Planning – Expert Witness Statement

Case: **ENV-2016-CHC-047**

BETWEEN: **Blueskin Energy Limited v Dunedin City Council**

Topic: Planning

Undertaken: 22-26 May 2017 (via phone and email correspondence)

Environment Court Practice Note:

In preparing this joint witness statement, we have each:

- Read the Environment Court Consolidated Practice Note 2014 Code of Conduct and agree to abide by it.
- Read and abided by the Environment Court Consolidated Practice Note 2014 in respect of Expert Witness Conferencing (reference 7) and Appendix 3 Protocol for Expert Witness Conferences.
- Read and rely on the facts provided in the attached Statement of Agreed Facts ï Planners Conferencing prepared by Michael Garbett dated 22 May 2017.

Witnesses:

Name	**Called by**	**Signature**
Darryl Sycamore	Dunedin City Council (órespondentô)	
Ben Farrell	Blueskin Resilient Trust (óappellantô)	

Date signed: 26 May 2017

Other Joint Witness Statements

Acoustic

1. We have reviewed the Statement of Statement of agreed facts ï acoustic conferencing dated 16 May 2017 prepared by Michael Garbett. We acknowledge the conferencing is yet to be completed.

2. We may wish (or be required) to amend this Joint Witness Statement upon reviewing the Acoustic JWS.

Avi-fauna

3. We have reviewed the avifauna conferencing of 27 April 2017. We:

    a. Accept the resolved points and the position set out in paragraphs 17-19 of the avifauna conferencing in terms of best practice and the phrasing of the relevant consent conditions.

    b. Agree that pre-installation monitoring is not necessary.

Landscape

4. We have reviewed the landscape conferencing statement dated 8 May 2017. We agree:

    a. That the single turbine will result in reduced adverse landscape and visual amenity effects compared to the original three proposed.

    b. That perception is highly subjective and varied between individuals.

    c. That the turbine will be highly visible within the Blueskin Bay landscape, wider coastline and beyond.

    d. Accept that Porteous Hill is part of the coastal landscape.

    e. We do not agree with Stephen Brown in terms of mitigation potential, and consider conditions directing mitigation can address the issue of landscape effects.

    f. We do not agree with Stephen Brown that the coastal environment extends to the crest of Porteous Hill.

Environmental effects (s.104(1)(a))

5. We agree:

    a. The only more than minor and/or potentially inappropriate adverse effects relate to the change in existing amenity values of the neighbouring properties at 22 Pryde Road, 90 Pryde Road and 110 Porteous Road.

    b. Amenity values are subjective and unique to each individual. We accept the residents of 22 Pryde Road, 90 Pryde Road and 110 Porteous Road believe their amenity values will be significantly adversely affected.

    c. Effects on amenity values are difficult to measure, quantify, and evaluate.

    d. With Mr Chiles (evidence in chief par 12-16) and Mr Hunt (evidence in chief par 5-6) that:

        i. The operative district plan includes noise limits which are more stringent than those recommended in NZ6808:2010;

        ii. The 2GP specifies that noise effects from wind turbines be managed in accordance with the recommendations in NZS6808:2010;

        iii. NZS6808:2010 is the most appropriate method/tool to apply to assess the appropriateness of unwelcome sound (noise effects).

e. There are no standards or methods for providing a helpful guideline to assess the effects of the proposal on amenity values, except in relation to noise effects where NZS6808 assists in the identification and evaluation of sound limits/noise effects.

f. In the absence of applicable rules or development standards, the visual simulations and opinions of the landscape experts are helpful in understanding the visual impacts of the wind turbine.

g. The evidence of the acoustic experts is helpful in understanding the noise effects of the wind turbine.

h. Given the rural context of the site and affected neighbours, it is helpful to consider effects on amenity values in respect of effects on rural character.

i. When considering effects on rural amenity and character, it is appropriate to consider wind turbines as an activity that is generally compatible with rural activities.

j. The change in environmental conditions (i.e. the change in visual or audible characteristics) is not itself an adverse effect. Rather, it is the change coupled with individual personal preferences.

Effects on exiting amenity values of the Pryde Road Residents

k. Except for visual amenity values, adverse effects on the amenity values of the Pryde Road residents will be no more than minor.

l. The adverse effects on the existing visual amenity values on the Pryde Road residents will be less than that of the original 3-turbine proposal, but will remain moderate (more than minor but not significant). This is primarily because:

   i. The wind turbine, while visible, will not be overly dominant and a rural outlook (rural character/setting) will be maintained.

   ii. There is potential for planting to be implemented to reduce visual impacts in the mid-long term.

Effects on the existing amenity values of residents at 110 Porteous Hill Rd

m. The property owner and occupier of 110 Porteous Road (Mr Mursa) is likely to be the most affected by the proposal.

n. Given Mr Mursaôs personal opinion that the wind turbine is not appropriate[1], coupled with the visibility of the turbine from numerous locations on the property, the adverse effects on Mr Mursaôs amenity values are expected to be significant when he is able to view or hear the turbine from his property.

o. The adverse effects on the existing amenity values of Mr Mursa will, at times, be significant.

p. Mr Mursa will not always (or constantly) be adversely affected by the wind turbine (e.g. when he cannot see or hear it).

q. With appropriate mitigation planting, the adverse effects on the amenity values of Mr Mursa can reduce. However, it is understood the mitigation planting would need to be on Mr Mursaôs land, so this mitigation cannot occur (and therefore much weight given to it) without his agreement.

[1] Evident from his s.274 party application dated 20 August 2016

r. Mr Sycamore contends that, while the effects on Mr Mursa could be mitigated, the need to plant screening near the dwelling to effectively screen the turbine is an unreasonable burden on Mr Mursa.

Other parties

s. The visual or aural amenity values of other persons and community groups will not be adversely affected to a more than minor extent.

Rural amenity and character

t. The rural amenity (including character) of the rural zone and surrounding rural area will be maintained. In reaching this conclusion we largely rely on the respective opinions of the landscape experts.

Relevant Statutory Planning Instruments (s.104(1)(b)

6. We agree the relevant planning documents to be considered under s.104(1)(b) are those listed in Table 1 below.

Table 1 List of relevant planning documents

Document	Notified	Decision	Appeals	Operative
National Policy Statement for Renewable Electricity Generation (**NPSREG**)	-	-	-	2011
Otago Regional Policy Statement (**RPS**)	Oct 1993	Oct 1998	Resolved	Yes
Dunedin City District Plan (**ODP**)	July 1999	July 2006	Resolved	Yes
Proposed Otago Regional Policy Statement (**PRPS**)	May 2015	Oct 2016	Yes	No
Proposed Dunedin City District Plan (**2GP**)	Sept 2015	No	-	No

7. We agree the relevant objectives and policies are those listed in Tables 2-6 below[2]. For each document we have:

a. Identified if the provision is **directive** if it uses absolute words without qualification (e.g. use of the words: ñavoidò, ñprotectò, ñensureò, ñrequireò, ñonly allowò). We have not considered a provision directive where it allows broad discretion.

b. Identified if the provision as being of a HIGH, MEDIUM, or LOW level of significance to assist in the evaluation of the application. We applied the following criteria (which we developed in conferencing based on the material before us):

Scale	Criteria applied
HIGH	Provision is directive and highly relevant to the case
MED	Provision is not directive but is moderately or highly relevant to the case
LOW	Provision is not particularly relevant to the case

[2] This list derives from Mr Farrellôs evidence dated 27 January 2017. Provisions marked with ** are additional to the list provided in Mr Farrellôs evidence. Some provisions listed in Mr Farrellôs evidence have been omitted from this table as they are not considered relevant.

c. Identified if the provision as being of a HIGH, MEDIUM, or LOW level of significance to assist in the evaluation of the application. We applied the following criteria (which we developed in conferencing based on the material before us):

Scale	Criteria applied
HIGH	Provision is directive; and Provision is of high significance; and Provision is not subject to challenge
MED	Provision is directive but not of high significance; or Provision is not directive but is of medium or high significance; Provision is of medium or high significance but is uncertain (subject to material challenge)
LOW	Provision is not directive or particularly relevant; and/or Provision is of a low significance; Provision is subject to challenge that is material; Provision is directive but process orientated;

National Planning Directions

8. We agree:

    a. The NPSREG is relevant.

    b. No other national policy statement or national environmental standard is relevant.

    c. No consent is required under any national environmental standard.

