



## **PROPOSED INVERCARGILL CITY DISTRICT PLAN**

### **Decision No. 1**

#### **Amenity Values of the District**

##### **Hearings Committee**

Councillor Darren Ludlow (Chair)

Councillor Neil Boniface

Councillor Graham Sycamore

Keith Hovell

11 October 2016

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## **INTRODUCTION**

We have been appointed by the Invercargill City Council to consider and issue decisions on the submissions lodged to the Proposed Invercargill City District Plan.

In this decision we consider the submissions lodged to the Issues and Objectives in Section 2 of the Proposed District Plan that relate to Amenity Values.

The Resource Management Act 1991 sets out various matters that impact on our considerations and deliberations. The key provisions are Sections 5 - 8, 32, 75 and 76 of the Act, and the Second Part of the First Schedule to the Act. The Section 42A Report prepared for the Committee considered these matters in detail and we have had regard to those matters. Where the statutory provisions are of particular significance we have referred to them within this Decision.

In this Decision, the following meanings apply:

"The Council" means the Invercargill City Council.

"Further Submitter" means a person or organisation supporting or opposing a submission to the Proposed Plan.

"FS" means Further Submission.

"Hearings Committee" means the District Plan Hearings Committee established by the Council under the Local Government Act.

"NES" Means National Environmental Standard.

"NPS" Means National Policy Statement.

"Operative District Plan" means the Invercargill City District Plan 2005.

"Proposed Plan" or "Proposed District Plan" means the Proposed Invercargill City District Plan 2013.

"RMA" means the Resource Management Act 1991.

"Submitter" means a person or body lodging a submission to the Proposed Plan.

At the commencement of the hearings, Crs Boniface and Ludlow declared an interest as Directors of PowerNet Limited, Cr Sycamore declared an interest as a Director of Invercargill City Holdings Limited and Commissioner Hovell declared a conflict of interest in relation to submissions lodged by Cunningham Properties Limited. The Councillors and Commissioner took no part in deliberations in relation to the submissions of the submitters referred to.

## **THE HEARING**

The hearing to consider the submissions lodged to the matters set out in this decision was held in the Council Chambers on 5 May 2014.

### **Section 42A Report**

The Hearings Committee received a report from William Watt of William J Watt Consulting Ltd. In that report Mr Watt outlined that "amenity values" include qualities that make an area attractive for a person or organisation to locate a land use activity on a particular site, and for other land uses to locate nearby and that the "effects" of land use can impinge on the "amenity" of others. He also highlighted the Proposed District Plan uses zoning as a technique to group land uses with similar requirements for "amenity", and sets standards for

the level of “effect” that one land use can have on another. In that regard, he considers “amenity values” is a foundation concept of the Plan.

In his report, Mr Watt recommended some changes to the District Plan provisions, in order to assist readers of the Plan to interpret the concept of amenity values, and to clarify the extent to which amenity values are to be maintained and enhanced in some zones of the city, as set out in the Proposed Plan.

In response to questions from the Committee, Mr Watt in relation to his recommendation on Submission 79.3 by KiwiRail Holdings Ltd, accepted that as an alternative to referring to reverse sensitivity in Issue 1 of Section 2.2.1, reference could be made to various adverse effects in the text in Section 2.2. In relation to his recommendation on Submission 71.31 by NZAS Ltd, Mr Watt also agreed an alternative wording to Objective 2 could take the form of “providing for activities in the Smelter Zone, while minimising any adverse effects on amenity values outside of that zone”.

## **Submitters Attending the Hearing**

### Federated Farmers

Ms Tanith Robb appeared on behalf of Federated Farmers of New Zealand, reading a statement prepared by David Cooper, Senior Policy Adviser.

