

From: [Jonty Boshier](#)
To: [IPCN Submissions Mailbox](#)
Cc: ["Mr Peter Hennessy \(Client\)"](#)
Subject: Glanmire Action Group - Further Submission to IPC
Date: Wednesday, 20 December 2023 4:47:30 PM
Attachments: [image002.png](#)
[JB 2.19.36 Glanmire Action Group - Response to DPE letter to IPC 18.12.2023.pdf](#)
[Email Response - E.Dawson.pdf](#)
[IPC questions and my responses - D.Harbison.pdf](#)
[Additional Insurance comments for Solar Farm - L.Thurston.pdf](#)

Dear Commission,

Please find **attached** further response on behalf of the Glanmire Action Group.

Thank you for your consideration in this matter.

Have a pleasant Christmas break.

Kind regards,

Jonty Boshier
Solicitor

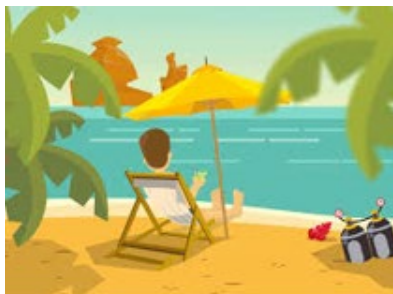


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Christmas/New Year from 12.00pm, Friday 22
December 2023 until 9.00am, Monday 8
January 2024.*

*We wish you a Merry Christmas and look
forward to assisting you in the New Year.*

From: Levi Thurston [REDACTED] >
Sent: Wed, 20 Dec 2023 16:19:29 +1100
To: Jonty Boshier
Cc: 'Mr Peter Hennessy (Client)'
Subject: Additional Insurance comments for Solar Farm
Categories: LEAP

Hi Jonty,

I've read the Response of the Department of Planning and Environment dated 12 December 2023 and the Response of Elgin Energy Pty Ltd dated 12 December.

I note in particular the comments of Mr Lalich at page 6 of the DPE's report, where it states; "*Mr Paul Lalich went on to suggest that buffer distances should be considered in order to mitigate bushfire risk, and therefore reduce the likelihood that insurance companies would increase premiums*".

As stated in our report the mitigation options are not there to lessen or reduce the premiums related to insurance for the neighbouring farms but are the basic minimum requirements to gain eligibility to a policy that might cover the Liability and Vicarious liability associated with being a neighbouring farm to the Solar farm installation. The indicative premiums would not reduce or change from our previous statement in the report.

I also note Elgin Energy's response at page 10 to 14. I do not agree with their conclusions in respect of premiums. I reiterate that risk mitigation strategies effect eligibility, not premiums.

I hope this help clarify where things sit in relation to the mitigations and the premium.

Regards,



Levi Thurston
Director - **NLT Insurance Brokers Pty Ltd**
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From: Erika Dawson [REDACTED] >
Sent: Fri, 15 Dec 2023 10:34:56 +1100
To: Jonty Boshier;'Mr David Harbison (Expert)'
Cc: 'Glanmire Action Group'
Subject: RE: Glanmire Solar Plant
Categories: LEAP

Hi Jonty

I don't have much time to review this over the next week, however, please find following my thoughts on the two letters.

DPE Questions & Response Letter

- 1. Please advise whether the proposed eastern and western boundary setbacks for the development site comply with the relevant guidelines and are appropriate to ensure visual impact mitigation and land use compatibility is achieved for adjoining properties.**

This is quite a broad question as 'land use compatibility' extends to a vast array of things. The response seems to only focus on the large scale solar guideline and the associated technical supplement for landscape and visual impact assessment. It does not consider other guidelines that impact on land use compatibility such as *Planning for Bush Fire Protection 2019*.

In relation to the heat island effect, the guideline states that the solar array should be set back from the property boundary by at least 30m. For the eastern boundary, the setback relies upon the Brewongle Lane road reserve. This is acceptable. For the western side, the department discounts the need for a 30m buffer in part due to the existing access track. The access track is not 10m wide as stated in the DPE response. The fenced corridor may be 10m wide, but the track itself isn't.

The development does not provide the minimum required 30m setback from the property boundaries on either the eastern or western boundaries. The western boundary setback is either 15m (5m veg screen + 10m APZ) or 20m (10m Veg screen + 10m APZ). This is half or 2/3 of the required separation distance.

The neighbouring property, regardless of the existence of the access track, should not be being burdened with providing part of the buffer required for the proposed development. The buffer should be wholly located within the development site so as to not adversely impact the preferred and predominant agricultural use of the neighbouring property.

- 2. Through its Site Inspection and Locality Tour (including engagement with the landholders of R21), the Commission understands that cropping activity may occur up to the western boundary of the development site. Noting this, please confirm the Department's view of the appropriateness of the proposed western boundary setback and its use of adjoining land outside the development site area given Table 8 (page 28) of the Department's Assessment Report specifies:**

"Although the western edge of the solar arrays is set back less than 30 m, the Department considers the buffer which have been incorporated (i.e. minimum of 20 m) is appropriate given there is no horticultural or cropping activity on the adjacent property and the proposed landscaping buffer would further mitigate potential heat island effects."

As per comments above, that it is not appropriate to rely on/burden the adjoining land for the proposed development.

Minimum buffer (20m) stated is not correct as per site plans submitted with the DA. See above comments.

The justification has not considered impact on bushfire risk as a result of proposed re-vegetation.

- 3. The Commission notes that statements were made at the Public Meeting that only 6% of the Bathurst Local Government Area (LGA) comprises cropping land and that the development site is part of that resource. Noting this, did the Department consider the loss of Land and Soil Capability Class (LSC) Class 3 land on the site within its regional context, i.e. the Bathurst LGA?**

Others are better placed to respond on this point.

4. **During its Site Inspection and Locality Tour, the Commission discovered that much of the site appears to be cropped currently or recently. A number of speakers at the Public Meeting also noted that a majority of this land is and has been utilised for cropping.**

Noting paragraph 83 of the Department's Assessment Report, which specifies that the majority of the development site "has been previously cleared and used for agricultural activities including grazing and some cropping", what is the Department's view on the above observations?

I'm not sure what the panel is trying to achieve with this point apart from getting the department to acknowledge they didn't recognise that the land is regularly cropped. The assessment did discount the application of the urban heat island buffers on the basis that the adjacent land to the west wasn't cropping land.

