

Blueskin Energy Limited
C/- Bridget Irving
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Dear Sir/Madam

RESOURCE CONSENT APPLICATION LUC-2015-469
147 CHURCH ROAD
MERTON

The above application for land use consent was processed on a notified basis in accordance with Section 95 of the Resource Management Act 1991. Independent Commissioner Colin Weatherall heard and considered the application at a hearing on 17, 18, and 19 May 2016. The hearing was adjourned until 9 June 2016 when the applicant delivered the right of reply. The Commissioner issued a minute on 16 June 2016 formally closing the hearing resolving in accordance with Section 48(1) of the Local Government Official Information and Meetings Act 1987, to exclude the public.

The Commissioner carried out an initial site visit on Wednesday 30 March 2016 and a further visit on Thursday 2 June 2016.

The Commissioner has **declined** consent to the application on 12 July 2016. The full text of this decision commences below.

The Hearing and Appearances

The applicant was represented by:

- Bridget Irving (Solicitor)
- Campbell Hodgson (Solicitor)
- Scott Willis (Blueskin Energy/Blueskin Resilient Communities Trust (BRCT))
- Di Lucas (Landscape Architect)
- Mike Moore (Landscape Architect)
- Ben Farrell (Planner)
- Dr John Craig (Ecologist)
- Dr Virginia Toy (Geologist)
- Dr Stephen Chiles (Acoustic Consultant)
- Dr Janet Stephenson

Council staff attending were:

- John Sule (Advisor to the Commissioner)
- Darryl Sycamore (Processing Planner)
- Wendy Collard (Governance Support Officer)
- Carlo Bell (Environmental Health Officer)
- Barry Knox (Landscape Architect)

Submitters appearing were:

- Geraldine Tait
- Jeremy Head (Landscape Architect for Geraldine Tait)
- Alasdair Morrison
- Andrew Barratt
- Tracey Scurr
- Denis Albert
- Graeme Bennett
- Jenny McDonald
- Simon Ryan and Jennifer Ashby
- Lyndon and Kirsty Clayton
- Karen Price & Steven Mutch (Solicitors for S Ryan, J Ashby and L & K Clayton)
- Stephen Brown (Landscape Architect for S Ryan, J Ashby and L & K Clayton)
- Rachel McClellan (Ecologist for S Ryan, J Ashby and L & K Clayton)
- Stephen Packer
- Jenny Rodgers
- Mark Brown
- Thomas Cardy and Jamie Pickford
- Metiria Turei MP
- Paul Jouanides
- Brenda and John Thom
- Derek Onley
- Gareth Hughes MP
- Rachel Ozanne
- Frederika Schmaltz
- Andrew Deaker
- Kat Achterberg
- John Kaiser
- Ben Wooliscroft

Procedural Issues

At the commencement of the hearing the Commissioner asked for a response from Ms Irving in relation to the evidence and appearance from Dr Stephenson for the applicant and her submission in support of the application. Ms Irving advised the Commissioner that Ms Stevenson's evidence should not be treated as expert evidence prepared under the Environment Court's code of conduct for expert witnesses and the Commissioner should adjust the weight given to the evidence accordingly.

Late Submissions

The Commissioner issued a minute prior to the hearing to advise that after consulting with the applicant that he had accepted the late submissions from:

- Murray Cumming
- Alan Greenall
- Eve Jolly
- New Zealand Windfarm Energy Association
- John Thom

A very late submission from Kirstie McKinnon was received during the hearing. This submission was not accepted by the Commissioner.

Principal Issues of Contention

The principal issues of contention are as follows:

- Whether the applicant had adequately addressed all information requirements in relation to the range of adverse effects from the proposal;

- Whether the proposal passes the Section 104D gateway test for non-complying activities;
- The appropriate weighting to be given to the proposed second generation plan in relation to objectives and policies for landscape and energy generation;
- The significance of ecological effects;
- The significance of landscape effects;
- The significance of positive effects;
- The significance of the adverse effects on the nearest neighbours to the turbines and whether these are outweighed by the positive effects of the proposal;

Summary of Evidence

Introduction from Processing Planner

Mr Sycamore gave an overview of his recommending report. He acknowledged the expert evidence that had been received following the release of the Section 42A report that he had prepared. He noted that this evidence had addressed some of the information gaps he had identified in the report. He also acknowledged that some submitters had provided expert landscape evidence that outlined a less positive view of the adverse effects of the proposed turbines on landscape and rural amenity values. He noted that he would be required to review his recommendation prior to the applicant's right of reply and that he would not offer any further comment on his recommendation until that time as he wanted to hear all the submissions prior to reviewing his position.

The Applicant's Case

Bridget Irving opened the applicant's presentation with her legal submissions. She outlined the main effects issues to be considered and the evidence that had been provided by Blueskin Energy through the evidence pre-circulation process.

Ms Irving outlined the statutory assessment process for the Commissioner. In relation to the Section 104D gateway test she noted that Mr Sycamore and Mr Farrell for the applicant had concluded that the proposal passed the gateway test.

Ms Irving then went on to discuss the major issues for the Commissioner to consider under Section 104 and she identified, landscape, amenity, noise, ecological aeronautical, geotechnical, traffic effects and positive effects as important considerations. In relation to landscape Ms Irving argued that as the turbines are located outside the landscape overlay in the operative plan that the objectives and policies of the landscape section of the operative plan were not a relevant consideration. Ms Irving also identified that the permitted baseline was of little relevance for this application.

In relation to the provisions of the proposed second generation plan (2GP) Ms Irving argued that the objectives and policies of the 2GP should be given more weight than would normally be the case at this early stage because the operative plan did not contemplate wind turbines and because the 2GP provisions had been drafted to give effect to the National Policy Statement for Renewable Energy Generation (NPSREG).

Ms Irving acknowledged the differences of views in relation to the relevance of the NZ Coastal Policy Statement. She argued that the activities were occurring at a location that is not part of the coastal environment and therefore the policy statement was not a relevant consideration.

Ms Irving concluded by noting that the proposal is unique with its genesis in a community that is concerned about the impacts of climate change. She drew the Commissioner's attention to the positive effects of the proposal. Ms Irving acknowledged that there are some adverse local effects but argued that these were not significant and outweighed by the benefits. She considered that the proposal was a community response to climate change that should be enabled by granting the consent.

Scott Willis summarised his pre-circulated evidence for the Commissioner and responded to questions on his evidence. He noted that he was the Project Manager for Blueskin Energy Limited and the president of the Blueskin Resilience Communities Trust.

Mr Willis provided background to the structure of the Trust and its membership. He identified projects the Trust had been involved in. In relation to the wind farm proposal he also provided a chronology of the projects progression and he detailed the community consultation that had been undertaken by the Trust.

In relation to community benefit he noted that once the turbines are up and running it is estimated that up to \$100,000 per annum will be provided to the Trust to provide services to the Community. Mr Willis provided a background to how the community has been kept informed in relation to the project which included A&P shows, social media, and a regular article in Blueskin News.

Mr Willis responded to some matters that had been raised in the evidence of submitters. He noted that there cannot be more than three turbines on the site and that the prevailing wind was not in the direction of the Ryan/Ashby property. He identified that the wind resource was considered to be an above average wind source. In regard to location he noted that some flexibility was sought to allow for movement within 30m of the proposed GPS locations but these movements would not result in the turbines being shifted any closer to neighbouring dwellings.

He responded to a question regarding the consideration on alternatives by outlining in general terms the consideration of other sites on Double Hill Road, Mopanui Ridge, Heyward Point White Road and Mt Kettle.

He identified that the applicants lease was for 20 years with 4 rights of renewal. He later noted that the life of the structure could be up to 100 years but the turbines would likely need to be regularly replaced over that time period.

He discussed options for connection to the supply grid noting that the electrons produced by the turbines will be consumed locally. He noted that the Trust's initial ambition was to provide retail access to the community but this was not able to be achieved.

Di Lucas outlined her pre-circulated evidence and clarified some areas where inaccuracies had been identified by the landscape evidence provided on behalf of submitters. Ms Lucas noted that the turbines would have high visibility however this did not equate to negative environmental effects. She noted that mitigation had been built into the proposal in that 3 turbines were aesthetically a good number. Ms Lucas noted that only minimal earthworks were required and the form of the towers was good in terms of the visual aesthetic. She noted that the turbines would not alter the landform and the towers were not in full frontal view of residences. Ms Lucas responded to questions from the Commissioner on the divergence in opinion from the landscape architects and what additional mitigation was possible. Ms Lucas noted that in terms of colour there could be a graded colouring toward the base of the turbines. Ms Lucas suggested that the lights are to be shielded and did not need to be flashing (this was identified as incorrect in the right of reply as flashing lights are required by the CAA).

Mike Moore spoke to his pre-circulated evidence. He provided a background to his involvement as a peer reviewer of the landscape assessment by Ms Lucas' evidence for the applicant. He advised that he largely agreed with the position of Ms Lucas on landscape matters following his own assessment. Mr Moore read the conclusion from his evidence. Mr Moore took the opportunity to correct Page 33 of his evidence as he now accepted that all three turbines would be visible from 22 Pryde Road.

Mr Moore noted that in relation to paragraph 33 of the evidence from Stephen Brown where Mr Brown discussed the visibility of the turbines from 22 and 90 Pryde Road, Mr Moore felt that the wholly negative impact noted by Mr Brown was overstated as people could have different reactions to turbines. In terms of the impact on the rural environment Mr Moore considered that turbines can be part of the landscape and they can be accepted in a rural environment. Their impact is not necessarily negative. In terms of the effects of the turbines on the closest neighbours he concluded that they were moderate to significant. He responded to a number of questions from the Commissioner on landscape matters.

Ben Farrell spoke to his evidence and in line with the correction made by Mr Moore he also corrected paragraph 61 of his evidence relating to the visibility of the turbines from Pryde Road properties. Mr Farrell outlined the scope of his evidence. He noted the largest point of variance in relation to his evidence and Mr Sycamore's was the weight given to the renewable energy under the National Policy Statement for Renewable Electricity Generation 2011 (NPSREG). He had given more weight to the NPSREG.

In response to questions Mr Farrell confirmed that he considered effects on closest residents were more than minor but not significant and as a consequence an assessment of alternative sites was not required. The adverse effects were not so significant to warrant refusal in his opinion.

