

23 December 2022

**NEW ENERGY SOLAR (ASX: NEW)**  
**2023 NOTICE OF EXTRAORDINARY GENERAL MEETING**

New Energy Solar Limited (ACN 609 396 983) (NEW or the Company) advises of its upcoming Extraordinary General Meeting (the Meeting). The Meeting will be held at the time, date and place detailed below to consider and vote on the resolutions in this notice.

Date:	Wednesday 25 January 2023
Time:	11am Sydney time
Venue:	The Meeting will be a hybrid meeting, held physically at Level 32, 1 O'Connell Street, Sydney NSW 2000 and virtually at <a href="https://meetings.linkgroup.com/NEWEGM2023">https://meetings.linkgroup.com/NEWEGM2023</a> .

The Meeting will provide an opportunity for Shareholders to consider, and if thought fit, to pass two resolutions. The first resolution is an ordinary resolution and proposes a return of capital of \$0.135 per NEW share (**Tranche 2 Capital Return**). The second resolution is proposed as a special resolution and seeks approval to remove NEW from the Official List of the ASX (**Proposed De-listing**).

The attached New Energy Solar Limited Notice of Extraordinary General Meeting 2023 (including explanatory memorandum) provides details of the resolutions to be considered by Shareholders and is expected to be dispatched by post to Shareholders on 23 December 2022.

Shareholders are encouraged to:

- Read the Notice of Meeting and Proxy Form in full.
- Attend and participate in the Meeting, which will provide an opportunity to ask questions regarding your investment.
- Vote on the resolutions as set out in the Notice of Meeting.

For further information, please contact:

Caroline Purtell  
Company Secretary  
Tel: 1300 454 801

For more information, please contact [info@newenergysolar.com.au](mailto:info@newenergysolar.com.au)

*Authorised for release by the Board of New Energy Solar Limited.*

**New Energy Solar**

**Australia**

Level 32, 1 O'Connell Street, Sydney NSW 2000

**T** 1300 454 801 **F** 1300 883 159

**E** [info@newenergysolar.com.au](mailto:info@newenergysolar.com.au) **W** [nes.com.au](http://nes.com.au)

**United States**

276 Fifth Avenue, Suite 805, New York NY 10001

**T** 646 860 9900



## **New Energy Solar Limited**

ACN 609 396 983

Extraordinary General Meeting

**11 am Sydney Time**

**Wednesday, 25 January 2023**

**Level 32**

**1 O'Connell Street  
Sydney NSW 2000**

# **New Energy Solar Limited Notice of Extraordinary General Meeting 2023**

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### **New Energy Solar**

#### **Australia**

Level 32, 1 O'Connell Street, Sydney NSW 2000

**T** 1300 454 801 **F** 1300 883 159

**E** [info@newenergysolar.com.au](mailto:info@newenergysolar.com.au) **W** [nes.com.au](http://nes.com.au)

#### **United States**

276 Fifth Avenue, Suite 805, New York NY 10001

**T** 646 860 9900

## Letter from the Chair

Dear Shareholders

On Friday, 18 November 2022<sup>1</sup>, New Energy Solar Limited (the **Company**) successfully completed the sale of its portfolio of 14 U.S. solar assets to MN8 Energy LLC. (**MN8**), as described in the Extraordinary General Meeting Notice of Meeting released on 22 August 2022 (the **Transaction**).

On 1 December 2022, the Company paid the capital return approved by Shareholders on 26 September 2022 of A\$0.82 per Share. As announced on 24 November 2022, the Company estimated that there would be a further A\$0.205 per Share to be returned to Shareholders (**Potential Future Capital Return(s)**), subject to obtaining Shareholder approval.

The Company now intends to apply for de-listing from the ASX. Under the Listing Rules, both the Potential Future Capital Return(s) and the de-listing require Shareholder approval. Accordingly, on behalf of the Board, I am pleased to invite you to an Extraordinary General Meeting (**EGM**) to be held at 11 am (Sydney time) on Wednesday, 25 January 2023.

### Capital Return

The Company has successfully completed the sale of its 14 U.S. solar assets. The Company used the proceeds to repay its U.S.\$21.3 million revolving credit facility and has retained approximately U.S.\$14 million in the U.S. to meet the estimated future U.S. tax liability resulting from the sale along with other minor ongoing costs. The remaining U.S.\$217 million was converted into A\$325.8 million at an exchange rate of 0.66602 AUD/USD (**Converted Proceeds**)<sup>2</sup>. Payment of A\$0.82 per Share occurred on or around 1 December 2022 (**Tranche 1 Capital Return**).

The amount available for Potential Future Capital Return(s) is expected to be approximately A\$0.205 per Share. The Company is seeking to return A\$0.135 per Share (**Tranche 2 Capital Return**) as soon as practicable following the required Shareholder approval being obtained at this EGM. A further capital return may occur after the Company's de-listing (**Tranche 3 Capital Return**) following the Company discharging all remaining liabilities, realising all of its assets and after accounting for all costs associated with winding up the Company.

Combined with the Tranche 1 Capital Return, the total amount expected to be ultimately returned to Shareholders is expected to be 4.5-8% more than the previously estimated range of A\$0.95-A\$0.98 per Share, reflecting the favourable AUD/USD outcome and a better-than-expected working capital outcome for Q3 2022.

### Proposed De-listing

Following Completion, the Company no longer has any operational assets and, subject to receiving the required Shareholder approval, is focused on returning capital to Shareholders as soon as is practicable. In these circumstances, the benefit of the Company being a listed entity is outweighed by the costs and administrative burden of remaining listed.

Accordingly, the Company is seeking approval from Shareholders to remove the Company from the Official List of the ASX (**Proposed De-listing**). The Company has received in-principle advice from ASX that ASX would be likely to remove the Company from the ASX Official List, on a date to be determined by ASX in consultation with the Company, but which is expected to be on 28 February 2023 meaning that the last

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<sup>1</sup> Please refer to ASX Announcement dated 21 November 2022, available [here](#).

<sup>2</sup> Please refer to ASX Announcement dated 24 November 2022, available [here](#).



possible date to trade NEW Shares is 27 February 2023. The Proposed De-listing is subject to the approval of the ASX, including any proposed conditions.

