

Hearing: at Palmerston North on 26 and 27 March 2012

DECISION: PART 2 – LANDSCAPES AND NATURAL FEATURES

Counsel and parties participating in this topic:

T L Hovell for Genesis Energy Ltd

A J L Beatson and N J Garvan for Meridian Energy Ltd

J C Campbell and J A Munro for Mighty River Power Ltd

S J Ongley and A Camaivuna for the Minister of Conservation

L C R Burkhardt for TrustPower Ltd

W J Bent – s274 party

A M Mildon for herself, and for R G Mildon, Huatau Marae and Tararua Aokautere
Guardians – s274 parties

J W Maassen and N Jessen for the Manawatu-Wanganui Regional Council



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Introduction

[2-1] This topic had two principal points requiring resolution. First, what provisions would be sufficient and appropriate to address TrustPower Ltd's interest in securing a policy pathway for *repowering* [ie the replacement of existing turbines] its existing windfarms, known as T1 and T2, at the northern end of the Tararua Ranges, to the east of Palmerston North city. Secondly, whether POP's Policy 7-7 should be in the form as resolved at Court-assisted mediation, or in an alternative form proposed by some of the participating energy companies.

TrustPower's position – repowering of its existing windfarms

[2-2] TrustPower wished to see more recognition of its existing investment in the Tararua windfarms and did not want to be forced to, figuratively if not literally, start afresh when it comes time to replace the existing turbines. It feared that might come about because, as seems generally accepted, the northern Tararuas are at or close to windfarm saturation point and cumulative adverse effects are large on the planning horizon. Its immediate concerns with Policy 7-7 (set out in para [2-6]) were that it might be *triggered* by its repowering of the existing windfarms.

[2-3] During the course of the hearing TrustPower and the Council were able to agree on a formula of words which satisfied them both. In a joint memorandum, this was presented to us as:

Amend Explanation to Policy 7-7 by adding the following text: (Insert at end of fourth paragraph in 7.7)

In the application of Policy 7-7(aa) to the repowering of existing wind farms within their consented site or footprint, the assessment of cumulative landscape and visual effects and their significance should not be limited to the consideration of one factor, such as changes in height. Instead the changes to the existing environment should be considered in their entire context including any benefits from reduced density and a more visually coherent pattern of development with respect to the characteristics and values of the ONFL. In this context, 'repowered' means the replacement of turbines that have reached the end of their economic life with updated turbine technology to continue to make the best use of the available energy resource.

Amend Policy 3-4 Renewable Energy by adding the following clauses:

(v) the benefits of enabling the increased generation capacity and efficiency of existing renewable electricity generation facilities

(v) the logistical or technical practicalities associated with developing, upgrading, operating or maintaining an established renewable electricity generation activity



Amend the Explanation to Policy 3-4 by adding the following text (Insert at end of first paragraph in 3.7.1)

In relation to the application of Policy 3-4(v), 'upgrading' has the ordinary meaning of the word, as used in the National Policy Statement on Renewable Electricity Generation 2011. [We note that the NPS does not define the term 'upgrading' and we proceed on the assumption that the parties meant no more than that the term should be given its ordinary meaning of 'raising to a higher standard'].

[2-4] The agreement contained, as one might expect, the proviso that if the Court was persuaded to remove or make more significant changes to Policy 7-7(aa) then that formula may require revision. No other party overtly disagreed with that resolution, so far as it affects the repowering of existing windfarms, and neither do we. Subject to the wider issues relating to Policy 7-7, this agreement deals with the first issue requiring resolution.

The content of Policy 7-7

[2-5] The issue of *Landscape* appears in Chapter 7 of POP, the title of which is *Indigenous Biological Diversity, Landscape and Historic Heritage*. Although the debate centres on Policy 7-7, the Objective to which it gives effect is of course also relevant. As amended at Court-assisted mediation, it provides:

Objective 7-2: Outstanding natural features and landscapes, and natural character

- (a) The characteristics and values of:
 - (i) the Region's outstanding natural features and landscapes, including those identified in Schedule F, and
 - (ii) the natural character of the coastal environment, *wetlands, rivers and lakes* and their margins
 are protected from inappropriate subdivision, use and development.
- (b) Adverse effects including cumulative adverse effects, on the natural character of the coastal environment, *wetlands, rivers and lakes* and their margins, are:
 - (i) avoided in areas with outstanding natural character, and
 - (ii) avoided where they would significantly diminish the attributes and qualities of areas that have high natural character, and
 - (iii) avoided, remedied or mitigated in other areas.
- (c) Promote the rehabilitation of or restoration of the natural character of the coastal environment, *wetlands, rivers and lakes* and their margins.

[2-6] Also as modified at Court-assisted mediation, the two Policies related to Objective 7-2(a)(i) now read as:



Policy 7-7: Regionally outstanding natural features and landscapes

The natural features and landscapes listed in Schedule F Table F1 must be recognised as regionally outstanding and must be spatially defined in the review and development of district plans. All subdivision use and development directly affecting these areas must be managed in a manner which:

- (aa) avoids significant adverse cumulative effects on the characteristics and values of those outstanding natural features and landscapes, and
- (a) except as required under (aa), avoids adverse effects as far as reasonably practicable and, where avoidance is not reasonably practicable, remedies or mitigates adverse effects on the characteristics and values of those outstanding natural features and landscapes.

Policy 7-7A: Assessing outstanding natural features and landscapes

The Regional Council and Territorial Authorities must take into account but not be limited to the criteria in Table 7.2 when:

- (a) identifying outstanding natural features and landscapes, and considering whether the natural feature or landscape is conspicuous, eminent, remarkable or otherwise outstanding, and
- (b) considering adding to, deleting from, or otherwise altering, redefining or modifying the list of outstanding natural features or landscapes listed in Table F1 of Schedule F, or
- (c) considering the inclusion of outstanding natural features or landscapes into any district plan, or
- (d) establishing the relevant values to be considered when assessing effects of an activity on:
 - (i) outstanding natural features and landscapes listed in Table F1 of Schedule F, or
 - (ii) any other outstanding natural feature or landscape.