Mr Farrell commented on the number of wind farm consents and the number of conditions that have been placed on them. His opinion is that the specific design of conditions is important. He does not think that conditions should be cut and pasted from other wind farm consent and that they should be site specific. He responded to questions from the Commissioner on his assessment.

Dr John Craig spoke to his ecological evidence and he noted that he had now visited the site and was aware that the lights on the turbine would be on all the time. Dr Craig advised that his role was for the birds and to discuss the value of data collection. He noted that birds are frequently used by people to raise issues with wind farms particularly in the northern hemisphere. Due to the temperatures in the continent there are a lot of bird migrations and that does not happen in the same way in NZ.

Dr Craig commented on the submissions regarding the lack of data in regard to his assessment. He discussed data collection and the models that are used to predict bird losses. He discussed examples of other wind farm sites and the results of the modelling work. He noted the significant variances with modelling work. He considered that in this case the effect on the birds for this project would be minimal. He couldn't say that there won't be kills but considered the rare species at Blueskin Bay would not likely climb 400 metres over Porteous Hill they are more likely to travel up the valleys on either side. He noted that all human structures such as houses, roads, and power lines kill birds. In its full context the kills from these structures are minor compared to pests such as stoats and cats. If additional pest control was undertaken in Blueskin Bay then this in his opinion would result in a much better outcome for the birds than removing the wind turbines. He would therefore recommend that some of the profits be put back into pest control. He responded to questions from the Commissioner on his assessment.

Dr Stephen Chiles spoke to his evidence and noted that he had used the appropriate New Zealand standard for wind farm noise for his assessment work. Mr Hunt the peer reviewer had agreed with him on this aspect and the scenarios used for prediction work he had undertaken. He identified that a noise limit of $L_{90}40\text{dBA}$ and below was acceptable under the standard although it would be audible in the rural environment. He discussed at the predicted levels which are generally below the required standard except for one location. He identified that the predictions were conservative. Dr Chiles identified that noise levels can be reduced by controlled output. He noted that reducing the output of the closest turbine by

200KW would achieve the necessary reduction to ensure compliance with the noise limit. He noted that this could be controlled by a computer.

Dr Chiles addressed the submissions regarding noise and noted that he has been involved in a number of consents such as the Mount Stuart wind farm. He stated that the prediction data is reliable. He also noted that scientific evidence shows that the claims regarding wind farm noise in relation to infrasound are not sustained.

Dr Chiles commented on the peer review that had been completed by Council and the concerns raised regarding the absence of background noise monitoring. He agreed with Mr Hunt that this assessment needs to be completed but he argued that the background monitoring can be done once consent was granted and the conditions proposed by Dr Chiles would ensure this is done prior to construction. Dr Chiles commented on proposed conditions in the section 42A report and suggested that these could be improved and that had included 5 conditions to this effect. He responded to questions from the Commissioner on his assessment.

Virginia Toy spoke to her pre-circulated evidence and she provided a background to her connection with Waitati and her qualifications as a geologist. She commented that she is a strong supporter for renewable energy. Ms Toy advised that in January 2016 she undertook some initial geotechnical investigation and looked at the areas to be used for foundations. She noted that she was not qualified to undertake a geotechnical assessment for the site as she is not an engineer however has been assisting with the information gathering for a geotechnical assessment. Ms Toy commented on the test pits dug at the site of the foundations in April 2016 and she noted that included in evidence is a draft assessment of the site by Mark Walrond from Geosolve. It is her view that the site appears generally suitable for establishment of stable foundations for the turbines but that BRCT should engage a geotechnical expert to complete a geotechnical investigation on the specific design of foundations.

Janet Stephenson spoke to her pre-circulated evidence and noted her role was to discuss the wider picture for consultation on wind farms and community response.

She noted the first piece of research work on wind farms was commissioned by the Electricity Commission. Research was requested on why wind farms were high on the list for renewable energy but received most opposing submissions. She provided a background to how the research was undertaken. She acknowledged that the RMA does not state that applications have to include consultation but there were benefits to undertaking consultation.

She noted that the value of best practice consultation had been researched and what early engagement looked like. Research had also been done on people and opinions of submitters. She noted that this research indicated that people who do not submit still have a view and that resource consent submissions did not capture all of a community's views.

Dr Stephenson discussed the consultation on this provided a background to local workshops and the research that had been undertaken for various subjects such as open days.

Overall findings was that there was support for the project although there were some concerns such as lifespan of the project, feasibility, environmental effects of the turbines, benefits to the community. Porteous Hill was identified as the preferred site following the survey. She feels that most the concerns had been addressed. Consultation model – looking at the process of consultation as opposed to just consulting the immediate neighbours.

She commented that it was her view that the consultation had exceeded the best practices model. Wide spread engagement showed that there was wide spread support but there were some concerns. In her view the consultation process undertaken by BRCT has been excellent.

Evidence of Submitters (Summary)

Ross Johnston spoke in support of the proposal. He noted that he had lived in Purakaunui since 1976 and was a member of the BRCT. He commented that from his perspective the application ticks a number of boxes by responding to global climate change, through targets to achieve 95% renewable energy nationally and to alignment with the local spatial plan. He noted he was a "yes in his backyard" person if a proposal was of benefit to him and the community. Mr Johnston considered that the local community would benefit from this project.

Jeremy Head (Landscape Architect for Geraldine Tait) spoke to his pre-circulated landscape evidence on behalf of Geraldine Tait. In relation to the applicant's landscape evidence Mr Head commented that he considered the site was not appropriate for the proposal. Whether the turbines were 90m or 125m in height the area is not appropriate in his view.

He observed that there would be a large viewing audience looking at the site from SH1 to Doctors Point and beyond and he considered that dismissing landscape impacts on the basis that some people may like it and some may not was not good enough. He thinks that the risk is too high. He considered the wider landscape effects of the turbines would be more than minor and due to the large audience the risk was too great. He noted that if it was an environment where transitory landscape views where the main impact then it may be different as people would be passing through and it would not have a long effect.

In response to questions regarding his assessment of the receiving environment he noted that he had identified areas where most people are living, located, travelling through and see the proposal and where the visual effects would be more than minor. He acknowledged that there were other areas that would view the site however he had disregarded them due to the land being rural land.

He commented on Ms Lucas's comments regarding the site and the reasons it was appropriate for the proposed turbines and her answer regarding the ease of access to the site was not a reason in his view. He considered that structures such as this would be more appropriate in a different landscape

Mr Head commented on the earthworks for the site and he noted the report from Fulton Hogan on the works necessary to allow vehicles up the road lacked detail. In the past he had seen applications for wind farms where effort had been put into specifying the roading requirements. He noted that there were six corners that would be required to be remodelled to allow access. There would be significant earthworks, cutting and removal of vegetation that has not been appropriately detailed.

Mr Head agreed in principle that 3 turbines are a good number and three blades are better than two but he does not consider that utilising three blades turbines was mitigation and he does not agree with Ms Lucas on the minor changes to the silhouette of the hill. Mr Head commented on the word "elegance" and that not everyone would consider them elegant. He noted that the Sydney Harbour Bridge would be considered elegant and he provided his reasons for this. In respect of the turbines he felt that they should be considered ugly, large spikey things.

Mr Head noted in response to a question from the Commissioner regarding the visual simulations that montages are not real. A photograph is coloured pixels on paper and not reality. When you stand in the landscape the eye will settle on things that are out of place or out of character, the point of interest. In his opinion that is what the turbines would be, an unusual element.

He agreed that they are riding on the landform but considered they are not part of the landscape. He does not feel that there is any meaningful mitigation available and moving them or changing colours would not work. The tight nature of the site and the tight nature of the turbines also means they have nowhere else to go. In his opinion the turbines will loom over this landscape and he did not agree that these turbines would only have a minor effect on the Northern Coastal Protection Landscape area.

Mr Head concluded that as an individual he does not have a problem with turbines but he considered that they need to be carefully sited in appropriate places. He does not believe that they are appropriate at the proposed location as they will impact the landscape due to their size. There needs to be renewable energy but at appropriate sites and this is not appropriate in his view.

Alasdair Morrison circulated a written submission and spoke in opposition to the proposal. Mr Morrison noted that he had been a resident of Waitati for 31 years and was a long-term member of the Community Board. Mr Morrison noted that he was a resident of Thornicroft Road and his dwelling looks directly out onto Porteous Hill.

Mr Morrison provided a critique of aspects of the planners report and the applicant's evidence to support his position that the adverse landscape and amenity effects would be more than minor. He noted that he was not aware of any territorial authority that has granted resource consent for construction of a wind farm in full view of so many residential dwellings.

Mr Morrison questioned the consultation process and disagreed with Ms Stevenson that the consultation had been exemplary. Mr Morrison also discussed project viability and he outlined his concerns about the project not being completed or going broke and the costs of removal of redundant turbines. He considered the proposal was incomplete and lacked sufficient detail.

He concluded by seeking that the Commissioner decline the application providing a summary of his reasons.

Andrew Barratt circulated a written submission and spoke in opposition to the proposal. He outlined his experience with the local Community Board and he identified that his property would not be directly affected by the proposed development.

Mr Barratt reviewed his original submission and provided a critique of the Planners Section 42A report. He contended that:

- The turbines more be more symbolic than of real benefit in terms of the DCC energy policy;
- The turbines could be located in a number of other sites;
- The community benefits are questionable.

He considered that the turbines would be a constant source of distress to residents in the immediate vicinity and that the precedent set would be undesirable. He considered that there should be a minimum distance established in the 2GP energy generation rules. If the application is declined he urged the DCC to work with the applicant to find a location with a better wind resource, convenient connection to the grid, less landscape sensitivity and sufficient distance from residents.

He noted that in his view it was the wrong deed for the right reasons.

Tracey Scurr circulated a written submission and spoke to a submission on behalf of Geoff Scurr Contracting Limited (GSCL). Ms Scurr noted that she was a director of the company that operated a quarry located on Pryde Road which had been in operation for 18 years providing gravel and rock primarily for local roading use. Ms Scurr agreed with several of the experts that presented evidence indicating that some residents are affected in a greater than minor way.

She noted that GSCL had been kept well informed of the project's progress by the applicants and the detail and timing of the project was not a surprise to GSCL. In relation to noise she noted that the environment on Pryde Road was relatively quiet. While the quarry did result in some noise within noise limits, there were long periods of weeks or even months when the noise level was very low.

