

RESOURCE MANAGEMENT ACT 1991

DECISION OF THE SELWYN DISTRICT COUNCIL ON A RESOURCE CONSENT APPLICATION

APPLICATION REFERENCE:	RC235464
APPLICANT:	KeaX Limited
SITE ADDRESS:	115, 150 and 187 Buckleys Road, Brookside
LEGAL DESCRIPTION:	Lot 1 DP 7545 (CB751/93), Lot 2 DP 54392 (CB32F/403), Lot 2 DP 387576 (352257), RS8955 (CB512/201)
PROPOSAL:	To construct and operate a new solar array
ZONING:	Outer Plains Zone (Operative District Plan) and General Rural Zone (Partially Operative) (beyond appeal)
TYPE OF ACTIVITY:	Land Use (Discretionary)
DATE OF HEARING:	4 and 5 March 2024
APPEARANCES:	<u>Applicant</u> Ms Annabel Hawkins, Counsel Mr Campbell McMath, Applicant Ms Amanda Anthony, Landscape Architect Mr William Reeve, Acoustic Engineer Mr Martin Gledhill, Electrical Engineer Mr Stuart Ford, Soils specialist Mr Zac Beechy-Gradwell, Environmental Engineer Ms Claire Kelly, Planner <u>Submitters</u> Ms Jessica Ottawa, Counsel for Brookside Group Mr Clark Casey, Submitter Ms Donna Kewish, Submitter Mr Simon Robinson, Submitter Mr Mike Dalley, Submitter Mr Donald Green, Glenmore Farming, Submitter

Ms Hadee Thomson-Morrison, soils specialist
for Brookside Group

Ms Sharn Hainsworth, soils specialist for
Brookside Group

Mr Raymond Henderson, Ecologist for
Brookside Group

Mr Stewart Fletcher, Planner for Brookside
Group

Council Officers

Mr Richard Bigsby, Planner

Mr Andrew Craig, Landscape Architect

Mr Rudi Van Der Velden, Glint and glare
specialist

Mr Jon Farren, Acoustic Engineer

Ms Isobel Stout, Environmental Engineer

Mr James Gordon, Soils specialist

DECISION:

Granted

DECISION DATE:

22 April 2024

DELEGATION

I was appointed by delegation as Commissioner to hear submissions, evidence and make a decision on Resource Consent RC235464. This decision records the evidence and statements, my deliberations on the issues, and the outcome of my deliberations.

INTRODUCTION AND PROPOSAL OUTLINE

1. This is a decision on a resource consent application made to the Selwyn District Council (**the Council**) by KeaX Limited (**the Applicant**) for land use consent to construct and operate a 104ha solar array at 115, 150 and 187 Buckleys Road, Brookside. The site is legally described as Lot 1 DP 7545, Lot 2 DP 54392, Lot 2 DP 387576, and RS 8955.
2. I visited the surrounding area on 18 February 2023 prior to the Hearing commencing. On 16 March 2023 at the conclusion of the Hearing, I visited the site, surroundings and the properties of Submitters. I thank all parties for their hospitality and openness in that regard.
3. The landowners are the Ward family. The existing site use and built form is well described in the s42A Report and the application, but concisely is used for dairy farming, and contains irrigation infrastructure, existing dwellings and farm buildings. There are mature shelter belt plantings that extend around the majority of the perimeter of the site, although gaps are present including where the Shelter Belt has been limbed up such as at the interface with the Robinson Property at 79 Buckleys Road.
4. The site is zoned Outer Plans Zone under the Operative District Plan (**ODP**) and General Rural Zone under the Partially Operative District Plan (**PODP**) and is some 111ha in area.
5. The proposal is described in the application, including as amended through the provision of further information, and in evidence. In summary the proposal, includes:
 - i. A 104ha solar array across a 111ha site with an operational generating capacity of 100 gigawatt hours;
 - ii. The array will comprise 140,000 solar panels, set on single axis tracking tables;
 - iii. There will be 13 inverters across the site to convert the direct current into the network grid;
 - iv. A potential battery site (for storing energy) is proposed in the centre of the site;
 - v. Sheep grazing be undertaken on the site after the solar farm is commissioned;
 - vi. A Landscape Mitigation Plan as volunteered by condition of consent (to ensure compliance and management of the landscaping described in the application, effectively supplementing existing perimeter planting);
 - vii. Approximately 7,000m³ of earthworks are proposed and will be undertaken in accordance with an Erosion and Sediment Control Plan required by condition of consent (and satisfying the parameters described in the application);
 - viii. Construction activities associated with commissioning the solar array, including up to a 100 construction employees on site during peak construction, piling operations, and a 12 month construction period.

6. More details of the application are included in the Section 42A Report. But I note that, as led through evidence, the applicant sought to amend the hours of operation (by switching off the batteries and inverters) from 0730 – 2000 to 0700 – 2200 to align with the night-time noise provisions contained within the PODP.
7. The application was lodged prior to decisions on the PODP being released. Under the ODP, the site has an Outer Plains Zoning and resource consent (as a discretionary activity) is required pursuant to Rule 5.1.2 (Utilities – activities). However, Rule 5.1.2 is now inoperative, as its equivalent rule in the PODP (EI-R31) is fully operative (beyond appeal). Pursuant to EI-R31 of the PODP, resource consent (as a discretionary activity) is required.
8. In terms of transport and noise, the proposal complies with the relevant provisions of the ODP. The transport and noise chapters of the PODP are not relevant to the proposal, as the activity is only subject to the Energy and Infrastructure chapter rule provisions, which as agreed between the Planners becomes a 'one-stop shop' for energy and infrastructure matters.
9. The proposal does not constitute a 'change in use' pursuant to the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 and therefore does not require resource consent under those regulations.
10. The application included written approvals from the owners/occupiers of:
 - i. 105 Buckleys Road
 - ii. 150 Buckleys Road (the application site)
 - iii. 10 Stewarts Road
 - iv. 187 Buckleys Road (the application site)
 - v. 115 Buckleys Road (the application site)
 - vi. 821 Hanmer Road
 - vii. 883 Hanmer Road
11. Pursuant to s95 of the RMA1991, the application was limited notified on 7 November 2023 to the following:
 - i. Te Taumutu Rūnanga
 - ii. The owners/occupiers of:
 - 23 Buckleys Road
 - 79 Buckleys Road
 - 80 Buckleys Road
 - 15 Stewarts Road
 - 29 Irwell Rakaia Road
 - 198 Branch Drain Road
 - 313 Branch Drain Road
 - 324 Branch Drain Road
12. Whilst nine submissions were received, only seven were valid. The following concerns were raised within the seven valid submissions:
 - Rural character and amenity
 - Use of highly productive land
 - Agricultural management
 - Contamination
 - Electromagnetic fields (EMF)
 - Ecology
 - Heat island effect

- Noise
 - Dust
 - Increase in flooding and run off
 - An indefinite consent duration
 - Glare
 - Reverse sensitivity
 - Disruption of the internet
 - Health effects
 - Notification, including a lack of public notification
 - Lack of impartiality from council on consents for solar farms
 - Impacts on land valuation
 - Future expansion, including future applications
 - Costs of redevelopment to existing substation
 - Fire risk and management
 - Increase in traffic, including effects on safety
 - Inconsistency with freshwater management policy directives.
13. Two of the submissions were invalidated. The submission received from 150 Buckleys Road was not from a party that was notified, and hence as subject to s96(3) and (4) is not a party able to make a submission. As subject to Minute 4, the submission from Mr Raymond Henderson purportedly on behalf of Te Taumutu Rūnanga was withdrawn on the basis that both Taumutu Rūnanga and Ngāi Tahu Whakapapa Unit subsequently provided formal correspondence that Mr Henderson does not whakapapa for Te Taumutu.

BACKGROUND

14. In March 2022, the applicant applied (RC225180) to the Council to construct and operate a staged solar array ultimately spanning 258ha, which included the subject site.
15. RC225180 was declined resource consent on procedural grounds as related to the application of s104(3)(d) of the Act. The Independent Commissioner determined, in that instance, that RC225180 should have been publicly notified (and was not). That conclusion was reached on the basis that the notification decision was made on a proposal for a 35-year term, and the Commissioner's conclusion that the neighbours who were the subject of limited notification should not be treated as the sole arbiters of the effects of the establishment of the solar farm on the land in perpetuity as was advanced at the substantive hearing.
16. As identified at the outset of the Hearing, the previous resource consent, and its decline on procedural grounds does constitute a threshold or barrier to the proper consideration of this application. As rightly identified in legal submissions from the Applicant:

"It was entirely open to KeaX to make this new application. While the nature of the activity remains the same, what is now proposed is of a smaller scale, thereby naturally generating less effects on the environment and nearby landowners and occupiers. Crucially, the missing part of the puzzle (expert evidence on highly productive land) has been provided in support of this

proposal.... the Proposal must be considered on its own merits, separately to the previous application....".¹

PRE-HEARING

Section 42A Report and council expert evidence

17. Mr Bigsby on behalf of the Council prepared and circulated a report under s42A of the Resource Management Act 1991 (the Act). That report recommended approval to the proposal subject to conditions. As rightly identified in his report, Mr Bigsby identified that I was not bound by either his recommendation or constrained by proposed conditions.

