

**BEFORE THE INDEPENDENT HEARING PANEL**

**ATSELWYN DISTRICT COUNCIL**

<b>Under</b>	the Resource Management Act 1991
<b>In the matter of</b>	an application by KeaX Limited to construct and operate a 111ha solar array at 115 & 187 Buckleys Road, Leeston (RC235464).

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**BRIEF OF EVIDENCE OF STEWART WILLIAM FLETCHER**

**23 January 2024**

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## QUALIFICATIONS AND EXPERIENCE

- 1 My name is Stewart William Fletcher, I am a Consultant Planner and have been practicing as a Planner for approximately 26 years. I have a Bachelor of Resource Studies from Lincoln University and am a full member of the NZ Planning Institute. I have worked in a number of planning roles and have been operating my own consultancy for the past 14 years.
- 2 I provided planning evidence for the original resource consent application for the solar farm, which was declined by Council (resource consent RC225180).

## EXPERT WITNESS PRACTICE NOTE

- 3 While this is a Council hearing, I confirm that I have prepared this evidence in accordance with the Code of Conduct for Expert Witnesses Code of Conduct for Expert Witnesses contained in Part 7 of the Environment Court Practice Note 2023. The issues addressed in this statement of evidence are within my area of expertise except where I state that I am relying on the evidence or advice of another person. The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence. I have not omitted to consider material facts known to me that might alter or detract from the opinions I have expressed.

## SUMMARY STATEMENT

- 4 I have been engaged by Clark and Elizabeth Casey, Dave and Donna Kewish, Michael and Anneka Dalley, Corey Krygsman, Anne and Donald Green, Simon Robinson and Donna Irons (the **Brookside Submitters Group**)<sup>1</sup>, to provide planning evidence on the KeaX Limited proposal to construct and operate a 111ha solar array at 115 & 187 Buckleys Road, Leeston (the **Application**).
- 5 Resource consent is sought to establish a solar farm at 115, 150 & 187 Buckleys Road, Brookside. The solar farm site consists of four individual properties held in separate titles. The total area of the group of properties is 111.0151 hectares and hereon in, I refer to this conglomeration of properties as the 'application site'.
- 6 A resource consent application was previously lodged and considered by Council for a solar farm of a larger scale, but included the application site, now being assessed. That application was declined by Council as it was determined that the application should have been fully publicly notified. I note that this application is again being processed on a limited notified basis. With regards to that previous application, I provided planning evidence.
- 7 In providing evidence for this new application, due to budgetary and time constraints, I focus my evidence on a specific range of matters as opposed to addressing every planning related aspect of the proposal. For example, I consider recent assessments that disregard the provisions of the Operative Plan, to be incorrect. The application was lodged prior to the Partially Operative Plan taking effect and therefore the Operative Plan provisions still bear relevance. Instead however, I focus on those matters of more direct relevance to the submitters.
- 8 My evidence focusses on the following points:
  - 8.1 **Productivity:** - An element of the application which is relied on by the applicant is that the application site will remain productive. It is respectfully questioned whether in fact the application site constitutes a productive activity and in my opinion, any rural

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<sup>1</sup> Who all lodged submissions in opposition to the grant of consent application RC235464.

production within the site can be best considered accessory. This also ties into the points I raise around Highly Productive Land.