Ms Scurr was satisfied by evidence from Dr Craig that the effects on bird life would be minimal and she supported pest control. She saw the visual impact in relation to the quarry as a positive but she acknowledged that other property owners in the area had different opinions.

She identified increased tourist activity and surprise viewing effects as potential effects that had not been covered in the evidence. She requested that these matters be considered and should the consent be granted she requested that any consent conditions imposed be made clear and specific.

Denis Albert tabled and spoke to his written submission in opposition to the proposal. He provided a description of his property on Double Hill Road in relation to the proposal. Mr Albert noted that he considered the proposal to be an industrial activity as this was the most appropriate classification for the activity.

Mr Albert argued that there was no need for the wind farm as there was no shortage of renewable supply in the South Island and there were approvals at other locations to meet future demand. He noted that the proposal was for a 0.02% increase in generating capacity in a part of the country that does not need extra capacity. He also noted that the south Island electricity supply is 100% renewable. He discussed the importance of landscape values and argued that the proposal was not consistent with these values and was unsustainable.

Mr Albert commented on the community support for the proposal arguing that it was abundantly clear that there was no widespread support for either the BRCT or the wind turbine project. He noted that support was often from parties that did not live in Blueskin Bay and who would not be able to see the turbines whereas the opposing submission largely comprised that that could see the turbines from their own homes.

He considered the proposal would result in a major irreparable and unsustainable degeneration of the landscape values of Blueskin Bay. The effects were major in his view. Mr Albert provided a critique of the modelling that was undertaken for the noise assessment by the applicant and he considered the assessment to be inadequate. Mr Albert considered the noise issues needed to be fully understood prior to granting consent. He drew the Commissioner's attention to the issues with the Te Rere wind farm in Palmerston North.

Mr Albert also discussed minimum setbacks, fire hazards, lack of information on the transmission of power from the turbines to the grid, reverse sensitivity and issues associated with the access. In terms of ecology he considered that the information provided on bird strike was inadequate. He noted that should consent be granted that tight decommissioning conditions were required.

He commented on the application of 2GP objectives and policies in relation to wind farms and he considered there needed to be greater consideration to the increased landscape overlay which would include the location of the turbines. If weight being given to one section then the other should be given.

Mr Albert noted the inadequacies in the consent had made submitting difficult and he requested that the Council decline the resource consent application.

Graeme Bennett spoke in opposition to the proposal and he identified that he was a landowner that owns the whole face from Doctors Point to Waitati School.

In terms of the reduction of greenhouse gases he commented that he considered the carbon displacement issue was a non-event. He noted that he owned forestry at Taieri Mouth and they help sequester 2500 tonne per year significantly more than this proposal. Mr Bennett noted that he owned the site at Mopanui that was initially tested by a student. He identified that there was so much support for BRCT at the beginning but the proposal had changed significantly. It was initially intended to directly benefit the community which is the reason for the support. When it was discovered that it was not possible it then changed from something that would be owned by the community for use by the community at a cheaper rate with profits back to the community. A lot of support was lost when the proposal changed. Mr Bennett requested that the Commissioner look at what resilience means. He would like it to be explained.

He commented that he has land that may be used for residential development and the spatial plan indicates that this is an area that is suitable for residential development. The proposed turbines would be directly in the view of these sites. He does not think that this proposal would be a good bed mate. Mr Bennett noted that he agreed with Mr Albert in regards to the people surveyed. If you ask the right question to the right person you will get the right answer. He has never been included in any survey and he has lived there for 13 years. He noted that he would support the proposal if it supported him directly by providing power directly into his property but he cannot see the benefits of the proposed approach.

Jenny McDonald spoke to her submission in opposition to the proposal and identified that that she lived at Mount Cargill Road. She advised that she was also speaking on behalf of P J Clarke as well. Ms McDonald commented on the consultation process and noted that they felt that it did not reflect the views of the community. Ms McDonald's other concern was the location of Porteous Hill as the site for the turbines due to the wind factor and the amount of money that would be generated from the project. She commented that both she and P J Clarke had been members of the Trust and now considered that the project would divide the community not join it.

Karen Price & Steven Mutch (Solicitors for S Ryan, J Ashby and L & K Clayton) spoke to written legal submissions on behalf of their clients. Ms Price identified that briefs of expert evidence, in addition to the submission from their clients, would be provided by Stephen Brown a landscape expert and Dr Rachel McClellan avifauna expert.

Ms Price noted that the Pryde Road residents they were representing were the most affected residents with respect to the key environmental effects. It was identified that the key legal issues were in relation to:

- Whether the proposal passes the section 104D gateways test;
- If the proposal passes the gateways test whether the proposal is appropriate in relation to its adverse effects and the planning framework;
- The adequacy of information provided by the applicant.

Ms Price noted that the Pryde Road neighbours consider the proposal should be declined as the proposal failed both limbs of the Section 104D gateways test. If the Commissioner decided that the proposal passed the gateways test then it was argued that the application should be declined as the landscape/amenity effects will be so significant they will not be outweighed by the proposal's modest positive effects. In addition, it was also argued that the adverse effects were not able to be mitigated and that the proposal was inconsistent with the applicable planning framework.

The legal submissions addressed the key effects issues and referenced legal cases to support a position that the effects were more than minor. An assessment of the objectives and policies was undertaken referencing the views of experts and relevant case law. The assessment argued that the proposal was contrary to objectives and policies of the operative and proposed plans.

In the event the Commissioner found that the gateways test was met Section 104 and Part 2 matters were discussed. The lack of information on a number of matters including noise, shadow flicker, ecology, geotechnical/hydrological was highlighted as a concern. The legal submissions noted that positive effects were uncertain and it was concluded the adverse effects outweighed any positive effects such that the proposal was inappropriate and should be declined.

In terms of the new confidential financial information provided by the applicant Ms Price requested the Commissioner make this available to submitters noting that if financial information is truly sensitive, then again it can be readily protected via confidentiality obligations.

Further issues were raised in relation to issues raised in day one of the hearing in terms of the lack of information provided by the applicant. Ms Price raised the issue of carbon accounting and raised further concerns regarding the inadequacy of the noise assessment.

The Commissioner indicated that he would take legal advice on the confidential information and would not read it until he had considered this advice.

Simon Ryan, Jennifer Ashby, Lyndon Clayton and Kirsty Clayton jointly spoke to their detailed written submissions in opposition to the proposal. They covered a broad range of issues including:

- Visual and amenity effects
- Noise effects
- Ecological effects
- Shadow flicker and glare
- Radio communication effects
- Geotechnical/hydrological issues
- Impacts on existing farming activities
- Uncertain/overstated community benefits
- Decommissioning
- Lapse period
- Uncertainties with the proposal and inadequacies of the AEE
- Economic issues
- The potential for environmental creep
- Precedent and Plan Integrity issues

Following a more detailed discussion of the above issues they concluded that the application should be declined due to the significance of the adverse effects of the proposal. They had no confidence that proposed conditions of consent will mitigate the adverse effects. They also considered that the information supplied by the applicant was inadequate and this meant the Commissioner did not have sufficient information to make a decision on the application.

Stephen Brown (Landscape Architect for S Ryan, J Ashby and L & K Clayton) spoke to his pre-circulated evidence and tabled summary of his evidence. He concluded in his evidence that the adverse effects would be significant on the properties at 22 & 90 Pryde Road and the proposal was contrary to the policy frameworks under the operative and proposed District plans. In response to questions from the Commissioner Mr Brown noted that he had worked on 12 wind farm projects and was unable to think of any properties that would be closer to turbines than those located on Pryde Road. He noted that he was involved with another project with a dwelling that was 700m away and the electricity generator purchased the home in that case.

In terms of visibility from the dwellings of the closet residents Mr Brown noted that for most of the dwellings you would not see them from within the dwelling. However you would see them when moving around the house, coming and going and that is without regard to the working environment. He considered that landscape was more of an issue at 90 Pryde Road and he noted that at this location the noise of the turbines would be audible and that this would make you aware of the presence of the turbines. He responded to a number of questions from the Commissioner on landscape issues.

Rachel McClellan (Ecologist for S Ryan, J Ashby and L & K Clayton) spoke to her pre-circulated evidence and she provided a summary of key points in her evidence. In that summary she observed that the expert assessments by the applicant's experts that effects were not significant or insignificant were not supported by any robust data. She noted that she had identified that 14 species of nationally threatened or At Risk Species in addition to Tuis and Kereru that had the potential to interact with the wind farm. Given that lack of data Ms McClellan argued that potential effects that could be locally or regionally significant cannot be ruled out. On that basis she considered the application should be declined as:

- There is insufficient evidence to determine that potential effects will be acceptable;
- Available evidence provides a reasonable basis to conclude that adverse avifauna effects could be significant.

If consent was to be granted Ms McClellan recommended that conditions be imposed to secure detailed pre construction data collection/analysis and that conditions provide for meaningful modification if material issues are encountered.

Stephen Packer spoke in support of the proposal. He noted that he does not live in Blueskin Bay but has family that does. He noted that he feared for his grandchildren in respect to climate change. He considers the proposal sends a message that communities need to something in providing renewable energy sources. He considers that the landscape on Porteous Hill has been changed already due to farming and forestry activity. He submits that there is a beauty in wind farms and they could be considered a link from the land to the skyline. He feels that we have damaged the environment beyond repair. He supports the application.

Jenny Rodgers spoke to her submission in support of the proposal and identified that she lived in Waitati. She noted that she had lived there for two years and she considered that there had been good community engagement in the local newsletter which includes information about the project including ways to contact BRCT.

Ms Rogers was supportive and excited by the project as it is a physical structure that shows the community doing work to improve resilience in the community.

Mark Brown tabled and spoke to his written submission in opposition to the proposal. In relation to landscape he disputed the view of landscape architects for the applicant and considered the proposal was not suited to the character of Blueskin Bay or the wider coastline.

Mr Brown was critical of consultation noting that while there was a lot of initial discussion on a community owned wind cluster there were no community discussions on the specific proposal for Porteous Hill. He considered there was no clear direction from the community to proceed with the Porteous Hill project.

Mr Brown did not consider the project was financially viable and he was concerned about who would be responsible if the project fails either during or after construction. He noted that there was lack of details on transmission of power from the site.