Policy assessment

18. Mr Bigsby advised that only the objectives and policies of the PODP were relevant to the application, given the relevant rules in the ODP became inoperative following notification of the Council's decisions on the PODP. Mr Bigsby draws the same conclusion when considering the weighting of the plans².
19. Mr Bigsby considered that the proposal is consistent with SD-DI-O1, SD-DI-O2, SD-DI-O3, SD-DI-O4 and SD-DI-O6 as it would not detract from the rural character of the area (due largely to the existing and proposed shelterbelts, and proposed landscaping); will maintain land based primary production (albeit to a lesser degree than the current landuse); land and water resources had been considered in an integrated manner (noting that a stormwater discharge consent has been obtained from ECan); cultural values within the site are being protected (in consultation with Te Taumutu Rūnanga); and the risks from natural hazards had been addressed.
20. Mr Bigsby confirmed that the objectives and policies of the PODP as related to the proposal are 'largely self-contained' within of the Energy and Infrastructure chapter of the Plan³. Mr Bigsby did not consider the Plan objectives and policies specifically relating to *important infrastructure* are relevant as renewable energy generation is not captured by the definition of *important infrastructure*. Mr Bigsby narrowed the relevant EI chapter objectives and policies to EI-O4, EI-P2, EI-P4, EI-P5 and EI-P9. EI-O4 seeks to *optimise and increase renewable electricity generation outputs for the national regional and local use while minimising adverse effects on the environment and sensitive activities*.
21. Mr Bigsby was satisfied that the proposal mitigates the actual and potential adverse effects on the environment and noted that EI-P2 does not require adverse effects to be avoided. Mr Bigsby recognised the tension between the EI policy framework and GRUZ-O1 and GRUZ-P1 (which state the GRUZ is characterised by 'vastness' and 'openness'); but was ultimately comfortable that the shelterbelt planting proposed would be sufficient to reconcile this tension.

¹ Legal Submissions. KeaX. Hawkins [18,19]

² S42A [186, 187]

³ S42A [197]

22. Mr Bigsby noted that EI-P2 is under appeal; although he did not consider that the proposal is inconsistent with either the recommended Plan provision or the relief sought in appeals (the Appeals seek effects to be 'managed' rather than 'minimised'; and application to 'new and major upgrades to' important infrastructure and renewable energy generation). Mr Bigsby considered the proposal as consistent with TRAN-P7, CL-O1 and NH-O1 with respect to transport effects, contaminated land and natural hazards respectively.
23. With respect to EI-P4, Mr Bigsby considered the proposal as consistent with this policy, given compliance with relevant noise and vibration rules in the Noise chapter (despite not being required to). Mr Bigsby was satisfied that conditions of consent can be imposed to ensure that the noise and vibration effects arising from the construction and operation of the solar array are reasonable. Policy EI-P4 is subject to appeal and Mr Bigsby did consider that the proposal is inconsistent with recommended provision or the nature of the appeal.
24. Mr Bigsby noted that the proposal will be developed in accordance with the relevant regulatory controls and is therefore consistent with EI-P5 which pertains to radio, electric and magnetic fields.
25. EI-P9 considers the benefits, technical and operational requirements, efficiencies and availability of renewable electricity generation. Mr Bigsby was satisfied that the proposal would be significantly beneficial (and will contribute to national renewable energy targets). The proposal site is well located adjacent to the Brooksby substation and would satisfy the regulatory requirements associated with obligations under the Electrical Codes of Practice. Mr Bigsby is therefore satisfied that the proposal furthers the achievement of EI-P9⁴.
26. Mr Bigsby considered that the PODP gives effect to the Canterbury Regional Policy Statement (CRPS). As such, the s42A Report concluded that the proposal satisfied Objective 5.2.2 (supported by Policies 5.3.2, 5.3.9 and 5.3.12), Objective 15.2.1 (supported by Policy 15.3.1) and Objective 16.2.2 (supported by Policies 16.3.3 and 16.3.5) of the CRPS by enabling the establishment of *regionally significant infrastructure / renewable energy generation activity* in an appropriate location that does not compromise the soil resource.
27. Mr Bigsby was satisfied that the proposal is consistent with the relevant provisions of the National Policy Statement for Renewable Electricity Generation (NPS-REG). Mr Bigsby set out how the proposal achieves, and has regard to Policy A, Policy B and Policy C1 including by increasing supply, increasing diversity of supply, and contributing to security of supply (through the option to include batteries on the site in the future), thereby contributing to achievement of the national targets for renewable electricity generation (being 100% by 2030).
28. To the extent that it is relevant, Mr Bigsby relied on the assessment of the proposal against the National Policy Statement for Freshwater Management by ECan. That assessment concluded that the proposal is consistent with the relevant policies of the NPS-FM.

⁴ S42A [209 – 212]

29. Turning to the National Policy Statement for Highly Productive Land (NPS-HPL), Mr Bigsby considered that the sole objective, as well as Policies 1, 4, 8 and 9 are relevant. Based on the evidence of Mr Gordon, Mr Bigsby was satisfied that the proposal provides for the continued use of the site for land-based primary production. He considered that this *supports* land-based primary production but does not *prioritise* it.
30. Mr Bigsby considered that the proposal qualifies as *specified infrastructure* and that new infrastructure is anticipated by Clause 3.9(2)(j)(i); that the proposal has demonstrated a functional and operational need to locate on highly productive land (Clause 3.9(2)(j)(ii)); that the proposal minimises or mitigates the actual or potential loss of productive capacity (Clause 3.9(3)(a)); and lastly, Mr Bigsby was satisfied that the potential for reverse sensitivity effects are unlikely (Clause 3.9(3)(b)). On this basis, Mr Bigsby concluded that the proposal is not an inappropriate use of highly productive land.

Effects assessment

31. Mr Bigsby considered the effects are limited to rural character and amenity, glare and reflectivity, transportation, noise, environmental health, loss of highly productive land, reverse sensitivity, earthworks, cultural effects, ecological effects, hazard effects and servicing.
32. Relying on the evidence of Mr Craig, Mr Bigsby considered that the visual effects of the proposal are less than minor. However, this will only occur once additional mitigation planting is established as limited areas of the array will be temporarily visible during the short period (two years) that it takes for the proposed mitigation planting to mature (grow from 2m to 3.5m).
33. With respect to landscape effects, Mr Bigsby acknowledged that the PODP contemplates the establishment of renewable energy generation albeit as a discretionary activity, meaning that each application is to be assessed on its merits. Relying on the evidence of Mr Craig, Mr Bigsby considered that vegetation and openness are key considerations of character and amenity (in this location) and, when considering the influence of shelterbelt plantings on the existing and proposed environment, that the landscape effects of the proposal are no more than minor, lessening once mitigation planting achieves maturity and complete screening.
34. Relying on the evidence of Mr Van der Velden, Mr Bigsby concluded that the glare and reflectivity effects on neighbouring properties and road users are less than minor, due in part to the operating parameters that the applicant has volunteered (including tracking restrictions).
35. The traffic generated by the proposal complies with the maximum vehicle movements permitted by both the ODP and PODP. Accordingly, Mr Bigsby determined that there are no adverse safety effects during both the construction and operational phases.
36. Relying on the evidence of Mr Farren, Mr Bigsby considered that the construction noise effects can be mitigated with conditions restricting works to weekdays only; the setback of piling rigs from residential units; compliance with NZS 6803: 1999 Acoustics – Construction Noise; and the development and implementation of a Construction Noise and Vibration Management Plan. With respect to the operational noise, Mr Bigsby

(relying on the evidence of Mr Farn) considered that noise effects will be appropriate with the imposition of suitable conditions of consent requiring the inverters (and batteries if commissioned) to be switched off at night, a 40dB L_{Aeq} nighttime noise limit and a 50dB L_{Aeq} daytime limit; and the requirement for compliance monitoring. Lastly, relying on the evidence of Mr Farren, Mr Bigsby considered that the vibration effects are appropriate.

37. In his report, Mr Bigsby has addressed both contamination and electromagnetic fields (EMF) under potential environmental health effects. Relying on the evidence of Ms Stout, Mr Bigsby was satisfied that the potential contamination effects arising from the proposed infrastructure would be less than minor. With regards to EMF, Mr Bigsby, relying on Ms Stout, concluded that the effects are less than minor given the current regulatory framework for electrical installations.
38. In terms of highly productive land, and reliant on the evidence of Mr Gordon, Mr Bigsby was satisfied that the site can continue to support land based primary production (albeit for a restricted number of activities that are compatible with the solar array), that the potential productive capacity can be maintained, and that adverse effects on highly productive land would be minimal.
39. Mr Bigsby was satisfied that the potential for reverse sensitivity effects arising from locating the proposed solar operation near primary production activities (with associated noise, dust and odour effects) will be unlikely.
40. As earthworks are relatively confined (topsoil removal, cut and cover shallow trenches), will be located clear of the Wāhi Taonga Management Site – C59, and a condition of consent has been offered requiring an Erosion and Sediment Control Plan (ESCP) to be implemented, Mr Bigsby was satisfied that the effects of proposed earthworks are insignificant.
41. The site contains Wāhi Taonga Management Site – C59 (as shown in the Operative District Plan). The applicant and Council have both undertaken consultation with Te Taumutu Rūnanga, and the application was formally notified to the Rūnanga. A response to consultation was provided (including a Cultural Advice Report), but no submission on the application was made. Mr Bigsby considers that the combination of mitigating factors, including an exclusion area around the wāhi taonga site, adoption of accidental discovery protocol, the implementation of an ESCP, and the consent conditions already approved by Environment Canterbury (with regards to spills and contamination), mean that the effects are acceptable. His position is also informed by the absence of any submission in opposition from Te Taumutu Rūnanga. Lastly, Mr Bigsby supported the use of indigenous species in the perimeter planting of the site (as set out in the Cultural Advice Report) but acknowledged that visual effects will be extended due to the slower growing nature of the indigenous species.
42. Relying on the applicant's ecological report and the review of that report by Council biodiversity specialist (Ms Ford), Mr Bigsby was satisfied that the ecological effects of the proposal are very low to low provided that impact management and monitoring requirements are controlled through conditions of consent.
43. Mr Bigsby advised that the hazard risks include flooding, geotechnical and fire. With respect to flood risk, the application included a flood assessment that satisfied Mr Bigsby that the infrastructure and earthworks associated with the proposal will not

exacerbate flooding effects. Relying on the applicant's geotechnical assessment and the peer review of this report by Council (Mr McCahon), Mr Bigsby considered that the geotechnical effects are insignificant as the proposal is unlikely to accelerate, worsen or result in geotechnical risks. The applicant has advised that safety plans will be required under the Safety at Work Act 2015 and the Fire and Emergency New Zealand Act 2017, and that practice codes under the Electricity Act 1992 will need to be complied with. On this basis, Mr Bigsby considered that the fire risk is appropriately mitigated, but that a copy of the fire emergency plans should be provided to Council as recommended in a condition, were consent to be granted.

