

**BEFORE A COMMISSIONER APPOINTED BY
SELWYN DISTRICT
COUNCIL**

IN THE MATTER OF the Resource Management
Act 1991

AND

IN THE MATTER OF an application by KeaX
Limited for resource
consent to establish a solar
array at 150 Buckleys Road,
115 Buckleys Road and 821
Hanmer Road, Brookside,
Selwyn (RC225180)

SUMMARY STATEMENT (PLANNING) OF JESSE SAMUEL JAMES AIMER

1.0 INTRODUCTION

- 1.1 My name is Jesse Samuel James Aimer. My qualifications and experience are set out in the Section 42A report (the 's42A report') dated 1 February 2023.
- 1.2 After drafting the s42A report, it has come to my attention that the Environment Court Practice Note 2014 has been replaced by the Environment Court Practice Note 2023. I confirm that I have read and agree to comply with the Environment Court's Code of Conduct for Expert Witnesses contained in the Practice Note 2023. Except where I state that I am relying upon the specified evidence of another person, my evidence in this statement is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions which I express.
- 1.3 I set out below a summary of the evidence, focussing on matters which have developed subsequent to the notification of the proposal and drafting of the s42A report. In brief, I consider there are two key matters to be resolved:
- a) Consistency of the proposal with the National Policy Statement for Highly Productive Land 2022 (the 'NPS-HPL');
 - b) Visual amenity effects on the owners and occupiers of surrounding properties and road users.
- 1.4 Subject to these matters being adequately addressed, I consider that the application can be granted, subject to the conditions **attached** to this statement as **Appendix 1**.

2.0 PRELIMINARY MATTERS

The proposal

- 2.1 Ms Kelly has clarified¹ that the batteries are within the scope of this application. I agree with Ms Kelly's clarification, and consider the batteries to have been appropriately assessed as such.
- 2.2 The Applicant has proposed to change the external fence from a chain link fence with barbed wire on top, instead of deer fencing with three strands of wire on top.² I agree with Ms Kelly that this amendment will not result in any change to the effects assessment.

Reasons for consent

- 2.3 Ms Kelly disagrees with the assessment in the s42A report that Rule 3.13 of the Operative Selwyn District Plan ('District Plan') is relevant. Instead, Ms Kelly considers the fence comes within the definition of a 'utility building' (meaning Rule 3.13 does not apply), and that the fence is accordingly permitted under Rule 5.2.1.2.³ I do not consider that the fence meets the definition of 'utility building'⁴ nor 'utility structure'⁵. I therefore consider the fence to be a 'building', and its establishment a **discretionary** activity under Rule 3.13.

Permitted baseline

- 2.4 I largely agree with Ms Kelly's description of the permitted baseline at paragraphs [4.23]-[4.24] of her evidence statement, with the following exceptions:
- a) Subparagraph (d): Given the amount of electricity proposed to be generated, and the scale of infrastructure required to generate this electricity, I do not consider the generation of electricity for use on the same site to be a relevant baseline.
 - b) Paragraph [4.24]: I do not consider that the permitted afforestation of the site functions as a useful baseline.

3.0 HIGHLY PRODUCTIVE LAND

- 3.1 At paragraphs [14], [270] (fn142), [275] and [280] of the s42A report, I sought further evidence from the Applicant and Submitters as to the applicability of the NPS-HPL to the application.
- 3.2 Mr McMath has provided operational evidence⁶ in relation to:
- a) The operational need to locate the proposed solar array at the site.⁷
 - b) The ability for pasture to survive under the panels throughout the life of the solar array.⁸

¹ Statement of Evidence of Claire Kelly dated 9 February 2022 at [3.7].

² Statement of Evidence of Claire Kelly dated 9 February 2022 at [3.8].

³ Statement of Evidence of Claire Kelly dated 9 February 2022 at [4.12]-[4.13].

⁴ Utility Building "includes any building or part of any building which is a utility or which is used principally to house or support a utility; and that building is 10m² or more in gross floor area and 2.5m or greater in height."

