

BEFORE THE ENVIRONMENT COURT

IN THE MATTER of the Resource Management Act 1991
AND of appeals under clause 14 of the First
Schedule of the Act
BETWEEN THE OIL COMPANIES
(ENV-2016-CHC-074)
AND POWERNET LIMITED
(ENV-2016-CHC-092)
AND SOUTH PORT NZ LIMITED
(ENV-2016-CHC-093)
AND INVERCARGILL AIRPORT LIMITED
(ENV-2016-CHC-095)
AND TRANSPOWER NEW ZEALAND
LIMITED
(ENV-2016-CHC-100)
Appellants
AND INVERCARGILL CITY COUNCIL
Respondent

Environment Judge J J M Hassan – sitting alone pursuant to section 279 of the Act

In Chambers at Christchurch

Date of Consent Order: 10 November 2017

Date of Issue: 10 November 2017

CONSENT ORDER

A: Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:



- (1) the appeals are allowed to the extent that the Invercargill City Council is directed to amend the Proposed Invercargill City District Plan as set out in "Annexure A", attached to and forming part of this order;
- (2) the appeals, as they relate to the Infrastructure, Hazardous Substances and Energy provisions, are otherwise dismissed.

B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This proceeding concerns appeals against part of a decision of the Invercargill City Council on the proposed Invercargill City District Plan, in relation to the Infrastructure, Hazardous Substances and Energy provisions.

[2] The court has now read and considered the consent memorandum of the parties dated 27 October 2017, which proposes to resolve these appeals in so far as they concern the Infrastructure, Hazardous Substances and Energy provisions.

Other relevant matters

[3] Southland Regional Council, Federated Farmers, Southport New Zealand Limited and Transpower New Zealand Limited have given notice of an intention to become a party under section 274 of the Resource Management Act ("the RMA" or "the Act") and have signed the memorandum setting out the relief sought.

Orders

[4] The court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order;



- (b) all parties are satisfied that all matters proposed for the court's endorsement fall within the court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.



J J M Hassan
Environment Judge



TRACK CHANGES VERSION

~~Blue strikethrough~~ = words deleted

Red underline = words added

SECTION TWO – ISSUES, OBJECTIVES AND POLICIES

2.6 ENERGY

2.6.2 Objectives

Objective 2: An integrated planning approach is taken wherever practicable to the management of adverse effects resulting from the use and development of local and regional energy resources, recognising and balancing the significance of those effects with the benefits that arise at a local, regional and national level.

2.9 INFRASTRUCTURE

The infrastructure of the Invercargill City District is an important physical resource. Infrastructure includes a range of facilities, services and installations that enable a community to function including:

- (A) Utilities such as street lighting, electricity, water supply, stormwater drainage, sewerage and roading.
- (B) Facilities of public benefit including navigation aids, meteorological facilities, lighting in public places, data recording and monitoring systems.
- (C) Installations for the receiving and sending of communications.
- (D) Land tTransport networks including rail, port and airport facilities and installations.

The provision of infrastructure is essential for meeting the economic, social and health and safety needs of individuals and the community locally, regionally and nationally and it is appropriate for the District Plan to recognise these benefits. It is also appropriate for the District Plan to provide for these activities and their development, operation, upgrading, maintenance and replacement.

Where infrastructure is already in existence and has capacity, using existing infrastructure is preferable to building anew. Invercargill has substantial excess capacity in many areas already reticulated. Restricting extensions of infrastructure keeps the City compact and promotes efficient use of existing infrastructure. The potential adverse effects, including as well as the benefits of the development of infrastructure, need to be carefully considered.

Under the Resource Management Act 1991 the providers of infrastructure for public works and network utilities are able to use procedures to designate land for such activities. Any request for such a designation will be assessed having regard to the provisions of the Resource Management Act 1991 applicable to the



designation process, including having regard to the route, site and method selection, environmental effects of the proposal, the benefits to the local, regional and national communities and any locational, technical and operational requirements of the activity and associated works.

Not all infrastructure and its component parts can be undertaken by way of designation. As a result the District Plan must recognise and provide for appropriate infrastructure services and to avoid, remedy or mitigate any adverse environmental effects. Where subdivision and/or land use is undertaken, the provisions of infrastructure can be considered as part of that process.

