



## **PROPOSED INVERCARGILL CITY DISTRICT PLAN**

### **Decision No. 6**

### **Surface of Water Activities**

#### **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 in relation to Surface of Water Activities.

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.

"FS" means Further Submission.

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

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

"Operative Plan" or "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 TO CONSIDER SUBMISSIONS TO THE PROPOSED DISTRICT PLAN**

The hearing to consider the submissions lodged to the matters set out in this decision was held in the Drawing Room of the Civic Theatre on 9 June 2014.

### **Section 42A Report**

The Hearings Committee received a report from Liz Devery, Senior Policy Planner with the Invercargill City Council. In her report, Mrs Devery highlighted that under the RMA the Council's functions include the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes and as a consequence the Proposed Plan considers opportunities for recreational activities on the District's waterways and also seeks to improve access to the waterways.

Mrs Devery noted 11 submission and four further submission points were lodged on the relevant Plan provisions. While some of the submissions are comments on the Council's role in managing reserves in general and Council's awareness of safety issues, others are

generally supportive of the approach proposed. The main issue raised in submissions relates to the conflict between public access to waterways over private property and private property rights.

Federated Farmers questions the use of regulatory methods, preferring that access be dealt with using a non-regulatory approach. Mrs Devery recommended that the framework in the Proposed Plan be retained with a mixed regulatory and non-regulatory approach. She has also recommended that Policy 2 Public Access be amended to acknowledge that there may be situations where public access is not possible.

### **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 planning approach needs to recognise the principal role landowners play in the management of the region's natural and physical resources and the way that this role can be assisted by plans that do not unnecessarily inhibit or impose constraints on farming activities.

In relation to Policy 2, Mr Cooper stated that it would be more accurate and transparent to acknowledge that there may be times when access across private land is not appropriate. He opposed the addition of the words "where possible", preferring "where practical". He also supported the addition of a list giving examples of where it was appropriate for landowners to restrict public access, and requested that a further item be added stating "avoid animal welfare issues and disruptions to normal farming practices".

### **Material Tabled at the Hearing**

#### Alliance Group Limited

Kirsty O'Sullivan of Mitchell Partnerships Limited, advised on behalf of Alliance Group Limited that the recommendation to consider the submission of the Southern District Health Board referring to water quality as part of the Water Issues report was supported.

## **MATTERS REQUIRING PARTICULAR CONSIDERATION**

### **Public Access**

Federated Farmers in several submission points sought changes to the Proposed Plan provisions referring to public access to and along waterways. It favoured a non-regulatory approach and recognition that landowners had a right to decline access. Federated Farmers also requested that land owners had input into any brochures prepared that considered public access issues.

Mrs Devery in her Section 42A Report stressed that the maintenance and enhancement of public access to and along the coast, and margins of lakes and rivers was a matter of national importance that was to be recognised and provided for in district plans. She did however acknowledge that in some circumstances it was appropriate to restrict access, and she recommended an addition to the explanation of Policy 2 to identify these. Mrs Devery also recommended the rewording of the policy to read "to maintain and enhance where possible public access to the waterways of the District".

At the hearing, Federated Farmers supported the inclusion of a list identifying the circumstances when it was appropriate to restrict access. It also suggested an addition to that list. The addition of the words "where possible" to Policy 2 was not supported.

The Committee was of the view that the provision of public access to and along the margins of the riverbeds was a delicate matter that had been the subject of much debate, some of which was not well informed. It considered there was no singular answer to the conflict that arises between land occupiers undertaking legitimate activities and the disruption that can occur from people passing through, and the statutory emphasis given to public access. It noted that the issues are complicated by the legal roads and other instruments over land, to which the public has a right of access. It concluded that goodwill, responsible actions and tolerance were all required. Arising from that, it agreed that better education is required of both land occupiers and the public, and that can only be achieved through non-regulatory means. However, it also concluded that a regulatory framework is required to give effect to the requirements of Section 6 of the RMA. The Committee agreed with both Mrs Devery and Federated Farmers that within that framework there was a need to identify the circumstances when access should be restricted. It noted the list suggested by Mrs Devery, together with the addition sought by Federated Farmers, included both geographical locations where access was not appropriate, as well as temporal events that would apply over particular time periods.