44. Mr Bigsby was satisfied that the servicing needs of the site will be temporary, and the effects are consequentially insignificant.
45. Lastly, Mr Bigsby noted that the application will have positive effects including assisting with achieving targets for the generation of electricity from renewable sources and reducing reliance on fossil fuels.

Other matters

46. Relying on the Cultural Advice Report from Mahaanui Kurataiao Limited, Mr Bigsby was satisfied that the proposal largely aligns with the Mahaanui Iwi Management Plan 2013, except for use of exotic species in the proposed shelterbelt, rather than natives.
47. In response to a submission, Mr Bigsby confirmed that the effects of the proposal on land values is consequential, rather than an effect itself and therefore he has not directly considered the impacts on property values.

Part 2

48. Mr Bigsby in his s42A Report was satisfied that the relevant District Plans and national policy had been prepared in accordance with Part 2, and therefore recourse to Part 2 is not necessary. But for completeness, he considered that the proposal is consistent with Part 2 as the proposal will make efficient use of natural and physical resources; will maintain amenity and the environment; and will manage the effects of climate change through the use of renewable energy.
49. Overall Mr Bigsby is of the view that the proposal is consistent with national, regional and local policy and the actual and potential adverse effects of the proposal are minor or are able to be adequately mitigated so they are minor. Accordingly, the s42A Report recommended approval as subject to conditions.

Applicant and submitter evidence

50. In response to Mr Bigsby's s42A report and the evidence of council's experts, evidence was circulated prior to the hearing by the following:
 - a. KeaX Limited
 - i. Mr Campbell McMath (applicant)
 - ii. Ms Amanda Anthony (landscape expert)
 - iii. Mr William Reeve (acoustic expert)

- iv. Mr Martin Gledhill (electromagnetic fields expert)
 - v. Mr Stuart Ford (highly productive land expert)
 - vi. Dr Zac Beechey-Gradwell (contamination expert)
 - vii. Ms Claire Kelly (planning expert)
 - b. Brookside Submitters Group
 - i. Ms Hadee Thompson-Morrison (soil contamination expert)
 - ii. Mr Raymond Henderson (ecology and toxicology)
 - iii. Mr Sharn Hainsworth (land use capability expert)
 - iv. Mr Stewart Fletcher (planning expert)
51. Legal submissions were also received on behalf of the applicant and the Brookside Submitters Group.
52. As also identified in Minute 4, Mr Henderson was reminded of his obligations under the Code of Conduct as set out in [3] of his Evidence in Chief. Large sections of his evidence were subsequently redacted during the Hearing which, unhelpfully to both myself, Mr Henderson and the Brookside Submitters Group, strayed into matters outside of his qualifications and experience, as well as accepted statutory guidance, and into matters of conjecture. This has had a detrimental effect in terms of the weight I am able to give to his residual evidence for consideration.

THE HEARING

53. The hearing was held on the 4th and 5th of March.
54. In addition to the pre-circulated evidence, I also heard from a number of individuals who are party to the Brookside Submitters Group, including Mr Clark Casey, Mr Simon Robinson, Mr Mike Dalley, Ms Donna Kewish and Mr Donald Green (of Glenmore Farming). They helpfully provided written statements and spoke to these at the hearing. As these submitters consistently raised the same or similar concerns about the proposal (albeit as contextual to their circumstances), I have woven their views into my determination under the entity of '*the submitters*'.
55. I wish to acknowledge the conduct of each of the submitters in presenting their evidence and considered responses to questions in what has been clearly a matter that has been of significant focus for this community over a period of some time. I note that I especially considered the evidence of Mr Casey in relation to farm production, and Ms Kewish in terms of amenity considerations both considered and compelling. I provide additional discussion on these matters as relevant in the discussion below.
56. It is also noted that the Applicant advanced an amendment to the proposal's hours of operation (to align with those in the PODP), which was canvassed in evidence and discussed further at the hearing. I consider this amendment to the application in my discussion of noise below.

POST HEARING

57. I completed a site visit on 16 March 2024. The site visit assisted in clarifying for me a number of the matters advanced by both the submitters and the applicant with regard to the site and the proposal.
58. In terms of general observations, I noted that the existing perimeter shelter belts had been very recently pruned, and yet provided considerable screening at oblique and distance views. I also noted proximity to both the Robinson and Kewish properties to the proposal in terms of residential amenity. Lastly, I observed the increased extent and patchwork quality of shelterbelts and plantings south of the Irwell River and in the context of the subject site as identified in the evidence of Ms Anthony for the Applicant⁵, in comparison to a greater extent of openness exhibited with rural character to the north of the Irwell River.
59. Following this, I was satisfied that no further information was necessary to make my decision and I issued Minute 7 closing the hearing.

DISCUSSION

60. In considering this application, I am mindful that I have to consider the matters set out in sections 104, having regard to Part 2 and 104B of the Act in making my decision, and may impose conditions under s.108. As a discretionary activity there are no restrictions as to the consideration of effects, and I am able to consider all aspects of the proposal.
61. In undertaking this assessment, I am to disregard any adverse effects on those parties who have provided their written consent in accordance with s104(3)(a)(ii).
62. I may also disregard an adverse effect of an activity on the environment if the District Plan permits an activity with that effect in accordance with s104(2) of the RMA (known as the 'permitted baseline'). With respect to this proposal, the permitted baseline has not been traversed as a relevant planning matter and therefore I do not consider it pertinent to my decision-making process.
63. I agree with Mr Bigsby that there is no need for recourse to Part 2 of the Act, as the PODP and relevant regional and national policy has been developed in accordance with Part 2 and any conflicts between those documents (which I discuss below) can be resolved without 'reading up' to Part 2.

Procedural considerations

Notification

64. Concerns expressed in submissions also related to the notification decision for the application; specifically, that this application should have been publicly notified given

⁵ EIC Anthony [6.2]

the previous decision on RC225180 which declined that application pursuant to s104(3)(d).

65. I agree with the opening⁶ (and closing) legal submissions from Ms Hawkins for KeaX that: it is entirely open for the applicant to propose a new application; that the application is to be considered on its merits alone, and not against any preceding application that differs in scale and effects; and lastly that the proposed application contained expert evidence addressing a consideration against the NPS-HPL, which was not in effect when the previous application was lodged (but was when subject to consideration in the substantive decision).
66. I note that under questioning at the Hearing, Ms Ottawa as legal counsel for the Brookside Submitters Group reluctantly agreed with the above, albeit she retained the view that effects of the proposal remained more than minor with regard to amenity and highly productive land, and hence s104(3)(d) remained applicable.
67. I understand that s104(3)(d) does not operate retrospectively. That is, it does not provide an avenue where the substantive decision maker can revisit the notification decision. It requires a consideration and judgement under s104 in considering the application as to whether the adverse effects at the time of substantive decision making, meet the tests for notification. It would appear to be an agreed position that if the activity could be said to have an effect on the environment which is more than minor then public notification would have been required, and therefore there is a directive that consent pursuant to s104(3)(d) *must not* be granted.
68. The evidence from the Brookside Submitters Group is that 'more than minor' adverse effects will be advanced in terms of both amenity effects and also on highly productive land. I have deliberated on these matters below, but in terms of the former prefer the expert evidence of Mr Craig and Ms Anthony to the planning evidence provided by Mr Fletcher. I have concluded that effects on amenity values and rural character will be no more than minor, and limited only to the extent of immediately adjoining parties as were notified of the application and also on a temporary basis until established. In terms of highly productive land, I have concurred with the evidence provided by Mr Ford for the applicant and Mr Gordon for the Council that any effects on productive capacity would be less than minor.
69. Accordingly, I conclude that s104(3)(d) has been considered and does not provide a jurisdictional bar to consent.
70. Lastly, and as an aside I consider that the community petition appended to the submitters statements indicates that the number of parties in opposition would have undoubtably risen, reiterating that neither 'opposition' or indeed 'support' for a proposal does not of itself achieve the statutory threshold relating to a requirement for public notification or limited notification of applications⁷. However, I remain convinced that new issues (or issues not already raised in submissions) would unlikely have been raised, nor that that a broader spatial consideration of actual or potential effects arising

⁶ Legal Submissions KeaX [16 – 21]

⁷ Sections 95 – 95G RMA1991.

would lead to a different conclusion as to effects on amenity, rural character and highly productive land.

Consultation

71. I also consider it appropriate to provide a brief comment on the applicant's approach to consultation. The extent of consultation is not governed by the Resource Management Act, that is there is no statutory obligation for the applicant to consult with neighbours. Whilst I acknowledge the frustrations of the submitters as expressed in submissions, this is not a matter that plays into my decision making or could be taken further.

Consideration of alternatives

72. The RMA is clear on when consideration of alternatives is required. I am satisfied that there is no requirement on the applicant to consider alternatives, as I have concluded that there are not significant adverse effects associated with the proposal. Hence, the statutory requirements of Section 6 of the Fourth Schedule of the RMA are not triggered by the application.

Limitations on this Decision

73. Lastly, as I noted in my opening comments at the hearing, I am only able to consider those matters relevant to the Selwyn District Council in terms of their duties and functions under the Act. Accordingly, I cannot:
- a. Reconsider, nor duplicate considerations with regard to any aspect of the existing ECan consents (CRC223909 and CRC223908). Despite the application having a discretionary status, I cannot consider the stormwater effects of the proposal (including contaminant loadings and quality) or the proposed earthworks (with respect to effects on aquifers) as these remain under the jurisdiction of the Regional Council.
 - b. Consider matters associated with fire risk and hazardous substances, as these are managed under the Fire and Emergency New Zealand Act 2017 and the Hazardous Substances and New Organisms Act 1996.
 - c. Consider the potential cumulative effects of any future lodged or unconsented resource consent applications for solar arrays in the area.

Assessment of Effects on the Environment (Section 104(1)(a))

74. I agree with Mr Bigsby that the primary environmental effects associated with the proposal are rural character and amenity, glare and reflectivity, transportation, noise, environmental health, loss of highly productive land, reverse sensitivity, earthworks, cultural effects, ecological effects, natural hazard effects and servicing.