5. **An issue raised by a number of speakers at the Public Meeting was that increased, and potentially unattainable public liability insurance would be required for adjacent properties as a result of the Application. Has the Department given any consideration to how this issue could be managed, including whether in its view a condition of consent could be implemented to mitigate these impacts?**

The un-insurability is a land use conflict issue that directly adversely impacts upon the preferred and predominate land uses in the locality. The bushfire assessment provided has not adequately considered the bushfire risk to and from the proposed development site. Further the recommended conditions to reportedly address the bushfire risk have not been demonstrated to be commensurate to the risk, nor will they achieve their intended function in managing the risk due to conflicting mitigation measures of the screen planting and pasture requirements within the solar array area.

The RFS's submission does not state that the development complies with PBP. It provided no comments on the recommended conditions.

6. **Noting the NSW Government's Response to the NSW Agriculture Commissioner's Reports dated 1 March 2023 (specifically page 10 of the Response under the theme of 'Fire and insurance risks'), please advise what progress has been made in regard to the further consultation with the Australian Energy Infrastructure Commissioner and the Clean Energy Council.**

Should a decision be made in the absence of full and proper information... precautionary principle.

7. **Has the Department conducted any consultation with the Insurance Council of Australia regarding this issue?**

Ditto for 6.

8. **It was noted at the Public Meeting and Site Inspection that it would be almost impossible to maintain pre-development water flow across the site to the same levels post-development, particularly given several dams on site will be infilled. How has local knowledge of water movement on the development site and the potential impact on dams both on the site and within neighbouring landholders' properties (particularly R21, for example) been considered in the Department's assessment?**

The recommended condition is inconsistent with the DPE guidelines for preparing consent conditions as they are not clear as to what is required to comply with the condition.

9. **Has the Department considered additional water requirements to facilitate vegetation establishment and maintenance?**

This one probably needs some further interrogation to determine the legitimacy of the conclusions.

Applicant Questions & Response Letter

1. **Please confirm the precise height of the proposed solar arrays (at both highest tilt on axis and when horizontal), substation, battery and security fencing.**

No comments.

2. **Please confirm the precise extent of the proposed setbacks on the eastern and western boundaries of the development site, including the extent within these setbacks that is proposed for vegetation screenings, asset protection zones, maintenance tracks, and existing roads.**

No comments.

3. **Please confirm whether the western setback relies on adjoining land to provide an appropriate buffer.**

As per comments above on this matter.

4. **Please confirm the rationale for the proposed exclusion zone at the northern end of the site (south of the 300m setback to Great Western Highway).**

No comments.

5. **Please confirm the dimensions of the proposed southern setback.**

No comments.

6. **Please advise whether any consideration has been given to public liability insurance requirements for adjacent properties and whether any solutions are proposed to address any increased costs for those landholders.**

As per comments above on this matter.

7. **Please confirm the water budget required for all uses, including:**

- ongoing agricultural operations,
- cleaning of solar panels,
- vegetation establishment and watering,
- dust suppression,
- bushfire management, and
- all other needs for the Application.

As per comments above on this matter. The response does not provide a water budget.

What about water for the grazing animals, establishment of screening veg, riparian areas, pasture under the solar arrays?

8. **Please advise what water storage volumes are proposed to be held on-site and whether additional water sources such as dams are required.**

Does not address what was asked for.

DPE responses (#9) suggest other water sources would be utilised.

9. **The Commission heard concerns at the Site Inspection, Locality Tour and Public Meeting regarding water storage, flow changes and potential flooding impacts, both on site and to neighbouring properties. Noting this, please advise how the first order stream flowing into R21 and shown in the 'General layout showing Development footprint and constraints' plan (Appendix A.1 of the Amendment Report - see marked up screenshot below) was considered during the Application's design and the final proposed solar PV array layout.**

No comments.

10. **Please confirm whether and to what extent engagement was undertaken with the landholders of R7 in relation to impacts of glint and glare and subsequent mitigation (i.e. screening plantings and limiting the resting angle of all solar panels during backtracking to a minimum of 4 degrees).**

No comments.

11. **The Commission notes that statements were made at the Public Meeting that only 6% of the Bathurst Local Government Area (LGA) comprises cropping land and that the development site is part of that resource. Noting this, please clarify how the Application has been designed to reduce impacts Land and Soil Capability Class 3 land**

on the site consistent with the Department of Planning and Environment's revised 2022 Large Scale Solar Energy Guideline?

The question asks "how the Application has been designed to reduce impacts Land and Soil Capability Class 3 land on the site". The response has not answered the question.

12. Please provide detail of the type, height and location of the security fencing proposed for the site.

No comments.

13. Has the Applicant considered and provided for sufficient water to facilitate vegetation establishment and ongoing maintenance?

Others can better comment on this matter.

If you need any further clarification on any of these items, please let me know.

Kind regards,

Erika Dawson
Director | Principal Town Planner & Bushfire Consultant



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Please note that Integrated Consulting will be closed for the Christmas/New Year break from 5:00pm Wednesday 20th December 2023 and reopening on Monday 8th January 2024.

From: Jonty Boshier [REDACTED]
Sent: Thursday, December 14, 2023 2:33 PM
To: Erika Dawson [REDACTED]; 'Mr David Harbison (Expert)' [REDACTED]
Cc: 'Glanmire Action Group' [REDACTED]
Subject: Glanmire Solar Plant

Dear Erika and David,

Please find attached additional documentation produced by Elgin Energy and the DPE.

I've also attached the soil assessment of Mr McMahon, David.

If you have comments in respect of each of the documents, it would be most appreciated.

Peter and I are currently reviewing also and will be working on our response tomorrow morning.

Kind regards,

Jonty Boshier
Solicitor



HENNESSY DOWD
Lawyers

191 Russell Street, Bathurst NSW 2795

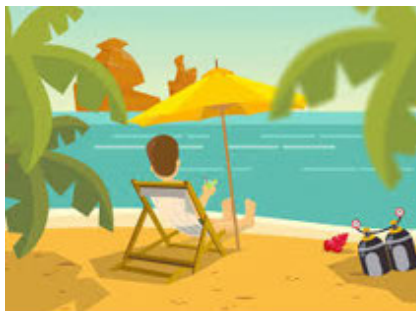
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From: [REDACTED]
Sent: Wed, 20 Dec 2023 10:48:49 +1100
To: Jonty Boshier;'Glanmire Action Group'
Subject: IPC questions and my responses
Categories: LEAP

Hi Jonty,
Please find my comments below to the questions asked by the IPC of both the DPE and Elgin and their respective responses.