Sally Brown tabled and spoke to her written submission in opposition to the proposal. Ms Brown noted she was born and raised in Waitati and was a trained Landscape Architect.

Ms Brown noted that there was a strong community at Blueskin Bay but the wind farm proposal was creating tension and she did not agree that BRCT was as connected to the community as they have stated. She considered that calling it a community project was incorrect. She noted that there were a lot of residents at a public meeting in November 2015 organised by the community and it was clear from that meeting that that community was not well-informed about the project.

In terms of the impact on landscape Ms Brown noted the sensitivity of the local landscapes warranted protection under the District Plan. She identified Porteous Hill as an important visual backdrop within the coastal landscape. Ms Brown noted the importance of landscapes to tourism and its growing economic importance.

Ms Brown considered that the wind farm will alter the landscape indefinitely setting a precedent for further structures to be established on local hill within the coastal landscape. Ms Brown agreed with the expert evidence from Stephen Brown and Jeremy Head that the proposal will have adverse landscape effects and she stated that in no way are the structures an elegant and meaningful addition to the landscape.

Jamie Pickford spoke to the submission from himself and **Thomas Cardy** in opposition of the proposal. He noted that they live at 129 Pryde Road. Mr Pickford considered that there were few gains or benefits to the community from the proposal and he considered that weight should be given to the submitters who reside close to the site. He commented that Porteous Hill was an important part of their life and he discussed the process that they had been in during the resource consent for the nearby quarry. He outlined the activities on the site they enjoy and he provided a background to the reasons for living in Pryde Road which included the rural aspects of the site. Mr Pickford commented that granting consent would be like granting consent for an apartment block. He noted that from their site they were able to see the existing testing pole no matter what the weather and they were concerned about the dominance of the much larger proposed turbines. He considered that the adverse effects on the landscape would be significant and the landscape would be changed forever.

Mr Pickford commented on the noise impact noting that at their site it was very quiet as it is not affected by noise from the state highway. He commented that there is no specific evidence in the application on the effect of noise would be on them. He observed that their property was their piece of paradise and that they live with all the windows and doors open. He argued that the proposal would have a significant adverse effect on them and should be declined.

Metiria Turei spoke to her submission in support of the proposal. Ms Turei identified that she was a resident of Waitati and that she could see Porteous Hill from her home. She submitted that she was in full support of the proposal and requested that the consent be granted.

Ms Turei noted that community engagement by the Trust has been extensive in this case and she referred to the advice from Janet Stephenson who had detailed this in her evidence. Ms Turei noted that the Trust have contributed to the community through the insulation of homes to make them warmer that has improved the health and wellbeing of residents. This project was an extension of the service that BRCT provides. She noted that BRCT was a community organisation not a corporate entity that contributes to the community and helps with solutions for the causes using local resources. She also commented on the comments and attacks on the applicant and was disappointed by these.

She acknowledged the residents in Pryde Road and their genuine concerns. However their concerns in her view were not enough to decline consent. She considered the negative effects on these properties were outweighed by the positive effects.

In terms of the landscape effects Ms Turei commented that she agreed with the evidence from Di Lucas. Ms Turei noted the Ms Lucas was a respected landscape Architect and her advice that it is a good location is significant. Ms Turei acknowledged that the landscape will be altered however does not mean that this will be a negative effect. The introduction of the turbines will mean the local environment will have a new character and in her view it is an addition to the environment and not a negative one. Ms Turei noted that the new character will reflect the evolving character of the community.

Ms Turei commented that renewable energy is the future and that communities wanted to be independent from each other and resilient. She noted that despite submission that arguing that the contributions of this facility are too small to be valuable she argued that every little bit helps and the proposal was a valuable first step.

Paul Jouanides spoke in opposition to the proposal. He provided a background to where he lived in relation to the proposal. He commented on the landscape evidence regarding the elegance of the turbines noting that he does not agree with this view. He considered that a positive view of the effect on landscape was bogus. He noted that they are located in the bottom of a small valley and that he does not wish to see lights from the turbines on the top of the hill. If the project was to go ahead he considers the development would conflict with the environment and he raised concerns about the loss of bird life.

Mr Jouanides outlined his concerns about the limited number of community who would benefit from this project when compared to the destruction of people's lifestyles. The proposal does not increase resilience in his view and he raised concerns about precedent. He noted would have given consideration to buying there if he had known about the wind farm proposal. He has concerns for the value of his property and feels that if granted he should be compensated. He does not see that this proposal is a positive thing for him or his family.

John Thom was supported by Brenda Thom who spoke to his submission in opposition to the proposal. Brenda commented that John was an affected landowner and his farm is adjacent to the site. Mr Thom commented that he would be approximately 300 to 400 metres from the site.

Ms Thom outlined to the Commissioner that Mr Thom intended to subdivide his farm land and build a retirement home on one of the sites. The approximate location was indicated on the map and it was noted that decision would be made following the decisions on the proposed 2GP. Ms Thom noted that Mr Thom was concerned about the effect of the turbines and was of the view that the turbine site was inappropriate for the development. In terms of the effects of the turbines she noted that he was on the land day in and day out and it will have an adverse effect on him and other users of the land as other community groups are allowed to use the land for recreational use. If consent was granted then Mr Thom would not build his retirement home and would not subdivide. The lapse period at 10 years was also identified as being too long.

Ms Thom noted that proposal is not accepted by the residents in the area and she noted that the three turbines would adversely affect his enjoyment of the land. She also noted it could impact on his farming activity and he would not be able to top dress that section of his farm close to the turbines. The Commissioner was invited to visit his farm to see the impact. Ms Thom noted that the area is generally farming and lifestyle blocks and the location of the turbines are not certain. Ms Thom noted that he feels the night pollution from the lights had not been adequately covered in the application and concerns were also raised regarding noise, glare and shadow flicker.

Ms Thom raised concerns regarding the bird life and the evidence regarding this from the applicant. It was noted that birdlife had increased as a result of the Ecosanctuary and there was remnant bush on the property. Porteous Hill is visible from all parts of the wider area and when Mr Thom built his home he had to adhere to a number of conditions such as a landscape plan and specific colours. Mr Thom feels that this proposal is inconsistent with the Council's approach to landscape in other situations. It was noted that if there had been three turbines there when he purchased the property then he would never have purchased it.

Ms Thom noted that the effects are more than minor they are huge. People who are most affected by the proposal should be listened too and the application should be refused.

Derek Onley spoke to detailed written submissions in opposition to the proposal. He noted that he had been a resident of Waitati for 20 years and he outlined his qualifications and experience in ornithology. Mr Onley discussed the Council's 2007 Biodiversity Strategy and the decline of biodiversity over time. Mr Onley was critical of the applicant's assessment work and the he was concerned that at this time when the environment is under stress that we need to make informed decision on all development proposals and use our resource wisely.

He noted that he agreed with the peer review by Golder Associates who concluded that the applicant's assessment was inadequate. He noted that we needed to take heed of the loss of biodiversity in the UK. Mr Onley advised that he supported the evidence of Rachel McClellan explaining the difference between his view and hers. He noted that where he differed was in relation to her emphasis on the species at risk discounts the loss of more common species setting up a process for slow decline which won't be noticed. He provided comments on specific bird movements, numbers and behaviours from his own local observations in the Karitane to Blueskin district. He noted that these do show that local movement of birds over land does occur and could occur over the wind farm site. He was critical of Dr Craig assessment noting that the field work needed to be done. He was also critical of Mr Sycamore advising that a lizard or bat management plan was not required, reinforcing his point that the collection of data was important to making an informed decision

Mr Onley did not agree that the assessment of alternative sites has been seriously considered. He also questioned the viability of the project questioning whether the proposal will generate enough income to cover the costs of environmental monitoring and mitigation. He noted that similar greenhouse gas reductions could be achieved by planting less than 100ha of forest. He discussed a British example of a wind turbine application for the Royal Society for the Protection of Birds. He noted that this project involved 2 years of biological study over the full range of flora and fauna before deciding that the effects would be less than minor. This was different to the applicants approach to the ecological assessment and John Craig's unscientific and unsupported evidence.

Gareth Hughes joined the meeting by Skype and commented that his submission was in support of the application. He advised that he was the energy spokesperson for the Green Party. Mr Hughes commented that he had been on-site and had been following the project. He provided a background to the use of wind energy and that he felt that the effects of this proposal were no more than minor. He outlined a significant untapped wind resource in New Zealand.

He commented on the NPSREG and change promoted by consumers. He noted the community benefits of the applicant's proposal. He was supportive of the Trust's community engagement and he considered the visual impact was subjective. He identified that in his view the effects of the proposal were no more than minor. He noted that internationally large wind farms overseas are located off-shore, however, there are often small ones on land. He discussed bird strike and the environmental impact and Dr Craig's evidence that the ecological effects would be minimal. Mr Hughes noted the Government's commitment to the reduction of carbon emissions.

Rachel Ozanne spoke to her written submission in opposition to the proposal. She identified that her family live on Porteous Hill about 1.26 km from the site. She commented that they farm their site and they live there because of the environment. Ms Ozanne considered they will be impacted greatly by the proposal. Ms Ozanne referred to a 2005 Council landscape review in the rural area and she commented on the correspondence that they received from Council on the review reading from the report. Ms Ozanne had significant concerns given the landscape review by Council in regards to the land feature of Porteous Hill. She noted that she did not agree with the two landscape architects for the applicants.

Ms Ozanne discussed light pollution and noted that one of the joys of living on Porteous Road is that the night skies are dark and the night sky would be destroyed. She noted that they do not have curtains on that side of the hill due to the night sky. Reason they choose to live there was the proximity to town and the rural aspect. Only noise is farm animals and activities.

Ms Ozanne discussed her concerns about noise and noted the research into the noise effects of wind farms. She noted studies that promoted separation distance for wind farm significantly greater than that was proposed. Ms Ozanne referred to a study which identified that a separation distance of 1.4 km from wind turbines was appropriate.

Ms Ozanne noted that Porteous Hill sits within the Orokonui halo project which is the area of spill over from the eco-sanctuary. She stated that it was inconceivable that the turbines would be built on a hill within the halo of the Orokonui Ecosanctuary. Ms Ozanne identified that they rely on springs for all their water and their spring isn't located within their boundary. Potential disturbance to ground water was a therefore a concern.