The presence of infrastructure can influence the quality of the environment surrounding it, which is reflected in the need for specific port and airport related Zones, and for the recognition of network corridors around infrastructure such as roads, the railway and the National Grid. Care needs to be taken locating activities that may affect the efficient and effective operation and development of such infrastructure in order to avoid reverse sensitivity effects.

Where subdivision and/or land use is undertaken, the provision of infrastructure, and/or any requirement to expand or upgrade existing infrastructure, is considered as part of the consenting process. The Council has also developed the Invercargill City Council Bylaw 2016/1 Code of Practice for Land Development and Subdivision Infrastructure which aims to ensure that infrastructural works undertaken as part of a subdivision or land use development are done to an acceptable means of compliance with Acts and Council requirements. This bylaw sits outside the District Plan but will assist in achieving some of the desired outcomes.

Transportation infrastructure is also considered under the Transportation provisions within the District Plan. Infrastructure associated with the Airport and Seaport is also provided for in the Transportation and Zone Specific provisions within the District Plan.

2.9.2 Objectives

Objective 4: To ensure that the location and design of infrastructure avoids, where practicable, and otherwise remedies or mitigates significant adverse effects on:

- (A) The aesthetic coherence and character of residential neighbourhoods and the health of residents.
- (B) The natural character of wetlands, and lakes and rivers and their margins.
- (C) Outstanding natural features and landscapes.
- (D) Areas of significant indigenous vegetation and significant habitats of indigenous fauna.
- (E) The maintenance and enhancement of public access to and along lakes and rivers.
- (F) The relationship of Māori and their culture and traditions with their



ancestral lands, water, wāhi tapu, and other taonga.

(G) Heritage.

2.9.3 Policies

Policy 2 Management of effects: ~~Where practicable, To avoid, where practical,~~ remedy or mitigate adverse environmental effects arising from the development, construction, operation, maintenance and upgrading of infrastructure on the environment.

***Explanation:** While infrastructure provides communities with essential services, this infrastructure should avoid, remedy or mitigate the adverse effects on the environment in which it is placed, wherever practicable. This is especially important when looking to install new infrastructure. In determining practicability, careful consideration of all infrastructure types, designs, and possible routes and sites should be completed. This consideration shall be undertaken to determine which option will avoid, remedy or mitigate adverse effects on the environment; enable the development of sustainable, secure and efficient infrastructure; and ensure that infrastructure is integrated with surrounding land use. These options may include opportunities to co-locate or share facilities to minimise cumulative effects. Such consideration should also recognise any locational, technical and operational constraints of the infrastructure. Assessments of environmental effects should have regard to all matters of national significance and adverse effects of construction. Consideration shall also be had to all matters of national significance, with particular consideration of the practicability of avoiding significant adverse effects on these matters. Where appropriate, and where such measures are volunteered, offsets or compensation may be considered to address significant residual adverse effects. Consideration shall also be had to The Council is also required to give effect to the relevant ~~n~~National Policy Statements and ~~implement~~ National Environmental Standards. ~~Infrastructural providers should be encouraged to consider all options to address adverse environmental effects. These options may include consideration of alternatives and/or opportunities to co-locate or share facilities where this is feasible and practicable to minimise the cumulative effects of infrastructure on the environment.~~*

Policy 3A Management of Activities around the National Grid: To manage the effects of subdivision, development and land use on the safe, effective and efficient operation, maintenance, upgrading and development of the National Grid by ensuring that:

- (a) National Grid Corridors and National Grid Yards are identified in the Plan to establish safe buffer distances for managing subdivision and land use development near National Grid lines including support structures;
- (b) Sensitive activities and buildings and structures that may compromise the National Grid, including those associated with intensive farming activities, are excluded from establishing within National Grid Yards;
- (c) Subdivision is managed within National Grid Corridors to avoid subsequent land use from restricting the operation, maintenance, upgrading and development of the National Grid ; and
- (d) Changes to existing activities within a National Grid Yard do not further restrict the operation, maintenance, upgrading and development of the National Grid.



Policy 5 Functional need, Technical and Operational Requirements: To recognise that infrastructure can have a functional, technical or operational need for a particular location.

***Explanation:** Sometimes infrastructure must be located at a particular place for operational reasons, even if that place is subject to hazard or other constraints.*

2.14 SUBDIVISION

2.14.3 Policies

Policy 9 Infrastructure: To respect recognise the operational, maintenance, upgrading and development requirements and manage the reverse sensitivity issues associated with infrastructure including the National Grid, electricity lines, State Highways, railways and the airport.