The wording of Policy 2 in Section 2.15.3 was subject to comment, both in the submissions lodged and at the hearing. The Committee did not agree with the addition of the words "where possible" in the policy, because of the uncertainty created. Given sufficient funding many things are possible, but whether they have enduring practicality is another matter. The Committee agreed with Federated Farmers that use of the words "where practical" was more suitable.

## **SECTION 32 MATTERS**

### **Requirements**

The Committee was advised by Mrs Devery 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 understands 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); and
  - 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**

Arising from the submissions lodged, this decision makes a minor addition to Policy 2 in Section 2.15.3. We consider the amendments made are only of a minor nature and do not raise any significant matters outside of the original evaluation report and the assessment included in the Section 42A Report. Mrs Devery in her Section 42A Report advised the Committee as follows:

*Due to the minor nature of the recommended changes it is not necessary or practical to evaluate in detail or quantify the economic, social, cultural, environmental and employment effects of the changes. It is sufficient to state that a more easily interpretable plan can aid efficient and effective regulation, which can result in positive effects with respect to these matters. For this reason, the recommended approaches are considered to be preferable to the alternatives of adopting the provisions as notified and those alternatives proposed by submitters for which recommendations differ.*

The Committee agrees with that approach and adopts it.

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



Councillor Darren Ludlow (Chair)



Councillor Neil Boniface



Councillor Graham Sycamore



Keith Hovell



## APPENDIX 1 - DECISIONS BY SUBMISSION

SUBMISSION	DECISION
<b>GENERAL</b>	
<p><b>117.9 - Southern District Health Board</b>                      The submitter believes that the Council does an excellent job of managing the Sandy Point reserve and the work done to maintain accessways at the reserves</p> <p><b>FS34.11 - ICC Environmental Health and Compliance Services</b>                      Supports submission 117.9.                      The further submitter states that the Council manages the accessways at the reserves and that it is aware of the safety factors for recreational surface water activities, as identified in the issues of the Proposed District Plan</p> <p><b>117.10 - Southern District Health Board</b>                      The submitter would like to raise the possibility of public transport options to Sandy Point and Oreti Beach for selected weekends during the spring and summer months.</p> <p><u>Decision Sought:</u> Consider public transport out to Sandy Point and Oreti Beach.</p>	<p><b>Decision 6/1</b>                      These submissions are noted.</p> <p><b>Amendments to District Plan</b>                      None required.</p> <p><b>Reason</b>                      The matters raised by the submitters relate to the Council's operations and are beyond the scope of what can be considered in the District Plan.</p>
<p><b>117.21 - Southern District Health Board</b>                      The submitter would like to see issues of water quality addressed which would improve the health of the public and increase the enjoyment for people participating in recreational water activities.</p> <p><u>Decision Sought:</u> The submitter would like to see issues of water quality addressed which would improve the health of the public and increase the enjoyment for people participating in recreational water activities.</p> <p><b>FS6.3 - Alliance Group Limited</b>  <i>Opposes submission 117.21.</i>                      While the further submitter agrees that it is appropriate to take measures to improve public health, it considers that water quality and freshwater management are functions of regional councils and that it is unnecessary to duplicate that function within the Proposed Plan.</p>	<p><b>Decision 6/2</b>                      These submissions are noted.</p> <p><b>Amendments to District Plan</b>                      None required.</p> <p><b>Reason</b>                      While surface of water activities can affect water quality, provisions covering water quality issues are covered in the Proposed District Plan under the heading of Water. It is not considered necessary to repeat these provisions under the Surface of Water Activities section of the Proposed District Plan.</p>