Ms Ozanne was critical of the community engagement for the proposal. She noted that they only received one visit regarding the possibility of a wind farm and that was to seek funding. She did not know anything about this proposal until the meeting was set up in Warrington. She considered the meeting was like a crisis meeting as the consent application had already been lodged. She noted the applicant initially advanced the proposal on the basis that it would provide direct economic benefits for the Blueskin community which is not the case now. She noted that there was no reason why the additional generation could not be added to an existing wind farm.

Ms Ozanne disagreed that the proposal was developed as a community initiative and she disagreed with the arguments put forward by Blueskin Energy to support this position. She noted that the electricity generated was going to grid and not the community. She considered that local residents will have their lives and lifestyle ruined for the sake of the national grid.

Ms Ozanne requested that the consent be refused as the turbines will be detrimental to local community health and wellbeing.

Frederika Schmaltz spoke to her submission in opposition to the proposal and outlined her experience with living in Europe and wind farms. Ms Schmaltz considered that silence without background noise was important and should be valued. She was concerned about the noise generated by the turbines and the impacts including those on the closest residents. She was concerned that she will not escape it from her house.

Ms Schmaltz was also concerned that if the noise is too loud for the immediate neighbours that it would not be able to be turned down.

Andrew Deaker spoke on on behalf of Initial Volco Trust in support of the proposal. He noted that he lived in the area and he provided a background to his property and the view of the turbines on the landscape. He noted that he found the turbines to have the quality of a kinetic sculpture. He commented that the Trust owned a large block of conservation land on Mount Cargill and he identified that the Trust has an active history of support for a number of projects. He noted they have supported anti-nuclear activity in NZ and research on the herbicides, etc on the food chain. The trust supported Orokonui and other ecology projects including the BRCT resilience projects. He feels that profits from the wind farms operation would be a great to fund the development of other projects.

Mr Deaker noted that he sees the proposal as win/win/win. He will get to enjoy a view of the turbines, the proposal will bring benefits to the community and that his children will have a better outcome.

In respect of noise he outlined his experience and he noted considered that there would be no impact on residents as a result of the proposal.

Kat Achtenberg spoke in support of the proposal. She identified that she works as the Projects Coordinator for BRCT but was submitting as a private individual. Ms Achtenberg commented that she came to NZ from Germany 2 years ago and she had heard about project in Germany. She noted that the landscape around Porteous Hill was not untouched. As it was a rural working environment it had been modified.

She noted that the proposal was intended to help a community and make it more resilient. She commented that BRCT was a charitable trust seeking to improve Blueskin Bay community, not to make a large company rich. Ms Achtenberg identified that 86% of Dunedin's electricity currently comes from renewable sources but NZ's energy demand will continue to grow. Ms Achtenberg referred the Parliamentary Commissioner for the Environment's report regarding future-proofing of New Zealand's energy supply. She noted that wind turbines were not new technology noting that they had been used in Europe for centuries and that they will become more common in future.

John Kaiser spoke in support of the proposal noting that he had lived in Waitati for 23 years. He noted that the issue was wider than the local community. He noted that the benefits brought to the community will all be kept south of the Waitaki River. It keeps the corporates cut out of it, and it will be good for local community and Otago. In terms of landscape he considered it would be more acceptable to have it located in the pastoral landscape of Porteous Hill than the Silverpeaks.

Ben Wooliscroft spoke to his submission in support of the proposal. He commented that he thought that this proposal was a generous living asset that the University were able to research. He considered renewable energy is good for everyone and in particular the Blueskin Community. He noted that it was great opportunity for this community, university and Dunedin.

Geraldine Tait tabled and spoke to her detailed written submissions in opposition to the proposal. She noted that she was concerned about the wider impacts of the proposal on the Blueskin Bay community and impacts on landscape and amenity values. She also noted that she was concerned for the families living closest to the turbines. Ms Tait identified the strong attachment that people can form to local hills and landscape features. Ms Tait noted that she was a founding member of BRCT and supported its original direction but had resigned as due to concerns about the direction the Trust appeared to be headed. She noted that she did not support the proposal commenting that the project was idealistic and had been pursued well beyond its logical end.

In relation to community issues Ms Tait noted that the proposal was not a community project or facility and that BRCT was only a small special interest group. Ms Tait questioned the motivation of the trust and disputed the community need for the funding from the wind farms operation.

In relation to energy issues she noted that she agreed with Mr Albert's submission and noted that the tiny amount of power produced in Blueskin Bay will not make the slightest difference to coal use. She noted that BRCT would be more effective in addressing resilience in the community by focusing on transport issues.

Ms Tait was critical of the consultation that was undertaken noting that the proposal was quite different to the proposal consulted on to use Windflow 500 turbines that were 46.5m in height. Her experience was that when attempting to make local residents aware of the consent a shocked and angry response came from many people who did not know about the proposal.

Ms Tait discussed her concerns noise noting the peculiarities of noise propagation in the area. She also raised concerns about disturbance to groundwater and local springs.

Ms Tait discussed the increasing importance of tourism noting that tourists were attracted to landscapes and wildlife. She indicated that the natural values of the area were worth protecting if not for the locals but for economic reasons. She also noted that the sea was well used recreationally and this recreation use would be detrimentally impacted by the turbines.

Ms Tait expressed concerns about financial management also noting that there was the prospect of the consent to be sold to another party. She outlined her concerns regarding undesirable precedent.

She requested that the resource consent application be declined in its entirety.

Tabled Submissions

The Commissioner noted at the hearing that two letters had been received from parties who no longer wanted to attend the hearing. He noted that these letters were received from the New Zealand Transport Agency and Otago Natural History Trust Board. These letters were considered and noted by the Commissioner.

Technical Reports by Council Staff

Carlo Bell clarified for the Commissioner that his role as an Environmental Health Officer at the DCC included investigating noise complaints and providing advice on resource consent applications. For this application he reviewed NZS: 6808-2010, visited the area and carried out background monitoring. He noted that he had recommended that a peer review be undertaken and asked for clarifications which had now been covered by the peer review from Mr Hunt as well as by Dr Chiles. Overall Mr Hunt was reasonably accepting of Dr Chiles's assessment with some areas of difference.

Mr Bell agreed that the District Plan Noise Limits were not appropriate for wind turbines and NZS: 6808-2010 is the suitable standard to apply. He noted that this standard is in-line with international standards and provides for indoor noise levels which meet World Health Organisation guidelines. Mr Bell identified that NZS: 6808 is designed to avoid adverse noise effects on people caused by the operation of wind farms. He noted that the noise limit set by the standard is $L_{90}40\text{dB}$ at the notional boundary or 5dB above the background noise level (the higher of the two). Mr Bell identified that no noise or planning law requires zero audibility and the standard states that it does not provide absolute protection from wind farm sound but provides limits that are reasonable for protecting sleep and amenity.

Mr Bell noted that modelling is an established method and the modelling in this case has been verified by Mr Hunt to be sufficiently accurate. He noted that a light down-wind is worst case scenario. At higher wind speed the turbine noise will increase but the masking effect generally increases especially with nearby vegetation. He noted that topography was not considered and this is in accordance with the requirements of NZS6808.

Mr Bell noted that his background noise monitoring found very low background night-time noise levels further away from SH1 in low wind speeds. However as wind speed increase to around 3-5 m/s cut in speed 11-18km/h the background increases significantly but is likely to still be below 36dB at the lower operational wind speeds.

Mr Bell stated that there is agreement that the modelling indicates a possible non-compliance at 22 Pryde Rd. He noted that Dr Chiles highlighted the output need only be reduced by 1dB to comply with NZS: 6808 and demonstrated how this could be achieved. He has also suggested that background monitoring (10 days) needs to be done pre-construction.

Mr Bell noted that while NZS: 6808 indicates the background assessment should have been done prior to application it can only be omitted where no breach of 40dB is predicted. Dr Chiles suggests that the modelling shows levels very close to 40dB and in any case the output can easily be adjusted to comply with the 40dB Limit. Mr Bell was satisfied that that noise could be managed through conditions (size, output, background monitoring, post-construction compliance monitoring) so that NZS6808 could be complied with.

In relation to amenity Mr Bell noted that there will at times where the wind farm will be clearly audible from outdoor areas of nearby properties especially around lower operating wind speeds. He noted that in his experience when a noise source is clearly identifiable people can be sensitised to it and it may cause annoyance even if relevant limits have been complied with. Given the expected change in the outdoor noise environment for nearby residences this may be considered as a reduction in amenity value.

Barry Knox provided a written summary of the landscape evidence presented at the hearing noting the areas of agreement and the points of difference for the Commissioner to consider. He noted that there was:

- Agreement that Porteous Hill not an outstanding landscape under s6(a) or 6(b)
- Agreement regarding general landscape descriptions. Porteous Hill is a significant feature, if not outstanding.
- Agreement that the wind turbines here would be highly visible.
- Agreement that if turbines were to be there, a cluster is probably better than turbines being too dispersed. (More turbines would produce greater clutter).
- Agreement in terms of aesthetics, if they were to be there, a group of 3 turbines is good.

In relation to the divergence in positions Mr Knox noted that the Landscape Architects Mr Brown and Mr Head for the submitters had a negative view of the turbines at the proposed location because the landscape and rural amenity impacts were significant in their view. Ms Lucas and Mr Moore appearing for the applicant considered that the wider landscape issues were minor but identified adverse effects on the closest residents. In terms of the local effects on rural amenity for the closest residents Ms Lucas acknowledged there would be adverse effects and Mr Moore considered that these effects would be moderate to significant for the closest residents.

Mr Knox concluded that overall he preferred the view of Mr Moore and in his opinion the adverse effects of the proposed turbines on the visual amenity of the broader Blueskin Bay environment will be no more than minor, but adverse visual effects from closer residences, are likely to be moderate to significant.

Review of the Section 42A report Recommendation by the Processing Planner

Mr Sycamore thanked the applicant and submitters and noted that the applicant had attempted to address information deficiencies he and submitters had identified. He acknowledged the Trust runs on a tight budget, but noted that the burden should not fall on submitters to address those technical shortfalls.

Mr Sycamore accepted that the applicant had invested a lot of energy into liaising with the community. Despite this he noted the evolution and increased scale of the turbines after much of that consultation had occurred had clearly caught a number of submitters by surprise. This was evidenced by the obvious effort put into consultation by the applicant, yet the breadth of dissatisfaction from submitters.