***Explanation:** Subdivision and development activities can have adverse effects on the operation, maintenance, upgrading and development of nearby infrastructure. Potential reverse sensitivity issues resulting from new subdivisions need to be managed to allow the infrastructure to continue to operate.*



SECTION THREE - RULES

3.7 HAZARDOUS SUBSTANCES

3.7.1 The following activities are permitted activities:

(H) The following quantity of HSNO Class 2.1.1A LPG in single vessel storage tanks, or in multiple vessel storage cylinders up to a maximum size of 45kg per cylinder, is permitted at service stations selling fuel and associated products, subject to meeting all relevant requirements of HSNO 1996:

<u>Seaport 1 and Smelter Zones:</u>	<u>No limit</u>
<u>All other Zones:</u>	<u>540kg</u>

(H) Unless provided for by Rules 3.7.1 (A) - (G) above, the manufacture, storage, use and management of hazardous substances not exceeding the quantity limits and other requirements stipulated in Appendix VII Hazardous Substances.

3.9 UTILITIES

National Grid ~~Corridors~~ Yard

3.9.4 The following buildings and structures are permitted within the National Grid ~~Corridor~~ Yard, provided these comply with the safe electrical clearance distances set out in the New Zealand Code of Practice for Electrical Safe Distances (NZECP34:2001) and provided those in (C) to (H) are located at least 12 metres from the outer visible foundation of a National Grid Transmission Line Support Structure:

- (A) ~~Any utility within a transport corridor~~ Network utilities (other than for the reticulation and storage of water in canals, dams or reservoirs including for irrigation purposes) undertaken by a network utility operator as defined in Section 166 of the Resource Management Act 1991 or any part of electricity infrastructure that connects to the National Grid
- (B) Fences no more than 2.5 metres in height and located more than 5 metres from the outer visible foundation of a National Grid transmission line support structure.
- (C) Any new non-habitable building less than 2.5 metres high and 10 square metres in floor area
- (D) ~~Any~~ Non-habitable buildings or structures used for agricultural activities provided ~~it is~~ they are ~~Not~~ a milking shed/dairy shed (excluding the stockyards and ancillary platforms), wintering barn, or building for intensive farming activities (excluding animal feed lots), or a commercial greenhouse.
Located at least 12 metres from a National Grid Support Structure
- (E) Mobile irrigation equipment used for agricultural activities



- (F) Other than reticulation and storage of water in dams or reservoirs in Rule 3.9.5(C), reticulation and storage of water for irrigation purposes provided that it does not permanently physically obstruct existing vehicular access to a National Grid support structure.
- (DG) Alterations and extensions to existing buildings, ~~provided that any extension does not occur closer to:~~ any
 - (a) where the alterations or extensions are not within the National Grid Yard; and or
 - (b) where the alterations do not increase the existing building envelope
- (H) Public signs required by law or provided by any statutory body in accordance with its powers under any law.

3.9.5 The following activities are non-complying within the National Grid Yard

- (A) Any new building or structure, or addition to any building or structure, not permitted by Rule 3.9.4; not provided for above
- (B) Any change of use to a National Grid Sensitive activity, or the establishment of a new National Grid Sensitive activity;
- (C) Reticulation and storage of water in dams or reservoirs, or for irrigation purposes if it permanently physically obstructs existing vehicular access to a National Grid support structure.

Note: The New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP34:2001) contains restrictions on the location of structures and activities in relation to the lines and needs to be met. Compliance with the permitted activity standards of the Plan does not ensure compliance with the ~~Code of Practice.~~ ~~The~~ New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34: 2001).

Note: Vegetation to be planted within the National Grid ~~Corridor~~ Yard should be selected and/or managed to ensure that it will not result in that vegetation breaching the Electricity (Hazards from Trees) Regulations 2003.



3.17 SOILS, MINERALS AND EARTHWORKS

Earthworks and Mineral Extraction

3.17.1 Except for within the National Grid Yard, Rules 3.17.2 – 13.17.8 do not apply to:

- (G) The movement, deposition or removal of material associated with the removal and replacement of underground petroleum storage systems.