Board Recommendation

The Board **unanimously recommends Shareholders vote in favour** of payment of the Tranche 2 Capital Return and the Proposed De-listing.

Each Director who is also a Shareholder intends to vote in favour of the resolutions.

Yours sincerely



James Davies  
Chairman



## Important Dates\*

The applicable important dates are updated in the table below.

Important Dates	Timing	Date
Date of EGM		25 January 2023
Announcement of effective date for the Tranche 2 Capital Return	On or before the Effective Date for the Tranche 2 Capital Return	27 January 2023
Effective date for the Tranche 2 Capital Return ( <b>Effective Date</b> )	Effective Date	27 January 2023
Last day for trading of Shares to be entitled to participate in the Tranche 2 Capital Return	1 Business Day after the Effective Date	30 January 2023
Shares commence trading on an 'ex return of capital' basis	2 Business Days after the Effective Date	31 January 2023
Record date for determining entitlement to participate in the Tranche 2 Capital Return ( <b>Record Date</b> )	3 Business Days after the Effective Date	1 February 2023
Distribution date (if Resolution 1 passed) for payment of Tranche 2 Capital Return to Shareholders	5 Business Days after the Record Date	On or around 8 February 2023
Suspension Date from ASX Official List – last day to trade NEW Shares		27 February 2023
Removal Date from ASX Official List	The Removal Date is not earlier than one month after the date Shareholders are notified of the intention to de-list.	28 February 2023

(\*) All dates and times are indicative only. The Company reserves the right to vary these dates and times. All dates and times in this Notice refer to Sydney time. The Company will make an announcement to ASX of any changes to the timetable if they occur.

For more information please contact [info@newenergysolar.com.au](mailto:info@newenergysolar.com.au)



## 1. Background

The Company is an ASX listed entity.

On Friday, 18 November 2022, the Company successfully completed the Transaction. As a result of this, the Company no longer has any operational assets and intends to distribute the Converted Proceeds to Shareholders. As such, it is no longer beneficial for the Company to remain listed on ASX.

## 2. Directors' Recommendation and Voting Intention

The Directors of the Company recommend **voting in favour** of the resolutions to approve the Tranche 2 Capital Return and Proposed De-listing of the Company, on the basis that the Tranche 2 Capital Return and Proposed De-listing of the Company are in the best interests of Shareholders.

Each director who is also a Shareholder intends to vote all Shares which they control in favour of Resolutions 1 and 2.

### Potential advantages

In forming their recommendation to **vote in favour**, the Directors have had regard to a range of factors, including:

- the Company has already divested itself of its key assets and business as part of the Transaction;
- The Shareholders will, after the capital returns (including the Tranche 1 Capital Return, Tranche 2 Capital Return and Tranche 3 Capital Return), realise the value of their investment in the Company;
- Following the capital returns, the benefit of the Company being a listed entity is outweighed by the costs, as the Company does not have any ongoing business operations. In the opinion of the Board, it would not be appropriate for the Company, having no operations or plans to enter into any new business activity and therefore no need to access fresh equity or debt capital, to maintain its listing on ASX;
- The Company currently incurs various administrative and management costs to comply with the Listing Rules, fees for ASX clearance, and settlement and costs for maintaining staff and other services. As a result of the Proposed De-listing, it will not be necessary for the Company to continue to pay these costs<sup>3</sup>; and
- The Company will be relieved of the administrative and compliance burden associated with being listed.

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<sup>3</sup> Comprising (approximately and per annum) ASX listing fees of A\$7,500, ASIC fees of A\$17,000, and registry fees of A\$146,000.



### Potential disadvantages

The Directors are of the view that the Tranche 2 Capital Return and Proposed De-listing have limited disadvantages. However, Shareholders may choose to vote against the resolutions as:

- Following the capital returns and winding up process, Shareholders will no longer have exposure to the investment opportunities afforded by their investment in the Company;
- The tax consequences of the Tranche 2 Capital Return may not suit the current financial position of Shareholders; and

Shareholders' ability to sell Shares and realise their investment in the Company may be diminished after the Proposed De-listing, as Shares will no longer be traded on the ASX and will only be capable of sale by private transaction. Therefore the liquidity of the Shares will be directly affected and is likely to be further diminished.

### 3. Notice of Meeting to Shareholders

Notice is given that an Extraordinary General Meeting of Shareholders of the Company (**EGM**) will be held at the time, date and place detailed below to consider and vote on the resolutions in this notice of meeting (**Notice**):

#### **DATE**

**11 am (Sydney time), Wednesday, 25 January 2023.**

#### **VENUE**

**Level 32, 1 O'Connell Street, Sydney, NSW 2000.**

The Board is pleased to also provide Shareholders with the opportunity to participate in the EGM virtually through the online platform provided by its share registrar Link Market Services  
<https://meetings.linkgroup.com/NEWEGM2023>.

Refer to section 8, Hybrid Meetings, below for details on how to participate in the EGM.

Terms and expressions used in this Notice have, unless otherwise defined, the same meanings as set out in the Explanatory Memorandum.

### 4. Business

#### **Business**

##### **Return of capital**

To consider and, if thought appropriate, pass the following as an **ordinary resolution**:

**Resolution 1:** *“That for the purposes of Part 2J.1 of the Corporations Act 2001 (Cth) and for all other purposes, approval is given for the equal*



*reduction of the share capital of the Company of A\$0.135 per ordinary share. The reduction of capital is to be effected by the Company paying to each registered holder of fully paid ordinary shares in the Company on the Record Date A\$0.135 per ordinary share.”*

**Note:** please see the Explanatory Memorandum for more detail.

### **Proposed De-listing**

To consider and, if thought appropriate, pass the following as a **special resolution**:

**Resolution 2:** *“That, for the purposes of Listing Rule 17.11 and for all other purposes, the Company be removed from the Official List of the ASX on a date, and subject to any conditions, to be decided by ASX and that the Directors be authorised to do all things reasonably necessary for the removal of the Company from the Official list of the ASX.”*

**Note:** please see the Explanatory Memorandum for more detail.

## **5. Other Information**

An Explanatory Memorandum accompanies and forms part of this Notice.

