting associated with the Project shall be mounted, screened, and directed in such a manner so as not to create a nuisance to the surrounding environment, properties and roadways. The lighting shall be the minimum level of illumination necessary and shall comply with Australian Standard AS4282 1997 – *Control of the Obtrusive Effects of Outdoor Lighting*.

C17. Where aviation hazard lighting is recommended by the Civil Aviation Safety Authority and/or Airservices Australia, all feasible and reasonable attempts shall be made to ensure that this lighting is designed and directed so as not to create a nuisance to the surrounding environment, properties and roadways.

Visual Amenity

C18. The height of the top most point of the gas turbine assembly shall not exceed 606 metres AHD (including stacks of 28m high and air intake but excluding lightning protection).

C19. The use of reflective building elements shall be minimised and the use of building materials and treatments which visually complement the surrounding landscape shall be maximised.

C20. Where any built element of the power station is visible from a residential dwelling or business premises located within five kilometres from the power station, the landowner of the dwelling or business may request landscaping measures on their property to screen views of the power station. Such a request shall be made in writing by the landowner upon construction of the stacks, and up to 12 months following completion of construction of each stage of the Project.

C21. The Proponent shall investigate and implement feasible and reasonable landscaping measures in consultation with the landowner of the affected dwelling or business identified in condition C20. If the landowner and Proponent cannot agree on the measures to be implemented, then either party may refer the matter to the Director-General for resolution, whose decision shall be final and binding on the parties. Upon written acceptance of the landscaping measures, these shall be implemented at the landowner's property within six months.

- C22. The Proponent shall provide and bear the full cost of all feasible and reasonable landscaping treatments to visually screen affected dwellings or businesses identified in condition C20.
- C23. Landscaping works to reduce the visual impact of the power station shall comprise advanced plantings of locally native species.

Design and Landscape Plan

- C24. A **Design and Landscape Plan** shall be prepared and implemented for the Project. The Plan shall be prepared by appropriately qualified person(s) in consultation with the relevant council and community and shall present an integrated landscape design for the Project. The Plan shall include, but not necessarily be limited to:
- (a) identification of design objectives, principles and standards based on -
 - (i) local environmental values,
 - (ii) rural design context,
 - (iii) sustainable design and maintenance,
 - (iv) community amenity and privacy, and
 - (v) relevant design standards and guidelines;
 - (b) details on the location of existing vegetation and proposed landscaping at the power station, in the vicinity of associated infrastructure, and within the buffer zone to the power station, to be used to reduce the visual impact of the Project;
 - (c) an assessment of the effectiveness of existing vegetation and the proposed landscaping identified in (b) to visually screen the power station and associated infrastructure;
 - (d) a description of the areas disturbed by construction and details of the strategies to progressively rehabilitate, regenerate and/ or revegetate these areas;
 - (e) the landscape screening measures to be employed at receivers in proximity to the project site and along nearby roadsides to screen views of the power station and valve station;
 - (f) details of the species to be used in landscaping, including the appropriateness of the species to the area and potential to provide suitable habitat for threatened species;
 - (g) graphics such as sections, perspective views, photomontages and sketches for key elements of the Project from nearby residences and viewing areas;
 - (h) a description of the design features, built elements, lighting and building materials for the power station and associated infrastructure along with the proposed measures for reducing any visual impacts;
 - (i) monitoring and maintenance procedures for the built elements, rehabilitated vegetation and landscaping (including weed control), including performance indicators, responsibilities, timing and duration, and contingencies to be implemented where rehabilitation of vegetation and landscaping measures fail; and
 - (j) evidence of consultation with the relevant council and community on the proposed landscape measures prior to finalisation of the Plan. The "community" shall include, but not be limited to, landowners, business owners and public authorities, whose dwelling, business or public area respectively, have been identified in the documents listed in condition B1(b) and B1(c) as having views of the power station.

The Plan shall be submitted for the approval of the Director-General at least one month prior to the commencement of construction of the Project, unless otherwise agreed by the Director-General. The Plan may be submitted in stages to suit the staged construction of the Project.

UTILITIES AND SERVICES

- C25. Utilities, services and other infrastructure potentially affected by construction and operation shall be identified prior to construction to determine requirements for access to, diversion, protection, and/or support. Consultation with the relevant owner and/or provider of services that are likely to be affected by the Project shall be undertaken to make suitable arrangements for access to, diversion, protection, and/or support of the affected infrastructure as required. The cost of any such arrangements shall be borne by the Proponent.

WASTE MANAGEMENT

- C26. All waste materials removed from the site shall only be directed to a waste management facility or premises lawfully permitted to accept the materials.
- C27. Waste generated outside the site shall not be received at the site for storage, treatment, processing, reprocessing, or disposal on the site, except as expressly permitted by a licence

under the *Protection of the Environment Operations Act 1997*, if such a licence is required in relation to that waste.

- C28. All liquid and/or non-liquid waste generated on the site shall be assessed and classified in accordance with *Waste Classification Guidelines* (Department of Environment, Climate Change and Water, 2009), or any superseding document.
- C29. The Proponent shall maximise the reuse and/or recycling of waste materials generated on site, to minimise the need for treatment or disposal of those materials outside the site.

WATER QUALITY AND HYDROLOGY

- C30. Except as may be provided by an Environment Protection Licence, the Project shall be constructed and operated to comply with section 120 of the *Protection of the Environment Operations Act 1997*, which prohibits the pollution of waters.
- C31. The Proponent shall undertake hydrologic and hydraulic studies as part of the detailed design to address the potential for flooding at the power station.
- C32. The Project shall be designed, sited and constructed so that it is not subject to inundation by floodwaters up to or at a level of the Probable Maximum Flood, nor worsen flooding on adjacent land in the vicinity of the Project. Not worsen is defined as:
- a maximum increase in inundation levels upstream of the Project of 50 millimetres in a 1 in 100 year average recurrence interval rainfall event; and
 - a maximum increase in inundation time of one hour in a 1 in 100 year average recurrence interval rainfall event.
- C33. Where the Proponent can demonstrate to the satisfaction of the Director-General that it is not reasonable and feasible to design to the Probable Maximum Flood, the Proponent may nominate an alternative design flood level for the approval of the Director-General. The alternative flood level shall be developed using a risk-based approach and in consultation with the relevant council.
- C34. The Project shall be designed, and employ surface water management techniques, such that existing runoff volumes along drainage lines from the site are maintained at pre-construction levels and there are no adverse effects to adjoining land as a result of flooding and runoff.
- C35. Process wastewater, wastewater generated from equipment washing, cleaning, domestic sources (such as amenities and kitchens) or maintenance, and contaminated water from bunded areas must not be discharged to the environment unless permitted by an Environment Protection Licence, or otherwise agreed in writing by the EPA.
- C36. Any wastewater storage ponds/ pits constructed as part of the Project shall be lined with an appropriate liner(s) with a minimum permeability coefficient of 1×10^{-10} metres per second.
- C37. The Proponent shall not establish any new water storage structures or utilise any existing water storage structures on site for the purposes of stormwater capture during construction or operation except in accordance with section 53 of the *Water Management Act 2000*.
- C38. Water for the operation of the power station is to be sourced from groundwater bores located on the power station site and the bores must be licensed under the *Water Management Act 2000*.
- C39. Trucking of potable water to the site shall be minimised by using on-site above-ground rainwater storage. The use of potable water should be limited for drinking, amenities (hand basins, sinks, showers and toilet) and turbine compressor washing when non-potable water cannot serve these functions.
- C40. The maximum permissible amount of potable water to be trucked to the site is 300 kilolitres per annum.

WEATHER MONITORING

- C41. The Proponent shall establish and maintain a meteorological station on site within one month of the approval of the Project, with the capability of continuously monitoring the parameters set out in Table 1.

Table 1 - Weather Monitoring

Parameter	Units of Measure	Frequency	Averaging Period	Sampling Method
Rainfall	millimetres	Continuous	1 hour	AM-4
Wind speed @ 10 metres	metres per second	Continuous	15 minute	AM-2 & AM-4
Wind direction @ 10 metres		Continuous	15 minute	AM-2 & AM-4
Temperature @ 2 metres	degrees Celsius	Continuous	15 minute	AM-4
Temperature @ 10 metres	degrees Celsius	Continuous	15 minute	AM-4
Sigma theta @ 10 metres		Continuous	15 minute	AM-2 & AM-4
Solar radiation	Watts per square metre	Continuous	15 minute	AM-4
Additional requirements: - Siting - Measurement				AM-1 & AM-4 AM-2 & AM-4
Relative Humidity	Percentage	Continuous	1 Hour	AM-4

- C42. The weather parameters specified in Table 1 shall be monitored on site in accordance with the specified sampling methods, units of measure, averaging periods and frequency.
- C43. The Proponent shall use the meteorological data collected on site to determine the occurrence and frequency of stability category temperature inversions prevailing at the Project site and whether they occur for a significant period of time at the site as defined in the *NSW Industrial Noise Policy* (Environment Protection Authority, 2000).
- C44. Stability category temperature inversion conditions (stability category) are to be determined in accordance with methods set out in the *NSW Industrial Noise Policy* (Environment Protection Authority, 2000).
- C45. After a period of 12 months of meteorological monitoring, the Proponent shall forward to the Director-General a report describing the type and frequency of temperature inversion conditions prevailing at the site. The report shall be made available on the dedicated website for the project within 1 month of it being forwarded to the Director-General.

End of Schedule C

SCHEDULE D

COMMUNITY INFORMATION, REPORTING AND AUDITING

COMMUNITY INFORMATION, CONSULTATION AND INVOLVEMENT

D1. A **Community Communication Strategy** shall be prepared and implemented to provide mechanisms to facilitate communication between the Proponent (and its contractor(s)), the Environmental Representative, the relevant council and community stakeholders (particularly adjoining landowners) on the construction and operational management of the Project. The Strategy shall include, but not be limited to:

- (a) identification of stakeholders to be consulted as part of the Strategy, including affected and adjoining landowners;
- (b) procedures and mechanisms for the regular distribution of information to community stakeholders on construction progress and matters associated with environmental management and operation of the facility;
- (c) the establishment and operation of a Community Consultative Committee generally in accordance with the *Guidelines for Establishing and Operating Community Consultative Committees for Mining Projects* (Department of Planning, 2007 or its latest version);
- (d) procedures and mechanisms through which the community stakeholders can discuss or provide feedback to the Proponent and/or Environmental Representative in relation to the environmental management and delivery of the Project;
- (e) procedures and mechanisms through which the Proponent can respond to enquires or feedback from the community stakeholders in relation to the environmental management and delivery of the Project; and
- (f) procedures and mechanisms that would be implemented to resolve issues/ disputes that may arise between parties on the matters relating to environmental management and the delivery of the Project. This may include the use of an appropriately qualified and experienced independent mediator.

Issues that shall be addressed through the Community Communication Strategy include, but are not necessarily limited to:

- (a) construction and operational traffic;
- (b) landscaping and urban design matters;
- (c) operational water management;
- (d) air quality;
- (e) erosion and sediment control;
- (f) noise and vibration mitigation and management; and
- (g) construction timetable and construction progress.

The Proponent shall maintain and implement the Strategy throughout construction and operation of the Project. The Strategy shall be approved by the Director-General prior to the commencement of construction, or as otherwise agreed by the Director-General.

Complaints and Enquiries Procedure

D2. Prior to the commencement of construction, or as otherwise agreed by the Director-General, the Proponent shall ensure that the following are available for community enquiries and complaints for the duration of construction and operation of the Project:

- (a) a 24 hour telephone number(s) on which complaints and enquiries about the Project may be registered;
- (b) a postal address to which written complaints and enquires may be sent;
- (c) an email address to which electronic complaints and enquiries may be transmitted; and
- (d) a mediation system for complaints unable to be resolved.

The telephone number, the postal address and the email address shall be published in newspaper(s) circulating in the local area prior to the commencement of construction and prior to the commencement of operation for both stages of the project. This information shall also be provided on the website (or dedicated pages) required by this approval.

D3. Prior to the commencement of construction, or as otherwise agreed by the Director-General, the Proponent shall prepare and implement a **Construction and Operational Complaints**

Management System consistent with AS 4269: *Complaints Handling* and maintain the System for the duration of construction and operation of the Project.

Information on all complaints received, including the means by which they were addressed and whether resolution was reached, with or without mediation, shall be maintained in a complaints register and included in the compliance reports required by condition D5. The information contained within the System shall be made available to the Director-General on request.

Provision of Electronic Information

D4. Prior to the commencement of construction, or as otherwise agreed by the Director-General, the Proponent shall establish and maintain a new website, or dedicated pages within an existing website, for the provision of electronic information associated with the Project, for the duration of construction and the operation of the Project. The Proponent shall, subject to confidentiality, publish and maintain up-to-date information on the website or dedicated pages including, but not necessarily limited to:

- (a) information on the current implementation status of the Project;
- (b) a copy of the documents referred to under condition B1, and any documentation supporting modifications to this approval that may be granted from time to time;
- (c) a copy of this approval and any future modification to this approval;
- (d) a copy of each relevant environmental consent, licence or permit required and obtained in relation to the Project;
- (e) a copy of each current strategy, plan, program or other document required under this approval;
- (f) the outcomes of compliance tracking in accordance with condition D5; and
- (g) details of contact point(s) to which community complaints and enquiries may be directed, including a telephone number, a postal address and an email address.

COMPLIANCE MONITORING AND TRACKING

Compliance Tracking Program

D5. The Proponent shall develop and implement a **Compliance Tracking Program** to track compliance with the requirements of this approval. The Program shall be submitted to the Director-General for approval prior to the commencement of construction and operate for the duration of the operation of the Project, subject to the Director-General's review of the outcomes of the Operation Performance Audit Report referred to in condition F23. The Program shall include, but not necessarily be limited to:

- (a) provisions for the notification of the Director-General prior to the commencement of construction and prior to the commencement of operation for both stages of the Project;
- (b) provisions for periodic review of the compliance status of each stage of the Project against the requirements of this approval;
- (c) provisions for periodic reporting of compliance status of each stage of the Project to the Director-General, including a Pre-Construction Compliance Report, during construction reporting, and a Pre-Operation Compliance Report for each stage of the Project;
- (d) provision for reporting compliance with conditions C13 and C14, including dates of studies/plans/systems submission and approval, and actions taken or proposed to implement the recommendation made in the studies/plans/systems;
- (e) a program for independent environmental auditing in accordance with *ISO 19011:2003 - Guidelines for Quality and/ or Environmental Management Systems Auditing*;
- (f) mechanisms for recording environmental incidents during construction and operation and actions taken in response to those incidents;
- (g) provisions for reporting environmental incidents to the Director-General and relevant public authorities during construction and operation of the Project;
- (h) procedures for rectifying any non-compliance identified during environmental auditing, review of compliance or incident management; and
- (i) provisions for ensuring all employees, contractors and sub-contractors are aware of, and comply with, the conditions of this approval relevant to their respective activities.