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SUBMISSION	DECISION
<b>SECTION 2.15 SURFACE OF WATER ACTIVITIES</b> <b>2.15.1 Issues and 2.15.2 Objectives</b>	
<p><b>117.18 - Southern District Health Board</b>                      The submitter supports the Council's awareness of safety factors for recreational surface of water activities as identified in the Issues, and specifically Issue 1. The submitter is also highly supportive of Objectives 1 and 2.</p> <p><b>FS34.12 - ICC - Environmental Health and Compliance Services</b>                      Supports Submission 117.18.                      The further submitter states that the Council manages the accessways at the reserves and that it is aware of the safety factors for recreational surface water activities, as identified in the issues of the Proposed Plan.</p> <p><b>77.45 - Te Runaka o Waihopai and Te Runaka o Awarua</b>                      Support Objective 1 and 2. Retain.</p>	<p><b>Decision 6/3</b>                      These submissions are noted.</p> <p><b>Amendments to District Plan</b>                      None required.</p> <p><b>Reason</b>                      The submitters support provisions in the Proposed Plan and seek no change to them.</p>
<b>2.15.3 Policies</b>	
<p><b>77.46 - Te Runaka o Waihopai and Te Runaka o Awarua</b>                      Support Policies 1, 2 and 3. Retain.</p>	<p><b>Decision 6/4</b>                      This submission is noted.</p> <p><b>Amendments to District Plan</b>                      None required.</p> <p><b>Reason</b>                      The submitter supports provisions in the Proposed Plan and seeks no change to them. Reference should be made to Decision 6/5 however, as this amends Policy 2.</p>
<p><b>88.15 - Federated Farmers</b>                      Support in part Policy 2 – Public Access. Private landowners have a number of concerns when it comes to allowing access on or across their property and considers that it will not always be necessary or appropriate for public access to waterways to be provided and this must be reflected within any plan provisions. Where such access is appropriate, the submitter believes it needs to be clearly recognised that landowner permission is required before</p>	<p><b>Decision 6/5</b>                      This submission is accepted in part.</p> <p><b>Amendments to District Plan</b>                      Amend Policy 2 and explanation as follows:</p> <p><b>Policy 2 Public access:</b> To maintain, and enhance <u>where practical</u>, public access to the waterways of the District.</p>

## APPENDIX 1 - DECISIONS BY SUBMISSION

SUBMISSION	DECISION
<p>any private land is accessed.</p> <p><u>Decision Sought:</u> Amend the wording of the policy as follows:</p> <p><b>Policy 2 Public access:</b> To maintain and enhance public access to the waterways of the district, <u>while respecting landowners right to decline access.</u></p>	<p><b>Explanation:</b> <i>The provision of access to the margins of rivers and lakes is a matter of national interest and the public has traditionally enjoyed access to many of the waterways in the District for recreation. It is therefore important that this access be maintained and enhanced. Public ownership of the margins of the main waterways in the city along with the use of instruments such as esplanade strips are key methods of ensuring continued access to these resources.</i></p> <p><u>In certain areas and/or at certain times of the year the provision of public access to waterways is not appropriate or possible. Restrictions to access should be determined on a case by case basis in order to:</u></p> <ol style="list-style-type: none"> <li>a. <u>protect important amenity and ecological values</u></li> <li>b. <u>protect sites important to tangata whenua</u></li> <li>c. <u>avoid adverse environmental effects</u></li> <li>d. <u>protect the integrity of flood alleviation or river management works</u></li> <li>e. <u>protect rare and/or endangered species</u></li> <li>f. <u>protect public health and safety</u></li> <li>g. <u>provide for national security needs; and</u></li> <li>h. <u>avoid animal welfare issues and disruptions to normal farming practices.</u></li> </ol> <p><b>Reasons</b> As discussed on pages 2 and 3 of this Decision:</p> <ol style="list-style-type: none"> <li>1. Public access to and along the coast, lakes and rivers is a matter of national importance in Section 6 of the RMA which must be recognised and provided for in district plans.</li> <li>2. There are valid reasons for restricting access to some areas and at particular times.</li> </ol>
<p><b>88.16 - Federated Farmers</b></p> <p>Support in part Policy 3 – Liaison. The submitter supports Council liaising with ES and others to develop a strategic and co-ordinated approach to public access. However, the submitter does not support Council addressing the issue of access to rivers and lakes at the time of subdivision, or by Environment Southland when considering effects of activities in river and lake beds. The submitter believes that Council can best ensure enduring legal access rights to waterways are secured and that private landowners have buy-in to the process for the future if they ensure that any access to the District's waterways across private land is managed appropriately and</p>	<p><b>Decision 6/6</b> This submission is rejected.</p> <p><b>Amendments to District Plan</b> None required.</p> <p><b>Reason</b> As discussed on pages 2 and 3 of this Decision, public access to and along the coast, lakes and rivers is a matter of national importance in Section 6 of the RMA which must be recognised and provided for in district plans. Non-regulatory methods have a role, but by themselves they will not meet</p>