The relevant portions of Schedule F in the decisions version are these:

<p>(da) The skyline of the Puketoi Ranges defined as the boundary between the land and sky as viewed at a sufficient distance from the foothills so as to see the contrast between the sky and the solid nature of the land at the crest of the highest points along the ridges</p>	<ul style="list-style-type: none"> (i) Visual and scenic characteristics, particularly the visual prominence of the skyline in the eastern part of the Region (ii) Geological features, particularly the asymmetrical landform termed a cuesta
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<p>(ia) The skyline of the Ruahine and Tararua Ranges – defined as the boundary between the land and sky as viewed at a sufficient distance from the foothills so as to see the contrast between the sky and the solid nature of the land at the crest of the highest points along ridges. The skyline is a feature that extends along the Ruahine and Tararua</p>	<ul style="list-style-type: none"> (i) Visual and scenic characteristics, including aesthetic cohesion and continuity, its prominence throughout much of the Region and its backdrop vista in contrast to the Region’s plains (ii) Importance to tangata whenua and cultural values (iii) Ecological values including values associated with remnant and
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Ranges beyond the areas in (h) and (i) above	regenerating indigenous vegetation (iv) Historical values (v) Recreational values
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The references to ... *the areas in (h) and (i) above* in (ia) ... are to the Ruahine Forest Park and the Tararua Forest Park respectively.

Table 7.2, mentioned in Policy 7-7A as containing the criteria to be considered, is this:

Table 7.2 Natural Feature and Landscape Assessment Factors

Assessment factor	Scope
(a) Natural science factors	<p>These factors relate to the geological, ecological, topographical and natural process components of the natural feature or landscape:</p> <ul style="list-style-type: none"> (i) Representative: the combination of natural components that form the feature or landscape strongly typifies the character of an area. (ii) Research and education: all or parts of the feature or landscape are important for natural science research and education. (iii) Rarity: the feature or landscape is unique or rare within the district or Region, and few comparable examples exist. (iv) Ecosystem functioning: the presence of healthy ecosystems is clearly evident in the feature or landscape.
(b) Aesthetic values	<p>The aesthetic values of a feature or landscape may be associated with:</p> <ul style="list-style-type: none"> (i) Coherence: the patterns of Land cover and land use are largely in harmony with the underlying natural pattern of landform and there are no, or few, discordant elements of land cover or land use. (ii) Vividness: the feature or landscape is visually striking, widely recognised within the local and wider community, and may be regarded as iconic. (iii) Naturalness: the feature or landscape appears largely unmodified by human activity and the patterns of landform and land cover are an expression of natural processes and intact healthy ecosystems. (iv) Memorability: the natural feature or landscape makes such an impact on the senses that it becomes unforgettable.
(c) Expressiveness (legibility)	<p>The feature or landscape clearly shows the formative natural processes or historic influences that led to its existing character.</p>



(d) Transient values	The consistent and noticeable occurrence of transient natural events, such as daily or seasonal changes in weather, vegetation or wildlife movement, contributes to the character of the feature or landscape.
(e) Shared and recognised values	The feature or landscape is widely known and is highly valued for its contribution to local identity within its immediate and wider community.
(f) Cultural and spiritual values for tangata whenua	Māori values inherent in the feature or landscape add to the feature or landscape being recognised as a special place.
(g) Historical associations	Knowledge of historic events that occurred in and around the feature or landscape is widely held and substantially influences and adds to the value the community attaches to the natural feature or landscape.

The Council's position

[2-7] The Council supports the present text of Policy 7-7, or something very close to it, because it believes that it provides direction on the appropriate/inappropriate use and development of Outstanding Natural Features and Landscapes (ONFLs) to ensure that their qualities and values are not compromised. It also believes that the importance of renewable energy generation is well recognised and supported by Chapter 3 of POP.

Genesis' position

[2-8] Genesis operates the Tongariro Power Scheme on the central plateau of the North Island, and has also applied for resource consents to establish and operate the Castle Hill windfarm. Both are within, or partly within, the region. It also has substantial generating assets elsewhere in the country. Mr Hovell advised that his client's position was that in its present form Policy 7-7(aa) is generally inconsistent with the purpose of the RMA; that it fails to give effect to the National Policy Statement for Renewable Electricity Generation (NPSREG) (and s7(j)); that it is not the most appropriate way to achieve Objective 7-2; that the Policy's requirement of avoidance of cumulative adverse effects does not promote the sustainable management of resources, and that the Council's assessment of *inappropriate* (in terms of s6(b)) development in relation to ONFLs is flawed.

[2-9] The version of Policy 7-7 advanced as curing those shortcomings by the consultant planner called by Genesis, Mr Richard Matthews, is this:



Policy 7-7: Regionally outstanding natural features and landscapes

The natural features and landscapes listed in Schedule F Table F1 must be recognised as outstanding and must be spatially defined in the review and development of district plans. All subdivision, use and development:

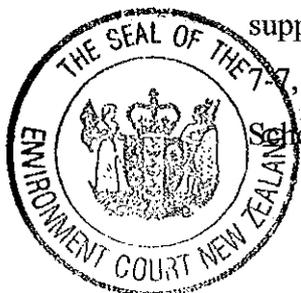
- i) within these areas must be managed in a manner which:
 - (aa) avoids significant adverse cumulative effects on the characteristics and values of those outstanding natural features and landscapes as far as reasonably practicable and, where avoidance is not reasonably practicable, remedies or mitigates those effects, and
 - (a) except as required under (aa), avoids, remedies or mitigates adverse effects on the characteristics and values of those outstanding natural features and landscapes.
- ii) directly affecting these areas must be managed in a manner which avoids, remedies or mitigates adverse effects on the characteristics and values of those outstanding natural features and landscapes.