Mr Cooper in the written statement stressed that the rural setting is largely comprised of working farm and other primary production environments, and that “there is a need for flexibility around land use decisions to enable farmers to adapt to changing situations and pressures while making proactive decisions around how to best protect the rural amenity values in an economically sustainable farming environment”. He expressed concern that if the rural amenity is given too high a priority this flexibility will be undermined, unnecessarily constraining farm practices. Arising from that, he opposed the recommendation to reject Submission 88.42 which sought to amend Objective 2 in Section 2.40.2.

Mr Cooper advised that Federated Farmers supported the recommendations to note Submission 88.24 in relation to Section 2.2.1 Issues and Submission 88.50 to amend Objective 1 in Section 2.41.2.

Ms Robb in response to questions from the Hearings Panel advised that she would support the inclusion of a further Objective in the Plan that recognised and provided for farming activities in the Rural 1 Zone.

## **Material Tabled at the Hearing**

### New Zealand Aluminium Smelters Limited

Katherine Viskovic of Chapman Tripp, advised on behalf of New Zealand Aluminium Smelters Ltd (NZAS) that the recommendation to reject Submission 71.31 (Objective 2, Section 2.43.2) was opposed, and “it still appears unnecessary to include an objective specific to amenity values within the Smelter Zone as it does not relate to the activities which the Smelter Zone otherwise permits”.

## **MATTERS REQUIRING PARTICULAR CONSIDERATION**

### **Rural 1 Zone Amenity Values**

Federated Farmers through the statement prepared for the hearing by David Cooper raised two issues with regard to rural amenity.

In Submission 88.24 Federated Farmers requested the Council to recognise that:

- Amenity values within rural Invercargill are generally those that have been created, enhanced or maintained through normal farming activities;
- Farming activities are entirely appropriate within a dynamic rural landscape; and
- Non-regulatory methods are preferable to the use of regulation in this area.

Mr Watt in his Section 42A Report recommended that this submission be noted and taken into account when considering other changes sought by the submitter. Mr Cooper agreed with that approach.

This submission however refers to Section 2.2.1 Issues and as such requires determination with regard to that section. The question arises as to whether any of the matters raised in the three bullet points require any additions or changes to the stated Issues. With regard to each bullet point:

- In Section 2.2 comment is made to the effect that amenity values are derived from various influences, including "development decisions made in the past". That expresses more generally the reference made to "normal farming activities" and the Committee considers the generic comment appropriate in this part of the Proposed Plan.
- The Committee agrees that "farming activities are entirely appropriate within a dynamic rural landscape". That does not however require recognition as an Issue.
- In the Committee's view whether non-regulatory methods are preferable to the use of regulation is a matter to be determined on a case by case basis, having regard to the circumstances and the statutory guidance provided particularly by Part II and Sections 32, 74 and 75 of the RMA.

Federated Farmers in Submission 88.42 also sought to amend Objective 2 in Section 2.40.2 to the effect of encouraging, rather than requiring, maintenance and enhancement of amenity values in the Rural 1 Zone. The Section 42A Report recommended that the submission be rejected. This recommendation was opposed by Federated Farmers as noted in the summary of the presentations at the hearing. However, the Committee agreed with Mr Watt that "encouragement" would be insufficient in some cases to achieve the environmental outcomes the Council sought in rural areas.

In response to questions from the Committee Ms Robb, representing Federated Farmers, indicated support for an objective that recognised the working rural environment, as referred to in Submission 88.42 to the effect that "the amenity values of the Rural 2 Zone are maintained or enhanced while providing for managed urban growth". With the amalgamation of the Rural 1 and 2 Zones and a slight wording change, similar to that suggested by Mr Watt, the Committee accepts that approach, but also considers that an addition is required to Section 2.40.

## **Smelter Zone Amenity Values**

NZAS Ltd in Submission 71.31 sought the deletion of Objective 2 in Section 2.43.2 on the basis that it is unclear what amenity values apply within the zone, and how they relate to the smelter. The Section 42A Report considered it important to recognise the amenity values in the zone, but accepted that it was not appropriate to constrain the activities provided for in the zone. The Report recommended amending the provision. In their written submissions to the Committee, NZAS reiterated their opposition to the provision.

