

HEARINGS COMMITTEE AGENDA

TUESDAY 17 MAY 2016
WEDNESDAY 18 MAY 2016
(THURSDAY 19 MAY 2016 IF REQUIRED)

COMMENCING AT 9.00 AM
EDINBURGH ROOM, MUNICIPAL CHAMBERS

MEMBERSHIP: Commissioner Colin Weatherall

IN ATTENDANCE: John Sule (Senior Planner/Committee Advisor), Darryl Sycamore (Planner), Barry Knox (Senior Landscape Architect), Carlo Bell (Environmental Health Officer) and Wendy Collard (Governance Support Officer)

PART A (Committee has the power to decide these matters):

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

Introduction

Applicant to introduce themselves and their team.

Procedural Issues

Any procedural matters to be raised.

Presentation of the Planner's Report

Report from Darryl Sycamore
Refer to pages P1 – P37

The Applicant's Presentation

Application
Refer to pages A1 – A508

Submissions

Refer to pages S1 – S416

Summary of Submissions

Refer to pages AS1 – AS13

Council Officer's Evidence

- Memorandum from Landscape Architect
Refer to pages T1 – T4
- Memorandum from Environmental Health Officer
Refer to pages T5 – T6
- Memorandum from Planner/Engineer, Transportation
Refer to pages T7 – T9
- Email from Senior Geotechnical Engineer, MWH
Refer to page T10
- Report from Acoustic Consultant, Malcolm Hunt Associates
Refer to pages T11 – T18

- Letter from Group Leader, Water Management & Ecology, Golder Associates
Refer to pages T19 – T23

The Planner's Review of their Recommendation

The Planner reviews their recommendation with consideration to the evidence presented

The Applicant's Response

The Applicant to present their right of reply

PLEASE NOTE: The **only** section of the hearing which is not open to the public is the Committee's final consideration of its decision, which is undertaken in private. Following completion of submissions by the applicant, submitters and the applicant's right of reply, the Committee will make the following resolution to exclude the public. All those present at the hearing will be asked to leave the meeting at this point.

RESOLUTION TO EXCLUDE THE PUBLIC

To be moved:

"That the public be excluded from the following parts of the proceedings of this meeting, namely, Item 1.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under Section 48 (1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

	General subject of each matter to be considered.	Reason for passing this resolution in relation to each matter.	Ground(s) under section 48 for the passing of this resolution.
1	Resource Consent application – 147 Church Road, Merton	That a right of appeal lies to any Court or Tribunal against the Dunedin City Council in these proceedings.	Section 48(1)(d)



Report

TO: Hearings Commissioner

FROM: Darryl Sycamore, Planner

DATE: 7 April 2016

SUBJECT: **LAND USE CONSENT APPLICATION**
LUC-2015-469
147 CHURCH ROAD, MERTON

1. INTRODUCTION

[1] This report has been prepared on the basis of information provided in the application received on 2 October 2015, and the further geotechnical assessment received by Council on 29 February 2016, along with submissions and technical comments from Council officers. The purpose of the report is to provide a framework for the Commissioner's consideration of the application and the Commissioner is not bound by any comments made within the report. The Commissioner is required to make a thorough assessment of the applications using the statutory framework of the Resource Management Act 1991 (the Act) before reaching a decision.

2. DESCRIPTION OF THE ACTIVITY

[2] Blueskin Energy Limited (BEL) seek resource consent to erect and operate three wind turbines, situated on Porteous Hill, a remnant volcano that forms part of the Kilmog series of land features. The proposal is to establish a small scale wind-farm on the site.

[3] In 2013 resource consent (LUC-2013-41) was granted to erect and maintain a wind-monitoring mast as part of a feasibility study to identify a suitable site. The turbine model proposed by the applicant is the Gamesa G58, or similar. Three turbines, each producing around 800-900kW and with a maximum height of 125m above ground level are proposed. Generation with the Gamesa model will occur within a narrow wind velocity window, where turbines cut in at wind speeds of 4m/sec and cut out at 28m/sec.

[4] Works will include the extension of the access road, excavation of the tower foundations, erection and commissioning of the turbines. Connection will be directly to the 33Kv OtagoNet Distribution Network, being the National Grid. The three turbines will be transported in sections to the site on flat-deck trucks. The structures will be shipped to Port Chalmers and then transported by Fulton Hogan to the subject site in sections. The total weight of infrastructure for transportation will be approximately 117 tons. A Route Assessment confirms the road and bridges are sufficiently dimensioned to convey the load, with some minor works required to broaden sweeping corners on Porteous Road itself.

[5] Consent is sought with a ten year lapse period to provide sufficient time to capitalise and advance the project.

DESCRIPTION OF SITE AND LOCATION

- [6] The subject site is a farm located on Porteous Hill, which is highly visible from many areas within Dunedin City. It is visible from sea, and at various locations from State Highway 1.
- [7] Access is via Porteous Road, from State Highway 1, which winds up a narrow, and at times a single lane, gravel road over a range of gradients.
- [8] The site is a volcanic knoll comprising basalt intrusions through schist. It is currently in pasture and used for stock grazing. Relatively small pine plantations occupy nearby properties. Areas of remnant native vegetation are located in the near vicinity to the proposal.
- [9] From a wider perspective, Porteous Hill is a landmark feature in the Blueskin area. A number of townships are nearby, such as Waitati, Doctors Point and Warrington and the proposed turbines will be visible to many of those residents
- [10] The Orokanui Ecosanctuary is located across Blueskin Bay and it features a broad array of native fauna including threatened bird species. Those birds are free to migrate to, and beyond the ecosanctuary perimeter.



Figure 1- Porteous Hill Relative to the Wider Coastal Setting

[11] The property has had a number of building and resource consents issued prior to lodging this application. The record is predominately related to residential activity on a separate parcel of land under the same register. They are summarised below:

File Number	Purpose
ABA-2011-330	Building consent to install fireplace
ABA-2003-299533	Building consent to alter the dwelling
H-1992-114623	Building consent to construct a farm shed
H-1984-283654	Building consent to construct a hay shed
LUC-2013-41	Resource consent to erect a wind monitoring mast
HAIL-2013-117	HAIL search of archive records for hazardous or industrial activities on the site

3. ACTIVITY STATUS

Dunedin City District Plan

[12] The subject site is zoned **Rural** in the operative Dunedin City District Plan. Part of the eastern margin of the site is within the North Coast Coastal Landscape Preservation Area (CLPA), although the turbines will not be sited within the CLPA. There are no other designations on the site or within the immediate area. The subject site and wider area is annotated in the hazards register of the District Plan as including a number of landslide movement features although the actual tower locations are situated within an area not marked for landslide instability.

[13] The applicants consider the proposal is a community support activity. I do not accept this definition, and while not a perfect fit, I consider the proposal is best assessed as a utility activity.

[14] Utilities are defined in the District Plan as the means the systems, services and networks associated with:

- the supply of electricity;
- community water supply and drainage;
- the transmission and distribution of natural or manufactured gas;
- telecommunications and radiocommunications;
- navigational aids;
- meteorological facilities;
- river flow recording facilities."

[15] While the Proposed Dunedin City District Plan (2GP) is still under development and carries little or no weight, it does provide guidance about the intended future direction of the City, and indicates the preferred activity status of wind turbines for electricity generation. A number of definitions are included in the 2GP may help provide clarity on the activity status of the proposal. *Large Scale Network Utilities* include wind generators, in terms of both community scale and regional scale. The definition of *Wind Generators- Community Scale* states:

"renewable energy generators that generate energy using wind resources that do not exceed:

1. *five wind turbines, each with a maximum height, measured from base of mast to upper point of blade, of 85m; or*
2. *three wind turbines, each with a maximum height, measured from based of mast to upper point of blade, of 125m".*

The 2GP definition reaffirms the proposal is most consistent with a utility activity.

[16] Turning to the operative District Plan, wind-farm activity is not specifically identified as permitted, controlled or discretionary by the rules of the Utilities section, the proposal is a **non-complying activity** under Rule 22.5.4.

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011

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[17] The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 came into effect on 1 January 2012. The National Environmental Standard applies to any piece of land on which an activity or industry described in the current edition of the Hazardous Activities and Industries List (HAIL) is being undertaken, has been undertaken or is more likely than not to have been undertaken. Activities on HAIL sites may need to comply with permitted activity conditions specified in the National Environmental Standard and/or might require resource consent.

[18] The applicant sought and obtained a search of Council records for the purpose of a HAIL determination. It is considered, more likely than not, that no activities have occurred on the site that appear on the HAIL. As such, the National Environmental Standard is not applicable to the application.

Second Generation District Plan (2GP)

[19] The Proposed 2GP was notified on 26 September 2015. Section 88A of the Resource Management Act determines that the activity status of the application remains unaltered as the rules have no legal effect.

[20] The site is zoned Rural Coastal in the 2GP, and two of the three turbines will be sited within the Seacliff Significant Natural Landscape Area. This presents a point of difference to the current zoning layout. From a cultural perspective, the site falls within a broader area where wāhi tūpuna may be present. The 2GP also recognises the site broadly includes land stability hazards.

[21] While the relevant rules of the 2GP do not yet apply, the relevant objectives and policies require consideration.

4. NOTIFICATION & SUBMISSIONS

[22] Twenty-eight written approvals were submitted as part of the application, and are summarised below. These parties were not specifically identified by the Council as being potentially affected by the application.

Person	Owner	Occupier	Address	Obtained
T. Port	✓		2920 Waikouaiti- Waitati Road	06.10.15
S & L Brewster	✓	✓	6 Raynbird Street, Company Bay	06.10.15
M. Mason		✓	16 Cairnhill St, Dn	06.10.15
W. Currie	✓	✓	76 Borlasses Rd, Sawyers Bay	06.10.15
A & R Parker	✓	✓	71 Doctors Point Road, Waitati	01.11.15
C & G Thompson	✓	✓	10 Brown Street, Waitati	01.11.15
E. Higbee	✓		227 Doctors Point Road, Waitati	01.11.15
C & L Rainbow	✓	✓	7 Ferguson Street, Warrington	01.11.15
L Copeland		✓	215 Doctors Point Road, Waitati	01.11.15
K & M Peppercorn	✓		214 Doctors Point Road, Waitati	01.11.15
A.Dabaliz	✓	✓	3 Hill Street, Port Chalmers	22.11.15
C.Cole	✓	✓	2939 Waitati-Waikouaiti Highway	01.11.15
B.Sheppard	✓		19 Manchester Street, Dn	31.10.15
W. Stanton & M. Turei	✓	✓	13 Almond Street, Waitati	01.11.15
C.Le Breton	✓		96 Doctors Point Road, Waitati	03.11.15
P. Cardno	✓	✓	12 Thornicroft Road, Waitati	01.11.15
L. Booth	✓		37 Harvey Street, Waitati	13.11.15
J & S Chapman	✓	✓	33 Mihiwaka Station Rd	22.11.15
T. Denley & L. Madden	✓	✓	33 Bradley Road, Osborne	22.11.15
D.Cameron &	✓		56 Mihiwaka Station Road	22.11.15

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A. Harrison				
B.Harrison & B. Chreptyk		✓	56 Mihiwaka Station Road	22.11.15
M & L Workmen		✓	11 Russell Road, Seacliff	22.11.15
C. Rainbow	✓		6 Watson Street, Warrington	01.11.15
E & T Schwass	✓		17 Barra Street, Karitane	13.11.15
L. Gavin	✓		30 Hill Street, Waitati	05.10.15
D.Robertson	✓		2 Quayle Street, Waitati	30.10.15
V. Toy	✓		1 Killarney St, Waitati	01.11.15
E.Dowden	✓		2100 Waikouaiti-Waitati Rd	28.10.15

- [23] The application was publically notified on 4 November 2015. Twenty-five parties within a 1km radius of the site were forwarded copies of the application for consideration. The closing date for submissions was 2 December 2015.
- [24] A public meeting took place on 19 November 2015 at Warrington Hall, and was widely publicised. That meeting was well attended.
- [25] 146 submissions were received following the notification of the application. Of these, 73 submissions were in support, 68 opposed and five were neutral.
- [26] Of the 146 submissions, five were received by Council after the closing date. These late submissions were received in the following days after the close of submissions. It is my recommendation to the Commissioner that these submissions are accepted as postal delivery is not always reliable. If accepted they would assume the full suite of rights as submitters under the Act. The Commissioner is invited to make a determination whether those submissions are accepted at the hearing.
- [27] Given the number of submissions in response to notification, an annotated summary of those submissions are contained in Appendix A of the agenda. Full submissions can be viewed online from the Dunedin City Council website.
- [28] Notwithstanding the volume of public interest in the application, the issues raised by submitters revolve around a few key elements. For those submitters who support the development, the predominant key issues include:
- The project will support the Blueskin Bay community financially.
 - The project will make the Blueskin Bay community more resilient.
 - Renewable electricity generation will offset carbon reliance and lower greenhouse gas emissions.
 - The environmental effects will be minimal.
 - The turbines will fit appropriately within the landscape, or contribute positively to the landscape.
 - That the proposal is visionary and encourages other communities to consider such innovative projects.
 - The consultation process was thorough.
- [29] Submissions in opposition to the project raise a number of issues as overarching their position. The key matters raised include:
- The proposal is not a community support activity, rather a commercial venture.
 - The proposal includes no business model confirming the project is viable or that the Blueskin Bay community will benefit.
 - The consultation process was inadequate.
 - The technical reports were not robust.
 - Property values will decline as a result of the project.
 - The landscape will be adversely impacted.
 - Bird-strike has not been sufficiently assessed.
 - The geology of the site is unstable and not sufficiently assessed.
 - Noise issues will affect quality of life.
 - The potential impact on drinking water supplies had not been considered.
 - Aviation warning lights, glare and flicker effects will be a nuisance or health hazard.