Incident Reporting

D6. The Proponent shall notify the Director-General of any incident during construction and operation with significant off-site impacts on people or the biophysical environment within 24 hours of becoming aware of the incident. The Proponent shall provide full written details of the incident to the Director-General within seven days of the date on which the incident occurred.

- D7. The Proponent shall meet the requirements of the Director-General to address the cause or impact of any incident, as it relates to this approval, reported in accordance with condition D6, within such period as the Director-General may require.

Note: Nothing in this approval removes the Proponent's obligation under Section 148 of the *Protection of the Environment Operations Act 1997* to notify the appropriate regulatory authority (as defined under Section 6 of the *Protection of the Environment Operations Act 1997*) where a pollution incident occurs in the course of the development so that material harm to the environment is caused or threatened.

End of Schedule D

SCHEDULE E

CONSTRUCTION ENVIRONMENTAL MANAGEMENT

AIR QUALITY

Dust Generation

- E1. The Proponent shall construct the project in a manner that minimises dust emissions from the site, including wind-blown and traffic-generated dust, dust from stockpiles, dust from concrete batching, and material tracking from construction sites onto public roads. All activities on the site shall be undertaken with the objective of preventing visible emissions of dust from the site. Should such visible dust emissions occur at any time, the Proponent shall identify and implement all feasible and reasonable dust mitigation measures (including temporary cessation of relevant works, as appropriate) such that emissions of visible dust cease.

ECOLOGY

Clearing

- E2. Prior to commencement of clearing, the Proponent shall implement mitigation measures, as identified in the Construction Flora and Fauna Management Plan required under condition E45(f), to minimise impacts to native vegetation (particularly threatened species and endangered ecological communities and their habitat).
- E3. The Proponent shall ensure that clearing of native vegetation, in particular vegetation associated with the endangered ecological communities Box Gum Woodland and Natural Temperate Grassland, and threatened flora species is limited to the minimum extent required (where reasonable and feasible) for the construction and operation of the project.
- E4. Clearing of Box Gum Woodland shall be limited to a total of 5.93 hectares and clearing of Natural Temperate Grassland shall be limited to 9.07 hectares.
- E5. The Proponent shall mark the areas of endangered ecological communities not to be impacted by the Project with flagging tape or similar prior to commencing construction to ensure that there is no incursion into, or clearing of the areas.
- E6. The Proponent shall ensure that no canopy trees of endangered ecological communities are cleared during the construction of the gas pipeline, unless otherwise approved by the Director-General.
- E7. The Proponent shall ensure that the width of the construction corridor of the gas pipeline is reduced to minimise impact on endangered ecological communities and/or threatened flora and their habitat.
- E8. The Proponent shall ensure that there is no incursion into, or clearing of, the Box Gum Woodland located adjacent to the southern portion of the lateral natural gas pipeline during construction of this section of the pipeline.
- E9. The Proponent shall ensure that there is no clearing of any vegetation along the local road network between Gunning and the Project site.
- E10. Any areas temporarily disturbed during construction (including access tracks and compound sites) shall be rehabilitated to a standard equal to or better than the existing condition, as soon as feasible and reasonable following the completion of construction activities in the affected location. Replanting of affected vegetation shall be undertaken using locally native species.
- E11. All feasible and reasonable measures shall be undertaken to minimise the clearing of bush rock and significant rocky outcrops and, where removed, their relocation into adjacent areas to provide fauna habitat.

Flora and Fauna Mitigation Measures

- E12. In the event that the species *Aprasia parapulchella* (Striped Legless Lizard), *Delma impar* (Pink-tailed Worm-lizard) or any other threatened fauna or flora species not previously identified on site, are identified during construction, all work in the vicinity of the sighting shall stop and management measures to minimise the risk to the species implemented in consultation with the OEH.

- E13. The Proponent shall implement measures to minimise impacts to flora and fauna species and their habitat (particularly endangered ecological communities and any species of threatened fauna not previously identified on site and their habitats) as far as practicable during the construction of the Project, including:
- (a) pre-clearing surveys;
 - (b) fencing of sensitive areas;
 - (c) setbacks;
 - (d) protocols for trimming of the foliage of species belonging to endangered ecological communities;
 - (e) protocols for the removal and relocation of fauna during clearing, including a two-stage clearing strategy;
 - (f) presence of an experienced ecologist to oversee clearing activities and facilitate fauna rescues and relocation;
 - (g) timing construction to be outside of the breeding season of threatened species with the potential to occur on site;
 - (h) avoiding impacts to habitat trees (>40 centimetre trunk width or any trees with hollows) unless demonstrated to the satisfaction of the Director-General that no reasonable and feasible alternative exists to avoiding the impact;
 - (i) reinstating habitat features (such as hollow bearing logs, large woody debris, bush rock, leaf litter/mulch and topsoil etc.) following disturbance;
 - (j) developing measures for minimising the incidence of fauna being trapped in trenches during gas pipeline construction such as minimising the length of time that trenches are left exposed and measures to encourage trapped fauna to escape from the trenches; and
 - (k) monitoring and response measures to identify and deal with trapped or injured fauna.

HERITAGE

- E14. The Proponent shall take all reasonable and feasible measures to avoid the sites known as Dalton 1, 2, 3, 4, 5, 6 and 7, DPAD1 and DPAD2 (as identified in the report *Dalton Peaking Power Plant – Cultural Heritage Assessment (and Addendum)* prepared by Navin Officer Heritage Consultants dated June 2009) and the sites known as DGP1, DGP2, DGP3, DGP4, DGP5 and DGP6 (as identified in the report *Dalton Gas Pipeline – Cultural Heritage Assessment (and Addendum)* prepared by Navin Officer Heritage Consultants, dated February 2011) during the construction of the project, and develop site-specific management and mitigation measures to ensure that they are not impacted by the construction or operation of the Project. If impacts are unavoidable, management and mitigation measures shall be implemented in accordance with the Construction Heritage Management Plan required by condition E45(e).
- E15. Where ground disturbance is proposed in the vicinity of D5, DPAD1 and/or DPAD2, prior to commencing construction the Proponent shall undertake a program of archaeological subsurface testing with the aim of identifying any Aboriginal cultural heritage values which may be impacted by the Project. The Proponent shall ensure monitoring by relevant Aboriginal stakeholders during such works. If objects are uncovered, management measures shall be implemented in accordance with the Construction Heritage Management Plan required by condition E45(e).
- E16. The Proponent shall undertake consultation with the Buru Ngunawal Aboriginal Corporation prior to commencement of construction. The outcomes of the consultation shall be addressed in the Construction Heritage Management Plan required under condition E45(e).

NOISE AND VIBRATION

Construction Hours

- E17. Construction activities (including the delivery of materials) associated with the Project shall be undertaken during the following standard construction hours:
- (a) 7:00 am to 6:00 pm Mondays to Fridays, inclusive; and
 - (b) 8:00 am to 1:00 pm Saturdays; and
 - (c) at no time on Sundays or public holidays.
- E18. Construction works outside of the standard construction hours identified in condition E17 may be undertaken in the following circumstances:

- (a) construction works (excluding the delivery of materials) that generate noise that is:
 - (i) not audible at any sensitive residential receiver; and
 - (ii) no more than the noise management levels specified in Table 3 of the *Interim Construction Noise Guideline* (Department of Environment and Climate Change, 2009) at other sensitive receivers; or
 - (b) for the delivery of materials required outside these hours by the NSW Police Force or other authorities for safety reasons; or
 - (c) where it is required in an emergency to avoid the loss of lives, property and/or to prevent environmental harm; and
 - (d) works approved through an Environment Protection Licence, or by the Director-General.
- E19. Except as expressly permitted by an Environment Protection Licence issued for the Project, activities resulting in impulsive or tonal noise emission (such as rock breaking, and rock hammering) shall only be undertaken:
- (a) between the hours of 8:00 am to 5:00 pm Monday to Friday;
 - (b) between the hours of 8:00 am to 1:00 pm Saturday; and
 - (c) in continuous blocks not exceeding three hours each with a minimum respite from those activities and works of not less than one hour between each block.

For the purposes of this condition 'continuous' includes any period during which there is less than a one hour respite between ceasing and recommencing work.

- E20. Blasting, pile driving, and rock crushing and screening are not permitted for the Project.

Construction Noise and Vibration

- E21. The Project shall be constructed with the aim of achieving the construction noise management levels detailed in the *Interim Construction Noise Guideline* (Department of Environment and Climate Change, 2009) and, for construction traffic noise, in the *Environmental Criteria for Road Traffic Noise* (Environment Protection Authority, 1999). All feasible and reasonable noise mitigation measures shall be implemented and any activities that could exceed the construction noise management levels shall be identified and managed in accordance with the Construction Noise and Vibration Management Plan required under condition E45(b).
- E22. The Project shall be constructed with the aim of achieving the following construction vibration goals:
- (a) for structural damage, the vibration limits set out in the *German Standard DIN 4150-3: 1999 Structural Vibration - Effects of vibration on structures*;
 - (b) for human exposure, the acceptable vibration values set out in the *Environmental Noise Management: Assessing Vibration: A Technical Guideline* (Department of Environment and Conservation, 2006); and
 - (c) the ground-borne noise levels set out in the *Interim Construction Noise Guideline* (Department of Environment and Climate Change, 2009).
- E23. The Proponent shall minimise noise emissions from plant and equipment, including bulldozers, cranes, graders, excavators and trucks, by installing and maintaining, efficient silencers and low-noise mufflers (residential standard).

PROPERTY IMPACTS

- E24. Access to private property shall be maintained during construction unless otherwise agreed with the property owner in advance. Where approved access to a property is to be affected by construction of the Project, unless otherwise agreed with the property owner, the Proponent shall provide an alternative access of a standard that is at least equivalent to that currently existing and meets relevant road safety standards, prior to affecting the existing access. Details for provision of altered access shall be determined in consultation with the property owner. The original access to the property shall be reinstated to at least an equivalent standard following the completion of construction, in consultation with the property owner, unless otherwise agreed with the property owner.
- E25. The Proponent shall construct the Project in a manner that minimises impacts to private properties and other public or private structures (such as fences and utility services infrastructure). In the event that construction of the Project results in direct or indirect damage to any such property or structure, the Proponent shall arrange and fund repair of the damage to a standard comparable to that in existence prior to that damage, or compensate the owner of

the structures/property, unless otherwise agreed to by the owner. All repairs/compensation are to be implemented within 30 days of an agreement being reached, unless otherwise agreed to by the owner.

SOIL AND WATER MANAGEMENT

- E26. Soil and water management measures consistent with *Managing Urban Stormwater - Soils and Construction Vols 1 and 2, 4th Edition* (Landcom, 2006) shall be employed during the construction of the Project to minimise soil erosion and the discharge of sediment and other pollutants to land and/or waters.
- E27. Where available, and of appropriate chemical and biological quality, stormwater, recycled water or other water sources shall be used in preference to potable water for construction activities, including concrete mixing and dust control.
- E28. Construction activities within 40 metres of any watercourses, shall be consistent with the *Controlled Activity Guidelines* (NSW Office of Water, 2010) including, but not limited to, 'In-stream Works', 'Outlet Structures', 'Riparian Corridors', 'Vegetation Management Plans', and 'Watercourse Crossings', or any guidelines which supersede these documents.

TRAFFIC AND TRANSPORT

- E29. Unless otherwise agreed by the Director-General, the Proponent shall undertake the following in consultation with, and to the satisfaction of, the relevant road and rail authorities (as relevant):
 - (a) prior to the commencement of construction, review the proposed construction traffic route(s) and existing access provisions to the power station site to determine whether the route(s) and existing provisions allow for safe access of construction and operational vehicles associated with the Project (including appropriate site distances, rail crossings and provisions for over-mass and/or over-dimensional transport and safety with other road and rail users). Where improvements or changes to the proposed route and/or infrastructure is required, the Proponent shall implement these to the satisfaction of the relevant road and rail authority, prior to the commencement of construction;
 - (b) assess all roads proposed to be used for over-mass and/ or over-dimensional haulage (including intersections, bridges, culverts and other road features) prior to the commencement of construction of Stage 1 and Stage 2, to determine whether the existing road condition can accommodate the proposed over-mass and/ or over-dimensional haulage. Where improvements are required, the Proponent shall implement these, to the satisfaction of the relevant road authority, prior to the commencement of construction of each stage; and
 - (c) upon determining the haulage route(s) for construction vehicles associated with the Project, and prior to construction of Stage 1 and prior to construction of Stage 2, the Proponent shall undertake **Road Dilapidation Reports** of the local and collector roads used for haulage. The report shall assess the current condition of the roads to be used by construction traffic and describe mechanisms to restore any damage that may result due to traffic and transport related to the construction of the Project. The report shall be submitted to the relevant road authority for review prior to the commencement of haulage. The "existing" road condition shall be taken to be that following any upgrade in accordance with condition E29(b).
- E30. The Proponent shall ensure that any measures to restore or reinstate roads affected by the construction of the Project are undertaken in a timely manner, in accordance with the requirements, and to the satisfaction, of the relevant road authority, and at the full expense of the Proponent.
- E31. Any pavement failures arising from construction traffic that result in safety concerns for other road users, shall be repaired in accordance with the relevant road authority's specifications no later than 48 hours following notification by the relevant road authority.
- E32. The Proponent shall temporarily seal Walshs Road from the intersection of Loop Road to the proposed southern site entrance to the Project site, and Loop Road from the intersection of the Gunning/Dalton Road to the intersection of Bevendale Road, prior to the use of the roads by construction traffic. The Proponent shall ensure that the road surface is sealed to meet the reasonable requirements of Upper Lachlan Shire Council and includes a trafficable surface

suitable to accommodate light, heavy and over-sized vehicle movements associated with the construction of the project.

- E33. The Proponent shall permanently reseal the roads identified in condition E32 upon completion of the construction of Stage 1 of the Project to meet the reasonable requirements of Upper Lachlan Shire Council.
- E34. The Proponent shall consider whether any identified road improvements or modifications to the road network (including rail crossings) are consistent with the project approval. Should they not be consistent, then the Proponent shall seek approval under the Act.
- E35. The Proponent shall instruct the drivers of heavy vehicles that compression breaking is not permitted on local and main roads in the township of Gunning and on Dalton Road north of the intersection with Gunning Road.
- E36. The Proponent shall ensure that construction vehicles adhere to nominated haulage routes identified in the Construction Traffic Management Plan as referred to in condition E45(c).
- E37. No construction traffic is permitted to access the Project site via Yass Street (west of Warrataw Street), or Jerrawa and Coolaie Roads, or Walshs Road west of the new access road to the site.
- E38. The Proponent shall ensure that heavy vehicle movements through Gunning are outside the morning and afternoon school peaks.