- 8.2 **Amenity:** - Detailed landscape assessments have been undertaken by various experts which explore the landscape significance of the site and the impacts of the proposal on the character of the area. Comment has been included, and is referred to in the section 42A report, that the use of the site will change to one of an industrial character. In doing so consideration has not been given to, in a more general sense, the natural or physical qualities and characteristics of the area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.
- 8.3 **Highly Productive Land:** - The application site is classified as Highly Productive Land, as per the National Policy Statement for Highly Productive Land (**NPS-HPL**). An incorrect interpretation has been applied that the establishment of a new solar farm is excluded from being an inappropriate activity, as per section 3.9 of the NPS-HPL. On this basis the establishment of a new solar farm is classified as being an inappropriate activity, and territorial authorities must avoid the inappropriate use or development of highly productive land that is not land-based primary production. If one was to step beyond this issue, it is considered that the purpose of the NPS-HPL is not being achieved.
- 8.4 **Alternatives:** - Adequate consideration has not been given to alternative locations and methods for undertaking the proposed activity.
- 8.5 **Complete Proposal:** - It is questioned whether the application represents the full scale of the proposed activity and is simply the first stage of a proposal to ultimately achieve a development of the same scale that was previously sought and declined by Council.
- 8.6 **Runoff / Contamination:** - Evidence from other parties has been produced which suggests that the proposed activity could lead to contamination related effects, both from potential leaking or damage from the solar panels but simply impacts on the site and waterways from the runoff from the panels.
- 8.7 **Notification:** - Resource consent has again been processed on a limited notified basis. I conclude that the application should have been publicly notified and accordingly, the Hearings Commissioner is not able to assess whether resource consent can be granted - per section 104(3)(d) of the Resource Management Act 1991 (the **RMA**).

## PURPOSE AND SCOPE OF EVIDENCE

- 9 As per my above summary, specific comments on aspects of the proposal are provided as follows:

### *Productivity*

- 10 Across the resource consenting process for this proposal, there has been a growing emphasis on the applicant's ability to operate the application site in such a manner as to enable the continued productive use of the application site.

- 11 In my opinion, an ability to use the site for productive purposes will be potentially retained in some limited form, and various experts have advised as such, but care should be undertaken in assuming the site will be used for productive purposes. The resource consent application, on page 6 (description of proposal), specifies that sheep grazing or other primary production will occur underneath the panels to manage the growth of grass across the site. The purpose of any grazing etc. is understood to address grass growth which facilitates the operation of the site as a solar farm. I do not consider that the proposal is for an agrivoltaic activity where a dual use of land for both solar and agriculture is occurring, and from my review of the application and supporting material, this is not proposed as part of the application.
- 12 In my opinion, resource consent is being sought to establish and operate a solar farm, and accessory to that activity will be some form of other use for the purpose of maintaining the site. I have reviewed Mr Handsworth's evidence on this matter, and whilst I am not an agricultural or land use versatility expert, I agree with Mr Handsworth that the establishment of the solar farm will dissuade persons from undertaking productive activities of the sort that can be readily anticipated in the area. Limitations are imposed through the imposition of physical structures and a wide range of productive activities will not be able to be established due to potential conflicts with the solar activity, such as ensuring easy access to maintain the panels, the avoidance of risk (such as fire) and possibly crops requiring the application of sprays.
- 13 I raise this issue because the emphasis portrayed through the various assessments in support of the application, attempt to paint a picture that the site will be used for productive purposes. This can impact the way that one views and assesses the potential effects of the proposed activity (such as on the amenity of the area) and also assesses the proposal against various documents, such as the NPS-HPL.
- 14 This becomes increasingly relevant given that resource consent is sought to operate the activity on an ongoing basis, and for an indefinite term. One cannot assume that the activity will cease in the future to enable a legitimate productive use of the site to resume. I also reiterate that the resource consent is being sought to operate a solar farm on the site for an unlimited term, and not for a dual activity or for a productive purpose. This is the crux of the matter at hand.

#### *Amenity*

- 15 In assessing the effects of the proposed activity, consideration has been given to amenity related effects. Amenity values are defined in the Resource Management Act 1991 as follows:
- amenity values*** means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes
- 16 The conclusions of the processing planner and Council appointed landscape architect, are generally that the proposal will have an adverse effect on rural amenity primarily due to the predominance of the character in the local area but that the adverse effects will be minimised by mitigation plantings.
- 17 I agree that plantings will assist in minimising potential amenity effects, but this needs to be referenced against the existing character of the area. Shelterbelts are a prevalent characteristic of the local area, but these are typically of a paddock based length breaking areas apart, compared to the entire length of a boundary. This has the impact that open

views across paddocks and the wider area are readily available. Generally, the type of plantings used in a number of the shelters in the local area are not dense, and partial visibility is available through them such that persons will still be able gain partial views across the rural areas.