[30] Overall, the breadth of submissions provides a valuable insight of the wider community's perspective for the project. Broadly speaking, the submissions highlight two groups that are diametrically opposed based on perception of the effects and benefits.

5. ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

[31] Section 104(1)(a) of the Act requires that the consent authority have regard to any actual and potential effects on the environment of allowing the activity. 'Effect' is defined in the section 3 as including-

- a) *Any positive or adverse effect; and*
- b) *Any temporary or permanent effect; and*
- c) *Any past, present, or future effect; and*
- d) *Any cumulative effect which arises over time or in combination with other effects–
Regardless of the scale, intensity, duration or frequency of the effect, and also includes –*
- e) *Any potential effect of high probability; and*
- f) *Any potential effect of low probability which has a high potential impact.*

Permitted Baseline

[32] The purpose of the permitted baseline test is to define the environment so as to gauge the level of effects of allowing the proposed activity. The baseline has been defined by case law as comprising the existing activities on the site and non-fanciful (credible) activities that comply with the provisions of the District Plan (i.e permitted activities). Section 104(2) of the Resource Management Act 1991 provides the consent authority with the discretion whether or not to consider the permitted baseline when assessing the effects of an application for resource consent.

[33] Within the context of the current application, I consider there is only a limited baseline that will serve to narrow the matters relevant to the Commissioner's consideration of the application. The site is zoned Rural and comprises a number of allotments, being 160.9ha in total. The eastern portion of the site is within the NCCLPA, that is, the land most visible from the coastal margin.

[34] A number of tall structures could be established on the site as of right. A utility in the form of a tubular mast up to 15m high and with a 1.5m diameter is the most credible comparison permitted on the rural site. No structures within the CLPA are permitted as of right.

[35] The proposed wind turbines are up to 125m high, significantly greater than that permitted. As such, the baseline provides limited scope for discounting the effects arising from the installation of the wind turbines. Should the baseline be applied, it is the effects of bulk beyond that hypothetical 15m high cylinder comprising a diameter of 1.5m that shall be assessed.

[36] This section of the report assesses the following environmental effects in terms of the relevant assessment matters of sections 6.7 and 18.6 of the District Plan:

- Bulk and Location
- Amenity Values and Visual Impact
- Noise, Glare & Light Considerations
- Ecological Considerations
- Natural Hazards
- Cultural & Archaeological Considerations
- Transportation
- Sustainability
- NES for Assessing & Managing Contaminants in Soil to Protect Human Health
- Positive Effects
- Other Matters

- Second Generation District Plan (2GP)
- Cumulative Effects
- Summary

[37] The following parts of this report represent my views on the effects of the proposal, having regard to the application, the submissions, technical advice and a site visit.

Bulk & Location, and Other Plan Provisions (22.6.5, 22.6.10, 22.6.11 & 6.7.9)

[38] The turbines will undoubtedly be large, but in terms of a wind-farm the proposal is small scale with three turbines set in relatively tight cluster. From many vantage points, the turbines may even appear as one structure. Assuming the finalised model of turbine is the Gamesa G58, the three tower sections alone will be 55m long and exceed 60 tons. The tower section set into the ground profile will be 3.03m in diameter. Wherever a structure of this dimension is located, they are no doubt considered prominent.

[39] As noted earlier, the installation of three wind turbines on the site at Porteous Hill is a non-complying activity, and therefore the performance criteria set out in Rule 6.5.3 do not apply. As the permitted baseline is better suited to the effects arising from a permitted utility activity, the rural bulk and location assessment matter is even less relevant.

[40] The proposal represents a significant deviation for what was generally anticipated for the zone. While not expressly clear in the application the proposed turbines may not comply with the yard provisions for structures in the rural zone due to a paper road that bisects the site. Any breach of the Rural zone rules is, however, largely academic in terms of perceived effects.

[41] From Pryde Road the turbines will be dominant with effects most evident on local residents. The subject site is immediately to the south of Pryde Road. For the residents of Pryde Road, the subject site is part of the prominent ridgeline and horizon. A number of submissions from Pryde Road residents state the turbines are not compatible in such close proximity. Images provided in the application do indicate the scale of the turbines will eclipse the residential properties. The site and scale of the structures when viewed from Pryde Road offer little scope to mitigate the effects of bulk.

[42] Effects of bulk and location will mostly be localised to those immediate residents, particularly those residing on Pryde Road. The effects on those residents will in my view be more than minor. When viewed from afar, the turbines will be notable but not overpowering and will result in effects that are no more than minor.

Amenity Values and Visual Impact (Assessment 22.6.3, 6.7.3 & 6.7.13)

[43] The Resource Management Act 1991 defines 'amenity values' as:

"those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes."

[44] In a general sense, the character of rural land within the Dunedin City jurisdiction is dominated by pastoral farming from grassy lowlands to tussock high country. This has resulted in a low density of development and a sense of openness throughout much of the rural area within Dunedin. In this case, the site is an undulating rural zoned property set within the broader Kilmog hills complex. The site is predominantly pastoral land use at higher elevations, and domestic dwellings, forestry, roads and farmland at lower elevations.

[45] The construction and operation of a cluster of three community wind turbines approximately 125 metres high has, the potential to significantly alter the landscape. That said, the proposal is for a small-scale wind-farm comprising only three generators which differs from most other commercial wind-farms that connect to the national grid.

- [46] The application was forwarded to the Council's Landscape Architect, Mr Barry Knox. He reviewed the landscape report by Lucas Associates provided in the application. That report concluded the proposed development would introduce a new aspect to the setting which "would provide an elegant and meaningful addition" to the landscape. It concludes the proposal is generally compatible with the visually relevant provisions of the District Plan.
- [47] Mr Knox noted the land is zoned rural, and the higher easterly part of the site is within the North Coast Coastal Landscape Preservation Area (NCCLPA), although none of the three wind turbine towers is proposed for location within the NCCLPA.

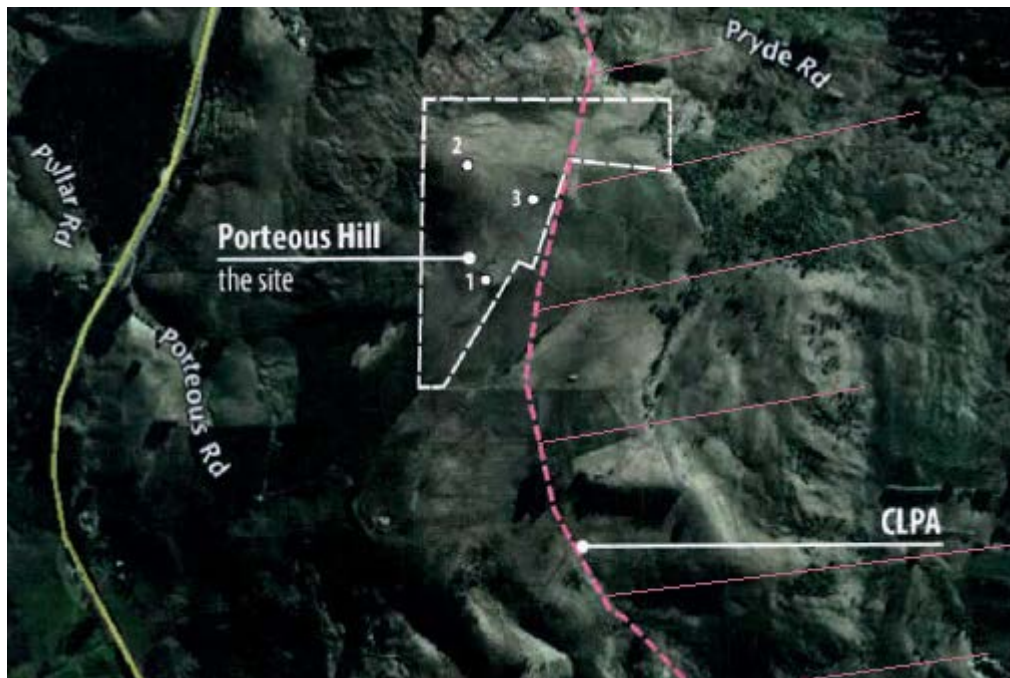


FIG 2- Subject Site Relative to North Coast Coastal Landscape Preservation Area

- [48] From a forward looking perspective, Council's Landscape Architect commented that the 2GP was recently publicly notified, and the proposed location of the three wind turbines would be within a significant natural landscape overlay in this plan. Under Section 5 of the 2GP (*Network Utilities and Energy Generation*) in Objective 5.2.1, local renewable energy generation is encouraged, and the proposal is generally in line with the directions indicated by 2GP.
- [49] Although as noted none of the proposed towers would be within the NCCLPA, they are located close by and within the general context of the landscape zone. The Dunedin City District Plan provides an indication of *Features and Characteristics to be Protected* which can be used to assist with an assessment of effects on the values of surrounding landscape.
- [50] The Council's Landscape Architect accepts that the visual effects of the wind turbine cluster are objectively and comprehensively assessed in the Landscape Assessment included in the AEE by Lucas Associates. In his professional view, Ms Lucas's interpretations of the visual effects are well illustrated by the inclusion of photo montages. Her assessment considered various viewpoints from outside the site, and in Mr Knox's opinion, this provides a valuable resource on which to base an evaluation of visual effects. Ms Lucas interprets the effects on visual amenity and makes statements along the lines that these, rather than being adverse, in some situations would produce change, and a "new aspect". These changes would not necessarily be negative, and in some cases they would be positive. She refers to the clusters as having visual effects which could be described as having "transparency and elegance" or which could introduce an "elegant and meaningful addition to the landscape".

- [51] The opinion of the Council's Landscape Architect generally echoes similar views as outlined in the AEE landscape report by Lucas Associates; although his view is expressed somewhat more cautiously. Mr Knox acknowledges that to some people, and from some views the wind turbine cluster would provide an elegant and interesting addition to the landscape. However the turbines are very large structures, and from some perspectives, and in some climatic or temporal situations the proposed turbines would no doubt have effects on visual amenity which could be considered to have a more than minor adverse effect. Indeed, some within the community will strongly disapprove of their presence.
- [52] Overall, Mr Knox concludes the effects on visual amenity of the cluster of the proposed three wind turbines would be seen as providing an interesting and positive counterpoint to the surrounding landscape, without for the most part compromising basic visual amenity values in any more than a minor way. He acknowledges for those residing nearby, the effects on visual amenity may be more than minor.