ANCILLARY FACILITIES

- E39. Unless otherwise approved by the Director-General, the location of Ancillary Facilities shall:
 - (a) be located more than 50 metres from a waterway;
 - (b) be located within or adjacent to the Project;
 - (c) have ready access to the road network or direct access to the construction area;
 - (d) be located to minimise the need for heavy vehicles to travel through residential areas;
 - (e) be located in areas of low ecological significance and require minimal clearing of native vegetation (not beyond that already required by the project);
 - (f) be sited on relatively level land;
 - (g) be separated from nearest residences by at least 200 metres (or at least 300 metres for a temporary batching plant);
 - (h) not unreasonably affect the land use of adjacent properties;
 - (i) not unreasonably impact on the visual, acoustic and air quality amenity of the nearest residences;
 - (j) be above the 20 year ARI flood level unless a contingency plan to manage flooding is prepared and implemented;
 - (k) operate in accordance with the construction hours set out in condition E17;
 - (l) be located in areas of low heritage conservation significance (including identified Aboriginal cultural value) and not impact on heritage sites beyond those already impacted by the Project; and
 - (m) provide sufficient area for the storage of raw materials to minimise, to the greatest extent practical, the number of deliveries required outside standard construction hours.
- E40. The location of ancillary facilities shall be identified in the Construction Ancillary Facilities Management Plan required under condition E45(a) and include consideration of the criteria listed in condition E39.
- E41. Ancillary facilities that do not meet the criteria set out under condition E39 must be approved by the Director-General prior to establishment. In obtaining this approval, the Proponent shall demonstrate consistency with project impacts identified in the documents listed under condition B1 and provide an environmental assessment of the facility. Such assessment(s) can be submitted separately or as part of the Construction Ancillary Facilities Management Plan required under condition E45(a). The assessment report shall include, but not necessarily be limited to:
 - (a) a description of the ancillary facility, its components and the surrounding environment;
 - (b) details on the activities to be carried out at the facility, including the hours of use and the storage of dangerous and hazardous goods;
 - (c) an assessment of the environmental impacts on the site and the surrounding environment, including, but not limited to noise, vibration, air quality, traffic and access, flora and fauna, heritage and light spill;

- (d) details on the mitigation, monitoring and management procedures specific to the ancillary facility that would be implemented to minimise environmental impacts or, where this is not possible, reasonable and feasible measures to offset the impacts and an assessment of the adequacy of the mitigation or offsetting measures. This shall include consideration of restrictions on the hours of use or exclusion of certain activities;
 - (e) details on the timing for the completion of activities at the ancillary facility and how the site will be decommissioned (including any necessary rehabilitation); and
 - (f) demonstrated overall consistency with the approved project.
- E42. The Director General's approval is not required for minor ancillary facilities (e.g. lunch sheds, office sheds, and portable toilet facilities) that do not comply with the criteria set out in condition E39 and:
- (a) are located within an active construction zone within the approved project footprint; and
 - (b) have been assessed by the Environmental Representative to be -
 - (i) of low amenity risk to surrounding residences, with consideration to matters such as noise and vibration impacts, traffic and access impacts, dust and odour impacts, and visual (including light spill) impacts, and
 - (ii) of low environmental risk in respect to waste management and impacts on flora and fauna, soil and water, and heritage; and
 - (c) have environmental and amenity impacts that can be managed through the implementation of standard environmental measures detailed in an approved Construction Environmental Management Plan for the project.

ENVIRONMENTAL REPRESENTATIVE

- E43. Prior to the commencement of construction of the Project, or as otherwise agreed by the Director-General, the Proponent shall nominate for the approval of the Director-General a suitably qualified and experienced Environment Representative(s) that is independent of the design, construction and operational personnel. The Proponent shall employ the Environmental Representative(s) for the duration of construction and operation of Stages 1 and 2 of the Project, or as otherwise agreed by the Director-General. The Environment Representative(s) shall:
- (a) be the principal point of advice in relation to the environmental performance of the Project;
 - (b) monitor the implementation of environmental management plans and monitoring programs required under this approval and advise the Proponent upon the achievement of these plans and programs;
 - (c) have responsibility for considering and advising the Proponent on matters specified in the conditions of this approval, and other licences and approvals related to the environmental performance and impacts of the Project;
 - (d) ensure that environmental auditing is undertaken in accordance with the Proponent's Environmental Management System(s);
 - (e) be given the authority to approve/ reject minor amendments to the Construction Environmental Management Plan and Operation Environmental Management Plan required under conditions E44 and F24, respectively. What constitutes a "minor" amendment shall be clearly explained in both plans;
 - (f) be given the authority and independence to require reasonable steps be taken to avoid or minimise unintended or adverse environmental impacts, and failing the effectiveness of such steps, to direct that relevant actions be ceased immediately should an adverse impact on the environment be likely to occur; and
 - (g) be consulted in responding to the community concerning the environmental performance of the Project where the resolution of points of conflict between the Proponent and the community is required.

CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN

- E44. Prior to the commencement of construction of any stage, or as otherwise agreed by the Director-General, the Proponent shall prepare and implement (following approval) a Construction Environmental Management Plan for the Project. The Plan shall outline the environmental management practices and procedures that are to be followed during the construction of the stage, and shall be prepared in consultation with the relevant government

agencies and in accordance with the *Guideline for the Preparation of Environmental Management Plans* (Department of Infrastructure, Planning and Natural Resources, 2004). The Plan shall include, but not necessarily be limited to:

- (a) a description of activities to be undertaken during construction, including scheduling;
- (b) statutory and other obligations that the Proponent is required to fulfil during construction, including approvals, consultations and agreements required from authorities and other stakeholders under key legislation and policies;
- (c) a description of the roles and responsibilities for relevant employees involved in the construction of the Project, including relevant training and induction provisions for ensuring that employees, including contractors and sub-contractors are aware of their environmental and compliance obligations under these conditions of approval;
- (d) an environmental risk analysis to identify the key environmental performance issues associated with the construction phase; and details of how environmental performance would be managed and monitored to meet acceptable outcomes, including the actions to be undertaken to address identified potential adverse environmental impacts. In particular, the following environmental performance issues shall be addressed in the Plan:
 - (i) measures for the handling, treatment and management of the unexpected discovery of **contaminated soils**;
 - (ii) measures to monitor and manage **waste** (solid and liquid) generated during construction including, but not necessarily limited to, general procedures for waste classification, handling, reuse, and disposal, how contaminated materials would be handled and disposed, use of secondary waste material in construction wherever feasible and reasonable, and procedures for managing green waste including timber and mulch from clearing activities;
 - (iii) measures to monitor and manage **spoil and fill** including details of how excavated material would be handled, stockpiled, reused and disposed and a stockpile/spoil reuse management protocol detailing location criteria that would guide the placement of stockpiles and spoil reuse, and minimum management measures (including rehabilitation) that would be implemented to avoid and/or minimise amenity impacts to surrounding residents and environmental risks (including to surrounding watercourses);
 - (iv) measures to monitor and manage **hazard and risks** including emergency management; and
 - (v) details of **community involvement strategies** and **community complaints handling procedures** during construction, consistent with the requirements of conditions D1 and D2;
 - (vi) details of **compliance and incident reporting** consistent with the requirements of conditions D5, D6 and D7, including a definition of environmental incident categories and reportable environmental incidents;
- (e) procedures for the periodic review and update of the Construction Environmental Management Plan and its sub-plans as necessary (including where minor changes can be approved by the Environmental Representative); and
- (f) the additional Plans listed under condition E45.

The Plan shall be submitted for the approval of the Director-General no later than one month prior to the commencement of each construction stage, or as otherwise agreed by the Director-General. Construction works for each stage shall not commence until written approval has been received from the Director-General.

Note: The approval of a Construction Environmental Management Plan does not relieve the Proponent of any requirement associated with this project approval. If there is an inconsistency with an approved Construction Environmental Management Plan and the conditions of this project approval, the requirements of this Project approval prevail.

E45. As part of the Construction Environmental Management Plan for the Project required under conditions E44, the Proponent shall prepare and implement the following management plans:

- (a) an **Ancillary Facilities Management Plan** to detail the management of construction ancillary facilities associated with the Project. The Plan shall include but not be limited to

- (i) the location and description of the facility(s), its components and the surrounding environment,
 - (ii) details of the activities to be carried out at each facility, including the hours of use and the storage of dangerous and hazardous goods,
 - (iii) an assessment of each facility against the locational criteria outlined in condition E39,
 - (iv) details of the mitigation and management procedures specific to the facility that would be implemented to minimise environmental and amenity impacts and an assessment of the adequacy of the mitigation measures, and
 - (v) identification of the timing for the completion of activities at each facility and how the site will be decommissioned (including any necessary rehabilitation);
- (b) a **Construction Noise and Vibration Management Plan** to detail how construction noise and vibration impacts will be minimised and managed. The Plan shall be consistent with the guidelines contained in the *Interim Construction Noise Guidelines* (DECC, 2009) and shall include, but not be limited to -
- (i) identification of sensitive receivers and the construction noise and vibration goals and objectives applicable to the Project,
 - (ii) details of construction activities (including concurrent works) and an indicative schedule for construction works, including the identification of key noise and/or vibration generating construction activities (based on representative construction scenarios, including at ancillary facilities) that have the potential to generate noise and/or vibration impacts on surrounding sensitive receivers,
 - (iii) an assessment of the cumulative noise impact of concurrent construction activities over the duration of the construction of the project,
 - (iv) an assessment of construction traffic noise impacts on sensitive receivers on Warrataw Street, Gunning, and where construction traffic noise impacts exceed the goals under the *Environmental Criteria for Traffic Noise* (Environment Protection Authority) the mitigation measures proposed to reduce noise impacts (including the architectural treatment of buildings);
 - (v) identification of measures proposed to be implemented to minimise and manage construction noise and vibration impacts (including construction traffic noise impacts);
 - (vi) procedures and mitigation measures to ensure relevant vibration criteria are achieved, including applicable buffer distances for vibration intensive works, use of low-vibration generating equipment/ vibration dampeners or alternative construction methodology, and pre- and post-construction dilapidation surveys of sensitive structures where vibration is likely to result in damage to buildings and structures (including surveys being undertaken immediately following a monitored exceedance of the criteria),
 - (vii) procedures for construction noise and vibration monitoring, and assessment of construction noise levels (including construction traffic) at sensitive receivers and against compliance with noise guidelines. The procedure is to detail the monitoring frequency, locations and methods of monitoring, responsibilities for monitoring and assessment, methods for recording and reporting monitoring results, and procedures to be followed where significant exceedances of relevant noise and vibration goals/guidelines are detected,
 - (viii) procedures for notifying sensitive receivers of construction activities that are likely to affect their noise and vibration amenity, as well as procedures for dealing with and responding to noise complaints;
- (c) a **Construction Traffic and Access Management Plan** to manage construction traffic and access impacts of the Project. The Plan shall be developed in consultation with the relevant road and rail authority and shall include, but not necessarily be limited to -
- (i) identification of construction traffic routes and quantification of construction traffic volumes (including light, heavy and over-dimensional / over mass sized vehicle movements, and spoil haulage), including any necessary route or timing restrictions on oversized loads,
 - (ii) an assessment of alternative options to construction traffic traversing through the centre of Gunning,

- (iii) measures to ensure acoustic and amenity impacts along construction vehicle routes are minimised,
 - (iv) details of vehicle movements to construction sites and ancillary facilities including parking, dedicated vehicle turning areas, and ingress and egress points,
 - (v) identification of construction traffic impacts that could result in disruption of traffic (including changes to intersection arrangements), public transport, pedestrian and cycle access, property access, movement of livestock,
 - (vi) details of management measures to minimise traffic impacts, including work traffic control measures, onsite vehicle queuing and parking, measures to minimise peak-time congestion, measures to avoid heavy vehicle movements through Gunning during morning and afternoon school peak periods, and measures to ensure safe pedestrian and cycle access (particularly across Yass Street east of its intersection with Warrataw Street, Gunning and along Dalton Road),
 - (vii) proposed management measures for dealing with constraints to construction traffic movements including the Hume Highway crossing of Paddys River at Marulan, the Gunning rail bridge and 90 degree corners along Walshs Road,
 - (viii) in regards to over-dimensional / over-mass sized loads, details of the preferred option for the rail crossing at Gunning (including endorsement by the relevant rail authority, and management of the crossing to avoid use by other traffic) and temporary layby area including their removal once no longer required,
 - (ix) a response plan which sets out proposed responses to construction traffic incidents, and
 - (x) procedures for informing the public where any road access will be modified or restricted as a result of the project;
- (d) a **Construction Soil and Water Quality Management Plan** to manage surface and groundwater impacts during construction of the Project. The Plan shall be developed in consultation with the NSW Office of Water and include, but not necessarily be limited to -
- (i) identification of all potential sources of water pollution and a detailed description of the management methods to be implemented to minimise soil erosion and prevent the discharge of sediment or other water pollutants from the site, including strategies to minimise the area of bare surfaces and stabilise disturbed areas, and plan drawings showing the locations for sediment and erosion control measures,
 - (ii) plans and drawings showing the location of sediment and erosion control measures,
 - (iii) details on the installation, monitoring and maintenance requirements for each of the recommended water quality control measures,
 - (iv) a program for recording and reporting on the effectiveness of water quality control measures against performance goals, including procedures for rectifying any non-compliances,
 - (v) details of stormwater overflow paths and measures for managing overflows,
 - (vi) detailed drawings of any engineering structures such as sediment and evaporation ponds, including design standards and management regimes,
 - (vii) details of the control measures to be employed to manage any accumulation of groundwater and surface water, including procedures for handling, treatment and disposal of groundwater and contaminated groundwater,
 - (viii) a contingency plan, consistent with the *Acid Sulfate Soils Manual*, to deal with the unexpected discovery of actual or potential acid sulfate soils, including procedures for the investigation, handling, treatment and management of such soils and water seepage;
 - (ix) contingency plans to be implemented in the event of major fuel spills or other chemicals spills, and
 - (x) a water balance plan detailing the source and security of construction water supply, water use on site, water and wastewater management on site, and any temporary water storages;
- (e) a **Construction Heritage Management Plan** to detail how construction impacts on Aboriginal and Historic heritage will be minimised and managed. The Plan shall be developed in consultation with the OEH and relevant Aboriginal stakeholders (for Aboriginal heritage), and include, but not necessarily be limited to -

