

IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

IN THE MATTER of the Resource Management Act 1991
AND of an appeal under clause 14 of the First
Schedule of the Act
BETWEEN UNITED PORT ROAD LIMITED
(ENV-2020-AKL-000128)
Appellant
AND WHANGAREI DISTRICT COUNCIL
Respondent

Court: Environment Judge J A Smith sitting alone pursuant to
section 279 of the Act

Date of Order: 12 MARCH 2021

Date of Issue: 12 MARCH 2021

CONSENT ORDER

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

- (1) Whangarei District Plan map 67Z shows that portion of the land at
129 Port Road (Lot DP 440670) outlined in red in the plan at
Annexure 1 as zoned Waterfront Zone and Precinct 10 (Waterfront
Commercial Precinct);



(2) A new Precinct 10 (Waterfront Commercial Precinct) is included in the Waterfront Zone chapter of the Whangarei District Plan in accordance with Annexure 2;

(3) 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 order relates to the appeal by United Port Road Limited (**United**) against the decision of the Whangarei District Council on the Urban and Services plan change package (88A, 88B, 88C, 88D, 88F, 88G, 88H, 88I) to the Operative Whangarei District Plan (**the Plan**)

[2] This appeal relates to the zoning of the property owned by United located at 129 Port Road Whangarei, comprised of Lot 2 DP 440670, as outlined in blue in the plan below (**the site**):



[3] To the east the site is separated from the Hātea River by public open space land, and to the west the site adjoins Port Road. To the north is existing business development extending along Port Road. To the south the site is separated by one further property from Dave Culham Drive, which extends from Port Road east over the Hātea River via Te Matau ā Pohe bridge. The Hātea loop pedestrian and cycle path is located on the public open space land between the site and the Hātea River and continues over Te Matau ā Pohe.

[4] Under the Plan the site is part of a continuous stretch on the eastern side of Port Road zoned as Business 2 Environment (effectively light industrial).

[5] The Urban and Services plan changes notified the continuous stretch on the eastern side of Port Road (including the site), and several large sites on the western side of Port Road (opposite the site), as Waterfront Zone (**WZ**) – Waterfront Mixed-Use Area.

[6] United made a submissions seeking to either split zone the site so that the western portion was zoned Commercial Zone (**COMNZ**) or Mixed Use Zone (**MUZ**) and the eastern portion remain WZ, or to rezone the entire site COMZ or MUZ and apply a ‘Waterfront Overlay’ on the eastern portion.

[7] Whangarei District Council’s decisions on submissions to the Plan Changes retained WZ zoning for the entire eastern side of Port Road (including the site) and rezoned sites on the western (opposite) side of Port Road to COMZ.

[8] United’s appeal seeks to rezone the western portion of the site to COMZ, or to apply a precinct over the western portion of the site to enable the continued operation of commercial activities on the site.

[9] United’s submission and appeal also sought amendment to the WZ maximum building height and minimum ground floor “floor-to-ceiling” height, but those aspects of the appeal are not being pursued.

[10] There are no section 274 parties to the appeal.

Agreement reached

[11] Following Court-assisted mediation the parties have reached an agreement that will resolve the appeal in its entirety. The agreement is to:

- (a) Retain the WZ over the entirety of the site
- (b) Apply a new “Waterfront Commercial Precinct” (the **Precinct**) over the western portion.

[12] United will not pursue the building height or floor-to-ceiling height aspects of the appeal.

[13] The parties are satisfied that the underlying WZ zoning and the Precinct recognise the existing commercial and industrial activities within the site and provide for the on-going operation of industrial and trade retail activities located in the Precinct, while managing effects on the adjacent WZ and riverside Open Space Zone (OSZ).