Effects on the North Coast Coastal Landscape Preservation Area

- [53] While the turbines will not be sited within the CLPA, they will be perceptibly visible from within the CLPA to the extent they may appear to be within the area where controls on bulk do apply. As the structures will appear to be within a management area, it would be appropriate to consider the extent of potential effects on the NCCLPA.
- [54] The Dunedin City District Plan lists the "Features and Characteristics to be protected" for the NCCLPA. There are:
- *The general visual dominance of the natural landscape elements, eg natural landform over human landscape elements, eg buildings or shelter plantings.*
 - *The integrity, extent, coherence and natural character of the landform, streams and remaining areas of indigenous vegetation.*
 - *The generally limited visual influence of any large scale structures or exotic plantings to diminish the impact of the natural landscape forms and features.*
 - *The extent and quality of the dramatic coastal landforms and views. Visual interest is focused on the coastal edge.*
 - *The remote wilderness character of the beach landscapes and the visual separation of these areas from adjacent developed areas by dunes or other landforms.*
 - *The human-made features which are relics of the past, eg remnant shelter plantings.*
 - *The highlights of transient wildlife interest, eg seals.*
 - *Areas of significant habitat value, eg Aramoana Salt Marsh and Purakanui Estuary.*
 - *The landscape values of the historically and culturally significant Quarantine Island/ Kamau-taurua and Goat Island/ Rakiriri, pa sites at Huriawa (Karitane) and Mopoutahi (Purakanui Bay) and site of early European settlement at Matanaka. [Amended by Variation 14: 26/8/02]*
 - *The following significant landform features listed in the NZ Geological Society Geopreservation Inventory for the Otago Region:*
 - *Aramoana coastal features*
 - *Blueskin Bay coastal features*
 - *Karitane tombolo*
 - *Aramoana - Heyward Point*
 - *Harwood sea cliffs.*
- [55] The Council's Landscape Architect considers that although the cluster of three wind turbines are sited outside the NCCLPA subzone, they are sufficiently close enough to the boundary that their visual dominance is within the broader context of the NCCLPA. In this respect, Mr Knox considered assessment of the effects of the turbines using the features and characteristics listed above are appropriate.

- [56] He observes that *"Porteous Hill provides the backdrop for Waitati estuary, particularly when viewed from Waitati township itself, from the hills to the south around Blueskin Road and from a number of viewpoints along the northern motorway for north moving traffic. From Warrington, Porteous Hill is closer, but intervening topography, vegetation and structures at lower elevations of the hill help to screen views of the higher elevations and provide visual distractions. When the subject site is observed from the east along Coast Road these views are also more intermittent and less obvious, as the visual focus of most viewers is invariably along the road itself, or at lower elevations, or towards the coast. As indicated in the landscape report by Lucas Associates, the most direct visual effect from a public access viewpoint is from Pryde Road, but this is used by very few people as it is a secondary road, mainly required for quarry access."*
- [57] With regard to the *"visual dominance of the natural landscape elements"* related to installation of the turbine cluster, Mr Knox noted, it is longer views from the southern sector which potentially have the widest community impact, and which would probably provide the most notable changes to the existing visual scene. There are an infinite number of lighting, weather and time of day possibilities which would introduce subtle and wide ranging variations to the visual impact of the wind turbine towers depending on the prevalence of these conditions. However, it was the opinion of Mr Knox that generally the turbines in this location, when viewed from the south, would provide a visual element which would be in scale with the extensive natural hilltop and surrounding open ground, and in the opinion of Mr Knox would create reactions from viewers ranging from *"an interesting and pleasing addition"* to *"a slightly annoying distraction"*.
- [58] It is clear that visual impact assessments are subjective and it is also apparent from submissions that some viewers will find the turbines obtrusive or potentially offensive.

Amenity & Visual Effects Conclusion

- [59] It is quite difficult to be objective about effects on visual amenity and natural landscapes as far as wind turbines are concerned because of factors already alluded to above. However, in the opinion of Mr Knox, the Porteous Hill turbines would introduce defined built elements into the natural landscape which would have effects on visual amenity ranging from a positive complement creating interest, to those which may have a minor adverse impact on the natural values of the surrounding landscape.
- [60] I note a number of submitters raised concern at the prominence of the structures. It is evident from the images in the application that the structures will be dominant when viewed from properties on Pryde Road. It is those residents living on Pryde Road that will be the most affected by the development.
- [61] While I have some reservations of the relatively positive stance of the landscape reports by both the submitter's consultant, and Council's Landscape Architect, I rely on their technical expertise. Their professional judgement is similarly aligned, and they are qualified and highly experienced in considering landscape issues.
- [62] This view is given weight by the existing landscape character at low to mid elevations of Porteous Hill, which as the landscape report outlines well, is a working environment. It has a variety of *"human landscape elements"* such as vegetation groupings, land use activities and smaller scale structures, which overall would allow the turbines to integrate into the environment.
- [63] Cumulative effects would need to be carefully considered should there be any more turbines introduced in the general vicinity. Mr Knox notes that for this application, there appears to be an appropriate overall balance, with mostly no more than minor potential adverse effects on the visual amenity and broad natural character values of the surrounding landscape.

[64] Having considered the reports by Lucas Associates and the Council's Landscape Architect, I acknowledge the mutual consensus in opinion that the proposal will generally result in adverse landscape effects that are no more than minor overall.

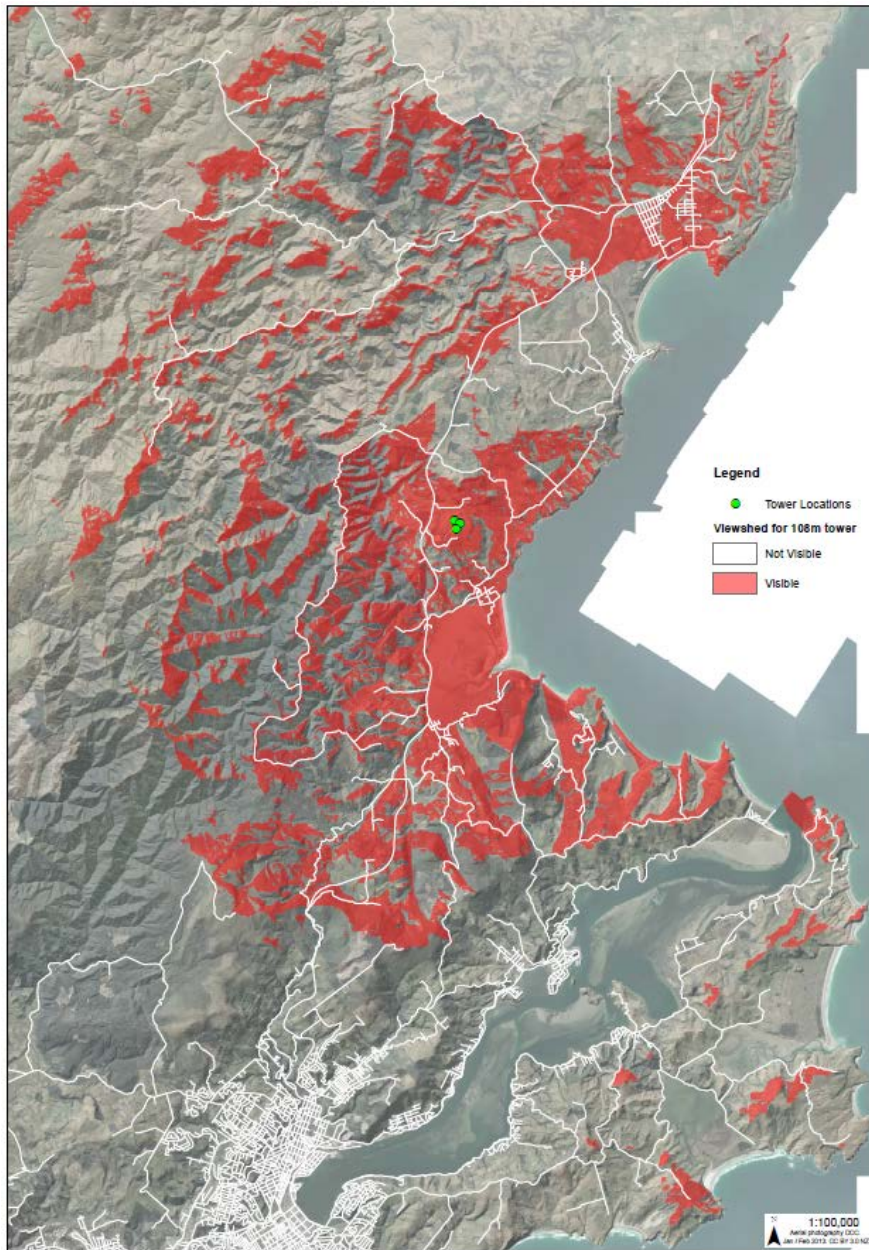


FIGURE 3 - Area within Dunedin City where turbines will potentially be visible¹

Noise, Glare, Light and Health & Safety (22.6.7, 22.6.14 and 22.6.8)

[65] The application was forwarded to the Council's Environmental Health Department for comment. They assessed the proposal with respect to noise, glare and light arising from the activity.

[66] A number of submissions, mostly in opposition, expressed concern at the effects of:

- Noise emanating beyond the property boundary from the rotation of turbines and the gearbox,
- glare and reflection from blades catching the sun,
- flicker effects where the sun is directly behind the blade and blade rotation creates subtle flicker on those facing the sun.

¹ Courtesy of DCC Business Information Services

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- [67] Some submitters raised concern at the potential adverse effects on health arising from the points above. I am not an expert but I considered the application was light on specific details addressing each of these issues. The applicant may wish to address these issues during the evidence exchange process.
- [68] The Environmental Health Department noted the site is situated in a rural setting. Rural zoned properties have an expectation of a quiet and more protected amenity value than those in built up areas of the city. Noise generally associated with rural areas also differs from urban areas. For example, background noise sources are predominantly animals and farm machinery operating during day time hours.
- [69] The Environmental Health Officer, Mr Carlo Bell noted the site is (under the operative Dunedin City District Plan) zoned rural and is located reasonably close to State Highway 1, being the Waitati-Waikouaiti Highway. The day-time L10 noise limit is 55 dBA (until 9pm) and night-time L10 noise limit is 40 dBA.
- [70] Mr Bell assessed an acoustic report provided in the application by *Chiles Limited* and accepts the report appropriately refers to NZS 6808 and the Dunedin District Plan. As suggested in NZS 6808 the report identifies the predicted 35dB contour using modelling and this in turn identifies three dwellings which may be affected by noise from the wind farm when the wind farm is at maximum output. The report estimates a background daytime noise level of 36 dB L_{A90} during 'wind farm operation'. It does not discuss the nighttime background. NZS 6808 suggests a limit of 40 dB L_{A90} at sensitive locations (e.g. a dwelling) or 5 dB above the background where background noise is greater.
- [71] The Chiles Limited '*report 130701b*' dated 13 September 2013 concluded one residential unit would be exposed to noise above the District Plan threshold of 40dBA, by 1dBA. With respect to that breach, the Chiles Report states "*there exists a very real risk the wind sound would exceed background plus 5dB*".
- [72] To explore noise issues further, the Environmental Health Officer carried out noise monitoring of existing noise levels in accordance with NZS 6801 (except for the wind conditions) and NZS 6808. This was during a range of wind conditions and at different times of the day. The results are below.