Rural character and amenity, glare and reflectivity

75. Expert evidence in respect of rural character and amenity effects was presented by Mr Craig (on behalf of Council) and Ms Anthony (on behalf of the applicant). Expert evidence in respect of glint and glare (an aspect of amenity) was presented by Mr Van der Velden. The submitters also provided commentary on their experiences with the character and amenity of the area.
76. I record that Mr Fletcher also provided 'consideration' as to changes in amenity and rural character. He concluded that adverse effects will be more than minor, particularly for those in the local area, including those that pass by⁸ and include a loss of openness as associated with rural character. Mr Fletcher does not identify the relevant Planning framework he is reliant on in that assertion.
77. Regardless, I simply note in this respect I prefer the expert evidence of Mr Craig for the Council and Ms Anthony for the applicant. Both expert witnesses identified that the proposed array is not incongruent with the existing environment or respective PODP outcomes in terms of rural character and amenity, and that any sense of 'enclosure' as provided by the proposed mitigation shelterbelts would be *'entirely acceptable given that it is a very common feature within the rural Canterbury Plains'*⁹.
78. Mr Craig considered that glare, view quality and obstruction of views are key considerations of visual effects and that, in the absence of mitigation planting, the visual effects could be more than minor. With respect to landscape effects, Mr Craig is satisfied that the setting (landscape around the site) is 'typical' and does not include distinct or unique features that would rule out the proposal, and that the prominent characteristics of openness and vegetation will be somewhat and largely maintained (respectively). As such Mr Craig considered that the solar array will result in a significant landscape change, but that this is an acceptable effect. With regards to rural amenity, Mr Craig is satisfied that the proposed mitigation planting will adequately mitigate effects on rural amenity.
79. Mr Van der Velden considered that the glint and glare effects on adjoining properties would be less than minor (due to the limited duration of glare impact annually – less than 10 hours a year and less than 10 minutes per day) and mitigated by the proposed mitigation planting. With respect to road users, he considered the proposed mitigation planting to be critical to manage glare effects, particularly on elevated road users (those in trucks and buses etc).
80. Ms Anthony is satisfied that the visual and landscape effects will be in the realm of 'low' as a consequence of the mitigation planting (fully grown). In response to Mr Van der Velden's evidence, Ms Anthony reported that the glint and glare modelling assessment was rerun and the Landscape Mitigation Plan revised to increase the extent of mitigation planting and reduce glint and glare effects on road users. Ms Anthony also made reference to the effects of permitted buildings and activities on rural amenity and noted that rural amenity (including a sense of openness) could be diminished by activities that could otherwise establish without resource consent.

⁸ EIC Fletcher [21]

⁹ EIC Craig [54]

81. I acknowledge the concerns of the neighbours regarding the effectiveness of the mitigation planting; the change in views (or impediment of long views); the glint and glare effects; and the noise effects (discussed below). It became apparent during the Hearing that a substantial concern of the submitter group related to the change in rural character from pastoral to that associated with the solar array, regardless of whether the array and supporting infrastructure were immediately observable.
82. There is little disagreement between Mr Craig, Mr Van der Velden and Ms Anthony (and indeed the planners involved in the hearing) as to the need for the proposed mitigation planting. Furthermore, I agree with Ms Anthony's 'permitted baseline' comparison, where any number of permitted activities and buildings, depending on location, could equally reduce the sense of rural openness and amenity for individual submitters. I am also mindful that afforestation is a permitted activity on the site.
83. I am therefore satisfied that the existing and proposed mitigation planting, in combination with the Landscape Management Plan are sufficient to address the adverse effects on rural character and amenity subject to the imposition of suitable condition/s.
84. The issue of native vs exotic planting is discussed in the cultural effects section below.

Transportation

85. No expert evidence was tabled with respect to the transportation effects of the proposal. Notwithstanding this, I am satisfied that as the proposal complies with the relevant permitted traffic movements in the PODP; that peak traffic movements are limited to the construction period (approximately a year); and that the applicant proposes to upgrade the access formation on Branch Drain Road, the transportation effects are acceptable subject to the imposition of suitable condition/s.
86. In terms of specific submitter raised matters, I can confirm with respect to a matter raised by Ms Kewish that the proposal does not include any vehicle access to the site adjoining 324 Branch Road.

Noise

87. An amendment to the proposal was tabled by the applicant at the hearing; specifically, to extend the amend the hours of operation to align with the PODP (0700 – 2200). There was no change to the proposed noise limits (being less than both the ODP and PODP limits).
88. Expert evidence in respect of noise effects was tabled by Mr Farren (on behalf of council) and Mr Reeve (on behalf of the applicant. Ms Kewish (submitter) also talked at length in her statement about the concerns she had in relation to noise effects on the amenity of the area, including construction effects.
89. With respect to the operational noise, the experts agreed that a 50dB L_{Aeq} is appropriate for a maximum daytime noise limit (being 5dB L_{Aeq} lower than that prescribed by the ODP and PODP) and takes into account other relevant guidelines and the ambient noise level. There is no disagreement between the experts that the complementary 40dB L_{Aeq} maximum nighttime limit is appropriate (also 5dB L_{Aeq} lower than the ODP and PODP). I am therefore satisfied that, subject to suitable condition/s of consent, the adverse effects from operational noise are minor. Noting that these

noise emission levels have been volunteered by the applicant (representing augier conditions).

90. With respect to the extended daytime hours. I am satisfied that this change in scope is appropriate given that the hours are consistent with the PODP and that the maximum proposed limit is still less than the permitted limit set out in the PODP.
91. For completeness, I consider that the changes: (as to noise emissions during operating hours), do not change the scale or intensity of the proposal as lodged; do not result in noticeable change in noise effects (being both aligned with the PODP hours and also not being incongruent with background noise levels) as outlined by Mr Reeve for the applicant in response to questions; and importantly would not result in any additional parties being impacted that might have otherwise been notified of the application.
92. With respect to construction noise, the experts were again in agreement that the construction noise limits are appropriate, provided a Construction Noise and Vibration Management Plan (**CNVMP**) is developed and implemented. The CNVMP will ensure application of the best practicable option (with respect to noise management) is implemented, including consideration as provided by guidance from NZS6803 and specifically include an element of community relations management.
93. Ms Kewish has expressed a preference for construction work to be limited to Monday to Friday so that weekends are less disturbed. There was also discussion at the Hearing with both the submitter group and Mr Reeve (for the applicant) and Mr Farren (for the Council) as to weekend respite from Pile driving activities.
94. The acoustic advice from both Mr Farren and Mr Reeve was that pile driving operations, including from multiple rigs could accord within the management and assessment regime contained within NZS6803:1991. However, the applicant in the Right of Reply has reflected on this matter and advised of two additional controls to be volunteered as Conditions. These are:
 - a. A restriction on piling operations (percussive or otherwise) on Saturdays.
 - b. A restriction on piling operations (percussive or otherwise) outside the hours of 8.00am and 5.00pm on weekdays.
95. I am therefore satisfied that, subject to suitable condition/s of consent including those volunteered in the applicant's Right of Reply relating to piling operations, the adverse effects from operational and construction noise are less than minor.

Environmental health

96. Environmental health considerations encompass electromagnetic fields (EMF) and contamination (leaching) from the equipment. As I have already noted, I will not comment on stormwater contamination, as this matter has been determined by ECan.
97. With respect to contamination (leaching), expert evidence was provided by Ms Stout (for council) and Mr Beechey-Gradwell (for the applicant). Ms Thompson-Morrison (for the submitters) provided evidence (and an appended report) related to soil structure, which I have not found to overly inform the issue of contamination.
98. Mr Hainsworth (for the submitters) provided limited commentary on contamination, but the focus of his evidence is productive capacity.

99. Mr Dalley (a submitter) appended a pilot study to his statement which he stated evaluated the effects of solar panel leachates on highly productive land (the study was prepared by Mr Dalley and Mr Henderson on Mr Dalley's property). As was raised at the Hearing, the conclusions of the data appended to the evidence of Mr Dalley was seemingly on the basis of then being able to be raised in the evidence of Mr Henderson, and thus avoiding the requirement for pre-circulation. Regardless of the propriety or otherwise to consider this evidence, both Ms Stout for the Council and Dr Beechey-Gradwell for the applicant, having time to properly consider the matter have both agreed that the levels of contaminants present in the sampling undertaken are within acceptable background ranges in rural Canterbury, and that the use of % changes (relative to controls) within the data as contained within the Appendix are misleading. I agree, I have not considered it further in my deliberations.
100. Ms Stout and Mr Beechey-Gradwell were largely in agreement as to the potential for contamination (or leaching of contaminants) from the proposed equipment.
101. Ms Stout's evidence and discussion at the Hearing, which was particularly compelling, took a practical approach to the likelihood of contamination (focussing on the likelihood of leaching and the benefits of monitoring and maintenance).
102. Mr Beechey-Gradwell provided contaminant testing results from sites in Wairau Valley (Marlborough) and the United Kingdom (showing that there was no statistically significant increase in contaminants below solar panels).
103. While I acknowledge the concerns of the submitters, particularly those with nearby productive farms (including the submitter evidence of Mr Dalley), I am persuaded by the evidence of Ms Stout and Mr Beechey-Gradwell that the potential for contamination (leaching of contaminants) is insignificant, and with suitable conditions of consent requiring monitoring and maintenance, the effects are likely negligible. It is noted that the applicant in the Right of Reply has also volunteered additional conditions with respect of the monitoring and maintenance of solar panels / infrastructure.
104. With respect to EMF, expert evidence was provided by Ms Stout (for council) and Mr Gledhill (for the applicant). Concerns were raised by submitters, particularly with respect to effects on insects and bees, which are critical to nearby cropping farms. The experts agree that the EMF levels arising from the proposed solar array are likely undetectable at the boundary of the property; that the inverters are the largest generator of EMF on the site (and these are internal); and that EMF diminishes over distance (both horizontally and vertically) and therefore the effects of this proposal on humans is non-existent and insects and bees would be immaterial. I am satisfied that the effects arising from EMF are less than minor.