Regional Policy Statements

9. We agree the operative and proposed Otago Regional Policy Statements are relevant.

Regional Plans

10. We agree:

    a. No regional plans are relevant.

    b. No consent is required under any regional plan.

District Plans

11. We agree:

    a. The site falls entirely within the Dunedin City boundaries. Therefore the Dunedin City District Plan is the only relevant district plan.

    b. Both the operative and proposed district plans are relevant.

    c. Under the operative district plan:

        i. The site is zoned Rural.

        ii. Part of the eastern portion of the site is within the North Coast Coastal Landscape Preservation Area (CLPA), although the proposed wind turbine will not be sited within the CLPA.

        iii. There are no other pertinent features identified in the District Plan on the site or within the immediate area.

        iv. The application is for a non-complying activity under Rule 22.5.4 of the Operative Dunedin District Plan as wind turbines are not specifically provided for as permitted, controlled or discretionary by the rules of the Utilities section (or any other section in the plan).

Implementation of higher order directions in lower order documents

RPS & ODP

12. We agree:

    a. The RPS is not inconsistent with Part 2 of the RMA.

    b. The ODP is not inconsistent with the RPS. We note the RPS does not contain directive provisions.

    c. The RPS and ODP do not implement the NPSREG. On this basis the RPS and ODP do not implement Part 2 of the RMA and are incomplete or invalid.

PRPS and 2GP

13. We agree:

    a. The PRPS is subject to unresolved appeals. Therefore the PRPS is uncertain.

    b. The PRPS objectives and policies listed in Table 5 below are relevant. We observe three of these provisions are directive but none of them should carry much weight (*Policy 3.1.7* deals with soil contamination and is not particularly relevant; *Objective 3.2* and *Policy 3.2.6* deal with the protection of natural landscape values and are particularly relevant, but they are subject to challenge).

    c. The PRPS appears to generally align with the NPSREG, except some directive provisions frustrate it, namely Objective 3.2.4 and 3.2.6 in terms of managing landscapes and seascapes.

    d. Under the 2GP, the proposed turbine is located in the Rural Coastal zone and overlain by the Seacliff Significant Natural Landscape (SNL). Ridgeline and wahi tupuna notations also apply over the wider turbine site. The 2GP's mapping of the coastal environment does not extend over the turbine site.

    e. The application does not require any resource consent under the 2GP at the time of drafting this report (no applicable rules have legal effect).

    f. The 2GP, as notified, classifies wind turbine generators (as proposed) within SNL areas as non-complying. However [as discussed below] this may change as the applicable s.42A Report is recommending it be changed to discretionary.

    g. The relevant 2GP objective and policies are those listed in Table 6 below. Of these:

        i. About 15 are directive with six of those directive and of high significance (*Objective 2.4.4* (Natural landscapes), *Policy 5.2.1.2* (Energy developments), *Policy 5.2.1.7* (Utility structures), *Policy 5.2.1.11* (Energy developments), *Policy 10.2.5.15* (Wind generators), and *Policy 16.2.3.1* (Utilities / structures));

        ii. However, all these provisions are subject to challenge and therefore we consider they do not carry high weighing (we acknowledge we are not aware of the nature or extent of the submissions on each provision).

    h. Dunedin City Council has heard submissions on some but not all parts of the 2GP.

    i. Council has not made any decisions on the 2GP.

    j. The 2GP appears to generally align with the PRPS.

k. The 2GP, as notified, does not appear to give effect to the NPSREG. Our reasons includes:

   i. The general directive in the NPSREG is to recognise the benefits of REG by providing for REG activities where the REG resource exists.

   ii. Policy 10.2.5.7 is directive and frustrates the direction in the NPSRG because:

   iii. It is very difficult for adverse effects of REG activities to be avoided.

   iv. Alternatively, it is challenging for a turbine within a Significant Natural Area to result in effects that are no more than minor.

   v. There is no direction in any higher order document (including Part 2 of the RMA) for adverse effects of REG to be avoided on SNL values.

   vi. The 2GP, as notified, classifies community and small scale REG activities as non-complying activities in locations where the wind resource exists. The non-complying activity status under rule 5.3.2.16 has been opposed in submissions and, following a detailed analysis in the relevant s.42A Report (Section 6.2.4), is recommended to be amended to discretionary. The attached pages of the s.42A Report provide a relevant discussion on this matter (in particular pages 257-258).

l. The 2GP (including relevant objectives and policies) is subject to unresolved appeals. The document is therefore uncertain.

<u>Part 2</u>

14. Considering the above, we agree that Part 2 of the RMA is relevant to the Courts decision.

Summary of Policy documents: significance of values & weighting

15. We agree:

a. The non-complying activity should not be used to interpret the ODP and 2GP as a means of discouraging the proposed activity. We note the attached s42 report for DCC in relation to the 2GP recommends that community wind generators be classified as a discretionary activity.

b. Both the ODP and 2GP contain relevant provisions. The 2GP contains more relevant provisions compared to the ODP. However, neither document should carry more weight than the other. This is primarily because both plans contain provisions which are potentially invalid and the 2GP is uncertain. For example:

   i. The ODP fails to provide for the benefits of renewable electricity generation, making it incomplete or invalid;

   ii. The 2GP attempts to give effect to the NPSREG but it does not, making it incomplete or potentially invalid.

c. The policy framework provides strong support for infrastructure development that does not result in more than minor adverse effects on the environment.

d. There are no environmental bottom line directives in the objectives and policies, which are particularly relevant or that carry much weight, which prevent the benefits of the activity from being considered. The provisions with the strongest directives carry low weight in our opinion.

e. The benefits to be generated by the proposal are to be recognised and provided for as a matter of local, regional, and national significance.

f. Rural amenity values should be maintained and/or enhanced.

g. SNL values should be maintained and protected from inappropriate development.

h. All environmental effects should be avoided, remedied or mitigated. Where this is not achieved, the operative policy framework, in particular the direction in the NPSREG, enables decision makers to allow applicants to utilise offsets or compensation for addressing residual adverse effects.

i. The Spatial Plan for Dunedin, which was adopted in September 2012, is a relevant document. However, we are not aware of any specific reference in the 2GP or any other statutory RMA planning document to the spatial plan. Therefore, while relevant, the document carries little weight in this case.

Coastal Planning Documents and the Coastal Environment

16. We agree the New Zealand Coastal Policy Statement (December 2010) and the Otago Regional Coastal Plan (operative June 2009 and updated 2011-2012 to give effect to the NZCPS) are not relevant, on the basis that the proposed activity is not within the coastal environment[3]. Our reasons for this conclusion include:

    a. The ñcoastal landscapeòis not the same as the ñcoastal environmentò The fact that the site can be seen from the coast (i.e. part of the coastal backdrop) does not dictate that the site is part of the coastal environment.

    b. The wind turbine will be located outside the North Coast Coastal Landscape Preservation Area as identified in the ODP.

    c. The site does not contain any coastal escarpment or other distinctive coastal feature such as coastal vegetation or habitat of indigenous coastal species.

    d. The site has no coastal margins and does not contain significantly active coastal processes, influences or qualities.

    e. The site is not known to provide or present a strong link/relationship between tangata whenua and the coast.

    f. DCC has identified the coastal environment in accordance with the NZCPS (par 22 of the landscape JWS). However, we acknowledge Mr Brown does not agree with Mr Moore or Mr Knox and we are unsure if the methodology applied to delineating the coastal environment in the 2GP is subject to challenge.

