BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No. [2018] NZEnvC175

IN THE MATTER	of the Resource Management Act 1991
AND	of appeals under Clause 14 of the First Schedule of the Act
BETWEEN	THE DIRECTOR-GENERAL OF CONSERVATION
	(ENV-2016-CHC-91)
	POWERNET LIMITED
	(ENV-2016-CHC-92)
	ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED
	(ENV-2016-CHC-99)
	TRANSPOWER NEW ZEALAND LIMITED
	(ENV-2016-CHC-100)
	Appellants
AND	INVERCARGILL CITY COUNCIL
	Respondent

Before:	Environment Judge J R Jackson
Hearing:	In Chambers at Christchurch
Date of Decision:	19 September 2018
Date of Issue:	19 September 2018

DIRECTIONS UNDER SECTION 292 RMA

A: Under section 292 Resource Management Act 1991 the Environment Court directs that the definition of "indigenous vegetation" in Decision [2018]

NZEnvC 134 should be corrected by replacing "all" with "any of" as follows (deletion struck-through, addition underlined):

> indigenous vegetation means vegetation or groundcover containing vascular and/or non-vascular plants and/or lichens that are indigenous in or endemic to ~~all~~ any of the ecological districts of which the City are part.

REASONS

The court's decision on "indigenous vegetation" definition

[1] In an Interim Decision dated 1 June 2018[1] (the Interim Decision) I concluded provisionally[2] that the definition of "indigenous vegetation" in the Proposed District Plan ("PDP") should be:

> indigenous vegetation means vegetation containing vascular and non-vascular plants and fungi that are indigenous or endemic to the ecological districts covering the City.

[2] The decision was interim to allow the parties to be heard on the reference to ecological districts in the definition and for advice on the phrase "vascular and non-vascular plants and fungi". The parties, including the Director-General of Conservation ("DGC") and Council filed various memoranda responding to the Interim Decision and court Minutes.

[3] The court issued a 'Final Decision' on 14 August 2018[3] on the definition of "indigenous vegetation" to be included in the proposed plan. In that decision, the court held[4] as follows:

> ... the definition of 'vegetation' should read 'indigenous vegetation means vegetation or groundcover containing vascular and/or non-vascular plants and/or lichens that are indigenous in or endemic to all the ecological districts of which the City are part' ...

[4] The DGC has raised an issue about a subtle change in the wording of the definition. To highlight the issue, Mr Williams, counsel for the DGC has conveniently set

---

1 *Director-General of Conservation and Ors v Invercargill City Council* [2018] NZEnvC 84.
2 Interim Decision at [69].
3 *Director-General of Conservation and Ors v Invercargill City Council* [2018] NZEnvC 134.
4 Final Decision at [15].

out the Final Decision version of the definition showing the changes from the Interim Decision. Additions are underlined and deletions struck out (viz ~~struck out~~):

> indigenous vegetation means vegetation or groundcover containing vascular and/or non-vascular plants and/or lichens ~~fungi~~ that are indigenous in or endemic to all the ecological districts of which ~~covering~~ the City are part.

[5] The DGC's concern is with the addition of "all" which now qualifies the phrase "the ecological districts of which the City are part". This may be read to mean the vegetation or groundcover needs to be indigenous in or endemic to every ecological district within Invercargill City to come within the definition. This would thereby exclude vegetation or groundcover which are indigenous in or endemic to one ecological district within the City but not others.

[6] Counsel submits, and I accept, that requiring that "indigenous vegetation" be endemic to every ecological district within a Council's district would fail to maintain diversity of indigenous vegetation within that Council's district. This would be a perverse outcome and is not what the court intended with the definition of "indigenous vegetation" for application in the proposed plan.

[7] The intention was that, as long as the vegetation or groundcover is indigenous in or endemic to at least one of the ecological districts of which the City is part, this will achieve the desired outcome under section 31(1)(b)(iii) of the Act to meet the Council's function to maintain indigenous biological diversity in its district, thereby giving effect to the Act. It is clear that the court introduced some uncertainty to the PDP with its casual introduction of the word "all". The question then is what should be done about the error since the court was *functus officio*.

[8] Section 292 RMA states:

> **292 Remedying defects in plans**
>
> (1) The Environment Court may, in any proceedings before it, direct a local authority to amend a regional plan or district plan to which the proceedings relate for the purpose of—
>
> (a) remedying any mistake, defect, or uncertainty; or
>
> (b) giving full effect to the plan.
>
> (2) The local authority to whom a direction is made under subsection (1) shall comply with the direction without using the process in Schedule 1.

[9] Notice was given to all parties of the court's intention to use section 292 RMA to correct the error. No party opposed that course. Accordingly, since the issue is minor, I will make the change sought.

J R Jackson
Environment Judge