

IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

Decision [2024] NZEnvC 045

IN THE MATTER OF an appeal under clause 14 of the First
Schedule of the Resource Management
Act 1991

BETWEEN AIRBNB AUSTRALIA PTY LIMITED
(ENV-2023-AKL-000090)

Appellant

AND NEW PLYMOUTH DISTRICT
COUNCIL

Respondent

Court: Environment Judge MJL Dickey sitting alone under s 279 of the Act

Date of Order: 18 March 2024

Date of Issue: 18 March 2024

CONSENT DETERMINATION

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

- (1) the appeal is allowed subject to the agreed amendments to the
Proposed New Plymouth District Plan (**Proposed Plan**) as set out in
Appendix A, attached to and forming part of this order; and



(2) the appeal is otherwise dismissed.

B: Under section 285 of the RMA, there is no order as to costs.

REASONS

Introduction

[1] This consent order relates to an appeal by Airbnb Australia Pty Limited (**Airbnb Australia**) in relation to New Plymouth District Council's decisions on submissions to the Proposed Plan (**PDP-DV**), in particular, the decisions on two provisions of the Mixed Use Zone chapter involving Residential Visitor Accommodation (**RVA**): MUZ-R6 and MUZ-R15.

[2] The Proposed Plan was publicly notified on 23 September 2019 and PDP-DV was published on 13 May 2023. Airbnb Australia appealed the decision on 26 June 2023.

[3] Airbnb Australia sought to amend provisions under MUZ-R6 and MUZ-R15, and any consequential changes that resolve the concerns set out in its appeal, in order to change the activity status of RVA within the Mixed Use Zone Living Precinct from discretionary to permitted.

[4] No person has given notice of an intention to become a party under s 274 of the Act.

Agreement reached between the parties

[5] Following direct discussions, the parties agreed that this appeal can be resolved by consent on the basis that several agreed amendments are made to the Mixed Use Zone chapter of the PDP.

[6] The agreed amendments are set out in Appendix A of this order and include the following:

- (a) add residential visitor accommodation (within the MUZL Precinct) to the list of compatible activities in Policy MUZ-P1;
- (b) make RVA a potentially compatible activity where it is not located within the MUZL Precinct/Waiwhakaiho Specific Control Area in Policy MUZ-P2 (and a consequential change to ensure the same for Visitor Accommodation given the amendment to MUZ-R6 to exclude/split out RVA);
- (c) add a new rule MUZ-R7 for RVA as a permitted activity in the MUZL Precinct; and
- (d) amend MUZ-R15 (which will be re-numbered to R16) to exclude RVA.

Consideration

[7] The Court has read and considered the notice of appeal dated 26 June 2023, and the joint memorandum of the parties dated 22 February 2024.

[8] In terms of s 32AA, the Court is satisfied from the information available that the amendments are the most appropriate way to achieve the objectives of the Proposed Plan for the Mixed Use Zone.

[9] The Court is making this order under s 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 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 scope of the appeal.

Orders

[10] Therefore the Court orders, by consent, that:

- (a) the appeal is allowed subject to the agreed amendments to the Proposed Plan as set out in **Appendix A**, attached to and forming part of this order;
- (b) the appeal is otherwise dismissed; and
- (c) there is no order as to costs.



MJL Dickey
Environment Judge



APPENDIX A

Changes made by this order (additions are underlined)

Mixed Use Zone

Policies

MUZ-P1

Allow activities which are compatible with the role, function and planned character of the Mixed Use Zone, while ensuring their design, scale and intensity is appropriate.

Compatible activities include:

1. commercial service activities;
2. supermarkets;
3. community facilities;
4. community corrections activities;
5. living activities within the PREC14 - Mixed Use Zone Living Precinct; ~~and~~
6. sport and recreation activities; ~~and~~
7. residential visitor accommodation within the PREC14 - Mixed Use Zone Living Precinct.

