



## **PROPOSED INVERCARGILL CITY DISTRICT PLAN**

**Report No.24**

### **Introduction**

**26 January 2015, 9.00 am  
COUNCIL CHAMBERS  
101 ESK STREET, INVERCARGILL**

**Reporting Officer: Liz Devery  
SENIOR PLANNER - POLICY**

**Peer Reviewed by: Dan Wells  
JOHN EDMONDS AND ASSOCIATES LTD**

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# 1. EXECUTIVE SUMMARY

The Introduction section provides an overview of the Proposed Invercargill City District Plan and an explanation of what the Proposed District Plan is. The purpose of the legislation under which the Proposed District Plan is formulated, the Resource Management Act 1991 is outlined with explanation of the Proposed District Plan's relationship with other policies and plans, and the Treaty of Waitangi. The Introduction also includes an explanation of how the Proposed District Plan and Proposed Planning Maps work.

Whilst this section of the Proposed Plan is not required under legislation, it is intended that this section of the Proposed Plan sets the scene for the Plan User.

The submissions received on this section of the Proposed Plan are largely seeking minor amendments to "inaccuracies" in terminology used. It is recommended in this report that these minor amendments be made.

The one issue raised that is discussed in greater detail in this report is the questioning of the "precautionary approach" used in the Proposed District Plan. This approach is, however, supported in this report.

In this report:

- Part 2 considers several key procedural issues.
- Part 3 provides general background to the proposed provisions.
- Part 4 summarises the various statutory provisions that apply to the consideration of the Proposed District Plan.
- Part 5 assesses the relevant issues raised by submitter and the effects of the relief sought.
- Part 6 includes an evaluation of the provisions in accordance with Section 32AA of the RMA.
- Part 7 sets out the overall conclusions.
- Appendix 1 sets out the recommendations on each of the submission points.
- Appendix 2 sets out the recommended changes to the text of the Proposed District Plan.

## **2. INTRODUCTION**

### **2.1 Report Author**

My name is Elizabeth Ann Devery. I am the Senior Planner – Policy at the Invercargill City Council, a position I have held since January 2003. I have over 14 years planning policy experience working in planning and regulatory roles in local government in New Zealand and the United Kingdom. These roles have focused on both developing and implementing District Plans and planning documents. I hold the qualifications of LLB/BA (Hons I) in Geography.

### **2.2 Peer Review**

This report has been peer reviewed by Dan Wells from John Edmonds and Associates Ltd. Dan Wells is a practising resource management planner with a variety of experience throughout the plan change preparation process. Dan has a Bachelor of Resource and Environmental Planning (Hons) and a Post Graduate Diploma in Development Studies, both from Massey University.

### **2.3 How to Read this Report**

This report is structured as follows:

- Interpretation (an explanation of some of the terms used).
- Summary of the Hearing process.
- Background to Section One Introduction.
- Description of the statutory framework within which the proposed provisions have been developed.
- Analysis of the submissions, including a discussion of the key issues raised through the submissions and further submissions received.
- Assessment of the proposed changes under Section 32AA of the RMA.
- Concluding comments.
- Appendix 1 detailing recommendations on individual submissions.
- Appendix 2 detailing the recommended changes to Section One Introduction of the Proposed District Plan.

To see recommendations on an individual submission please refer to the table in Appendix 1. The table sets out the name and relevant submission number of those that submitted on the Introduction; a brief summary of their submission and decisions requested, followed by my recommendation and the reasons for it.

### **2.4 Interpretation**

In this report, the following meanings apply:

“Council” means the Invercargill City Council

“Hearings Committee” means the District Plan Hearings Committee established by the Council under the Local Government Act

“FS” means further submission

“Operative District Plan” means the Invercargill City District Plan 2005

“Proposed District Plan” means the Proposed Invercargill City District Plan 2013

“Provisions” is a term used to collectively describe Objectives, Policies and Rules  
“RMA” means the Resource Management Act 1991

## **2.5 The Hearing Process**

A number of hearings are to be held to consider the submissions lodged to the Proposed Invercargill City District Plan 2013. The hearings have been divided up to ensure that submissions on similar issues have been grouped together and to enable the Hearings Committee to make decisions on the provisions relating to those issues. This report applies to the Tangata Whenua provisions of the Proposed District Plan.

