

**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 DIRECTOR-GENERAL OF  
CONSERVATION  
ENV-2016-CHC-091  
AND POWERNET LIMITED  
ENV-2016-CHC-092  
AND SOUTH PORT NZ LIMITED  
ENV-2016-CHC-093  
AND ROYAL FOREST AND BIRD  
PROTECTION SOCIETY OF NEW  
ZEALAND INCORPORATED  
ENV-2016-CHC-099  
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

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**CONSENT ORDER**

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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 make amendments to the proposed Invercargill City District Plan, as set out in Annexure A, attached to and forming part of this order;
- (2) all other appeal topics remain live and are to be determined.



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

## REASONS

### **Introduction**

[1] The court has now read and considered the consent memoranda of the parties dated 13 September 2017 and 29 September 2017<sup>1</sup>, which propose to resolve these appeals in so far as they concern the Coastal Environment and Soils provisions of the Invercargill City District Plan.

[2] All other appeal topics remain live and are to be determined.

### **Other relevant matters**

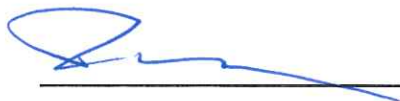
[3] New Zealand Aluminium Smelters, Federated Farmers, Southland Regional Council and Balance Agri-Nutrients have given notice of an intention to become a party under section 274 of the Resource Management Act ("the RMA" or "the Act") and have signed the memorandum setting out the relief sought.

### **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.

DATED at CHRISTCHURCH this 18 October 2017



**J J M Hassan**  
**Environment Judge**



<sup>1</sup> By way of response to the court's Minute dated 25 September 2017.

## Annexure A

Deletions in strikethrough (blue) and additions underlined (red).

### 2.4 COASTAL ENVIRONMENT

#### 2.4.2 Objectives

**Objective 6:** ~~Avoid~~ Manage adverse effects of land use and development on coastal water quality and ecosystems.

#### 2.4.3 Policies

**Policy 1 Identification and delineation:** To identify the coastal environment ~~and to delineate it on the District Planning Maps,~~ recognising that the landward extent of the coastal environment varies as a result of the dynamic coastal processes and values present.

**Explanation:** The NZCPS 2010 clearly outlines the characteristics to be considered when identifying areas of coastal environment. The coastal environment is shaped by dynamic coastal processes. The District Planning Maps ~~delineate the~~ identify the general extent of the coastal environment within the Invercargill City District to ~~provide~~ assist with clarity as to when District Plan provisions apply.

**Policy 2 Locations for use and development:** To identify the Bluff ~~area township,~~ and the hamlet of Ōmaui as the appropriate locations for subdivision, use and development in the coastal environment and, subject to providing for activities with a functional need to locate in the coastal environment, to give priority to preservation of the natural character of the coastal environment elsewhere.

**Explanation:** This approach will encourage development to locate in areas that are already modified and help avoid cumulative effects, protect natural character, outstanding natural features and landscapes, and other values of the coastal environment. The areas within the Bluff township and Ōmaui that are considered appropriate are identified through zoning.

**Policy 3 Assessment criteria:** ~~When assessing natural character in relation to proposals for subdivision, use and development, the following criteria will be considered:~~

- ~~1. In areas of the coastal environment with outstanding natural character, the extent to which the proposal avoids adverse effects on natural character; and~~
- ~~2. In all other areas of the coastal environment, the extent to which significant adverse effects on natural character are avoided, and other adverse effects are avoided, remedied or mitigated.~~

**Explanation:** ~~Natural character may include matters such as:~~

- ~~(a) Natural elements, processes and patterns~~
- ~~(b) Biophysical, ecological, geological and geomorphic aspects~~
- ~~(c) Natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks~~
- ~~(d) The natural movement of water and sediment~~
- ~~(e) The natural darkness of the night sky~~
- ~~(f) Places or areas that are wild or scenic~~
- ~~(g) A range of natural character from pristine to modified, and~~



~~(h) — Experiential attributes, including the sounds and smell of the sea, and their context or setting.~~

**Policy 43** To seek the maintenance and enhancement of public access within the coastal environment through regulatory and non-regulatory means where it:

- (a) Is practical to do so;
- (b) Will not give rise to health and safety issues; and
- (c) Will not interfere with the reasonable use of the land by the occupier.