17. If the Court determines that the proposed activity is within the coastal environment then the NZCPS and the regional coastal plan would be relevant. We have not undertaken a thorough analysis of the relevant objectives and policies of the NZCPS. However, we tentatively agree the proposal is generally consistent with the NZCPS. This is primarily on the basis that the NZCPS recognises and provides for REG development and the coastal values afforded protection by the NZCPS will be appropriately maintained by the application. In this regard:

[3] We acknowledge Mr Brown's opinion set out in his will say evidence dated 20 April 2016 and the Landscape JWS suggesting the objectives and policies in the NZCPS apply.

a. The proposal will enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety. In doing so the NZCPS (objective 6 and policy 6) recognise among other things that the coastal environment contains significant renewable energy resources and the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms.

b. The proposal can be considered a strategically planned development. It has also been planned for almost a decade with significant input from the local community and Dunedin City Council. It is identified in the Dunedin City Spatial Plan. Moreover, the proposal is in close proximity, and will be connected, to the local road and electricity distribution networks.

c. The proposal will not prevent or adversely affect the safeguarding of the integrity, form, functioning and resilience of the coastal environment or impact the sustainability of ecosystems within the coastal environment.

d. While the turbines will be visible and introduce additional built elements to the landscape, there are no specific natural character or landscape values identified as being particularly significant that are adversely affected by the proposal. Moreover the proposal will not prevent the preservation of the natural character of the coastal environment (if the turbine is located within the coastal environment it is only located on its periphery) and will generally maintain the natural hilltop and open space qualities of the coastal hill backdrop.

e. Runanga support the proposal and no concerns have been raised in relation to the Treaty of Waitangi.

f. The proposal is not subject to or will extenuate any discernible coastal hazard risks.

g. The proposal does not affect water quality; historic heritage; public open space qualities and recreation opportunities of the coastal environment; or any international obligations regarding the coastal environment.

Other Matters (104(1)(C))

18. We agree:

a. The Dunedin City Spatial Plan is a relevant document to have regard to under section 104(1)(c).

b. The Dunedin City Spatial Plan 2012 provides strategic direction for land use in the City. It was developed under the Local Government Act 2002.

c. The Spatial Plan is primarily, but not solely, concerned with Dunedinôs urban form and design.

d. On the basis the Spatial Plan carries little weight; we have not undertaken a detailed analysis of the provisions of the Spatial Plan or its implications.

Construction Access / Roading Improvements

19. We have read the evidence of Mark McNeilly. We accept that the road formation does not align with the legal road and in parts extends in Mr Mursaôs property.

20. We agree that some road works and tree maintenance will be required, and understand that all that this work will be entirely within the legal road.

21. Based on the evidence of Mr McNeilly we agree that the wind turbine components can physically and practicably be transported to the site over the existing road formation, albeit with some upgrading of works within legal road reserve.

22. We agree that for the transport truck to travel to the subject site, the vehicle will traverse over Mr Mursaôs property which functions as formed road. We recognise the road formation is long established and that historically all vehicles on the formed road will traverse the property of Mr Mursa. We agree that any issues of access while using the formed road are a civil matter.

Financial/commercial viability of the wind farm

23. We agree the financial/commercial viability of the wind farm is not an important or particularly relevant factor for the Court to determine.

24. We are not aware of any environmental rationale for delving into the commercial viability of the project. In arriving at this conclusion we assume that the wind turbine can practicably be disestablished and removed from the site should it cease permanent operation.

25. We assume it is highly unlikely that the consent holder would construct the wind turbine without the necessary funding secured to operate the turbine.

Non-complying activity gateway test (s.104D(1))

26. We agree:

    a. While the adverse effects on the environment is generally no more than minor, the application does not pass the first limb of the gateway test under s.104 on the basis that the residual adverse effects on the residents of 110 Porteous Road and 22 & 90 Pryde Road will be more than minor.

    b. The application passes the second limb of the gateway test. In this regard the application does not contravene the relevant objectives and policies in either the ODP or the 2GP.

Consent conditions

27. We agree the conditions proposed by the applicant at the close of the Council hearing (attached to Mr Farrell's evidence dated January 27 2017) are generally sufficient, except as discussed below.

    a. Numerous conditions (e.g. conditions 1, 3, 4, 5, 7, 8, 9, 15, 16, 22, 24) will need to be amended or deleted to refer to the additional information provided by the applicant and the amended windfarm layout/design;

    b. The noise conditions (25-30) should be amended to reflect the agreed/not agreed outcomes of the acoustic experts;

    c. The environmental monitoring and reporting conditions (31-33) should be amended to:

    d. Reflect the agreed/not agreed outcomes of the ecological experts.

    e. For any management plan, include clear objective(s) with measurable and enforceable methods/outcomes

    f. In accordance with Policy C2 of the NPSREG and the offer by the applicant for financial compensation (our understanding), an augier condition can be included as a mechanism to facilitate financial compensation to one or more neighbour(s) the Court may deem to be adversely affected to a more than minor extent.

    g. An *augier* condition could also be included to facilitate and manage the planting and maintenance of landscape planting within neighbouring properties for the purpose of softening or screening visual impacts of the wind turbine. The condition would need to be subject to affected neighbours approval.

List of relevant objectives & policies (Tables 2-6)

Table 2 Relevant objectives and policies of the NPSREG

Provision	Value	Directive?	Significance	Weighting
Objective	Renewable electricity generation	No	High	Med
Policy A	Renewable electricity generation	No	High	Med
Policy B	Renewable electricity generation	No	High	Med
Policy C1	Renewable electricity generation	No	High	Med
Policy C2	Renewable electricity generation	No	High	Med

Table 3 Relevant objectives and policies of the RPS

Provision	Value	Directive?	Significance	Weighting
Objective 4.4.5	Kaitiakitanga	No	Low	Low
Objective 5.4.1	Use of land resources	No	Med	Low
Objective 5.4.2	Use of land resources	No	Low	Low
Objective 5.4.3	Protection of ONFLs	Yes	Low	Low
Policy 5.5.3	Use of land resources	No	No	Low
Policy 5.5.6	Protection of ONFLs	Yes	Low	Low
Objective 12.4.1	Energy use / production	No	High	Med
Objective 12.4.2	Energy use / production	No	High	Med
Objective 12.4.3	Energy use / production	No	High	Med
Policy 12.5.2	Energy use / production	No	High	Med
Policy 12.5.3	Energy use / production	No	High	Med
Policy 12.5.4	Energy use / production	No	High	Med