⁵ Utility Structure "includes any device, equipment or other facility which is used principally to house or support a utility including any antenna, mast, pole or pylon; or any structure housing a utility which is less than 10m² in gross floor area, or less than 2.5m in height."

⁶ Statement of Evidence of Campbell McMath dated 9 February 2023.

⁷ From [5.6] – [5.11].

⁸ At [5.12].

- c) The proposed use of the site for agri-voltaic (i.e. sheep farming and solar photovoltaic energy generation) purposes.⁹

3.3 Ms Kelly has provided planning evidence that:

- a) The landowners propose to keep using the land as a productive farming unit, but with sheep rather than cows.¹⁰
- b) The combination of the new solar farm and the continuation of sheep farming at the site means that the site will continue to be used for “*land-based primary production*” as defined in the NPS-HPL. Accordingly, the proposal will not be “caught” by clause 3.9(1) of the NPS-HPL.¹¹
- c) In the event the proposal is “caught” by clause 3.9(1), the proposal falls within the exemptions set out in clause 3.9(2)(j)(i) and 3.9(f), and achieves the matters contained in clause 3.9(3).¹²

3.4 I accept the evidence of Mr McMath in relation to the concept of agri-voltaics, the viability of agri-voltaics at this site, and the proposed use of the site for both sheep farming and renewable energy generation. I also accept the evidence of Ms Kelly that sheep farming as a ‘productive unit’ will continue at the site following the establishment of the solar array.

3.5 Based on the evidence of Mr McMath and Ms Kelly, I consider that the land will continue to be used for ‘*land-based primary production*’, as defined in the NPS-HPL. Importantly, this is on the assumption that the sheep will be farmed on the scale of a ‘productive unit’ for food or fibre production, in addition to grazing at the site.

3.6 However, I consider there is a risk that, under the conditions proposed by the Applicant, the use of the site for land-based primary productive purposes could cease without breaching any conditions of consent.¹³ Accordingly, I have proposed a condition of consent requiring that the land be used for land-based primary production, as defined in the NPS-HPL, while the solar array is in operation.

3.7 On the basis that the land will continue to be used for land-based primary production, as that term is used in the NPS-HPL, I consider that the proposed activity:

- a) will not trigger clause 3.9(1);
- b) will be consistent with the NPS-HPL Objective and supporting policies;¹⁴ and
- c) does not need to be limited to a 35-year duration;¹⁵

given that the land will continue to be used for ‘*land-based primary production*’. Accordingly, I do not consider the NPS-HPL operates as a barrier to the grant of consent.

3.8 For completeness, and after considering the evidence of Mr Fletcher,¹⁶ I accept the evidence of Mr McMath and Ms Kelly that the proposed solar farm has an operational need to locate at the site.

⁹ From [6.2]-[6.5].

¹⁰ Statement of Evidence of Claire Kelly (Planning) dated 9 February 2022 at [6.37].

¹¹ At [6.14].

¹² From [6.16]-[6.26].

¹³ Given that I do not consider that the grazing of sheep, in of itself, necessarily meets the definition of ‘*land-based primary production*’, and the description of sheep grazing in the assessment of environmental effects is high level, such that the site could cease to be used for ‘*land-based primary production*’ while still complying with proposed condition 1.

¹⁴ Policies 1, 4, 8 and 9.

¹⁵ The matter of duration is also addressed in section 11 below.

¹⁶ Statement of Evidence of Stewart William Fletcher dated 16 February 2023 at [5.6]-[5.20].

4.0 LANDSCAPE AND VISUAL EFFECTS

- 4.1 An assessment of landscape character and visual amenity effects is provided in paragraphs [50]-[62] and [132]-[140] of the notification decision and [72]-[89] of the s42A report. These findings are based on the evidence of Ms Anthony¹⁷ and Mr Densem¹⁸ and are summarised below.