The significant differences between his version and the post-mediation version are of course that his version would require *avoidance* of significant adverse cumulative effects caused by subdivision, use and development *within* the ONFLs, and then only *as far as reasonably practicable*, with remedy and mitigation as options. Further, his version would allow the options of avoidance, remedy and mitigation for subdivision, use and development *directly affecting* (but not necessarily within) the ONFLs.

[2-10] Mr Matthews expresses the view that ... *In some instances, avoidance may not be practicable, therefore the option to remedy or mitigate any potential adverse cumulative effects should be provided.* We cannot agree with that proposition, for the reasons we shall shortly discuss. In any event, given the lack of opposition to TrustPower's modified version, we take it that it is regarded as, at least, acceptable.

Mighty River Power's position

[2-11] Within the region, Mighty River Power Ltd (MRP) has consent for a windfarm at Turitea, somewhat to the south of the existing windfarms on the Tararua ranges to the east of Palmerston North, and it is in the course of seeking consent for a further windfarm on the Puketoi Range, east of Eketahuna. It also has hydro development interests on the Whangaehu River, north of Whanganui. Broadly, it supports Chapter 7 of POP but believes that two matters need improvement: – Policy 7-7, and the definitions of the Tararua, Ruahine and Puketoi Ranges as ONFLs in Schedule F.



[2-12] MRP points out, as do the other power companies, that electricity is essential to providing for the wellbeing of people and communities. Further, supplying electricity from renewable sources not only meets that need but also contributes to managing the effects of climate change, and the conservation of resources for the benefit of future generations. No one disputes those propositions.

[2-13] Ms Campbell goes on to submit that Policy 7-7 fails to give effect to Part 2 and the NPSREG – Policies C, E2 and E3 in particular, and that there is an internal conflict between Chapter 3 and Policy 7-7 of POP.

[2-14] The issue of the definitions of some ONFLs in Schedule F of POP was debated among the landscape architecture witnesses, and we shall discuss that as a discrete topic.

Meridian's position

[2-15] For Meridian, Mr Beatson and Ms Garvan make rather similar criticisms of Policy 7-7 and Schedule F. Dealing with the policy, the submission is that Objective 7-2(a) is quite consistent with s6(b) in speaking of *inappropriate use and development* but the Policy is at odds with the Objective because it effectively imposes a blanket prohibition on *any* use and development which brings about significant cumulative adverse effects on an ONFL. The Meridian position therefore is that significant cumulative adverse effects on an ONFL do not necessarily mean that the use or development causing those effects will be inappropriate in s6 terms, and that in adopting the present formula of Policy 7-7, the Council is creating an internal inconsistency within POP, and is failing to give effect to the Act.

[2-16] As between the energy companies, it can be seen that there are common themes in the issues they raise and we shall address the arguments in a common way also, rather than by addressing each set of submissions individually.



The section 274 parties' positions

[2-17] For the s274 parties she represented, Ms Mildon made it clear that they entirely agree with the position taken by the Council, and the evidence presented by Ms Clare Barton, the Council's planning witness, and Mr Clive Anstey, the Council's landscape witness, in support of it. She powerfully made the point that the physical and visual environment is much more than just *a view*, and that landscapes can range from the small and discrete to the bold and panoramic. She suggested that there could be no more obvious example of cumulative adverse effects than the southern Ruahine/northern Tararuas and the ... *conglomeration of disparate windfarms* ... along its skyline and ridges and spurs. She strongly disagreed with the view that that section of the skyline should be excluded from Schedule F(ia) on the basis that it was already strongly compromised. She maintained that, notwithstanding its present state, it remains an indivisible part of the panorama from the Manawatu plains.

[2-18] Mr John Bent was also entirely supportive of the Council's stance in respect of cumulative effects, reminding us of the Court's comment in *Outstanding Landscape Protection Society v Hastings DC* [2008] NZRMA 8 ... "If a consent authority could never refuse consent on the basis that the current proposal is ... *the straw that will break the camel's back*, sustainable management is immediately imperilled".

[2-19] Against that background we shall discuss the issues raised by the power company appellants, which can be grouped under generic heads.

Policy 7-7 – conflict with the NPS Renewable Electricity Generation 2011

[2-20] Section 62(3) RMA requires an RPS to give effect to a National Policy Statement (NPS). Turning to the NPSREG, it first confirms that the development and operation of renewable energy generation activities are a matter of national significance and are the objective of the NPS. The particularly relevant portions of this NPS appear to be:

- C. Acknowledging the practical constraints associated with the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities



Policy C1

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;
- (b) logistical or technical practicalities associated with developing, upgrading, operating or maintaining the renewable electricity generation activity;
- (c) the location of existing structures and infrastructure including, but not limited to, roads, navigation and telecommunication structures and facilities, the distribution network and the national grid in relation to the renewable electricity generation activity, and the need to connect renewable electricity generation activity to the national grid;
- (d) designing measures which allow operational requirements to complement and provide for mitigation opportunities; and
- (e) adaptive management measures.

Policy C2

When considering any residual environmental effects of renewable electricity generation activities that cannot be avoided, remedied or mitigated, decision-makers shall have regard to the offsetting measures or environmental compensation including measures or compensation which benefit the local environment and community affected.

E2 Hydro-electricity Resources

Policy E2

Regional policy statements and regional and district plans shall include objectives, policies, and methods (including rules within plans) to provide for the development, operation, maintenance, and upgrading of new and existing hydro-electricity generation activities to the extent applicable to the region or district.

E3 Wind Resources

Policy E3

Regional policy statements and regional and district plans shall include objectives, policies, and methods (including rules within plans) to provide for the development, operation, maintenance and upgrading of new and existing wind energy generation activities to the extent applicable to the region or district.