Table 4 Relevant objectives and policies of the ODP

Provision	Value	Directive?	Significance	Weighting
Objective 4.2.1	Amenity values of Dunedin	No	High	Med
Objective 4.2.3	Managing infrastructure	No	High	Med
Objective 4.2.4	Significant natural resources	No	High	Med
Policy 4.3.1	Amenity values	No	High	Med
Policy 4.3.4	Protection of natural resources	No	High	Med
Policy 4.3.6	Access to resources	No	High	Med
Policy 4.3.9	Procedural	Yes	Med	Med
Policy 4.3.10	Holistic approach	No	Med	Med
Objective 5.2.1	Treaty of Waitangi	No	Med	Low
Objective 5.2.4	Manawhenua	No	Med	Low
Policy 5.3.1	Manawhenua	No	Med	Low
Policy 5.3.2	Manawhenua	No	Med	Low
Objective 6.2.1	Land resource	No	High	Med
Objective 6.2.2	Amenity values/ rural character	No	High	Med
Objective 6.2.4	Public infrastructure	No	Med	Med
Objective 6.2.5	Land use conflicts	No	Med	Med
Objective 6.2.6	Capacity of land resources	No	Med	Med
Policy 6.3.1	Productive land use	Yes	Med	Med
Policy 6.3.2	Productivity capacity	Yes	Med	Med
Policy 6.3.5	Rural character	Yes	High	**High**
Policy 6.3.6	Amenity values	No	High	Med
Policy 6.3.11	Activities in rural zone	No	Med	Med
Policy 6.3.12	Managing different land uses	No	Med	Med
Objective 20.2.1	Transport network	No	Med	Med
Objective 20.2.2	Transport network	No	Med	Med
Objective 20.2.4	Transport network	No	Med	Med
Policy 20.3.1	Transport network	No	Med	Med
Policy 20.3.2	Transport network	No	Med	Med
Policy 20.3.3	Transport network	No	Med	Med

Policy 20.3.5	Transport network	No	Med	Med
Policy 20.3.6	Transport network	No	Med	Med
Policy 20.3.8	Transport network	No	Med	Med
Policy 20.3.9	Transport network	No	Med	Med
Objective 21.2.2	Noise	Yes	High	**High**
Objective 21.2.3	Colours and lighting	Yes	High	**High**
Policy 21.3.3	Noise and glare	Yes	High	**High**
Objective 22.2.1	Utilities	No	Med	Med
Objective 22.2.2	Utilities	Yes	Med	Med
Policy 22.3.1	Utilities	No	Med	Med
Policy 22.3.2	Utilities	No	Med	Med
Policy 22.3.4	Utilities	No	Low	Low
Policy 22.3.5	Utilities	No	Low	Low

Table 5 Relevant objectives and policies of the PRPS

Provision	Value	Appealed?	Directive?	Significance	Weighting
Objective 1.1	Integrated management	Yes but appeal not material	No	Med	Low
Policy 1.1.1	Integrated management	Yes but appeal not material	No	Med	Low
Policy 1.1.2	Economic wellbeing	Yes	No	Med	Low
Policy 1.1.3	Social & cultural wellbeing	Yes but appeal not material	No	Med	Low
Objective 2.1	Treaty of Waitangi	No	No	Low	Low
Policy 2.1.1	Treaty of Waitangi	No	No	Low	Low
Policy 2.1.2	Treaty of Waitangi	No	No	Low	Low
Objective 2.2	Kai Tahu	Yes but appeal not material	No	Low	Low
Policy 2.2.1	Kai Tahu	Yes	No	Low	Low
Objective 3.1	Natural resources	Yes	No	Med	Low
Policy 3.1.7	Soil values	Yes	Yes – avoid contamination	Low	Low
Policy 3.1.10	Landscape and natural features	Yes but appeal not material	No	High	Med
Objective 3.2	Landscape and natural features	Yes	Yes – protect or enhance landscape values	High	Low
Policy 3.2.5	Landscape and natural features	Yes	No	High	Low
Policy 3.2.6	Landscape and natural features	Yes	Yes – avoid significant adverse effects	High	Low
Policy 3.2.7	Coastal environment	Yes but appeal not material	No	Low	Low
Objective 4.2	Climate change	Yes but appeal not material	No	Med	Med
Policy 4.2.2	Climate change	Yes but appeal not material	No	Med	Med
Objective 4.3	Infrastructure	Yes	No	Med	Low
Policy 4.3.1	Infrastructure	Yes	No	Med	Low
Policy 4.3.2	Infrastructure	Yes	No	Med	Low
Policy 4.3.3	Infrastructure	Yes	No	Med	Low
Objective 4.4	Infrastructure	Yes	No	Med	Low
Policy 4.4.2	Infrastructure	Yes but appeal not material	No	Med	Low

Policy 4.5.7	Infrastructure	Yes but appeal not material	No	Med	Low
Objective 5.3	Protection of land	No	No	Med	Med
Policy 5.3.1	Rural activities	Yes	No	Med	Low

Table 6 Relevant objectives and policies of the 2GP

Provision	Value	Directive?	Significance	Weighting
Objective 2.2.2	Energy Resilience	No	High	Med
Policy 2.2.2.3	Renewable energy	No	Med	Med
Objective 2.3.1	Rural land	No	Low	Low
Policy 2.3.1.2	Rural land	No	Low	Low
**Objective 2.4.4[4]	Natural landscapes	Yes	High	Med
**Policy 2.4.4.3[5]	Natural landscapes	Yes	Low	Low
Objective 2.4.6	Rural character	No	High	Med
Policy 2.4.6.2	Rural character	No	High	Med
Objective 2.5.1	Kaitiakitaka	No	Low	Low
Policy 2.5.1.2	Kaitiakitaka	No	Low	Low
Objective 5.2.1	Utilities	No	High	Med
Policy 5.2.1.1	Renewable energy	No	High	Med
Policy 5.2.1.2	Energy developments	Yes	High	Med
Policy 5.2.1.5	Utility structures	No	High	Med
Policy 5.2.1.7	Utility structures	Yes	High	Med
Policy 5.2.1.9	Earthworks	No	Low	Low
Policy 5.2.1.11	Energy developments	Yes	High	Med
Objective 6.2.1	Transport infrastructure	No	Med	Med
Policy 6.2.1.3	Transport infrastructure	Yes	Med	Med
Objective 6.2.3	Transport network	No	Low	Low
Policy 6.2.3.3	Transport network	No	Low	Low
Policy 6.2.3.9	Transport network	Yes	Low	Low
Objective 6.2.4	Transport network	No	Low	Low
Policy 6.2.4.5	Transport network	No	Low	Low
Policy 6.2.4.6	Transport network	Yes	Low	Low
Objective 10.2.5	ONFLs, SNLs	No	Med	Med
Policy 10.2.5.15	Wind generators	Yes	High	Med
Objective 14.2.1	Manawhenua	No	Low	Low
Objective 16.2.1	Rural production	No	Med	Med
Policy 16.2.1.1	Rural production	Yes	Low	Low
Objective 16.2.2	Rural production	No	Low	Low
Policy 16.2.2.6	Non-rural activities	Yes	Med	Med
Objective 16.2.3	Rural character	No	High	Med
Policy 16.2.3.1	Utilities / structures	Yes	High	Med
Objective 16.2.5	Earthworks	No	Low	Low
Policy 16.2.5.1	Earthworks	Yes	Low	Low
Policy 16.2.5.2	Earthworks	Yes	Low	Low
Policy 16.2.5.3	Earthworks	Yes	Low	Low

[4] Natural landscapes and natural features: Dunedin's outstanding and significant natural landscapes and natural features are protected.

[5] Protect the values in identified natural features and natural landscapes (ONFs, ONLs, SNLs) by listing these values in Appendix A3 and using rules that: a. limit land use activities that may be carried out on ONFs; b. manage land use activities that may be carried out in ONLs and SNLs; c. restrict the scale and design of development in ONFs, ONLs, and SNLs; and d restrict forestry activity in ONLs and SNLs.

ATTACHMENT: Extract from DCC s.42A Report on the 2GP

Activity Status of REG (Rule 5.3.2)

The University request changes to the activity status table because, in their view, the broad-brush use of non-complying activity status across almost half the city's area is unjustified, especially when in many cases generation could be located within an overlay zone without any impact on the particular values of that overlay.