- (i) in relation to Aboriginal Heritage -
 1. details of any further archaeological investigations within the Project area;
 2. procedures for dealing with previously unidentified Aboriginal objects (excluding human remains) including cessation of works in the vicinity, assessment of the significance of the item(s), determination of appropriate mitigation measures and when works can re-commence by a suitably qualified archaeologist in consultation with the Department, OEH and relevant Aboriginal stakeholders, and assessment of the consistency of any new Aboriginal heritage impacts against the approved impacts of the Project, and registering of the new site(s) in the OEH's Aboriginal Heritage Information Management System (AHIMS) register;
 3. the outcomes of the consultation required under condition E16, including any issues and concerns raised and how these have been addressed;
 4. details of management measures to be carried out in relation to Aboriginal heritage, including a detailed methodology and strategies for protection, monitoring, salvage, and conservation of Aboriginal sites and items in the Project area;
 5. procedures for managing the discovery of confirmed or potential human remains, including the temporary cessation of works in the vicinity and notification to the NSW Police Force, OEH, the Department and relevant Aboriginal stakeholders and not recommencing any works in the area unless authorised by the OEH and/ or the NSW Police Force;
 6. heritage training and induction processes for construction personnel (including procedures for keeping records of inductions) and obligations under the conditions of this approval and *National Parks and Wildlife Act 1974* (where relevant) including site identification, protection and conservation of Aboriginal cultural heritage; and
 7. procedures for ongoing Aboriginal consultation and involvement for the duration of the Project; and
- (ii) in relation to Historic Heritage:
 1. procedures for dealing with previously unidentified heritage objects, (including cessation of works in the vicinity, assessment of the significance of the item(s)) and determination of appropriate management and mitigation measures including when works can re-commence by a suitably qualified and experienced archaeologist in consultation with the OEH and the Department, and assessment of the consistency of any new heritage impacts against the approved impacts of the Project; and
 2. heritage training and induction processes for construction personnel (including procedures for keeping records of inductions and obligations under the *Heritage Act 1977* including site identification, protection and conservation of non-Aboriginal cultural heritage);
- (f) a **Construction Flora and Fauna Management Plan** to detail how construction impacts on ecology will be minimised, managed and monitored. The Plan shall be developed in consultation with the OEH and shall include, but not necessarily be limited to -
 - (i) details on the location (including plans) of all native vegetation communities, threatened flora and fauna species and their habitat; and endangered ecological communities to be impacted by the Project;
 - (ii) details of mitigation measures to be implemented during construction to minimise impacts on native fauna and flora (particularly threatened species and their habitats and endangered ecological communities) including (but not necessary limited to) the measures detailed in conditions E12 and E13, measures for maintaining existing habitat features and increasing habitat corridors, seed harvesting and appropriate topsoil management measures, construction worker education, weed management, erosion and sediment control and progressive re-vegetation;
 - (iii) a procedure for dealing with unexpected finds of threatened flora species and endangered ecological communities and their habitat identified during construction, including stopping works and notification to the OEH, determination of appropriate mitigation measures in consultation with the OEH (including relevant re-location

- measures), and update of biodiversity offset requirements consistent with condition C11,
- (iv) proposed revegetation and rehabilitation measures, including identification of flora species and sources, completion criteria and measures for the management and maintenance of rehabilitated/ revegetated areas,
 - (v) weed management measures focusing on early identification of invasive weeds and effective management controls, and
 - (vi) a description of how the effectiveness of these management measures would be monitored and linked to the Ecological Monitoring Program required under condition C7; and
- (g) a **Construction Air Quality Management Plan** to detail how construction impacts on air quality will be minimised and managed. The Plan shall include, but not necessarily be limited to -
- (i) the identification of potential sources of dust,
 - (ii) dust management objectives,
 - (iii) mitigation measures to be implemented, including measures during weather conditions where high level dust episodes are probable (such as strong winds in dry weather), and
 - (iv) a monitoring program to assess compliance with the identified objectives.

End of Schedule E

SCHEDULE F**OPERATION ENVIRONMENTAL MANAGEMENT****AIR QUALITY****Air Discharge Points**

F1. For the purpose of this approval, air discharge/monitoring points are identified in Table 2.

Table 2 - Identification of Air Monitoring and Air Discharge Points

Monitoring / Discharge Point Identifier	Type of Monitoring Point	Type of Discharge Point	Description of Location
1	Air Emissions Monitoring	Discharge to air	Turbine Stack 1
2			Turbine Stack 2
3			Turbine Stack 3
4			Turbine Stack 4
5			Turbine Stack 5
6			Turbine Stack 6

F2. The design and construction of the Project shall include sampling positions that comply with TM-1 as set out in *Approved Methods for the Sampling and Analysis of Air Pollutants in NSW* (Department of Environment and Conservation, 2007), or as otherwise agreed in writing by the EPA.

Discharge Limits

F3. The project shall be designed, constructed, operated and maintained to ensure that for each turbine stack discharge point, the concentration of each pollutant listed in Table 3 is not exceeded. This condition does not apply during the start-up and shut down period for a turbine. The condition continues to apply to other turbines if they are operational during these periods.

Table 3 - Maximum Allowable Discharge Concentration Limits (Air)

Discharge Point Identifier*	Pollutant	Units of measure	100 percentile concentration limit (mgm ⁻³)	Averaging Period	Reference conditions
1, 2, 3, 4, 5 & 6	nitrogen dioxide (NO ₂) or nitric oxide (NO), or both as NO ₂ equivalent	milligrams per cubic measure	51	1-hour	dry, 273 K, 101.3 kPa, and 15% oxygen (O ₂)

*Discharge Point Identifier location is as identified in Table 1.

- **Note 1:** While the concentration limits specified do not apply during start-up or shut down periods, the proponent is subject to the requirements of section 128 (2) of the *Protection of the Environment Operations Act 1997* in relation to the prevention and minimisation of air pollution.
- **Note 2:** Emissions from start-up and shut-down periods must be included in Load Based Licensing assessable pollutant load calculations.

Air Quality Monitoring

F4. The Proponent shall monitor the pollutant concentrations and emission parameters specified in Table 4, at each of the turbine stack discharge points. Monitoring shall be undertaken during the operation of Stages 1 and 2 of the Project, at the frequency indicated in Table 4, unless otherwise agreed by the EPA.

Table 4 – Periodic Pollutant and Parameter Monitoring (Air)

Monitoring Point(s)	Pollutant	Units of measure	Frequency	Sampling Method#
Discharge point identifiers 1, 2, 3, 4, 5 and 6	Nitrogen dioxide* (NO ₂) or nitric oxide (NO) or both, as NO ₂ equivalent	milligrams per normalised cubic metre	Continuous	CEM-2
	Moisture content	%	Continuous	TM-22
	Oxygen (O ₂)	%	Continuous	CEM-3
	Temperature	degrees Celsius	Continuous	TM-2
	Volumetric flow rate	cubic metres per second	Continuous	CEM-6
	Dry gas density	kilograms per cubic metre	Continuous	TM-23
	Molecular weight of stack gases	grams per gram mole	Continuous	TM-23
	Velocity	metres per second	Continuous	CEM-6

*Nitrogen dioxide (NO₂) or nitric oxide (NO), or both (as NO₂) shall be reported on consistent with the reference conditions (dry, 273 K, 101.3 kPa, and 15 % O₂) identified in Table 3.

The sampling methods are those specified in the *Approved Methods for the Sampling and Analysis of Air Pollutants in NSW* (Department of Environment and Conservation, 2007).

- F5. Prior to the commencement of commissioning of Stages 1 and 2 of the project, the Proponent must notify the Director-General and the EPA in writing of the proposed timing of commissioning the power station and how all plant and equipment will be brought on line to ensure compliance with all relevant environment protection requirements.

Air Quality Performance Verification

- F6. Within 90 days of the commencement of operation of Stage 1 and Stage 2, or as otherwise agreed by the Director-General, and during a period in which the Project is operating under normal operating conditions, the Proponent shall undertake a program to confirm the air emission performance of the Project. The program shall include, but not necessarily be limited to:
- (a) monitoring of the parameters in Table 5 at such time(s) as is necessary to provide an adequate characterisation of the emissions from each turbine during normal operation;
 - (b) a comprehensive air quality impact assessment in accordance with the methods outlined in *Approved Methods for the Modelling and Assessment of Air Pollutants in New South Wales* (Department of Environment and Conservation, 2005), using actual air emission data collected and meteorological weather data on site, to determine performance against the ground-level concentrations for air pollutants predicted for the Project in the document listed in condition B1(b); and
 - (c) details of any entries in the Complaints Register relating to air quality impacts.

A report providing the results of the program shall be submitted to the Director-General and EPA within 45 days of completion of the testing required under (a) and (b).

Table 5 – Air Quality Verification Monitoring

Monitoring Point(s)	Pollutant	Units of measure	Sampling Method
Discharge point identifiers 1, 2, 3, 4, 5 and 6	Nitrogen dioxide (NO ₂) or nitric oxide (NO) or both, as NO ₂ equivalent	milligrams per normalised cubic metre	TM-11
	Carbon monoxide (CO)	milligrams per normalised cubic metre	TM-32
	Dry gas density	kilograms per cubic metre	TM-23
	Moisture content	%	TM-22
	Molecular weight of stack gases	grams per gram mole	TM-23
	Oxygen (O ₂)	%	TM-25
	Temperature	degrees Celsius	TM-2
	Velocity	metres per second	TM-2
	Volumetric flow rate	cubic metres per second	TM-2

*The sampling methods are those specified in the *Approved Methods for the Sampling and Analysis of Air Pollutants in NSW* (Department of Environment and Conservation, 2007).

Discharge Point Identifier location described in condition F1

F7. In the event that the program undertaken to satisfy condition F6 indicates that the operation of the Project, under normal operating conditions, will lead to:

- (a) greater point source emissions than the stack discharge concentration limits identified in condition F3; or
- (b) greater ground-level concentrations of air pollutants than that predicted for the Project in the documents listed in conditions B1(b) and B1(c),

the Proponent shall provide details of remedial measures to be implemented to reduce point source emissions or ground-level concentrations of air pollutants to no greater than that predicted in environmental assessment documents listed under this approval, and to meet the impact assessment criteria detailed in *Approved Methods and Guidance for the Sampling and Analysis of Air Pollutants in New South Wales* (Department of Environment and Conservation, 2007). Details of the remedial measures and a timetable for implementation shall be submitted to the Director-General for approval, within such period as the Director-General may require.

The Proponent shall cease or limit operations to meet the specified criteria, until the remedial measures approved by the Director General have been implemented.

Long Term Air Emission Benchmark – Operation

F8. After 12 months from the end of commissioning of Stage 1, but not longer than 24 months, the Proponent shall submit a report to the Director-General and EPA proposing an annual average nitrogen oxides emission benchmark for the turbine stack(s) per Table 6. The annual average emission benchmark shall reflect the average performance of the power station during normal operation and the proper and efficient operation of the turbines. The benchmark will also:

- (a) be derived using NO_x emission data from the Continuous Emissions Monitoring Systems for the turbine stack(s);
- (b) be determined following the collection of a NO_x concentration dataset that is sufficient to represent the likely longer-term operating patterns of the power plant;
- (c) take into account the variation of NO_x concentrations at different generating loads;
- (d) recognise that generating load patterns may vary from year to year due to differences in electricity market demands and include an appropriate allowance for this variation; and
- (e) include provision for the probable increase in NO_x emissions with time due to reasonable wear and tear of the power plant.

Table 6 - Emission Benchmark

Emission Point(s)	Pollutant	Units of measure	Emission Benchmark	Averaging Period (note 1)	Reference conditions
Stacks serving turbines 1-6	Nitrogen dioxide (NO ₂) or nitric oxide (NO) or both, as NO ₂ equivalent	milligrams per cubic metre	To be determined	Annual Average	Dry, 273 K, 101.3 kPa, 15% oxygen (O ₂)

Note 1: The annual average benchmark applies over each reporting period as defined in the Environment Protection Licence.

F9. If the emission benchmark in Table 6 is exceeded, the Proponent shall provide a report and action plan to the Director-General and EPA within one month of the exceedance. The action plan must include:

- a review of all practicable measures to reduce NO_x emissions;
- an evaluation of the marginal cost of incremental NO_x reductions; and
- proposed modifications to plant and/or operations that produce NO_x reductions consistent with (a) and (b).

Operations shall be ceased or limited to meet the specified benchmark until the Director-General and EPA are satisfied with the action plan to reduce the NO_x emissions.

NOISE

Noise Criteria

F10. The Project shall be designed, operated and maintained to ensure that the total cumulative noise contribution from the operation of the power station to the background acoustic environment does not exceed the noise limits specified in Table 7 and Table 8.

Table 7 – Maximum Allowable Noise Limits

Location	Noise Limits dB(A)			
	Day 7:00 am to 6:00 pm Mondays to Saturdays 8:00 am to 6:00 pm Sundays and public holidays	Evening 6:00 pm to 10:00 pm on any day	Night 10:00 pm to 7:00 am Mondays to Saturdays 10:00 pm to 6:00 am Sundays and public holidays	
	L _{Aeq} (15 minute)	L _{Aeq} (15 minute)	L _{Aeq} (15 minute)	L _{Amax}
All surrounding sensitive receivers*	35dB(A)	35dB(A)	35dB(A)	45dB(A)

Table 8 - Maximum Noise Limits dB(C)

Location	Noise Limits dB(C)		
	Day 7:00 am to 6:00 pm Mondays to Saturdays 8:00 am to 6:00 pm Sundays and public holidays	Evening 6:00 pm to 10:00 pm on any day	Night 10:00 pm to 7:00 am Mondays to Saturdays 10:00 pm to 6:00 am Sundays and public holidays
	L _{Ceq} (15 minute)	L _{Ceq} (15 minute)	L _{Ceq} (15 minute)
All surrounding sensitive receivers*	65dB(C)	60dB(C)	60dB(C)

- *At a sensitive receiver in existence at the date of approval or;
- any residential dwelling for which an approval has been sought or obtained under the *Environmental Planning and Assessment Act 1979*, prior to the date of this approval or;
- where any landowner can demonstrate that the preparation of an application under the *Environmental Planning and Assessment Act 1979* for any residential dwelling has commenced prior to the date of this approval; or;
- 25% or more of the area of a vacant allotment in existence at the date of this approval, or where a dwelling is permissible under the *Environmental Planning and Assessment Act, 1979* at that date, with the exception of land that is currently used for industrial or mining purposes.

The noise limits set out in Table 7 and Table 8 apply under all meteorological conditions except for the following:

- (a) wind speeds greater than 4 metres per second measured at 10 metres above ground level; or
- (b) F stability category temperature inversion conditions and wind speeds greater than 2 metres per second at 10 metres above ground level; or
- (c) G stability category temperature inversion conditions.

The data to be used for determining meteorological conditions shall be that recorded by the meteorological station located on the project site.

The stability category temperature inversion exceptions detailed in (b) and (c) are not applicable if the report prepared under condition C45 demonstrates that the stability category inversion conditions described in (b) and (c) are characteristic of the area and occur for a significant period of time, unless otherwise agreed to by the Director-General.

Noise Modifying Factors

- F11. If noise from an activity is substantially tonal, intermittent or impulsive in nature (as described in Chapter 4 of the *NSW Industrial Noise Policy* (Environment Protection Authority, 2000)), 5 dB(A) shall be added to the measured noise level when comparing the measured noise with the limits specified in Table 7 and Table 8, in accordance with the requirements of the *NSW Industrial Noise Policy*.