DPE Questions & Response Letter

3. The Commission notes that statements were made at the Public Meeting that only 6% of the Bathurst Local Government Area (LGA) comprises cropping land and that the development site is part of that resource. Noting this, did the Department consider the loss of Land and Soil Capability Class (LSC) Class 3 land on the site within its regional context, i.e. the Bathurst LGA?

The DPE have taken a very simplistic view of such statistics without any understanding of seasons or land description. How the ABS categorise the land is irrelevant in this situation, as we are clearly challenging the 6% of Bathurst LGA being in crop in 2020/2021. The DPE has made no reference to the significant drought experienced in NSW from 2017 – 2020. After three years of significantly below average rainfall, much crop (and pasture) land was denuded, and livestock prices to restock were sky rocketing. As a practicing agronomist, I can assure you those farmers who had land suitable to crop, they went cropping in 2020 as a means of cash flow potential following the drought, at far less risk than the high prices of stock. In saying that, I believe the 6% of land area quoted for 2020/2021, or the 8,705 ha, is highly likely to be more than would normally be considered “Land mainly used for cropping”, as every possible ha was cropped if it could be.

The ‘massaging’ of data by the DPE is rubbish. To say the site is only 0.17% of the Bathurst LGA suitable for “cropping activities” is in complete contrast to the category they have just taken the data from, which was “land mainly used for crops and improved pastures”! All of a sudden, all the pasture country in the Bathurst LGA becomes area available for “cropping activities” according to the DPE. Totally wrong, so stick with the stats of what area has been classed for cropping. To downplay the Land Class 3 country potentially lost to 0.03% of the Bathurst LGA is just trying to justify their support for such a project. Again Rubbish. The proponents knew there was Land Class 3 on the proposed site, and a significant percentage of it as presented at the IPC public meeting, and they chose to ignore the Guidelines.

Applicant Questions & Response Letter

11. The Commission notes that statements were made at the Public Meeting that only 6% of the Bathurst Local Government Area (LGA) comprises cropping land and that the development site is part of that resource. Noting this, please clarify how the Application has been designed to reduce impacts Land and Soil Capability Class 3 land on the site consistent with the Department of Planning and Environment’s revised 2022 Large Scale Solar Energy Guideline?

From what the applicant has responded, it seems the way to “design to reduce impacts” is to “Compromise” the land use. Not a design at all.

From the table in the applicants’ response, I make the following notes to each Guideline

The Guidelines require the following key principals are applied:

1. Applicants should consider the agricultural capability of the land during the site selection process.
Totally ignored, their own early Land and soil capability map only showed two land classes, 3 and 5. Class 3 Land, as we know, “High Capability Land” and should be avoided. They didn’t!
2. Applicants should avoid siting solar energy projects on important agricultural land as far as possible.
Whilst not mapped for this particular area, 50 – 70+ years of local knowledge and historical picture evidence has this land as highly productive, important agricultural land, mainly of cropping activities. Should be avoided, they still continue.
3. Agricultural assessment should be proportionate to the quality of the land and the likely impacts of a project.
Their first assessment was completely inadequate as highlighted by Dr. McKenzie, encouraging the proponent to continue, only to have the land correctly “upgraded” when the proportionate study was undertaken, ironically back to the original Class 3 land they knew about from the start.
4. Mitigation strategies should be adopted to ensure that any significant impacts on agricultural land are minimised.

The proponents claim that the land will be returned to its original land class. Not in any way, can soil that is disturbed and trenched in the way required to establish this site, can soil layers be replaced exactly as they lay naturally today. Soil bulk density, water infiltration rates, sodic layers, presence of dispersive soils etc will never be the same, and potential environmental damage and erosion is real on these 'disturbed' areas.

In the proponents response, they quote " As such the impacts are considered highly reversible with regard to agricultural productivity in the long term". See note above, Nothing about changing soil properties is "reversible" and the areas of the site they wish to trench will never be returned to its current state.

The proponents claim "The Study Area is subject to livestock as the primary land-use", so why then does this site have such a long cropping history? It is true that "dual purpose" crops are sown to get a grazing benefit as well, but the principle outcome is grain yield from these crops. To say 50% of the site is pasture, and improved pasture at that, is rubbish. Have a look at the pictures available, and to the referenced year of 2020/2021. All but one paddock on the site was in crop, and there was Canola, Wheat and Oats. There is hardly a perennial plant present on the site, such has been the cropping rotation and importance of cropping on the proposed site.

"Cited in the Minesoils report well in excess of 90% of the 159ha development footprint will not be permanently disturbed once post-construction remediation is complete. This leaves 15.9ha of the site as a maximum area that could be permanently disturbed". 15.9 ha that could be "permanently disturbed". Open to environmental damage and erosion that could cause degradation to the neighbours land as this soil from the proposed washes onto neighbouring land, who knows. If an area of land of this size was to be made available to a housing development, as an example, with 500 square meter blocks, 318 houses could be built. Imagine if that area was "permanently disturbed" and no longer available to a developer, there would be community outrage.

The loss of productivity to the Bathurst LGA is again being downplayed by the proponent. "A temporary loss of 40.1ha of class 3 soil with a commitment to rehabilitate to existing levels is not considered a significant impact to the LGAs cropping resource". **"Not considered a significant impact to the LGA's cropping resource", what rubbish.** If it was for one year, maybe so, but for 30 years, and potentially longer, it is a huge amount of crop and food production. Take average annual yields of 5 t/ha wheat, just on this Class 3 land, 200 tonnes/year of potential wheat yield loss. Under sound agricultural management, such land can be continuously cropped, as much of it has been now for many years, so whilst it may not be wheat every year, other crops could be used and the potential yield loss is there every year of this project.

Kind regards, and If you need any further clarification on any of these items, please ask.

David Harbison.

David Harbison
D R Agriculture Pty Ltd



RESPONSE TO DEPARTMENT OF PLANNING & ENVIRONMENT LETTER TO INDEPENDENT PLANNING COMMISSION DATED 12 DECEMBER 2023, AND ELGIN ENERGY'S REQUEST FOR INFORMATION DOCUMENT DATED 12 DECEMBER 2023

Introduction

The Glanmire Action Group having reviewed the Department of Planning and Environment's letter dated 12 December 2023 drafted by Nicole Brewer, Director of Energy Assessments, and Elgin Energy's "Glanmire Solar Farm – Request for information" letter dated 12 December 2023, take this opportunity to provide a response.