3.17.2 Subject to Rule 3.1 Biodiversity, Rule 3.3 Contaminated Land, Rule 3.8 Heritage, Rule 3.9 Utilities, Rule 3.10 Natural Features, Landscapes and Townscapes,

Rule 3.12 Natural Hazards and Rule 3.17.3 it is a permitted activity to undertake the following earthwork activities provided these comply with the conditions in Rule 3.17.3:

(D) Earthworks in the National Grid Yard

(DE) All other earthworks provided that the quantity of earthworks undertaken in a 12 month period shall not exceed:

3.17.3 The following conditions apply to the permitted activities in Rule 3.17.2:

(C) Within the National Grid Yard:

- (a) earthworks within 6 metres of the outer visible edge of the foundation of a National Grid transmission line support structure shall be no deeper than 300mm.
- (b) earthworks between 6 metres to 12 metres from the outer visible edge of the foundation of a National Grid transmission line support structure shall be no deeper than 3 metres.
- (c) earthworks shall not create an unstable batter that will affect a National Grid transmission line support structure.
- (d) earthworks shall not result in a reduction in the ground to conductor clearance distance of:
 - (i) 6.5 metres where the conductor voltage does not exceed 110kV; or
 - (ii) 7.5 metres where the conductor voltage exceeds 110kV.
- (e) clauses (a) to (d) above do not apply to:
 - (i) earthworks undertaken by a network utility operator providing the work is not associated with buildings or structures for the storage of water for irrigation purposes;
 - (ii) earthworks undertaken as part of agricultural, horticultural or domestic cultivation;
 - (iii) repair, sealing, resealing of an existing road, footpath, farm track or driveway.



3.17.6 It is a non-complying activity to:

(C) Undertake earthworks activities that do not comply with 3.17.3(C).

3.17.8 In addition to matters required to be included in a resource consent by the Resource Management Act 1991, applications under Rules 3.17.6 and 3.17.7 above shall include:

(A) An assessment of the following:

- (h) When within the National Grid Yard:
- (i) Any effects on the integrity of the transmission line.
 - (ii) Volume, area and location of the works, including temporary activities such as stockpiles;
 - (iii) Timing of works;
 - (iv) Site remediation;
 - (v) The use of mobile machinery near transmission lines;
 - (vi) The results of consultation with Transpower New Zealand including whether approval has been obtained under clause 2.2.3 of the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001).

Note: The New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP34:2001) contains restrictions on the location of structures and activities in relation to the lines and needs to be met.

3.18 SUBDIVISION

- 3.18.3 ~~Other than as listed in Rules 3.18.1, 3.18.6 and 3.18.7 s~~Subdivision is a discretionary activity:
- (A) in the National Grid Corridor where the resulting allotment(s) are capable of accommodating a building platform for a dwelling or principal building that is wholly outside the National Grid Yard with the minimum dimensions of 20m by 20m;
 - (B) other than as listed in Rules 3.18.1, 3.18.6 and 3.18.7.

~~Electricity Transmission Lines~~ National Grid Corridor

- 3.18.5 ~~Where subdivision of land creates new boundaries within an area measured 25 metres from either side of the centre line of an electrical transmission line designed to operate at or above 110kV, is within the National Grid Corridor the following matters will be among those taken into account by the Council in exercising its discretion.:~~

- (A) ~~The extent to which the subdivision design avoids, remedies or mitigates conflicts with existing lines, for example through the location and design of roads, reserves, landscaping, earthworks and building platforms.~~
- (B) ~~The ability for maintenance and inspection of transmission lines including ensuring access.~~
- (C-A) The extent to which the design and construction of any subdivision



allows for earthworks, buildings and structures to comply with the safe separation distance requirements in the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP: 34 2001).

- ~~(D) The extent to which the subdivision design and consequential development will minimise the potential reverse sensitivity on and amenity and nuisance effects of the National Grid.~~
- (E B) The results of consultation undertaken, including any written advice obtained, from the owner of the electricity transmission line.
- (C) The extent to which the subdivision or subsequent building location mitigates the effects of the transmission lines and the risk of potential injury and/or damage to property, for example through the location of roads and reserves under the route of the transmission lines.
- (D) The ability for continued access to the National Grid for maintenance, inspections and upgrading.
- (E) The extent to which the design and construction of the subdivision allows for activities to be set back from the National Grid to ensure adverse effects on and from the National Grid and on public safety are appropriately avoided, remedied or mitigated.
- (F) The nature and location of any proposed vegetation to be planted in the vicinity of the National Grid.

