

09 DEC 2016

CRUICKSHANK PRYDE
Barristers and Solicitors

9 December 2016

The Registrar
Environment Court
Level 1
District Court Building
282 Durham Street
CHRISTCHURCH 8013

By Courier

INVERCARGILL
42 Don Street
P.O. Box 857
Invercargill 9840
New Zealand
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Phone 03 214 4069
Fax 03 214 4760
Email office@cplaw.co.nz

QUEENSTOWN
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Trust Account
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**Niagara Sawmilling Co Limited v Invercargill City Council – Appeal against a Decision
on Proposed Invercargill City Council District Plan**

On behalf of the Appellant, we enclose:

1. Notice of Appeal (in duplicate)
2. A cheque in the sum of \$511.11 in payment of the filing fee

Yours faithfully

CRUICKSHANK PRYDE



Rex Chapman
Partner

Email : rex.chapman@cplaw.co.nz

Copy to:
Chief Executive
Invercargill City Council
Esk Street
INVERCARGILL

Niagara Sawmilling Co Limited
By email

SCANNED

12 DEC 2016



*The Partners and Staff wish everyone a very Merry Christmas
and a Happy New Year.
We close at 1.00pm on 23 December 2016 and re-open 8.30am
on 9 January 2017.*

IN THE ENVIRONMENT COURT
AT CHRISTCHURCH REGISTRY

ENV – 2016

IN THE MATTER of an appeal under Clause 14(1),
First Schedule of the Act in relation to
the Proposed Invercargill City Council
District Plan – Industrial Zones

BETWEEN **NIAGARA SAWMILLING CO
LIMITED**

Appellant

AND **INVERCARGILL CITY COUNCIL**

Respondent

**Notice of Appeal against a decision on the Proposed Invercargill City
Council District Plan 2013 – Industrial Zones**

Dated 8 December 2016

Presented for filing by:
Cruickshank Pryde
P O Box 857
Invercargill
Ph (03) 214 4069
Fax (03) 214 4760
Solicitor Acting
R T Chapman

To: The Registrar
Environment Court
Christchurch

1. Niagara Sawmilling Co Limited ("*Niagara*") appeals against part of the decision of the Invercargill City Council on the Proposed Invercargill City Council District Plan – Industrial Zones (Decision No. 38).
2. Niagara is the successor in terms of Section 2A of the Resource Management Act 1991 of Niagara Properties Limited who made a submission on the variation.
3. Niagara is not a trade competitor for the purposes of Section 308B of the Resource Management Act 1991.
4. Niagara received notice of the decision on 31 October 2016.
5. The decision was made by Invercargill City Council.
6. The part of the decision that Niagara is appealing is the decision to reject the re-zoning of the land at 9 Kennington Road and 534 Woodlands Invercargill Highway ("*the Land*") from Rural 1 to Industrial 3.
7. The legal description of the land is as follows:
 - 7.1 9 Kennington Road – Part Lot 2, DP1110 (CFRSLD3/1104)
 - 7.2 543 Woodlands Invercargill Highway – Lot 1, DP1110 (CFRSL95/23)

Reasons

8. The reasons for the appeal are as follows:

8.1 The land is surrounded by or is adjacent to an established Industrial Zone.

8.2 The industry in this area is well established with a long history on the adjacent land.

8.3 The land is located on high ground with low susceptibility to hazards which are encountered on much of the industrial land in the Invercargill City Council District.

8.4 The Respondent's decision was based on the grounds that the industrial use of the land would give rise to adverse impacts on the amenity of the residential activities nearby. In reaching its decision the Respondent failed to have regard to:

(a) The industrial use of the land would still have to comply with the rules for the Industrial Zone which protects residential amenity; and

(b) The residential area referred to by the Respondent (Kennington Road) is already surrounded on all sides by the existing Industrial Zone.