Loss of highly productive land

105. This matter is discussed in relation to the NPS-HPL below.

Reverse sensitivity

106. Mr Bigsby and Ms Kelly agree that the potential for reverse sensitivity effects is highly unlikely.
107. In terms of effects associated with increased bird roosting in mitigation planting and hence degradation of adjoining crops as raised by Mr Casey, I note that some 80% of

the proposed perimeter shelterbelts already exists, as does substantial areas of landscape planting and shelterbelts in the wider surrounding context. I do not consider there to be a demonstrable connection between the planting proposed and a resultant material adverse effect from increased bird habitation.

108. I consider that adverse effects associated with actual or potential effects from reverse sensitivity to be less than minor.

Earthworks

109. Given the proportional (some 63.2m³/ha) and limited nature (approx. 7,000m³ total) of proposed earthworks (cut and cover trenching, some removal of topsoil) and the applicant's willingness to prepare and implement an Erosion and Sediment Control Plan (**ESCP**), Mr Bigsby and Ms Kelly agree that the potential for adverse effects arising from the proposed earthworks are less than minor.
110. It is also noted in combination with the ESCP that no earthworks are proposed within the ODP notated Wāhi Taonga Management Site – C59, nor within 10m of the drains that run adjacent to the site boundaries, except that associated with the culvert replacement for the existing access on Branch Drain Road. The extent of earthworks proposed are also well below the extent of those permitted by the PODP¹⁰.
111. I agree with the assessment of Mr Bigsby and Ms Kelly, and that adverse effects associated with earthworks, including associated effects with dust and sediment runoff will be less than minor.

Cultural effects

112. A Cultural Advice Report (**CAR**) was provided by Mahaanui Kurataiao Limited on behalf of Te Taumutu Rūnanga prior to the application being notified. Te Taumutu Rūnanga was notified of the application as part of the s95 process, but no submission was made and rūnanga did not take part in the hearing process. Notwithstanding this, I consider that the CAR clearly sets out the ways in which the rūnanga's concerns can be addressed by the applicants. It is the opinion of Mr Bigsby that, the conditions of consent before me by-and-large will satisfy the issues raised by rūnanga. This includes the fenced exclusionary area within 50m of the wāhi taonga site (as notated in the ODP).
113. I understand that an area of outstanding disagreement is the plant species used in the mitigation planting, with the proposal promoting fast-growing exotic species and the rūnanga's preference is for exotic species to be replaced overtime with eco-sourced indigenous species.
114. Mr Bigsby and Mr Craig (for council) acknowledge the benefits of indigenous species. However, Mr Craig correctly in my view focused landscaping mitigation with the management of any residual temporary visual effects associated with the proposal. Accordingly, he preferred the benefits associated with faster growing mitigation planting as established with exotic species. This view concurred with that of Ms Kelly and Ms Anthony (for the applicant).

¹⁰ EW-REQ1

115. I am mindful that afforestation is a permitted activity, as is the planting of shelterbelts in the General Rural zone (both of which are typically exotic species). Overall, I find support for the use of fast-growing exotic species for mitigation purposes. I do not consider that approach to screening is in direct conflict with the position of mana whenua who sought within the CAR for a preference for indigenous species to be used in the longer term and at a broader context. Whilst not stipulated as a Condition of Consent, I would encourage the applicant to work with rūnanga if there is scope for the longer term provision of indigenous species within the site, although not as replacement planting for shelterbelt screening as associated with the proposal.

Ecological effects

116. Mr Bigsby (based on internal council advice) is satisfied that the potential for ecological effects arising from the proposal is low. I note Ms Stout's comments above confirming that the potential for EMF to affect animals and insects is negligible. I am therefore satisfied that, subject to appropriate conditions of consent, that the ecological effects of the proposal are acceptable.

Natural hazard effects

117. Mr Bigsby has identified flooding risk, geotechnical risk and fire risk under the banner of natural hazard risk. I note that this matter was of considerable concern as expressed in the statement of Mr Dalley, as to whether the proposal would exacerbate existing flood risk and overland flows over his adjoining property.
118. With respect to flooding risk, Mr Bigsby was satisfied that the earthworks are not of sufficient scale to alter overland flowpaths; that the panels are able to 'stowed' such that they will not affect flood paths; and finished floor levels of the inverters and batteries will be 1m above existing ground levels. With suitable conditions of consent, I am satisfied that the flood risk is adequately mitigated.
119. With respect to the matters as to flood risk raised by Mr Dalley, I note that the site (and that of Mr Dalley) is contained within the PODP Plains Flood Management Overlay which identifies a predisposition to the likelihood of surface flooding. However, I find that the proposal will not exacerbate existing flood risk, nor to any material degree impact on surface drainage patterns.
120. With respect to geotechnical risk, Mr Bigsby (with external council advice) is satisfied that the proposal is unlikely to worsen, accelerate or give rise to geotechnical hazards. I am therefore satisfied that the geotechnical risks are insignificant.
121. Lastly, with respect to fire risk, this has been identified as a particular concern by the submitters. As I have noted above, the applicant has obligations under the Fire and Emergency New Zealand Act 2017 (and is required to prepare a Fire Emergency Plan), as well as the Electricity Act. Correctly, Mr Bigsby also notes that the applicant has responsibilities under the Health and Safety at Work Act 2015 and will need to prepare a Health and Safety Management Plan. As specific processes exist outside of this resource consenting process for managing the fire risk, I am satisfied that the risks are adequately mitigated. I have included a condition of consent requiring the Fire Emergency Plan to also be submitted to council for their records, given that invariably fire management is a function of local governments (in support of FENZ).

Servicing

122. The installation of the solar array (the construction phase) will require the site to be temporarily serviced. I am satisfied that the servicing solutions proposed by the applicant are sufficient. It is appropriate to have a condition of consent that ensures that all services are removed from site following completion of the construction phase.

Positive Effects

123. I agree with the assessment of Mr Bigsby and Ms Kelly that there are substantial benefits arising from the proposal, including a renewable energy supply for approximately 11,200 homes annually and a corresponding contribution to New Zealand's renewable energy targets.

Conclusion on Effects

Based on the above, including that associated with productive capacity of Highly Productive Land as discussed below, I am satisfied that the effects of the proposal, as subject to Conditions including those volunteered by the Applicant, will be no more than minor (at most).

Relevant Provisions of Statutory Documents (s104(1)(b))

124. I agree with Mr Bigsby that the relevant statutory framework is set out in:
- The National Policy Statement for Renewable Electricity Generation (NPS-REG)
 - The National Policy Statement for Highly Productive Land (NPS-HPL)
 - The National Policy Statement for Freshwater Management (NPS-FM)
 - The Canterbury Regional Policy Statement (CRPS)
 - The Partially Operative District Plan (PODP)
125. For completeness, I agree with Mr Bigsby that consideration of the ODP objectives and policies would not afford this process any assistance (given there are no ODP rule triggers, it must therefore be assumed that the proposal is consistent with the objectives and policies of the ODP).
126. As noted by Mr Bigsby, an assessment of the NPS-FM was completed by ECan. That decision records that the Regional Council are satisfied that the proposal is consistent with the NPS-FM.

National Policy Statement for Renewable Electricity Generation

127. There is no dispute that the proposal receives strong policy support from the NPS-REG. New Zealand is targeting 50% total energy consumption from renewable sources by 2035, and 100% renewable electricity by 2030. The proposal will undoubtedly contribute to those targets by serving approximately 11,200 houses (which in real terms is almost all the houses required to satisfy the Selwyn District's housing demand for the next 10 years).

National Policy Statement for Highly Productive Land

128. Much of the legal submissions from Ms Ottawa and Planning evidence of Mr Fletcher on behalf of the Brookside Submitters Group focused on the assessment and application of the NPS-HPL to the Proposal, specifically the application of Clause 3.9(2)(j).
129. There was no dispute that the NPS-HPL applies to the Proposal. Nor that in the context of the consideration of the application that I am to 'have regard to' any relevant provisions of the NPS-HPL¹¹ rather than a requirement to 'give effect' to the NPS-HPL as would be required in the development of regional and district plans.
130. The focus in evidence and deliberations is centred on Clause 3.9(2) which provides 'exceptions' as appropriate uses of highly productive land that is not land-based primary production; conjunctively 'any use or development' is to minimise or mitigate any actual loss or potential cumulative loss of the availability and productive capacity of highly productive land in the district under Clause 3.9(3)(a).
131. I was assisted by the expert evidence of Mr Gordon (for council), Mr Ford (for the applicant and Mr Hainsworth (for the submitters) Their insights were immensely helpful.
132. The planning evidence of Mr Bigsby and Ms Kelly agreed that the proposal, as reliant on the expert evidence, was consistent with Clause 3.9 of the NPS-HPL and that adverse effects on the availability and productive capacity of highly productive land would be minimised and mitigated. Conversely Mr Fletcher (for the Brookside Submitter Group) advised that the proposal was unable to traverse the hurdle of clause 3.9(2)(j) stating reliance on the status and implications of the Ministry for the Environment's Consultation Document (Sept 2023) on the proposed intended insertion of the word 'construction' into clause 3.9(2)(j)(i) of the NPS-HPL.
133. Legal submissions have also assisted with the interpretation and application of the NPS-HPL to the proposal.
134. I also acknowledge the statements of the submitters (especially that of Mr Casey and Mr Dalley as local farmers who have valuable local knowledge on the productive capacity of the land). However, I note that much of the evidence of Mr Casey, whilst compelling as to the economic productive capacity of the proposal (including pastoral use), traversed into matters associated with viability or economic returns predicated on farming uses.
135. Clause 3.9(3)(a) of the NPS-HPL does not extend to a consideration of economic productivity and return based on the viability of land-based primary production. The consideration is rather that '*use or development*' (of the land) minimises or mitigates loss of the '*availability*' and '*productive capacity*' of highly productive land in the district.
136. Simply put, I am not required to determine whether the proposed pastoral uses (including sheep breeding and finishing) will, in themselves, be economically viable or the 'highest and best' – only that that Proposal (and ongoing management) ensures

¹¹ S104(1)(b)(iii)

that adverse effects on the availability and productive capacity of the land as deemed highly productive are minimised and mitigated.