All Shareholders should read the Explanatory Memorandum carefully and in its entirety. Shareholders who are in doubt regarding any part of the business of the EGM should consult their financial or legal adviser for assistance.

To constitute a valid meeting of the Company, a quorum of the lesser by number of at least three Shareholders or Shareholders representing at least 10% of the voting Shares must be present (virtually or by proxy) at the time when the EGM proceeds to business.

Resolution 1 proposed to be considered at the EGM is an ordinary resolution while Resolution 2 is a special resolution. To be passed, Resolution 1 must be approved by 50% of the total votes cast by Shareholders entitled to vote on the resolution (including Shareholders who are voting by proxy). Resolution 2 must be approved by a 75% majority of the total votes cast by Shareholders entitled to vote on the resolution (including Shareholders who are voting by proxy).

## **6. Proxies, Corporate Representatives and Attorneys**

### **Proxies**

Any Shareholder entitled to attend and vote at this EGM is entitled to appoint not more than two proxies to attend and vote in his/her stead.

A proxy need not be a Shareholder.

If the Shareholder appoints two proxies, the Shareholder may specify the proportion or number of votes each proxy is entitled to exercise. If no proportion or number of votes is specified, each proxy may exercise half





of the votes. If the specified proportion or number of votes exceeds that which the Shareholder is entitled to, each proxy may exercise half of the Shareholder votes. Any fractions of votes brought about by the apportionment of votes to a proxy will be disregarded.

Proxies must be:

- (a) lodged by posting them or delivering them by hand to the address specified below;
- (b) received at the fax number specified below; or
- (c) registered online.

Not later than 48 hours before the EGM i.e.  
11 am (Sydney time) on Monday, 23 January 2023.

Proxy forms received later than this time will be invalid. Additional proxy forms will be supplied by the Share Registry on request.

If the appointment of a proxy specifies the way the proxy is to vote on a particular resolution:

- the proxy is not required to vote on a show of hands, but if the proxy does so, the proxy must vote as directed (subject to any applicable voting exclusions);
- if the proxy has two or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands;
- if the proxy is not the Chair of the EGM, the proxy need not vote on a poll but if the proxy does so, the proxy must vote as directed (subject to any applicable voting restrictions); and
- if the proxy is the Chair of the EGM, the proxy must vote on a poll and must vote as directed.

There are some circumstances where the Chair of the EGM will be taken to have been appointed as a Shareholder's proxy for the purposes of voting on a particular resolution even if the Shareholder has not expressly appointed the Chair of the EGM as their proxy. This will be the case where:

- the appointment of the proxy specifies the way the proxy is to vote on a particular resolution;
- the Chair of the EGM is not named as the proxy;
- a poll has been called on the resolution; and
- either of the following applies:
  - the proxy is not recorded as attending the EGM; or
  - the proxy attends the EGM but does not vote on the resolution.



Shareholders who cast a vote on a resolution before the EGM by lodging a valid proxy will still be entitled to lodge a further vote on that resolution during the live EGM, with the later vote overriding the earlier vote.

Shareholders should consider directing their proxy how to vote on each resolution by crossing either the “For”, “Against”, or “Abstain” box when lodging their proxy form to ensure that their proxy is permitted to vote on their behalf in accordance with their instructions.

The Chair of the EGM intends to vote all undirected proxies able to be voted in favour of Resolutions 1 and 2.

By mail: New Energy Solar  
C/- Link Market Services Limited  
Locked Bag A14  
Sydney South NSW 1235 Australia

By fax: +61 2 9287 0309

In person: Level 12, 680 George Street, Sydney NSW 2000

Online: [www.linkmarketservices.com.au](http://www.linkmarketservices.com.au)

A proxy form is provided with this Notice.

### Corporate representatives

A Shareholder or proxy that is a corporation and entitled to participate and vote at the EGM may appoint an individual to act as its corporate representative. Evidence of the appointment of a corporate representative must be in accordance with section 250D of the Corporations Act and be lodged with the Company before the EGM. The appointment may be a standing one. Unless the appointment states otherwise, the representative may exercise all of the powers that the appointing body could exercise at a general meeting or in voting on a resolution.

### Attorney

To vote by attorney at the EGM, the original or a certified copy of the power of attorney or other authority (if any) under which the instrument is signed must be received by the Share Registry before 11 am (Sydney time) on Monday, 23 January 2023 in any of the following ways:

By mail: New Energy Solar  
C/- Link Market Services Limited  
Locked Bag A14  
Sydney South NSW 1235 Australia

In person: Level 12, 680 George Street, Sydney NSW 2000

By fax: +61 2 9287 0309

Online: [www.linkmarketservices.com.au](http://www.linkmarketservices.com.au)



## 7. Entitlement to Vote

Persons who are registered Shareholders at 11 am (Sydney time) Monday, 23 January 2023 will be entitled to vote at the EGM. If you are in any doubt as to whether you are entitled to vote, please notify us immediately.

By order of the Board.

CAROLINE PURTELL  
Company Secretary  
23 December 2022

## 8. Hybrid Meetings

### All resolutions will be by poll

In accordance with clause 7.7(b) of the Company's constitution, the Chair intends to demand a poll on each of the resolutions proposed at the EGM. Each resolution considered at the EGM will be conducted by a poll, rather than on a show of hands.

The Chair considers voting by poll to be in the interests of Shareholders as a whole and is a way to ensure the views of as many Shareholders as possible are represented and offered an opportunity to participate at the EGM.

The EGM will be held at both a physical location and virtually.

### Attending physically

Shareholders and proxies will be able to attend and participate in the EGM in person at Level 32, 1 O'Connell Street, Sydney, NSW 2000.

### Attending virtually

Shareholders and proxies also have the option to attend and participate in the EGM virtually via an online platform at <https://meetings.linkgroup.com/NEWEGM2023>. Directors have determined that Shareholders attending and participating in the EGM virtually via the online platform will be able to vote and ask questions during the EGM. More information regarding virtual attendance at the EGM (including how to vote and ask questions virtually during the EGM) is available in the New Energy Solar Limited Virtual Meeting Online Guide available at <https://www.newenergysolar.com.au/investor-centre/key-documents>.