Operational Noise Review

- F12. Within 90 days of the commencement of operation of the Project, or as otherwise agreed by the Director-General, and during a period in which the Project is operating under design loads and normal operating conditions (including start up and shut down periods), the Proponent shall undertake an **Operational Noise Review** to confirm the noise emission performance of the Project. The Review (and associated report) shall be prepared in consultation with, and to the satisfaction of, the EPA.
- F13. Noise monitoring is to be consistent with the guidelines provided in the *New South Wales Industrial Noise Policy* (Environment Protection Authority, 2000) and must include attended and unattended noise monitoring at the receptor locations A, B, C, D, E, F, G, H, I, J, R12, R13, R14, R15, R16, R17 and R21 (if agreed to by the landowner) as identified in the document listed in condition B1(c) and any other sensitive receivers as notified by the Director-General or EPA. The noise assessment must include monitoring of operations that have the potential to cause offensive noise including, but not limited to, safety valve operation, and the operation of circuit breakers during the day, evening and night time periods. The noise monitoring equipment used at a location must be placed in a position that is:
- (a) at the most affected point within the property boundary or at the most affected point within 30 metres of the dwelling façade where the dwelling is more than 30 metres from the boundary to determine compliance with the $L_{Aeq(15\text{ minute})}$ noise limits; and
 - (b) measured within one metre of the dwelling façade to determine compliance with the $L_{A(max)}$ noise limits.

The data to be used for determining meteorological conditions shall be that recorded by the meteorological weather station located on the project site.

- F14. A report providing the results of the Review shall be submitted to the Director-General and the EPA within 90 days of completion of the monitoring. The report shall include, but not necessarily be limited to:
- (a) a description of the methodologies for noise monitoring, including the location of monitoring sites and frequency of monitoring;
 - (b) documentation of the operational noise levels at receiver locations A, B, C, D, E, F, G, H, I, J, R12, R13, R14, R15, R16, R17 and R21 as identified in the document listed in condition B1(c);
 - (c) an assessment of the noise performance of the Project against the noise limits specified in Table 7 and Table 8 and the predicted noise levels as detailed in the reports listed in

conditions B1(b) and B1(c) or as updated in the Director-General's Environmental Assessment Report;

- (d) re-evaluation of Stage 2 noise predictions;
- (e) details of the on-site meteorological conditions prevailing during the monitoring; and
- (f) details of any entries in the Complaints Register relating to noise impacts.

F15. In the event that the Review indicates noise levels are in excess of the noise limits stipulated in condition F10 for either Stages 1 or 2, the Proponent shall cease or limit operations to meet the stipulated noise limits and submit to the Director-General a report that includes, but is not limited to:

- (a) an assessment of all feasible or reasonable physical and other mitigation measures for reducing noise at the source;
- (b) identification of the preferred measure(s) for reducing noise at the source;
- (c) evidence that the EPA is satisfied that the proposed noise mitigation measures are acceptable; and
- (d) location, type, timing and responsibility for implementation of the noise mitigation measure(s).

F16. At-source noise mitigation measures identified in the report prepared under condition F15 are to be implemented prior to the Project becoming fully operational again.

F17. Following the implementation of at-source controls, noise monitoring is to be undertaken in accordance with condition F13 during the first three months in which the Project is operating under design loads and normal operating conditions (including start up and shut down periods). A report is to be submitted to the Director-General and the EPA within 30 days of completion of the monitoring in accordance with F14(a) to (f).

Where noise monitoring indicates noise levels are in excess of the noise limits stipulated in condition F10, the Proponent shall cease or limit operations to meet the stipulated noise limits unless a negotiated agreement consistent with the requirements of Section 8.3 of the *NSW Industrial Noise Policy* (Environment Protection Authority, 2000) exists between the Proponent and the landowner. Where the negotiated agreement involves at-receiver measures, these are to be implemented in accordance with conditions F21 and F22 or unless otherwise agreed to by the landowner. Where the negotiated agreement involves land acquisition, the land is to be acquired in accordance with Schedule G, or unless otherwise agreed to by the landowner.

Ongoing Operational Noise Monitoring

F18. The Proponent shall prepare and implement an **Operational Noise Monitoring Program** to assess ongoing compliance against the operational noise limits set out in condition F10 of this approval. The noise monitoring program shall be prepared in consultation with, and to the satisfaction of the EPA. Noise monitoring is to be consistent with the guidelines provided in the *NSW Industrial Noise Policy* (Environment Protection Authority, 2000) and shall include, but not be limited to:

- (a) noise monitoring at receiver locations A, B, C, D, E, F, G, H, I, J, R12, R13, R14, R15, R16, R17 and R21 (if agreed to by the landowner) as identified in the document listed in condition B1(c), or any additional receivers as notified by the Director-General or EPA. The Proponent shall also consult with the community in relation to any additional noise monitoring locations;
- (b) unattended and attended noise monitoring;
- (c) monitoring during the day, evening and night periods at least quarterly for the first three years of operation for both Stages 1 and 2, and annually thereafter, unless otherwise agreed or directed by the Director-General;
- (d) monitoring of operations that have the potential to cause offensive noise including, but not limited to, safety valve operation, and the operation of circuit breakers;
- (e) monitoring of the effectiveness of any noise mitigation measures implemented under condition F15, against the noise limits specified in condition F10.

Noise compliance monitoring shall be undertaken by a suitably qualified and experienced acoustical consultant.

A report providing the results of the program shall be submitted to the Director-General and the EPA within 28 days of completion of each monitoring event.

The monitoring program shall form part of the Operational Noise Management Plan referred to in condition F25(b).

12 Month Operational Noise Review

F19. Following 12 months of operation of Stage 1, the Proponent shall re-evaluate the noise predictions for Stage 2 for the worst case scenario, based on actual noise data obtained from operational noise monitoring and data recorded by the meteorological station located on the project site. The Proponent shall prepare a report that includes, but is not limited to:

- (a) The results of the re-evaluated noise predictions;
- (b) Where the predicted noise levels exceed the noise limits stipulated in condition F10:
 - (i) an assessment of all feasible or reasonable physical and other mitigation measures for reducing noise at the source;
 - (ii) identification of the preferred measure(s) for reducing noise at the source;
 - (iii) location, type, timing and responsibility for implementation of the noise mitigation measure(s); and
 - (iv) a revaluation of predicted noise levels with the proposed at source noise mitigation measures.

The Review (and associated report) shall be prepared in consultation with, and to the satisfaction of the EPA, and shall be submitted to the Director-General within 60 days of undertaking the 12 month re-evaluation of noise predictions.

F20. Should the operational noise review detailed in condition F19 indicate predicted noise levels for Stage 2 exceed the noise limits stipulated in condition F10 (following the incorporation of source control measures stipulated in F19), then the Proponent shall enter into a negotiated agreement with the affected landowner consistent with the requirements of Section 8.3 of the *NSW Industrial Noise Policy* (Environment Protection Authority, 2000) within three months of the report detailing the revised noise predictions being submitted to the Director-General. Where the negotiated agreement involves at-receiver measures, these are to be implemented in accordance with conditions F21 and F22, or unless otherwise agreed to by the landowner. Where the negotiated agreement involves land acquisition, the land is to be acquired in accordance with Schedule G, or unless otherwise agreed to by the landowner.

Noise Mitigation

F21. If any negotiated agreement undertaken between the Proponent and landowner involves at-receiver mitigation, the Proponent shall investigate and implement feasible and reasonable at-receiver noise mitigation measures such as double glazing, insulation, air conditioning and/or other building acoustic treatments, outdoor (for example, courtyard) treatments at any residence on the land, or relocation of the dwelling on the property (unless otherwise agreed to by the landowner). Mitigation provided shall meet the appropriate internal noise criteria such as that set by the UK Department of Environment, Food and Rural Affairs. The landowner is under no obligation to agree to any at-receiver mitigation measures.

F22. The Proponent shall bear the costs of any at-receiver mitigation measures implemented at an affected property or land.

OPERATIONAL PERFORMANCE

Operation Performance Audit Report

F23. Within fifteen months of the completion of the construction of Stage 1 and fifteen months of the completion of the construction of Stage 2, or as otherwise agreed by the Director-General, the Proponent shall commission an independent qualified person or team to undertake an **Operational Performance Audit** of the Project. The independent person or team shall be approved by the Director-General prior to the commencement of the Audit. The Operational Performance Audit Report shall be submitted to the Director-General within one month of the completion of the Audit, and made available on the dedicated website for the project, unless otherwise agreed by the Director-General. The Audit shall:

- (a) assess compliance with the requirements of this approval including run-time, and other licences and approvals that apply to the Project;
- (b) assess the operational performance of the Project against the aims and objectives for the Project specified in the documents referred to under condition B1;

- (c) assess the environmental performance of the Project against the predictions made and conclusions drawn in the documents referred to under condition B1; and
- (d) review the effectiveness of the environmental management of the Project, including any environmental impact mitigation works.

OPERATIONAL ENVIRONMENTAL MANAGEMENT

F24. Prior to the commencement of operation, or as otherwise agreed by the Director-General, the Proponent shall prepare and implement (following approval) an **Operation Environmental Management Plan** for the Project. The Plan shall outline the environmental management practices and procedures that are to be followed during operation, and shall be prepared in consultation with relevant agencies and in accordance with the *Guideline for the Preparation of Environmental Management Plans* (Department of Infrastructure, Planning and Natural Resources, 2004). The Plan shall include, but not necessarily be limited to:

- (a) a description of activities to be undertaken during operation of the Project (including staging and scheduling);
- (b) statutory and other obligations that the Proponent is required to fulfil during operation, including approvals, consultations and agreements required from authorities and other stakeholders under key legislation and policies;
- (c) overall environmental policies, guidelines and principles to be applied to the operation of the Project;
- (d) a description of the roles and responsibilities for relevant employees involved in the operation of the Project, including relevant training and induction provisions for ensuring that employees are aware of their environmental and compliance obligations under these conditions of approval;
- (e) an environmental risk analysis to identify the key environmental performance issues associated with the operation phase; and
- (f) details of how environmental performance would be managed and monitored to meet acceptable outcomes, including what actions will be taken to address identified potential adverse environmental impacts, including those safeguards and mitigation measures detailed in the EA and/or Submissions Report (and any impacts arising from the staging of the construction of the Project). In particular, the following environmental performance issues shall be addressed in the Plan:
 - (i) measures to monitor and maintain **biodiversity offset measures** implemented in accordance with condition C11,
 - (ii) implementation of measures consistent with the National Recovery Plan for Natural Temperate Grassland of NSW and the ACT,
 - (iii) measures to monitor and maintain the effectiveness of **flora and fauna** management measures, including revegetated areas, landscaped areas and the control of the spread of weeds;
 - (iv) ongoing measures to control **soil erosion** and sedimentation,
 - (v) measures to monitor and manage operational **traffic and access**,
 - (vi) measures to monitor and manage **hazards and risks**,
 - (vii) **emergency management**,
 - (viii) details of the outcomes of a revised **plume assessment** based on actual emissions data and meteorological data collected on site,
 - (ix) details of **community complaints handling procedures** during operation, consistent with the requirements of condition D3, and
 - (x) details of **compliance and incident reporting** consistent with the requirements of conditions D5, D6 and D7, including a definition of environmental incident categories and reportable environmental incidents;
- (g) procedures for the periodic review and update of the Operation Environmental Management Plan and its sub-plans as necessary (including where minor changes can be approved by the Environmental Representative); and
- (h) the additional plans listed under condition F25.

The Plan shall be submitted for the approval of the Director-General no later than one month prior to the commencement of operation, or as otherwise agreed by the Director-General. Operation shall not commence until written approval has been received from the Director-General.

Note: The approval of an Operation Environmental Management Plan does not relieve the Proponent of any requirement associated with this Project approval. If there is an inconsistency with an approved Operation Environmental Management Plan and the conditions of this Project approval, the requirements of this Project approval prevail.

F25. As part of the Operation Environmental Management Plan for the project, required under condition F24, the Proponent shall prepare and implement the following Management Plans:

- (a) an **Operational Air Quality Management Plan** to outline measures to manage impacts from the project on local and regional air quality. The Plan shall include, but not necessarily be limited to:
 - (i) identification of all major sources of particulate and gaseous air pollutants that may be emitted from the project, being both point-source and diffuse emissions, including identification of the major components and quantities of these emissions,
 - (ii) monitoring for gaseous and particulate emissions from the project,
 - (iii) procedures for the minimisation of gaseous and particulate emissions from the project, including pro-active and reactive management and response mechanisms, with specific reference to measures to be implemented and actions to be taken to minimise and prevent potential elevated air quality impacts on surrounding land uses as a consequence of meteorological conditions, upsets within the project, or the mode of operation of the project at any time,
 - (iv) specific procedures for the management of generating efficiency and the minimisation of greenhouse gas emissions per unit of electricity generated,
 - (v) procedures aimed at maximising the efficiency of the start-up and shut-down cycles for the project,
 - (vi) provision for regular review of air quality monitoring data, with comparison of results against the predictions made in the document listed under condition B1(b),
 - (vii) plans for regular maintenance of process equipment to minimise the potential for leaks and fugitive emissions, and
 - (viii) a contingency plan should an incident, process upset or other initiating factor lead to elevated air quality impacts, whether above normal operating conditions or environmental performance goals/ limits;
- (b) an **Operational Noise Management Plan** to detail measures to mitigate and manage noise during operation of the project. The Plan shall include, but not necessarily be limited to -
 - (i) identification of the noise limits specified under this approval,
 - (ii) identification of operational activities that will be carried out and the associated noise sources,
 - (iii) details of the management methods, procedures and mitigation measures that will be implemented to control individual and overall noise emissions from the site during operation,
 - (iv) procedures for periodic consideration of noise impacts against the noise limits specified under this approval,
 - (v) noise monitoring and reporting procedures, including in response to complaints,
 - (vi) measures to monitor and minimise operational traffic noise, and
 - (vii) procedures to generate suitable documentation for annual noise monitoring and reporting, that demonstrates that the noise limits specified under this approval are being met;
- (c) an **Operational Groundwater Management Plan** to detail measures to monitor and assess the impacts of groundwater extraction on local groundwater quality and hydrology. The Plan shall be developed in consultation with NSW Office of Water and Upper Lachlan Shire Council and include, but not necessarily be limited to:
 - (i) groundwater quality and flow objectives and assessment criteria;
 - (ii) baseline data on groundwater quality, depth and flow in the project area;
 - (iii) groundwater extraction plan detailing the location of groundwater bores to be used to supply water for the operation of the power station, and volume and frequency of groundwater extraction from each bore;
 - (iv) schedule for periodic monitoring of groundwater quality, depth, and flow;
 - (v) rational and procedures and protocols for collecting groundwater samples;

- (vi) methods for assessing impacts on the quality, quantity and flow of groundwater resources resulting from groundwater extraction (within at least a four kilometre radius of the extraction points);
- (vii) measures for protecting groundwater resources from wastewater infiltration or contaminated leachate and methods for assessing any potential impacts associated with infiltration or leachate;
- (viii) contingency planning to minimise any impacts on other water users and a response plan to address potential exceedances and groundwater quality or quantity impacts; and
- (ix) provisions for compensation of other licensed extractors whose access to water is impacted by this project; and
- (d) an **Operational Water and Wastewater Management Plan** to detail measures to manage and monitor water and wastewater usage and water quality impacts, and ensure that the Project is managed as a nil discharge site. The Plan shall include, but not necessarily be limited to -
 - (i) water quality objectives and assessment criteria;
 - (ii) water balance detailing water consumption and uses:
 - a. domestic and operational wastewater volumes generated on site;
 - b. types;
 - c. volumes of wastewater reused on site and nature of the reuse operations; and
 - d. volume of wastewater disposed of offsite including its source nature and frequency;
 - (iii) identification of clean and contaminated surface water runoff, measures for managing runoff, and the location and design characteristics of contaminated water storage(s);
 - (iv) details of the proposed sewage management process and effluent and biosolids management measures, including an assessment of all potential impacts where effluent and biosolids are managed/ disposed of on site; and
 - (v) contingency measures in the case of accidental discharges to surface waters, including remediation and monitoring measures.