- 18 In this instance persons will view the site, and its development as a solar farm, including security fencing, while vegetation is establishing. This will eventually be replaced by thick hedging which will conceal the site. The enclosing of the site itself creates an amenity different to that of the surrounding area, and it will stand out significantly within the surrounding environment.
- 19 I am not suggesting that the establishment of a solar farm in a rural area is not appropriate and instead recognition needs to be given to the fact that such an activity, and the employment of mitigation measures, will impact the amenity and character of the area. There will be impacts on the openness of the area, the type of activities being undertaken, separation between structures, and the sense of those activities being undertaken in the area. In my opinion the proposal represents a significant change from the existing character and amenity of the area.
- 20 In considering the sensitivity of the area, the site is approximately 5.5 kilometres to the north of Leeston. Properties in the area vary in size, but there is a significant number of properties that I would consider to be of a lifestyle size, generally being 10 hectares or less. This became more evident when I undertook a site visit during a weekend and noted a number of persons out walking or biking in the local area. Therefore, the characteristic of the area is that of a higher density of living when compared to an area dominated by larger farms. As you will hear from the submitters when they give their evidence, a number of those residents live on these lifestyle properties due to the amenity they obtain both within their properties and the character of the local area.
- 21 On the basis of the characteristics of the area, it is suggested that there is a higher sensitivity to persons being impacted by a significant change in the nature and character of the application site particularly in reference to the character of the local area. It is considered that this change to the amenity and character of the local area will be more than minor for those persons in the local area, including those that pass by the site, either by vehicle, cycling or walking.
- 22 It is strongly recommended that the Hearings Commissioner undertakes a detailed visit of the local area, including during a weekend when people may be out enjoying the local area, such as walking or biking.
- 23 While the above gives particular focus on the impacts on the amenity of the wider area, it is noted that I consider the amenity related impacts will be greater again for those persons who reside close to or adjoining the site. For those residing close by, other factors such as noise from the activity and the resulting impacts on a person's amenity also necessitate consideration. Impacts on these persons could be considered potentially significant.
- 24 You will hear recounts of the community and neighbour concerns relating to these matters from the submitter group providing evidence and presenting at the hearing.

## *Highly Productive Land*

- 25 The application site is classified as Highly Productive Land, as per the NPS-HPL. The applicant and Council reports have provided detailed assessments of the provisions of the NPS HPL. There is no disagreement that the provisions of the NPS-HPL apply.
- 26 An important starting point in considering the proposal against the NPS – HPL is the correct application of the provisions. This is of particular importance when assessing the proposal against policies and in particular section 3.9; which has been referenced in the application, evidence, and Council report. Section 3.9 reads as follows:

### **3.9 Protecting highly productive land from inappropriate use and development**

- (1) *Territorial authorities must avoid the inappropriate use or development of highly productive land that is not land-based primary production.*
- (2) *A use or development of highly productive land is inappropriate except where at least one of the following applies to the use or development, and the measures in subclause (3) are applied:*
  - (a) *it provides for supporting activities on the land:*
  - (b) *it addresses a high risk to public health and safety:*
  - (c) *it is, or is for a purpose associated with, a matter of national importance under section 6 of the Act:*
  - (d) *it is on specified Māori land:*
  - (e) *it is for the purpose of protecting, maintaining, restoring, or enhancing indigenous biodiversity:*
  - (f) *it provides for the retirement of land from land-based primary production for the purpose of improving water quality:*
  - (g) *it is a small-scale or temporary land-use activity that has no impact on the productive capacity of the land:*
  - (h) *it is for an activity by a requiring authority in relation to a designation or notice of requirement under the Act:*
  - (i) *it provides for public access:*
  - (j) *it is associated with one of the following, and there is a functional or operational need for the use or development to be on the highly productive land:*
    - (i) *the maintenance, operation, upgrade, or expansion of specified infrastructure:*
    - (ii) *the maintenance, operation, upgrade, or expansion of defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990:*
    - (iii) *mineral extraction that provides significant national public benefit that could not otherwise be achieved using resources within New Zealand:*
    - (iv) *aggregate extraction that provides significant national or regional public benefit that could not otherwise be achieved using resources within New Zealand.*