Protected Areas and Minimum Lot Sizes

3.18.6 Subdivision is a non-complying activity where it would create lots as follows:

- (L) Within the National Grid Corridor that cannot comply with 3.18.3(A).



SECTION FOUR - DEFINITIONS

National Grid Corridor: Means the area measured ~~25 metres~~ either side of the centreline of above ground National Grid ~~transmission lines~~ as follows:

- 16 metres for the 110kV transmission lines on pi poles
- 32 metres for the 110kV transmission lines on towers
- 37 metres for the 220kV transmission lines on towers.

Note: The National Grid Corridor does not apply to underground cables or any transmission lines (or sections of line) that are designated.

National Grid Sensitive Activities: - Means ~~buildings or parts of buildings used for, or able to be used for the following purposes:~~

- (A) ~~Caretakers Accommodation~~ Residence (excluding accessory buildings)
- (B) Day Care ~~a~~Activity;
- (C) Educational ~~a~~Activity, ~~except training related to the National Grid;~~
- ~~(D) Home Stay;~~
- ~~(E)~~ Hospital ~~a~~Activity;
- ~~(F) Residential activity;~~
- ~~(G) Residential Care Activity; or~~
- ~~(H) Visitor accommodation~~



APPENDIX VII – HAZARDOUS SUBSTANCES

HSNO SUB-CLASS AND HAZARD CLASSIFICATION	SUBSTANCE	GROUP 1: RESIDENTIAL 1, RESIDENTIAL 1A, RESIDENTIAL 2, RESIDENTIAL 3, AND OTATARA ZONES AND RESIDENTIAL ACTIVITIES IN ALL OTHER ZONES	GROUP 2: INDUSTRIAL 1, BUSINESS 1, BUSINESS 2, BUSINESS 3, BUSINESS 4, BUSINESS 5 AND BUSINESS 6 EXCLUDING RESIDENTIAL ACTIVITIES	GROUP 3 : INDUSTRIAL 2, INDUSTRIAL 3, INDUSTRIAL 4 AND SEAPORT 2 ZONES, EXCLUDING RESIDENTIAL ACTIVITIES	GROUP 4 HOSPITAL, EXCLUDING RESIDENTIAL ACTIVITIES	GROUP 5: RURAL AND AIRPORT PROTECTIONS ZONES, EXCLUDING RESIDENTIAL ACTIVITIES	GROUP 6: SEAPORT 1 ZONE, EXCLUDING RESIDENTIAL ACTIVITIES	GROUP 7: AIRPORT OPERATIONS ZONE, EXCLUDING RESIDENTIAL ACTIVITIES	GROUP 8: SMELTER ZONE, EXCLUDING RESIDENTIAL ACTIVITIES
2.1.1A High hazard gases	LPG (inc. propane-based refrigerant) in cylinders For Service Stations refer also to Note 44 <u>Rule 3.7.1(H)</u>	300kg Total Storage Quantity providing indoor storage is no more than 20kg per dwelling (except for multi-storey attached dwellings of over 3 storeys where no more than 10kg per dwelling)	300kg Total Storage Quantity providing indoor storage is no more than four 45kg cylinders	300kg Total Storage Quantity providing indoor storage is no more than four 45kg cylinders	300kg Total Storage Quantity providing indoor storage is no more than four 45kg cylinders	300kg Total Storage Quantity providing indoor storage is no more than four 45kg cylinders	No threshold	300kg Total Storage Quantity providing indoor storage is no more than four 45kg cylinders	1500kg Total Storage Quantity providing indoor storage is no more than four 45kg cylinders
Flammable liquids (stored below-ground)									
3.1A, 3.1B, 3.1C, 3.1D	Petroleum, diesel or alcohol blend fuels	No threshold							

Notes:



41. Notwithstanding the volumes set for LPG (inc. propane-based refrigerant) in cylinders in Class 2.1.1A High hazard gases the following quantity of LPG stored in cylinders up to a maximum size of 45kg is permitted at duly authorised service stations selling fuel and associated products:

Seaport 1 and Smelter Zones No limit
All other Zones 450kg

CLEAN VERSION

SECTION TWO – ISSUES, OBJECTIVES AND POLICIES

2.6 ENERGY

2.6.2 Objectives

Objective 2: An integrated planning approach is taken wherever practicable to the management of adverse effects resulting from the use and development of local and regional energy resources, recognising and balancing the significance of those effects with the benefits that arise at a local, regional and national level.

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