HAZARD AUDIT

F26. Twelve months after the commencement of operation of the Project and every three years thereafter, or as otherwise agreed by the Director-General, the Proponent shall commission an independent, qualified person or team (approved by the Director-General prior to each audit) to undertake a comprehensive **Hazard Audit** of the Project. The Hazard Audits shall be carried out in accordance with the Department's publication *Hazardous Industry Planning Advisory Paper No. 5 - Hazard Audit Guidelines*. The audit report must be accompanied by a program for the implementation of all recommendations made in the audit report. If the Proponent intends to defer the implementation of a recommendation, reasons must be documented.

The audit reports shall be submitted to the Director-General within one month of each audit.

End of Schedule F

SCHEDULE G**ADDITIONAL PROCEDURES****LAND ACQUISITION CRITERIA**

- G1. If any negotiated agreement between the Proponent and landowner involves land acquisition, the Proponent shall make a binding written offer to the landowner based on (unless otherwise agreed to by the landowner):
- (a) the current market value of the landowner's interest in the property at the date of this written request, as if the property was unaffected by the Project which is the subject of the Project application, having regard to the –
 - (i) existing and permissible use of the land, in accordance with applicable planning instruments at the date of the written request, and
 - (ii) presence of improvements on the property and/or any approved building or structure which has been physically commenced at the date of the landowner's written request, and is due to be completed subsequent to that date;
 - (b) the reasonable costs associated with –
 - (i) relocating (inclusive of any business related activity located on the property) within the local government area, and
 - (ii) obtaining legal advice and expert advice for determining the acquisition price of the land, and the terms upon which it is required; and
 - (c) reasonable compensation for any disturbance caused by the land acquisition process.
- G2. The Proponent shall bear the costs of any valuation or survey assessment.
- G3. If the Proponent and landowner agree that only part of the land shall be acquired, then the Proponent shall pay all reasonable costs associated with obtaining Council approval for any plan of subdivision (where permissible), and registration of the plan.

End of Schedule G

17 August 2012

Dalton Power Project

Planning Agreement

The Upper Lachlan Shire Council

AGL Energy Ltd

Freehills

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Planning Circular

Freehills

Planning Agreement

Date »

Between the parties

The Upper Lachlan Shire Council

ABN 81 011 241 552 of 44 Spring Street, Crookwell NSW 2583

(Council)

AGL Energy Ltd

ACN 115 061 375 of Level 21, 101 Miller Street, North Sydney NSW 2060

(Company)

Recitals

- 1 The Development is a project to which Part 3A of the EPA Act applies.
- 2 The Company lodged an application seeking Part 3A Approval for the Development on 25 March 2010.
- 3 Part 3A Approval was granted for the Development on 19 July 2012.
- 4 Condition B16 of the Part 3A Approval requires the Company to, within 12 months of the date of the Part 3A Approval, unless otherwise agreed by the Director-General, enter into a planning agreement with the Council to provide contributions to the Council for a Community Enhancement Fund.
- 5 This deed satisfies condition B16 of the Part 3A Approval.
- 6 If the Development proceeds to Stage 1, the Company has agreed to pay to the Council's Community Enhancement Fund the amount of 0.833% of Stage 1 Capital Expenditure over a period of 40 years on the terms set out in this deed.
- 7 If the Development proceeds to Stage 2, the Company has agreed to pay to the Council's Community Enhancement Fund the amount of 0.833% of Stage 2 Capital Expenditure over a period of 40 years on the terms set out in this deed.
- 8 The Council agrees to distribute the Monetary Contributions in accordance with the terms of the Community Enhancement Fund.

The parties agree as follows:

Freehills

1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this deed are set out below:

Term	Meaning
Approved Local Project	Local Project recommended by the Committee and approved by Council for funding from the Community Enhancement Fund in accordance with this deed.
Auditor	an appropriately qualified accountant appointed by the Council.
Committee	a formal committee of Council, constituted pursuant to section 355 of the <i>Local Government Act 1993</i> (NSW), established to administer the Community Enhancement Fund in accordance with the DCP.
Community Enhancement Fund	the fund of the same name established and administered by the Council in accordance with the DCP.
Construction Certificate	has the meaning contained in the EPA Act.
Costs	includes costs, charges and expenses, including those incurred in connection with advisers.
DCP	the <i>Upper Lachlan Development Control Plan 2010</i> as amended from time to time.
Development	the construction and operation of the Dalton Power Project on the Land, being a gas fired power station built in two stages with Stage 1 comprising between two and four open cycle gas turbines with a capacity of up to 750 megawatts and Stage 2 comprising a facility with up to six open cycle gas turbines with a capacity of up to 1,500 megawatts, and construction of a gas pipeline, access road and transmission line connection.
Development Cost	The value of works must be provided by the applicant at the time of request with adequate supporting documentation, and must be independently certified by a Quantity Surveyor who is registered with the Australian Institute of Quantity Surveyors or a person who

Freehills**† Definitions and interpretation**

Term	Meaning
	can demonstrate equivalent qualifications in accordance with the definition of 'Quantity Surveyor'.
EPA Act	<i>Environmental Planning and Assessment Act 1979 (NSW)</i> .
Funding Application	has the meaning given in clause 6.2.
Government Agency	any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.
Index Number	the Consumer Price Index for Australian (All Groups Index for Capital Cities) as published by the Australian Bureau of Statistics.
Land	<p>the site of the Development, being the land contained in the following property titles:</p> <ol style="list-style-type: none"> 1 Lots 115, 249, 252, 253, 305 and 307 in DP754111 ('The Elms'); 2 Lots 14, 183, 184, 187, 200, 283 and 306 in DP754111 and Lots 1 and 2 in DP 126122 ('Holmes'); 3 Lots 116, 162, 317, 318, 321, 322 in DP754111 ('Riverview'); 4 Lots 21, 186 and 251 in DP754111; 5 part Lots 23, 27, 30, 31 in DP754111; and 6 Lot 1 in DP126119.
Local Projects	<p>any projects proposed to be carried out within the Upper Lachlan Shire Council local government area with a preference for any projects located within the localities of Dalton, Gunning and Biala which are aimed at:</p> <ol style="list-style-type: none"> 1 enhancing any aspect of the local environment including, but not limited to, ameliorating any impacts from the Development; or 2 providing any public community service or public facility and public infrastructure.
Mediator	a person appointed as mediator under clause 10.5 of this deed.
Monetary Contribution	the monies paid to the Council in accordance with clause 5 of this deed.
Part 3A Approval	project approval no. MP10_0035 granted by the Planning and

Freehills

1 Definitions and Interpretation

Term	Meaning
	Assessment Commission, as delegate of the Minister for Planning and Infrastructure, under section 75J of the EPA Act which authorises the construction and operation of a gas turbine power station and associated infrastructure known as the Dalton Power Station.
PS 10-008	the planning system circular PS 10-008 issued on 10 May 2010 in the form at Attachment 1.
Quantity Surveyor	Independent quantity surveyor nominated by the Council and acceptable to the Company (acting reasonably)
Stage 1	Stage 1 of the Development comprising construction and operation of between two and four open cycle gas turbines with a capacity of up to 750 megawatts.
Stage 1 Capital Expenditure	the total capital expenditure for Stage 1, being an amount calculated in accordance with PS 10-008, as certified by a Quantity Surveyor.
Stage 1 Date	the date on which the Company gives notice to proceed for Stage 1 to its principal contractor for engineering, procurement and construction.
Stage 1 Monetary Contribution	an amount calculated in accordance with the following formula as adjusted in accordance with clause 5.1(b) of this deed: $\frac{0.833\% \times \text{Stage 1 Capital Expenditure}}{40}$
Stage 1 Monetary Contribution Year 0	an amount calculated in accordance with the following formula: $\frac{0.833\% \times \text{Stage 1 Capital Expenditure}}{40}$
Stage 2	Stage 2 of the Development comprising construction and operation of one or more additional gas turbines
Stage 2 Capital Expenditure	the total capital expenditure for Stage 2, being an amount calculated in accordance with PS 10-008, as certified by a Quantity Surveyor. For the avoidance of doubt, the Stage 2 Capital Expenditure does not include the Stage 1 Capital Expenditure.
Stage 2 Date	the date on which the Company gives notice to proceed for Stage 2

Freehills

1 Definitions and interpretation

Term	Meaning
	to its principal contractor for engineering, procurement and construction.
Stage 2 Monetary Contribution	an amount payable annually over forty years calculated in accordance with the following formula as adjusted in accordance with clause 5.2(c) of this deed: $\frac{0.833\% \times \text{Stage 2 Capital Expenditure}}{40}$
Stage 2 Monetary Contribution Year 0	an amount calculated in accordance with the following formula: $\frac{0.833\% \times \text{Stage 2 Capital Expenditure}}{40}$

1.2 Interpretation

- (a) Clause headings are for convenience only and will be ignored in the interpretation of this deed.
- (b) References to a party include the successors and permitted assigns of that party.
- (c) Words importing the singular include the plural and words importing the plural include the singular.
- (d) Words importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- (e) Nothing contained in this deed will be deemed or construed as creating the relationship of partnership.
- (f) References to a month mean a calendar month and a reference to a year means a calendar year.
- (g) References to any document include any permitted amendment, supplement to or replacement or novation of the document.
- (h) References to any legislation or to any section or provision of any legislation includes any:
 - (1) statutory modification or re-enactment of or any statutory provision substituted for that legislation, section or provision; or
 - (2) ordinances, by-laws, regulations and other statutory provision substituted for that legislation, section or provision.
- (i) Other grammatical forms of defined words or expressions have corresponding meanings.
- (j) "Including" and similar expressions are not words of limitation.
- (k) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this agreement.
- (l) A promise on the part of 2 or more persons binds them jointly and severally.

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2 Planning Agreement

- (m) A reference to an agreement other than this agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (n) A reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.
- (o) No provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of this agreement or that provision.
- (p) A reference to a body, other than a party to this agreement (including an institute, association or authority), whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

2 Planning Agreement

The parties agree that this deed is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the EPA Act.

3 Application of this deed

This deed satisfies condition B16 of the Part 3A Approval.

4 Operation of this deed

-
- (a) The parties agree that this deed will bind the parties from the date that AGL Energy Ltd and Upper Lachlan Shire Council have both executed, signed and dated the deed.
 - (b) The parties agree that this deed will not operate until the later of:
 - (1) the date on which the Company obtains a Construction Certificate for any part of the Development; and
 - (2) the Stage 1 Date.

5 Payment of the monetary contribution**5.1 Stage 1 Monetary Contribution**

-
- (a) If the Company proceeds to Stage 1, the Company must pay to the Council the Stage 1 Monetary Contribution:

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6 Community Enhancement Fund

- (1) within 30 days of the Stage 1 Date; and
 - (2) each year up to and including the 39th anniversary of the Stage 1 Date, within 30 days of the anniversary of the Stage 1 Date.
- (b) The parties agree that the Stage 1 Monetary Contribution will be reviewed and adjusted each year on the anniversary of the Stage 1 Date in accordance with the following formula:
- $$MC = \frac{A \times B}{C}$$
- Where:
- MC = the Stage 1 Monetary Contribution payable for the following contribution year;
- A = the Stage 1 Monetary Contribution Year 0;
- B = the Index Number last published before the end of the contribution year just ended; and
- C = the Index Number last published before the Stage 1 Date.
- (c) The monetary contribution is a taxable supply for GST in accordance with Clause 12.

5.2 Stage 2 Monetary Contribution

- (a) If the Company proceeds to Stage 2, the Company must pay to the Council the Stage 2 Monetary Contribution:
- (1) within 30 days of the Stage 2 Date; and
 - (2) each year up to and including the 39th anniversary of the Stage 2 Date, within 30 days of the anniversary of the Stage 2 Date.
- (b) The Stage 2 Monetary Contribution is in addition to the Stage 1 Monetary Contribution.
- (c) The parties agree that the Stage 2 Monetary Contribution will be reviewed and adjusted each year on the anniversary of the Stage 2 Date in accordance with the following formula:
- $$MC = \frac{A \times B}{C}$$
- Where:
- MC = the Stage 2 Monetary Contribution payable for the following contribution year;
- A = the Stage 2 Monetary Contribution Year 0;
- B = the Index Number last published before the end of the contribution year just ended; and
- C = the Index Number last published before the Stage 2 Date.
- (d) The monetary contribution is a taxable supply for GST in accordance with Clause 12.

5.3 Application of Monetary Contributions

The Council must hold and apply all Monetary Contributions in accordance with clause 6.

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6 Community Enhancement Fund

6 Community Enhancement Fund**6.1 Community Enhancement Fund**

- (a) The Council must invest all Monetary Contributions in an interest bearing externally restricted reserve fund held in the name of the Council for the purpose of the Community Enhancement Fund.
- (b) The Council must ensure that the Community Enhancement Fund is established and remains established during the term of this deed.
- (c) The Council must ensure that the Company has at least one representative on the Committee at any time, if the Company so chooses.

6.2 Call for funding applications

The Council agrees:

- (a) in February to March each year in which there are funds in the Community Enhancement Fund; or
- (b) any further period determined by the Committee.

to publicly advertise in the Council Voice newsletter and in the local newspapers the availability of funds in the Community Enhancement Fund and to call for applications to be made to the Committee, in the form required by the Committee, from the public, community groups and individuals for funding for Local Projects (Funding Applications).

6.3 Notification to Company

The Council must procure that the Committee:

- (a) if requested by the Company, consult the Company in relation to applications made for funding for Local Projects from the Community Enhancement Fund; and
- (b) notifies the Company of each Local Project which is to be funded from the Community Enhancement Fund after full Council adoption and resolution including the amounts of any funding.

6.4 Allocation of funds

- (a) The Council must pay funds from the Community Enhancement Fund to each Local Project recommended from time to time by the Committee for funding from the Community Enhancement Fund in accordance with the determinations made by the full Council of Upper Lachlan Shire Council.
- (b) This deed expressly authorises Council to progressively or otherwise pool funds to fund prioritised projects as recommended by the Committee.

6.5 Public recognition

- (a) If requested by the Company, the Council must publicly acknowledge:
 - (1) the payment of the Monetary Contribution by the Company; and
 - (2) the Company's role in funding any Approved Local Projects via the Community Enhancement Fund.
- (b) The form of public acknowledgment required by clause 6.5(a) is to be agreed by the Council and the Company (acting reasonably) but may include:

Freehills7 Registration

- (1) the inclusion of the Company's logo in any advertisement for Funding Applications or an announcement made in relation to the Approved Local Projects and funding determinations; and
- (2) where appropriate for particular Approved Local Projects, a permanent sign recognising that the Approved Local Project was funded by the Company via the Community Enhancement Fund.