Mr Sycamore noted his reservations about the strength of the economic argument, and cautioned against applying too much weight to the positive effects. He noted that he had generally considered the effects and suitability much the same as if the applicant was a commercial company.

In terms of the 104D assessment, Mr Sycamore noted that he had reconsidered his position in terms of the effects limb of 104D gateway test and now considered this limb may not sufficiently met in terms of the effects on immediate neighbours. He noted that the general consensus of the expert evidence concludes visual amenity and landscape effects are moderate to significant on the immediate neighbours.

Despite the view of Landscape Architects Stephen Brown and Jeremy Head that the proposal was contrary to the objectives and policies of the operative plan, Mr Sycamore indicated that he agreed with Mr Farrell that the objectives and policies should be assessed as a whole, rather than a few in isolation. He confirmed that he considered that the proposal satisfied the objectives and policies limb of the Section 104D gateway tests. This would provide for the Commissioner to consider the proposal on its merits under s104 and Part 2 of the Act.

Mr Sycamore acknowledged that the revised conditions Dr Chiles for managing noise offered during the hearing were more robust than those set out in the draft conditions and agreed that NZS:6808 is appropriate measurement tool. Mr Sycamore accepted that noise could be managed by conditions to ensure compliance with the standard NZS:6808-2010. However he noted the turbines will be clearly audible and may be considered a nuisance by residents despite being within the levels specified in the standard.

Mr Sycamore noted that Dr Craig, a highly regarded ecologist suggested the effects are negligible and any monitoring would be largely meaningless. He promoted pest control as a better mechanism to address avian ecology. This position is not aligned with other ecological experts who prefer monitoring, both pre and post construction. Mr Sycamore noted that he preferred a balanced approach, whereby some, albeit limited, modelling is carried out prior to installation to develop an understanding of bird migration. While Dr Craig may be correct, Mr Sycamore considered it would be irresponsible to not quantify bird migration through the subject site. Mr Sycamore noted that Mr Farrell for the applicant had sought more targeted conditions relating to bird strike and management than those he had recommended. He noted that he was happy to accept Mr Farrell's recommendations and he noted that if the application was granted that these conditions can easily be substituted for his proposed conditions.

Mr Sycamore noted that the Council's Landscape Architect, Mr Knox had provided an invaluable summation of landscape effects and that Mr Knox had found the expert evidence of Mr Moore most compelling. Mr Knox concluded any adverse effects of the turbines on the broader Blueskin Bay community would be no more than minor. For those closer residents, such as the Pryde Road neighbours, Mr Knox had accepted effects on landscape and amenity would be moderate to significant. Mr Sycamore accepted the overall assessment of both Mr Moore and Mr Knox and he noted that landscape and amenity are the key point of contention.

Mr Sycamore recommended that clarification is provided by the applicant in their right of reply on the potential impacts on the application of fertiliser on neighbouring farms and concerns regarding impacts to groundwater and springs which were relied on by neighbouring site for domestic and rural uses. He also sought clarification that the colour of the turbines was acceptable to the CAA.

Mr Sycamore considered that alternative sites were not sufficiently addressed in the application. He noted that some other sites were initially assessed but he was not convinced other sites were appropriately considered. He noted that there are likely to be other sites where wind characteristics are equally suitable with less impact on private residents. He did not agree with Mr Farrell who considered it was not necessary to assess alternative sites.

With respect to the 10 year lapse date sought, he confirmed his view that it is inappropriate to impose such a period of uncertainty to those local submitters in opposition. A 5 year lapse period provides sufficient time to demonstrate substantial progress, while not necessarily requiring the project to be completed and operational.

In terms of undesirable precedent Mr Sycamore noted that the proposal was a true exception. The non-complying activity status was the result of the operative District Plan being out dated and failing to contemplate wind turbines for energy generation. Future utility applications of this scale are unlikely to piggyback on the outcome of this application should consent is approved.

Mr Sycamore noted that some submitters had expressed concern at decommissioning of the turbines should the activity not be financially viable. He considered that a bond should be in place to cater for any unforeseen outcome.

Mr Sycamore considered that the proposal was finely balanced. While acknowledging the turbines will change the landscape, it was his view the significant adverse effects were limited to those residing near Porteous Hill. He noted that if the Commissioner was satisfied that the fresh water springs would not be affected, and that the visual and noise effects on the Pryde Road neighbours were acceptable, then he considered that consent could be granted. Mr Sycamore stated that at his point he was unconvinced the effects on the Pryde Road neighbours are sufficiently addressed with respect to both visual dominance and noise. He also noted the unpredictable nature of springs providing potable and stock water. As a consequence he recommended the application be declined.

Legal Opinion

A legal opinion was sought by the Commissioner in relation to the contested legal matters. It sought advice on the following:

- The effects gateway under Section 104D,
- The weighting that should be applied to the proposed section generation District Plan objectives and policies,
- Application of the landscape objectives and policies in the operative plan,
- Confidential information provided to the Commissioner on financial matters.

The legal opinion was posted on the Councils website and available to the applicant prior to the applicant's right of reply.

Applicant's Right of Reply

Ms Irving was offered the ability to present a written right of reply to the Commissioner. She accepted that offer and requested that the right of reply be provide in public. A written right of reply was received by the Commissioner on 8 June 2016 and presented in public on 9 June 2016.

The applicant clarified the key features of the application in their closing submission and these are summarised as follows:

- The establishment and operation of 3 wind turbines on Porteous Hill. The turbines will not exceed a height of 90 from ground level to blade tip. The turbines will be finished in a light grey colour (RAL7035). The turbines will be finished with a matt finish to avoid blade glint. Each turbine requires a medium intensity flashing light at hub height that will flash between 20 and 60 times per minute. The light will be shielded from locations below. The turbines are capable of generating 2.4MW of electricity when operating at full capacity.
- GPS locations were provided to identify turbine positions but flexibility was sought to move the turbines by up to 30m. If movement is required they will not be moved any closer to the closest dwellings at 22 and 90 Pryde Road. The turbines will be no closer than 679m from 22 Pryde Road, 471m from 90 Pryde Road and 580m from 110 Porteous Road. For all other dwellings the distance is greater than 900m.

- Predicted noise levels indicate a minor breach of noise limits could occur at the notional boundary of 90 Pryde Road. If there is non-compliance the power output of the closet turbine will be reduced to ensure compliance. All turbines will be free of special audible characteristics.
- Earthworks will be undertaken to establish access tracks, for foundations and to widen the access road. Transmission lines will be located underground within the site. Two options for transmission were identified.

The right of reply addressed the matters of contention identified at the hearing including the matters identified in a guidance letter from the Commissioner. Closing legal submissions were provided and these were supported by responses from the applicant's geotechnical, ecological and acoustic experts to issues that were raised by submitters. The closing legal submissions argued that adequate information had been provided by the applicant, the adverse effects were outweighed by the positive effects of the proposal and there was a clear case for consent to be granted. The right of reply included draft conditions for the Commissioner to consider.

The applicant argued that BRCT's own vision reflected the purpose of the Act. It was noted that approval would send a positive message to other communities with New Zealand that they too can be masters of their own destiny. The applicant concluded by requesting that consent be granted.

The confidential information provided by the applicant was returned unread by the Commissioner at the conclusion of the hearing.

Statutory and Other Provisions

In accordance with Section 104 of the Resource Management Act 1991, the Planner's Report detailed in full the relevant statutory provisions and other provisions were considered. Regard was given to the relevant provisions of the following chapters of the operative Dunedin City District Plan: 4 Sustainability, 6 Rural zones, 14 landscape, 17 Hazards (Earthworks), 20 Transportation, 21 Environmental Issues and 22 Utilities. Consideration was also given to the objectives and policies of the proposed second generation District Plan. Statutory provisions considered included Sections 5, 7(c) and 7(f) within Part 2 of the Act. Regard was also given to the National Coastal Policy Statement, the National Policy Statement for Renewable Energy Generation and the Regional Policy Statement for Otago.

Main Findings on Principal Issues of Contention

I have considered the submissions and evidence, the relevant statutory and plan provisions, and the principal issues in contention. I note that a large number of submissions were received for this application. These were all read and considered regardless of whether submitters attended the hearing. The main findings on the principal issues have been incorporated within the reasons discussed below.

Decision

LUC-2012-468

*That pursuant to Section 34A(1) and 104B and after having regard to Part 2 matters and Sections 104 and 104D of the Resource Management Act 1991, and the relevant provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **declines** consent to a **non-complying** activity being the establishment and operation of 3 wind turbines on Porteous Hill and associated earthworks on land at 47 Church Road, Merton, legally described at Lots 1 & 2 Deposited Plan 473199, held in Computer Freehold Register 646829.*

Reasons for this Decision

The Permitted Baseline and the Existing/Receiving Environment

1. Following visits to the wind farm site and neighbouring sites I agree that the subject site and the receiving environment are rural in character. In terms of the receiving environment I note that the Landscape Architects evidence is reasonably consistent. The site on Porteous Hill is not located in an outstanding landscape but it is located on a significant local landscape feature (Porteous Hill). As Porteous Hill is a prominent feature near the settlements of Waitati and Warrington the turbines will be highly visible to a wide viewing audience. I accept that although the receiving environment is modified by farming practices and shelter planting it retains a high degree of naturalness.
2. In respect of whether the site forms part of the coastal environment and the relevance of the NZ Coastal Policy statement I consider that the location of the turbines is outside the coastal environment and therefore the Coastal Policy Statement is not a consideration in determining the outcome of the consent.
3. I accept the advice that I received on the permitted baseline from Mr Sycamore. The most relevant baseline to apply is that related to the installation of permitted utilities and permitted earthworks activities. The discounting of effects in respect of permitted utility activities, given the scale of the turbines, provides minimal assistance to me in determining the matter.
4. Consideration of the existing/receiving environment requires a review of permitted activity rights and any resource consents that have been granted and are likely to be implemented. The submission from John Thom referenced a future subdivision of his farmland and the construction of a dwelling. While this may be a part of Mr Thom's future plans I accept the legal submission from the applicant that it cannot be a consideration in assessing the impacts of the proposed turbines. This would also apply to the proposed subdivision and future residential use of Mr Bennett's land raised in his submission.