137. As outlined in legal submissions, there are several steps to be considered to establish whether the Proposal is consistent with the NPS-HPL.
138. In terms of the initial matters, there was agreement between all parties that the Proposal is '*specified infrastructure*' in terms of 3.9(2)(j).
139. Renewable electricity generation is recognised as nationally significant in a National Policy Statement (specifically, the NPS-REG); it is captured by the definition of 'regionally significant infrastructure' set out in the CRPS; and I am also satisfied that the Proposal is of a sufficient scale to qualify as 'important infrastructure' pursuant to the PODP (noting that the definition is not limited to only those activities listed).
140. I also consider that the applicant sufficiently demonstrated an operational need to establish the solar array on HPL as represented by the site (clause 3.9(2)(j)). Policy C of the NPS-REG provides insights into operational need, with Clauses (b) and (c) relating to: the logistical and technical practicalities associated with developing renewable energy generation activity; and the location of existing structures and infrastructure including ... the distribution network and the national grid, respectively.
141. I am satisfied that an operational need has been demonstrated given the site's location immediately adjoining the Brookside substation and the resilience and capacity of the substation (including multiple distribution opportunities).
142. I am also satisfied based on the evidence provided that the proposal would not result in any actual or potential reverse sensitivity effects on land-based primary production activities from the use and development (clause 3.9(3)(b)).
143. The remaining focus of the dispute is therefore centred on:
 - a. Does the '*construction*' or '*development*' of the proposal as specified infrastructure come within the ambit of clause 3.9(2)(j)(i); and subsequently,
 - b. As subject to the measures in 3.9(3)(a), what is required to be demonstrated in terms of the minimisation and mitigation of loss of the availability and productive capacity of highly productive land in the district and does the Proposal (including any conditions) overcome that hurdle.
144. The initial matter is that the exception in Clause 3.9(2)(j)(i) only refers to '*the maintenance, operation, upgrade, or expansion*' of specified infrastructure, and there is no explicit provision for use and development as associated with the '*construction*' of specified infrastructure.
145. I disagree with Mr Fletcher's assertion that the MfE Consultation Document (Sept, 2023) confirms that there is no pathway to consider the establishment of a new solar array under section 3.9(2)(j). I find that Mr Fletcher's reading of this document was somewhat selective. A broader consideration of the Consultation Document as read as a whole does not state that there is no pathway to establish new specified infrastructure on highly productive land. Rather that the NPS-HPL should more clearly provide policy support for new specified infrastructure.
146. I consider that the intention of Clause 3.9(2)(j)(i) is to provide for the construction of new specified infrastructure, despite not explicitly stating '*construction*'. I also note that

this accords with both the MfE Consultation Document, as well as useful legislative background provided in the Right of Reply by legal counsel for the Applicant¹².

147. I agree with legal counsel for the Applicant that the Consultation Document confirms that the NPS-HPL was intended to provide explicit policy support for new specified infrastructure on highly productive land. For the avoidance of doubt, I acknowledge that the Consultation Document is not to be afforded any statutory weight.
148. I understand where obscurity or ambiguity in the interpretation of a provision arises, it is appropriate to refer to the other sections of the instrument, and it may be necessary to refer to the overall text.
149. The established principles of interpretation in terms of the context of the RMA and planning instruments are that whilst it is appropriate to seek the plain meaning of a provision from the words themselves, it is not appropriate to undertake that exercise in a vacuum. That is in this instance, the NPS-HPL is to be read as a whole and regard is to be had to the context of the instrument.
150. In considering the wider legal principles of interpretation which require me to consider the purposive approach to the NPS-HPL, I consider that the NPS-HPL does not contain an absolute protection requirement. There is express policy recognition¹³ that the '*use and development*' of highly productive land is, as appropriately considered, able to occur within the overall purpose of the NPS-HPL to protect and prioritise highly productive land for use in land-based primary production.
151. Within the scheme of the NPS-HPL:
 - a. That some non-productive use and development of highly productive land is appropriately necessary applies to all '*use and development*' be that *new* use or development, or maintenance, upgrade or expansion of *existing* use and development.
 - b. The term '*development*' in Clause 3.9(2)(j)¹⁴ on a plain meaning would include 'construction'.
 - c. Specified infrastructure is recognised as nationally important¹⁵.
152. Furthermore, I note that Clause 3.9(2)(j)(i) is not a rule. The NPS-HPL is not an NES, and it would be incorrect to interpret Clause 3.9 as standards setting the gateways to avoid a prohibition. Such an interpretation would also create inconsistencies with the other relevant National Policy Statements (as also to be had regard to pursuant to s104(1)(b)(iii)) such as the NPS-REG which seeks to recognise and provide for the national significance of renewable electricity generation activities.
153. I therefore consider that the Proposal falls within the ambit of the exception for specified infrastructure in Clause 3.9(2)(j)(i).

¹² Right of Reply. Chapman Tripp [58].

¹³ Policies 4 and 8.

¹⁴ '*... it is associated with the one of the following, and there is a functional or operational need for the use **or development** to be on the highly productive land*'.

¹⁵ NPS-HPL Section 1.3 Interpretation.

154. Turning therefore to Clause 3.9(3)(a), with regards to productive capacity, I consider that the NPS-HPL is agnostic to the type of land-based primary production that may occur, it does not require the 'highest and best' land-based primary production use of the HPL. This is explicitly stated in the September 2023 discussion document¹⁶.
155. I also note that Clause 3.9(3)(a) does not compel a landowner to undertake land-based primary production (and indeed specify what that activity must be), only that if a proposal is able to step through Clause 3.9(2), it is also to ensure that it minimises or mitigates the loss of availability and productive capacity of HPL. I am satisfied that the proposal (due to its design and operating parameters, including the Condition volunteered by the applicant in regard to Farm Management) minimises and mitigates the loss of availability and productive capacity of the HPL.

Canterbury Regional Policy Statement

156. I am satisfied that the proposal is consistent with the relevant provisions of the CRPS, namely Objective 5.2.2, Policy 5.3.2, Policy 5.3.9 and Policy 5.3.12, as well as Objective 15.2.1 and Policy 15.3.1, and Objective 16.2.2, Policy 16.3.3 and Policy 16.3.5. The proposal enables the development of regionally significant infrastructure, while managing the effects on the environment and having regard to any locational or technical constraints. The proposal will promote a diverse and secure supply of energy, while not foreclosing the productive capacity of HPL within the site.

Partially Operative District Plan

157. I am satisfied that the proposal is consistent with relevant Strategic Directions in the PODP, specifically SD-DI-O1 – SD-DI-O4 and SD-DI-O6. I agree with Mr Bigsby's assessment that the proposal has appropriately responded to the environment (rural character, and land and water resources, including HPL), while supporting the wellbeing of the community and efficiently using land and resources.
158. Renewable energy and important infrastructure are provided for in the Energy and Infrastructure (EI) chapter of the PODP and are not subject to zone provisions. Given my determination (above) that the proposal also meets the definition of 'important infrastructure', I have taken a broader approach to the objectives and policies of the EI chapter than that of Mr Bigsby, and considered EI-O1 – EI-O4, EI-P1, EI-P2, EI-P4, EI-P5 and EI-P9. I am satisfied that the proposal supports the important infrastructure and renewable energy objectives by contributing to resilient and secure renewable energy generation, supporting substantial urban growth in the district and enabling people and communities. I have considered the operational needs of the proposal, and consider the Proposal will increase renewable electricity generation and contribute towards national targets. Importantly, I am satisfied that the effects of the proposal have been appropriately minimised, including landscape, noise and vibration effects and effects on HPL.

¹⁶ Managing the use and development of highly productive land: Discussion document, September 2023, page 6

159. The Transport and Noise provisions are relevant to the application, but I am satisfied that, because the proposal will comply with the relevant transport and noise rules, then it stands that it is consistent with the objectives and policies of those chapters.

Conclusion

160. I consider that the proposal is consistent with both the NPS-HPL and the NPS-REG as it provides for renewable energy generation while not foreclosing the ability to use the site for land based primary production if the landowner so chooses. I am satisfied that the proposal is consistent with local and regional policy.

Other Matters

161. Given that the renewable generation activities are generally anticipated by the District Plan subject to locational considerations, I do not consider matters of precedent and District Plan integrity would arise in this situation.
162. Because the proposal does not preclude the ability to use the land for land-based primary production and appropriate decommissioning and site rehabilitation conditions have been proffered by the applicant, I am satisfied that the indefinite duration for which consent is sought is appropriate. I agree with the applicant's Right of Reply that a consent duration (whilst offered if considered necessary) is not required given the conclusion above that subject to Conditions, the availability and productive capacity of HPL represented by the site remains.

Conclusion

163. I have concluded that the actual and potential effects on the environment associated with the proposal, subject to conditions being met will be no more than minor and that it is not contrary to or inconsistent with the objectives and policies of the NPS-REG, NPS-HPL, CRPS and PODP, and in this context meets the requirements of Part II of the Act.

DECISION

164. For the foregoing reasons, RC235464, to construct and operate a solar array at 115 and 187 Buckleys Road, Leeston is **approved** pursuant to sections 104, and 104B of the Act subject to the conditions set out in **Appendix 1** below.

Dated this 22nd day of April 2024



Matt Bonis

Commissioner

Appendix 1

RC235464 Land Use Consent Conditions

1. The proposal shall proceed in substantial accordance with the information submitted with the application on 10th of August 2023, the further information provided on 5th, 20th and 24th of October 2023 and on 4th March 2024, and the attached stamped Approved Plans entitled “RC235464 Land Use Approved Plans”, except where another condition of this consent must be complied with.
2. The operation of the solar array activity shall be limited to between the hours of 7.00am to 10.00pm. For completeness, there shall be no activity on-site at night-time (10pm to 6.59am) and the batteries and inverter will be switched off by their Programmable Logic Controller (PLC).
3. The Consent Holder shall ensure that all contractors engaged to undertake activities authorised by this resource consent are made aware at all times of the conditions and management plans that apply to this resource consent that are relevant to their work area and the measures required for compliance with the conditions.