Relief Sought

9. Niagara seeks the following relief:

9.1 That the land be zoned Industrial 3 under the Proposed Invercargill City Council District Plan.

10. The following documents are attached to this notice:

(a) A copy of the Appellant's submission

(b) A list of names and addresses of persons to be served with a copy of the notice

(c) A copy of the decision on the Proposed Invercargill City
District Plan – Industrial Zones – Decision No. 38



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R T Chapman

Solicitor on behalf of the Appellants

Dated: *9 December 2016*

Address for service of appellant: Cruickshank Pryde

Solicitors

PO Box 857

INVERCARGILL

Telephone: 03 2144069

Fax: 03 2144760

Email: rex.chapman@cplaw.co.nz

Contact Person: R T Chapman

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Christchurch.

19 The Crescent, PO Box 1262,
Invercargill 9840, NEW ZEALAND
Telephone: 03 218 2546
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Web: www.bonischconsultants.co.nz



21st October 2013

RESOURCE MANAGEMENT ACT 1991 (Act)

Submission on Proposed Invercargill City District Plan 2013

To: Invercargill City Council
Private Bag 90104
INVERCARGILL 9840

Submitter: Niagara Properties Ltd (**the Submitter**)
PO Box 524
INVERCARGILL 9840

Subsume

This is a submission on the Proposed Invercargill City District Plan 2013 (Proposed Plan).

The Submitter can not gain an advantage in trade competition through this submission.

The specific provisions of the proposal that this submission relates to are:

All of the provisions in the Proposed Plan as they relate to the land bound by:

- Lot 9, Lot 11-16, Part Lot 2-10, Part Lot 10A, Part Lot 16-17, Part Lot 19-20, Block I, DP 112 (CFR SL151/34) – 21 First Street.
- Section 82, Block VII, Invercargill Hundred (CFR SL7C/703) – 41 Kennington Road
- Section 83, Block VII, Invercargill Hundred (CFR SL7C/705)
- Section 84-85, Block VII, Invercargill Hundred (CFR SL7C/704)
- Part Lot 1, DP 6957 (CFR SL10C/639) – 37 Kennington Road
- Part Lot 2, DP 1110 (CFR SLB3/1104) – 9 Kennington Road
- Lot 1, DP 1110 (CFR SL95/23) – 534 Woodlands Invercargill Highway
- Lot 1, DP 6068 (CFR SL237/40) – 17 Kennington Road
- Lot 1, DP 5638 9CFR SL7B/960) – 21 Kennington Road
- Lot 2, DP 5638 (CFR SL7B/961) – 25 Kennington Road
- Lot 1, DP 4359 (CFR SL172/275) – 27 Kennington Road
- Lot 3, DP 6957 (CFR SLB3/1105) – 29 Kennington Road
- Lot 1, DP 8125 (CFR SL1A/1304) – 31 Kennington Road

(the Land), including, but not limited to:

- Section 2.28 relating to the Objectives, Policies and Methods for the Industrial Zone;

- Section 2.40 relating to the Objectives, Policies and Methods for the Rural 1 Zone;
- Any relevant definitions and planning maps or other provisions that relate to the Land.
- Noise provisions of the plan
- Rule 3.13.2 Noise Levels from Activities
- Rule 3.13.2 Rural Noise Levels
- Rule 3.13.2 Industrial Noise Levels
- Policy 2.40.3 Policy 8 Noise

Niagara Properties Ltd submission is:

The provisions identified above are not supported by the Submitter in so far as they relate to the Land and they should be amended as set out in the Relief Sought.

Reasons for submission:

The submitter's reasons include, but are not limited to, the matters set out below.

Zoning

We submit that the proposed zoning of the Land as Rural 1 Zone is not the most appropriate outcome for the land and that the Land should be zoned Industrial 3 Zone for the following reasons:

- The Land surrounded by or adjacent to established industrial zone land
- The zoning of this land as Industrial 3 will ensure coherent development in an area suited to industrial use with good transportation routes.
- The industry in this area is well established with a long history on the site
- The land is located on high ground with low susceptibility to hazards encountered on much of the industrial land in the Invercargill City District.