**Explanation:** *The Objectives and Policies of the NZCPS and Regional Policy Statement for Southland require provision of public access along the margins of the coast in certain circumstances and the Council will seek to implement that by a range of regulatory and non-regulatory techniques while recognising potential effects and impacts of such access.*

**Policy 54** ~~Avoid, remedy or mitigate adverse effects on amenity, social, intrinsic, ecological, cultural, heritage, natural character and landscape and natural features values within the coastal environment. Ensure that subdivision, use and development activities within the coastal environment:~~

- (A) Avoid adverse effects on areas of outstanding natural features and landscapes and/or outstanding natural character and/or areas of significant indigenous biodiversity.
- (B) Avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects on other natural features and landscapes and/or natural character, and indigenous biodiversity.
- (C) Avoid, remedy or mitigate adverse effects on amenity, social, intrinsic, ecological, cultural and heritage values.

**Explanation:** *The coastal environment contains a multitude of values and it is appropriate to manage activities to avoid, remedy or mitigate any adverse effects of activities on those values. Such action is consistent with the NZCPS and Regional Policy Statement for Southland.*

Natural character may include matters such as:

- (a) Natural elements, processes and patterns
- (b) Biophysical, ecological, geological and geomorphic aspects
- (c) Natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks
- (d) The natural movement of water and sediment
- (e) The natural darkness of the night sky
- (f) Places or areas that are wild or scenic
- (g) A range of natural character from pristine to modified, and
- (h) Experiential attributes, including the sounds and smell of the sea, and their context or setting.



When assessing natural character the extent to which natural character has already been modified by existing subdivision, use and development will be part of the evaluation.

**Policy 5 National Grid:** New development of the National Grid should seek to avoid adverse effects on outstanding natural features and landscapes and/or areas of outstanding natural character located within the coastal environment.

**Explanation:** While all efforts should be made to avoid adverse effects on these environments this policy recognises that new development of the National Grid may not be able to avoid all adverse effects.

**Policy 6 Functional need, technical or operational requirements:**

(A) To protect and provide for existing infrastructure, port and renewable energy projects that have a functional, technical or operational requirement to locate in the coastal environment.

(B) To ~~give priority to recognise~~ and make provision for the functional, technical or operational requirements of infrastructure, port and renewable energy projects in determining appropriate locations and/or management in the ~~that have a functional need of a~~ coastal environment ~~location~~, and make appropriate provision for other facilities and activities that have located in the coastal environment for historical reasons.

**Explanation:** *The Port of Bluff and wharf facilities at Tiwai Point straddle the coastal marine area and the landward edges of the coastal environment and they have a functional need for such a location, as do mineral extraction activities. Infrastructure including roads, railways, and communication and power lines can also have a need to be located within the coastal environment in order to provide essential services.*

*Other activities, such as the Aluminium Smelter at Tiwai Point and the associated National Grid transmission lines, are located in the coastal environment for historic reasons and have invested heavily in their buildings, plant and equipment. Much of the District's sport and recreation activities require large areas of land located within the coastal environment. All these activities are important in enabling development and diversification to occur to meet the changing needs of the Invercargill City District and the Southland region. Many have a technical and/or operational requirement to be located within a coastal space. For others, it is not practicable to consider relocation.*

*Where new activities are being established, notwithstanding this policy, regard must be given to the suitability of any site and, together with any expansion of existing activities, the extent to which adverse effects can be avoided, remedied or mitigated, having regard to the provisions of the Resource Management Act 1991.*



#### 2.4.4 Methods of Implementation

Method 1 ~~Delineation of~~ Identify the general extent of the Coastal Environment on the District Planning Maps.

### 3.17 SOILS, MINERALS AND EARTHWORKS

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:

...

(g) Any effect on the future development potential of the land.

(h) Any effect on indigenous biodiversity values.

## SECTION FOUR DEFINITIONS

**Coastal Environment:** commences at the landward boundary of the Coastal Marine Area as defined by the RMA and contains land to the extent that such land is affected by or affects the coast, whether the coast be sea, estuary, harbour or bay. ~~as delineated on the District Planning Maps.~~