Management Plan Certification

4. The Consent Holder shall prepare the following management plans for certification by the Council (compliance@selwyn.govt.nz) or by their nominated appointee. The Consent Holder shall prepare the following management plans in accordance with the requirements of the relevant conditions and in general accordance with the application documents:
 - a) Erosion and Sediment Control Plan (**ESCP**), incorporating a Dust Management Plan (**DMP**)
 - b) Construction Management Plan (**CMP**), including a Construction Noise and Vibration Management Plan (**CNVMP**) and Construction Traffic Management Plan (**CTMP**)
 - c) Landscaping Management Plan (**LMP**)
 - d) Avifauna Monitoring Plan (**AMP**)
 - e) Farm Management Plan (**FMP**)
5. The Consent Holder shall ensure that all management plans are prepared by a suitably qualified and experienced person (**SQEP**).
6. The Consent Holder shall submit the above management plans to the Council for certification in accordance with the timeframe specified in each relevant condition below. Works must not commence until the relevant management plan(s) are certified.
7. The certification process shall be limited to confirming in writing that the Management Plan has been prepared in accordance with the relevant conditions(s) and will achieve the objectives of the Management Plan.

8. If the Council's response is that they are not able to certify the management plan, the Consent Holder shall address any reasons or recommendations provided by the certifier and re-submit an amended Management Plan for certification.
9. The Consent Holder shall comply with all certified management plans.

Amendments to Management Plans

10. The Consent Holder may make amendments to the above Management Plans that are consistent with the objectives and performance requirements of the management plan and relevant consent conditions. The Amended Management Plan shall be submitted to SDC for certification in accordance with Conditions 6-9 (including but not limited to the SDC Certification Response in Condition 8), and all relevant works must not continue until the plan is certified.

Erosion and Sediment Control

11. The Consent Holder shall operate under the Erosion and Sediment Control Plan required by Condition 9 of CRC223908 and certified by Canterbury Regional Council.

Site Preparation and Construction

12. The Consent Holder shall undertake construction of the solar farm within a total period of 12 months.
13. Prior to the commencement of construction on the site, the vehicle crossing to service the site on Branch Drain Road shall be formed and sealed in accordance with Diagram E10.D of the Operative District Plan (Rural Volume), at the expense of the Consent Holder. (Note – the Consent Holder will require a vehicle crossing approval from Council's Infrastructure Department prior to installation).
14. The relocatable site office shall temporarily support construction and be removed from the site within 30 days of the completion of construction, including the wastewater holding tank and water tanks.
15. The Consent Holder shall, at least 30 working days prior to the commencement of construction, submit to the SDC for certification a CMP, including a CTMP and CNVMP.
16. The CMP shall include, but not be limited to:
 - a) Confirmation of the construction works program, including hours of work and staging of work;
 - a) The construction methodology;
 - b) Identification of the key personnel, roles and responsibilities and contact person(s) and contact details (including as associated with the CTMP and for public enquiries and CNVMP);
 - c) Measures for regular communication with residents located within the

vicinity of the site;

- d) Methods and systems to inform and train all persons working on the site of potential environmental issues and how to avoid, remedy or mitigate potential adverse effects;
- e) Measures to ensure compliance with the protection of the wāhi taonga site in accordance with condition 21; and
- f) Inclusion of the Accidental Discovery Protocols and a list of contact names and numbers relevant to accidental discovery.

17. The CTMP shall include, but not be limited to:

- a) Expected number of vehicle movements, particularly heavy vehicle numbers during each phase of construction;
- b) Hours of work;
- c) Points of site access;
- d) Construction traffic routes;
- e) Nature and duration of any temporary traffic management proposed;
- f) Any vehicle crossing upgrades proposed;
- g) Location of on-site parking and loading areas for deliveries; and
- h) Measures to prevent, monitor and remedy tracking of debris onto public roads and dust onto sealed sections.

18. The CNVMP shall include, but not be limited to

- a) The measures identified in Annex E3 of NZS 6803: 1999 “Acoustics – Construction Noise”; and
- b) the proposed piling methodology that has been selected with respect to the best practicable option.

19. Construction work on the site must only take place between the hours of 7.30 am and 6.00 pm, Monday to Saturday (inclusive), except that piling of any type shall not be undertaken outside the hours of 8:00am and 5:00pm on weekdays or at any time on a Saturday. Noisy works must not be undertaken on Sundays or public holidays.

Note: This condition does not preclude quieter work related to construction outside of standard hours providing it can comply with the permitted construction noise limits at these times (e.g. equipment set-up or maintenance)

20. Earthworks shall not occur within a 10m minimum setback from those existing drains running adjacent to the Branch Drain Road and Buckleys Road boundaries, with the exception of the culvert replacement for the existing access on Branch Drain Road.

Cultural

21. As part of the site setup (pre-construction works), the part of the Wāhi Taonga Management Site – C59 within the site shall be fenced off, with a minimum 50m setback buffer established and maintained surrounding the area ('the Wāhi Taonga buffer area').
22. No ground disturbance will take place within the Wāhi Taonga buffer area to protect the Wāhi Taonga values.
23. An Accidental Discovery Protocol (ADP) must be in place for the entirety of works and all contractors shall be made familiar with this protocol. The ADP is included as an attachment to these conditions.
24. If bone material is discovered that could potentially be of human origin, the following protocols shall be adopted:
 - a) Earthworks works should cease in the immediate vicinity while an Archaeologist establishes whether the bone is human.
 - b) The site will be secured in a way that protects the kōiwi as far as possible from further damage.
 - c) If it is not clear whether the bone is human, work shall cease in the immediate vicinity until a specialist can be consulted and a definite identification made.
 - d) If bone is confirmed as human (kōiwi), the Archaeologist will immediately contact Iwi representatives (if not present), Heritage New Zealand Pouhere Taonga and the New Zealand Police.
 - e) Consultation will be undertaken with Iwi representatives from Te Taumutu Rūnanga and Ngāi Tahu, the Heritage New Zealand Pouhere Taonga Regional Archaeologist, the NZ Police and the Consent Holder to determine and advise the most appropriate course of action. No further action will be taken until responses have been received from all parties, and the kōiwi will not be removed until advised by the NZ Police and Heritage New Zealand Pouhere Taonga.
 - f) The Iwi representatives will advise on appropriate tikanga and be given the opportunity to conduct any cultural ceremonies that are appropriate.
 - g) If the Iwi representatives are in agreement and so request, the bones may be further analysed by a skilled bio-anthropological specialist prior to reburial, in line with the Heritage New Zealand Pouhere Taonga Guidelines Kōiwi Tangata Human Remains (2014).
 - h) Activity in that place can recommence as soon the bones have been reinterred or removed and authorisation has been obtained from Heritage New Zealand Pouhere Taonga.
25. If taonga are discovered, the following protocols shall be adopted:
 - a) The area containing the taonga will be secured in a way that protects the

taonga as far as possible from further damage.

- b) Consultation will be undertaken with Te Taumutu Rūnanga, who will advise on appropriate tikanga and be given the opportunities to conduct any cultural ceremonies that they consider to be appropriate.
- c) An archaeologist will examine the taonga and advise Heritage New Zealand Pouhere Taonga.
- d) These actions will be carried out within an agreed stand down period and work may resume at the end of this period or when otherwise advised by Heritage New Zealand Pouhere Taonga.
- e) The Archaeologist will notify the Ministry for Culture and Heritage of the find within 28 days as required under the Protected Objects Act 1975.
- f) The Ministry for Culture and Heritage, in consultation with Iwi representatives from Te Taumutu Rūnanga and Ngāi Tahu, will decide on custodianship of the taonga.

Landscaping

26. At least 30 working days prior to the commencement of landscaping, the Consent Holder shall submit to SDC for certification a LMP. The LMP will give effect to the Revised Landscape Mitigation Plan, Figure B, dated February 2024 and as amended by the Graphic Supplement as dated 14 March 2024. The objective of the LMP is to direct the details of planting around the external boundaries of the site such that, once established, the boundary planting:

- a) is a minimum of three and a half (3.5) metres in height and three (3) metres in width;
- b) screens the solar array when viewed externally to the site; and
- c) prevents any glare from the solar array from escaping onto neighbouring properties or road.

27. The LMP must include the following details:

- a) The planting shall be located between the site boundary and the security fencing to screen the site and protect the planting from livestock grazing the site.
- b) Where there are gaps in the existing vegetation (as indicated on Figure B), plants shall be 2m in height double staggered rows of fast growing, evergreen (Cupressus x ovensii, Oven's Cypress or a similar Cypress plant species). Where existing vegetation needs replacing, a smaller grade of PB3 planting may be used.
- c) New planting along Branch Drain Road shall be set back 10m from the site boundary and maintained at 3.5m in height once achieved. Where planting is directly behind vegetation that is already at, or exceeds, 2m in height, PB3 grade (Cupressus x ovensii, Oven's Cypress or a similar Cypress plant species) will be implemented.

- d) The existing planting along Branch Drain Road (outside of the boundary fence) may be removed once the new plantings reach at least 3.5m in height.
- e) Irrigation and associated infrastructure for the landscaping planting shall be installed prior to commencing planting.
- f) All planting shall be irrigated (as required) for the duration of the solar array activity.
- g) An additional visually impermeable shelterbelt hedge shall be planted and maintained at a minimum height of 3.5m approximately 20m from the boundary with 324 Branch Drain Road (and 33m from the existing residential unit on this site).

28. The LMP shall include, but not be limited to:

- a) The details of plant species, spacing, size and quantities of plants.
- b) Timeline for planting works.
- c) Details of site preparation and maintenance required for plant establishment including the nature, duration and extent of any proposed irrigation.
- a) Details of plant replacement should a gap become apparent, the plants die or become diseased.
- d) The location and design of fencing of the Site.
- e) Details of ongoing maintenance including weed control management and monitoring.
- f) Details of the method and frequency of monitoring the health of the plants to ensure their health and survival.

29. Prior to the commencement of construction on the site, the mitigation planting will be established along the full length of the site boundaries in accordance with the LMP.