[2-21] So there is an initial acknowledgement that there may be practical constraints in both establishing new generating infrastructure, and operating, maintaining and upgrading existing infrastructure. And that is followed by a very clear acknowledgement in Policy C2 that there may be adverse environmental effects that



cannot be avoided, remedied or mitigated. In that case, the possibility of offsetting or compensation is specifically raised. But there is no affirmation that this sort of infrastructure occupies so special a place in the order of things that it may be established no matter what its effects may be. In other words, the regime that applies to generation infrastructure is the same regime that applies to other subdivisions, uses or developments, save for the additional factor of the NPS.

[2-22] It has to be accepted of course that the *constraints* in establishing and operating generation infrastructure can cut both ways. The infrastructure can only be established where the resource exists – generally in high and exposed places for wind, and generally in confined river valleys for hydro. Windfarms will therefore generally be prominently visible, and hydro dams may drown picturesque valleys, or channel otherwise naturally flowing rivers. As always in cases of sensitive receiving environments, it will be a matter of judgement as to which factor will hold sway: - the benefits of renewable generation on one side or, for instance ... *the protection of outstanding natural features and landscapes from inappropriate ... use, and development ...* in terms of s6(b), on the other.

[2-23] There really is no greater conflict or incompatibility between Policy 7-7 and the NPSREG than there is between s6(b) and s7(j). The two are reconcilable - both must be given their appropriate weight and a decision then must be made as to whether the proposed development would be *inappropriate* in that receiving environment.

[2-24] POP must be read as a whole and, when it is, it does not read as *thwarting* the NPS. While Policy 7-7 speaks of the recognition of ONFLs and the avoidance of one type of adverse effect, that does not mean that POP as a whole does not give effect to the NPS, any more than s6(b) could be said to fail to give effect to s7(j). If one reads, for instance, Chapter 3 of POP, it is clear that energy infrastructure is given its place in the scheme of things and that, as with any other RMA decision involving values and outcomes, it is to be weighed against other relevant factors.



Policy 7-7 – not the appropriate way to achieve Objective 7-2(a)

[2-25] Objective 7-2 is set out in full at para [2-5]. For ease of reference, we repeat the relevant portion here:

Objective 7-2: Outstanding natural features and landscapes, and natural character

(a) The characteristics and values of:

- (i) the Region's outstanding natural features and landscapes, including those identified in Schedule F, and
- (ii) the natural character of the coastal environment, *wetlands, rivers and lakes* and their margins

are protected from inappropriate subdivision, use and development.

(b) Adverse effects including cumulative adverse effects, on the natural character of the coastal environment, *wetlands, rivers and lakes* and their margins, are:

- (i) avoided in areas with outstanding natural character, and
- (ii) avoided where they would significantly diminish the attributes and qualities of areas that have high natural character, and
- (iii) avoided, remedied or mitigated in other areas.

[2-26] The energy companies largely relied upon the evidence of Mr Matthews and Ms Irene Clarke, a consultant planner, called by Meridian, in support of the argument that the Policy does not give effect to Objective 7-2 or, as it was put for Meridian, it is *at odds with* the Objective. Ms Clarke's evidence might be better considered under the next, and partially overlapping, topic. Mr Matthews' view is that the policy ... *provides no direct link that makes it clear that the characteristics and values of the region's ONFLs are to be protected from inappropriate subdivision, use and development.* He goes on to say that there is no policy which provides an assessment of what might be appropriate development in an ONFL, contrasting it with the guidance given in the treatment of natural character in Objective 7-2(b). That management guidance requires that adverse effects on areas with high natural character be avoided where practicable, or otherwise remedied or mitigated, but (a) gives no such guidance.

[2-27] We agree that there may be some difference between the approach to landscape and that of natural character in Objective 7-2, but we fail to see that it somehow renders Policy 7-7 invalid. We see no incompatibility between the Objective and the Policy for landscape and natural character.



Requiring avoidance of cumulative adverse effects does not promote sustainable management

[2-28] In beginning the discussion of *cumulative effects* we think we can do no better than to cite a portion of the evidence given by Mr Frank Boffa, a Landscape Architect called by TrustPower. It sets out what we understand to be the current thinking on what cumulative effects may actually be, and how to consider them. Mr Boffa's evidence was acknowledged by many of the other landscape architects at the hearing. He said this:

[6] In the context of landscape and visual effects, cumulative effects are generally considered in relation to additional changes resulting from a new wind farm in conjunction with other surrounding (existing and consented) wind farms. The current approach to assessment of cumulative effects tends to be an additive approach where the effects (even if only minor) of proposed subsequent activities are added to and assessed in conjunction with the effects of existing installations.

[7] This approach accords with the Parliamentary Commissioner for the Environment's (PCE) 2006 *Report Wind Power, People and Place*, which suggests that the consideration of cumulative effects requires the consideration of the effects of several wind farms located together and that the cumulative effects of wind farms relate particularly to landscape and visual impact ...

[8] The assessment of cumulative landscape and visual effects are often considered under the following headings –

- (a) Simultaneous effects – where more than one wind farm and/or parts of them and their component elements and infrastructure are seen in a single field of view.
- (b) Successive effects – where more than one wind farm and/or parts of them and their component elements and infrastructure are seen in successive views from a single viewpoint.
- (c) Sequential effects – where a sequence of full or partial views over wind farms and their component elements and/or infrastructure are seen when moving through the landscape (as along a road or highway).

[9] The *PCE in Wind Power, People and Place*, cites guidance published by the Scottish Natural Heritage as being the most comprehensive on cumulative effects. The guidance states that cumulative landscape and visual effects can arise from:

- The number of and distance between individual wind farms;
- How wind farms relate to each other visually;
- The overall character of the landscape and its sensitivity to wind farms; and



- The siting and design of wind farms.

[10] I tend to agree with the PCE in that the Guidance on how cumulative effects can arise looks to consider a wider range of factors rather than just how wind farms are viewed from particular locations. ...

[12] ... internal cumulative effects considerations tend to relate to the spatial composition of the turbines within a wind farm development relative to their overall visual coherence ... the consideration of internal cumulative effects tends to be focussed more on spatial design considerations relative to the development's 3 dimensional envelope and the patterns and appearance of the wind farm overall relative to this.