Before embarking upon our comments, there is, we suggest, a need to remember that this process is an evidenced based process. At every turn, we have endeavoured to treat the process as such. This view is of course coupled with observations we have made previously expressing our determination to be frank and fair in our submissions to the adjudicating body.

We note that the Commission has invited the DPE, Elgin Energy, and others, including this Group, to provide information. We now have until 20 December to respond.

We accept of course there must be a deadline, but the introduction of fresh material has its dangers. For example, the DPE has advised that it is pursuing the Insurance Council of Australia. It has in fact had 12 months to do that, and the Proponent has had much longer. As set out at page 11 Paragraphs 39-45, the credibility of the Proponent was clearly and seriously raised. The Proponent in its response has failed to explain. After these submissions, do we run the risk of the DPE conferring with the Insurance Council and receiving advice that it misunderstands and so misuses without us having the opportunity to address the matter?

We suggest that to date, the DPE has demonstrated a capacity to misunderstand, and suggest that our concern is entirely appropriate.

In the short time that we have had, we have obtained responses from Erika Dawson and David Harbison for the commission's convenience, we **enclose** there email correspondence. We also **enclose** email correspondence from Mr Levi Thurston.

For the Commissions convenience, we respond to the matters raised, referring as best we can to the opinions of the above experts.

Having regard to this, we respond as follows:-

Department of Planning & Environment Letter

Set Backs & Buffers

1. Please advise whether the proposed eastern and western boundary setbacks for the development site comply with the relevant guidelines and are appropriate to ensure visual impact mitigation and land use compatibility is achieved for adjoining properties.

- (a) It is respectfully submitted that the question as to "land use compatibility" extends to a vast array of matters and extends beyond the guidelines referred to by the Department of Planning and Environment.
- (b) The DPE's response seems to only focus on the Large Scale Solar Guideline and the associated technical supplement for landscape and visual impact assessment. It does not consider other guidelines that impact on land use compatibility such as *Planning for Bushfire Protection 2019*.

- (c) We submit the DPE should address these matters.
- (d) In relation to the heat island effect, the guideline states the solar arrays should be set back from the property boundary by at least 30 metres. This is a minimum requirement. No evidence or assessment has been provided that confirms this setback is adequate to this specific site.
- (e) In respect of the western side boundary, we note the Department discounts the need for a 30 metre buffer in part, due to the existing access track. The access track is not 10 metres wide as stated in the DPE response. The fence corridor may be 10 metres wide, but the track itself is not. We respectfully suggest the DPE is in error.
- (f) We also note the development does not provide the minimum required 30 metre setback from the property boundaries on either the eastern or western boundaries. The western boundary set back is either 10 metres (5 meters of vegetation screen plus 10 metres of asset protection zone) or 20 metres (10 metres vegetation screen plus 10 metres asset protection zone). This is half or two-thirds of the required separation distance. We respectfully suggest Elgin Energy, or the DPE are not currently complying the guidelines.

The minimum buffer (20 metres) stated does not correspond to the site plan submitted with the DA.

- (g) Additionally, the neighbouring property, regardless of the existence of the narrow access track, should not be burdened with providing part of the buffer required for the proposed development. The buffer should be wholly located within the development site so as to not adversely impact the preferred and predominant cropping/agricultural use of the neighbouring property.

Anything to the contrary, is entirely unacceptable in respect of this issue.

- (h) Nevertheless, the Glanmire Action Group's remains firm in the view that the land use conflict, in particular the issue of obtaining adequate public liability insurance remains an insurmountable issue such that the project should not proceed.

2. ***Through its site inspection and locality tour (including engagement with the landholders of R21), the Commission understands that cropping activity may occur up to the western boundary of the development site. Noting this, please confirm the Department's view of the appropriateness of the proposed western boundary set back and its use of adjoining land outside the development site area given Table 8 (page 28) of the Department's Assessment Report specifies,***

“Although the western edge of the solar array is set back less than 30 metres, the Department considers the buffer which have been incorporated (i.e. minimum of 20 metres) is appropriate given there is no horticultural or cropping activity on the adjacent property and the proposed landscaping buffer would further mitigate potential heat island effects.”

- (a) The fundamental error is to totally misunderstand or misrepresent the activity on the adjacent property. To suggest that there is no horticultural or cropping activity on the adjacent property is contrary to all of the evidence we presented to the DPE, and this fundamental factual error taints all of the comments that the DPE makes thereafter.
- (b) We note our comments above in respect of the burdening of the adjoining land's farmer.

Glanmire Action Group Further Submission - 20th December 2023

- (c) We further reiterate that a minimum buffer (20 metres) stated does not correspond to the site plan submitted with the DA.
- (d) The justification has not considered impact on bushfire risk as a result of proposed revegetation.
- (e) In respect of the DPE's comments as to the vegetation screens minimising heat island impact, we note our comments in response to submissions at paragraph 98, page 20.
- (f) The extent to which these vegetative screens will grow as planned, and to the height anticipated, we note the comments once more in the case of *Super Studio -v- Waverley Council* [2004] NSWLEC91 paragraph 5 to 7,

“The second principle is that where proposed landscaping is the main safeguard against overlooking it should be given minor weight. The effectiveness of landscaping as a privacy screen depends on continued maintenance, good climatic conditions, and good luck. While it is theoretically possible for a council to compel an applicant to maintain landscaping to achieve the height and density proposed in the application, in practice this rarely happens.”.

- (g) The adequacy of this remains a significant concern to the Glanmire Action Group.
- (h) We further note once more the comments of Ms Erica Dawson, fire expert, as above; Elgin Energy Pty Ltd nor the DPE have adequately assessed bushfire risk with the introduction of vegetative screening.