Effects

Landscape

5. I discussed the issue of divergent expert advice on landscape effects throughout the hearing and I note the turbines described were as elegant at one end of the scale and ugly, large, spiky things at the other end. All landscape experts agree that the turbines will result in a significant change but disagree as to whether that change is adverse or the degree to which it is adverse. Submitters too have a divergence of views on the landscape merits of the turbines ranging from the turbines being akin to a kinetic sculpture to a landscape abomination. I appreciated the brief summary of the landscape evidence provided by Mr Knox as it was a useful starting point outlining what was generally agreed by landscape experts and where there was disagreement.

6. Determining a position on landscape effects is difficult as the assessment is subjective and potentially more art than science. The turbines will have a large resident viewing audience which the evidence suggests is not typical for wind farms and the Porteous Hill location appears to have been selected partly because of its visibility to the community of interest. The applicant sees that as positive as the turbines are providing a symbol for the community that represents the proactive manner in which it is facing the challenges that climate change presents. It is clear from the number of opposing submissions that not everyone will see it that way.
7. Ms Lucas noted in her evidence that the design of the proposed wind farm assists in achieving an acceptable landscape outcome. She identifies that three, slim, elegant, 90m high turbines with three blades, painted light grey and established with minimal earthworks will result in only minor effects on landscape values. Mr Moore who peer reviewed the landscape assessment for the applicant largely agrees with Ms Lucas and he concludes that the wind farm will integrate acceptably with the character of the rural landscape and will generally have positive effects on visual amenity values. Mr Knox the Council reviewer agrees. The landscape architects appearing for the submitters Mr Brown and Mr Head disagree and consider the adverse landscape effects to be significant. Mr Head appears to take the most extreme position on the turbines describing them at one point as ugly large spiky things. He argues that they are entirely inappropriate at the proposed location. Mr Brown is less extreme in his position but also concludes the proposal will have significant adverse effects on the landscape.
8. Mr Knox the Council's expert reviewing the landscape assessments has indicated that he prefers the position of Mr Moore and that he generally sees the impact on the wider Blueskin Bay environment as no more than minor. In terms of the wider landscape effects, I prefer the evidence that indicates that the wider landscape effects of the proposed turbines are no more than minor. The turbines are not sited in an outstanding landscape and the proposal will not alter the landform. Farming will continue to occur within a landscape modified by farming practices. The reduced scale of the turbines to 90m and the design elements integrated into the proposal assist with landscape integration. A significant change will occur and the viewer's eye will be drawn to Porteous Hill but the effect on the wider environment is not necessarily adverse.

Rural Character and Amenity

9. The turbines at 90m high are very large structures and they will be located in close proximity to neighbouring rural properties that contain dwellings. The dwelling at 90 Pryde Road will be the closest dwelling to any of the proposed turbines. That dwelling will be 471m from the northernmost turbine. Its proximity is such that achieving compliance with noise limits may require the output of the closest turbines to be reduced.
10. The applicant acknowledges that the effects on the Pryde Road properties are more than minor. Ms Lucas accepts the effects are more than minor and the applicant's peer reviewer Mr Moore considers the effects are moderate to significant. The position of Mr Knox is aligned with Mr Moore. Mr Head and Mr Brown consider the effects on rural amenity values to be significant. Mr Brown prepared detailed evidence that looks closely at the amenity impacts at 22 and 90 Pryde Road. After hearing the evidence and relating the evidence to observations on the site I consider the effects to be significant for the properties at 22 and 90 Pryde Road and moderate

for the property at 139 Pryde Road. While I acknowledge the turbines are not in full frontal view as noted by Ms Lucas proximity to the turbines is an issue. The evidence suggests that there may be no other privately owned dwelling located as close to a turbine of this size in the country. I consider the turbines will be intrusive and visually dominant and the significant impact of the turbines on the closest properties cannot be mitigated to any degree.

Earthworks and Road Access

11. Earthworks were identified as a concern to some submitters and questions were raised on the lack of detail on the earthworks that were proposed. The application indicates that approximately 6,500m³ are anticipated. The applicant has indicated that earthworks will be required for improvements to Porteous Road a vehicle access from Porteous Road to the turbine locations and for the foundations of the turbines. Ms Irvine referred me to an indicative layout prepared by Mark Walrond in relation to the proposed access. Ms Irvine also indicated that the applicant was confident that improvements to the road can all be undertaken within legal road reserve. Ms Irving noted that no consents have been sought to carry out works beyond the legal road and if there was work required outside the legal road then this was a risk for the applicant.
12. I am satisfied that the earthworks on the site for access track and foundations can be undertaken with only minor effects and effects can be managed by conditions. Recommended conditions are proposed in respect of the earthworks in the road that satisfy the roading authorities and I am satisfied that any adverse effects can be adequately managed through the recommended conditions.

Noise

13. Noise is an important effects issue for a number of submitters particularly the closest residents on Pryde Road. I noted that noise environment on Pryde Road will vary depending on proximity to the State Highway and will be influenced at times by activity at the quarry. I agree that the District Plan noise limits are not appropriate for the assessment of wind turbine noise and accept the expert advice from Dr Chiles that the noise standard NZS:6808-2010 is the appropriate measurement and assessment standard. I also accept the expert advice that the modelling undertaken by the applicant has been conservative and this was confirmed by the peer review that was undertaken. Both Dr Chiles and Mr Hunt are qualified and experienced in noise prediction and the assessment of noise from wind turbines. While some submitters including Mr Albert were critical of the noise modelling and assessment no alternative expert view was presented.
14. In the absence of background sound measurement, that would potentially allow a noise level greater than L₉₀40dBA, a predicted non-compliance at the notional boundary of 90 Pryde Road of 1 dB was identified by Dr Chiles. I note that this level of non-compliance is unlikely to be noticeable to a receiver and the advice from Dr Chiles is that if any non-compliance of this level arises it can be addressed by managing the output of the turbines. While I accept that achieving compliance by this means is possible it appears to be a constraint that is less than ideal from the applicant's perspective.
15. Noise from the turbines will be audible at neighbouring properties at times, although within the dwellings of neighbouring sites it will be below the level the world health organisation identifies as appropriate for sleep. I also accept the evidence that the proposed Enercon Turbines will not have special audible characteristics. Special

Audible Characteristics were a particular issue with early model turbines but no evidence was produced that it would be an issue with the model proposed for Porteous Hill. I also accept that audibility is not an appropriate standard that can be used to regulate noise emissions but I note that as the turbines can be heard the noise from the turbines will potentially impact on amenity values. Dr Chiles' view on that matter is the while the noise from the wind farm will influence rural amenity it should not represent a significant deterioration. Mr Brown notes that particularly at 90 Pryde Road the noise will reinforce awareness of the turbines and their visual dominance. I accept that the noise from the turbines will be able to comply with the limit specified in NZS:6808-2010 and this can be secured through consent conditions. I consider that the noise impacts will be restricted to a minor reduction in amenity values when considered discretely but I agree with the evidence that indicates that the audibility of the noise will likely reinforce the visual dominance of the turbines particularly at the property at 90 Pryde Road.

Positive Effects

16. I note that the positive effects that will accrue from the proposal are an important component of the applicant's case. The applicant has identified in their right of reply that these positive effects are as follows:

- A contribution to increased renewable electricity supply consistent with the objectives of the NPSREG;
- An increase in the diversity of supply within Dunedin increasing the resilience of the electricity supply for the city consistent with the Objectives of the 2GP;
- Increasing efficiency of the use of land at the site by allowing wind resource to be captured whilst farming activity will continue;
- A reduction in carbon emissions which contributes to New Zealand's international obligations;
- A significant stream of funding to BRCT to enable it pursue its vision; and
- Providing a symbol for the community that represents the proactive manner in which it is facing the challenges that climate change presents.

The applicant has also indicated in broad terms the intended dividend from the profits that will be directed back into community initiatives to improve community resilience will be in the order of \$100,000 per annum. It is clear from the evidence that the increase in renewable supply, the diversity of that supply and the reduction of carbon emissions accruing from the proposed development is very small. This led to some disparaging comments by submitters about the merits of the proposal. Despite this I consider the proposal has positive effects and these include the significant symbolic value of the project. It will provide an income stream for community initiatives. As Ms Irving pointed out the objectives of the NPSREG apply regardless of scale.

Impacts on Farming Activity

17. Submitters have raised concerns about potential impacts on their farming activities in relation into the application of fertiliser by helicopter of a fixed wing plane. The applicant has addressed this issue to my satisfaction in the right of reply where the applicant noted that the neighbouring land owners will be able to utilise aerial topdressing methods as they wish and not breach CAA requirements. Impacts on faming activities on the site and on neighbouring sites are considered to be minor.

Ecological Effects

18. There was significant debate on the adequacy of the applicant's evidence on ecological impacts particular in relation to effects on avifauna. The Applicant's expert Dr Craig argued that the effects would be minimal and that the applicant would be better directing money into pest control rather than large expensive studies which are highly unlikely to be of value. Ms McClellan disagreed with this approach as did Mr Onley who provided detailed submissions arguing that in the absence of data collection there could be no certainty as to the significance of the effects. I accept that best practice would be to undertake detailed studies prior to the application being lodged. However, this work is expensive and time consuming and the effects assessment provided should relate to the scale and significance of the application. With only 3 turbines proposed the scale of this application needs to be taken into account. In general terms I am satisfied that on the balance of probabilities that the effects on avifauna will be minimal.

Geotechnical/Groundwater

19. The applicant responded to concerns raised in submission and Mr Sycamore in the review of his recommendation by supplying a geotechnical report from Mark Walrond of Geosolve. I acknowledge that spring water is critical to the farming activity on neighbouring sites. Although, I was not able to question Mr Walrond on the assumptions in his report, on the balance of probabilities I consider that more than minor impacts to groundwater are unlikely. The report notes that with the exception of the foundations, the site will remain permeable and the volume of spring flows is not likely to be affected. No expert evidence to the contrary was submitted.