[2-29] In considering Policy 7-7(aa) and the cumulative effects of new or expanded windfarms, Mr Boffa goes on to say:

With respect to Policy 7-7(aa), which requires the avoidance of significant adverse cumulative effects, taken at face value this is a reasonable requirement where additional wind farms or the expansion of existing wind farms are proposed. *(He goes on to distinguish the repowering of existing windfarms but, as recorded, that has been dealt with).*

For the reasons set out elsewhere, we entirely agree with that view.

[2-30] Ms Campbell encapsulated the further point made by the energy companies (other than TrustPower) in her submission that because of the number of windfarms in the region now; the places where future windfarms are likely to be proposed; the nature of windfarms and the wide range of their possible cumulative effects, ... *any proposal in the region for a windfarm will almost certainly have a cumulative effect, and that the cumulative effect ... could well be considered significant.* The general position was that such an outcome would place an unreasonable burden on energy companies attempting to go about their business.

[2-31] We think that there are four responses to that submission. The first is that a cumulative effect will not necessarily arise from the construction of any other windfarm in the region. It would, for instance, be very difficult to mount a *cumulative effect* argument by adding the effects of a proposal in the Ruapehu District to those already existing on the Tararuas, east of Palmerston North.



[2-32] The second is that if there are cumulative effects on the receiving environment that, upon proper inquiry, are shown to be significant and to outweigh the acknowledged benefits of renewable energy generation, then it would be entirely proper to say ... *enough is enough*. That is exactly what the structure of the RMA provides for.

[2-33] The third response is to repeat that Policy 7-7 does not apply across the whole region – it is actually very site-specific. It applies only to those ONFLs listed in Table F1 of Schedule F and, insofar as practical impact on further windfarms is concerned, probably only to Item (da) – the skyline of the Puketoi Range; and Item (ia) – the skyline of the Ruahine and Tararua Ranges.

[2-34] Fourthly, it must be recognised that these provisions of POP were not drafted against the background of a blank regional canvas. The skyline and slopes of the Tararuas and Ruahines, south and east of Palmerston North, already accommodate more wind turbines per hectare than anywhere else in the country. It could reasonably be argued that the area has long since given effect to the NPSREG, and to s7(j), and that the time is near (some say it has passed) when, to give effect to other provisions of Part 2 – s6(b) in particular - decision-makers will have to say ... *enough is enough*.

[2-35] Ms Clarke noted that Objective 7-2 is not under appeal and is, in her view, an appropriate method of achieving the purpose of the Act. But it is her view that ... *Policy 7-7 is neither effective, efficient nor appropriate with reference to Objective 7-2(a)*. In summary, she considers that it introduces an approach to cumulative effects which the Objective does not seek; that it potentially predetermines what is inappropriate subdivision use or development, and that it does not efficiently achieve the objective because Schedule F, defining ONFLs and their boundaries, is not accurate.

[2-36] Ms Clarke acknowledges the importance of considering cumulative effects, but asserts that a requirement to avoid all significant cumulative effects goes further than directing an appropriate consideration of them. She sees that as ... *a directive*



and restrictive approach in how to protect the ONFL which is inconsistent with Part 2. Similar views were expressed by other witnesses called by the energy companies.

[2-37] The thrust of the submissions on the topic was that the focus on only *avoid* in Policy 7-7 seeks to recast Part 2 and that can only be done where there is a ... *strong evidential basis* ... and where all relevant factors have been considered. In working through the argument it is helpful to bear clearly in mind that Policy 7-7 does not speak of *every* adverse effect being avoided. It is much more precise than that, requiring the avoidance only of ... *significant adverse cumulative effects on the characteristics and values of those outstanding natural features and landscapes*. Those being the natural features or landscapes listed in Schedule F.

[2-38] Taking *significant* to have the meaning ascribed in the Concise Oxford – *extensive or important enough to merit attention* – what is to be avoided are adverse effects of that magnitude which are *cumulative* – ie which are additional to other adverse effects. So the end result is that, on only the defined features in this extensive region, additional adverse effects on characteristics and values are to be avoided, and the options of remedying or mitigating that category (and that category only) of adverse effect are not available.

[2-39] As a matter of principle, if it is open to a local authority, pursuant to s77A and s77B, to classify activities as *permitted* (at one end of the spectrum) to *prohibited* (at the other), then it seems unexceptionable for a local authority to say, in effect, ... *this category of land cannot absorb further significant adverse effects on its characteristics and values, even if some remedy or mitigation can be offered*. We know of no requirement in the law that all of the options to avoid, remedy or mitigate any adverse effect must always be recited, no matter what the nature of the effect may be, how minor or serious it may be, or how delicate or robust the receiving environment.

[2-40] A similar situation arose in *Wairoa River Canal Partnership v Auckland RC* [2010] NZEnvC 309. There, the ARC had adopted a Policy in its RPS which provided:



Countryside living avoids development in those areas or parts of areas identified, in the RPS, including Appendix B, or in regional or district plans, as having significant ecological, heritage or landscape value or high natural character and that contain:

- (a) significant ecological value; or
- (b) significant historic heritage (excluding significant historic built heritage); or
- (c) outstanding natural features and landscapes; or
- (d) high natural character;

In holding that the Policy was a proper one to be included, the Court said:

[14] It is to be noted that an RPS may not, of itself, contain rules that prohibit, regulate or allow activities. But it may contain policies and methods directed to a particular end or outcome, with those policies and methods to be given effect through a District Plan, which must not be inconsistent with the RPS: - see s75(2)(b) and *North Shore CC (Re an Application)* [1995] NZRMA 74. Similarly, a *policy* may be either flexible or inflexible, broad or narrow: - see *ARC v North Shore CC* [1995] NZRMA 424.

