

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

ENV-2016-CHC-

IN THE MATTER of the Resource Management Act 1991

AND

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

BETWEEN **POWERNET LIMITED**

Appellant

AND **INVERCARGILL CITY COUNCIL**

Respondent

NOTICE OF APPEAL

TO: The Registrar
Environment Court
Christchurch

- 1 **PowerNet Limited ("Appellant")** appeals against decisions of the Invercargill City Council ("**Respondent**") on its Proposed Invercargill City District Plan ("**Proposed District Plan**").
- 2 The Appellant made a submission on the Proposed District Plan.
- 3 The Appellant is not a trade competitor for the purposes of section 308D of the Act.
- 4 The Appellant received notice of the decisions on Monday 31st October 2016, and understands that the appeal period closes 9 December 2016.
- 5 The decisions were made by the Respondent.
- 6 The decisions appealed, reasons for appeal and relief sought are grouped together by topic and are set out below generally in the order in which the relevant provisions appear in the Proposed District Plan.

Section 2.9 – Infrastructure

2.9.3 Policy 2

- 7 The decision appealed is as follows:
 - (a) The decision to establish a hierarchy in terms of the preferred management of adverse effects arising from the development, construction, maintenance and upgrading of infrastructure.
 - (b) The decision to include explanatory text which places an obligation on infrastructure providers to “consider all options to address adverse environmental effects”.
- 8 The reasons for the appeal are as follows:
 - (a) It is not considered appropriate to include within this policy a first order priority to avoid the adverse effects arising from the development of infrastructure.
 - (b) Infrastructure is an essential activity, and as such there may be some adverse effects that cannot be completely avoided, yet the provision of that infrastructure may be deemed to be an

appropriate development given the significant benefits that may also arise as a result.

- (c) It is inappropriate to require infrastructure providers to “consider all operations to address adverse effects”. This places an inappropriately high threshold and inconsistent with the obligations inherent in the Act, which requires an assessment of suitable alternatives, under certain circumstances.

9 The Appellant seeks that Policy 2 is amended as follows:

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:

.....

~~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.~~

Section 3 – Rules

Biodiversity Rule 3.1

10 The decision appealed is as follows:

- (a) The decision establishes a discretionary activity status for the trimming, removal or changes to any indigenous vegetation or parts thereof, including branches or roots, within the dropline of that vegetation, required for the construction of a network utility service.

11 The reasons for the appeal are as follows:

- (a) Infrastructure is an essential activity, and new infrastructure may be required to locate within an area identified as being an area of significant indigenous biodiversity. The discretionary activity status is not considered appropriate for the trimming or any changes to indigenous vegetation required for the construction of

new network utility services. A more appropriate activity status for these activities is controlled.

- (b) It is considered that the removal or felling of indigenous vegetation required to establish a new network utility service should comprise a restricted discretionary activity rather than a full discretionary activity. This activity status will ensure that only those adverse effects on the indigenous biodiversity are considered as part of the consenting process.
- (c) It is understood that the rules within Section 3.1 only apply to activities within those areas identified as areas of significant biodiversity in the District Planning Maps. An amendment to the text under clause 3.1 is required to clarify this.

12 The Appellant seeks that Rule 3.1.2 is amended as follows:

- (a) Clarify that Rule 3.1.2 applies only to indigenous vegetation within areas of significant indigenous biodiversity identified in the District Planning Maps.
- (b) Amend Rule 3.1.2 as follows:

Insert a new controlled activity rule:

It is a controlled activity to trim indigenous vegetation required for the construction of new network utility services.

13 The Appellant seeks that Rule 3.1.3 is amended as follows:

- (a) Clarify that Rule 3.1.3 applies only to indigenous vegetation within areas of significant indigenous biodiversity identified in the District Planning Maps.
- (b) Amend the rule as follows:

It is a restricted discretionary activity to:

- (B) *Construct new network utility services including associated trenches and earthworks in a manner that will require the ~~trimming, removal or changes to~~ of any indigenous vegetation or parts thereof, including any branches or roots, within the drip line of that vegetation.*

The Council's discretion is restricted to:

(a) The adverse effects on biodiversity values resulting from the removal of vegetation, taking into consideration any mitigation proposed via replanting.