The Committee noted that within the Smelter Zone there are amenity values of note, such as natural values, particularly within the coastal environment. The Committee agreed that an objective referring to amenity values should be retained, but in a form that was more enabling than provided for by the notified plan and recommended in the Section 42A Report. The Committee considered that provision should be made for the activities provided for by the zone while at the same time managing the adverse effects of activities beyond the zone boundary.

## **Reverse Sensitivity**

KiwiRail Holdings Ltd in Submission 79.3 sought the inclusion of reference to "reverse sensitivity effects" as part of Issue 1 in Section 2.2.1 as subdivision location and design can have an impact on the avoidance of reverse sensitivity effects to infrastructure networks. In the Section 42A Report, Mr Watt recommended this submission be accepted.

At the hearing, the Committee questioned Mr Watt on this matter, suggesting that undue regard was being given to one particular adverse effect in this part of the plan. Mr Watt agreed that an alternative approach would be to highlight a range of adverse effects on amenity values as part of the text in Section 2.2 of the Proposed Plan.

In considering this matter, the Committee had regard to content of other parts of the Proposed Plan, noting the following in Section 2.9 Infrastructure:

*Issue 5 Subdivision, use and development can result in adverse effects, including reverse sensitivity effects, on existing or proposed infrastructure.*

*Policy 3 Reverse sensitivity: To protect local, regional and national infrastructure from new incompatible land uses and activities under, over or adjacent to the infrastructure.*

It also noted that KiwiRail Holdings Ltd supported this Issue and Policy, and that provisions in the subdivision and transportation sections have similar effect. These other provisions all apply across the entire District, and also recognise the potential impact on infrastructure networks, which was the main focus of the submission.

Having regard to these other provisions and their application across the entire District, the Committee concluded that no addition was required to Issue 1 in Section 2.2.1.

## **Minor Matters**

Mr Watt in his Section 42A Report highlighted several wording changes in the Proposed Plan that were desirable for clarity. These changes were not attributable to any submission. The Committee considered the effect of the amendments were so minor that they can be made at this stage under clause 16(2) of the First Schedule to the RMA.



## **SECTION 32 ASSESSMENT**

### **Requirements**

The Committee was advised by Mr Watt that Section 32 of the RMA establishes the framework for assessing objectives, policies and rules proposed in a Plan, and that a Report was released at the time of notification of the Proposed Plan in compliance with those provisions. The Committee was also advised that Section 32AA of the RMA requires a further evaluation to be released with decisions outlining the costs and benefits of any amendments made after the Proposed Plan was notified, with the detail of the assessment corresponding with the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the changes made to the Proposed Plan.

As the Committee understand its obligations, it is required to:

- (i) Assess any changes made to objectives to determine whether they are the most appropriate way to achieve the purpose of the RMA.
- (ii) Examine any changes made to the policies and rules to determine whether they are the most appropriate way to achieve the objectives of the Proposed Plan. This includes:
  - Identifying the costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions (including effects on employment and economic growth)
  - Identifying other reasonably practicable options for achieving the objectives; and
  - Assessing the efficiency and effectiveness of the provisions in achieving the objectives.

The Committee however, is not required to assess in accordance with Section 32 of the RMA any changes to the issues and or explanatory text of provisions.

### **Assessment**

This decision:

- Makes a minor amendment to Objective 4 of the Industrial 3 (Large) Zone adding the words "where practical"; and
- Replaces Objective 2 of the Smelter Zone to clarify that it is the environmental effects of activities beyond that Zone that the Council seeks to manage.

This decision does not make any further amendments to the policies and rules in the Plan.

The first two amendments referred to above are only of a minor nature and in the Committee's view do not raise any significant matters outside of the original evaluation report.