[15] In examining the proposed Policy 3 itself, the first thing to be noted is that it does not attempt to impose a prohibition on development - to *avoid* is a step short of to *prohibit*. Secondly, the *avoidance* is quite strongly qualified. CSL is to be avoided only in areas identified in the planning documents and that actually do contain significant ecological values; significant historic heritage; outstanding natural features or landscapes, or high natural character.

[16] Certainly, the use of the term *avoid* sets a presumption (or a direction to an outcome) that development in those areas will be inappropriate and that, in both the linguistic and legal senses, really answers the point that the appellants attempt to make.

[2-41] Mr Hovell, and Mr Beatson and Ms Garvan, suggested that this decision could and should be distinguished, but we do not agree. Its reasoning was not activity specific, nor Auckland metropolitan area specific, and is applicable whether or not a s6 matter is in issue. That said, of course we do not rely on the *Wairoa* decision as an *authority*. It is simply the decision on an appeal in which a similar argument arose. In this instance, the NPSREG does not overwhelm all other planning considerations and it is, in any event, given effect to in the RPS and Plan, as we have discussed elsewhere. We simply consider that the *Wairoa* decision accurately states the relevant law, and that we should apply the same view here.



[2-42] Mr Hovell submitted that Policy 7-7(aa) was determined ... *by Council in reference to s6(b) in a vacuum...* and he referred us to the evidence of Ms Barton at paras 14 and 82. We have to say that we find little or no support for the submission in those passages. Para 14 refers to the recognition of the limitation of the capacity of ONFLs to absorb the effects of development, and to absorb cumulative effects in particular. Para 82 continues the same theme and makes the point that the capacity of ONFLs should not be exceeded ... *unless there are compelling reasons for consent to be granted*. Ms Barton goes on to express the view that the issue of significant adverse cumulative effects should be addressed, and that whether or not effects of a given proposal fall within the rubric of *significant adverse cumulative effects* can be addressed on a case by case basis. We see nothing to disagree with in any of that. We see no deficiency in the Council's reasoning in adopting Policy 7-7, nor any gap in the evidence upon which it might have relied in coming to the view that the Scheduled ONFLs were worthy of their place there, and should be shielded from further or other significant adverse effects on their characteristics and values. Further, we do not think that the Council has foreclosed consideration of protection of the ONFLs from *inappropriate* subdivision, use and development. What may or may not be *inappropriate* will be considered in the context of a resource consent application.

Conflict with POP Chapter 3 – infrastructure

[2-43] In introducing the topic of infrastructure relating to energy, Chapter 3 of POP is quite fulsome:

Energy

Access to reliable and sustainable energy supplies is essential to the way society functions. People and communities rely on energy for transportation, and electricity for everyday activities at home and at work. A reliable and secure supply of energy, including electricity, is fundamental for economic and social wellbeing. Furthermore, the demand for electricity is increasing.

Government has developed energy strategies and made changes to the RMA to encourage energy efficiency and greater uptake of renewable energy over use of non-renewable resources. Renewable energy means energy produced from solar, wind, hydro, geothermal, biomass, tidal, wave and ocean current sources.

The Government has made a commitment to reduce New Zealand's greenhouse gas emissions and to achieve increasingly sustainable energy use. This commitment is



expressed by the inclusion of sections 7(ba), 7(i) and 7(j) in the RMA in 2004 and in national strategy and policy documents dealing with energy, renewable energy, energy efficiency and conservation, and electricity transmission.

The electricity transmission network is recognised by a national policy statement as a matter of national significance.

As at 2009, the Government's target is for 90% of New Zealand's electricity generation to be from renewable energy resources by 2025. Collectively these Government policy instruments seek to achieve economy-wide improvements in the efficiency of energy use and an increase in the supply of energy from renewable energy resources.

Given these national policy instruments and the presence of significant renewable energy resources with potential for development in the Region, the Regional Council recognises that it needs to provide for the development of renewable energy resources and the use of renewable energy.

The Region has potential for the development of renewable energy facilities, given the areas with high wind speeds, the potential to develop hydroelectricity resources, and some potential for the use of wave energy around the coastline.

The development and use of renewable electricity generation facilities face a number of barriers that include the difficulty in securing access to natural resources as well as functional, operational and technical factors that constrain the location, layout, design and generation potential of renewable energy facilities. The adverse environmental effects of renewable electricity generation facilities can also be a barrier, if they are not appropriately avoided, remedied or mitigated.

[2-44] That extract makes it clear that the Council was fully aware of the government's targets for renewable energy generation, and there is specific mention of ss7(ba), 7(i) and 7(j). Notable too is the last sentence, clearly recognising that adverse environmental effects can be a barrier to generation development if they cannot be avoided, remedied or mitigated. In other words, even a goal as important as renewable energy generation will not necessarily prevail over any other consideration. As with all RMA decisions involving benefits and disbenefits, it will be a question of deciding where the balance between them should lie, having regard to the factors and criteria set out in the primary and subordinate legislation.



[2-45] The decisions version of Chapter 3 then has this Objective:

Objective 3-1: Infrastructure and other physical resources of regional or national importance

To have regard to the benefits of infrastructure and other physical resources of regional or national importance by enabling their establishment, operation, maintenance and upgrading.

And these Policies:

Policy 3-3: Adverse effects of infrastructure and other physical resources of regional or national importance on the environment

In managing any adverse environmental effects arising from the establishment, operation, maintenance and upgrading of infrastructure or other physical resources of regional or national importance, the Regional Council and Territorial Authorities must:

- (a) allow the operation, maintenance and upgrading of all such activities once they have been established, no matter where they are located,
- (b) allow minor adverse effects arising from the establishment of new infrastructure and physical resources of regional or national importance, and
- (c) avoid, remedy or mitigate more than minor adverse effects arising from the establishment of new infrastructure and other physical resources of regional or national importance, taking into account:
 - (i) the need for the infrastructure or other physical resources of regional or national importance,
 - (ii) any functional, operational or technical constraints that require infrastructure or other physical resources of regional or national importance to be located or designed in the manner proposed,
 - (iii) whether there are any reasonably practicable alternative locations or designs, and
 - (iv) whether any more than minor adverse effects that cannot be adequately avoided, remedied or mitigated by services or works can be appropriately offset, including through the use of financial contributions.