### Using the online platform

We recommend that attendees log in to the online platform at least 15 minutes prior to the scheduled start time for the EGM using the instructions below:



- (a) enter <https://meetings.linkgroup.com/NEWEGM2023> into a web browser on a mobile or online device;
- (b) Shareholders will need their Shareholder Reference Number or Holder Identification Number, which is printed at the top of the proxy form; and
- (c) Proxyholders will need their proxy code which the Share Registry will provide via an email no later than 24 hours prior to the EGM. Shareholders who wish to appoint a proxyholder will also need to provide the proxyholder's email address, either on the proxy form or by calling the Link Market Services Contact Centre on 1300 554 474.

Online voting will be open between the commencement of the EGM at 11 am (Sydney time), 25 January 2023 and the time at which the Chair announces the closure of voting.

### **Restriction on recording**

Shareholders, proxies, corporate representatives or other permitted attendees to the EGM must not record, transmit or otherwise permit attendance or access to the EGM to any party who is not otherwise entitled to attend the EGM.



## Explanatory Memorandum

This Explanatory Memorandum relates to the Extraordinary General Meeting of the Company to be held at **Level 32, 1 O'Connell Street, Sydney NSW 2000** at 11 am (Sydney time) on **Wednesday, 25 January 2023** and at <https://meetings.linkgroup.com/NEWEGM2023>.

### What is the purpose of the EGM?

The purpose of the EGM is for the Shareholders to consider, and if thought fit, to pass resolutions approving:

- the Tranche 2 Capital Return; and
- the Proposed De-listing,

on the terms set out in this Explanatory Memorandum.

### **Capital Return Timetable**

The provisional timetable for the Tranche 2 Capital Return is set out on page 4 of this Notice. The future intentions of the Company are as follows:

- Subject to receiving the required Shareholder approval, following the Tranche 2 Capital Return and subject to the ASX approving the Proposed De-listing, the Company intends to undertake the Proposed De-listing; and
- Subject to receiving the required Shareholder approval, following the Tranche 2 Capital Return and the Proposed De-listing, the Company intends to convene a further meeting of Shareholders to approve the winding up of the Company and the Tranche 3 Capital Return. Under the terms of the MIPA, a winding up of the Company must not occur earlier than the date that is six (6) months following Completion.

## **Resolution 1**

### **Approval of Tranche 2 Capital Return**

Resolution 1 seeks, for the purposes of Part 2J.1 section 256C(1) of the *Corporations Act* and for all other purposes, Shareholder approval to conduct an equal reduction of share capital of the Company of A\$0.135 per Share.

Resolution 1 is proposed as an ordinary resolution.

### **Background**

#### ***What is the Tranche 2 Capital Return?***

In the opinion of the Board, the Company has capital in excess of what is needed for the Company's ongoing operations for the foreseeable future. Accordingly, the Company proposes to return to Shareholders an amount of A\$0.135 per Share held at the Record Date (the **Distribution Amount**).



The amount of A\$0.135 per Share (based on the capital structure as at the date of this Explanatory Memorandum) will be returned to relevant Shareholders by way of an equal capital reduction under Chapter 2J.1 of the Corporations Act.

The date and time for determining which Shareholders will participate in the Tranche 2 Capital Return is the Record Date, which is expected to be 4 Business Days after the EGM.

The number of issued Shares will not change as a result of the Tranche 2 Capital Return.

### ***Tranche 3 Capital Return***

Whilst it is the intention of the Company to distribute a significant portion of the remaining Converted Proceeds to Shareholders pursuant to the Tranche 2 Capital Return, the Company is withholding a certain amount from the Tranche 2 Capital Return to ensure that the Tranche 2 Capital Return does not materially prejudice the Company's ability to pay its creditors and ongoing costs up to the date of the Company being wound up, including fees of the Investment Manager and other residual liabilities.

On a winding up of the Company, expected to be conducted in Q3 or Q4 2023, subject to obtaining any required Shareholder approval, the Company intends to undertake the Tranche 3 Capital Return and distribute all remaining cash to Shareholders. The exact amount and timing of the Tranche 3 Capital Return is therefore currently unknown but is currently estimated at A\$0.07 per Share.

### ***Reasons for the Tranche 2 Capital Return***

The purpose of the Tranche 2 Capital Return is to return to Shareholders the proceeds of the Transaction.

### ***What approvals are required?***

The Tranche 2 Capital Return will constitute an equal capital reduction for the purposes of the Corporations Act as:

- (a) it relates only to ordinary shares;
- (b) it applies to each holder of ordinary shares in proportion to the number of ordinary shares they hold; and
- (c) the terms of the reduction will be the same for each holder of ordinary shares.

Section 256B(1) of the Corporations Act permits a company to reduce its share capital, including by returning capital in cash or in kind, if the reduction:

- (a) is fair and reasonable to the company's shareholders as a whole;
- (b) does not materially prejudice the company's ability to pay its creditors; and
- (c) is approved by shareholders under section 256C.



Resolution 1 seeks the approval of Shareholders as required under section 256C.

*Calculation of the amount of the Distribution Amount*

The total Distribution Amount will be A\$43,331,919, which will be distributed as an equal return of capital. Subject to no other Shares being issued prior to the Record Date, the Distribution Amount will result in a return of capital of A\$0.135 per Share.

The following table shows how the Company has calculated its estimate of the total amount available for the Tranche 2 Capital Return.