30. All landscaping shall be implemented and maintained in accordance with the LMP.

31. The Consent Holder shall retain all existing Site boundary shelterbelts and vegetation, with the exception of the planting along Branch Drain Road, where the existing vegetation will be removed once the proposed planting has achieved a height of 3.5m (Condition 27(d)).

32. All dead and diseased existing vegetation will be replaced within the next growing season or as soon as practically possible.

33. All security fencing shall be located internally within the site and be screened by the mitigation planting. The security fencing shall have a maximum height of 2.6m and the posts shall not exceed 3.0m. Closed board fencing shall be prohibited along the site boundaries.

Ecology

34. Where internal shelterbelts are to be cleared, this shall occur outside of the main bird breeding season (1 September – 31 January (inclusive)) to avoid any risk of impacts to nesting protected indigenous birds.
35. The Consent Holder shall undertake the construction of solar panel arrays outside of the main bird breeding season (September – January), to avoid adverse effects to breeding indigenous birds, inclusive of the South Island Pied Oystercatcher (SIPO).
36. As an alternative to Condition 35, a pre-construction survey of the site shall be carried out by a suitably qualified ecologist/ornithologist with over five years experience conducting bird surveys (SQEP), in order to:
 - a) Determine whether SIPO (or other bird species observed during the survey deemed of conservation concern by the SQEP) are breeding within the solar array footprint. Subsequently:
 - i. If breeding SIPO (or other species of conservation concern) are absent, works may proceed within the breeding season; or
 - ii. If breeding SIPO (or other species of conservation concern) are present within the site, works may proceed subject to setbacks from nests or other similar measures to avoid or otherwise manage impacts to breeding birds, as advised by the SQEP.
37. If construction works are delayed due to the breeding season/s (duration to be confirmed by the SQEP), then a period equal to that delay may be added to the 12-month period specified in Condition 12, as subject to written notice being provided in advance to the Selwyn District Council.
38. The Consent Holder shall undertake monitoring for bird strike to include:
 - a) a record of information about any bird species found dead at the Site that appear to have suffered trauma injuries, including species, number, and suspected cause of death. Input from an SQEP or veterinarian may be required.

Note: Due to Wildlife Act 1953 requirements the handling of injured indigenous birds or the storage of dead indigenous birds would likely require approval from the Department of Conservation.
 - b) Provide this information on an annual basis, to Selwyn District Council and / or the Department of Conservation, in order to increase the understanding of possible bird strike issues with solar arrays.

Noise

39. The Consent Holder shall ensure that all activities on the site are measured in accordance with NZS6801:2008 Acoustics - Measurement of environmental sound, and assessed in accordance with the provisions of NZS6802:2008 Acoustics - Environmental noise, and noise shall not exceed the following limits at any point within the notional boundary of any residential unit, during the following timeframes:
 - a) 0700 to 2159 hrs - 50 dB LAeq

- b) 2200 to 0659 hrs - 40 dB LAeq and 75 dB LAm_{ax}
- 40. Within six weeks of the solar array becoming operational, a suitably qualified and experienced acoustic consultant shall perform measurements to confirm compliance with both the daytime and night-time noise limits contained in Condition 39 above. The assessment shall include an objective analysis of any special audible characteristics during the day and at night in accordance with Appendix B4 of NZS 6802:2008 Acoustics - Environmental Noise.

Glare

- 41. Glare along Hanmer and Caldwell's Roads (and their junction) shall be mitigated by an area of no backtracking to the south-eastern portion of the site until the planting establishes to a minimum height of 3.0m. The Consent Holder shall submit a map confirming the extent of required mitigation planting with dimensions for consent monitoring and administration.

Monitoring and Maintenance

- 42. The Consent Holder shall ensure that the solar farm infrastructure is maintained to a high standard, including doing at least the following:
 - a) continuously undertake on-line monitoring, enabling faults such as broken panels to be identified in a prompt manner; and
 - b) undertaking a physical inspection of the solar farm infrastructure every 6 months; and
 - c) replacing any broken panels within two weeks of these being identified (subject to product availability)

Farm Management Plan

- 43. The Consent Holder shall, at least 30 working days prior to the commencement of construction, submit to the SDC for certification a Farm Management Plan (FMP). The FMP shall include, but not be limited to:
 - a) Methods and systems, including those required for irrigation, to ensure that the Site can continue to be used for land-based primary production, as defined in Condition 44.
 - b) A simple plan identifying the location of tracks, turning areas for machinery, and the initial locations of any proposed fencing, water troughs and irrigation equipment (as known at the time of constructing the solar farm).
 - c) Methods for successfully restoring pasture within three months of commissioning being completed.
- 44. Where the land is returned to pasture, the pasture shall be:
 - a) Maintained so that vegetation or grass is in a healthy and uniform state with the exception of seasonal browning off.
 - b) Replanted where erosion or die-off has resulted in bare or patchy soil cover.
 - c) Maintained so that no visible pugging is observed.

Note: For the purposes of this resource consent 'primary production' means

production from agricultural, pastoral, or horticultural activities that is reliant on the soil resources of the land.

Decommissioning and Site Rehabilitation

45. The Consent Holder must, within 12 months of the solar array reaching the end of its economic or operational life (not including periods when the solar array may not operate because of technical issues or maintenance/improvement works including the replacement of panels and other infrastructure), clear the site of all panels, buildings/structures and cabling, and the land shall be returned to a state that enables it to continue to be used for land-based primary production.
46. The Consent Holder shall advise the SDC, within three months of the solar array reaching the end of its economic or operational life, of the timeframe for:
 - a) clearing the site of all panels, buildings/structures and cabling; and
 - b) reinstatement of the site to a state that enables it to continue to be used for land-based primary production.
47. The Consent Holder shall ensure that the components and infrastructure are disposed of in a way that maximises reuse and recycling. For any parts that cannot be reused or recycled, the Consent Holder shall ensure that they are disposed of in an environmentally responsible way in accordance with industry best practices.

Hazard Management

48. Inverters, batteries and transformers shall be established at a minimum height of 1m above the existing ground level where they are positioned.
49. Fire detection and suppression systems shall be installed and maintained within the battery containers for the duration of the use of batteries on the site, and regularly tested in accordance with the manufacturers specifications.
50. The Consent Holder shall provide the Council with a copy of the Fire Response Plan that is prepared under the Fire and Emergency New Zealand Act 2017, prior to the operation of the solar array.

Review

51. The SDC may, under sections 128 and 129 of the Resource Management Act 1991 (Act), initiate a review of any or all conditions of this resource consent on the first, second and third anniversary of the commencement of the consent and every three years after that, for the duration of the resource consent. Any such review of conditions shall be for the purposes of:
 - a) responding to any adverse effect on the environment which may arise from the exercise of the consent and which it is most appropriate to deal with at a later stage; or
 - b) dealing with any unanticipated adverse effects on the environment which may arise from the exercise of the consent, which it is appropriate to deal with at a later stage; or
 - c) ensuring that the conditions are effective and appropriate in managing the

effects of the activities authorised by these consents.

Attachments

1. RC235464 Land Use Approved Plans

Selwyn District Council Advice Notes for the Consent Holder

1. Lapse Period (Land Use Consent)
 - a) Pursuant to section 125 of the Resource Management Act 1991, if not given effect to, this land use consent shall lapse five years after the date of issue of the decision, i.e. the date of receipt of the Notice of Decision email, unless before the consent lapses an application is made to the Council to extend the period after which the consent lapses and the Council decides to grant an extension.
2. Resource Consent Only
 - a) This consent is a Selwyn District Council resource consent under the Resource Management Act. It is not an approval under any other Act, Regulation or Bylaw. Separate applications will need to be made for any other approval, such as a water race bylaw approval or vehicle crossing approval.
3. Building Act
 - a) This consent is not an authority to build or to change the use of a building under the Building Act. Building consent will be required before construction begins or the use of the building changes.
4. Regional Consents
 - a) This activity may require resource consent(s) from Environment Canterbury (ECan). It is the consent holder's responsibility to ensure that all necessary resource consents are obtained prior to the commencement of the activity.
5. Monitoring
 - a) In accordance with section 36 of the Resource Management Act 1991, the Council's specialised monitoring fee has been charged. This covers setting up a monitoring programme and two site inspections
 - b) If the conditions of this consent require any reports or information to be submitted to the Council, additional monitoring fees for the review and certification of reports or information will be charged on a time and cost basis. This may include consultant fees if the Council does not employ staff with the expertise to review the reports or information
 - c) Where the conditions of this consent require any reports or information to be submitted to the Council, please forward to the Council's Compliance Team, compliance@selwyn.govt.nz.
 - d) Any resource consent that requires additional monitoring due to non-compliance with the conditions of the resource consent will be charged

additional monitoring fees at a time and cost basis

6. Vehicle Crossings

- a) Any new or upgraded vehicle crossing requires a vehicle crossing application from Council's Infrastructure Department prior to installation. For any questions regarding this process please contact transportation@selwyn.govt.nz. Use the following link for a vehicle crossing information pack and to apply online: Selwyn District Council - Application to Form a Vehicle Crossing (Entranceway)

7. Impact on Council Assets

- a) Any damage to fixtures or features within the Council road reserve that results from construction or demolition on the site shall be repaired or reinstated at the expense of the consent holder.

8. Vehicle Parking During the Construction Phase

- a) Selwyn District Council is working to keep our footpaths safe and accessible for pedestrians, including school children. The Council also seeks to avoid damage to underground utility services under footpaths, e.g. fibre broadband. During the construction phase (and at all other times), please:
 - park only on the road or fully within your property – it is illegal to obstruct or park on a footpath and
 - arrange large deliveries outside of peak pedestrian hours, e.g. outside school start/finish times

Te Taumutu Rūnanga Advice Notes for the Consent Holder

1. Where internal shelterbelts are to be cleared, this should occur outside of the main bird breeding season (September – January) to avoid any risk of impacts to nesting protected indigenous birds.
2. Construction of solar panel arrays should occur outside of the main bird breeding season (September – January), to avoid adverse effects to breeding indigenous birds in general, but particularly because there is some risk that an At Risk species (i.e. South Island Pied Oystercatcher, SIPO) may breed in pasture areas of the site.