Policy 3-4: *Renewable energy*

- (a) The Regional Council and Territorial Authorities must have particular regard to:
 - (i) the benefits of the use and development of renewable energy resources including:



- (A) contributing to reduction in greenhouse gases,
 - (B) reduced dependency on imported energy sources,
 - (C) reduced exposure to fossil fuel price volatility, and
 - (D) security of supply for current and future generations,
- (ii) the Region's potential for the use and development of renewable energy resources, and
 - (iii) the need for renewable energy activities to locate where the renewable energy resource is located.
- (aa) The Regional Council and Territorial Authorities must give preference to the development of renewable energy generation and use of renewable energy resources over the development and use of non-renewable energy resources in policy and plan development and decision-making, except with regard to providing for security of supply in "hydro dry" years.
 - (b) The Regional Council and Territorial Authorities must generally not restrict the use of small domestic-scale renewable energy production for individual domestic use.

[2-46] What is to be taken from those provisions is a recognition of the importance of renewable generation, eg Objective 3-1, Policy 3-4(a) and Policy 3-3(b). What should be noted is the emphasis on *minor* adverse effects in that provision, and the direction in Policy 3-3(c) that more than minor adverse effects must be managed by being avoided, remedied, mitigated or even offset. Those are the sort of issues which can and should be taken account of in considering a particular proposal, when its benefits and disbenefits can be identified and their relative weights and importance assessed.

The dictating of a non-complying activity status in District Plans

[2-47] A theme common to several parties was that the terms of Policy 7-7 should not be upheld because they would be likely to lead territorial authorities who had Schedule F ONFLs in their districts to make activities in them *non-complying*, thus significantly raising the bar to resource consents by bringing into play the threshold tests of s104D.

[2-48] If that did happen, we fail to see why, if the Policy is adopted for good reason, such a consequence would count against it now. There are many activities that have *non-complying* status, and for good reason – usually because the receiving



environment is regarded as particularly delicate or vulnerable and/or the activity in question is particularly noisome or noisy, or in some other way likely to produce serious adverse effects. If the Policy did affect District Plans in that way, a (for instance) windfarm proposal in a Schedule F ONFL could be advanced as having cumulative adverse effects that are no more than minor. If that argument succeeded, then the proposal will not fall foul of Policy 7-7 either, because the cumulative adverse effects will not, by definition, be *significant*.

[2-49] We note that the *Board of Inquiry into the Transmission Gully Plan Change Request*, in its decision and report of October 2011, at section 10.7, took it as a given that the possibility of requiring avoidance of adverse effects, without an option of remedy or mitigation, is an available provision, but chose not to adopt it on the material before it. There is no suggestion that such a provision was ultra vires. In the decision on the ensuing appeal to the High Court – *Rational Transport Society Inc v Board of Inquiry and Anor* [2012] NZRMA 298 (HC) at para [13] the provision of the Freshwater Plan to which the Plan Change applied is cited. It requires *avoidance* of adverse effects on identified wetlands, lakes and rivers and their margins, with no mention of remedy or mitigation. Again, the citation is without comment and again there is no hint in the judgment that such a provision could not stand, as a matter of law.

The definition of some ONFLs

[2-50] The definition of one of the ONFLs mentioned in Schedule F (which is part of the Regional Policy Statement component of POP) is also at issue. The ONFL in question is, as mentioned in para [2-6], described in the decisions version of POP as:

- (ia) The skyline of the Ruahine and Tararua Ranges – defined as the boundary between the land and sky as viewed at a sufficient distance from the foothills so as to see the contrast between the sky and the solid nature of the land at the crest of the highest points along ridges.

The skyline is a feature that extends along the Ruahine and Tararua Ranges beyond the areas in (h) and (i) above.

There was some disagreement among the Landscape Architect witnesses about this. At an early stage Mr Coombs, engaged by MRP, and Mr Anstey, engaged by the Council, agreed on a revised formula, in these terms:

- (ia) The series of highest ridges and highest hilltops along the full extent of the Ruahine and Tararua Ranges, including within the Forest Parks described in Items (h) and (i).



[2-51] In the course of the first round of expert landscape witness conferencing the formula was further modified to read:

- (ia) The main and highest ridges and highest hilltops along the full extent of the Ruahine and Tararua Ranges, including within the Forest Parks described in (h) and (i).

[2-52] Mr Stephen Brown, a consultant landscape architect engaged by Meridian, was able to attend the resumed expert conference. Mr Brown had the view, and Mr Coombs appeared to come to agree with him, that the area of ridgeline (or skyline) between the Pahiatua Track and Wharite Road did not meet the ONFL criteria and should be excluded from Item (ia). They considered that the area is now highly modified and does not display the characteristics and values which ought to be associated with that item. They thought that the removal of the words ... *the full extent of...* from the description would go some way to meeting their concerns. Mr Brown considers that the Manawatu Gorge, which lies within the area he would exclude, should be an ONFL in its own right, which it is.

[2-53] Mr Brown's questioned area contains the part of both ranges between the southern-most extent of the Te Rere Hau windfarm and the northern edge of the Te Apiti windfarm – a linear distance of c14 – 15km. In his evidence he describes this part of the ranges landscape as:

... a present-day sequence of ridges and hilltops that is not only visually dishevelled and devoid of any real sense of cohesion and unity; it is also blatantly 'cultural' as opposed to 'natural'. Thus, while the ranges' landform may well remain apparent – indeed, it is emphasised by the historic clearance of native forest across both Ranges – it is visually subjugated by the matrix of pastoral, forestry and energy generation activities/structures that sit atop almost every visible ridge and hilltop. In my opinion, this landscape is certainly expressive; but rather than affirming the integrity of a natural or outstanding landscape – let alone both together – it clearly articulates the idea of a highly modified, and rather utilitarian, 'energy production' landscape.