Date	Time	Location	$L_{A90(10min)}$	Wind conditions	Comments
28/10/15	14.56	Nr 90 Pryde	31.2	Light-mod SW wind	Some audible noise mainly stock
	15.18	Nr 22 Pryde	33.7	Light-mod SW wind	Traffic audible from SH1
	15.34	Nr 110 Porteous	30.1	Light-mod SW wind	Not much audible noise
4/11/15	21.17	Between 90 and 139 Pryde	17.6	Calm	No audible noise
	21.31	Nr 22 Pryde	26.1	Calm	Some traffic audible from SH1
	21.38	Nr 110 Porteous	23.2	Calm	No audible noise
12/11/15	06.54	Between 90 and 139 Pryde	36.1	Moderate SSW	A little traffic audible
	07.08	Nr 22 Pryde	38.7	Moderate SSW	Traffic audible from SH1

- [73] Of the locations monitored all have extremely low background noise levels except 22 Pryde Road, which is affected by noise from the State Highway. Existing noise levels are very low especially at night and in low wind conditions. However, Mr Bell suggests that a moderate wind will significantly increase background noise levels. The wind speed at which these turbines operate is not clear from the application but is likely to be quite an important factor because if the turbines² do not operate at low wind speeds the nuisance effects may be minor.
- [74] Given the technical nature of wind farm noise modelling, Mr Bell requested a review of the Chiles Limited, by an independent acoustic expert. The application was forwarded to Malcolm Hunt Associates who provided Council their independent assessment of the noise matters. A copy of that report is in Appendix D of the agenda.
- [75] Mr Hunt, noted the Chiles Noise Report identifies that noise models and assumptions were based on an 'indicative turbine model'. Mr Hunt suggests the approach taken presents a risk in terms of noise, as a noisier model could be installed rendering the data erroneous. To pre-empt the risk, the peer reviewer suggests a condition of consent requiring the turbine model be confirmed. I agree, and should the Commissioner approve the development, a high level of certainty is appropriate.
- [76] The *Malcolm Hunt Associates* review found the modelling carried out by the applicant to be conservative and assumed a worst case condition. In this situation, all turbines are generating simultaneously and continuously at maximum rated sound power levels. This simulation is not considered unreasonable.
- [77] The Malcolm Hunt Associates review respectfully rejected the comments on retrospective management of noise as a suitable approach to mitigation. Specifically, the *Chiles Report* referred to the single residence that will likely be exposed to noise above the permitted threshold. It states "in the event there was a non-compliance at a location such as at night, the wind turbines could potentially be programmed to reduce sound levels (at the expense of power output) to maintain compliance with these limits". The Hunt peer review states this approach anticipates consent be issued and then management of noise be retrospectively addressed. A post-construction compliance management approach may not sufficiently address adverse noise effects in the reviewer's expert opinion.
- [78] The Malcolm Hunt Associates review recommends the Commissioner be fully informed on all aspects of potential non-compliance and satisfied NZS6808:2010 can be met prior to issuing any consent. The review concludes by stating the background noise assessment has not been sufficiently adequate. They suggest the applicant conduct the necessary background sound monitoring near boundaries of the closest residential properties and submit a revised noise assessment.
- [79] I have read and generally concur with the independent noise review provided by Malcolm Hunt Associates. They suggest a more rigorous analysis of background noise including ten days consecutive monitoring under differing climatic conditions. Specific assessment against three residences in close proximity should form part of that wider assessment. It is my recommendation that a detailed assessment is provided prior to the hearing or alternatively prior to any decision being made by the Hearings Commissioner.
- [80] With respect to vibration and construction noise matters, the Malcolm Hunt Associates review considered that vibration and construction noise effects are likely to be negligible. Appropriate consent conditions will suffice including adopting a Construction Management Plan as promoted by the applicant.

² Specification sheets indicate the Gamesa G58 turbine operates with a cut-in wind-speed of 4m/sec and a cut-out of 28m/sec.

Navigational Lighting

- [81] A submission from the Civil Aviation Authority (CAA) noted the turbines may present a navigational hazard to aircraft. A Navigable Hazard Determination was made which confirmed the turbines could constitute a navigable hazard.
- [82] The CAA was neutral to the application and recommended a number of consent conditions. I note the proposed condition requiring the turbines be finished in a white, which is not practical or assumed by other turbine clusters in the South Island. Finishing the turbines in white raises issues on the landscape and has been not translated into the draft conditions of consent. The other conditions sought by the CAA have been incorporated into the draft conditions of consent.

Glare Arising from Rotating Blades

- [83] Little information is provided in the application about glare arising from sunlight catching the rotating blade and being reflected. A number of submissions have expressed concern that glare will be a nuisance. This of course will only occur during certain temporal and climatic settings, but the potential exists nonetheless.
- [84] The effects of glare in this case is not likely to be as frequent or prolonged as that of a residential dwelling or farm building where glazing creates glare issues. While I do acknowledge the prevailing winds will tend to restrict blade angles within a narrower arc, the extent of glare will be equally variable.
- [85] It is my opinion that while glare will occur intermittently and may well be perceived as a nuisance. Variable wind directions and climatic conditions will help alleviate any nuisance effects. As wind direction shifts, so too will the turbine array. The angle of incident and therefore reflection will be distributed over a wider arc, thereby reducing the frequency of glare on receivers. That applicant is encouraged to provide more information on glare effects.

Flicker Arising from Rotating Blades

- [86] A number of submitters have raised health issues arising from the frequency of the flicker arising from reflected light as blades rotate through the reflection plane. Some suggest that while the frequency may not be perceptible to the eye, it may be unconsciously perceptible and result in health issues.
- [87] The application does not address potential health implications of flicker. There appears to be consensus in the scientific community acknowledging the health risk of flicker effects. For example, a report promoted by an Australian university suggests a flicker 'risk zone' would extend to an area that is 10-fold the turbine rotor diameter³. To minimise health risk that report suggests flicker experienced within this zone should not exceed 30 hours per year.
- [88] The applicant is encouraged to identify all dwellings are within an appropriate and scientifically validated setback from the proposed turbines, and commission a report to determine potential risk to health of those residents. That report, if available during the hearing process can then inform what consent conditions are appropriate. Should no evidence be presented during the hearing process, a number of suggested conditions of consent have been included in the recommendation.

Ecological Considerations

- [89] The proposal has the potential to impact on both local ecology, and more broadly on migrant species. The site itself comprises pasture with exposed basalt rocks on the higher exposed portions of the property. Without having carried out a detailed assessment, the site appears to have few significant ecological values. The site is highly modified, and has been so for an extended period. No evidence of indigenous coastal vegetation is present, although some remnants are visible nearby.

³ Systematic review of the human health effects of wind farms. National Health and Medical Research Council, University of Adelaide. 2015. ISBN 978-0-9923968-0-0

- [90] The applicant commissioned an Ecological Assessment to compliment the AEE. The authors Katherine Dixon and Robin Mitchell carried out a site visit in 2013 and concluded the ecology is exposed to three potential sources of risk from the proposal. Of those three risks, ground disturbance arising from the installation of the turbine structures, and sediment transport into local watercourses were considered to be of a less than minor likelihood of occurrence. I agree, and with sufficient mitigation pathways set into consent conditions, the risk to the ecology is limited from these sources.
- [91] The most direct ecological risk is the impact on bird populations, primarily to individuals traversing through the site and being struck by rotating blades. One mitigating factor is the property contains no real habitat in terms of food sources or nesting areas to lure individuals to the site.
- [92] The Ecological Assessment prepared by the applicant considered bird strike on other wind-farms within both New Zealand and the United States. Bird strike frequency identified at the Mahinerangi wind-farm on the Lammermoor Range, where modelling and monitoring of the twelve turbines each resulted in approximately 1.1 bird strikes per annum. Other NZ wind-farms presented a rate of 6 bird deaths per turbine per annum. The applicant's ecologist suggests the variance relates to the setting and value of habitat, and offered a conservative estimate of 3 bird deaths per annum for each turbine. The significance of this in my view would depend on the species and national status, noting a dominance of introduced avifauna in the area.
- [93] While the conclusions of the applicant's ecologist may be valid, the assessment process and recommendations are in my opinion insufficient. The approach of the ecological assessment promoted in the application is to firstly establish the activity, then obtain data. From a regulatory perspective, the effects of bird strike should be more quantifiable.
- [94] As the Council has no in-house expert, the ecological assessment was peer reviewed by an independent ecologist for the Council, Mr Simon Chapman of Golder Associates (NZ) Ltd. He has extensive experience in considering the environmental implications of wind-farms throughout the country. Mr Chapman's review is attached in Appendix D.
- [95] It was his conclusion the applicant's assessment excluded key steps in assessing risk. He also noted the assessment did not consider lizard or bat populations.
- [96] The peer reviewer recommended a detailed Ecological Assessment be prepared and submitted to the Consent Authority prior to commencing excavations on the site. That report should, in his opinion, contain baseline data on bird numbers and species, a Bat Management Plan and a Lizard Management Plan. I do not accept a lizard or bat Management Plan is appropriate given the setting and scale of the proposed activity.
- [97] Ecological effects are one part of a broader assessment. It is my opinion the applicant's ecologist has taken a permissive stance seeking post-construction monitoring with little rigour in how that view is developed. Equally, given the scale and context of the proposal, it is my view the Council's independent ecologist has taken an overly conservative stance. On balance, I consider the effects can be managed by conditions.
- [98] A recommended condition of consent is included that takes a moderate stance with respect to ecological monitoring, in effect the middle-ground between both ecological assessments.
- [99] A s128 review clause specifically addresses bird mortality numbers beyond that anticipated, or of native species that are threatened or in decline. Should monitoring identify a discrepancy, then the Management Plan will need to be altered, with further review. In the extreme instance, modification of the Management Plan still results in

unsatisfactory losses of high value species, the operation of the turbines may need to be reduced during certain periods of the year or climatic conditions.

Hazards (Assessment Matters 22.6.16 & 6.7.23)

- [100] Like much of the wider environment, the site features a number of known natural hazards. A number of submissions in opposition raised concern at the geotechnical risk associated with the project. The proposal was forwarded to the Council's Consulting Engineer for his technical expertise in relation to managing hazards
- [101] The Consulting Engineer noted the property includes a number of landslide movement features; however the actual tower locations are situated within an area not marked for landslide instability is identified in a 2014 GNS report.
- [102] With respect to the global setting, the Consulting Engineer noted the underlying geology on comprises Olivine Basalt and Nepheline Dolerite lithology from the second main eruptive phase. This lithology is underlain by Burnside Mudstone, which outcrops further downslope. He comments, whilst Porteous Hill is formed of relatively high strength lithology, the underlying Burnside mudstone are extremely weak, and the entire Seacliff-Kilmog area is significantly affected by features of prior movement. Generally the towers are distant from any "recent" landslide features, but it is worth noting that the northern-most tower lies within 20m of an "ancient landslide boundary".
- [103] The Consulting Engineer comments that earthworks required for the construction of tower foundations are not likely to be significant. While there are potential instabilities of concern broadly associated with developments on the Kilmog, he notes the general area of Porteous Hill proposed for locating the towers is free from mapped instability, and is underlain by relatively strong second main phase eruptive volcanic lithology. The proposal will not in the engineer's opinion, create or exacerbate instabilities on this or adjacent properties
- [104] The applicant provided a further geotechnical report to Council on 29 February 2016, noting the author was not a qualified geotechnical engineer. While the recommendations were moderated, the author promoted the view the site is sufficiently sound from a geotechnical perspective to support the turbines.
- [105] The technical advice of the Consulting Engineer also expressed confidence the site is sufficiently stable for the scale of development. I have read and concur with the Consulting Engineer's assessment.

Cultural & Archaeological Considerations

- [106] The excavation has the potential to unearth evidence of pre-european occupation. A wāhi tūpuna site is situated in the wider vicinity, and pre-european activity may have extended to around the subject site given the expansive views from the site. The NZ Archaeological Authority webmap does not feature any recorded archaeological sites in the immediate area. Both Iwi and Heritage NZ were served copies of the application for consideration during the submission process. The local runaka provided their approval in support of the application.
- [107] A condition of consent will be included to address any accidental discoveries directing the consent hold to the relevant persons in the event of a discovery. An advice note is included which addresses any requirement to obtain an archaeological authority in the event of an accidental discovery.

Transportation Effects (Assessment Matters 6.7.24)

- [108] The Council's Transport Planner reviewed the application. He noted the site is zoned Rural, and accessed via Porteous Road which is classified as a Local Road in the Dunedin City District Plan.
- [109] The Transport Planner noted the construction phase of the process would be of most relevance to his department. The transport and construction of the wind farm

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infrastructure will require improvement of the State Highway 1- Porteous Road intersection, and Porteous Road itself.

- [110] The New Zealand Transport Authority (NZTA) have provided a written submission and are neutral toward the application, though they do recommend several conditions be imposed should consent be granted. These are summarised as follows:
- *The consent holder shall engage a suitably qualified person to design the layout of the Porteous Road/State Highway 1 intersection. The consent holder shall supply the consent authority with written confirmation from the road controlling authority that the Porteous Road/State Highway 1 intersection has been suitably designed. The design of the Porteous Road/State Highway 1 intersection shall be approved prior to any construction works commencing.*
 - *An approved Traffic Management Plan (TMP) to work within the State Highway corridor is required for physical works on the State Highway 1/Porteous Road intersection.*
 - *An approved Traffic Management Plan is required for the transportation of wind farm components to the site.*
 - *The applicant should repair any damage that has occurred to the transport network as a consequence of transportation of wind farm components to the site.*
- [111] I note a submitter refers to signage on State Highway 1 to alert drivers to the presence of the turbines entering their view. After a discussion with the NZTA, they are not initially amenable to any additional signage although may reconsider should it be found the turbines do startle motorists.
- [112] A transportation route survey, prepared by Fulton Hogan and submitted with the application, has been undertaken to assess the feasibility of using Porteous Road to transport construction materials to the site. It is based on a swept path assessment of the existing road geometry, and Fulton Hogan has identified a number of improvements that will be required to Porteous Road in order to provide for the heavy traffic.
- [113] The Council's Transport Planner has no objection to the improvements to the road, and advises their requirements for works being undertaken within the road are similar to those of the NZTA.
- [114] The specific site access, between the Porteous Road carriageway and the property boundary, will meet District Plan requirements. The Transport Planner advises that the vehicle access, from the carriageway to the property boundary, is over legal road and is therefore required to be constructed in accordance with the Dunedin City Council Vehicle Entrance Specification which is available from the Transport Department.
- [115] Construction traffic associated with transportation of infrastructure will impact on the functionality of the Council's transportation network, given the size of vehicles required to transport wind turbine components. I consider the effects can be managed by conditions. A Traffic Management Plan will ensure the transportation network can operate safely, and will be required by condition of consent.
- [116] While there will be reasonably significant traffic movements to and from the site associated with the construction period, there are expected to be minimal long-term effects on the transportation network as a consequence of wind farm operations. As such, Transport considers traffic generated by the proposal to have no more than minor impact on the transportation network, subject the traffic management plan being in place during the construction period.
- [117] The Transport Planner noted any damage to the Council's transportation network, as a consequence of transportation of construction materials and components to and from the site, shall be repaired at the applicant's expense.