3. *The Commission notes that statements were made at the public meeting that only 6% of the Bathurst Local Government Area (LGA) comprises cropping land and the development site is part of that resource. Noting this, did the Department consider the loss of land and soil capability (LSC) Class 3 land on the site within its regional context – i.e. the Bathurst LGA?*

Loss of Class 3 Land

- (a) We note the DPE's comments in respect of the Australian Bureau of Statistics data and their observations as follows,

“The Department notes that the ABS data states that 8,705 hectares only includes “land mainly used for crops” (e.g. cereals and grains), and goes on to quantify that there is a total of 107,895 hectares of “land mainly used for crops and improved pastures” which more closely represents the land use of the project site (i.e. grazing and cropping for fodder). This equates to a total of approximately 70% of the land subject to agricultural activities within the Bathurst Regional Council LGA.”.
- (b) We once again note the Glanmire Action Group's comments in respect of the DPE's categorisation of the land noting in their report to the IPC that they refer to the land as “grazing and some cropping”. We once again (as per paragraph 19, page 4 of our response) that this description is contrary to all of the evidence, in particular the signed Statement of Mr Mark Ryan, and so is unsupported.
- (c) In respect of this issue, we also **attach** email correspondence of Mr David Harbison who provides the following comment:-

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“The DPE have taken a very simplistic view of such statistics without any understanding of seasons or land description. How the ABS categorise the land is irrelevant in this situation, as we are clearly challenging the 6% of Bathurst LGA being in crop in 2020/2021.

The DPE has made no reference to the significant drought experienced in NSW from 2017 – 2020. After three years of significantly below average rainfall, much crop (and pasture) land was denuded, and livestock prices to restock were sky rocketing. As a practicing agronomist, I can assure you those farmers who had land suitable to crop, they went cropping as a means of cash flow potential following the drought, at far less risk than the high prices of stock. In saying that, I believe the 6% of land area quoted for 2020/2021, or the 8,705 ha, is highly likely the more that would normally be considered “Land mainly used for cropping”, as every possible ha was cropped if it could be.

The ‘massaging’ of data by the DPE is rubbish. To say site is only 0.17% of the Bathurst LGA suitable for “cropping activities” is in complete contrast to the category they have just taken the data from, which was “land mainly used for crops and improved pastures”. All of a sudden, pasture country becomes area available for “cropping activities”. To downplay the Land Class 3 country potentially lost to 0.03% of the Bathurst LGA is just trying to justify their support for such a project.... The proponents knew there was Land Class 3 on the proposed site, and a significant percentage of it as presented at the IPC public meeting, and they chose to ignore the Guidelines”.

- (d) The Glanmire Action Group submits that this land is “land mainly used for crops”. The quality of land is of that high standard.
- (e) In respect of the DPE’s conclusions that;

“The overall agricultural productivity of the Bathurst Regional Council LGA would not be significantly reduced, noting also that the inherent agricultural capability of the land would not be effected given the site would be returned to agricultural uses following decommission and rehabilitation.”. (emphasis added).

- (f) We reiterate our response set out at paragraph 93 on page 19 of our written submissions in respect of decommissioning - Ms Dawson in her report advises that whilst there is a requirement for rehabilitation to the site in recommended condition of consent (C34),

“Concern is raised as to the reality of decommissioning and returning the site to existing levels of agricultural capability over a period of 50 years. It is recommended that a security deposit be required from the developer, like required for mining developments, to cover the full rehabilitation costs of the development site to ensure that it is rehabilitated at the end of its life.”.

There is no evidence against this assertion.

We also note that Mr Harbison supports Ms Dawson’s view in respect to this issue.

Once again we are responding to Elgin Energy’s mere statements, with the expert opinion.

- (g) The extent to which the IPC relies upon rehabilitation as a factor for approval should be limited without these precautions.

- (h) We further note the following concerning realities of the project:-
- a. The capacity for Elgin Energy Pty Ltd to extend the life of the solar farm suggests that prime cultivation land could be out of production for an indefinite period of time.
 - b. The quality of the land will be significantly impacted where trenches are dug leading to potential erosion and soil dispersion.
 - c. 25.5% of the riparian corridor on Class 3 land will cause this prime agricultural resource to be lost in perpetuity.¹
- (i) The Action Group remains firm in its view that the proposed solar plant should not be placed on this site. Nevertheless, in the event the Independent Planning Commission form the, with respect, erroneous view that it was appropriate, the Action Group would seek that a security deposit be a condition of the development consent.
- (j) Any conclusion that this land is not cultivation land, and/or it can be returned to its original state is against the weight of evidence.

Strategic Policy Goals

- (k) In respect of the comment of the DPE stating;
- “The Department considers that the loss of this small area of agricultural land in the region... must be balanced against the broader strategic goals of the Government.”.*
- (l) We note our submissions at paragraph 60 and 61 of page 13 of our report which state,
- “We submit the proposed solar plant does not align with the Bathurst Regional Local Environment Plan, the Plan for Bushfire Protection 2019, or the Environment, Planning & Assessment Regulation 2000.”.*
- (m) It is also submitted that the project does not align with the policy imperatives of protecting prime cultivation land, agricultural enterprise, the maintenance of scenic quality of rural areas and food security.

Economic Benefits/ Costs

- (n) We note further the DPE’s in its calculation rely on “*environmental and economic benefits of solar energy*”.
- (o) We refer to paragraph 30, page 7 of our report and the comments of Mr Richard Ivey in respect of the profitability and economic benefit of the agricultural use of the land to the region. We reiterate his observations in respect of the land which are as follows:
- (i) Tremain Ivey Advisory agree with the assessment of the agricultural potential of the proposed solar project as assessed by Mr David Harbison. The area is “*Capable of supporting intensive mixed crop and livestock farming systems such as farming systems typical of that utilised by farm businesses on land that*

¹ Report of Erica Dawson (DPE Assessment Report) dated 7 December 2023, page 3 [19-20].

has met agricultural potential surrounding the solar project and generally within the Bathurst region”;

- (ii) The operating expenses are estimates as being \$126,664;
- (iii) The net cash surplus/deficit of the productive land is estimated to be \$102,050;
- (iv) Due to the combination of climate and soils, NSW far west generally has significantly longer agricultural production potential to that of the proposed solar plant site. The NSW far west has a number of renewable energy projects for this reason;
- (v) It is concluded that the annual gross agricultural income of the proposed solar project area is that of \$228,714 compared to the \$4,512 for land the same size from the NSW far west and the gross income for 186 hectares in NSW far west is less than 2% of the solar project area.²
- (p) It is submitted that the economic advantages of solar are best served on land in the NSW far west that is not as highly productive as the subject site.
- (q) The AG respectfully submits on this basis, that the DPE have erred in their conclusions in respect of this issue.
- (r) Any suggestion that the economic benefits/ costs favours this proposal is against the evidence, or weight of evidence.