Landscape character

- 4.2 The proposal will result in a relatively significant change to the landscape character of the site (regardless of visibility)¹⁹, due to:²⁰
- a) the transition from a rural productive landscape consisting of a dairy farm to that of a landscape containing energy infrastructure (albeit with sheep continuing to graze at the site);
 - b) the removal of internal shelterbelts;
 - c) the erection of boundary fencing, security gates and planting of indigenous species at the site.
- 4.3 However, I consider that, when considered in the context of the District Plan, the adverse effects of the proposal on landscape character and values (internal to the site boundaries) will be minor.²¹ Landscape character effects, when experienced externally from the site, will be mitigated over time through the establishment of boundary vegetation – going from minor to less than minor.²²

Visual amenity

- 4.4 Given the topography of the site, adverse visual effects will be limited to persons living or working adjacent to the site, or members of the public using roads within the vicinity of the site. Visual amenity effects on members of the public using roads within the vicinity of the site may be minor at first, reducing to less than minor as the shelterbelts establish and mature.²³
- 4.5 The following persons were considered to be affected by the application to a minor extent (reducing to less than minor for all except Donna and David Kewish and Ann Williams²⁴, and Mr Casey and Independent Trustees (Canterbury) Limited²⁵):
- a) Stage 1: Donna and David Kewish and Ann Williams, and Glenmore Farming Company Ltd, due to the gaps in planting along Branch Drain Road and visibility of the proposal through the hedge immediately to the north of 324 Branch Drain Road.²⁶
 - b) Stage 2: Donna and David Kewish and Ann Williams, Robyn Casey, Clark Casey, and Independent Trustees (Canterbury) Limited.²⁷
 - c) Stage 3: Robyn Casey, Clark Casey, and Independent Trustees (Canterbury) Limited.²⁸

¹⁷ Boffa Miskell, Landscape and Visual Effects Assessment, dated 9 March 2022.

¹⁸ Graham Densem, Landscape Peer Review, dated 18 September 2022.

¹⁹ Section 42A Report at [78].

²⁰ Section 42A Report at [74]; Notification Decision at [52] and [55].

²¹ Notification Decision at [55]-[58].

²² Notification Decision at [59]; Section 42A Report at [81].

²³ Notification Decision at [59].

²⁴ Notification Decision at [136](a).

²⁵ Notification Decision at [136](b).

²⁶ Section 42A Report at [84]; Notification Decision at [136].

²⁷ Section 42A Report at [85]; Notification Decision at [136].

²⁸ Section 42A Report at [86]; Notification Decision at [136].

- 4.6 Following the s42A report, landscape character and visual amenity evidence has been provided by Ms Anthony²⁹ on behalf of the Applicant and Mr Smith on behalf of the Submitters³⁰. Mr Densem have reviewed these reports, and I understand that his opinion as to the scale of landscape and visual effects remains as stated in his peer review, provided that the following matters are addressed:
- a) Increased certainty is provided in the conditions of consent that the screening will be effective, with an ability to prevent the stages from proceeding where the screening is not effective.
 - b) An additional row of indigenous shelterbelt planting between the site and 180 Grahams Road (RS 9933), as described in Mr Smith's evidence.
 - c) An additional shelterbelt in between the site and 324 Branch Drain Road (Lot 1 DP 81783), with a sufficient setback from the drain running between the two properties.
- 4.7 After considering this evidence, alongside the planning evidence of Ms Kelly and Mr Fletcher, and provided that Mr Densem's recommendations above are addressed, my opinion as to the scale of landscape and visual effects remains unchanged.
- 4.8 Accordingly, I consider the primary issue to be resolved is how visual amenity effects can be appropriately avoided, remedied or mitigated. Amended landscape conditions have been proposed to achieve this, taking into account comments from Mr Densem and Mr Van der Velden, the evidence and conditions proposed the Applicant, and the Submitters' evidence. Key features of these conditions include:
- a) A requirement to submit a Landscape Management Plan (LMP) for the SDC for certification, with a requirement that all landscaping be implemented and maintained in accordance with this plan. I have recommended adding an objective for the expert preparing the plan and the certifier to check the plan against, to provide certainty that the LMP will mitigate the adverse visual and glare effects of the proposal.
 - b) The ability for the certifier to withhold certification until satisfied that the plan will achieve the plan's objectives and the conditions of consent.
 - c) The ability to review the conditions of consent to respond to any unanticipated adverse effects, or to address any conditions that are ineffective in managing the effects of the activity.
 - d) A requirement for shelterbelt planting along Buckleys Road and Branch Drain Road to be 2 metres in height and 3 metres in width prior to the construction of Stage 1.
 - e) A requirement that an additional shelterbelt be established along the boundary with 324 Branch Drain Road and 180 Grahams Road (RS 9933).
 - f) A requirement that the perimeter fence be screened by the existing and proposed planting.
 - g) A requirement that all plantings be maintained to ensure their long-term survival, and replaced where necessary.