The following discussions of the 2GP's approach to the use of non-complying activity status, taken from Anna Johnson's Plan Overview Section 42A Report, are directly relevant to the University's submission on this matter:

Page 105

The protocol with respect to discretionary vs non-complying is that discretionary should be used where activities are anticipated to occur in the zone/overlay zone but a thorough assessment of the appropriateness of the activity is required and policies and assessment rules are used to support that assessment by outlining key outcomes to be assessed. For activities that are not anticipated to occur in a zone/overlay zone (and therefore should generally only be granted consent in exceptional circumstances) a non-complying activity status should be used.

Pages 122-123

The RMA anticipates and provides for a broad range of activity statuses to manage activities, as discussed in the introduction to this report, a non-complying activity status is used where an activity is not "provided for" in a certain environment (be it a management/major facility zone or within an overlay or mapped area) because it is generally not seen as appropriate. The judgement of appropriateness must consider the potential cumulative effects of activities not just those of an individual activity, and whether due to these effects the non-complying status is necessary to achieve the objectives of the plan. For this reason, for example, contravention of density provisions often default to a non-complying activity status, not because one over-dense housing development will have significant effects on infrastructure networks or amenity, but because a pattern of over-dense houses would have significant effects.

The reason for making something non-complying is to require a stringent examination of the activity in terms of section 104D. That requires the activity to pass one of the 'gateway' tests, either the adverse effects of allowing the activity will be no more than minor or because the activity is not contrary to the objectives and policies of the plan. This is generally due to an application being a 'true exception'. This can occur where the activity has distinguishing features such as its special scale, design, nature, or potentially significant positive effects on environmental, social, economic, or cultural well-being for the community, a special locational requirement (where it cannot locate where the activity is provided for within the plan). In making this assessment it is particularly important to consider cumulative effects, including potential cumulative effects caused by precedent of granting consent. This is especially important with an activity having effects that are no more than minor – as often an individual activity on its own may not be the straw the breaks the camel's back but may lead to that outcome through the precedent of approving a large number of similar activities.

Taking this discussion into account, I consider that the following two factors should be weighed up when determining whether or not non-complying activity status should be used for renewable energy generation activities in different environments:

1. Anticipated magnitude of effects from REG activities

The magnitude of effects is determined by:

- the sensitivity of the environment to potential adverse effects from the activity – both effects from individual examples of the activity and cumulative effects from multiple examples, and
- the characteristics of the activity, including scale, location, and visibility.

In the case of management and major facility zones, the focus is on adverse effects on the amenity of the zone, with the degree of adverse effect influenced by the existing level of amenity of the zone. In the case of overlay zones and scheduled sites, the focus is on adverse effects on the specific values identified for protection in the 2GP.

Particular weight should be given to adverse effects on the matters of national importance identified in section 6 of the RMA and, to a lesser extent, on other matters identified in section 7. Potential mitigation measures should be considered as part of the assessment of the magnitude of effects.

2. Locations where REG activities are anticipated to occur

The second factor to take into account when determining activity status is whether activities are anticipated to occur in the zone or overlay zone. In the case of renewable energy generation activities, this includes consideration of where renewable energy resources are available, and where, therefore, there are likely to be proposals to undertake generation activities. This question is relevant to whether 2GP policies and rules implement NPSREG, which requires that district plans *provide for* the development, operation, maintenance, and upgrading of new and existing renewable electricity generation activities. As the University points out, if non-complying activity status applies over a large proportion of the city's area, including a large proportion of the areas in which renewable energy generation is most likely to be viable, due to the availability of potential energy sources, it is questionable whether NPSREG is being implemented. Non-complying activity status, as noted in the Plan Overview Section 42A Report, is used where an activity is not "provided for" in a certain environment.

Policy C1 of NPSREG begins as follows:

Decision makers shall have particular regard to the following matters:

a) the need to locate the renewable electricity generation activity where the renewable energy resource is available…

The NPSREG Technical Guide, produced by the Energy Efficiency and Conservation Authority, provides the following guidance on the locational needs of different types of REG activity (p43):

Renewable electricity generation must be located where the resource is available. In order to be viable, wind farms must be located in locations where the wind is consistently strong, which is often on elevated sites. Biomass plants are best located near the source of the

biomass, because of the costs of transporting biomass long distances. Hydro-electricity power schemes must be located where the existing elevation or natural fall is sufficient to be utilised to produce electricity and the catchment area has sufficient rainfall.

The guide does not mention the locational requirements of solar energy generation. However, from a layperson's perspective, provided that a site has a northern aspect and sunlight is not obstructed by vegetation, structures etc., it seems to me that its solar energy resource should be similar anywhere the district.

Based on the guidance provided by EECA, wind and hydro generation are the two types of REG that generally need to be located on elevated ground. In relation to wind energy, this guidance is supported by the Otago Median Annual Average Wind Speed map, produced by NIWA in 2012[9], which shows that the highest average wind speeds are found on elevated land. As the University points out, overlay zones – within which, under 2GP rules as notified, many types of REG are non-complying activities – cover a large proportion of the land area of Dunedin district, and an even larger proportion of the district's elevated land. This is particularly true of Significant Natural Landscape and Outstanding Natural Landscape overlay zones, and, to a lesser extent, scheduled Areas of Significant Conservation Value. Outstanding Natural Features and the natural coastal character overlay zones are far more limited in spatial extent.

In terms of implementing NPS REG, therefore, there is a strong argument in favour of providing for REG activities as discretionary in overlay zones, particularly those of large extent i.e. SNLs, ONLs and ASCVs, because of the availability of renewable energy resources within these overlays.

The table below indicates the exact proportions of Dunedin district covered by overlay zones and scheduled sites in which regional scale renewable energy generation and community scale wind energy generation are non-complying in the proposed 2GP. In ONCCs, HNCCs and ONFs, community scale solar and hydro, and all on-site energy generation, is also non-complying. The total area of Dunedin district is 328087ha, and the total area over 300m above sea level is 192033ha.

	ONCC, HNCC and ONF combined	NCC	ONL	ASCV	SNL	ONCC, HNCC, ONF, NCC, ASCV, SNL combined[10]
Area (ha)	2132	1798	86823	19760	32951	125791
% area of Dunedin district	0.6%	0.5%	26.5%	6%	10%	38%

[9] https://www.niwa.co.nz/climate/national-and-regional-climate-maps/otago

[10] Note that several of these overlays overlap. The combined total takes this into account and does not count overlapping areas more than once.

Area over 300m above sea level (ha)	258	Nil	60572	10301	18222	79589
% area of Dunedin district over 300m above sea level	0.1%	Nil	31.5%	5.4%	9.5%	41%

Balancing protection of special values with provision for REG activities

In my opinion, the critical matter in resolving the question of appropriate activity status for REG activities in overlay zones and scheduled sites that have been identified to protect the natural character of the coastal environment, outstanding natural features and landscapes, areas of significant indigenous vegetation and significant habitats of indigenous fauna, and historic heritage, is to determine whether more weight should be given to recognising and providing for the matters of national importance set out in section 6, or the implementation of a national policy statement.

The following case law is directly relevant to this matter:

Mainpower NZ Ltd v Hurunui District Council [2011] NZEnvC 384

In this case, the site of a proposed wind farm was held to be an outstanding natural feature. The court discusses the conflict between implementation of NPSREG and provision for section 6 matters in paragraphs 56 and 57 of its decision as follows:

[56] "The provisions of the National Policy Statements together with the other statutory documents guide decision-makers when making value choices. The preamble to the NPS REG states that in some instances the benefits of renewable electricity generation can compete with matters of national importance as set out in section 6 of the Act, and with matters to which decision-makers are required to have particular regard under section 7. The objectives and policies are intended to guide applicants and decision-makers on an application for resource consent. However, there is nothing in its language or provision that creates a presumption that the matters of national significance in the NPS REG are to be given greater weight than those in section 6 or to prevail over the statutory purpose."