4. *During its site inspection and locality tour, the Commission discovered that much of the site appears to be cropped currently or recently. A number of speakers at the public meeting also noted that a majority of this land is and has been utilised for cropping.*

Noting paragraph 83 of the Department’s Assessment Report, which specifies that the majority of the development site “Has been previously cleared and used for agricultural activities including grazing and some cropping”, what is the Department’s view on the above observations?

- (a) The AG respectfully submits the DPE are falling into the error as noted above at 3(a)-(i).
- (b) We reiterate, it is incorrect to describe the land as “*grazing and some cropping*” or indeed “*grazing and fodder cropping*”. The land is cropping land with some grazing. This misdescription leads to greater error as conclusions are sought to be drawn.
- (c) It is submitted that the Department has not taken into account the land use of the site adequately and continues to inappropriately emphasise the land being used for grazing when, it is exactly the opposite.
- (d) We reiterate the observations of Mr Mark Ryan, and to the Action Group’s comments in respect of the productivity of the land set out at 17 to 31 of our submissions and paragraphs 70 to 94.
- (e) The factual assertions and views are against the evidence and weight of evidence.

² Report of Mr Richard Ivey dated 19 January 2021, page 4 – 5.

Insurance:

5. *An issue raised by a number of speakers at the public meeting was that increased, and potentially unattainable public liability insurance would be required for adjacent properties as a result of the application. Has the Department given any consideration as to how this issue could be managed, including whether in its view a condition of consent could be implemented to mitigate these impacts?*

Evidence

- (a) In respect of the DPE's submissions where it is stated;

"We do not consider that clear evidence has been provided on increased premiums or an ability to obtain insurance as a result of the proposed project."

- (b) We ask the IPC "what further evidence could have been provided to the DPE in respect of this issue over and above the formal reports of Mr Levi Thurston, and Mr Craig Mison?"

The DPE submission, on this and all other matters, really does suggest that it had not read/ understood our case as presented to it in the most responsible way – that is through evidence/ reports. The DPE's observations suggest that it had not viewed our Documentary that was so well prepared to assist them.

The Proponent has produced no evidence. It continues to rely upon mere hearsay that is unverified and inherently improbable. We have gone to great lengths to demonstrate its unlikelihood (see Written Response dated 8 December 2023, page 11, paragraphs 39-45).

The Proponent's response is largely a response of a proponent masquerading as a large and responsible entity. We suggest it is a "red hearing" introduced to mislead.

- (c) We do not consider the DPE's conclusion that there is a lack of "clear evidence" to be correct in any way.
- (d) We further note that Elgin Energy Pty Ltd, or the DPE have failed to provide any evidence directly contradicting the reports of Mr Levi Thurston or Mr Craig Mison. In the absence of any material, the reports of both experts ought to be relied upon by the IPC.

Indemnity

- (e) We note the DPE's comments in respect of indemnities,

"The Department agrees with these statements [the comments of Mr Hayden Fielder and Mr Paul Lalich] and considers that the issue of insurability, in particular, potential use of an indemnity related condition, is not considered to be a planning matter under the EP&A Act."

- (f) The AG respectfully suggests that whether this matter does or does not fall under the EP&A Act, the lack of insurability remains a clear and present risk to neighbouring farmers.

It is a matter that clearly “impacts upon neighbours”. We therefore respectfully suggest, this is a land use conflict that must be considered and appropriately answered.

Even if indemnification was legally feasible, there is no doubt that such a process would require constant supervision for the term of the project, and there is no mechanism for implementing or maintaining such a requirement. Any suggestion that puts the issue of insurance “on the back burner” is entirely inappropriate. See the statement of O’Brian Agriculture below in our Conclusion.

- (g) In respect of Mr Paul Lalich’s suggestion that buffer distances,

“should be considered in order to mitigate bushfire risk, and therefore reduce the likelihood that insurance companies would increase premiums”,

we respectfully suggest that there is no evidence to support the assertion that increasing buffer distances would have any material impact on insurance premiums. And in the event they do, the extent to which any reduction would be such that premiums would no longer be cost prohibitive.

We suggest Mr Lalich’s suggestion is merely that, a suggestion. It is coming from a lawyer with no relevant insurance experience or expertise and so is, with respect, of no evidentiary value and so is indeed, merely likely to mislead.

Given this comment was coming from a neighbour with similar interests to ours, we have gone to the trouble of getting a further report from Mr Levi Thurston confirming what we would suggest is the obvious:-

“I’ve read the Response of the Department of Planning and Environment dated 12 December 2023 and the Response of Elgin Energy Pty Ltd dated 12 December.

I note in particular the comments of Mr Lalich at page 6 of the DPE’s report, where it states; “Mr Paul Lalich went on to suggest that buffer distances should be considered in order to mitigate bushfire risk, and therefore reduce the likelihood that insurance companies would increase premiums”.

As stated in our report the mitigation options are not there to lessen or reduce the premiums related to insurance for the neighbouring farms but are the basic minimum requirements to gain eligibility to a policy that might cover the Liability and Vicarious liability associated with being a neighbouring farm to the Solar farm installation. The indicative premiums would not reduce or change from our previous statement in the report.

I also note Elgin Energy’s response at page 10 to 14. I do not agree with their conclusions in respect of premiums. I reiterate that risk mitigation strategies effect eligibility, not premiums.

I hope this help clarify where things sit in relation to the mitigations and the premium”.

- (h) It is submitted that irrespective of the adequacy of the buffer, liability remains. As does the size of the premium.

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- (i) We note the comments of Mr Graham Swain in his reported dated 5 December 2022 referred to in the AG's initial response to EIS which identified spotting distance for embers to be of a significantly greater distance than the setback proposed.
- (j) The AG respectfully submits that no evidence before the Independent Planning Commission that supports the DPE concludes:-

“the risk of fire spreading into the site from an adjoining property, or from the solar arrays and infrastructure to adjoining property would be adequately mitigated with implementation of the proposed management measures and adherence to the recommended consent orders”.

There is no evidence, or sufficient evidence, to support such a conclusion. There is an abundance of evidence, or in any event, evidence to the contrary.

The DPE are in error.

- (k) It is submitted in the strongest terms that the IPC must rectify this issue prior to the contemplation of any further conditions/approvals.
- (l) Having regard to the Public Liability Insurance Issue, and the DPE's reference to Fire Control within the Solar Plant and the impact of such control upon insurance premiums, it may help the commission if we set out the basic way a Bushfire/ grass fire/ crop fire litigation proceeds.