5.0 GLARE EFFECTS

- 5.1 Glare effects have been assessed in paragraphs [63]-[67] and [141]-[146] of the notification decision and [90]-[98] of the s42A report. There is a large degree of agreement between Mr Williams and Mr Van der Velden as to the extent of glare from the proposed solar array. In short:

²⁹ Statement of Evidence of Amanda Leigh Anthony dated 9 February 2023.

³⁰ Statement of Evidence of Paul Andrew Smith dated 16 February 2023.

- a) Existing vegetation is likely to mitigate a majority of the actual glare on properties and roads surrounding the site.
- b) It is expected that glare will not be experienced by any person (other than those in trucks and tractors) once the landscaping reaches a height of 2 metres (assuming the landscaping is sufficiently dense). For those persons above the height of the proposed planting, Mr Van der Velden considers that the strength of the glare, length of time, and existing vegetation above 2 metres are such that any temporary effects can be managed so as to not present an adverse health or safety effect.
- c) No glare will be experienced on neighbouring properties or roads once the height of the planting is 4 metres (assuming the landscaping is sufficiently dense).

5.2 Landscaping conditions have been proposed to mitigate any adverse effects of glare external to the site.

6.0 NOISE EFFECTS

6.1 Construction-phase noise is assessed at:

- a) Paragraphs [90]-[92] of the notification assessment, where it is concluded that any effects are permitted under the District Plan and will be less than minor.
- b) Paragraphs [100]-[103] of the s42A report. Based on the opinion of Acoustic Engineering Services and Marshall Day, it is considered that construction noise can be adequately managed through a construction noise and vibration management plan drafted in accordance with NZS 6803: 1999 *Acoustics – Construction Noise*, with additional measures proposed to address temporary adverse effects on 324 Branch Drain Road.

6.2 Operational noise is assessed at:

- a) Paragraphs [93]-[96] of the notification assessment, where it is concluded that any effects will be less than minor, being below the World Health Organisation limits for the protection of residential amenity when received at the notional boundary of any dwelling.
- b) Paragraphs [104]-[121] of the s42A report. Based on the opinion of Acoustic Engineering Services and Marshall Day, and taking into account the concerns raised by the Submitters, it is considered that the effects of the noise will be reasonable, provided that a day-time noise limit of 50 dB L_{Aeq} and a night-time noise limit of 40 dB L_{Aeq} (measured at the notional boundary of any dwelling outside the site) is complied with.

6.3 Following the s42A report, Mr Reeve has undertaken ambient monitoring of the site.³¹ I understand from speaking to Mr Farren that this has addressed his concern regarding a lack of ambient noise monitoring.

6.4 The Applicant has provided an amended set of conditions to manage construction and operation effects of the activity. Mr Farren has reviewed these conditions and has no issues with them.³² I have incorporated these conditions into the proposed conditions contained in **Appendix 1**. Based on the opinion of Mr Farren, I am satisfied that these conditions will adequately manage any adverse noise effects of the activity.