- (c) Clarify that the proposed rule set out above only applies to areas identified as areas of significant indigenous biodiversity identified in the District Planning Maps.

Further Relief Sought

14 In addition to the matters set out in paragraphs 10 to 13 above, the Appellant seeks the following relief:

- (a) Any similar relief with like effect which addresses the Appellant's concerns;
- (b) Any consequential amendments which arise from the Appellant's submission, the reasons for the appeal or the relief sought; and
- (c) Such other relief as the Court considers appropriate.

Attachments

15 Copies of the following documents are attached to this appeal:

- (a) The Appellant's submission and further submission (**Annexure A**);
- (b) The relevant parts of the Respondent's decisions (**Annexure B**); and
- (c) A list of the names and addresses of the persons to be served with a copy of this notice of appeal (**Annexure C**).

DATED this 9th day of December 2016

Signature of person authorised to sign on behalf of PowerNet Ltd



Megan Justice

Mitchell Daysh Limited

Address for service:

Mitchell Daysh Ltd

PO Box 489 Dunedin 9054

Attention: Megan Justice

Ph: 03 477 7884

Email: megan.justice@mitchelldaysh.co.nz

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.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in [form 33](#)) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

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 and (or) the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.

*Delete if these documents are attached to copies of the notice of appeal served on other persons.

Advice

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

- Schedule 1 form 7 heading: amended, on 1 November 2010, by [regulation 19\(1\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2010 (SR 2010/279).
- Schedule 1 form 7: amended, on 3 March 2015, by [regulation 5\(1\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2014 (LI 2014/386).
- Schedule 1 form 7: amended, on 3 March 2015, by [regulation 5\(2\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2014 (LI 2014/386).
- Schedule 1 form 7: amended, on 1 November 2010, by [regulation 19\(1\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2010 (SR 2010/279).
- Schedule 1 form 7: amended, on 1 June 2006, by [regulation 10\(4\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2006 (SR 2006/99).

ANNEXURE A

Appellant's Submission and Further Submission

ANNEXURE B

Respondent's Decisions

ANNEXURE C

Names and addresses of persons to be served with a copy of this notice

Infrastructure Policy 2

Open Country Dairy Ltd
PO Box 16
Waharoa 3441
Attention: Andrew Wellington
andrew.wellington@opencountry.co.nz

South Port NZ Ltd
c/- Mitchell Partnerships Ltd
PO Box 489
Dunedin
Attention: John Kyle
john.kyle@mitchelldaysh.co.nz
kirsty.osullivan@mitchelldaysh.co.nz

Transpower NZ Ltd
PO Box 1021
Wellington 6140
Attention: Jo Mooar
environment.policy@transpower.co.nz

Invercargill Airport Ltd
C/- Mitchell Partnerships Ltd
PO Box 489
Dunedin
Attention: John Kyle
john.kyle@mitchelldaysh.co.nz
kirsty.osullivan@mitchelldaysh.co.nz

NZ Transport Agency
PO Box 5245
Moray Place
Dunedin
Attention: Tony MacColl
tony.maccoll@nzta.govt.nz

Chorus NZ Ltd and Spark NZ Ltd
PO Box 632
Wellington
Attention: Mary Barton
mary.barton@chorus.co.nz

Biodiversity Rule 3.1.3

Transpower NZ Ltd
PO Box 1021
Wellington 6140
Attention: Jo Mooar
environment.policy@transpower.co.nz

Environment Southland
Private Bag 90116
Invercargill 9840
Attention: Dallas Bradley/Gavin Gilder
service@es.govt.nz;
gavin.gilder@es.govt.nz