Noise Provisions of the Plan

Overview

- Although our sawmill operation is located within the Industrial 3 Zone adjoining land is zoned Rural and the Rural Zone noise limits are more stringent than those of the Industrial 3 Zone.
- We are concerned that changes to the noise provisions of the Plan could limit our ability to undertake permitted land use activities under the Industrial 3 Zone.
- We note that there does not appear to be an assessment of the alternatives, benefits, and costs of the noise provisions or this change in noise measurement in the Section 32 Report for the Proposed District Plan.

Rule 3.13.2 Noise Levels at notional boundary of any noise sensitive activity within a zone.

- Oppose. Niagara Properties opposes the noise limits for Rural 1 'when measured at the notional boundary of any noise sensitive activity on a site within a zone' as it relates to the Land.
- Noise limits for rural land bordering the industrial 3 zone, particularly 17-31 Kennington Road should be the same as those for Industrial 3 area. The policies of the propose District Plan allow for

activities within the Industrial 3 zone on a 24/7 basis. The established industrial activities within this area currently operate on this basis, the proposed limits on the notional boundary of noise sensitive activities within the Rural 1 zone may have detrimental implications for the existing operation of Niagara Properties business.

Rule 3.13.2 Industrial Noise Levels

- Support. We support change to the day time LAmax for the Industrial 3 Zone.

2.40.3 Policy 8 Noise

- Oppose. Policy 8 does not recognise that parts of the Rural 1 Zone adjoin Industrial activities permitted under the Industrial 3 zone.
- The Rural 1 Zone is a working rural environment and subject to noise associated with rural activities along with other permitted activities such as industry in adjoining zones.
- We object to the term “peace and tranquillity” in the explanation attached to this policy.

What is the most appropriate zoning for the Land

Niagara Properties submits that the proposed zoning of the Land is inappropriate given the existing land use in the area and the suitability of the Land for Industrial zoning.

Section 2.28 Industry Overview states – “Maintenance of “critical mass” – creation and maintenance of jobs – is the most important overall issue on enabling the Invercargill community to provide for its future well-being. The Council wishes the District Plan to be part of an overall strategy supporting job creation and maintenance. Provision of Industrial Zoning will enable industry to locate in a variety of areas within the Invercargill city district.” This paragraph illustrates the importance Council places on the provision of zoning for industry.

Section 2.28.1 Issues states: “the significant resource management issues with respect to industry are:

1. A lack of sufficient provision for industrial land can mean there is inadequate choice of sites available for any industry that wishes to locate in Invercargill.
2. Failure to manage the effects of industry may mean that its requirements do not integrate with transport and other infrastructure systems and may result in industry detracting from the amenities of other land uses in other areas.
3. Failure to manage the amenity of the industrial areas may make them unattractive for industries to locate and do business.”

These issues highlight the importance of zoning for industrial land in areas which are most suitable. The Land is located in areas directly adjoining an established industrial area. The transportation routes are excellent with access to State highway 1 and a railway line running alongside the Industrial land.

The location of residential activities (zoned Rural 1) in land entirely surrounded by Industrial Zoned land is in direct contradiction with Issue 3 which states that failure to manage the amenity of industrial areas may make them unattractive for industries to locate and do business. Clearly this residential land use is incompatible with the surrounding established industrial uses. This has been highlighted in recent times by complaints from residents of this area over noise from the sawmill. It is also noted that that a section along

Kennington Road which previously was zoned industrial is now zoned Rural 1. Niagara Properties Ltd strongly opposes this section being rezoned from Industrial to Residential. There is no other District Plan in New Zealand which has six rurally zoned allotments used for residential purposes surrounded on all sides by an established industrial zone.

The industrial zoning at Kennington has ring fenced the existing area utilised for industry without providing for future development when the objectives of the District Plan clearly state that industries should locate and group in appropriate zones for those industries; that the pattern of industrial activity will not become dispersed. The policies focus on ensuring large industry is not located within built up areas and that the restrictions on industrial activities should be limited outside built up areas. The District Plan does not provide for residential activities to be surrounded by Industrial activities and this should be reflected in the *planning maps*.