³¹ Statement of Evidence of William Reeve on behalf of the Applicant (Acoustics) dated 9 February 2023 at [5.2]-[5.5].

³² Except for a minor change at condition 38 to refer to 'Annex 2' rather than 'Annex 3'.

- 6.5 I have reviewed the evidence of Mr Lewthwaite and Mr Fletcher as they relate to noise effects. I consider that the matters raised in this evidence have been addressed in the notification and s42A reports (including the technical reports relied on) and proposed conditions of consent.

7.0 SHADING EFFECTS

- 7.1 The s42A report stated that it is likely that planting along the southern boundary will shade the properties to the south between the hours of 1000 and 1400 on the shortest day of the year, and considered that any shading effects be mitigated through the requirement of a small setback.³³ I agree with Ms Kelly that this effect was incorrectly classified as a reverse sensitivity effect.³⁴ I also note that the effects set out in the Joint Submission regarding the attraction of birds, electromagnetic radiation impacting pollination and reduction in soil moisture and nutrients for crops cannot be considered as reverse sensitivity effects. I have otherwise not changed my opinion as to relevance of these effects.³⁵
- 7.2 Ms Kelly has noted that portions of the planting on the southern boundary is replacing existing plantings, or filling in gaps for existing planting. I agree with Ms Kelly's evidence on this point and consider that shading from the existing shelterbelts forms part of the existing environment.³⁶ I also acknowledge Ms Kelly's evidence that the proposed setback will result in a staggered shelterbelt.³⁷ I note that no concerns regarding the location of the proposed shelterbelt have been raised in Mr Fletcher's evidence, and no further evidence from Mr Casey has been provided detailing any potential adverse shading effects that may result from the proposed shelterbelt planting along the boundary with Lot 1 DP 37121.
- 7.3 In light of the above, I accept Ms Kelly's evidence that no additional setback from the southern boundary is required. However, I understand that the exact nature of the planting proposed along the southern boundary with Mr Casey's property is still yet to be resolved between the Applicant and Mr Casey.

8.0 REVERSE SENSITIVITY EFFECTS

- 8.1 Following the s42A report, Ms Kelly has addressed on any reverse sensitivity effects caused by dust on neighbouring farming operations. No further concerns have been raised nor evidence provided by the submitters in relation to reverse sensitivity effects. Accordingly, based on the evidence provided by Ms Kelly, I am satisfied that there are no outstanding reverse sensitivity effects that need to be addressed. Accordingly, I consider that the proposed activity is consistent with Proposed District Plan Policy GRUZ P7.

9.0 HEALTH AND SAFETY EFFECTS

- 9.1 Subsequent to the s42A report, Mr Gledhill for the Applicant has provided a statement of evidence on electromagnetic fields confirming that the proposed activity will have no effect on the health of people, or on bees or birds.³⁸ I accept Mr Gledhill's evidence and do not consider there to be any outstanding issues in relation to this point.

³³ S42A report at [128]-[129].

³⁴ Statement of Evidence of Claire Kelly (Planning) dated 9 February 2023 at [6.52]. I agree that any shading effects on adjoining sites are relevant to the assessment of Proposed District Plan Policy GRUZ P7, and note that paragraph [248(3)] of the s42A report should be read in light of this.

³⁵ S42A report at [124]-[127].

³⁶ Statement of Evidence of Claire Kelly (Planning) dated 9 February 2023 at [8.3].

³⁷ Statement of Evidence of Claire Kelly (Planning) dated 9 February 2023 at [8.5].

³⁸ Statement of Evidence of Martin Gledhill dated 9 February 2023.

- 9.2 Mr Henderson has provided a statement of evidence on behalf of the submitters in relation to contamination and resultant adverse effects.³⁹ For the reasons addressed in the s42A report, I do not understand these matters to be relevant for this hearing – in my view they are either matters to be addressed by the Canterbury Regional Council under the applicant's discharge permit, or are managed by other regulatory bodies under separate statutory regimes. Any land use consent granted by SDC for the solar array would not function as a 'one-stop shop' for operating the proposed solar array, and I accept Ms Kelly's evidence regarding the relevance of those other regimes for managing the effects raised in Mr Henderson's evidence.