- (3) *Territorial authorities must take measures to ensure that any use or development on highly productive land:*
  - (a) *minimises or mitigates any actual loss or potential cumulative loss of the availability and productive capacity of highly productive land in their district; and*
  - (b) *avoids if possible, or otherwise mitigates, any actual or potential reverse sensitivity effects on land-based primary production activities from the use or development.*
- (4) *Territorial authorities must include objectives, policies, and rules in their district plans to give effect to this clause.*

- 27 Significant weight has been given to the proposal constituting 'specified infrastructure', and I agree that the proposal falls within such a classification. On this basis the proposal can be assessed against section 3.9(2)(j) which I would suggest is the equivalent of an 'exception' clause in that it enables certain activities to establish on highly productive land. This is important, because if an application doesn't fall within the list of activities specified in section 3.9(2), then an activity is classified as inappropriate and, as per section 3.9(1) an inappropriate activity must be avoided.
- 28 In determining the application of section 3.9(2)(j), this section refers to an 'excluded' or 'appropriate' activity being associated with the maintenance, operation, upgrade, or expansion of specified infrastructure. The application cross references this to a 2022 Ministry guidance document which details that the intent of this section is that 'development' is also provided for. While I understand the relevance of the document, and the applicant's continuing reliance on it, such an approach is out of date. In October 2023, the Ministry for the Environment released a discussion paper regarding potential amendments to the NPS-HPL. A copy of the document is attached to the evidence as Appendix 1.
- 29 Issue 1 in that document addresses the lack of a clear consent pathway for construction of new specified infrastructure on HPL in clause 3.9(2)(j)(i). As is stands, the NPS-HPL does not provide a clear consent pathway for any person, company or organisation wishing to undertake development of new specified infrastructure on HPL, if they are not a requiring authority under the RMA. This limits the ability to construct new specified infrastructure on HPL at pace. It also limits certain providers, such as renewable electricity generators or installers of fibre for broadband, who are not requiring authorities.
- 30 That guidance document confirms that there is no a pathway to consider the establishment of a new solar farm under section 3.9(2)(j). The consequence of this is that the establishment of a new solar farm on highly productive land falls within the definition of being an inappropriate activity. Section 3.9(1) directs that territorial authorities must avoid the inappropriate use or development of highly productive land that is not land-based primary production. Strong direction is provided in the NPS-HPL and this is reinforced by Policy 8 which reads as follows:  
  
***Policy 8: Highly productive land is protected from inappropriate use and development.***
- 31 It is therefore suggested that the applicant, and Council Planner, have applied an incorrect and out of date interpretation of the NPS-HPL. It is of particular concern that this has occurred because the applicant was aware of the discussion document. In the evidence of Ms Claire Kelly, at Attachment 2 on the 27<sup>th</sup> page of the document, is discussion regarding the Notification Decision. Comments in the consideration of this issue specifically refer to the Ministry for the Environment and their 'Potential amendments to the NPS-HPL: Discussion

document'. The application of the discussion document is important in assessing the proposed activity and respectfully, I am concerned that known material has been omitted that might alter or detract from opinions expressed.

32 Overall, I am of the opinion that the NPS-HPL represents a significant roadblock to the establishment of a solar farm on the application site, especially given the avoid directive which is universally considered to mean 'not allow' in the context.

33 If one was to step around this issue, I note that there are other points in the consideration of the NPS-HPL, which I briefly summarise as follows:

- (i) I have previously questioned the concept of agrivoltaics and site productivity and whether the proposal retains the productive use of the land. The emphasis of the applicant is that the land will be able to be used for productive purposes and the S42A report recommends the inclusion of condition 35 which requires that the site is in a condition which can facilitate land based primary production. The NPS HPL defines productive capacity as follows:

***productive capacity***, in relation to land, means the ability of the land to support land-based primary production over the long term, based on an assessment of:

*(a) physical characteristics (such as soil type, properties, and versatility); and*

*(b) legal constraints (such as consent notices, local authority covenants, and easements); and*

*(c) the size and shape of existing and proposed land parcels*

34 In my opinion, care needs to be taken in applying the Council's approach. Firstly, as part of the application there is no requirement for the site to actually be used for productive purposes such that there is a very real possibility that the site will not be used for productive purposes, particularly in any meaningful way.