[57] "We agree with and adopt what was said by the Board of Inquiry in the Upper North Island Grid Upgrade Project (cited with approval by the Board of Inquiry — Renewable Electricity Generation at paragraph 52) that:

"Subject to Part 2, the NPS is to be applied by decision-makers under the Act, but not as a substitute for, or to prevail over, the RMA's statutory

purpose or the statutory tests. It is a relevant consideration to be weighed along with other considerations in achieving the sustainable management purpose of the Act. The objectives and policies of the national policy statement are intended to guide decision-makers in considering requirements for designations for transmission activities and in making decisions on resource consents."

I consider that the Environment Court's discussion of this matter indicates clearly that the objective of NPS REG should not take precedence over section 6.

A final factor that I consider to be relevant to REG activity statuses in Dunedin is the need, in the context of national electricity supply and demand, for additional regional scale REG capacity in the district. Regional scale generation is likely to be connected to the National Grid, and therefore to contribute to the electricity available for transmission nationally. In 2014, the South Island, which accounts for just over a quarter of New Zealand's population and just over one third of its electricity demand, produced 44% of the country's electricity – over 99% of this capacity comes from renewable resources. The Clutha River hydro schemes at Clyde and Roxburgh together contribute 22% of the South Island's generation capacity (784MW). Electricity generation from the Manapouri Power Station makes up 26% of the South Island's total, and most of this goes to the Tiwai Point Aluminium Smelter, which has been threatened with closure in recent years, and is currently guaranteed to stay open only until 2018. Given this context, it is questionable whether additional National Grid-connected REG capacity is likely to be proposed in Dunedin district in the near future.

My recommendations for change, or no change, to the notified activity status of different types of REG in different areas of the city, in response to the University's submission, are based on:

- Considerations of the likely need of each type of REG activity to locate in the area in question.
- Assessment of the likely magnitude of effects in each case, including Michael Moore's assessment of likely effects on landscape and natural character values in the relevant overlays.
- My assessment of the guidance in case law in relation to the balancing of section 6 matters and national policy statements.
- The broader context of New Zealand's electricity sector, to which the South Island and Otago currently contribute disproportionate amounts of renewable electricity in comparison to energy demand, and the possible imminent over-supply of electricity in the South Island if the Tiwai smelter closes.

The following paragraphs provide specific reasoning behind my recommendations, with respect to the various activities in different zones, overlay zones and scheduled sites.

<u>Rule 5.3.2.18-20 and 5.3.2.23: Regional scale REG and biomass generators - stand alone outside rural and industrial zones</u>

As discussed above, in relation to Policy 5.2.1.10, I consider that non-complying activity status is appropriate in this case. Regional scale REG is unlikely to seek to locate in these zones. Given the existing level of amenity in these zones, any activity of this kind would be likely to have significant adverse effects on amenity.

<u>Rules 5.3.2.12 to 5.3.2.23: REG activities in ONFs, ONCCs and HNCCs</u>

All REG activities, including energy resource investigation devices, on-site energy generation, all community and regional scale energy generation, and biomass generators - stand alone, are proposed to be non-complying in these overlay zones under Rule 5.3.2.

In his evidence, Michael Moore discusses the values of these overlays and considers the likely effects of each type of REG in turn, before giving his recommendation on an appropriate activity status. The activities that are proposed to be non-complying in these overlays range from small to potentially very large, so the magnitude of their effects on landscape and natural coastal character values would also be extremely variable. However, given the very high values accorded to these areas, and their significance in terms of sections 6a and 6b of the RMA, Mr Moore considers that in each case, he considers non-complying status to be justified.

As discussed in section 5.1.12.4 in relation to the activity status of network utilities structures - large scale in these areas, in addition to Mr Moore's analysis I note that:

- ONF, HNCC and ONCC overlays cover very little land within Dunedin. This will reduce the extent to which they are appropriate for larger scale REG, and also means that, although these areas may be appropriate for smaller scale REG from the point of view of resource availability, non-complying activity status in these overlays does not greatly constrain locations available for REG.

- ONF, HNCC and ONCC overlays are almost entirely without existing development and uninhabited. This means that there is unlikely to be demand for on-site energy generation.

Overall, I consider that non-complying activities status should be retained for these activities.

<u>Rules 5.3.2.16, 5.3.2.18-20 and 5.3.2.23: Community scale wind generators, regional scale REG and biomass generators - stand alone in scheduled heritage sites and heritage precincts</u>

Community scale wind generators, regional scale REG and biomass generators - stand alone are unlikely to seek to locate in these areas. Given the heritage values of these areas, which are nationally important under section 6f of the RMA, these activities would be likely to have significant adverse environmental effects. Therefore, I consider that non-complying activity status is appropriate in all these cases.

<u>Rules 5.3.2.16, 5.3.2.18-20 and 5.3.2.23: Community scale wind generators, regional scale REG and biomass generators - stand alone in ASCVs</u>

ASCVs cover 6% of Dunedin's area, much of this being elevated land; 5.4% of Dunedin's land above 300m is contained within ASCVs. It is therefore possible that REG, in particular wind and hydro generators, may seek to locate within these areas. Solar and biomass generators would be far less likely to need to locate in ASCVs in order to access energy resources.

ASCVs have been identified for protection in the 2GP due to the presence of significant indigenous vegetation and/or significant habitats of indigenous fauna. They are therefore of national importance under section 6c of the RMA. With regard to the likely effects on ASCVs of each REG activity in question, I consider that, together with associated access roads or tracks:

- Regional scale solar panels (consisting of over 500m^2 of ground mounted arrays) are likely to cause the disturbance of indigenous vegetation, may involve significant earthworks, and have the potential to displace indigenous fauna from their habitats.
- Regional scale hydro generators (consisting of a dam of over 2m in height, and/or an area of stored water over 200m2, and/or an installed capacity of over 4MW) would modify waterways, and may involve significant earthworks.
- Community scale wind generators (consisting of any wind generator that does not meet the definition of on-site generation, and does not exceed 3 turbines of each of max 125m in height or 5 turbines of 85m each of max in height) and regional scale wind generators (i.e. generators that exceed the community scale threshold) may involve significant earthworks and vegetation clearance, and may cause disturbance to birds and other fauna.
- With respect to Biomass generators – stand alone, I note that, as stated in section 6.5, the discussion and recommendations in response to submission points on biomass energy generation have not yet been completed. These will be made available as soon as possible as part of an addendum to this report. The activity status of biomass energy generation in all zones will be discussed in the addendum.

Taking the factors above into account, I consider that non-complying activity status is appropriate for community scale wind generators and regional scale REG in ASCVs.

<u>Rules 5.3.2.16, 5.3.2.18-20 and 5.3.2.23: Community scale wind generators, regional scale REG and biomass generators - stand alone in NCCs and ONLs</u>

NCC overlay zones, located in coastal areas, may be suitable for wind energy generation. However, they are unlikely to be suitable for hydro generation, since they are generally not located near elevated land. Solar and biomass generators would also be unlikely to need to locate in NCCs in order to access energy resources. NCCs are limited in spatial extent (0.5% of the total area of the city).

ONLs cover 26.5% of Dunedin's land, and 31.5% of the land over 300m above sea level, and therefore wind and hydro generation may seek to locate there. Again, solar and biomass generators would be less likely to need to locate in ONLs in order to be viable. Given that ONLs are generally located some distance away from Dunedin's urban areas, they may be less attractive locations for community-scale wind generators.

Both NCCs and ONLs have been identified to recognise and provide for section 6 matters. In his evidence, Michael Moore considers the University's request to amend the non-complying status of community scale wind generators (pp14-15), regional scale wind generators (pp16-17), hydro generators (pp25-26) and solar panels (pp29-30). In each case, he considers that non-complying activity status is justified, based on the nationally important values of the overlays and their sensitivity to effects.