The Hearings Committee comprises of accredited Invercargill City Councillors, with the assistance of an Independent Hearings Commissioner. This Committee is to consider the Proposed Plan and the submissions and further submissions lodged. The Committee has full delegation to issue a decision on these matters.

This report is prepared pursuant to Section 42A of the Resource Management Act 1991 (the “RMA”). Section 42A provides for a report to be prepared prior to a hearing setting out matters to which regard should be had in considering a Proposed District Plan and the submissions lodged to it. This report highlights those matters that are considered appropriate by the author for the Hearings Committee to consider in making decisions on the submissions lodged. This report has been prepared on the basis of information available prior to the hearing.

While the Hearings Committee is required to have regard to this report, regard must also be given to the matters raised in submissions, and presentations made at the hearing. The comments and recommendations contained in this report are not binding on the Hearings Committee and it should not be assumed that the Hearings Committee will reach the same conclusions set out in the report having heard from the submitters and Council advisers.

The hearing is open to the public, and any person may attend any part of the hearing. Those persons who lodged a submission have a right to speak at the hearing. They may appear in person, or have someone speak on their behalf. They may also call evidence from other persons in support of the points they are addressing.

At any time during or after the hearing, the Hearings Committee may request the preparation of additional reports. If that is done, adequate time must be provided to the submitters, to assess and comment on the report. The Hearings Committee may determine that:

- the hearing should be reconvened to allow responses to any report prepared, or
- any responses be submitted in writing within a specified timeframe.

At the conclusion of the hearing process, the Hearings Committee will prepare a written decision. The decision is sent to all persons who lodged a submission. If not satisfied with the decision the submitters have a right of appeal to the Environment Court. If an appeal is lodged, the RMA requires a copy to be served on all submitters with an interest in that matter. Any submitter served may, if they wish, become a party to the appeal either in support or opposition to it.

If there is an appeal, the Environment Court will provide an opportunity for mediation between the parties. If mediation is not accepted, or does not resolve the issues, a

further hearing will take place before a Judge and Court appointed Commissioners.  
Except on points of law, the decision of the Environment Court is final.



### **3. BACKGROUND**

The Introduction section provides an overview of the Proposed Invercargill City District Plan and an explanation of what the Proposed District Plan is. The purpose of the legislation under which the Proposed District Plan is formulated, the Resource Management Act 1991 is outlined with explanation of the Proposed District Plan's relationship with other policies and plans and the Treaty of Waitangi. The Introduction also includes an explanation of how the Proposed District Plan and Proposed Planning Maps work.

Whilst this section of the Proposed Plan is not required under legislation, it is intended that this section of the Proposed Plan sets the scene for the Plan User.

The Introduction is similar to the introductory section in the Operative District Plan.

## **4. STATUTORY CONTEXT / LEGISLATIVE REQUIREMENTS**

In reviewing the District Plan, the Council must follow the process outlined in Schedule 1 of the RMA. The Introduction seeks to set out how the RMA obligations have been addressed in the Proposed District Plan. This includes discussion on the purpose of the RMA, the relationship with other plans and policies developed under the RMA, the relationship with Iwi and the Treaty of Waitangi, and other documents.

## 5. ANALYSIS OF SUBMISSIONS

Seven points of submission have been lodged commenting on, supporting and suggesting amendments to the Introduction plus one further submission. These submissions are summarised in table format, along with recommended responses, in **Appendix 1** to this report.

In general, the submissions are supportive of the approach adopted in the Proposed District plan. The changes sought in the submissions relate mainly to minor details including amendments to 'inaccuracies' in terminology used. Overall, I do agree with the submitters that the document could be improved by minor amendments.

The one further submission questions the overall approach of the Proposed District Plan and it is considered that some discussion on this is important.

### 5.1 Precautionary approach

Environment Southland (submission number 18.5) has supported the reference in the Introduction to using a precautionary approach where there is less than complete scientific knowledge if the possible effects "could potentially be severely adverse" (section 1.4, paragraph 5). Federated Farmers lodged a further submission (submission number FS4.4) opposing this submission. I agree with the further submitter that there may be situations where complete scientific information may not ever be available, although knowledge is continually evolving. However, I believe the statement and approach is balanced and sensible in the context of the complete paragraph. The approach is also consistent, in my opinion, with the approach promoted by the RMA.

