

**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 BP OIL NEW ZEALAND LIMITED, MOBIL  
OIL NEW ZEALAND LIMITED AND Z  
ENERGY LIMITED  
(ENV-2016-CHC-74)  
SOUTH PORT NZ LIMITED  
(ENV-2016-CHC-93)  
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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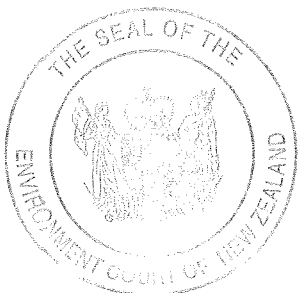
**CONSENT ORDER**

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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) the appeals, as they relate to the Seaport Zone and Transport Rules, 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 by BP Oil New Zealand Limited, Mobil Oil New Zealand Limited and Z Energy Limited (ENV-2016-CHC-74) and South Port NZ Limited (ENV-2016-CHC-93) against part of a decision of the Invercargill City Council on the proposed Invercargill City District Plan, in relation to Seaport Zones and Transport Rules.

[2] The court has now read and considered the consent memorandum of the parties dated 20 September 2017 which proposes to resolve these appeals in so far as they concern Seaport Zones and Transport Rules.

### **Other relevant matters**

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

### **Scope**

[4] In its appeal, South Port NZ Limited challenged the scope for the Council to create the Seaport 2 Zone, arguing it was not included in the notified Proposed District Plan.

[5] The provisions of the Seaport 2 Zone reflect a merger of two zones originally notified in 2013, identified as Seaport and Industrial 1A. The objectives and policies of Seaport 2 Zone are similar to those of the Industrial 1A Zone although the scope was broadened to allow for Seaport activities sought by the appellants. The Seaport 2 Zone was introduced by way of response to submissions on the Industrial 1A Zone, to submissions on the areas encompassed by the Seaport Zone and to submissions on the range of activities that were permitted in this area of land.<sup>1</sup>

[6] The court is satisfied with the parties' explanation and finds the introduction of the Seaport 2 Zone to be within the scope of the appeal.

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<sup>1</sup> Consent Memorandum dated 20 September 2017.



**Orders**

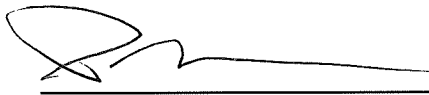
[7] The court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The court understands for present purposes that:

- (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.

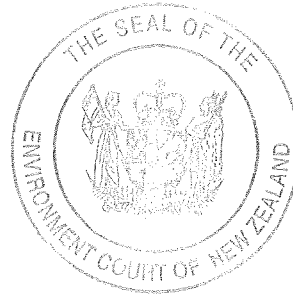
DATED at CHRISTCHURCH

5

October 2017



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



## SECTION FOUR

### ISSUES, OBJECTIVES AND POLICIES

#### 2.42 SEAPORT 1 ZONE

##### 2.42.3 Policies

**Policy 4 Glare:** To accept that glare may be an effect from activities in the Seaport 1 Zone and seek to minimise its adverse effects on the amenity of nearby residential areas.

**Policy 12 Reverse sensitivity:** To recognise the adverse effects that may be generated within and from the Seaport 1 Zone activities and:

- (a) identifying the effects and the area that these can impact on;
- (b) ~~provide~~providing information to owners and prospective owners on those effects;
- (c) ~~encourage~~encouraging owners of affected land to mitigate those effects on the occupiers of those properties; ~~and~~
- (d) when considering resource consents for subdivision use and development have regard to potential for reverse sensitivity effects that may impact on port related activities to ensure that Seaport Activities are protected from sensitive activities that are vulnerable to the range of adverse effects generated within and from the Seaport 1 Zone; and
- (e) Preventing sensitive activities from locating within the Seaport 1 Zone.

#### 2.42A SEAPORT 2 ZONE

##### 2.42A.3 Policies

**Policy 2 Waterfront Access:** To maintain and make a feature of pedestrian access along the waterfront, where it is safe and practical to do so.

*Explanation:* At present the public has access through part of the Seaport 2 Zone and the Council seeks to maintain that for amenity reasons and to also enable viewing of port activities. Such access must be balanced however, with the operational and functional requirements of the port, including health and safety.

**Policy 6 Glare:** To accept that glare may be an effect from activities in the Seaport 2 Zone and seek to minimise its adverse effects on the amenity of nearby residential areas.