He goes on to express the view that it is doubtful that, considered in isolation, any landscape architect would regard this sequence of ridges and hilltops as an ONFL, and that it is only the association with the extended ranges and state forest parks to the north and south that gives rise to the proposed ONFL under the description of *the*



full extent of the Ruahine – Tararua chain. He considers that the area would not meet the amended *Pigeon Bay* factors set out in Table 7.2 of POP, and that even that table does not contain an important factor – ie does ... *this landscape or feature stand out among the other landscapes and features of the district?* His preference for the scope of the ONFL would be:

Visual natural and scenic characteristics of the Ruahine and Tararua ranges, as defined by the series of highest hilltops along the Ruahine and Tararua Ranges, including the skyline's aesthetic cohesion and continuity, its prominence throughout much of the Region and its backdrop vista in contrast to the Region's plains.

[2-54] Further, he does not see the area as *outstanding* in the sense of it being ... *conspicuous, eminent, especially because of excellence ... remarkable in ...* (see *Wakatipu Environmental Society Inc v Queenstown Lakes DC* [2000] NZRMA 59).

[2-55] Mr Coombs remains content with the wording agreed between himself and Mr Anstey, and now adopted by the Council. That is:

- (ia) The series of highest ridges and highest hilltops along the full extent of the Ruahine and Tararua ranges, including within the Forest Parks described in items (h) and (i).

The characteristics and values associated with that ONFL are said to be:

- (i) Visual, natural and scenic characteristics of the skyline of the Ruahine and Tararua ranges, as defined by the series of highest ridges and highest hilltops along the full extent of the Ruahine and Tararua Ranges, including the skyline's aesthetic cohesion and continuity, its prominence throughout much of the region and its backdrop vista in contrast to the Region's plains.
- (ii) Importance to tangata whenua and cultural values
- (iii) Ecological values including values associated with remnant and regenerating indigenous vegetation
- (iv) Historical values
- (v) Recreational values.

[2-56] Mr Anstey has the opposite view to that of Mr Brown. He acknowledges that the full extent of the landscape has not yet been assessed, but while the portion in question is at a lower elevation and is not high in natural character, he considers its ridgeline is still natural. The lower elevation and the presence of turbines does not, in his view, mean that it ceases to be *outstanding*. He regards it as retaining elements



that make it outstanding, and emphasises that it is part of a continuum that should not be broken down into little sections. He regards the recognition of the full extent of the skyline as being clearly required, with the series of highest ridges and highest hilltops being distinctive physical features which together *inform* the skyline.

[2-57] It is the position of MRP that in the absence of a sufficient consensus among the expert witnesses, such a definitive direction (ie including the full extent of both ranges) should not be enshrined in the RPS.

[2-58] We are then faced with an irreconcilable difference of expert views presented by people eminent in the field. This is plainly a matter on which informed and reasonable people may hold different views, and neither view can be the only correct one. We are not convinced that the MRP suggestion is the better way of resolving the issue – this is not a matter to be settled by a majority vote, although we must note that the one energy company with windfarms at the northern end of the Tararuas, TrustPower, does not share the view that the area should not be within the ONFL. It is the case also that such status is not new, in the sense that the whole skyline is described as an ONFL in the operative RPS.

[2-59] While regarding the area around the windfarms as ... *about as disturbed and modified as most rural landscapes get* ... Mr Brown is prepared to accept ... *a certain symbolic value associated with the idea of protecting the physical continuity and linkage of both Ranges*. It is plain, we acknowledge, that the presence of multiple turbines along the Te Rere Hau to Te Apiti stretch of the Ranges, and the pastoral land around them, deprives the area of some of its *natural* characteristic. But it remains nevertheless part of a continuum of landform having visual and scenic characteristics and it remains, undoubtedly, part of the prominent backdrop vista from and to the region's plains. That is largely the way the ridges and hilltops have been seen in earlier windfarm litigation – for instance in the decision of the Turitea Board of Inquiry the Te Apiti turbines were regarded as sitting comfortably in the landscape without undermining its characteristics and values.

[2-60] While there is no crisp, *one way or the other* answer, we conclude that the whole of the landform forming the eastern backdrop to the Manawatu plains, and the



western backdrop to the northern Wairarapa/Tararua valley should be treated as one continuous entity, and we consider that the provisions now proposed by the Council give effect to that conclusion.

[2-61] That being so, we do not need to consider further amendments to Schedule F, or the possibility of having to use s293 to do so.

Summary of conclusions

[2-62] The specific concern of TrustPower about repowering its existing windfarms has been dealt with to its satisfaction, and that of the Council, and we see no reason to disagree with that outcome. The amendments to the explanations to Policies 3-4 and 7-7, and the amendment to Policy 3-4 itself, as set out in para [2-3] are approved.

[2-63] In terms of the principles discussed in Part 1 and set out in its Appendices, and the arguments raised, we consider that the provisions of POP (in particular Policy 7-7) requiring the *avoiding* of significant cumulative effects, without the specific alternatives of *remedying* or *mitigating*:

- give effect to the NPSREG – see paras [2-20] to [2-24].
- are the most appropriate way of achieving the Objectives, particularly Objective 7-2 – see paras [2-25] to [2-27].
- achieve the purpose of the Act – see paras [2-28] to [2-42].
- are not in conflict with Chapter 3 of POP – see paras [2-43] to [2-46].
- are not flawed because they may lead to activities having *non-complying* status in district plans – see paras [2-47] to [2-49].

[2-64] Nor do we find that the Council's interpretation of *inappropriate* in terms of s6(b) is flawed. Further, the definition of Item (ia) in Schedule F set out in para [2-55] is satisfactory – see paras [2-50] to [2-61].

[2-65] We ask that the Council, in consultation with other affected parties as necessary, redraft the affected portions of POP accordingly and present them for approval: - see para [1-23].