6.6 Auditing

- (a) During each year in which there are funds in the Community Enhancement Fund, the Council must appoint an Auditor to reconcile:
 - (1) the Monetary Contributions paid by the Company under clause 5; and
 - (2) any payments made by the Council in accordance with clause 6.4, and identify any corrective payments required.
- (b) The Company and the Council must make any corrective payments identified by the Auditor as being necessary to reconcile the Community Enhancement Fund.
- (c) The costs of the Auditor will be paid out of the Community Enhancement Fund.
- (d) The Auditor must provide to the Company a report on its work undertaken in accordance with clause 6.6(a) within three months of completing that work.

6.7 Administration

The costs of administering the Community Enhancement Fund by Council shall be paid out of the Community Enhancement Fund. The administration costs shall be \$5000 per annum, indexed to CPI over the life of the project.

7 Registration

The parties agree that this deed will be registered on the Land pursuant to section 93H of the EPA Act. All costs associated with the registration of the deed will be payable by AGL Energy Limited.

8 Disposal by the Company of its interest in the Development

Prior to the Company disposing of its interest in the Development to any third party, the Company must procure entry by that third party into a deed with the Council on substantially the same terms and conditions as this deed.

9 No fetter

Nothing in this deed shall be construed as requiring the Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

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10. Dispute resolution

10 Dispute resolution**10.1 Notice of dispute**

If a party claims that a dispute has arisen under this deed (Claimant), it must give written notice to the other party (Respondent) stating the matters in dispute and designating as its representative a person to negotiate the dispute (Claim Notice).

10.2 Response to Claim Notice

Within 20 business days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

10.3 Negotiation

The nominated representatives must:

- (a) meet to discuss the matter in good faith within 10 business days after service by the Respondent of notice of its representative; and
- (b) use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met;

10.4 Further notice if not settled

If the dispute is not resolved within 15 business days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (Dispute Notice).

10.5 Mediation

The parties agree that a dispute shall be mediated if it is the subject of a Dispute Notice, in which case:

- (a) the parties must agree the terms of reference of the mediation within 5 business days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) the appointment of a Mediator will be agreed between the parties, or failing agreement within 5 business days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply to appoint a mediator;
- (c) the Mediator appointed pursuant to this clause 10.5 must:
 - (1) have reasonable qualifications and practical experience in the area of the dispute; and
 - (2) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- (d) the Mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (e) the parties must within 5 business days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;

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11 GST

- (f) the parties agree to be bound by any mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
- (g) in relation to Costs and expenses:
 - (1) each party will bear their own professional and expert costs incurred in connection with the mediation;
 - (2) the Costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

10.6 Litigation

If the dispute is not finally resolved in accordance with clause 10.5, either party is at liberty to litigate the dispute.

10.7 Exchange of information

The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process established by this clause 10 for any purpose other than an attempt to settle a dispute between the parties.

10.8 Continue to perform obligations

Each party must continue to perform its obligations under this deed, notwithstanding the existence of a dispute.

11 GST**11.1 Interpretation**

- (a) Except where the context suggests otherwise, terms used in this clause 11 have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time).
- (b) In this clause 11:
 - (1) "monetary consideration" means any consideration expressed as an amount of money; and
 - (2) "non taxable supply" means a supply that is not a taxable supply.
- (c) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause.
- (d) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

11.2 Reimbursements

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total

cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates

11.3 Additional amount of GST payable

If GST becomes payable on any supply made by a party ("Supplier") under this deed:

- (a) any amount payable or consideration to be provided under any provision of this deed (other than this clause), for that supply is exclusive of GST;
- (b) any party ("Recipient") that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply ("GST Amount") at the same time as any other consideration is to be first provided for that supply; and
- (c) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with this clause.

11.4 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 11.3), varies from the additional amount paid by the Recipient under clause 11.3, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

12 General

12.1 Costs

The parties agree to meet their own Costs in connection with:

- (a) the negotiation, preparation and execution of this deed;
- (b) performing its obligations under this deed; and
- (c) the advertising and exhibiting of this planning agreement in accordance with the EPA Act.

12.2 Notices

- (a) A party notifying or giving notice under this deed must do so in writing addressed to that party in accordance with the details nominated in Schedule 1 (or any alternative details nominated to the sending party by notice).
- (b) A notice given in accordance with clause 12.2(a) will be deemed to have been given and received:
 - (1) if delivered, on receipt;
 - (2) if posted via registered post, three business days after posting;
 - (3) if sent by facsimile on confirmation of the correct transmission of the facsimile; and

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12. General

- (4) any notice received after 5.00 pm or on a day not a business day shall be deemed to have been received at 9.00 am on the next business day.

12.3 Waiver

- (a) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this deed, does not amount to a waiver of any obligation of, or a breach of obligation by, another party.
- (b) A waiver by a party is only effective if it is in writing.
- (c) A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

12.4 Governing law

This deed is governed by New South Wales law and each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed.

12.5 Prior agreements superseded

This deed:

- (a) wholly replaces and excludes all prior agreements, correspondence, negotiations, representations, explanations and statements between the parties covering or in connection with the matters covered by this deed; and
- (b) is the entire agreement between the parties in respect of the matters covered by this deed.

12.6 Modification of deed

No modification or alteration of any provision of this deed will be valid unless it is in writing and signed by all parties to this deed.

12.7 Representations and warranties

The parties represent and warrant that they have power to enter into this deed and comply with their obligations under the deed and that entry into this deed will not result in the breach of any law.

12.8 Severability

If any provision of this deed is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.

12.9 Confidentiality, media releases and enquiries

- (a) The parties agree that the terms of this deed are not confidential and this deed may be treated as a public document and exhibited or reported without restriction by any party.

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12 General

- (b) If requested by a party, the other party must not issue, publish or authorise any media release or advertisement concerning this deed, without obtaining the other party's prior written approval (which approval may not be unreasonably withheld).

12.10 Counterparts

This deed may be executed in any number of counterparts that together will constitute one instrument. A party may execute this deed by signing any counterpart.

12.11 No fiduciary relationship

Nothing in this deed will be construed or interpreted as constituting the relationship between the parties as that of a partnership, joint venture or any form of fiduciary relationship.

12.12 Further acts

Each party must promptly execute all documents and do all things reasonably required to effect, perfect or complete this deed and all transactions incidental to it.

12.13 Enforcement

This deed may be enforced by any party in any court of competent jurisdiction subject to compliance with clause 10 of this deed.

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Schedules

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Notice details

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Schedule 1

Notice details

The Upper Lachlan Shire Council

Address 44 Spring Street, Crookwell NSW 2583
Attention General Manager
Phone (02) 4830 1000
Fax (02) 4832 2066
Email jbell@upperlachlan.nsw.gov.au

AGL Energy Ltd

Address Level 21, 101 Miller Street, North Sydney NSW 2060
Attention Mark Stephens
Phone (02) 9921 2280
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Freehills

Signing page

Executed as an agreement

Signed for
The Upper Lachlan Shire Council

sign here ► [Signature]

print name JOHN BELL

in the presence of

sign here ► [Signature]

Witness

print name: TINA DODSON

Signed for
AGL Energy Ltd
by their authorised representative

sign here ► [Signature]

print name Anthony Fowler

in the presence of

sign here ► [Signature]

Witness

print name JANE BLAMPED

Freehills

Attachment 1

Planning Circular



Planning

PLANNING Circular

PLANNING SYSTEM

Regional and State planning

Circular PS 10/2010

Issued 10 May 2010

Related

New definition of capital investment value

This circular is to advise councils, developers and the community of a new definition of 'capital investment value' under the *Environmental Planning and Assessment Regulation 2000* and certain State Environmental Planning Policies.

Introduction

A new definition of 'capital investment value' (CIV) has been included in the *Environmental Planning and Assessment Regulation 2000* (the Regulation) to provide greater certainty as to what items should be included and excluded when calculating the CIV for a project.

From 7 May 2010, this definition is to be used when considering whether Schedule 1 of the State Environmental Planning Policy (Major Development) 2005 (MD SEPP) identifies a proposal as a project to which Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act) applies or if it is an application to be determined by a Joint Regional Planning Panel (Regional Panel). The definition is also to be used to determine the fees payable for an application under Part 3A of the EP&A Act. It is also relevant to certain other types of development and actions covered by SEPPs that reference the term.

However it does not apply for the purpose of calculating an application fee for a Part 4 development application, which continues to use 'cost of works' (see Clause 246 of the Regulation).

On 7 May 2010, the *State Environmental Planning Policy Amendment (Capital Investment Value) 2010* (the CIV SEPP) amended several State Environmental Planning Policies (SEPPs) to ensure the definition of CIV is consistent throughout the NSW planning system.

Changes relating to the Regulation

The amended definition is included in clause 3 of the Regulation, as follows:

Capital investment value of a development or project includes all costs necessary to establish and operate the project, including the design and construction of buildings, structures, associated infrastructure and fixed or mobile plant and equipment, other than the following costs:

(a) amounts payable, or the cost of land dedicated or any other benefit provided, under a condition imposed under Division 6 or EA of Part 4 of the *Environmental Planning and Assessment Act* or a planning agreement under that Division;

(b) costs relating to any part of the development or project that is the subject of a separate development consent or project approval;

(c) land costs (including any costs of marking and selling land);

(d) GST (as defined by *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act)).

The main change to the definition is a restriction that the following items should be excluded when calculating the CIV for a development:

- Development contributions - it is not appropriate to include development contribution charges in calculating the capital investment value. These charges are considered an external cost that should not contribute to the value of the development or be included for the purpose of calculating the project fees or other developer charges.

**SIGN
HERE**

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Attachment 1 Planning Circular

Department of Planning Circular PS 10-008

- * Costs relating to any part of the development or project that is, or will be, the subject of a separate development consent or project approval – the capital investment value of the development must only include those works that are subject to the current application, not prior or subsequent applications.

CIV made consistent in all SEPPs

The CIV SEPP amends:

- MD SEPP
- State Environmental Planning Policy (Sydney Regional Growth Centres) 2006
- State Environmental Planning Policy (Infrastructure) 2007, and
- State Environmental Planning Policy (Western Sydney Parklands) 2009.

These instruments are amended to ensure CIV has the same meaning as in the Regulation (as above).

Recent court case on CIV

The recent Land and Environment Court judgment *Calardu Penrith Pty Ltd v Penrith City Council* [2010] NSWLEC 50 Pty Ltd was partly concerned with the calculation of CIV. Although the judgement did not consider the amended definition of CIV, it provides relevant principles when calculating CIV, as follows:

- The included costs must relate to works contemplated in the application.
- The CIV of a proposed development is to be calculated at the time of lodgement of the application for the purposes of determining whether an application should go to a Regional Panel.
- CIV is expressly concerned with "costs" that are of a capital nature.
- These costs do not need to be incurred by the proponent/ applicant.
- There must be sufficient evidence to support the amounts, and considerable weight should be given to amounts that have been contractually agreed upon.
- Finance costs should not be included.

Determination of CIV

- The calculation of CIV under clause 13B of the MD SEPP is one of fact; it is not subject to the opinion of either the Council or the Regional Panel. Any disagreement about the CIV should be resolved objectively by a quantity surveyor.
- The Minister has the sole responsibility for forming the opinion if a development is a project to which Part 3A applies. Once such an opinion is formed, the project remains a Part 3A project regardless of any subsequent variations to CIV (or other relevant facts).

Staged development

When calculating the CIV for a staged development, the CIV of the separate applications comprising the overall staged development must be considered in determining the CIV for that development. However

an application can only be "started" at the request of the applicant.

Calculating CIV

The following information is provided as a guide to assist in establishing the types of costs that should be included and excluded when calculating CIV. The following information is not exhaustive and should be considered as a general guide based on the amended definition and the relevant matters raised in the recent court case.

Design and construction

The calculation of CIV should include the amount required to design and construct all buildings and other facilities that are part of included in the application, including any temporary buildings that will be used during the construction phase.

Structures and infrastructure

CIV should include all costs incurred from the construction of associated structures and infrastructure that are the subject of the current application. These costs include any supplementary or site preparatory works such as remediation, demolition, excavation and filling, that are required for the construction of buildings, provided these works are needed to make the site suitable for construction and for the operation of the project.

Site services

CIV should include the costs of providing electrical services, water, gas, sewerage and stormwater drainage, including any temporary diversions and/or arrangements during construction, and should form part of the application.

The costs of fire protection and communications services that are reasonably required to construct and operate the project should also be included.

Site works such as landscaping, car parking, roads and footpaths should also be included.

Plant and equipment

CIV should include standard building plant, such as lifts and air-conditioning, and all specialist and specific equipment related to the operation of the project, provided these are specifically included as part of the application.

Fit-out costs of a building may be included in the calculation of CIV where the costs are subject to the application. In such cases, the application would need to include specific tenancy use, and would be defined by specific reference to description in the application. Where such tenancy is not referred to or will be subject to further applications, the fit out costs should not be included.

Labour fees

All labour and personnel costs, including the payment of long service levies and other associated construction and labour costs should be included in the calculation of the CIV.

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Freehills

Attachment 1 Planning Circular

Department of Planning circular PS 10-008

Other fees:

Costs such as finance application fees, mortgage stamp duty, fees paid to register strata titles or to amalgamate land prior to development, and interest payable on the loans associated with the development should be excluded in the calculation of CIV.

Further Information

A copy of the amended Regulation and relevant SEPPs are available on the NSW legislation website:

<http://www.legislation.nsw.gov.au>

If you have further enquiries, please contact:

NSW Department of Planning
23-33 Bridge Street, Sydney NSW 2000
GPO Box 39, Sydney NSW 2001
Tel: 02 9228 6111 Fax: 02 9228 6455

Email: information@planning.nsw.gov.au

Note: This and other Department of Planning circulars are published on the web at:
<http://www.planning.nsw.gov.au/PlanningSystem/Circularsandguidelines/tabid/69/language/en-US/Default.aspx>

Authorised by:
Sam Haddad
Director-General
NSW Department of Planning

Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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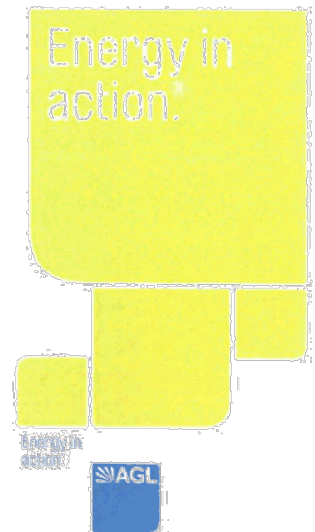
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Mr Mike Young
Director Resource Assessments
Department of Planning and Environment
320 Pitt Street, Sydney NSW 2000
2 March 2017

Dear Mr Young,

Re: Dalton Power Project - Request to extend Lapse Date

The Dalton Power Project is a proposed peaking gas turbine power station with the capacity to generate up to 1000 megawatts (**DPP**).