<b>Assets</b>	<b>A\$m</b>	<b>A\$ per Share</b>
Cash prior to Closing (ex Converted Proceeds)	5.1	0.016
Net Sale Proceeds retained in U.S.	21.2	0.066
Converted Proceeds	325.8	1.016
Escrow Amount	3.8	0.012
Australian Asset Sale Receivable	7.9	0.025
<b>Total Assets (A)</b>	<b>363.7</b>	<b>1.135</b>
<b>Current and Future Liabilities</b>		
Tranche 1 Capital Return	262.9	0.820
Disposal Fee	10.6	0.033
Other Transaction Fees Outstanding	0.9	0.003
U.S. Tax Liability	19.9	0.062
IM Fees Payable	1.3	0.004
Operating Costs	2.4	0.007
<b>Total Liabilities (B)</b>	<b>297.9</b>	<b>0.929</b>
<b>Potential Future Capital Return (A-B=C)</b>	<b>65.8</b>	<b>0.205</b>
Less		
Escrow Amount	3.8	0.012
Australian Asset Sale Receivable	7.9	0.025
<b>Subtotal</b>	<b>54.2</b>	<b>0.169</b>
Buffer (20% of Subtotal)	10.8	0.034
<b>Tranche 2 Capital Return (D)</b>	<b>43.3</b>	<b>0.135</b>
<b>Estimated Tranche 3 Capital Return (C-D=E)</b>	<b>22.5</b>	<b>0.070</b>



*Is the Tranche 2 Capital Return fair and reasonable to Shareholders?*

The Board considers that the Tranche 2 Capital Return is fair and reasonable to Shareholders as it will apply to all Shareholders equally having regard to the number of Shares held by each of them at the Record Date.

*Is there any material prejudice to creditors?*

The Directors have carefully reviewed the Company's assets, liabilities and expected cash flows, and believe that the Tranche 2 Capital Return will not materially prejudice the Company's ability to pay its creditors. The Directors have also satisfied themselves as to the solvency of the Company following the implementation of the Tranche 2 Capital Return.

*Who will participate in the Tranche 2 Capital Return?*

Subject to Shareholder approval, the Tranche 2 Capital Return will be made to all Shareholders who were Shareholders on the Record Date.

The amount payable in respect of each Share on issue on the Record Date will be calculated as follows:

Tranche 2 Capital Return payable = A\$43.3 million / Number of Shares on issue on the Record Date

This figure will then be rounded up or down to the nearest hundredth of a cent, applying standard rounding techniques.

If the Tranche 2 Capital Return is approved by Shareholders, payment will be made to entitled Shareholders:

- (a) with a registered address in Australia, by direct credit in accordance with the constitution of the Company. For entitled Shareholders who have a registered address in Australia but who have not provided the Share Registry with their direct credit instructions for payment, the Company may make payment by cheque; and
- (b) with a registered address outside of Australia, by cheque.

*Timetable for the Tranche 2 Capital Return*

Subject to Shareholder approval, the proposed Tranche 2 Capital Return is expected to take effect in accordance with the timetable on page 4 of the Notice.

*Tax treatment of the Tranche 2 Capital Return*

The Tranche 2 Capital Return should be treated as a return of capital, and not as a dividend for income tax purposes. The following section contains a general description of the Australian tax consequences that arise for Shareholders as a result of the return of capital. The tax consequences for a Shareholder with respect to the Tranche 2 Capital Return may vary depending upon a Shareholder's individual





circumstances. The information set out below is provided as a general guide only and does not constitute tax advice. Shareholders should consult their own tax adviser as to the potential tax consequences for them with respect to the Tranche 2 Capital Return.

For Shareholders who are residents of Australia for Australian tax purposes who hold their investment on capital account:

- No part of the capital reduction should be treated as a dividend for income tax purposes.
- The cost base of each Share will be reduced by the amount of the return of capital for the purpose of calculating any capital gain or loss on the ultimate disposal of the Share.
- An immediate capital gain will arise for Shareholders to the extent that the cost base of the Share is less than the amount of the return of capital. A CGT discount may be applied against the capital gain (after reduction of total capital gains by capital losses) where the Shareholder is an individual, complying superannuation entity or trustee, the Shares have been held for at least 12 months and certain other requirements have been met.

For Shareholders who are not residents for Australian tax purposes, no Australian capital gain or loss should arise as a consequence of the return of capital. Non-resident Shareholders should seek advice in relation to the specific tax consequences arising from the return of capital under the laws of their country of residence.

#### *Shareholder's tax position*

The tax treatment description above is generic and not intended to be comprehensive. It only addresses Australian income tax considerations.

The taxation implications for Shareholders will depend on their particular circumstances. Shareholders should seek independent professional tax advice in relation to their tax position based on their particular circumstances, including under the laws of the country where they are resident for tax purposes.

The Company and its advisers do not accept any liability or responsibility in respect of any statement concerning the taxation consequences of the Tranche 2 Capital Return or in respect of the taxation consequences themselves.

#### *Effect on the Company*

As at the date of this Notice, the Company has 320,587,986 Shares on issue. If the Tranche 2 Capital Return is implemented, the Company's issued share capital will be reduced by A\$43.3 million, being A\$0.135 per Share. After the proposed Tranche 2 Capital Return, the number of Shares on issue will remain the same but the capital of the Company will be reduced by the amount of the Tranche 2 Capital Return. As no Shares will be cancelled in connection with the Tranche 2 Capital Return, the



Tranche 2 Capital Return will not affect the number of Shares held by each Shareholder or the control of the Company.

Set out below is a pro forma statement of financial position, which does not contain all of the disclosures that are usually provided in a financial report prepared in accordance with Australian Accounting Standards and the Corporations Act:

	Pro forma as at 2 December 2022 (A\$ million)	Changes due to the Tranche 2 Capital Return (A\$ million)	Post the Tranche 2 Capital Return (A\$ million)
<b>Total Assets</b>	65.8	(43.3)	22.5
<b>Total Liabilities</b>	–	–	–
<b>Total Equity Interests</b>	65.8	(43.3)	22.5
<b>Total Revenue</b>	–	–	–
<b>Annual Operating Expenses</b>	(2.4)	0.3	(2.1) <sup>4</sup>
<b>EBITDA</b>	–	–	–

No adverse tax consequences are expected to arise for the Company as a result of the Tranche 2 Capital Return.

*Why you might vote against the Tranche 2 Capital Return*

The Directors unanimously recommend that Shareholders vote in favour of the Tranche 2 Capital Return. However, a Shareholder may choose to vote against Resolution 1 approving the Tranche 2 Capital Return as:

- they will no longer have exposure to the investment opportunities afforded by an investment in the Company;
- they may consider that the Company is more likely to generate a better financial return through reinvestment of funds than through direct investment by each Shareholder;
- the tax consequences of the Tranche 2 Capital Return may not suit their current financial position;
- they may consider that the Company should retain the funds.

<sup>4</sup> Includes the annual Investment Management Fee of 0.625% of Total Assets.



