

BEFORE THE ENVIRONMENT COURT

IN THE MATTER of the Resource Management Act 1991
AND of an appeal under clause 14 of the First
Schedule of the Act
BETWEEN SPARK NEW ZEALAND TRADING
LIMITED
(ENV-2016-CHC-116)
Appellant
AND INVERCARGILL CITY COUNCIL
Respondent

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

In Chambers at Christchurch

CONSENT ORDER

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

- (1) the appeal is 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) the appeal is 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 an appeal by Spark New Zealand Trading Limited against part of a decision of the Invercargill City Council on the proposed Invercargill



City District Plan, in relation to rule 3.9.21 ((E) Pole dimensions, (F) Cabinets and the status of Telephone Booths).

[2] The court has now read and considered the consent memorandum of the parties dated 30 June 2017, which proposes to resolve the appeal.

Other relevant matters

[3] No person has given notice of an intention to become a party under section 274 of the Resource Management Act ("the RMA" or "the Act").

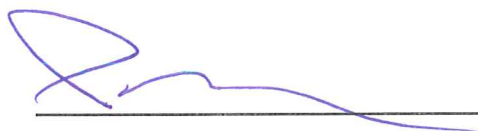
[4] It is recorded that while the parties have not included the expected assurance, as set out in Order (b) below, the assurance is included in the draft order provided to the court.

Orders

[5] 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 31st July 2017



J J M Hassan
Environment Judge



SECTION THREE

RULES

3.9 UTILITIES

Telecommunication and Radiocommunication Facilities

3.9.21 Telecommunication and radiocommunication facilities are permitted activities subject to the following standards:

...

~~(E)~~ (F) No masts, poles, or towers for telecommunication or radiocommunication facilities shall exceed 600 mm in diameter at a point ~~4.0~~ 6.0 metres or more above ground level in the Residential Zones, Otatara Zone and Business 2 and 4 Zones, or be sited within ~~25 metres of the boundary of these Zones~~ 5 metres of any boundary.

~~(F)~~ (G) Telecommunication cabinets and radiocommunication equipment cabinets outside of the road reserve shall not exceed:

(a) excluding the foundation plinth, 2.0 metres in height; or have a total floor area exceeding 2.0 square metres in the Residential 1, 2 and 3 Zones

(b) excluding the foundation plinth, 2.5 metres in height; or have a total floor area exceeding ~~4.8~~ 5 square metres in floor area in all other Zones.

3.9.22 No Communication Kiosk shall exceed 2.5 metres in height (excluding any small cell or antenna permitted in 3.9.22(A) below) or have a total volume exceeding 2.4 cubic metres.

(A) Any small cell or antennas attached to a Communication Kiosk shall be less than 1 metre in height and shall not have a horizontal dimension greater than the horizontal dimensions of the communication kiosk.

3.9.223 Telecommunication and radiocommunication facilities are discretionary activities where:

(A) The standards set out in Rule 3.9.21 and 3.9.22 are not met; or

(B) Any facilities are located within a site identified in the District Plan as containing significant indigenous biodiversity, an outstanding natural feature or landscape, or an item of heritage value identified in Appendix II; or

(C) Any facilities are located within the road reserve that is on the same side of the road as and next to land or sites that are identified in the District Plan as containing significant indigenous biodiversity, an outstanding natural feature or landscape, or an item of heritage value identified in Appendix II.



SECTION FOUR

DEFINITIONS

C

Communication Kiosk: Means a publicly accessible structure, whether free-standing or attached to a building, for the provision of telecommunication and radiocommunication services to the public. These include, but are not limited to, phone boxes and public wifi access points.