10.0 PLANNING PROVISIONS

- 10.1 I have addressed the relevant planning provisions, in accordance with ss104(1)(b) and (c), from paragraphs [202] to [285] of the s42A report. My assessment of these provisions remains the same as that report, with the exception of NPS-HPL and Policy GRUZ-P7 set out above. In short, I consider that the proposed activity, subject to the conditions proposed in **Appendix 1**, is consistent with the outcomes sought in the relevant planning documents.

11.0 DURATION

- 11.1 In the s42A report, I recommended a duration of 35 years be placed on the consent, subject to further evidence from the applicant and submitters on the appropriateness of this duration. I considered that such a duration would match the term of the lease, and balance economic and investment certainty with a requirement to ensure the land would not be 'locked up' from land-based productive uses for an indeterminate period of time.⁴⁰
- 11.2 Mr McMath⁴¹ and Ms Kelly⁴² have provided additional evidence on the appropriateness of a 35-year consent duration. I accept that a duration of longer than 35 years would provide the applicant with more certainty, and is consistent with the direction in the NPS-REG. More fundamentally, in light of the evidence from Mr McMath and Ms Kelly in relation to the proposed use of the site for agri-voltaics in a way consistent with the definition of '*land-based primary production*', I no longer consider a 35-year duration to be necessary to protect the soils at the site for (land-based) productive purposes (subject to a proposed condition requiring the use of the site for land-based primary production throughout the life of the solar array).
- 11.3 As a final point, Mr Fletcher considers that the application has been processed as if it were for a 35-year duration, as opposed to the unlimited duration sought.⁴³ I note that both the notification report and s42A report are clear that the proposed activity is subject to a 35-year lease term,⁴⁴ but that a 35-year consent duration was appropriate to protect the highly-productive soils at the site.⁴⁵ As is clear in both reports, a 35-year consent duration was not proposed as a mitigating factor for landscape or any other adverse effects.⁴⁶

³⁹ Statement of Evidence of Raymond John Henderson dated 16 February 2023.

⁴⁰ S42A report at [278]-[279].

⁴¹ At [6.8].

⁴² At [6.45].

⁴³ At [4.19]-[4.20].

⁴⁴ Notification Report at [16], [61], [100]; s42A Report at [19], [81(2)], [278], [279].

⁴⁵ S42A Report at [278]-[279].

⁴⁶ See Notification Report at [61]; s42A Report at [81(2)].

12.0 NOTIFICATION


- 12.1 Given my opinion that all effects on the environment were determined to be minor or less than minor,⁴⁷ and there were no special circumstances which warranted public notification, in accordance with section 95A I recommended that the application must not be publicly notified. In accordance with section 95B, I then assessed whether the application should be limited notified. A decision was then made to notify the application on persons determined to be affected.
- 12.2 I have not seen any evidence that changes my notification recommendation as to either the scale of effects on the environment, nor the persons affected by the application. I therefore do not consider that section 104(3)(d) operates as a bar to granting consent.

13.0 CONDITIONS

- 13.1 Attached as **Appendix 1** are the conditions I consider are appropriate to manage the effects of establishing the proposed solar array at the site. These conditions have been provided in tracked change from the draft version provided in the evidence of Ms Kelly, and have been informed by appropriate expert assessment.

14.0 CONCLUSION

- 14.1 For the reasons outlined above, I consider that the Commissioner can grant consent, subject to the conditions set out in **Appendix 1** below.

DATE	23 February 2023
NAME	Jesse Samuel James Aimer
POSITION	Consultant Planner
SIGNED	

file

⁴⁷ Noting that, as part of that assessment, any effects on persons who own or occupy the land over which the activity will occur, or any land adjacent to that land, must be disregarded: RMA, section 95D(a).