Financial Viability Decommissioning

20. Although I received submissions questioning the viability of the project, I agree with the advice from Mr Sycamore that financial viability is only a consideration in terms of environmental remediation and decommissioning should the project fail. Mr Sycamore supported a bond but the applicant has argued that a bond is not necessary. Mr Willis noted that the value of the metal from the turbines would be significantly more than the costs associated with disestablishing the towers but produced no figures to support that contention. I consider the risk to the environment of project failure is relatively low. It certainly does not have the degree or risk that a mining project would have. Given the relatively low level of risk associated with project failure I am satisfied that a condition requiring decommissioning in the event that the turbines are established and then no longer required would suffice in this case.

Shadow Flicker and Blade Glint

21. These effects were identified as a concern in submissions, with the lack of detail in the assessment on these effects questioned. The applicant responded to these concerns in the right of reply. In terms of blade glint the applicant has promoted a matt paint finish as an appropriate means of mitigating blade glint and has argued that the effects of shadow flicker will be minor. Having considered the evidence and submissions on these effects, I am satisfied that the effects will be minor.

Lighting

22. Some submitters raised concerns about lighting on the top of the turbines. The applicant confirmed that flashing lights will be required on the top of the turbines to meet civil aviation requirements but that the effects of the lighting will be minor as shielding will be provided to mitigate the effects of lighting on properties below the

turbines. Concerns were also raised by submitters in relation to the night sky. I accept the applicant's view on the effects from lighting and I agree that with mitigation in place they will be minor.

Conclusion on Effects for Section 104D Gateway Test

23. I have concluded that the adverse effects on the amenity and character of the use of the closest properties to the site (22 and 90 Pryde Road) are significant and the effects on the dwelling at 139 Road are moderate. While the outlook from the dwellings on these properties is for the most part oriented away from the turbines to the North the turbines are in close proximity to the dwellings at 22 and 90 Pryde Road. The evidence suggests that the dwelling at 90 Pryde Road at 471m from the closest turbine may be the closest privately owned dwelling to a turbine 90m or higher in the country. I agree that due to the proximity of the turbines, particularly the most northern turbine, and the elevation of the landform on which the turbines are sited relative to Pryde Road, they will be imposing and visually dominant for the owners and occupiers of these properties. The noise from the turbines will be audible at these properties drawing attention to the visual dominance of the turbines. As a result, they will significantly alter the rural amenity values for the closest properties, adversely affecting the use and enjoyment of these properties.
24. I accept the legal advice I have received on the effects gateway limb of the Section 104D gateway test. As a consequence I consider that the proposal does not pass the effects limb on the 104D gateway test and therefore the proposal must pass the objectives and policies limb of the gateway test before I can consider granting consent to the proposed development.

Objectives and Policies

The NZ Coastal Policy Statement 2010

25. I accept advice that while the site is close to the coast the location of the turbines is not within the coastal environment and as a consequence I have not given this policy any weight.

The National Policy Statement for Renewable Electricity Generation (NPSREG)

26. Ms Irving in her closing submissions noted that the national policy statement is applicable and an important consideration regardless of the scale of the project. Mr Farrell the planner for the applicant also places weight on the NPSREG noting that the weight he places on the policy statement is a point of difference between his position and that of Mr Sycamore. I accept that the NPSREG is relevant and that it applies regardless of the scale of the project. As a result, the direction within the policy statement is important and needs to be taken into account when determining the application.

District Plan Objectives and Policies

27. The applicant concedes that the proposal does not pass the effects gateway and argues that the proposal passes the objectives and policies limb of the Section 104D gateway test. The closing submissions from the applicant argue that I should assess the objectives and policies as a whole. Ms Price and Mr Much identify a High Court case that promoted an approach where a proposal would fail the gateway test limb if it was contrary a single objective or policy. This case was described by Ms Irving as an outlier. I consider that the orthodox approach of considering the objectives and policies as a whole is appropriate in this case and I have applied the orthodox approach to my consideration of the objectives and policies.

28. I have also considered the divergence of legal opinion on the weight to be afforded to the objectives and policies of the second generation proposed District Plan in relation to energy generation. My consideration was assisted by additional independent legal advice provided by Michael Garbett from Anderson Lloyd. I accept the advice that more weight can be given to the proposed 2GP objectives and policies on energy generation than would typically be the case as they are prepared specifically in light of the NPS for renewable energy generation.
29. I also agree with the independent legal advice that I cannot consider the objectives and policies of the operative plan in relation to the Landscape Section as the turbines are not located within the overlay. I also agree with Mr Farrell that there is no policy guidance in the operative plan that would suggest that effects from outside the overlay area that impact on land within the landscape overlay requires the Landscape Section objectives and policies to be considered.
30. Both Mr Farrell and Mr Sycamore have determined that an overall assessment of the objectives and policies indicated that the proposal was not contrary to the relevant objectives and policies of the operative and proposed District Plans. Mr Head and Mr Brown argue that the proposal is contrary. Having considered the evidence I agree with Ms Irving that the expert landscape evidence from Mr Head and Mr Brown in relation to the assessment of objectives and policies is too focused on landscape issues in coming to an overall position on how the proposals fit with the policy framework. I also noted that case law establishes contrary as a high bar meaning opposite to or repugnant to.

Conclusion on Objectives and Policies

31. I prefer the position of Mr Sycamore and Mr Farrell that the proposal is not contrary to the objectives and policies of both the operative and proposed second generation plans when the objectives and policies are considered as a whole. Therefore the proposal passes the objectives and policies gateway in section 104D and I am able to consider granting the consent following an assessment under Section 104 of the RMA, subject to part 2 of the Act.

Consideration of Alternatives

32. Mr Farrell did not consider alternatives as he considered the adverse effects were more than minor but not significant. I note that the applicant contends that if the effects were found to be significant then it has undertaken an adequate assessment of alternative sites which is a requirement of the RMA when the effects are significant. The applicant identified the alternative sites that were considered in the evidence of Mr Willis and in its right of reply. I accept that the applicant has looked at other sites and I consider that the description of alternative locations provided by the applicant has met the applicant's obligations in relation to the consideration of alternatives.

Other Matters

Precedent

33. In terms of precedent Mr Sycamore identifies that in his opinion the proposal would not create an undesirable precedent for future applications. He noted its non-complying activity status related to the fact that wind generation was not considered in the operative plan. I agree that precedent issues arising from this proposal are not likely to be readily transferable to any other "like" proposals within Dunedin City.

Consultation

34. In relation to consultation I noted that this is not a requirement under the RMA. Despite this, a large number of submissions and a lot of evidence was directed towards consultation. The applicant's aspirations in relation to community resilience and its description of the proposal as community support activity may explain why this was a particular focus. The applicant argues that the evidence indicates that the applicant has put significant effort into consulting and involving the local community in its projects including the current proposal. I acknowledge that effort. However, it is also clear from the submissions that the more recent changes to the project prior to lodgement of the application were not well understood by the local community. There was no evidence to indicate that there was any specific consultation on the establishment of three 90m high turbines on Porteous Hill and the large number of submissions questioning the consultation process is testament to this.

Determination

35. I consider the proposal is not contrary to the objectives and policies of the operative and proposed District Plans. Having determined that the proposal is not contrary to the objectives and policies of the operative and proposed plans I am required to consider the matter under Section 104 and Section 104 is subject to Part 2 of the RMA.
36. I have considered the range of effects arising from the proposal and I believe the most significant adverse effects will be on the closest neighbours to the site on Pryde Road. Their amenity will be adversely affected by the close proximity of the turbines to their farms and dwellings. The proximity of the turbines is important as the evidence and my questioning indicates that the adverse effects of the turbines on rural character and amenity are not able to be mitigated to any degree. This is not surprising given their 90m height. It is accepted that the dwellings are oriented away from the turbines although the dwelling at 22 Pryde has a kitchen/living area window and parts of the outdoor living space that look towards Porteous Hill. Despite this, the turbines will be imposing and visually dominant, particularly the northern most tower, in relation to the properties at 22 and 90 Pryde Road and to a lesser extent the property at 139 Pryde Road.
37. Ms Irving in her closing identified that the only live issue for the proposal was the significance of the adverse effects on Pryde Road residents. I agree that this is the area of most contention and critical in determining the outcome of the consent. I note there have been a number of wind farm cases that have dealt with dominance and/or significant and very significant effects on neighbouring sites by the removal of one or more turbines. I consider the imposing nature of the turbines on the sites at 22 and 90 Pryde Road and the impact on rural character and rural amenity values of their dominance would be reduced by the removal of the northernmost turbine from the proposal. This option was not offered by the applicant in their closing and I am reluctant to impose this as mitigation as the three turbines appear central to the applicant's proposal.
38. In respect of the other effects of the proposal including landscape, there will be adverse effects but not to a degree that would be significant enough to compel refusal of the application. Noise will meet the required standard but I consider it will add to the intrusion and dominance experienced by residents and it will contribute to the reduction in amenity values.

39. I have considered the positive effects of the proposal and the influence of the NPSREG on the assessment renewable energy generation projects. I accept the NPSREG provides a strong direction to grant consents to renewable energy projects regardless of their scale due to the national benefits of renewable energy. In considering the NPSREG I note that when adverse effects cannot be mitigated the direction within the policy statement is to look at compensation or environmental offsets. Any compensation involved with the project is not directed to the worst affected neighbours and does not provide any respite from the significant amenity impacts on those nearest neighbours. In this case I consider that the adverse effects on amenity values are too great for these worst affected residents. Ultimately I have decided that the wider benefits of the application do not outweigh the significant adverse effects on the amenity values of the nearest neighbours. I note that the determination may have been different if the option of removing the closest and most dominant turbine from the application had been identified as an option that was available to me.

40. I consider that declining of consent is necessary to achieve the purpose of the Resource Management Act 1991 to promote the sustainable management of natural and physical resources.

Right of Appeal

In accordance with section 120 of the Resource Management Act 1991, the applicant and/or any submitter may appeal to the Environment Court against the whole or any part of this decision within 15 working days of the notice of this decision being received. The address of the Environment Court is:

The Registrar
Environment Court
PO Box 2069
Christchurch 8140

Any appeal must be served on the following persons and organisations:

- The Dunedin City Council;
- The applicant;
- Every person who made a submission on the application.

Failure to follow the procedures prescribed in sections 120 and 121 of the Resource Management Act 1991 may invalidate any appeal.

Please direct any enquiries you may have regarding this decision to John Sule whose address for service is City Planning, Dunedin City Council, PO Box 5045, Dunedin 9058.

Yours faithfully



Colin Weatherall
COMMISSIONER