Typical Litigation

Typically, the solar company/ its insurer will be the plaintiff in an action against a neighbouring or nearby landowner/ occupier and /or the machinery contractor. The Action would typically be brought in negligence and would allege that the fire was started by and/or allowed to spread onto the plaintiff's premises as a result of the Defendant's (landowner/ occupier and /or the machinery contractor) negligence.

The defendants might: (a) deny negligence and/or (b) allege contributory negligence. If the plaintiff fails to prove negligence its action will fail.

If it proves negligence, but the Defendants prove that it (the plaintiff) was guilty of contributory negligence, by for example, failing to have or maintain a sufficient firebreak, then the Plaintiff's verdict may be reduced by a percentage. The fact is, however, that the Defendant's liability for negligence will not be extinguished, and so the Defendant's primary liability will stand, and the Plaintiff will succeed.

It follows that actions taken by the solar entity on its own block will not impact upon the premium payable by the defendants.

We suggest this is simply a case of “solar in the wrong place”. It is proposed at a location surrounded by fertile cropping land.

6. *Noting the NSW Government's response to the NSW Agricultural Commission's report dated 1 March 2023 (specifically page 10 of the response under the theme of “fire and insurance risk”), please advise what progress is being made in regard to the further consultation with the Australian Energy Infrastructure Commissioner and the Clean Energy Council.*

- (a) We respectfully suggest the DPE has not made any progress in this respect and only indicates to the IPC that this is a potential future point of engagement.

- (b) It is respectfully submitted this is a wholly inadequate response.
- (c) If the DPE makes an enquiry now, that may introduce into this process fresh material upon which the DPE or the Commission may be inclined to rely and on which we have not had the opportunity to comment. This would be, we suggest, an inappropriate and dangerous course.

7. *Has the Department conducted any consultation with the Insurance Council of Australia regarding this issue?*

- (a) We reiterate our comments immediately above.
- (b) The DPE's engagement in respect of this issue is wholly inadequate.

Flooding:

8. *It was noted at the public meeting and site inspection that it would be almost impossible to maintain predevelopment waterflow across the site to the same levels post-development, particularly given several dams on site will be infilled. How has local knowledge of water movement on the development site and the potential impact on dams both on the site and with the neighbouring landholders properties (particularly R21, for example) being considered in the Department's assessment?*

- (a) It is submitted that the recommended condition is inconsistent with the DPE's guidelines for the preparation of consent conditions.
- (b) The proposed conditions are unclear, and any assessment of compliance is not practicable or measurable.
- (c) We submit this is wholly inadequate.

Landscaping & Water:

- (a) The assessments and conclusions provided by the DPE are without appropriate supporting documentation.
- (b) The AG is unable to comment in respect of these submissions without considering how this assessment was undertaken.

* * *

Elgin Energy Request for Information Document:

1. *Please confirm the precise height of the proposed solar arrays, at both heights (tilt on axis and when horizontal), substation, battery, and security fencing.*

- (a) No comment.

2. *Please confirm the precise extent of the proposed set backs on the eastern and western boundaries of the development site, including the extent within these set backs that is proposed for vegetation screenings, asset protection zones, maintenance tracks, and existing roads.*

- (a) We refer to our comments in respect of asset protection zones at paragraph 1(a)-(h).

3. ***Please confirm whether the western set back relies on a joining land to provide an appropriate buffer.***

(a) We note our comments above at 1(e)-(h).

4. ***Please confirm the rationale for the proposed exclusion zone at the northern end of the site (south of the 30 metre set back to Great Western Highway).***

(a) We reiterate the AG's position in respect of the adequacy of screen planting.

5. ***Please confirm the dimensions of the proposed southern set back. Note all set backs should be calculated within the development site and not encroach on or make use of neighbouring properties.***

(a) We reiterate our comments in respect of the adequacy of these set backs as set out above.

6. ***Please advise whether any consideration has been given to public liability insurance requirements for adjacent properties and whether any solutions are proposed to address an increased cost for those landholders.***

(a) We reiterate our comments at 3(a)-(l).

(b) We further note and specifically request any evidence of "*consultation between Elgin Energy and several insurance providers*".

(c) As at the date of this letter, no evidence has been provided to the Department of Planning and Environment, or the Independent Planning Commission, or the community, of any insurance provider or representative body providing formal written advice in respect of the alleged negligible effect on premiums.

(d) In the absence of any such material, the Independent Planning Commission must rely on the report of Mr Levi Thurston and Mr Craig Mison.

(e) We further note the alleged representations made by the Insurance Council of Australia and the National Insurance Brokers Association of Australia and relied upon by Elgin Energy Pty Ltd in their Response to Submissions at page 75.

We reiterate our position that as at the date of this further comment, we have not received confirmation from either the Insurance Council of Australia or the National Insurance Brokers Association confirming they have in fact provided that information to Elgin Energy or the DPE despite our request.

We submit this remains hearsay.

(f) We once again note the comments of Elgin Energy where they say,

"A detailed review of the submissions and supporting material found no data or other material was provided that unambiguously linked an instance of denied insurance, restricted reinsurance, or increased cost of insurance through an adjacent solar farm. Reference is made to indicative future premiums and risk generally. Primary source documentation, such as a quotation or correspondence from an insurance provider confirming that a

landholder's/owner's risk profile had and would change due to proximity to a solar farm did not accompany these submissions."

- (g) It is respectfully submitted that the expert opinion of Mr Levi Thurston should be regarded as primary source documentation having regard to his expertise.
- (h) We further note that Elgin Energy Pty Ltd has not been able to provide any quotation or "primary source documentation" to refute and expressly contradict the conclusions made by Levi Thurston.
- (i) It is clear Elgin Energy Pty Ltd has failed to show the ability for neighbouring farmers to obtain insurance, or indeed, to provide any evidence, to refute any proposition by our insurance experts.
- (j) It remains the case that in the event of fire, irrespective of these mitigation measures, the negligent party remains at fault and liable to pay the costs for any damages that occur. In such an eventuality, (grass fire throughout the whole solar plant), the potential liability to the negligent party is significant (as per Mr Thurston's assessment, potentially liable to in excess of \$200,000,000).
- (k) It is submitted there is an abundance of cases of fire entering adjoining premises and causing most substantial damage. Of course, a solar plant, as distinct from a rural property adjoining will increase the damage exposure, and that is what this issue is all about. The only other comment we can make is that climate change is likely to add to the issue.