## APPENDIX 1 - DECISIONS BY SUBMISSION

SUBMISSION	DECISION
<p>respectfully, including improving the publicly available resources, pamphlets, signs and mapping to ensure user responsibilities and landowners details and rights are clearly shown and known.</p> <p><u>Decision Sought:</u> Amend the wording of the policy as follows:</p> <p><b>Policy 3 Liaison:</b> To liaise with Environment Southland and the region's other territorial authorities to develop a <del>strategic</del> and co-ordinated <u>and non-regulatory</u> approach to the retention or creation of public access to the waterways of the district.</p> <p><b>FS39.20 - Environment Southland</b> opposes Submission 88.16 The further submitter considers that the approach to the retention or creation of public access to the waterways of the District should be strategic, as stated in the policy, not ad hoc or haphazard. This is consistent with Method BRL.7 of the Proposed RPS. They further consider that regulatory as well as non regulatory mechanisms should be considered as a means of providing public access.</p> <p>The further submitter notes that Policy 3 (and Policy 2) of Section 2.15 are largely about public access rather than "surface of water activities" as the Section is named. They suggest amending the title to provide greater clarity about the content of this section.</p>	<p>the requirements of the RMA. As a consequence, a strategic approach is necessary to blend both regulatory and non-regulatory methods.</p>
<p><b>2.15.4 Methods</b></p>	
<p><b>88.17 - Federated Farmers</b> Support in part Method 4. The submitter believes that organisations representing farmers' interests must be consulted when brochures are developed on the provision of public access to waterways, and that the public should be educated about landowners' rights and concerns in regards to public access.</p> <p><u>Decision Sought:</u> Amend the wording of the method as follows:</p> <p><b>Method 4</b> Production and dissemination of brochures on provision of public access, <u>in discussion with land owners as a significantly affected party.</u></p>	<p><b>Decision 6/7</b> This submission is rejected.</p> <p><b>Amendments to District Plan</b> None required.</p> <p><b>Reason</b> Where consultation is appropriate during the preparation of brochures it is desirable to contact a number of different groups, including land owners, land occupiers, government agencies and interest groups such as Fish and Game. Rather than list a range of people or groups that may be consulted, it is preferable to retain the generic wording used.</p>

## APPENDIX 1 - DECISIONS BY SUBMISSION

SUBMISSION	DECISION
<b>SUBDIVISION</b> 2.14.3 Policies 3.18 Rules	
<b>77.44 - Te Runaka o Waihopai and Te Runaka o Awarua</b> Support Policy 11 – Public Access. Retain.  <b>18.101 - Environment Southland (part thereof)</b> Support 3.18.4(P) Retain as a matter to be taken into account.	<b>Decision 6/8</b> These submissions are noted.  <b>Amendments to District Plan</b> None required.  <b>Reason</b> The submitters support provisions in the Proposed Plan and seek no change to them.

## APPENDIX 1 - DECISIONS BY SUBMISSION

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## APPENDIX 2 - AMENDED DISTRICT PLAN PROVISIONS

### SECTION TWO – ISSUES, OBJECTIVES AND POLICIES

#### 2.15 **Surface of Water Activities and Access to Waterways**<sup>1</sup>

**Policy 2 Public Access:** To maintain, and enhance where practical<sup>2</sup>, public access to the waterways of the District.

**Explanation:** *The provision of access to the margins of rivers and lakes is a matter of national interest and the public has traditionally enjoyed access to many of the waterways in the District for recreation. It is therefore important that this access be maintained and enhanced. Public ownership of the margins of the main waterways in the city along with the use of instruments such as esplanade strips are key methods of ensuring continued access to these resources.*

In certain areas and/or at certain times of the year the provision of public access to waterways is not appropriate or possible. Restrictions to public access should be determined on a case-by-case basis in order to:

- a. protect important amenity and ecological values
- b. protect sites important to tangata whenua
- c. avoid adverse environmental effects
- d. protect the integrity of flood alleviation or river management works
- e. protect rare and/or endangered species
- f. protect public health and safety
- g. provide for national security needs; and
- h. avoid animal welfare issues and disruptions to normal farming practices.<sup>3</sup>

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<sup>1</sup> Minor amendment made under Clause 16(2) of the RMA First Schedule

<sup>2</sup> Decision 6/5

<sup>3</sup> Decision 6/5

Note: Underline indicates additions, strikethrough indicates deletions.