It is worth noting that the definition of "effect" in Section 3 of the RMA includes:

"(f) Any potential effect of low probability which has a high potential impact"

The precautionary approach is also promoted in Policy 3 of the NZCPS:

#### *"Policy 3*

1. Adopt a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse.
2. In particular, adopt a precautionary approach to use and management of coastal resources potentially vulnerable to effects from climate change, so that:
  - a. avoidable social and economic loss and harm to communities does not occur;
  - b. natural adjustments for coastal processes, natural defences, ecosystems, habitat and species are allowed to occur; and
  - c. the natural character, public access, amenity and other values of the coastal environment meet the needs of future generations.

The use of a precautionary approach to natural hazards is also promoted in the Quality Planning website in relation to natural hazards.

It is my opinion that the precautionary approach is appropriate and should be promoted through the District Plan.

## **6. DISCUSSION OF SECTION 32 MATTERS**

Section 32 of the RMA states the Council's obligations in assessing the alternatives, benefits and costs. A Section 32 analysis was released at the time of notification which assessed the alternatives, benefits and costs of the provisions of the Proposed District Plan.

As this report is concerned with the Introduction only and does not alter the provisions of the Plan, an assessment under Section 32 of the RMA is not required.

## **7. CONCLUDING COMMENTS**

The Introduction section of the Plan is not a requirement under the RMA but is included to “set the scene” and put the Proposed District Plan in the wider RMA context. The Introduction also sets out the layout of the planning document.

Submission points in relation to this part of the Proposed District Plan have identified a number of minor inaccuracies that it is recommended be corrected.

The precautionary approach adopted in the Proposed District Plan, whilst supported by a submitter, was questioned by another. It is recommended that this approach is sensible and appropriate in the context of the RMA.

Given that this part of the District Plan is not a requirement under the RMA and will not affect the provisions, it is considered that there is no need or requirement to carry out a Section 32AA evaluation of the suggested changes.

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## APPENDIX 1 - Recommendations in response to submissions

Submitter	Submission	Recommendation
<b>1.2 Relationship with other Plans under the RMA</b>		
<b>18.2 Environment Southland</b>	<p>Oppose in part 1.2</p> <p>The numbering 1.2. (C) is duplicated</p> <p>RELIEF SOUGHT:</p> <p>Amend numbering to 1.2.(A) to 1.2.(E)</p>	<p><b>Accept</b></p> <p>It is recommended that the formatting of 1.2 be amended by renumbering the clauses, subject to recommendation set out in response to submission 18.4 below.</p>
<b>18.3 Environment Southland</b>	<p>Oppose in part 1.2 (C) and (D)</p> <p>The submitter considers that there is no need to add “prepared by Environment Southland” to “The Regional Policy Statement for Southland” and “Regional Plans”. If it is considered that these words must be there, similar words should be added (A) to (C)</p> <p>RELIEF SOUGHT:</p> <p>Delete “prepared by Environment Southland” from (D) and (E).</p>	<p><b>Accept</b></p> <p>It is recommended that the wording “prepared by Environment Southland” is superfluous and unnecessary. Removing this wording will not have a detrimental effect on the meaning of the provisions.</p> <p>RECOMMENDATION:</p> <p>Delete “prepared by Environment Southland” from (D) and (E) as set out in response to submission 18.4 below.</p>
<b>18.4 Environment Southland</b>	<p>Oppose in part 1.2</p> <p>The submitter notes that Section 1.2 says that the District Plan “gives effect to” various instruments, including Regional Plans.</p> <p>The submitter points out that Section 75(4) of the Resource Management Act 1991 provides that a District Plan must “not be inconsistent with” a regional plan or a water conservation order.</p> <p>RELIEF SOUGHT:</p> <p>Amend Section 1.2 as follows:</p> <p>“The District Plan gives effect to:</p> <p>(A) National Policy Statements.</p>	<p><b>Accept</b></p> <p>It is acknowledged that the RMA sets out different obligations in relation to how the Proposed District Plan addresses other policies and Plans developed under the RMA. The wording in the Introduction does not accurately reflect these obligations, as set out by the submitter.</p> <p>RECOMMENDATION:</p> <p>Amend Section 1.2 as follows:</p> <p>“The District Plan gives effect to:</p> <p>(A) National Policy Statements.</p> <p>(B) The New Zealand Coastal Policy Statement.</p>