### *Recommendation of Directors*

The Directors are of the opinion that the proposed Tranche 2 Capital Return is fair and reasonable to Shareholders as a whole and does not materially prejudice the Company's ability to pay its creditors. Accordingly, for the reasons set out in this Notice, the Directors unanimously recommend that Shareholders vote in favour of Resolution 1.

Each director who is also a Shareholder intends to vote all Shares which they control in favour of Resolution 1.

No Director will receive any payment or benefit of any kind as a consequence of the Tranche 2 Capital Return other than as a Shareholder of the Company. As at the date of the Notice, the following Directors have an interest in the Tranche 2 Capital Return as they are Shareholders:

<b>NAME OF DIRECTOR</b>	<b>INTEREST</b>
James Davies	43,016
John Holland	256,754
Caroline Purtell	0

### *Other information*

In accordance with section 256C(5) of the Corporations Act, a copy of this Notice has been lodged with ASIC.

### **Proposed De-listing from the ASX**

Resolution 2 seeks approval from Shareholders to remove the Company from the Official List of the ASX. The Company has received in principle advice from ASX that ASX would be likely to remove the Company from the ASX Official List, on a date to be determined by ASX in consultation with the Company, which is expected to be 28 February 2023 meaning the last possible day to trade NEW Shares is 27 February 2023.

Resolution 2 is proposed as a special resolution.

The Company intends to apply to ASX to be removed from the ASX Official List under ASX Listing Rule 17.11 shortly before the date of the EGM.

The Company has been advised by the ASX that its removal from the ASX Official List is subject to the following conditions:

- (a) The request for removal of the Company from the ASX Official List is approved by a special resolution of the Shareholders.
- (b) The notice of meeting seeking Shareholder approval for the Company's removal from the ASX Official List must include, in form and substance satisfactory to ASX, the following:



- (i) a timetable of key dates, including the time and date at which the Company will be removed from ASX if that approval is given;
  - (ii) a statement to the effect that the removal will take place no earlier than one month after approval is granted;
  - (iii) details of the processes that will exist after the Company is removed from the ASX Official List to allow shareholders to dispose of their holdings and how they can access those processes; and
  - (iv) the information prescribed in section 2.11 of ASX Guidance Note 33.
- (c) The Company releases the full terms of this decision to the market upon making a formal application to ASX to remove the Company from the ASX Official List.

#### *The effect of the Proposed De-listing*

If Shareholders approve Resolution 2, the Company will be removed from the Official List of the ASX, subject to any conditions imposed by the ASX. Between the date of the EGM and the Suspension Date, the Shares will continue to be traded on ASX in the ordinary course. After the Suspension Date, Shares will only be capable of sale by private transaction (which will require Shareholders to identify and agree terms with potential purchasers of Shares). The Company does not intend to offer a buy back or liquidity facility in conjunction with the Proposed De-listing. The Directors are of the view that the Proposed De-listing is in the best interests of Shareholders for the reasons set out in this Explanatory Memorandum.

#### *Assets, liabilities and creditors*

The Directors consider that the Proposed De-listing will not have an adverse effect on the Company's capacity to meet its existing and any anticipated obligations and will continue to be able to pay its debts as and when they fall due. As set out above, the Directors also note that the Proposed De-listing will result in considerable cost savings for the Company. However, it should be noted, that if Resolution 1 is passed, that the net cash position of the Company will be reduced by the amount of the Tranche 2 Capital Return.

#### *Ongoing compliance obligations*

If the Company is de-listed, various requirements of the Listing Rules will no longer apply to the Company. The reduction of obligations associated with a listing on the ASX may include relief from some reporting and disclosure requirements, removal of restrictions on the issue of Shares by the Company, requirements concerning significant changes to the Company's activities and relief from requirements to address ASX Corporate Governance Principles and Recommendations.



The absence of continued restrictions in these areas may be perceived to be a disadvantage to some Shareholders, particularly minority Shareholders. However, Shareholders will still have the benefit of the protections given to them under the Corporations Act. The Company will still be required to comply with its obligations under the Corporations Act and as set out in the Company's Constitution, including that:

- while the Company has 100 or more Shareholders (that is, while it is an unlisted disclosing entity), it will still be required to comply with continuous disclosure obligations under section 675 of the Corporations Act;
- the Company will still be required to lodge annual audited and half-yearly financial statements as required under the Corporations Act;
- while the Company has 50 or more Shareholders, the acquisition and control of its Shares will still be subject to the takeover provisions set out in Chapter 6 of the Corporations Act;
- the restrictions around the giving of a financial benefit to a related party under Chapter 2E of the Corporations Act will continue to apply; and
- the majority of the provisions of the Constitution will not be affected by the Company ceasing to be listed and there is no present proposal to change the Company's Constitution following the Proposed De-listing.

#### *Share trading*

If Shareholders wish to sell their Shares on the ASX, they will need to do so before the Company is suspended and subsequently removed from the Official List. The removal of the Company from the Official List will take place no earlier than one month after Shareholders vote in favour of the Proposed De-listing, and subject to any conditions imposed by the ASX.

Following the Proposed De-listing, any Shareholder wishing to sell their Shares can transfer their Shares off-market to a willing third party purchaser in accordance with the Company's Constitution, however, such market may not be liquid and Shareholders will be personally responsible for sourcing any potential purchaser for their Shares.

As indicated above, whilst the Company has 50 or more Shareholders, whole of company transactions where an offer is made to all Shareholders, (e.g. a takeover bid or a scheme of arrangement), would still be undertaken pursuant to the requirements in the Corporations Act. In the event of such a proposal, in accordance with regulatory requirements, Shareholders will be provided with all relevant information in order to assess such proposal.

#### *What remedies may Shareholders pursue under the Corporations Act?*

If a Shareholder considers the Proposed De-listing to be contrary to the interests of the Shareholders as a whole or oppressive to, unfairly



prejudicial to, or unfairly discriminatory against a Shareholder or Shareholders, it may apply to the court for an order under Part 2F.1 of the Corporations Act.