The new Objective 2 of the Smelter Zone is considered the most appropriate way to achieve the purpose of the RMA having regard to the nature of the activities taking place in the Smelter Zone. This provides for the undertaking of industrial activities in the zone, and for the people and communities of Invercargill to provide for their social, economic and (indirectly, through other provisions of the Plan) cultural well-being.

Dated at Invercargill this 11<sup>th</sup> day of October 2016

A handwritten signature in blue ink, appearing to be 'D Ludlow', with a large, sweeping underline.

Councillor Darren Ludlow (Chair)

A handwritten signature in blue ink that reads 'Neil Boniface'.

Councillor Neil Boniface

A handwritten signature in blue ink, appearing to be 'G Sycamore', with a long, sweeping underline.

Councillor Graham Sycamore

A handwritten signature in blue ink that reads 'K Hovell'.

Keith Hovell

## APPENDIX 1: DECISIONS BY SUBMISSION

| SUBMISSION  | DECISION  |
|---|---|
| <b>SECTION 2.2 INTRODUCTION</b>   |   |
| <p><b>48.8 - Forest and Bird Society and 54.7 Otatara Landcare Group</b><br/>Support.</p> <p><b>88.23 - Federated Farmers</b><br/>Support. The submitter in particular supports the comment that:<br/><i>“Amenity values vary from place to place and person to person”</i></p>   | <p><b>Decision 1/1</b><br/>These submissions are noted.</p> <p><b>Amendments to District Plan</b><br/>No amendments are required.</p> <p><b>Reason</b><br/>The submitters support Section 2.2 and seek no change to it.</p>   |
| <b>SECTION 2.2 - 2.2.1 Issues</b>   |   |
| <p><b>88.24 - Federated Farmers</b><br/>The submitter supports the plan provision in part. The submitter supports amenity values being considered at a general level rather than tying them directly to specific landscapes and considers that normal farming activities, including earthworks, vegetation planting and clearance are entirely appropriate activities within a dynamic working rural landscape that changes over time. The submitter believes that Council needs to recognise that the valued characteristics of the rural areas of the Invercargill City District are generally those that have been created or enhanced, and most importantly maintained by normal farming activities that are entirely appropriate within a dynamic working rural landscape, and it is important that the plan appropriately addresses these matters and the positive cultural, social, economic and environmental effects of farming. The submitter reiterates their support for the use of non-regulatory methods in this area.</p> <p>The submitter seeks that Council recognises that:</p> <ul style="list-style-type: none"> <li>• Amenity values within rural Invercargill are generally those that have been created, enhanced or maintained through normal farming activities;</li> <li>• Farming activities are entirely appropriate within a dynamic rural landscape; and</li> <li>• Non-regulatory methods are preferable to the use of regulation in this area.</li> </ul> | <p><b>Decision 1/2</b><br/>This submission is rejected.</p> <p><b>Amendments to District Plan</b><br/>No amendments are required.</p> <p><b>Reasons</b><br/>As discussed on pages 2 and 3:</p> <ol style="list-style-type: none"> <li>1. Section 2.2 acknowledges that amenity values are influenced by various factors, including past development decisions. A generic comment is considered more appropriate than the specific reference sought by the submitter.</li> <li>2. The appropriateness of farming activities within rural areas is accepted, but no addition is required to this section of the Plan.</li> <li>3. The appropriateness of any method requires consideration on a case by case basis having regard to the circumstances and the provisions of the RMA.</li> </ol> |