- [118] Overall, Transport considers the proposal to have no more than minor impact on the safety/functionality of the transportation network, subject to the inclusion of a number of consent conditions and advice notes. I have read, and concur with this assessment.

Cumulative Effect (Assessment Matters 22.6.15 & 6.7.4)

- [119] The District Plan directs the Commissioner to consider the cumulative effects of an activity. The District Plan recognises that some development can create long term impediments to primary production activities, or affect the quality of amenity for those residing nearby.

- [120] The proposal is a green-field development set within a rural pasture. Some submitters, both in support and opposition have commented that should consent be issued, it will make any future application to increase the number of turbines easier to obtain. Council must, however, assess each new application on its individual merits. Short of the applicant volunteering a covenant that there will be no future expansion of the turbines, there are few mechanisms to absolutely ensure no future applications will be forthcoming.

Sustainability (Assessment Matters 22.6.1 & 6.7.1)

- [121] The District Plan seeks to enhance the amenity values of Dunedin and to provide a comprehensive planning framework to manage the effects of use and development of resources.

- [122] The purpose of the Resource Management Act is to promote the sustainable management of natural and physical resources. Sustainable Management is defined in the Act as managing the use, development and protection of natural and physical resource in a way, or at a rate which enable people and communities to provide their social, economic and cultural well-being, while sustaining the potential of natural and physical resources to meet the reasonable foreseeable needs of future generations while safeguarding the life supporting capacity of air, water, soil and ecosystems and avoiding, remedying or mitigating any adverse effects on the environment.

- [123] The application promotes the installation and operation of the three turbines as being consistent with the RMA in supporting sustainable development. The application refers to the Economic Development Strategy, Social Wellbeing Strategy, draft Energy Plan and draft Environment Strategy. The NES for Renewable Electricity Generation 2011 recognises the contribution of renewable electricity generation plays in addressing the effects of climate change.

- [124] A number of submitters support the proposal on the basis the energy is renewable and will help offset generation reliant on carbon. Conversely, a lesser number of submitters hold the view the proposal will have little or no impact on the consumption of fossil fuels in the electricity sector.

- [125] The application states the turbines are a significant new renewable generation project for the City. While relatively small scale, the proposal seeks to produce 7.2 gigawatt hours (GWh) per year which is not insignificant in terms of the Blueskin community. As a comparison, total demand for Dunedin City in 2014 was 903 GWh. Around 86% of Dunedin's electricity is generated by renewable resources⁴, with less than 0.1% of the energy used in Dunedin is sourced within the City boundaries. This proposal will slightly reduce the reliance on generation beyond the City.

- [126] Reducing the reliance on generation which creates greenhouse gas emissions aligns with purpose of the Act and the NES for Renewable Electricity Generation. Of the greenhouse gas emissions attributed to Dunedin City, 14% relate to electricity supply³. Further renewable generation can only seek to reduce emissions, consistent with the objectives of both the RMA and NES.

⁴ The Dunedin Energy Baseline Study, Sept 2015, ISBN 978-0-9941219-8-1 University of Otago for the Otago Chamber of Commerce and the Dunedin City Council.

- [127] On a broader level, and more challenging to quantify, the manufacture of turbines comes at an environmental cost, albeit beyond the City. Some submissions suggest the environmental cost of producing the turbines themselves has not been considered at a sustainability level. Indeed, the manufacture of wind turbine components is a resource-intensive process. A key component, powerful magnets made from neodymium and dysprosium are rare earth minerals mined almost exclusively in China. The environmental record of rare earth mineral mining is, at best, considered questionable.
- [128] At a more local level, and in terms of the District Plan, the Council's Water and Wastewater Business Unit and Transportation Department have reviewed the proposal and not identified any issues. There is no expectation that the proposed turbines will have adverse effects on the sustainability of the transportation or three-waters networks that are more than minor.
- [129] Overall, and notwithstanding the broader issue in terms of rare earth elements in componentry, I consider the proposal is consistent with the Sustainability section of the Plan.

NES Assessing and Managing Contaminants in Soil to Protect Human Health

- [130] An application has been made to obtain all known records or archival evidence to form a view whether the site may be classified as a HAIL (Hazardous Activities or Industries List) site under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011.
- [131] HAIL-2013-117 concluded the site history indicates no previous activities on the subject site that may feature on the HAIL list. A site visit found the area identified for the turbines comprises pasture with exposed volcanic rock, and no evidence of HAIL activity. As such, the NES National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011 has not been applied.

Positive Effects

- [132] The application promotes itself as a community support activity and details a manifesto of community resilience, sustainability and distribution of profits. Economic benefits in terms of construction and operational costs will extend city-wide, with benefits passed from power generation onto the Blueskin community.
- [133] Specific details in the application are not compelling in relation to 'community support activity' with numerous submitters expressing cynicism on the benefits. Many submitters have stated the economics of the activity has not been sufficiently assessed, or that the concept is flawed for a variety of reasons.
- [134] Some submitters comment that the \$6M to capitalise the project has not been secured. Others are concerned where that capital will come from, and how returns on investment will be managed. While I acknowledge the application promotes itself as being able to distinguish itself from others by way of the community focus, the application is almost silent on how this will be achieved.
- [135] Neither the District Plan, nor RMA requires any surety in the economic validity in any commercial project being assessed by Council, or in this case the Independent Commissioner. Viability is more a concern should a large project fail and leave a costly environmental mess. This is not the case with this application.
- [136] In this case, little positive weighting can be attributed to any positive effects arising from the community directly benefiting from the proposal when carrying out an overall judgement assessment. The applicant may wish to expand on this during the pre-circulation of evidence.

Alternative Locations (Assessment Matters 22.6.9)

- [137] In 2013, the applicant obtained a resource consent (LUC-2013-41) to erect and maintain a wind-monitoring mast as part of the feasibility study to identify a suitable site. Based on the data obtained from the wind monitoring, the applicant has sought to proceed with the wind-farm activity.
- [138] Reliable wind is a tangible resource. The applicants have chosen to advance the proposal on the basis the resource is economically sufficient. The proposal is also focused on providing economic benefit to the Blueskin community, and sought to locate the development near that community. I note a number of submitters have considered the site is not suitable and encouraged the applicant to identify a more remote site. The applicant may wish to clarify the range of locations that were considered as part of the proposal during the hearing.

Other Matters

10 Year Lapse Period under s125

- [139] Consent is sought with a ten year lapse period that is where substantial progress must be made within ten years after the close of any appeal period (or after the conclusion of an appeal/mediation). In my opinion and based on the breadth of community interest, a ten year lapse period provides a high degree of uncertainty about whether the project will indeed proceed, or not.
- [140] It is my view a ten year lapse period is not appropriate. Five years provides sufficient duration for the applicant to access funding streams, develop plans and commence the project to the extent that substantial progress has been achieved, while providing a degree of surety for the community.

Connection to the OtagoNet 33kV Distribution Grid

- [141] The proposal seeks to connect to the 33kV OtagoNet distribution grid for delivery to end users. Little information in the application details how generated electricity will be conveyed to the distribution grid. The application is invited to provide further details about how this connection will be achieved during the evidence exchange prior to the hearing as undergrounding of infrastructure is an assessment consideration.

Proposed Second Generation Plan (2GP)

- [142] The rule provisions of the Proposed 2GP have not been given effect to, or made operative. The relevant provisions could change as a consequence of the submission process. Accordingly, the Council cannot have regard to the rule provisions of the 2GP as part of the assessment of this application.

Summary of the Effects on the Environment

- [143] Overall, the proposal will result in some adverse effects on the environment that are no more than minor such as the effects on amenity and landscape values when viewed from a distance. Effects on transportation can be sufficiently addressed by way of consent conditions.
- [144] For those residents living in the immediate area, specifically on Pryde Road, the turbines will dominate the visual amenity. The visual effects arising from the turbines in the immediate environment will in my opinion be more than minor.
- [145] I note the breadth and passion of submissions relating to the perceived effects on amenity and landscape. While a landscape assessment is subjective, I rely on the advice of both the Council and applicant's landscape architect which are generally aligned. The turbines will be highly prominent, and will alter an already highly modified environment which, to the applicant's landscape architect results in an "elegant and meaningful addition to the landscape". Alternatively, some within the Blueskin community suggest the turbines will adversely alter the landscape and is founded on a false environmental premise.
- [146] Irrespective of one's view, the structures will not occupy the site in perpetuity, rather until the turbines see out their usefulness.

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[147] Overall, and based on the expert evidence of both the Council and applicant, it is my opinion the effects of the proposal will be no more than minor.

6. OBJECTIVES AND POLICIES ASSESSMENT (Section 104(1)(b))

[148] Section 104(1)(b) requires the consent authority to have regard to any relevant objectives, policies and rules of a plan or proposed plan. The Dunedin City Council is currently operating under the Dunedin City District Plan, and the following section of the report assesses the proposal against the relevant objectives and policies of the Plan.

Dunedin City District Plan Sustainability

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 4.2.1	Enhance the amenity values of Dunedin.	<p>The subject site is a rural property in a rural setting and the proposal is a small scale wind-farm.</p> <p>Both the Council's Landscape Architect and the Landscape expert for the applicant recognise the proposal will alter an already modified landscape. They conclude the structures may be viewed as elegant and a meaningful addition to the landscape, or alternatively, as being incompatible with the landscape. I agree that they can be viewed positively and therefore maintain (or enhance) the rural setting. Alternatively, one's perception is their reality and without doubt some will hold the opinion they will degrade the landscape. In my own judgement the structures will present a dichotomy in views, where each submitter's overall outlook will remain irreconcilable.</p> <p>The bulk of the three turbines are, at a broader level on the site for a finite term, and once superseded by improved technology or no longer viable they can be easily removed. Only the concrete foundations will remain and the natural landscape is largely restored as it was prior to the activity.</p> <p>The proposal is considered to be generally consistent with this objective and policy.</p>
Policy 4.3.1	Maintain and enhance amenity values.	
Policy 4.3.2	Avoid developments which will result in the unsustainable expansion of infrastructure services.	
Policy 4.3.5	Require the provision of infrastructure at an appropriate standard.	
Objective 4.2.4	Ensure that significant natural and physical resources are appropriately protected.	
Policy 4.2.4	Provide for the protection of the natural and physical resources of the City commensurate with their local, regional and national significance.	

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Manawhenua

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 5.2.1	Take into account the principles of the Treaty of Waitangi in the management of the City's natural and physical resources.	The proposal has been assessed using the protocol established between Kai Tahu ki Otago and the Dunedin City Council. The proposal is considered to be consistent with this objective and policy. I note the submission from Kāti Huirapa Rūnaka ki Puketeraki who is supportive of the development as renewable generation is aligned with the kaitiaki concept of guardianship.
Policy 5.3.2	Advise Manawhenua of application for notified resource consents, plan changes and designations.	