Submitter	Submission	Recommendation
	<p>(B) The New Zealand Coastal Policy Statement.  (C) National Environmental Standards.  (C) The Regional Policy Statement for Southland, prepared by Environment Southland.  (D) <del>Regional Plans prepared by Environment Southland.</del></p> <p><u>The District Plan must not be inconsistent with—</u>  (A) a water conservation order; or  (B) a regional plan for any matter specified in Section 30(1) of the Resource Management Act 1991.”</p>	<p>(C) National Environmental Standards.  <del>(C) (D) The Regional Policy Statement for Southland, prepared by Environment Southland.</del>  <del>(D) Regional Plans prepared by Environment Southland.</del></p> <p><u>The District Plan must not be inconsistent with—</u>  (A) a water conservation order; or  (B) a regional plan for any matter specified in Section 30(1) of the Resource Management Act 1991.”</p>
<b>1.4 Regulatory Framework</b>		
<p><b>18.5 Environment Southland</b></p>	<p>Support 1.4, paragraph 5.</p> <p>The submitter supports the adoption of a precautionary approach where there is less than complete scientific knowledge.</p> <p>RELIEF SOUGHT:</p> <p>Retain as proposed.</p> <p><b>FS4.4 Federated Farmers</b>  <b>Oppose submission 18.5</b>  The further submitter considers that there is seldom complete scientific information available on any topic and that it is important that Council does not hamper land use or development knowledge is incomplete.</p>	<p><b>Accept</b></p> <p>The Introduction states that a precautionary approach is used in the Proposed District Plan where there is less than complete scientific knowledge if the possible effects “could potentially be severely adverse” (section 1.4, paragraph 5). This approach is consistent with the RMA. (See discussion in section 5.1 of this report.)</p> <p>I agree that there may be situations where complete scientific information may not ever be available, although knowledge is continually evolving. I believe the statement and approach is appropriate, balanced and sensible.</p> <p>RECOMMENDATION:  Retain 1.4 paragraph 5 as notified.</p>



Submitter	Submission	Recommendation
<b>79.2 KiwiRail Holdings Ltd</b>	<p>Oppose in part page 1-2 paragraph 3.</p> <p>The submitter considers that the Councils obligations under the RMA in relation to reverse sensitivity effects should be expressly stated</p> <p>RELIEF SOUGHT:</p> <p>Amend the second paragraph on page 1-2 to read:  “... The Council is required, as a territorial authority, to control the adverse effects of inappropriate subdivision, use and development of land, <u>including reverse sensitivity effects ...</u>”</p>	<p><b>Reject</b></p> <p>The provisions throughout the Proposed District Plan make numerous references to the consideration of reverse sensitivity effects. There are also numerous other effects that the Proposed District Plan seeks to control which are not specifically referred to in the Introduction section of the Plan. It is not considered necessary to refer in this context to all different adverse effects that the Proposed District Plan seeks to address and, whilst important, reverse sensitivity effects are not given specific priority.</p>
<b>1.5 Cross Boundary Issues</b>		
<b>18.6 Environment Southland</b>	<p>Oppose in part 1.5, paragraph 1</p> <p>The submitter considers that the statement that “The Invercargill city district also adjoins the coastal marine area (CMA) ...” is incorrect. The Invercargill city district boundary is mean low water mark. Therefore the district “contains” much of the CMA rather than “adjoins” it.</p> <p>RELIEF SOUGHT:</p> <p>Amend:  “The Invercargill city district also adjoins the coastal marine area ...”  to read:</p> <p>“The Invercargill city district also contains large parts of the coastal marine area (estuaries, harbours and open coast foreshores) which is the jurisdiction of Environment Southland and the Minister of Conservation for RMA matters.”</p>	<p><b>Accept</b></p> <p>It is acknowledged that the statement is inaccurate and can be amended to reflect the actual relationship without significant effects on the Proposed District Plan.</p> <p>RECOMMENDATION:</p> <p>Amend:</p> <p>“The Invercargill city district also <del>adjoins</del> <u>contains large parts of the coastal marine area (estuaries, harbours and open coast foreshores)</u> which is the jurisdiction of Environment Southland and the Minister of Conservation <u>for RMA matters.</u>”</p>