Under section 233 of the Corporations Act, the court can make any order that it considers appropriate in relation to the Company, including an order that the Company be wound up or an order regulating the conduct of the Company's affairs in the future. If a Shareholder considers that the Proposed De-listing involves "unacceptable circumstances", it may apply to the Takeovers Panel for a declaration of unacceptable circumstances and other orders under Part 6.10 Division 2 Subdivision B of the Corporations Act (refer also to Guidance Note 1: Unacceptable Circumstances issued by the Takeovers Panel). Under section 657D of the Corporations Act, if the Takeovers Panel has declared circumstances to be unacceptable, it may make any order that it thinks appropriate to protect the rights or interests of any person or group of persons, where the Takeovers Panel is satisfied that those rights or interests are being affected, or will be or are likely to be affected, by the circumstances.

#### *What happens if Resolution 2 is not approved*

If Resolution 2 is not passed, the Company's Shares will remain listed on ASX, but the Company will not have any ongoing business operations or plans to enter into any new business activity. Once the Tranche 2 Capital Return is completed, the Company will also have distributed a majority of its remaining cash.

The Company expects that in these circumstances the ASX would exercise its power to remove the Company from the Official List of ASX as its structure and operations would not be appropriate for a listed entity.

#### *Recommendation of Directors*

Each director who is also a Shareholder intends to vote all Shares which they control in favour of Resolution 2.

No Director will receive a payment or benefit of any kind, as a result of the Proposed De-listing, other than as Shareholder of the Company.

Refer to the section titled *Recommendation of Directors* of this Explanatory Memorandum and the material dealing with Resolution 1 for information about the number of securities of the Company which each Director holds as at the date of this Notice of Meeting

#### *Tax treatment of the Proposed De-listing*

The Board recommends that Shareholders seek their own legal, financial and tax advice about the potential impact of Resolution 2, including as to the potential advantages and disadvantages of holding shares in a company that is not listed on ASX.



**ASX Statement**

A draft of this Notice has also been provided to ASX for its review in accordance with the Listing Rules. Neither ASX nor any of its officers takes any responsibility for the contents of this Notice.

**Directors' recommendation**

For the reasons set out in this Explanatory Memorandum, the Directors of the Company unanimously recommend that Shareholders vote in favour of Resolutions 1 and 2.

**Other material information**

These Explanatory Notes provide Shareholders with all information known to the Company which has not previously been disclosed to Shareholders that is material to the decision whether or not to vote in favour of Resolutions 1 and 2.



## Glossary

In this Explanatory Memorandum and the Notice:

**ASIC** means the Australian Securities and Investments Commission.

**ASX** means the Australian Securities Exchange.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, New South Wales, Australia.

**Board** means all or some of the directors of the Company acting as a board and includes a committee or delegate of the Board.

**Buyer** means GSRP Shubert LLC, a subsidiary of MN8 Energy.

**Company** means New Energy Solar Limited (ACN 609 396 983).

**Completion** means completion of the Proposed Transaction in accordance with the MIPA.

**Corporations Act** means the *Corporations Act 2001 (Cth)*.

**Director** means a director of the Company.

**Effective Date** means 27 January 2023.

**EGM** means the Extraordinary General Meeting.

**Explanatory Memorandum** means the explanatory memorandum accompanying this Notice.

**Listing Rules** means the listing rules of the ASX, as amended from time to time.

**New Energy Solar** means the Company and its controlled entities.

**Notice** means the notice of meeting contained in this document.

**MIPA** means the Membership Interest Purchase Agreement between the Seller and the Buyer in relation to the Proposed Transaction dated on or around 21 August 2022.

**Record Date** means 1 February 2023 or such other date as determined by the Company.

**Seller** means New Energy Solar U.S. Corp.

**Share** means a fully paid ordinary share in the Company.

**Share Registry** means Link Market Services Limited.

**Shareholder** means a holder of a Share.

**Tranche 1 Capital Return** means the tranche 1 capital return described in this Notice.

**Tranche 2 Capital Return** means the tranche 2 capital return described in this Notice.





**Tranche 3 Capital Return** means the tranche 3 capital return described in this Notice.

**Transaction** means the acquisition of all the shares in NES Galaxy, LLC, in accordance with the MIPA.




## LODGE YOUR VOTE

 **ONLINE**  
[www.linkmarketservices.com.au](http://www.linkmarketservices.com.au)

 **BY MAIL**  
New Energy Solar Limited  
C/- Link Market Services Limited  
Locked Bag A14  
Sydney South NSW 1235 Australia

 **BY FAX**  
+61 2 9287 0309

 **BY HAND** (During business hours (Monday to Friday, 9:00am–5:00pm))  
Link Market Services Limited  
Parramatta Square, Level 22, Tower 6,  
10 Darcy Street, Parramatta NSW 2150; or  
Level 12, 680 George Street, Sydney NSW 2000

 **ALL ENQUIRIES TO**  
Telephone: 1300 554 474      Overseas: +61 1300 554 474

## NEW ENERGY SOLAR LIMITED EXTRAORDINARY GENERAL MEETING - PROXY FORM

I/We being a member(s) of New Energy Solar Limited and entitled to attend and vote hereby appoint:

### APPOINT A PROXY

**the Chairman of the Meeting (mark box)**

**OR** if you are **NOT** appointing the Chairman of the Meeting as your proxy, please write the name and email of the person or body corporate you are appointing as your proxy

Name

Email

STEP 1

or failing the person or body corporate named, or if no person or body corporate is named, the Chairman of the Meeting, as my/our proxy to act on my/our behalf (including to vote in accordance with the following directions or, if no directions have been given and to the extent permitted by the law, as the proxy sees fit) at the Extraordinary General Meeting of New Energy Solar Limited to be held at **11.00 AM (AEDT) on Wednesday, 25 January 2023** (the **Meeting**) and at any postponement or adjournment of the Meeting.

The Meeting will be conducted as a hybrid event. You can participate by attending in person at **Level 32, 1 O'Connell Street, Sydney, NSW, 2000** or logging in online at <https://meetings.linkgroup.com/NEWEGM23> (refer to details in the Virtual Extraordinary General Meeting Online Guide). To access the **Notice of Extraordinary General Meeting** this can be viewed and downloaded at the New Energy Solar's website at <https://www.newenergysolar.com.au/investor-centre/key-documents>.