In the Waiwhakaiho Specific Control Area, compatible activities include:

1. vehicle sales and service/repair services;
2. marine industrial activities;
3. marine retail activities;
4. hire services;
5. farming and agriculture suppliers;
6. nurseries and garden centres;
7. office furniture, equipment and systems suppliers;
8. community facilities;
9. community corrections activities; and
10. sport and recreation activities.

MUZ-P2

Manage activities which are potentially compatible with the role, function and planned character of the Mixed Use Zone and ensure it is appropriate for such activities to establish in the Mixed Use Zone, having regard to whether:

1. the purpose of the activity assists in providing a range of housing choices in the district;
2. the activity will improve community access to goods, services or community facilities and provide for the community's social or economic needs;
3. the scale, design and layout of the activity is compatible with the planned character and amenity of the surrounding area;
4. there is adequate existing or planned infrastructure to service the activity; and
5. any adverse effects can be internalised and any potential conflict between activities within the zone or at zone interfaces can be avoided.

Potentially compatible activities include:

1. living activities where not located within the PREC14 - Mixed Use Zone Living Precinct;
2. educational facilities;
3. visitor accommodation where not located within the Waiwhakaiho Specific Control Area;

4. residential visitor accommodation where not located within the PREC14 - Mixed Use Zone Living Precinct or the Waiwhakaiho Specific Control Area;
5. major healthcare activities;
6. medical and health services;
7. Māori purpose activities;
8. industrial activities;
9. emergency service facilities; and
10. food and beverage retail stores within the PREC14 - Mixed Use Zone Living Precinct.

In the Waiwhakaiho Specific Control Area, potentially compatible activities include:

1. building improvement centres (excluding nurseries and garden centres);
2. service stations;
3. drive-through restaurants; and
4. supermarkets.

MUZ-P3

Avoid activities which are incompatible with the role, function and planned character of the Mixed Use Zone or activities that will result in:

1. the establishment of retail activities (excluding food and beverage retail stores within the PREC14 - Mixed Use Zone Living Precinct and supermarkets) or business service activities in the Mixed Use Zone if it is more appropriate that they be located in the city centre, a town centre or a local centre to achieve the District Plan's objectives;
2. reverse sensitivity effects or conflict with permitted activities; or
3. adverse effects that cannot be avoided, or appropriately remedied or mitigated.

Incompatible activities include:

1. retail activities (except food and beverage retail stores within the PREC14 - Mixed Use Zone Living Precinct and supermarkets);
2. business service activities;
3. primary production;
4. rural industry; and
5. visitor accommodation and residential visitor accommodation in the Waiwhakaiho Specific Control Area.

Activities Rules

<u>MUZ-R7 Residential Visitor Accommodation</u>		
<u>(1) PREC14 – Mixed Use Zone Living Precinct</u>	<u>Activity status: PER</u> <u>Where:</u> <u>(1) All Mixed Use Zone Effects Standards are complied with</u>	<u>Activity status where compliance not achieved:</u> <u>RDIS</u> <u>Matters over which discretion is restricted:</u> <u>(1) The effects of non-compliance with any Mixed Use Zone Effects Standards and any relevant matters of discretion in the infringed effects standards.</u> <u>(2) The matters set out in MUZ-P1, MUZ-P4 and MUZ-P6.</u>

<u>(2) All other Mixed Use Zone areas</u>	<u>Activity status: DIS</u>	<u>Activity status where compliance not achieved:</u> <u>N/A</u>
<u>(3) Waiwhakaiho Specific Control Area</u>	<u>Activity status: NC</u>	<u>Activity status where compliance not achieved:</u> <u>N/A</u>

MUZ-R156 Visitor Accommodation (including excluding residential visitor accommodation)		
(1) All other Mixed Use Zone areas	Activity status: DIS	Activity status where compliance not achieved: N/A
(2) Waiwhakaiho Specific Control Area	Activity status: NC	Activity status where compliance not achieved: N/A

Consequential re-numbering of MUZ-R7 – R25