As noted above, given the existing contribution of Otago and the South Island as a whole to NZ's renewable electricity generation, together with the possible closure of Tiwai smelter, it is questionable whether additional regional scale REG is likely to be proposed in Dunedin district within the lifetime of the 2GP.

Taking into account the factors above, I consider that non-complying activity status is appropriate for community scale wind generator and regional scale REG in ONLs.

Rule 5.3.2.16: Community scale wind generators in SNLs

In terms of the likelihood of this activity seeking to establish in SNLs, I note that this overlay zone covers 10% of the city's land and 9.5% of the land over 300m. Also, SNLs are generally located close to the energy demand of Dunedin's most populated areas. Given that the site of Blueskin Energy Limited's proposed wind energy development at Porteous Hill is within an SNL, it is clear that these areas can be attractive to this type of activity.

Michael Moore has provided evidence in relation to the University and BRCT's requested change to the activity status of wind generators – community scale in SNLs is as follows (pp14-15 of Mr Moore's evidence):

I assess community scale wind generation activities as having the potential for significant adverse effects in the rural landscape generally. The significance of adverse effects increases as the overlays identified to protect natural character and landscape values are impacted. In my opinion, it is appropriate that the activity status allows for an acceptably rigorous assessment to be made as to the specific effects on the identified values in each situation.

In my opinion, non-complying activity status is appropriate, given the scale of the structures provided for, their potential for significant adverse effects and the fact that the overlays have significant natural character and landscape values. This is particularly the case for the overlays that have been identified to give effect to RMA section 6 matters (matters of national importance) i.e. NCC, HNCC, ONCC, ONL and ONF. In my opinion, either non-complying or discretionary status could be appropriate in the case of SNL's (identified to give effect to RMA section 7 matters), as long as the assessment matters are appropriate. As far as landscape and visual matters are concerned, I believe that the proposed discretionary activity assessment matters (Rule 5.9.2.3) adequately cover the matters to be considered as they include consideration of the objectives and policies of the overlay zone.

Examples of community scale wind generators may vary greatly in scale. The largest examples would consist of either five turbines each with a height of 85m, or 3 turbines each with a height of 125m (the maximum threshold for wind generators – community scale). However, proposals may be smaller in scale. Data from a range of smaller scale wind farms in New Zealand is shown below:

Name	**Location**	**Year of construction**	**Operator**	**Capacity**	**Turbines**	**Hub height**	**Blade length**	**Total height**
Southbridge	Southbridge, Canterbury	2004	Energy3	100kW	1 x 100kW	45m (lattice)	10m	55m
Chatham Islands	Chatham Islands	2010	CBD Energy	450kW	2 x 225kW	55m	15m	70m
Gebbies Pass	Banks Peninsula	2003	Windflow Technology	500kW	1 x 500kW	30m	16.2m	46.2m
Weld Cone	Ward, Marlborough	2010	Energy3	750kW	3 x 250kW	30m	13m	43m

Lulworth	Ward, Marlborough	2011	Energy3	1MW	4 x 250kW	30m	13m	43m
Brooklyn	Wellington	1993	Meridian	225kW	1 x 225kW	31.5m	13.5m	45m
Horseshoe Bend	Roxburgh, Central Otago	2009	Pioneer Generation	2.25MW	3 x 750kW	47m	Diameter 44m	69m

Although any of these examples would be likely to have more than minor adverse effects on the values of an SNL, not every proposal will have the same degree of effect. There may also be mitigating factors that reduce the magnitude of the effect, such as:

- Location of turbines away from ridgelines
- Distance of turbines from dwellings, public roads and other viewing places

Overall, taking the matters above into account, I consider that discretionary activity status, together with assessment rules that include consideration of the objectives and relevant policies for Significant Natural Landscape overlay zones, is more appropriate than non-complying for community scale wind generators in SNLs, to allow decision makers to weigh up all of the following factors:

- The extent of the effect on the protected values of the SNL
- Any factors that mitigate these effects, including the number and height of turbines, and the location of turbines in relation to ridgelines, dwellings, public roads and other viewing points, and
- The need for the activity to be located at the proposed site in order to use a wind energy resource.

<u>Rules 5.3.2.18-20 and 5.3.2.23: Regional scale REG and biomass generators – stand alone in SNLs</u>

As noted above, SNLs cover 10% of the city's land and 9.5% of the land over 300m, and therefore wind and hydro REG may seek to establish there, while solar and biomass generation would have less reason to locate in these areas. However, the broader context of the electricity supply and demand in the lower South Island may make it less likely that regional scale REG will be proposed in Dunedin district within the lifetime of the 2GP.

In his evidence, Michael Moore considers the University's request that non-complying status be amended for these activities on pp15-17 (wind), pp24-26 (hydro) and pp29-30 (solar). In each case, while acknowledging that SNLs have been judged as having lesser landscape values than ONLs and ONFs, and are protected to give effect to section 7 of the RMA rather than section 6, he considers that the notified activity status is appropriate. His assessment is based on the likely magnitude of effects of the activities on landscape values, given the scale of structures involved.

Taking the above factors into account, I consider that non-complying activity status should be retained for these activities in SNLs.

Chapter 10 policies

Although not specifically requested by the University, I consider that amendments to certain Chapter 10 policies that apply to REG activities that are restricted discretionary or discretionary activities in ASCVs, NCCs, ONLs and SNLs would be appropriate and would help to achieve the outcome sought in relation to enabling REG. I consider that these changes would enable REG and give more recognition to its need to locate where energy resources are available, while maintaining protection for recognised natural values.

In relation to Policy 10.2.1.10, which applies to REG activities in ASCVs, I recommend that the wording be amended to make clear that the policy applies only in ASCVs, and not in the city as a whole, and also to allow for adverse effects on identified biodiversity values that are 'no more than minor' rather than 'insignificant'. I consider that this wording allows for a more balanced assessment of effects, taking into account both the magnitude of any effect and any mitigation or remedying measures proposed, in order to establish whether, overall, effects are 'no more than minor'.

In relation to Policy 10.2.3.10, which applies to REG activities in NCCs, Policy 10.2.5.6, which applies to REG activities in ONLs, and Policy 10.2.5.7, which applies to REG activities in SNLs, I recommend that these policies be amended as shown below to recognise that there may be 'no practicable alternative locations' for REG activities and that, in these cases, the activities should be allowed provided that any adverse effects on recognised natural coastal character or landscape values are 'adequately mitigated'.

The recommended amendments to Chapter 10 policies will result in consequential amendments to the assessment rules in Chapter 10 that paraphrase these polices, which will have the effect of making the assessment rules more enabling of REG.

Rule 5.5 Performance standards

I do not consider it necessary to amend these performance standards to provide for and enable REG, as requested by the University. The performance standards that are specific to energy generation are Rule 5.5.10 On-site Energy Generation Design Standards, 5.5.11 Reflectivity (which applies to wind turbines) and 5.5.12.1 Boundary Setbacks (which applies to wind generators - community scale). However, I do recommend changes to these rules in response to other submission points, discussed in the on-site energy generation and community scale energy generation sections below.

I consider that these performance standards, including amendments in response to submissions, are enabling of REG. I note that:

- Performance standards allow for 2 X 5kW turbines to be established in rural zones, and 1 x 5kW turbine in rural residential zones, as a permitted activity, provided there is enough room on the site to meet the setback from boundaries.
- In rural zones, both hydro generators - on-site generation and hydro generators - community scale are permitted activities. Hydro generation is unlikely to be viable outside the rural zones. 2GP rules allow for generators consisting of a dam of up to 2m high, and/or stored water of up to 200m^2 in surface area, and/or 4MW of installed capacity, to be established as of right in the rural zones (although rules in the Regional Plan: Water for Otago also apply to these activities, and may result in consent requirement from the ORC).
- In all zones, solar panels with a maximum area of 200m^2 may be installed as of right.