**The Chairman of the Meeting intends to vote undirected proxies in favour of each item of business.**

### VOTING DIRECTIONS

Proxies will only be valid and accepted by New Energy Solar Limited if they are signed and received no later than 48 hours before the Meeting.

Please read the voting instructions overleaf before marking any boxes with an

#### Resolutions

For    Against    Abstain\*


1 Return of Capital

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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2 Proposed De-listing

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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STEP 2

 \* If you mark the Abstain box for a particular Item, you are directing your proxy not to vote on your behalf on a show of hands or on a poll and your votes will not be counted in computing the required majority on a poll.

### SIGNATURE OF SHAREHOLDERS – THIS MUST BE COMPLETED

Shareholder 1 (Individual)

Joint Shareholder 2 (Individual)

Joint Shareholder 3 (Individual)




Sole Director and Sole Company Secretary

Director/Company Secretary (Delete one)

Director

This form should be signed by the shareholder. If a joint holding, either shareholder may sign. If signed by the shareholder's attorney, the power of attorney must have been previously noted by the registry or a certified copy attached to this form. If executed by a company, the form must be executed in accordance with the company's constitution and the *Corporations Act 2001* (Cth).

STEP 3



## HOW TO COMPLETE THIS SHAREHOLDER PROXY FORM

### YOUR NAME AND ADDRESS

This is your name and address as it appears on New Energy Solar Limited's share register. If this information is incorrect, please make the correction on the form. Shareholders sponsored by a broker should advise their broker of any changes. **Please note: you cannot change ownership of your shares using this form.**

### APPOINTMENT OF PROXY

If you wish to appoint the Chairman of the Meeting as your proxy, mark the box in Step 1. If you wish to appoint someone other than the Chairman of the Meeting as your proxy, please write the name and email address of that individual or body corporate in Step 1. If you leave this section blank, the Chairman of the Meeting will be your proxy. A proxy need not be a Shareholder of New Energy Solar Limited.

### DEFAULT TO CHAIRMAN OF THE MEETING

Any directed proxies that are not voted on a poll at the Meeting will default to the Chairman of the Meeting, who is required to vote those proxies as directed. Any undirected proxies that default to the Chairman of the Meeting will be voted according to the instructions set out in this Proxy Form.

### VOTES ON ITEMS OF BUSINESS – PROXY APPOINTMENT

You may direct your proxy how to vote by placing a mark in one of the boxes opposite each item of business. All your shares will be voted in accordance with such a direction unless you indicate only a portion of voting rights are to be voted on any item by inserting the percentage or number of shares you wish to vote in the appropriate box or boxes. If you do not mark any of the boxes on the items of business, your proxy may vote as he or she chooses. If you mark more than one box on an item your vote on that item will be invalid.

### APPOINTMENT OF A SECOND PROXY

You are entitled to appoint up to two persons as proxies to attend the Meeting and vote on a poll. If you wish to appoint a second proxy, an additional Proxy Form may be obtained by telephoning New Energy Solar Limited's share registry or you may copy this form and return them both together.

To appoint a second proxy you must:

- on each of the first Proxy Form and the second Proxy Form state the percentage of your voting rights or number of shares applicable to that form. If the appointments do not specify the percentage or number of votes that each proxy may exercise, each proxy may exercise half your votes. Fractions of votes will be disregarded; and
- return both forms together.

### SIGNING INSTRUCTIONS

You must sign this form as follows in the spaces provided:

**Individual:** where the holding is in one name, the holder must sign.

**Joint Holding:** where the holding is in more than one name, either Shareholder may sign.

**Power of Attorney:** to sign under Power of Attorney, you must lodge the Power of Attorney with the registry. If you have not previously lodged this document for notation, please attach a certified photocopy of the Power of Attorney to this form when you return it.

**Companies:** where the company has a Sole Director who is also the Sole Company Secretary, this form must be signed by that person. If the company (pursuant to section 204A of the *Corporations Act 2001*) does not have a Company Secretary, a Sole Director can also sign alone. Otherwise this form must be signed by a Director jointly with either another Director or a Company Secretary. Please indicate the office held by signing in the appropriate place.

### CORPORATE REPRESENTATIVES

If a representative of the corporation is to attend the Meeting the appropriate "Certificate of Appointment of Corporate Representative" must be produced prior to admission in accordance with the Notice of Meeting. A form of the certificate may be obtained from New Energy Solar Limited's share registry or online at [www.linkmarketservices.com.au](http://www.linkmarketservices.com.au).

### LODGEMENT OF A PROXY FORM

This Proxy Form (and any Power of Attorney under which it is signed) must be received at an address given below by **11.00 AM (AEDT) on Monday, 23 January 2023**, being not later than 48 hours before the commencement of the Meeting. Any Proxy Form received after that time will not be valid for the scheduled Meeting.

Proxy Forms may be lodged using the reply paid envelope or:



#### ONLINE

[www.linkmarketservices.com.au](http://www.linkmarketservices.com.au)

Login to the Link website using the holding details as shown on the Proxy Form. Select 'Voting' and follow the prompts to lodge your vote. To use the online lodgement facility, Shareholders will need their "Holder Identifier" - Securityholder Reference Number (SRN) or Holder Identification Number (HIN).



#### BY MOBILE DEVICE

Our voting website is designed specifically for voting online. You can now lodge your proxy by scanning the QR code adjacent or enter the voting link [www.linkmarketservices.com.au](http://www.linkmarketservices.com.au) into your mobile device. Log in using the Holder Identifier and postcode for your shareholding.

#### QR Code

To scan the code you will need a QR code reader application which can be downloaded for free on your mobile device.



#### BY MAIL

New Energy Solar Limited  
C/- Link Market Services Limited  
Locked Bag A14  
Sydney South NSW 1235  
Australia



#### BY FAX

+61 2 9287 0309



#### BY HAND

delivering it to Link Market Services Limited\*  
Parramatta Square  
Level 22, Tower 6  
10 Darcy Street  
Parramatta NSW 2150  
  
or  
  
Level 12  
680 George Street  
Sydney NSW 2000

\* During business hours (Monday to Friday, 9:00am–5:00pm)