35 I recognise that the NPS-HPL focuses on land having an ability to support primary production as opposed to requiring primary production to occur, but it is considered that the establishment of a solar farm will impose a physical constraint on the productive use and therefore productive capacity of the application site. Mr Sharn Hainsworth explores the impact on the versatility of the land and reinforces this concern.

36 I do not disagree that options for the productive use of the site will remain available, but on the basis that the proposed activity will introduce limitations on the range of options / versatility for the productive use of the site it is respectfully suggested the proposal will impact the productive capacity of the site by virtue of the definition in the NPS-HPL. If an activity dissuades the productive use of a site, the question must be asked as to whether the land is being protected for use in land based primary production both now and in the future. This concern is reinforced through resource consent being sought to undertake the activity on an ongoing basis.

37 For the reasons explained above, I do not consider that this proposal is captured by the exceptions to the avoid direction set out in 3.9 of the NPS-HPL, however for completeness, the application of section 3.9(j) is dependent on there being a functional or operational need for the use or development to be on the highly productive land. The definitions for functional or operational need, as derived from the National Planning standings are as follows:

*“Functional Need:*

*means the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment.”*

*“Operational Need*

*means the need for a proposal or activity to traverse, locate or operate in a particular environment because of technical, logistical or operational characteristics or constraints.”*

- 38 It is my understanding that a key part of the above, is that there needs to be more than an operational advantage. There needs to be an operational need or requirement to establish within an area classified as highly productive land.
- 39 The applicants' evidence provides an analysis of what they consider are the operational needs of the activity. In my opinion, the key point which makes the application site preferential for the activity is the location of the local substation at the corner of the site. It is unclear from the limited information, whether with this is actually an operational or functional need, or whether it is simply a preference.
- 40 In considering the importance of proximity to a substation, I note that the applicant has not provided any parameters as to whether the establishment of a transmission line between the site and a substation would impact the viability of the proposal. For example, we do not know if there is a point at which the distance of any required transmission line would impact the feasibility of development and consequently, it is difficult to determine the range of sites available that can connect to a substation.
- 41 An analysis of alternative locations should be undertaken by the applicant, above the high level discussion provided by Mr McMath in his evidence regarding site selection. It is understood that upgrades to the existing substation are scheduled by Orion but it is unclear whether further improvements will be required to the substation or transmission lines to accommodate the proposed solar farm. A detailed understanding of this is also required because it could be that costings for any potential upgrade may offset the advantage gained in proximity to the substation. For example, it may be that a site near a transmission line is just as suitable on the basis that a purpose designed substation could be established as part of a solar farm development and it may be that the cost of establishing a substation is similar to that of upgrading an existing substation.
- 42 I am not qualified in electricity transmission and instead wish to highlight that it is not enough to specify that a site adjoining a substation demonstrates a functional or operational need to establish on highly productive land as opposed to a functional preference. There needs to be a detailed analysis to demonstrate this.

*Alternatives*

- 43 Section 6 of the Fourth Schedule of the RMA requires that, if it is likely that an activity will result in any significant adverse effect on the environment, a description of any possible alternative locations or methods for undertaking the activity should be provided.
- 44 Naturally, there is a difference in opinion as to the scale of effects from the proposed activity which impacts the need for such an assessment, but in my opinion, there are more than minor amenity related adverse effects, notwithstanding the fact that the NPS-HPL classifies the activity as inappropriate which must be avoided.

- 45 For these reasons, it is my opinion that a proper assessment of alternative locations and methods should have been undertaken. Regardless of the Fourth Schedule, I would also suggest that in assessing the impacts on highly productive land, this necessitates a reasoning as to why it is appropriate to establish on such land, including alternatives available to minimise the impacts on the land.
- 46 In consideration of the proposed activity, it is my understanding that there are no unique or specific characteristics for the site that necessitates the establishment of the solar farm in that location. The reason for seeking to locate on this site is due to the substation next door. On this basis, a comprehensive analysis should have been presented as to those options where a connection could have been made to the substation from another location, such as within a certain distance of the substation. At paragraph 42 I have also asked the question of whether improvements may be required to the substation and power lines as such financial improvements could suggest the availability of the substation might potentially still come at a cost. For example, would it be possible to construct a purpose designed substation elsewhere, at a similar cost to any potential upgrade.