Rural

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objectives?</i>
Objective 6.2.1	Maintain the ability of the land resource to meet the needs of future generations.	The proposal is considered to be consistent with these policies and objectives. The existing rural activity can continue on the site in much the same manner as that prior to the installation of the turbines. As noted above, in the future if wind generation is superseded by more efficient technology, the structures can be decommissioned with no overall impact on the productive potential of the rural resource.
Policy 6.3.1	Provide for activities based on the productive use of rural land.	
Objective 6.2.2	Maintain and enhance the amenity values associated with the character of the rural area.	Wind-turbines by their very nature are large and have a form that may appear unwieldy to some, yet elegant to others. The matters set out in policy 6.3.5 are tailored towards a typical rural site. Wind-farm activities are not anticipated in the District Plan and as a result few objectives and policies directly support or oppose commissioning turbines in the rural setting. As noted in the amenity assessment the proposal will introduce large man-made structures to a rural setting. While the life of the wind-turbines is finite, during their operational life, the structures will dominate over the rural environment. The bulk fits within the site and a rural setting is the obvious location for a series of large turbines. Infrastructure associated with electricity generation is by its very nature dominant on a landscape and the effects arising from this proposal are commensurate with the wider setting. Farming activities as they had previously existing, can continue on the site generally unhindered. Overall, the proposal is generally consistent to this objective and policy in as much as while
Policy 6.3.5	Require activities to be of a nature, scale, intensity and location consistent with maintaining the character of the rural area and to be undertaken in a manner that avoids, remedies or mitigates adverse effects on rural character of the district include, but are not limited to: a) A predominance of natural features over human made features, b) High ratio of open space relative to the built environment, c) Significant areas of vegetation in pasture, crops, forestry and indigenous vegetation, d) Presence of large numbers of farmed animals, e) noises, smells and effects associated with the use of rural land for a wide range of agricultural, horticultural and forestry purposes, f) low population densities relative to urban areas, g) generally unsealed roads,	

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	h) absence of urban infrastructure.	the structures are large, they will fit within the site while not diminishing the rural landscape significantly.
Policy 6.3.6	Avoid, remedy or mitigate the adverse effects of buildings, structures and vegetation on the amenity of adjoining properties.	Wind turbines are most appropriately sited in the rural zone. The proposal is for three turbines, and is in relative terms a small scale wind-farm. Direct effects of structures are generally limited to those residing in the immediate area.
Policy 6.3.11	Provide for the establishment of activities that are appropriate in the Rural Zone if their adverse effects can be avoided, remedied or mitigated.	<p>Wind-farms are best suited to the rural zone. While residential density is generally low in the rural zone, there are some who reside near the subject site. For those who reside the closest to the subject site, and will be the most exposed to visual effects, it is my view the impact on amenity will be locally significant.</p> <p>The turbines are large and effects on amenity cannot be adequately mitigated or remedied for those residing on nearby properties. The proposal is therefore inconsistent with this policy.</p>
Objective 6.2.4	Ensure that development in the rural area takes place in a way which provides for the sustainable management of roading and other public infrastructure.	With regard to the efficient use of the transportation network, the Transport Department has raised no concerns and support the proposal subject to a Traffic Management Plan. The proposal will contribute to public infrastructure irrespective of whether the Trust directs provide to the local community or not.
Policy 6.3.8	Ensure development in the Rural zones promotes the sustainable management of public services and infrastructure and the safety and efficiency of the roading network.	Overall, it is my view the proposal, subject to appropriate conditions of consent is generally consistent with this objective and policy.
Objective 6.2.5	Avoid or minimise conflict between different land use activities in rural areas.	The receiving environment generally comprises a range of land use activities such as residential lifestyle, farming or quarry activity. While the turbines will be a dominant feature both visually and audibly, they are not likely to create any reverse sensitivity issues. While noise has the potential to be a nuisance, it is my understanding any noise effects can be sufficiently managed by consent conditions.
Policy 6.3.12	Avoid or minimise conflict between differing land uses which may adversely affect rural amenity, the ability of rural land to be used for productive purposes, or the viability of productive rural activities.	<p>The productive use of the land or viability of the rural activities will not be affected by the development.</p> <p>The proposal is considered to be generally consistent with this objective and policy.</p>

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Utilities Section

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 22.2.2 and Policy 22.3.1	Seeks to avoid (where practicable), or remedy or mitigate the adverse effects of the construction or operation of a utility on health & safety and amenity.	The proposed wind turbines are large, and will be highly prominent. Both the Council's and applicant's Landscape Architects have the view the effects on the rural character and landscape is minor. With respect to health and safety considerations, the technical reports suggest these matters can be adequately addressed by conditions of consent. I agree and therefore the proposal is consistent with this objective and these policies.
Policy 22.3.2	This policy recognises some utilities have the potential to create significant adverse effects on the environment despite being essential to the efficient functioning of the City. Policy 22.3.2 seeks to ensure amenity values and the effect on health and safety of its people is not adversely affected by utility activities.	
Policy 22.3.5	Seeks to encourage the progressive undergrounding of utilities.	The application is not clear about how the connection to the 33Kv OtagoNet line will be achieved, but note there are a number of options. It is my view the cables should be installed underground where practical and if this is achieved, the proposal is consistent with this policy.

Transportation

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 20.2.1	Avoid, remedy, or mitigate adverse effects on the environment arising from the establishment, maintenance, improvement and use of the transportation network.	The proposal is considered to be consistent with these objectives and policies. The Transportation Department have not identified any concern about the possible effects on the roading network. Both the NZ Transport Agency and Council's Transportation Planner both advise the intersection of SH1 and Porteous Road requires an alignment upgrade. Assuming the intersection is sufficiently upgraded, the proposal will be consistent with these provisions.
Policy 20.3.1	Avoid, remedy or mitigate the adverse effects on the environment of establishing, maintaining, improving or using transport infrastructure.	
Objective 20.2.2	Ensure that land use activities are undertaken in a manner which avoids, remedies or mitigates adverse effects on the transportation network.	
Policy 20.3.4	Ensure traffic generating activities do not adversely affect the safe, efficient and effective operation of the roading network.	
Policy 20.3.5	Ensure safe standards for vehicle access.	
Objective 20.2.4	Maintain and enhance a safe, efficient and effective transportation network.	
Policy 20.3.8	Provide for the safe interaction of pedestrians and vehicles.	

Environmental Issues

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
<p>Objective 21.2.2</p>	<p>Ensure that noise associated with the development of resources and the carrying out of activities does not affect public health and amenity values.</p>	<p>Assessment of this objective and policy is challenging as these effects relate to individuals at differing intensities. For example, some submitters who live nearby have expressed concern at the likelihood of noise emissions affecting their aural amenity or health. Other submitters comment about glare and flicker from turbine blades.</p> <p>The acoustic report provided by the applicant is light on background noise data and indicates some parties may experience noise above the threshold, albeit by what is considered to be indistinguishable over the limit. Nevertheless, noise may at times, for some parties be a nuisance. In my opinion, individuals residing in a rural environment have a reasonable expectation to be subjected to rural noise and odour. The proposed noise is not an anticipated rural noise with respect to duration or tonal characteristics, and it will certainly adversely impact on the quality of some individual's private residence. For those persons, they will contend the proposal is contrary to the proposal. Noise and glare issues may potentially be negligible for many other residents or visitors to the wider area.</p> <p>When forming an overall assessment, it is my opinion the proposal is inconsistent with this objective and policy. Tailored conditions of consent that offer a suite of monitoring and management requirements will hopefully be sufficient to address any adverse effects should consent be granted.</p>
<p>Policy 21.3.3</p>	<p>Protect people and communities from noise and glare which could impact upon health, safety and amenity.</p>	

Proposed 2GP Objectives & Policy Analysis

[149] The objectives and policies of the 2GP must be considered alongside the objectives and policies of the current district plan, with respect to those rules made operative under s86D at the time of notification. Although there are no relevant rules currently operative with respect to the 2GP at this stage, the following objectives and policies provide some guidance on the potential future direction of the 2GP. As the 2GP is not operative limited weighting will be attributed to these objectives and policies.

<p>Objective 16.2.1 and Policy 16.2.1.10 (Rural Zones Section) which seek to ensure that rural zones are reserved for productive rural activities and the protection and enhancement of the natural environment, along with certain activities that support the well-being of rural communities where these activities are most appropriately located in a rural rather than an urban environment.</p>	<p>The site can be described as a typical hill slope rural property. The site comprises a little over 160ha in a number of discontinuous allotments. The land is also set within a prominent ridgeline and is, in part, within the Seacliff Significant Natural Landscape area.</p> <p>The proposal will not negate the ability to utilise the rural farm in a productive manner. The footprint and infrastructure associated with the turbines is within the context of the site, is very small.</p>
<p>Objective 16.2.3 and Policy 16.2.3.8 (Rural Zones Section) which seek to ensure that the rural character values and amenity of the rural zones are maintained or enhanced</p>	<p>The application promotes the concept of funnelling profit from the sale of electricity to the local community. While no evidence has been provided indicating how this will occur, and what mechanisms will be in place to ensure the development will not be on-sold to a third party private entity, the intent promoted in the application will provide for the well-being of the local community.</p> <p>A significant number of submitters oppose the development on the basis it is not suitable for the setting. While I accept Dunedin City may have less sensitive receiving environments for wind turbines, the applicant has advanced the project on the basis it will benefit the Blueskin Bay community and be located nearby.</p> <p>There is no doubt the structures are large, and from some locations, may dominate the landscape. Infrastructure relating to the generation of electricity is typically large, and a rural setting is clearly the most appropriate location for wind turbines. Wind is a resource and the generation structures should sensibly be sited where the wind resource is most abundant and reliable.</p> <p>The proposal is, in my view, consistent to these proposed objectives and policies.</p>
<p>Objective 16.2.4 and Policy 16.2.4.4 (Rural Zones Section) which seek to ensure that the productivity of rural activities in the rural zones is maintained or enhanced.</p>	<p>The objective seeks to maintain or enhance productivity in the rural zone.</p> <p>The proposed activity will have negligible effect on the productivity of rural activities. The part of the site affected by the wind-farm project is approximately 2ha, with the footprint of the infrastructure is around 0.3ha. Of that approximate 2ha, this area will be able to be grazed as it currently is.</p> <p>Once the turbines have seen out their useful life, and the site will be remediated. As such, the proposal is consistent with this proposed objective and policy.</p>

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Transport Section

	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
<p>Objective 6.2.3 and Policy 6.2.3.1 & 6.2.3.3 seeks that land use activities maintain the safety and efficiency of the transportation network for all travel methods.</p>	<p>The turbines will be transported to the site in sections. A transport assessment by Fulton Hogan for the applicant confirms the effects on the transportation network will be less than minor. Therefore the proposal is consistent with this objective and these policies.</p>

Utilities Section

	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
<p>Objective 5.2.1 and Policy 5.2.1.5 and 5.2.1.11</p> <p>Seeks that network utilities activities, including renewable energy generation activities, are able to operate efficiently and effectively, while minimising, as far as practicable, any adverse effects on the amenity and character of the zone; and, where located in an overlay zone, meeting the relevant objectives and policies for those areas.</p>	<p>While both the Council's and applicant's Landscape Architects have the view the effects on the amenity is no more than minor, they rightly have not applied much weighting to the proposed 2GP. I note the landscape overlay is proposed to extend in part over the subject site.</p> <p>The structures are large and minimising their prominence is challenging. In my opinion, the development will not adversely affect the amenity of the Blueskin Bay area, but may affect the immediate residents. Therefore the proposal is generally consistent with this objective and these policies as the effects are minimised as far as practicable.</p>
<p>Policy 5.2.1.7</p> <p>Requires network utility structures to be located, designed and operated in a manner to ensure any risk to health and safety is no more than minor.</p>	<p>The effects of noise on residents in close proximity to the proposed structures have been considered by noise experts. Initial and conservative modelling suggested a 1dBA breach to one residential property. It was considered the health risk can be adequately managed by conditions of consent.</p> <p>With respect to glare, the structures will be required to be of a low reflectivity material to minimise the potential health or nuisance risk. Regarding flicker, it is my view this can be suitably addressed as conditions of consent requiring monitoring and modelling.</p> <p>Overall, it is my opinion the proposal is consistent with this policy.</p>

Manawhenua Section

	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 14.2.1 and Policy 14.2.1.2 to require buildings, structures and utilities to be set back adequate distances from the coast and water bodies.	The proposal is was forwarded to Kai Tahu ki Otago on behalf of the four runaka that is within the DCC rohe. One runaka provided their support by submission, and therefore the proposal is considered consistent with this objective and policy.

[150] As the Proposed 2GP is not sufficiently far through the submission and decision-making process, the objectives and policies of the operative Dunedin City District Plan have been given more weight than those of the Proposed 2GP.