Under Section 2.32.3 Policies – Policy 1 Industrial 3 (Large) Zone the District Plan states: “to establish and implement an Industrial 3 Zone in the rural area to provide for a range of heavy industrial and serve activities requiring sites of more than one hectare with operating hours up to 24 hours a day seven days a week.” The explanation for this policy states that “the Council wishes to plan ahead for such developments by ensuring that zoned land is available. The scale of such industries and their operational requirements (in particular, the need to operate for extended periods up to 24 hours a day, seven days a week at certain times of the year) mean that they are best provided for in identified areas in the rural environment.” This policy and its accompanying explanation provide a clear reasoning as to why the identified Land would be most appropriately zoned as Industrial 3. There is an identified need to zone for industry, because of operating constraints these industries are best located in the rural area. The fact that the existing industrial land at Kennington has been zoned Industrial 3 without providing for future expansion is contrary to the objectives and policies listed in the District Plan for Industrial Zones and in particular Industrial 3 Zone.

The most appropriate zoning for the Land is identified as Industrial 3 for the following reasons:

Meets the issues, objectives and policies of the proposed District Plan

Allows for future location and expansion of industry in an area that has an established industrial use

Allows for industry to be located in an area with good transportation routes and access to services

Provides for coherent development in an established industrial area.

It therefore cannot reasonably be concluded that the Rural 1 zoning overlay that is proposed for the Land under the Proposed Plan:

- a) is the most appropriate outcome for the Land under section 32 of the Act, taking into account the relative costs, benefits and risks;
- b) will enable the integrated management of natural and physical resources; and
- c) will achieve the sustainable management purpose of the Act.

Relief Sought:

We request that the Proposed Plan be amended such that:

- a) The Land is rezoned Industrial 3 Zone and

- b) Any consequential changes necessary to the definitions, objectives, policies, rules, methods, and other explanatory text and other provisions of the Proposed Plan that may be relevant, as well as the planning maps to give full effect to the relief sought.
- c) The Council should provide an assessment of the alternatives, benefits, and costs of the noise provisions in the Plan and more specifically the change in the manner in which noise is measured and assessed. To propose changing the noise limits in the plan without undertaking a Section 32 analysis is contrary to the process required under the Act.
- d) Rule 3.13.2 – Remove the limits on noise ‘When measured at the notional boundary of any noise sensitive activity within a zone.’
- e) Rule 3.13.2 - Retain the 45 LmaxdBA night time limit for the Rural Zone.
- f) Rule 3.13.2 - Retain the Industrial 3 Zone 85db LAmax for day time.
- g) 2.40.3 Policy 8 - Amend wording to recognise that noise levels in parts of the Rural Zone and influenced by existing industrial activities and adjoining industrial zones.

Policy 8 Noise: To maintain low daytime ambient noise levels and lower night time ambient noise levels whilst allowing agricultural activities, and recognising that some parts of the zone are subject to higher levels of noise generated by transportation activities, existing industry and farm activities.

Explanation: Low ambient noise levels, particularly at night, are an important dimension to the amenity of the Rural 1 Zone. However, it is important to recognise that the Rural 1 Zone is a working environment and rural activities such as agriculture, horticulture and forestry along with existing industrial activities need to be provided for to ensure they are not compromised by reverse sensitivity issues involving noise. Delete: *“The peace and tranquillity”*

The Rural 1 Zone is also affected by major transportation infrastructure, in particular the State Highways, the railway and the airport and existing industrial activities and Industrial Zoning. However, it is important that the functioning of this essential infrastructure and existing industrial activities is not compromised by reverse sensitivity issues involving noise.

Yours faithfully

BONISCH CONSULTANTS

Christine McMillan

encl

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INVERCARGILL 9871

2. Southern District Health Board
C/- Public Health South
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INVERCARGILL 9840

Attention: Dr Leanne Liggett
Dr Liggett

3. Balance Agri-Nutrients Ltd
C/- Ryde Consulting Ltd
PO Box 13009
TAURANGA 3141

Attention: Mr Gavin Kemble
Mr Kemble

4. Silver Fern Farms Management Ltd
PO Box 941
DUNEDIN 9054

Attention: Alison Johnstone
Ms Johnstone

5. Shanan De Garnham
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