**Policy 14 Reverse sensitivity:** To recognise the adverse effects that may be generated within and from the Seaport 2 Zone activities and:

- (a) identifying the effects and the area that these can impact on;
- (b) ~~provide~~providing information to owners and prospective owners on those effects;



- (c) ~~encourage~~encouraging owners of affected land to mitigate those effects on the occupiers of those properties; ~~and~~
- (d) when considering resource consents for subdivision use and development have regard to potential for reverse sensitivity effects that may impact on port related activities to ensure that Seaport Activities are protected from sensitive activities that are vulnerable to the range of adverse effects generated within and from the Seaport 2 Zone; and
- (e) Preventing sensitive activities from locating within the Seaport 2 Zone.

## 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:

- (A) All facilities shall be planned and operated in accordance with NZS 2772: Part 1:1999 Radiofrequency Fields Part 1 – Maximum Exposure Levels – 3kHz to 300kHz.
- (B) Any facilities located in the road reserve shall be designed, built and operated as permitted in the Resource Management (National Environmental Standards for Telecommunications Facilities) Regulations 2008 (Refer to Appendix XIII).
- (C) No antenna dish shall be greater than:
  - (a) 1.2 metres in diameter in the Residential 1, 1A, 2 and 3 Zones and the Otatara Zone; or
  - (b) 3 metres in diameter in all other Zones.
- (D) No antenna attached to a building or mast shall extend above the building or mast more than:
  - (a) 5 metres in the Industrial 2, 2A, 3 and 4 Zones, Seaport 1 and 2 Zones, or Rural Zone or
  - (b) 3.5 metres in the Airport Protection Zone, Business Zones, Hospital Zone, Industrial 1 Zone, Otatara Zone and Residential Zones.
- (E) No masts for telecommunication or radiocommunication facilities shall exceed a height above ground level of:
  - (a) 10 metres in the Airport Protection Zone, Residential Zones, Otatara Zone and Business 2 and 4 Zones
  - (b) 15 metres in the Business 6 Zone and Industrial 1 Zone
  - (c) 20 metres in the Business 1, 3 and 5 Zones
  - (d) 25 metres in the Industrial 2, 2A, 3 and 4 Zones, Seaport 2, Rural and Hospital Zones



## 3.20 TRANSPORT

~~3.20.13~~ It is a restricted discretionary activity to carry out a land use activity:

- ~~(a)~~ That requires direct access over a railway level crossing where there is currently no direct access; or
- ~~(b)~~ When there is a change in land use that results in an increase in use of an existing direct access over a railway level crossing.

~~The matters over which the Council shall exercise its discretion are:~~

- ~~(A)~~ The potential for adverse effects on the safety and efficiency of the road and railway resulting from the nature, use, location, and design of direct access over a railway level crossing.
- ~~(B)~~ The type and degree of control at the level crossing.
- ~~(C)~~ The availability of unobstructed sightlines at the level crossing.
- ~~(D)~~ The ability to obtain alternative legal access to the site.

**3.20.14** The erection of, or addition to buildings and other structures, which exceed 1.2 metres in height, within the Railway Crossing Safety Zones shown on the District Planning Maps is a restricted discretionary activity.

The Council's discretion is restricted to:

- (i) Any adverse effect on the safety of the level crossing for vehicles and pedestrians.
- (ii) The extent to which vehicles entering and exiting the level crossing can see trains.

**3.20.15** Except within the Seaport 1 and Seaport 2 Zones, theThe construction of crossings at railway lines which are intended to be used by vehicles is a discretionary activity.

## 3.40A SEAPORT 2 ZONE

### Height of Structures

**3.40A.4** All new buildings and structures, and additions to existing buildings and structures, are to be designed and constructed to comply with the following maximum height and recession planes:

- (A) Maximum height: ~~42-17~~ metres.
- (B) Maximum height for lighting towers, cranes, lifting devices, conveyor belts, linkspans, and gangways (where fixed to land): 35m
- (C) Recession plane: Infogram 4 applies in relation to any boundary with any Residential Zone.



## SECTION FOUR

### DEFINITIONS

**Seaport Activities:** Means those activities, buildings and structures associated with, and necessary for, the loading and unloading of goods and materials to and from ships and boats and their associated storage, handling, consolidation and distribution. This includes, but is not limited to, associated administration activities (including ancillary offices), staff facilities and infrastructure, freight depots, and also includes the repair, maintenance and servicing of ships and boats, border control activities, ~~and~~ facilities for the use of passengers including associated vehicle parking, and any storage, handling, consolidation and distribution of any goods or materials referred to in Appendix IX.