[151] The proposal is considered consistent or generally consistent with the relevant objectives and policies of the operative Plan relating to Utilities, Sustainability, Manawhenua and Transport. Objectives and policies relating Rural and Environmental provisions are generally inconsistent.

[152] To attribute a weighting against the full suite of objectives and policies one must consider the most crucial elements against the District Plan. In my opinion the conflict relating to the impact of the structures on amenity/ landscape and the environmental provisions, specifically regarding noise, should be afforded the bulk of weighting. While significant, these matters in isolation should not overshadow a balanced assessment.

[153] Having assessed the objectives and policies individually I am now required to make an assessment as to how the proposal fits in an overall sense, with the objectives and policies of the plan. Wind-turbines in a commercial capacity were not anticipated when the District Plan was made operative in 1995, and the Operative District Plan provides little guidance on how wind-farm projects should be considered. The proposal was found to be consistent or generally consistent with the objectives and policies of the sustainability sections in both the operative and proposed plans.

[154] Having regard at the relevant objectives and policies individually for both the Operative District Plan and the relevant provisions of the 2GP, and considering these in an overall way, the above assessment indicates that the application is **consistent** with both the Operative District Plan and objectives and policies of the 2GP.

Assessment of Regional Policy Statement and Plans

[155] In accordance with Section 104(1)(b)(iii) of the Act the operative Regional Policy Statement and Proposed Regional Policy Statement for Otago has been taken into account. In particular, the proposal was assessed against the objectives and policies of chapters 4: Manawhenua, 5: Land, and 9: Built Environment. The proposal is considered to be consistent with the relevant objectives and policies of the Regional Policy Statement for Otago. However, Chapter 9: Built Environment is relevant in that it does, amongst other things, seek to provide for amenity values. Chapter 11, Natural Hazards also discusses hazards associated with activities and is relevant to this application.

[156] Chapter 12 and Policy 12.5.2 in particular of the Regional Policy Statement provides support to the proposal. As does objective 3.6 and policy 3.6.2 of the Proposed Regional Policy Statement which are aligned with the intent of the application.

[157] Overall, the proposal, subject to appropriate conditions of consent, is considered to be consistent with the relevant objectives and policies of the statement.

Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011

[158] In accordance with Section 104(1)(b) of the Resource Management Act 1991, the provisions of the National Environmental Standard were taken into account when assessing the application. The proposal is considered to be consistent with the policy objective of the National Environmental Standard as a review of the site history indicates no previous activities which feature on the HAIL list.

National Environmental Standard for Renewable Electricity Generation 2011

[159] In accordance with Section 104(1)(b) of the Resource Management Act 1991, the provisions of the National Environmental Standard for Renewable Electricity Generation were taken into account when assessing the application. The proposal is considered to be consistent with the policies B, C1 and E3 of the National Environmental Standard. The proposal is not inconsistent or contrary to any objectives or policies in this Environmental Standard.

7. DECISION MAKING FRAMEWORK

Part II Matters

[160] When considering an application for resource consent, any assessment of the proposal to be made is subject to consideration of the matters outlined in Part II of the Act. This includes the ability of the proposal to meet the purpose of the Act, which is to promote sustainable management of natural and physical resources. Other resource management issues require consideration when exercising functions under the Act. The relevant sections are:

- 5(2)(a) "Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations;
- 5(2)(c) "avoiding, remedying or mitigating any adverse effects of activities on the environment",
- 7(b) "The efficient use and development of natural and physical resources";
- 7(c) "The maintenance and enhancement of amenity values"; and
- 7(f) "Maintenance and enhancement of the quality of the environment"
- 7(j) "The benefit to be derived from the use and development of renewable energy"

[161] With regard to Section 5(2)(a), it is considered that the proposed wind-turbines will not adversely affect the productive use of the land. The site is presently used as stock grazing and the site will continue to do so in conjunction with the wind-farm should consent be granted.

[162] The proposed wind-farm may potentially have adverse effects on those living in the immediate environment, although a programme of monitoring and adjusting the operation of the turbines in response may alleviate noise effects. In broader terms, the effects will be subjective and personal. At three turbines, the wind-farm is small scale compared to other wind-farms. Given the prominence of the proposed turbines, it is challenging to remedy or mitigate the effects of bulk, and avoidance can only be achieved if they turbines are not installed in the first instance. Despite their prominence, based on the technical advice of both the Council staff and applicant's experts, the effects are minor. Relying on the expert's opinion, in conjunction with my overall assessment, is my opinion the application is generally consistent with 5(2)(c).

[163] With regard to Section 7(b), the proposal is an efficient use of the resource as the rural site will continued to be farmed while the turbines generate a significant amount of locally sourced, renewable electricity. The proposal is aligned with the sustainability sections of the operative and proposed District Plans. As such, the proposal is consistent with section 7(b) of the Act.

[164] With regard to Section 7(c), it is considered that the proposed wind turbines will have some impact on the amenity of the receiving environment. Again, while the structures will be prominent, the technical advice from both the Council's and applicant's landscape architect content the wider landscape effects are minor in terms of those in

the Blueskin Bay community, although the effects will be greater for those residing nearby. Many submitters hold a differing viewpoint, and I acknowledge the assessment on amenity is subjective. In this instance I rely on the landscape architects evidence, and as such I consider the proposal is consistent with 7(c).

- [165] With regard to Section 7(f), should the consent be approved, the proposal will in my opinion not adversely affect the quality of the environment in broader terms. For those residents in the immediate area, the quality of the environment will potentially be altered, in particular with respect to visual impact and noise. It is considered effects of noise can be sufficiently addressed by a noise monitoring protocol which will inform how the wind-farm will operate under certain environmental conditions. It is my overall view, the proposal is consistent with 7(f).
- [166] With regard to Section 7(j) the proposal seeks to establish local renewable energy generation. The proposal brings a range of benefits to the City, although many are not immediately quantifiable. Increased resilience from locally sourced clean energy may help offset carbon dependency and include reduced transmission losses. The proposal is therefore consistent to 7(j).

Section 104

- [167] Section 104(1)(a) states that the Council shall have regard to any actual and potential effects on the environment of allowing the activity. Section 5 of this report assessed the environmental effects of the proposal and concluded that the overall adverse effects on the environment will be no more than minor in terms of visual impact on the rural setting, amenity and noise.
- [168] Section 104(1)(b) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. Section 6 concluded that overall the application is consistent with Sustainability, Manawhenua and the Transportation sections. It was considered the proposal was, in overall terms, generally inconsistent with the Rural and Environmental sections.
- [169] Section 104(1)(b) requires the Council to have regard to any relevant regional policy statement, regional plan or National Environmental Standard. The application is consistent with the relevant objectives and policies of the Regional Policy Statement for Otago. The application is also consistent with the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011. The proposal is also consistent with the National Policy Statement for Renewable Energy Generation 2011.
- [170] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. Consistent administration and interpretation of the Plans by the Council is a desired outcome for consents. In this case, the proposal is non-complying because wind-farms are not anticipated in the rural zone in the Dunedin City District Plan. This is discussed further below.
- [171] Overall, the proposal satisfies the requirements of both s104(1)(a) and (b). The site is rural zoned and wind-farms are most suited to rural settings where effects are more appropriately managed.

True exception (s104(1)(c))

- [172] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. Consistent administration and interpretation of the Plans by the Council is a desired outcome for consents, a key matter of relevance to the Commissioner.
- [173] Early case law from the Planning Tribunal reinforces the relevance of considering District Plan integrity and maintaining public confidence in the document. In *Batchelor v Tauranga District Council* [1992] 2 NZLR 84, (1992) 1A ELRNZ 100, (1992) 1 NZRMA 266 the then Planning Tribunal made the following comments:

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"...a precedent effect could arise if consent were granted to a non-complying activity which lacks an evident unusual quality, so that allowing the activity could affect public confidence in consistent administration of the plan, or could affect the coherence of the plan."

- [174] In *Gardner v Tasman District Council* [1994] NZRMA 513, the Planning Tribunal accepted that challenges to the integrity of a district plan could be considered as an 'other matter' (under what was then section 104(1)(i) and what is now section 104(1)(c) of the Resource Management Act 1991), rather than as an effect on the environment. The Planning Tribunal in that case also said:

"If the granting of one consent was likely to cause a proliferation of like consents and if the ultimate result would be destructive of the physical resources and of people and communities by reason of causing unnecessary loadings on services or perhaps by reason of causing under-utilisation of areas where services etc have been provided to accommodate such activities, then the Council may well be able to refuse an application having regard to that potential cumulative effect."

- [175] There have been similar matters considered by the Environment Court when sitting in Dunedin. Case law starting with *A K Russell v DCC (C92/2003)* has demonstrated that when considering a non-complying activity as identified by the Dunedin City Council District Plan the Council will apply the 'true exception test'.

- [176] In paragraph 11 of the decision Judge Smith stated "... we have concluded that there must be something about the application which constitutes it as a true exception, taking it outside the generality of the provisions of the plan and the zone, although it need not be unique." This was added to in paragraph 20 where the Judge stated, "... therefore, examining this application in accordance with general principles, we have concluded that the application must be shown to be a true exception to the requirements of the zone."

- [177] More recently however, the matter of Plan integrity was considered in the Environment Court case *Berry v Gisborne District Council (C71/2010)*, which offered the following comment:

"Only in the clearest of cases, involving an irreconcilable clash with the important provisions, when read overall, of the Plan and a clear proposition that there will be materially indistinguishable and equally clashing further applications to follow, will it be that Plan integrity will be imperilled to the point of dictating that the instant application should be declined."

- [178] The Commissioner should consider the relevance of maintaining the integrity of the District Plan and whether there is a threat posed by the current application in this regard. If the Commissioner deems there to be a real threat from this proposal should it be approved, it would be prudent to consider applying the 'true exception' test to determine whether a perception of an undesirable precedent being set can, or should, be avoided. The risk to plan integrity falls not only on the operative Plan and therefore the Hearings Commissioner must be confident the site and proposal is indeed unique. With respect to the 2GP, the proposal would not be assessed as a non-complying activity and therefore and integrity issues are redundant.

- [179] The proposal is non-complying as the site is zoned rural and wind-farms are not anticipated in the Plan. In my view there are few opportunities for others to piggyback on the outcome of this proposal to advance a separate, but similar application. A true exception need not be unique, and every application is considered on its merits.

- [180] The applicant considers the position the application is sufficiently distinguishable as it is a community support activity, and profits will flow through into the Blueskin community. Based on the information presented thus far, I am not convinced, and I do not consider the proposal is a community support activity as defined in the Plan.

However, I consider the project itself presents a level of uniqueness that separates itself from the generality of other non-complying consents.

[181] It is my view the proposal satisfies the true exception test under section 104(1)(c) of the Act.

Non complying status (s104D)

[182] Section 104D of the Act establishes a test whereby a proposal must be able to pass through at least one of two gateways. The test requires an overall assessment that effects are no more than minor or the proposal is not contrary to the relevant objectives and policies.

[183] The key issue is in terms on amenity and visual effects arising from the prominence of the structures. In my opinion, local effects will be more than minor. Overall, Council's Landscape Architect has assessed the application and determined effects on amenity on the wider environment will be no more than minor. The applicant's landscape architect, Di Lucas of Lucas Associates shares a similar professional opinion. Other matters relating to effects are also considered no more than minor, and many of those can be sufficiently addressed by way of consent conditions and monitoring protocols.

[184] While the proposal only need pass one branch of the gateway test in order for the Committee to be able to grant consent, it is my opinion that both gateway tests relating to effects or objectives and policies of the District Plan are sufficiently satisfied. The Commissioner is therefore able to consider granting consent to the proposal.

8. RECOMMENDATION

[185] Pursuant to Section 34A(1) and 104B and after having regard to Part 2 matters and Section 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan the Dunedin City Council **grants** consent for a **non-complying** activity being the installation and operation of three wind turbines on the site at 147 Church Road, Merton, legally described at Lots 1 & 2 Deposited Plan 473199, held in Computer Freehold Register 646829, subject to the conditions imposed under Section 108 of the Act.