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| SUBMISSION   | DECISION  |
|--|---|
| <p><b>79.3 - KiwiRail Holdings Ltd</b><br/>Oppose in part. The submitter considers that there should be greater recognition of reverse sensitivity effects and notes that subdivision location and design can have an early and permanent impact on the avoidance of reverse sensitivity effects to infrastructure networks. The submitter seeks to amend Issue 1, 2.2.1 as follows:</p> <p>“1. Subdivision, land use and development can have adverse effects on the amenity values of the district, <u>including reverse sensitivity effects.</u>”</p>   | <p><b>Decision 1/3</b><br/>This submission is rejected.</p> <p><b>Amendments to District Plan</b><br/>No amendments are required.</p> <p><b>Reason</b><br/>As discussed on page 3, the provisions in Section 2.9 Infrastructure, and other sections of the Proposed Plan adequately recognise reverse sensitivity effects.</p>  |
| <b>INDUSTRIAL 3 ZONE - 2.32.2 Objective 4</b>  |   |
| <p><b>15.13 - Ballance Agri-Nutrients Ltd</b><br/>The submitter Supports Objective 4 in part. The submitter is concerned by the outcome sought by Objective 4 that amenity values be maintained <u>and</u> enhanced, which it considers to be inappropriate in areas where lawfully established industrial land use activities already contribute to and have set the character and amenity of the area. Further, given the nature of industrial activities, the submitter considers it may not be possible to provide for the enhancement of amenity values in all instances and therefore the objective should acknowledge this fact through the inclusion of the words “where appropriate”.</p> | <p><b>Decision 1/4</b><br/>This submission is accepted.</p> <p><b>Amendments to District Plan</b><br/>Section 2.32.2 Objective 4 (renumbered Objective 3 as a result of other decisions) is amended to read:</p> <p><b>Objective 34:</b> The identification, maintenance and enhancement of the amenity values of the Industrial 3 Zone <u>where practical.</u></p> <p><b>Reason</b><br/>The effect of activities permitted within the Industrial 3 Zone requires qualification of the objective for it to be achievable.</p> |
| <b>RURAL 1 ZONE - 2.40.2 Objective 2</b>   |   |
| <p><b>88.42 - Federated Farmers</b><br/>The submitter opposes this Objective in part. The submitter is opposed to any protection of a rural ideal in the rural area of the District and considers that any objective set in the rural area must appropriately acknowledge the importance of also enabling continuation as a working rural environment. The submitter seeks to amend the wording of the proposed Objective as follows:</p> <p><del>“The amenity values of the Landowners within Rural 1 Zone are encouraged to maintained and or enhanced amenity values.”</del></p>  | <p><b>Decision 1/5</b><br/>This submission is accepted in part.</p> <p><b>Amendments to District Plan</b><br/>(i) Amend Section 2.40 to read:</p> <p style="padding-left: 40px;">The Rural 4 Zone provides for rural activities such as agriculture, horticulture and forestry and associated residential activities... <u>As such it comprises a dynamic working environment within which productive primary use is the</u></p>  |

## APPENDIX 1: DECISIONS BY SUBMISSION

| SUBMISSION   | DECISION  |
|--|---|
| <b>RURAL 2 ZONE - 2.41.2 Objective 1</b>   | <p style="text-align: center;"><u>dominant land use. ...</u></p> <p>(ii) Replace Section 2.40.2 Objective 2 to read:</p> <p style="padding-left: 40px;">Provide for the use and development of land within the rural area while maintaining, and where practical enhancing, amenity values.</p> <p><b>Reasons</b></p> <ol style="list-style-type: none"> <li>1. The additions highlight the dynamic nature of the rural environment as sought by the submitter in various submission points.</li> <li>2. “Encouragement” by itself will not be sufficient in some cases to achieve the environmental outcomes sought by the Proposed Plan.</li> </ol> |
| <p><b>88.50 - Federated Farmers</b><br/>                     The submitter supports this Objective in part. The submitter considers that the zone is separated from the Rural 1 Zone specifically to provide for urban growth, and this should be reflected in the Objective. The submitter seeks to amend the wording of the proposed Objective as follows:</p> <p>“The amenity values of the Rural 2 Zone are maintained <del>and</del> <u>or</u> enhanced <u>while providing for managed urban growth.</u>”</p> <p><b>FS26.10 - A4 Somerset Development Ltd</b> support in part submission 88.50 and the relief sought, although questions the ability of all the areas zoned Rural 2 to be utilised for appropriate rural land use activities. In these situations, the further submitter considers the land should be rezoned to fit the adjoining environment.</p> <p><b>FS46.41 Leven Investment Ltd and others</b> support in part submission 88.50 and the relief sought but questions the ability of the Rural 2 properties to be developed for urban use activities given the limited number of activities that are permitted in the Rural 2 Zone. The further submitter considers that the zoning of these areas should be changed to some form of urban zoning.</p> | <p><b>Decision 1/6</b><br/>                     This submission is noted.</p> <p><b>Amendments to District Plan</b><br/>                     None required.</p> <p><b>Reason</b><br/>                     Decision 35/20 deletes the Rural 2 Zone.</p>  |