ATTACHMENT: Statement of Agreed Facts – Planners Conferencing prepared by Michael Garbett dated 22 May 2017

In the Environment Court of New Zealand
Christchurch Registry

ENV-2016-CHC-47

Under	the Resource Management Act 1991 (**RMA**)
In the matter of	an appeal under section 120 of the RMA
Between	**Blueskin Energy Limited**
	Appellant
And	**Dunedin City Council**
	Respondent

Statement of agreed facts – planners' conferencing

22 May 2017

Respondent's solicitor:
Michael Garbett
Anderson Lloyd
Level 10, Otago House, 477 Moray Place, Dunedin 9016
Private Bag 1959, Dunedin 9054
DX Mail: YX10107 Dunedin
P + 64 3 477 3973| f + 64 3 477 3184
michael.garbett@al.nz

anderson lloyd.

The following represents the agreed facts:

General application information

1 The application site is located at Porteous Road, Warrington, Dunedin.

2 The turbine specifications are those set out in the evidence of Mr Scott Willis at paragraph 76 as follows:

Project attribute	Appeal proposal
Manufacturer	Enercon GmbgH
Turbine type	E-82 E4
Nominal Power	3000kW
Total nominal power	3000kW
Hub Height	68.91m
Rotor diameter	82m
Total height	110m
IEC wind class[1]	IIA and IA
Rotor blade length	38.8m
Swept area	5281m^2
Pitch control	One independent electrical pitch system per rotor blade with dedicated emergency power supply
Total Energy yield	7440MWh annually
Foundation	Flat foundation without buoyancy Concrete volume 416m^3
Colour	Matte RAL7035
Ground-Screened Night Lights	Yes
Earthworks	Track formation, laydown area (20x40m) and foundations for 1 platform.

3 The three nearest houses to the proposed turbine site are:[2]

(a) 110 Porteous Road (650m away from the proposed turbine);

(b) 90 Pryde Road (682m away from the proposed turbine); and

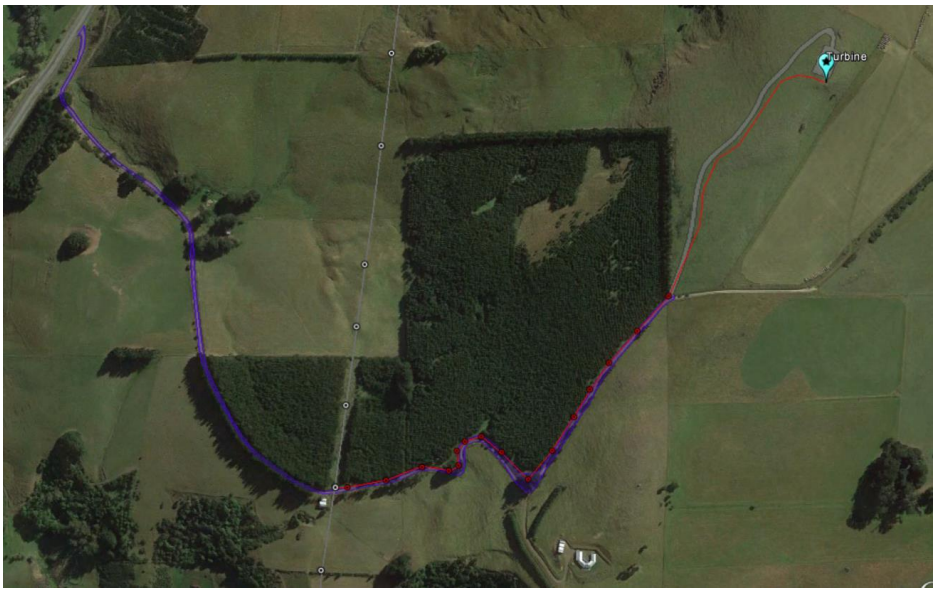
[1] IEC refers to the International Electrotechnical Commission standard for wind turbines. 11A class for example means Medium wind - Higher Turbulence. Wind classes determine which turbine is suitable for the normal wind conditions of a particular site. They are mainly defined by the average annual wind speed (measured at the turbine's hub height), the speed of extreme gusts that could occur over 50 years, and how much turbulence there is at the wind site.

[2] Refer Brief of Evidence of Dr Stephen Gordon Chiles at page SCG-007

(c) 22 Pryde Road (844m away from the proposed turbine).

4 Transmission of the electricity generated will occur via underground line within the application site then via overhead lines within Porteous Hill Road Reserve. The indicative alignment of the transmission infrastructure is identified below.[3]

Blueskin Bay – Development Overview



The environment

5 Porteous Hill summit is 401m above sea level and is approximately 2.5km from Blueskin Bay and 2km from the open coast north of Warrington. Hammond Hill (436m above sea level) is located approximately 1.6km to the north.

6 State Highway 1 runs approximately 700 to the west of the site.

7 The summit of Porteous Hill is a broad rolling summit that is open and covered predominantly in pasture. There is significant rock outcropping within the application site. Aside from fences and the wind monitor mast there are no structures on the hilltop.

8 The lower slopes to the south and east are a patchwork of pasture, native and exotic scrub, exotic woodlots, shelterbelts and scattered native trees. The area to the north and east are more dominantly pasture. There is an area of native bush on the north east side of the hill.

[3] Refer Brief of Evidence of Scott Matthew Willis at figure 4, page SW-029

Site zoning

Operative District Plan

9 The subject site is zoned **Rural** in the operative Dunedin City District Plan. Part of the eastern portion of the site is within the North Coast Coastal Landscape Preservation Area (**CLPA**), although the turbine will not be sited within the CLPA. There are no other pertinent features identified in the District Plan on the site or within the immediate area.

Proposed District Plan (2GP)

10 The Proposed 2GP was notified on 26 September 2015. Under the 2GP, the proposed turbine is located in the **Rural Coastal** zone and overlain by the Seacliff Significant Natural Landscape (**SNL**). Ridgeline and wahi tupuna notations also apply over the wider turbine site. The 2GP's mapping of the coastal environment does not extend over the turbine site.

Activity status

11 The application is for a non-complying activity under Rule 22.5.4 of the Operative Dunedin District Plan. Wind turbines are not specifically provided for and therefore the activity status defaults to non-complying.

Unresolved issues

12 As requested by the Court[4], please:

> … conference on the following:
>
> (a) to agree on a bundle of relevant planning instruments;
>
> (b) to identify the date that each of those planning instruments were notified and became operative (the court wishes to know whether and to what extent the planning instruments have progressively implemented Part 2 of the Act through the National Policy Statement and successively lower order documents); and
>
> (c) given that this is a non-complying activity under the operative and proposed District Plan, I assume (and I may be wrong) there is no direct policy support for the windfarm activity *per se*. With reference to the words used in the objectives and policies to identify the weight given to the provisions, in particular those addressing effects on the environment. Are the policies directive or prescriptive as to environmental outcomes or not?

[4] Record of Pre-Hearing Conference dated 14 March 2017, para [31]

13 In conjunction with the Court's request at (b) above, identify whether and to what extent lower order planning instruments implement higher order instruments.

14 In conjunction with the Court's request at (c) above, identify any relevant provisions in the agreed bundle of planning instruments which are subject to challenge or appeal.

15 Identify the weighting that should be given to the Operative District Plan provisions and the Proposed District Plan Provisions.

16 Discuss the plans' identification of the site in relation to the coastal environment.

17 Consider recommended conditions from the Applicant and whether these are supported, and if not why not, and what could be changed.

18 Identify what is agreed, and what is not with reasons.

Dated this 22nd day of May 2017

M R Garbett
Counsel for Dunedin City Council