PROPOSED CONDITIONS

- 1 *The proposal shall be constructed generally in accordance with the plans and relevant details submitted with the resource consent application received by Council on 2 October 2015, and the further geotechnical assessment received by Council on 29 February 2016, except where modified by the following conditions.*
- 2 *The consent holder shall advise the Council, in writing, of the start date of the works. The written advice shall be provided to Council at rcmonitoring@dcc.govt.nz at least five (5) working days before the works are to commence.*

General

- 3 *The maximum number of turbines shall not exceed three.*
- 4 *The turbine model shall be the Gamesa G58 turbine, or one of a lesser noise rating.*
- 5 *The maximum height of the structures, to the tip of the blade shall not exceed 126m above the existing ground level.*
- 6 *The wind turbines shall be all finished in the same, neutral off-white or light grey, low reflectivity colour.*
- 7 *Lattice pylons shall not be used as wind turbine support structures.*

- 8 All turbines shall be of a similar size and appearance.

Navigational Lighting

- 9 Each wind turbine must be lit with a medium intensity red light, with a minimum 1,600 candela, located on the top of the mast and visible in all directions.
- 10 As the turbines are constructed and prior to commencing generation, the consent holder shall forward a report to the Civil Aviation Authority and GroupEAD Asia Pacific so the aeronautical charts can be amended to depict the turbines on the site. This should include the precise location of each turbine, elevation on the ground at each turbine and the maximum height of each turbine (to the tip of the blade) above ground level. A copy of this report shall also be provided to the Dunedin City Council by email to rcmonitoring@dcc.govt.nz, and titled 'LUC-2015-469 Amendment to CAA Charts'.
- 11 All navigational lights shall be shielded to avoid downward light spill.

Hazardous Substances

- 12 Any refuelling, lubrication or mechanical repairs shall be undertaken in a manner as to ensure that no spillages of hazardous substances occur on the land surface or near any ephemeral surface depression where potable supply may be sought.
- 13 An oil spill containment kit shall be retained on-site and accessible at all times.
- 14 Staff or contractors carrying out any maintenance, refuelling or lubrication on the site should be familiar with protocols managing spillage of hazardous substances.
- 15 If any fuel or oil spillage in excess of 5 litres occurs, the consent holder shall:
- (a) Immediately take action that is necessary to stop/ and or contain such escape, and
 - (b) Take all reasonable steps to remedy or mitigate any adverse effects on the environment resulting from the escape, and
 - (c) Immediately inform both the Dunedin City Council Consents Manager, and Otago Regional Council Compliance Manager of the spill.

Turbine Operation

- 16 The consent holder shall obtain a report from a suitably qualified person within 18 months of commencement of generation, which details the extent and duration of any shadow flicker caused by the rotation of wind turbines on the curtilage of residential unit existing at the date of the grant within a 1km radius of the turbines.
- 17 Should that report identify any residential units detailed above experience shadow flicker within the curtilage of more than 30 hours per calendar year, the consent holder shall submit a plan to the Consent Authority outlining how the turbines will be operated to reduce flicker to no more than 30 hours per calendar year.
- 18 Where turbines are shown to affect television reception as assessed by an independent and suitability qualified radio engineer (at the landowners expense) on any residential unit within 1km radius of the turbines and existing at the date of the grant, then the consent holder shall provide alternative television reception arrangements at no cost to the occupier such that the television reception is no worse than prior to the construction of the turbines.

Noise

- 19 The consent holder shall, before the commencement of any excavations on the site, carry out a noise monitoring assessment comprising at least ten consecutive days to obtain a baseline record over various climatic conditions. This baseline record shall be provided to the Council by email to rcmonitoring@dcc.govt.nz, titled 'LUC-2015-469 Baseline Noise Data'.

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- 20 Wind turbine sound levels when measured at the notional boundaries of residential units existing shall not exceed the A-weighted background sound level (L_{95}) by more than 5dBA, or a level of 40dBA L_{95} , whichever is greater.
- 21 A report shall be prepared for the Consent Authority within six months of operation detailing the finding of noise monitoring. That report shall include appropriate regression curves of the L_{95} , 10 min of the wind turbine sound levels corrected for any special audible characteristics, and be in a form that will allow the Consent Authority to undertake its own analysis and assessment of those results.
- 22 Should compliance with noise levels above not be met, the consent holder shall operate the turbines at reduced noise output until remedies are identified and implemented. If sound emissions cannot be reduced such that they comply, then the consent holder shall cease to operate until modifications are made to reduce the noise. In that instance, further operation shall only be for sound level assessments. Operation may re-commence once the noise limits are achieved.

Environmental Monitoring and Reporting

- 23 An Ecological Monitoring Plan (EMP) shall be prepared by an independent and suitability qualified and experience person and submitted to the Consent Authority prior to commencing any excavations on the site.
- 24 An updated copy of that plan and monitoring data shall be submitted annually for the first three years after the commencement of power generation and every two years thereafter on the month of the grant for a further three cycles. That plan shall at minimum include:
- (a) A summary of all the environmental monitoring undertaken for the previous reporting period;
 - (b) Discussion on any environmental trends identified over the life of the project and the previous reporting period;
 - (c) A detailed analysis of bird strike findings set out below.
- 25 The consent holder shall monitor bird strike and report in the EMP. This shall be carried out as detailed below:
- (a) The consent holder shall retrieve any bird carcasses located on the site. For the first three years of operation, and on a weekly basis during summer and spring, and on a monthly basis during the remainder of the year.
 - (b) During the first three years after the commencement of operation, all bird carcasses found shall be identified by species, age class (i.e. juvenile or adult), gender, the cause of death (where possible), location of carcasses in relation to the turbines. This assessment shall be carried out by an independent and suitably qualified expert in avifauna.
 - (c) If the consent holder identifies any significant adverse effect as a result of the turbine operation, a mitigation programme shall be developed in consultation with both the Consent Authority and Department of Conservation and may result in on-going monitoring beyond the initial three year monitoring period.
 - (d) Bird strike carcasses shall be photographed, recorded and disposed of at a suitable facility or site.
 - (e) Should bird strike carcasses exceed more than two raptor species per calendar year, the consent holder shall allow vegetation growth around the turbine area to naturally occur in order to minimise the visibility of bird carcasses to raptor species.

For the purpose of clarity, the consent holder is advised should bird mortality exceed levels not anticipated and comprise a predominance of native species that are regarded as threatened or in decline, the consent holder may be required to cease operation of the turbines during particular periods or climatic conditions.

Transportation

- 26 The consent holder shall engage a suitably qualified person to design the layout of the Porteous Road/State Highway 1 intersection. The consent holder shall supply the

consent authority with written confirmation from the road controlling authority that the Porteous Road/State Highway 1 intersection has been suitably designed. The design of the Porteous Road/State Highway 1 intersection shall be approved prior to any construction works commencing.

- 27 Engineering plans prepared by a suitably qualified person, showing the full details of the construction of all roading improvements (including Porteous Road), shall be submitted to and approved by the Group Manager Transportation prior to construction. The consent holder shall carry out those works in accordance with the approved plans.
- 28 Upon completion of construction of the roading improvements, all works shall be tested to demonstrate that they meet the acceptance requirements of the DCC Code of Subdivision and Development.
- 29 Upon completion of all of the roading improvements, the works shall be certified as having been constructed in accordance with the approved plans and specifications.
- 30 A Traffic Management Plan shall be submitted to, and approved by the Transport Operations Manager, regarding the transportation of construction materials and components to and from the site. The traffic management plan shall be approved prior to these works commencing.
- 31 Any damage to the Council's transportation network, as a consequence of transportation of construction materials and components to and from the site, shall be repaired at the applicant's expense.
- 32 Where conditions of this consent require the provision of further information such as reports or management plans by the consent holder, the Consent Authority may commission a peer review of this information to certify its accuracy and compliance with conditions of consent. Any such peer review shall be at the consent holder's expense.

Contact & Complaints Procedure

- 33 The consent holder shall establish and publicise a local telephone number and email address so that the local community have a specific point of contact should they wish to raise any issues associated with the construction or operation of the wind-farm. A log book shall be kept of all calls and emails received, and made available to the Resource Consents Manager upon request.
- 34 The complaint records shall include the date, time, duration of any incident, the location of the complainant when the incident was detected, the possible cause of the incident and the corrective action taken by the consent holder.
- 35 Any issues arising from the complaints procedure shall be considered by the consent holder in relation to revising the Noise Management Plan where appropriate.

Closure & Remediation

- 36 If the wind-farm ceases operation, or is decommissioned for any other reason, then all the turbines above ground structures shall be removed and turbine footings covered and revegetated consistent with the surrounding vegetation composition.

Archaeology & Accidental Discovery

- 37 If the consent holder:
 - (a) discovers koiwi tangata (human skeletal remains), waahi taoka (resources of importance), waahi tapu (places or features of special significance) or other Maori artefact material, the consent holder shall without delay:
 - (i) notify the Consent Authority, Tangata whenua and Heritage New Zealand and in the case of skeletal remains, the New Zealand Police.
 - (ii) stop work within the immediate vicinity of the discovery to allow a site inspection by Heritage New Zealand and the appropriate runanga and their

advisors, who shall determine whether the discovery is likely to be extensive, if a thorough site investigation is required, and whether an Archaeological Authority is required.

Any koiwi tangata discovered shall be handled and removed by tribal elders responsible for the tikanga (custom) appropriate to its removal or preservation. Site work shall recommence following consultation with the Consent Authority, Heritage New Zealand, Tangata whenua, and in the case of skeletal remains, the New Zealand Police, provided that any relevant statutory permissions have been obtained.

(b) *discovers any feature or archaeological material that predates 1900, or heritage material, or disturbs a previously unidentified archaeological or heritage site, the consent holder shall without delay:*

(i) stop work within the immediate vicinity of the discovery or disturbance; and

(ii) advise the Consent Authority, Heritage New Zealand, and in the case of Maori features or materials, the Tangata whenua, and if required, shall make an application for an Archaeological Authority pursuant to the Heritage New Zealand Pouhere Taonga Act 2014; and

(iii) arrange for a suitably qualified archaeologist to undertake a survey of the site.

Site work shall recommence following consultation with the Consent Authority.

Review Clause

38 *In accordance with section 128 the Consent Authority may serve notice on the consent holder within the month of the grant of consent on the 1st, 2nd, 5th and 10th anniversary of its intentions to review any of the conditions of this consent for either of the following purposes:*

(a) To address any adverse effects on the environment that may arise from the exercise of this consent, including noise, glare, flicker, transportation effects, effect on potable supply, or effects on avifauna that was not sufficiently addressed during the consenting process.

(b) To require the consent holder to adopt the best practicable option to avoid, remedy or mitigate any effects on the environment.

9. REASONS FOR RECOMMENDATION

1. The site is zoned rural in the Dunedin City District Plan. The rural zone is regarded as the most suitable zone for a commercial wind turbine project.
2. The key issue revolves around potential loss of amenity and impact on the landscape. Both the Councils and applicants landscape architects promote the view the landscape and amenity effects will be no more than minor. It is also my opinion that any actual or potential adverse effects on amenity or landscape of the proposed activity will be no more than minor to those living beyond the immediate area. My position is a little tempered noting the assessment is subjective and a large number of submissions include a breadth of opinions as to how the structures may affect their amenity. Overall, I rely on both experts to guide my assessment. In terms of local effects to residents nearby, the effects would in my opinion be more pronounced.
3. Effects of noise on the quality of life for nearby residents are a relevant concern. The applicant's acoustic expert suggests noise can be sufficiently managed by way of a monitoring programme which will inform how the wind turbines may operate, or may not depending on climatic conditions.
4. The ecological effects and in particular, bird mortality should be able to be sufficiently managed by conditions of consent.

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5. Issues arising from minor matters and their effects such as transportation or hazards should be sufficiently managed by conditions of consent.
6. The proposed ten year lapse period is not accepted as appropriate given the prominence of the structures. A five year term provides a greater level of certainty to a community that is quite polarised about the development.
7. Overall, the proposal is consistent with the key objectives and policies in the Dunedin City District Plan and proposed Second Generation District Plan.
8. It is my opinion the application passes both gateways for non-complying activities under section 104(D) of the Act.
9. It is my opinion that the proposal will not create an undesirable precedent where other landholders will rely on similar arguments to advance other wind turbine projects. The capital outlay and availability of suitable sites makes any such project both sufficiently unique and challenging.
10. While acknowledging the proposed Second Generation District Plan is still in development, it does promote renewable energy generation, and community resilience.
11. The project is aligned with a number of statutory documents promoting sustainability and renewable energy generation such as the National Policy Statement for Renewable Energy Generation 2011, the Operative Regional Policy Statement and the Proposed Policy Statement.

Report prepared by:

Report checked by:



Darryl Sycamore
Planner

John Sule
Senior Planner

11 April 2016

11 April 2016

Date

Date