## APPENDIX 1: DECISIONS BY SUBMISSION

| SUBMISSION  | DECISION   |
|---|--|
| <b>SMELTER ZONE - 2.43.2 Objective 2</b>  |  |
| <p><b>71.31 - NZAS Ltd</b><br/>           The submitter opposes Objective 2 and seeks its deletion. The submitter considers that it is unclear what particular “amenity values” are meant to be identified, maintained and enhanced, and how these amenity values are related to the smelter.</p> | <p><b>Decision 1/7</b><br/>           This submission is accepted in part.</p> <p><b>Amendments to District Plan</b><br/>           Amend Objective 2 to read:</p> <p><b>Objective 2:</b> <i>Provide for activities associated with the Tiwai Aluminium Smelter to be undertaken within the Smelter Zone, while managing the environmental effects of those activities beyond the Zone boundary. <del>Identification, maintenance and enhancement of the amenity values.</del></i></p> <p><b>Reason</b><br/>           The amendment clarifies the intent of the Council, while at the same time recognising the purpose of the Smelter Zone and the scale of environmental effects of the activities that take place within the Zone.</p> |

## APPENDIX 2: AMENDED DISTRICT PLAN PROVISIONS

### SECTION TWO - ISSUES, OBJECTIVES AND POLICIES

#### 2.2 Amenity Values of the District

For the purposes of this District Plan, amenity values have been identified as

*“Those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.”  
(s2 Resource Management Act 1991)*

It is these amenity values when combined that provide the context and opportunity for the District to evolve and develop.

Amenity values vary from place to place and ~~person to person~~ according to the perspective of the individual.<sup>1</sup> However, shared common amenity values are apparent. Areas which share amenity values in this way are identified and recognised in this District Plan as zones.

Amenity values are an amalgamation of physical qualities and attributes of an area and development decisions made in the past.

#### 2.32 Industrial 3 (Large) Zone

##### 2.32.2 Objectives

**Objective 34:** The identification, maintenance and enhancement of the amenity values of the Industrial 3 Zone where practical.<sup>2</sup>

#### 2.40 Rural 4-Zone

The Rural 4 Zone provides for rural activities such as agriculture, horticulture and forestry and associated residential activities... As such it comprises a dynamic working environment within which productive primary use is the dominant land use.<sup>3</sup> ...

##### 2.40.2 Objectives

**Objective 2:** ~~The amenity values of the Rural 1 Zone are maintained and enhanced.~~ Provide for the use and development of land within the rural area while maintaining, and where practical enhancing, amenity values.

#### 2.43 Smelter Zone

##### 2.43.2 Objectives

**Objective 2:** Provide for activities associated with the Tiwai Aluminium Smelter to be undertaken within the Smelter Zone, while managing the environmental effects of those activities beyond the Zone boundary. ~~Identification, maintenance and enhancement of the amenity values.~~<sup>4</sup>

<sup>1</sup> Minor change under Clause 16 of the First Schedule

<sup>2</sup> Decision 1/4

<sup>3</sup> Decision 1/5

<sup>4</sup> Decision 1/7

Note: Underline indicates additions, strikethrough indicates deletions.