7. *Please confirm the water budget required for all uses, including: ongoing agricultural operations, cleaning of solar panels, vegetation establishment and watering, dust suppression, bushfire management, and all other needs for the application.*

- (a) We note our comments above in respect of the adequacy of water management.
- (b) We note that no water budget has been provided.
- (c) There is no allocation or assessment for the watering of grazing animals, the establishment of the screening vegetation, the growth and support of the riparian areas, or to ensure pasture under the solar arrays.
- (d) It is submitted that this response is inadequate.

8. *Please advise what water storage volumes are proposed to be held on the site and whether additional water sources such as dams are required.*

- (a) We respectfully submit the Elgin Energy's response does not answer the question as requested.

9. *The Commission heard concerns at the site inspection, locality tour, and public meeting regarding water storage, flow changes and potential flooding impacts, both on site and to neighbouring properties. Noting this, please advise how the first order stream flowing into R21 and shown in the "General Layout Showing Development Footprints and Constraints" plan (Appendix A.1 of the Amendment Report – see marked up screenshot below) was considered during the application's design and the final proposed solar PV array layout.*

- (a) No comment.

10. *Please confirm whether and to what extent engagement was undertaken with the landholders of R7 in relation to impacts of glint and glare and subsequent mitigation (i.e. screen plantings and limiting the resting angle of all solar panels during backtracking to a minimum of four degrees.*
- (a) The landholder is better placed to respond to this question.
 - (b) No further comment.
11. *The Commission notes that statements were made at the public meeting that only 6% of the Bathurst Local Government Area (LGA) comprises cropping land and that the development site is part of that resource. Noting this, please clarify how the application has been designed to reduce impact land and soil capability Class 3 on the site consistent with the Department of Planning and Environment's revised 2022 Large Scale Energy Solar Guideline:*
- (a) We note that the question asked, "How the application has been designed to reduce impacts on land and soil capability Class 3". It is submitted that the response has not answered the question.
 - (b) The proponent has now shown how the application has been designed to reduce impacts on Class 3 land.
12. *Please provide detail of the type, height, and location of the security fencing proposed for the site.*
- (a) No comment.
13. *Has the applicant considered and provided for sufficient water to facilitate vegetation establishment and ongoing maintenance?*
- (a) No comment.

Conclusion:

It is respectfully submitted that the DPE in its response has not adequately addressed the concerns identified by the Action Group, particularly in respect of land use conflicts, quality of land, compliance with the Planning for Bushfire Protection 2019, and most importantly, public liability insurance.

Similarly, Elgin Energy's response to the questions put by the Independent Planning Commission do not adequately respond to the Commission's questions. The proponent continues to minimise, miscategorise and mislead, both in respect of the use and quality of the land, and indeed the degree to which public liability insurance is in fact an issue.

We submit the IPC ought to respond to the evidence.

Quality of Land

The quality of the land is a matter common to the IPC's questions at 2, 3, and 4 above.

As to practical quality, the only evidence is that presented by this group. Through the documentary, and so many witnesses, it is clear that this land has been used as cultivation for at least the past 70 years.

There is we suggest, no evidence to the contrary.

As to Class classification, it is also clear that the preferable evidence on soil classification is that of Dr McKenzie, Mr Harbison, Mr McMahon and Minesoils. The Proponents agronomists (SLR) still protests it remains in the right – “*everyone is out of step but joe*”.

This land should be avoided.

Public Liability Insurance

As to Public Liability Insurance raised by the IPC at 5 above; the clear evidence on this and associated matters, is forthcoming from this Action Group. It includes the reports of Craig Mizon, Mr Levi Thurston and O’Brien Agriculture below. We suggest there is no evidence to the contrary, and those reports should be acted upon.

Insurance is an insurmountable problem. This Action Group has done the best we can to inform the DPE and the Commission, and indeed Elgin Energy Pty Ltd of all relevant issues. Thankfully this Commission has finally responded to our concerns.

We confirm that in our view, to approve this proposal without insurance being sorted is a dangerous action indeed. And we suggest, with respect, that the Commission owes to the community a duty of care. We suggest that approval without the insurance resolution is a breach of the duty with the outstanding matter remaining, that is to say, damage. And that can occur at any time.

Some Mere Information Without Evidence

Again, in the hope of assisting the Commission, we advise that as best we can ascertain, the ACT allows solar in a setting in which the surrounding land is, for a most significant distance, under the management and control of the solar entity.

We note that the proponent appears to be relaxed in not helping the Commission at all in relation to the UK position. We can only confirm that Solar seems to occur in a setting similar to the ACT, and in any event, fire is not an issue.

The writer has tried, but so far failed to ascertain the insurance position in Spain. The writer’s information has not gone beyond advice that solar is located on arid land in Spain and doesn’t mix with fertile land. We emphasize however, that our enquiries are merely that, enquiries.

Insurance ought of course, not be given as a “condition of consent”. This as we have already submitted, is not workable.

Since our submission dated 8 December 2023, we have received documentation confirming our submission (See Newton Chandler Submission dated 8 December 2023). The following is an impact statement from O’Brien Agriculture who adjoin the Suntop Solar Farm at Wellington NSW:-

“5 years on from that submission & 2 years on from the Project build completion, we are still unable to access Public Liability insurance above \$20million. Numerous insurance agents & brokers have discussed the complex nature for underwriters to share the risk above the current \$20million for primary producers. At most, \$50 million may be accessible but very expensive, if at all able to access. Achmea insurance (specific to the farming industry) more recently advised that they would have to go offshore to seek underwriters to split the risk.

All in all, not an easy task for neighbouring farmland to insure their risk - despite government promises (& Project proponents) to seek indemnification in the approval process! Best case scenario for us has been to mitigate risk in the short term by sowing most of the paddocks that adjoin the solar farm with pastures (max only 5 years mitigation strategy for mixed farming country!). We have again written to council and have invited them, once again, to become

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informed with us and to reengage withdraw so many of the views to the commission expressed against us”.

Our community should not be subjected to such an unworkable condition. The proponent has had ample opportunity to deal with so many issues and has failed, and ought we suggest, fail in its application.

If we can assist the Independent Planning Commission in respect of any of the materials set out above please do not hesitate to contact Mr Jonty Boshier, Solicitor of Hennessy Dowd Lawyers, or Mr Peter Hennessy SC (retired from practice from the NSW Bar) all assisting the Glanmire Action Group.