#### *Complete Proposal*

- 47 I am conscious that resource consent was previously sought for a larger site and the application site area has been subsequently reduced by roughly half for the current proposal. It is at the applicant's discretion as to what they apply for, but the question does linger as to whether a further resource consent may be sought in the near future for the establishment of a further area of solar panels.
- 48 As I say, this is up to the applicant, but it would be considered a potential abuse of process if this application represented a first stage, and the process had to be repeated for future stages including associated questions of precedent. Splitting a proposal into separate applications could mean that a territorial authority fails to look at a proposal as a whole.

#### *Runoff / Contamination*

- 49 With regards to the question of contamination, Mr Ray Henderson has provided detailed evidence exploring potential impacts on land and water, should the existence of solar panels result in the 'leaking' of toxic chemicals, as well as failure of solar panels resulting in the same.
- 50 I understand an important factor in determining the scale of impact is the soil type, including whether any contaminants may remain in the upper level of the soil and also the control of stormwater, including potential runoff. On that basis, I consider that the establishment of the panels could necessitate the incorporation of stormwater controls beyond what is provided for in the Environment Canterbury discharge consent (CRC223909).
- 51 When a building or hard surfacing is established, this necessitates the establishment of measures to control water runoff, such as soakage pits/ponds or swales. The type of measures adopted for particular structure or surface will depend on the characteristics of the land, including such aspects as soil type.
- 52 In this instance, the applicant proposes to establish large areas of panels which will prevent water infiltration into the land for a significant portion of the site. It needs to be established whether this will give rise to stormwater impacts, including overland flow paths, site run off, and impacts on the local area. Concerns relating to these matters will also be addressed in the evidence of the Brookside Submitter Group.

- 53 I am conscious that resource consent has been obtained from Environment Canterbury for the discharge of stormwater to land, but this does not remove an onus on the Selwyn District Council to also consider and address stormwater related effects in much the same way as it does for subdivisions and building developments. If this matter is poorly managed the proposal could have flood effects on nearby properties, especially those of Mr Dalley and Mr Clarke who will address this in their evidence.

#### *Notification*

- 54 As discussed earlier, the previous resource consent application for the site and adjoining properties was processed on a limited notified basis and subsequently declined on the basis that the application should have been fully publicly notified. I presented evidence regarding this matter, including points that not all potentially affected parties had been notified, that there were more than minor amenity related effects, and there were more than minor impacts on highly productive land. The Hearings Commissioner agreed that there were potentially more than minor effects with regards to Highly Productive Plan.
- 55 While the scale of the new application has been reduced, I am interested in the fact that Council have again elected to process this application on a limited notified basis. This introduces a repetition of the same question as to whether the application should have been fully notified.
- 56 Section 95A of the Resource Management Act 1991 specifies the steps that must be undertaken in determining whether or not a resource consent application should be processed on a publicly notified basis. The includes as part of the third step (section 95A(8)(b)) whether the activity will have or is likely to have adverse effects on the environment that are more than minor. The fourth step (section 95A(9)) requires a determination as to whether special circumstances exist in relation to the application that warrant the application being publicly notified.
- 57 While the assessment as to notification has been completed and we are now at a point whereby a determination as to approval is to be made, the notification process remains relevant. Section 104(3)(d) of the Resource Management Act 1991 specifies that a consent authority must not grant a resource consent if the application should have been notified and was not.
- 58 The Council appointed processing planner has followed the steps specified in the Resource Management Act 1991 and the notification assessment has been made available. I have reviewed that assessment, together with the section 42A report, and it is my professional opinion that there have been errors made in the conclusions reached as to notification. On this basis the application of section 104(3)(d) is pertinent to the consideration of the application, and it is respectfully suggested that the Hearings Commissioner needs to first determine whether a procedural issue has arisen that mandates that resource consent must not be granted.
- 59 The reasons for my determination that there are procedural complications are based on my above comments regarding the NPS-HPL and amenity related effects. There may also be other reasons depending on the detailed investigation of contamination and stormwater effects. To briefly summarise these reasons for concern:
- 59.1 In assessing the application for the purpose of determining whether it should be notified, the mindset was given that the establishment of a new solar farm was

excluded from being an inappropriate activity under the NPS-HPL. There also appears to be consideration that the site will be used for productive purposes.