The Planning Assessment Commission granted AGL Energy Ltd (**AGL**) project approval for the construction and operation of the DPP under Part 3A of the *Environmental Assessment & Planning Act 1979* on 19 July 2012 (MP10_0035). The DPP was designated as critical infrastructure. The current lapse date for the DPP Project Approval is 19 July 2017.

AGL seeks to modify the Project Approval (**MOD 1**) to extend the lapse date for a further **two years** to enable:

- (a) AGL to review the DPP in line with current technology and energy market circumstances;
- (b) consultation with the local community, landholders and other stakeholders on potential modifications to the DPP to take into account new technologies and market conditions; and
- (c) if required, AGL to lodge a more substantive project approval modification (MOD 2).

The project description, legal framework and justification for MOD 1 (lapse date extension) are detailed below.

Project Description

The DPP is a proposed \$1.5 billion gas turbine power plant on an approximately 573 hectare site located off Walshs Road, approximately four kilometres north of the town of Dalton.

The DPP was proposed to be constructed in two stages, with stage 1 not exceeding a nominal generating capacity of 750 megawatts (**MW**). The total nominal generating capacity after completion of stage two was not to exceed 1000 MW.

In October 2012, AGL announced the suspension of construction of the DPP due to difficult market conditions – including lower demand for electricity.

At that time, AGL publicly acknowledged that the Project Approval remained valid for five years, and that market conditions or demand could change.



Legal framework

The DPP is a "transitional Part 3A project" under the *Environmental Planning & Assessment Amendment Act 2011*, and therefore the modification is sought under s75W of Part 3A of the EP&A Act (preserved under Schedule 6A to the EP&A Act) to extend the lapse date for a further two years.

The DPP has also been approved by the Commonwealth Department of Environment under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Justification for extending the lapse date

• Importance of the Project – change in market conditions

Since AGL suspended development of the DPP, energy market conditions have changed.

The original justification for the DPP remains the same – i.e. – that it will contribute to ensuring adequate, reliable and consistent supply of electricity during times of peak demand in NSW, and help to keep downward pressure on price.

However the supply of traditional base load (thermal) generation in NSW is declining, while the supply of renewable, intermittent sources is increasing.

The Australian Energy Market Operator's (AEMO) Electricity Statement of Opportunities (2016 ES00), predicts that total generation capacity will become less reliable as intermittent generation (e.g. wind and photovoltaic generation) increases and thermal generation (e.g. coal and gas-fired generation) withdraws. This creates a critical need to address the availability of energy at specific times of demand.

The 2016 ES00 forecasts that in the absence of new generation, network or non-network development, the closure and announced withdrawal of coal-fired power stations (such as the closure of Munmorah and Wallerawang Power Stations, and AGL's announced withdrawal of 2000 MW of generation from Liddell in March 2022), may lead to decreased reliability of supply.

The DPP can assist in addressing this issue by, among other things, providing up to 1000 MW of rapid start up generation capacity at times of reduced supply or generation capability of other power plants and sources.

Furthermore, the potential for a regional blackout (similar to the recent blackouts in South Australia) increase as NSW becomes more reliant on wind and rooftop PV generation. This risk is heightened at times when high demand coincides with low wind and rooftop PV generation and unplanned generation outages.

While the DPP alone cannot improve reliability of the NEM, it does have the potential to improve network reliability in these market conditions, forming an integral part of the NEM's supply.

• Improved efficiency, flexibility and greater community consultation

Extending the lapse date will allow adequate time for AGL to review and update the DPP in line with current technology and energy market circumstances. Since the original EA was prepared, energy technology has evolved, resulting in greater efficiencies. For example, the current Project Approval requires 'F Class' turbines to be used. This fails to take into account new and more efficient technologies, such as 'fast start' aero derivative gas turbines. In addition battery storage is emerging as a complementary technology able to supply energy for the period while gas turbines are increasing output.



AGL seeks that MOD 1 (lapse extension) be approved to allow AGL adequate time to evaluate the most efficient and cost effective solutions for the project, in addition to current market conditions, in order to lodge a more substantive modification (MOD 2) including updated expert reports.

AGL acknowledges that an extension to the lapse date will result in some ongoing uncertainty for the local community, particularly in view of AGL's previous suspension of the DPP.

However the additional time will enable AGL to recommence engagement with the local community (i.e. by establishing a community consultation committee), Upper Lachlan Shire Council and other stakeholders on the DPP, and the potential more substantive modification to the Project Approval.

AGL considers that extending the lapse date to review the project and enable recommencement of community and stakeholder engagement will provide maximum transparency for the local community in relation to the future of the DPP.

In the 7-8 years since the initial development activities at Dalton, AGL's approach to community consultation has improved in effectiveness and sophistication. This improvement has been built on experience across Australia in wind, solar and CSG projects. Today, AGL has a dedicated and well-resourced stakeholder team which are a key part of our development activities. This team not only assists in consulting with the communities in which we operate but also in auditing and ensuring that our projects meet our board endorsed sustainability standards. At the heart of these standards is the routine use of Community Consultative Committees during development and construction to ensure effective communication. During a MOD2 process, setting up a CCC would be our first action in preparing an application to update the DPP approval.

AGL's approach to engaging with the community is outlined in our Community Engagement Policy. We seek to:

- Be a trusted and respected member of the communities in which we operate
- Engage beyond baseline regulatory requirements.

Our Community Engagement Policy is consistent with the best practice standards articulated by the International Association for Public Participation (IAP2) and Accountability. Our policy applies to all AGL employees, contractors, projects, services and joint ventures under AGL's control.

Community engagement to support a modification will focus on providing clear, effective information on the project to identified stakeholders and to engage in open dialogue through transparency, listening, recording and responding to issues where appropriate. We will review and update our stakeholder identification and analysis to ensure that it addresses any changes in social context since the project was approved.

Initial engagement activities will focus on understanding key issues of concern and rebuilding relationships in the community. These activities will include meetings and briefings with State and Federal Members of Parliament (MPs), Council, and members of the community who have previously shown an interest in the project.

As part of our Community Engagement Policy, AGL adopts a continuous improvement process. Engagement to support this modification will be reviewed and feedback will inform our approach to engaging on any potential further modification. Engagement will be scaled appropriately and include the provision of clear and factual information and opportunities to provide feedback on the proposal. Accordingly, engagement activities to support a further modification may include:

- Community updates/ fact sheets
- Website updates



- Meetings and briefings
- Presentations and information sharing sessions
- Open house and community drop-in sessions
- Community workshops
- The establishment of a Community Consultative Committee (CCC)
- Community investment
- The provision of community benefits to offset construction impacts
- **Increased private sector investment consistent with government policy**

The DPP is consistent with government policy favouring private sector investment in electricity generation, which is projected to increase competition in the energy market and restrain costs for the whole economy.

Higher electricity prices are a risk to economic growth and create hardship for parts of the community. Extending the lapse date will ensure that the DPP remains a potentially viable project, which creates an opportunity to further Government policy by facilitating investment in flexible capacity which can place downward pressure on electricity prices and increase competitiveness.

- **Socio-economic benefits**

Extending the lapse date would not change the positive socio-economic benefits of the DPP, rather would better enable the positive employment and other socio-economic benefits of the DPP to be realised.

The DPP would require approximately 250 employees for each stage of construction, and approximately 5-10 employees once operational. Moreover, AGL will seek to source as many construction workers and facility operators from the local region as possible. This will generate positive social impacts for the Dalton population, and the wider population within the Upper Lachlan Local Government Area and neighbouring LGAs.

The Project will also generate significant economic benefits. It is estimated that if stage one were to result in 780 MW of generating capacity, it would create \$291.3m in value add GDP and household income effects. Furthermore, AGL will adopt numerous stringent mitigation measures relating to the control of noise levels, air and water quality, traffic and transportation, visual amenity and other environmental matters, as required under the Project Approval.

For example, AGL proposed an offset area of approximately 183.25 ha reflecting the values of the native biodiversity of the development footprint.

- **No change to scope as a result of extending the lapse date**

There is no change to the scope of the DPP as a result of MOD 1. A delay to the DPP does result in ongoing uncertainty for the local community, however the environmental impacts of a further delay would be minimal. The extended lapse date would enable a full review of the DPP, and if required, a more substantive modification which would include specialist studies of any modifications to the project scope.

- **Changes to the surrounding environment**

While an extension of the lapse date will result in negligible environmental impacts, as part of any more substantive modification (MOD 2), AGL would assess any changes to the local environment in addition to any changes to the DPP.

**Conclusion**

AGL seeks to extend the lapse date of the Project Approval by two years, to enable AGL to undertake a detailed review of the DPP taking into account changed market conditions and new technology, recommence community and stakeholder engagement, and lodge a further, more detailed modification application, if required.

Under the current market conditions, the DPP has the potential to form an important component of the NEM's flexible capacity, by satisfying peak demand and supplementing intermittent generation as coal-fired power plants continue to be withdrawn, therefore providing more secure and affordable supply to NSW homes and businesses.

It is expected that an extension of the lapse date will not result in changes to the benefits or impacts of the DPP.

AGL is committed to re-establishing effective consultation with the local community (including a CCC) and other stakeholders.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Nigel Bean'.

Nigel Bean

General Manager – Power Development

March 2017



Community Update on the AGL proposed Dalton Power Project.

Gas assisting with NSW's energy security.

AGL is committed to ensuring a secure, reliable and affordable energy supply in NSW as we transition to a carbon constrained economy. This proposal is one way that AGL can assist NSW to manage its energy security and price.

Gas fueled turbines operating in an open cycle arrangement are the most effective method of complementing intermittent renewable generation sources, such as wind and solar. As Australia transitions away from coal a gas turbine plant, such as Dalton, can ensure reliable generation is available to meet customer needs.

The government's approval of the power station is due to expire on 30 June 2017.

AGL will make a decision whether or not to proceed with the power station once we have considered a number of factors including the closure of coal fired power stations, and the introduction of new intermittent sources of energy.

Why Dalton was selected.

Dalton was selected as the preferred site for the proposed power station because of its proximity to electricity network connection at the Bannaby substation and the Moomba-Sydney gas pipeline connection, and the availability of a large rural site, largely shielded from homes and roads.

If built, the power station would be surrounded by a large buffer zone, to minimise the impact of operations on the local community. It would occupy less than 26 hectares (ha) of a 500 ha site. The site is currently leased for grazing and we expect to continue to provide land for this purpose if the power station is built.

This community update provides information on AGL's proposal to construct and operate a peaking power station four kilometres north of Dalton.

Project background

In July 2012, the NSW Government approved AGL's proposal to construct and operate a gas-turbine powered station of initially 750 megawatts and ultimately up to 1,000 megawatts. Later that year, AGL suspended the proposed power station due to market conditions.

More recently, the state's energy requirements have changed and the need to ensure secure, reliable and affordable energy supply in NSW has become increasingly important.

With this in mind, AGL has lodged an application for extension to give time to further consider if the power station is required.

What is a peaking power station?

A peaking power station is operated only when more energy supply is needed, not all of the time.

The project today

The modification application is on exhibition until 31 March 2017 and you can provide feedback on it by accessing the Department of Planning and Environment's website, www.majorprojects.planning.nsw.gov.au. Or viewing the documents during regular business hours at:

- » Department of Planning & Environment, Information Centre, Level 22, 320 Pitt Street, Sydney;
- » Upper Lachlan Shire Council, 123 Yass Street, Gunning;
- » Upper Lachlan Shire Council, 44 Spring Street, Crookwell; and
- » Nature Conservation Council, 14/338 Pitt Street, Sydney.

If granted, the extension will also allow AGL to consult with the local community, landholders and other stakeholders on potential modifications to the proposed power station that take into account new technologies and changing energy needs. If required following that review, AGL will lodge a request with government to modify the approved peaking power station.

What we heard and how we have responded.

During the environmental assessment of the proposed power station, various stakeholders including community members, provided feedback on the proposal.

This feedback included comments on noise, traffic, air quality, flora and fauna, visual impact and water supply. In response to this feedback, and in addition the rigorous regulatory assessments completed for the NSW Government, AGL completed additional studies and assessments, and made modifications to the project, including:

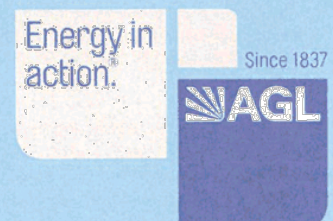
- » The NSW Government assessed the power station on a larger 1,500MW gas-fired plant, and identified that the project would meet all NSW environmental guidelines, including guidelines for air quality even at this larger scale.
- » After additional investigations into groundwater (bore) sources, there was evidence that the bore water will be adequate for the project and won't affect other bores, meaning trucking in external water supplies will not be required for the power station.
- » AGL will complete ongoing, real-time air quality monitoring during both construction and operation and will make this information publicly available on the project website.
- » AGL commissioned targeted surveys to assess whether the migratory, threatened Golden Sun Moth (*Synemon plana*) is present in the project area. The survey confirmed that the Golden Sun Moth does not occur on the site. Additionally, AGL has developed a series of mitigation measures to ensure our activities can co-exist with the moth should it begin to occupy the site.
- » AGL completed a detailed traffic management plan, in order to manage impacts on the community both during construction and operation.

AGL is committed to leaving a positive legacy in the communities in which we operate. In August 2012, we committed to establish a Community Enhancement Fund for a period of 40 years from the commencement of construction of the power station. The fund will support local community groups and members of the public to enhance the region and will be administered by Upper Lachlan Shire Council.

To find out more or request a meeting with AGL's Community Relations team, please contact us:

Email: daltonpower@agl.com.au
 Phone: 1800 039 600
 Web: www.agl.com.au/dalton

Our website includes lots of information on the proposal, including summaries of the environmental assessment, the submissions we received and how we have addressed issues raised in the design of the project.



Department of Planning and Environment- Local community given more time to com... Page 1 of 2

Local community given more time to comment on Dalton Power Project

Date: 23.03.2017 Type: Departmental Media Release

Author: Department of Planning and Environment

The community will have more time to give feedback on the Dalton Power Project extension after the Department of Planning and Environment extended the exhibition period for another two weeks.

Mike Young, Director of Resource Assessments, said while the exhibition period has already begun, the extension means the community can now make a submission up until 13 April, the day before Good Friday.

"The local community have let us know that the exhibition period was not long enough, and we have listened. It was a reasonable request and we have done so, giving people up until Easter," Mr Young said.

"Community consultation is an important part of the planning process and we read every submission sent to us as part of our assessment."

AGL is seeking a two year extension to the lapse date of its approval for the Dalton Power Project from July 2017 to July 2019.

"This application makes no changes to the approved Dalton Power Project," he said.

"The project approval allows for the construction and operation of a 1000 megawatt gas fired power station near Dalton, in the State's Southern Tablelands. The project would operate as a peaking facility to supply electricity at short notice during periods of peak demand.

"Once the Department finalises its assessment, including consideration of public submissions, we will forward the application to the independent Planning Assessment Commission for decision.

To read the modification application and to make a submission, visit the Major Projects website.