1.6 Contents of the District Plan		
<p><b>65.1 ICC – Environmental and Planning Services</b></p>	<p>Oppose in part 1.6, paragraph 8.</p> <p>The term “management area” is not used elsewhere in the Plan and could be confusing for the Plan user.</p> <p>RELIEF SOUGHT:</p> <p>Amend 1.6 to read:</p> <p>“... The District Planning Maps identify the <u>specific zone for</u> each parcel of land within the district ...”</p>	<p><b>Accept</b></p> <p>It is considered that the suggested amendment more accurately sets out the approach taken in the Proposed District Plan.</p> <p>RECOMMENDATION:</p> <p>Amend 1.6 paragraph 8 to read:</p> <p>“... The District Planning Maps identify the <del>management area</del> <u>which applies to specific zone for</u> each parcel of land within the district ...”</p>

## APPENDIX 2 - Recommended Changes to the Proposed District Plan

(Underline indicates recommended additions, strikethrough indicates recommended deletions.)

### SECTION ONE - Introduction

1.1 **The Resource Management Act 1991** – No change

1.2 **Relationship With Other Plans Under The Resource Management Act 1991**

The District Plan gives effect to:

(A) National Policy Statements.

(B) The New Zealand Coastal Policy Statement.

(C) National Environmental Standards.

~~(C) (D) The Regional Policy Statement for Southland, prepared by Environment Southland.~~

~~(D) Regional Plans prepared by Environment Southland.~~

The District Plan must not be inconsistent with—

(A) A water conservation order; or

(B) A regional plan for any matter specified in Section 30(1) of the Resource Management Act 1991.”

1.3 **Relationship With Iwi And The Treaty of Waitangi** – No change

1.4 **Regulatory Framework** – No change

1.5 **Cross Boundary Issues**

The Invercargill city district is adjacent to the Southland district and is within the jurisdiction of Environment Southland. The Invercargill city district also adjoins contains large parts of the coastal marine area (estuaries, harbours and open coast foreshores) which is the jurisdiction of Environment Southland and the Minister of Conservation for RMA matters. A number of issues affect more than one local authority.

Applicants who require resource consents from more than one organisation will be encouraged to make their applications simultaneously, to enable the application to be assessed jointly as a whole where possible. The Council will

encourage other authorities to do the same. The RMA sets out occasions when applications must be considered together.

The Council has adopted procedures for joint hearings involving other local authorities in Southland.

Where an application for a resource consent may adversely affect those in the Southland District, the Council will require that these people be notified of the application unless they have given their written approval.

Where possible, non-regulatory methods may be undertaken in conjunction with other local authorities. For example, it may be more efficient and economical, in terms of staff, time and costs, to undertake or commission monitoring or research in co-operation with adjoining councils.

## **1.6 Contents of the District Plan**

The RMA states that no person may use land in a manner that contravenes a rule in the District Plan, unless they have existing use rights or a resource consent granted by the Council. In addition no person may subdivide land in the district unless expressly allowed by a rule in the District Plan or resource consent.

The District Plan includes the matters prescribed in Section 75 of the RMA. It gives effect to all relevant National Policy Statements, the New Zealand Coastal Policy Statement and the Regional Policy Statement.

The layout for the District Plan is based on cascading logic.

Section Two states the significant resource management issues, the objectives and the policies that the District Plan seeks to achieve. The provisions are framed around two key sections: district wide provisions and zone specific provisions. The district wide provisions cover general matters applicable to the whole district. The district has also been divided spatially into zones. Each zone has specific provisions providing opportunities for land use, subdivision and development that is in keeping with the character and amenity sought for each area. There is at least one objective and policy for each significant resource management issue. This section also gives a broad indication of the methods to be used to implement the policies.

The rules are stated in detail in Section Three. Rules establish minimum environmental standards that can be enforced. The rules, like Section 2, have been divided into district wide rules and zone specific rules. The rules determine the activity status of activities and may address more than one objective and/or policy.

Section Four lists the Definitions of terms used in the District Plan.

Section Five contains the Appendices to the District Plan.

The District Planning Maps identify the ~~management area which applies to specific zone for each parcel of land within the district.~~ The maps also show other important information such as designations, heritage features,

significant areas of indigenous biodiversity, the coastal environment, and hazard information.

It is recommended that anyone proposing a subdivision and/or land use activity within the District discuss the proposal in the early stages with the Council's resource management staff to identify whether a resource consent is required and, if so, what issues will need to be addressed.

## **1.7 Regional Rules – No change**