- 59.2 The up-to-date interpretation of the NPS-HPL is that the proposal represents an inappropriate activity. The question must be asked how the establishment of an inappropriate activity on highly productive land (which must be avoided under the NPS-HPL) will not have a more than minor adverse effect.
- 59.3 The site will not be used for productive purposes. It will be used for a solar farm on an ongoing basis. Any activities undertaken on the site, such as grazing, will be to assist in the maintaining of the solar farm activity. There is no disagreement that the proposal will retain some ability for productive activities to be undertaken, but this is not what is sought, and the proposed activity will both dissuade and limit the use of the site for productive purposes.
- 59.4 The change in use of the site represents a significant change in the amenity and character of the site and surrounding area. The public, including local community, will be entirely aware of the change of use of the site and that the mitigation measures proposed will also significantly change the amenity and character of both the site and the local area.
- 59.5 The change in the use of the site from one of rural production to electricity generation will significantly change the amenity and character of the local area and the site will most likely become known in the community as a solar farm which is less consistent with the current amenity and character of the area. Objectives and policies in the Operative and Partially Operative District Plans include:
- 59.5.1 maintaining rural character
  - 59.5.2 avoiding significant adverse effects of activities on the amenity values of the rural area
  - 59.5.3 maintaining low levels of building density
  - 59.5.4 retaining a contrast to urban areas
  - 59.5.5 enabling a range of activities that: have a direct relationship with, or are dependent on, primary production, have a functional or operational need to locate in the rural area; represent an efficient use of natural and physical resources; and maintain or enhance the character and amenity values of the surrounding area.
- 59.6 The above provisions create an expectation or context for the appearance, nature and character of rural areas and reinforces the fact that the proposed activity will have a significant effect on the rural amenity and character of the area and that such an impact should be given significant consideration.

## CONCLUSION

- 60 Resource consent is sought to construct and operate a 111ha solar array at 115 & 187 Buckleys Road, Leeston. The application site is classified as Highly Productive Land, and the resource consent application is being processed on a limited notified basis. I have provided expert planning evidence which addresses select issues that I consider need to be assessed in the determination of the resource consent application.

- 61 It has been identified that the proposed activity could have more than minor adverse environmental effects, with particular regard to impacts on the character and amenity of the area and on highly productive land. If it is determined that the proposal will have more than minor adverse effects, Section 104(3)(d) of the Resource Management Act 1991 must apply, which specifies that a consent authority must not grant a resource consent if the application should have been notified and was not.
- 62 The application site is located within an area of Highly Productive Land, as per the provisions of the NPS-HPL. The language of the NPS-HPL is strong in specifying that inappropriate activities are to be avoided. On the basis of recent material produced by the Ministry for the Environment, the NPS-HPL does not provide a clear consent pathway for any person, company or organisation wishing to undertake development of new specified infrastructure on HPL, if they are not a requiring authority under the RMA. The consequence of this is that the establishment of a new solar farm on highly productive land falls within the definition of being an inappropriate activity. Section 3.9(1) of the NPS-HPL, directs that territorial authorities must avoid the inappropriate use or development of highly productive land that is not land-based primary production.
- 63 In my opinion the two points above represent impediments to any potential approval of the resource consent application. If those impediments are somehow overcome, consideration still needs to be given to those other aspects of the proposal, including its effects on the environment, in order to determine whether resource consent can be granted. I have detailed that the adverse effects of the proposed activity will be more than minor.
- 64 In my opinion, the resource consent application should have been processed on a fully notified basis and clear direction is provided that the establishment of the proposed activity on highly productive land is to be avoided. On this basis, resource consent should be declined.

**23 February 2024**

**Stewart William Fletcher**

**APPENDIX 1.**  
**POTENTIAL AMENDMENTS TO THE NPS – HPL: DISCUSSION DOCUMENT**