Section 32AA

[14] The WZ chapter Issues section describes the WZ:

The Waterfront Zone provides important amenity for Whangarei City, being a hub for recreation, culture and tourism. A key aspect of the Waterfront Zone is ensuring that development is physically and visually connected to the waterfront, the City Centre and Open Space and Recreation Zones. The built form in the Waterfront Zone should be sufficient to provide for economic growth and development while also protecting view shafts of Parihaka and the waterfront, retaining a sense of openness, and managing adverse effects on the adjacent Open Space and Recreation and General Residential Zones. ...

The Waterfront Mixed-Use Area extends along Hihīaua Peninsula, Riverside Drive and Port Road, providing for residential, commercial and community activities, along with maritime industrial activities that are compatible with sensitive activities.

[15] In agreeing to apply a precinct over the WZ rather than split zone the site COMZ and WZ, the parties have had regard to the findings of the Hearing Commissioners:

We have some sympathy with Mr Masefield regarding the potential split zoning at 129 Port Road and adjoining sites. However, we note that whilst he points out that the site is far deeper than is typical of the waterfront zone, there are other sections of the zone which are of a not dissimilar depth and in all cases the zone occupies the

complete block depth between the waterfront and the first road from this. Providing a split zone would therefore be an anomaly.

- [16] Retention of the WZ zoning of the site ensures:
- (a) Consistent zoning and policy direction along the Hātea River riverside;
 - (b) That the character and amenity of the adjoining WZ sites, OSZ and Hātea River are maintained and protected under suitable policy framework; and
 - (c) That the eastern portion (which is not subject to the Precinct) 'sleeves' the Precinct from the riverside.

[17] Under the National Planning Standards, a precinct overrides the underlying zoning but only to the extent that it provides different objectives, policies and rules.

[18] The Precinct relies on the underlying WZ (and any relevant district wide and overlay chapters) for matters such as subdivision density and built form bulk and location provisions, providing for a built form of development within the Precinct that is consistent with that of the contiguous WZ.

[19] The Precinct applies exemptions to the WZ to protect the economic viability of the on-going operation of the existing mix of activities within the site. The underlying WZ and the Precinct enable:

- (a) Motor Vehicle Sales as a permitted activity subject to boundary landscaping /fencing requirements.
- (b) General Retail (that does not retail or dispense motor vehicle fuel) as a permitted activity.
- (c) General Industry, Manufacturing, Storage, Repair and Maintenance, Garden Centre, Trade Suppliers, Hire Premise and General Commercial activities as restricted discretionary activities subject to boundary landscaping /fencing requirements and the following matters of discretion:
 - i. Effects on the adjacent Waterfront Zone.
 - ii. Reverse sensitivity effects.

- iii. Adverse effects between incompatible activities, both within the Precinct and within the adjacent Waterfront Zone (cross-precinct boundary).
- iv. Site layout, location of vehicle access, orientation of buildings, location of main entrance to buildings, vehicle entrance to buildings.
- v. The nature of the activity and any noxious characteristics.

[20] The matters of discretion achieve WZ objectives WZ-O4 and O5 and effectively manage the design, location, nature and scale of activities within the precinct so that they are compatible with the surrounding WZ and OSZ.

WZ-O4 – Amenity and Character

Protect and enhance the sense of place, amenity, character, cultural, heritage, ecological and recreational values unique to the Waterfront Zone.

WZ-O5 – Connections

Protect and enhance the Waterfront Zone's physical and visual connections with waterways, the coastal marine area and the City Centre.

[21] The matters of discretion also manage potential reverse sensitivity effects to achieve the District Growth and Development chapter objective DGD-O5.

DGD-O5 – Incompatible Activities and Reverse Sensitivity

Avoid conflict between incompatible land use activities from new subdivision, use and development.

[22] Providing for a suite of targeted light industrial activities as restricted discretionary activities within the Precinct creates additional Plan-enabled capacity under clause 3.4 of the National Policy Statement on Urban Development 2020.

Consideration

[23] In making this order the Court has read and considered the appeal and the memorandum of the parties dated 8 March 2021.

[24] 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 agree that the agreed amendments resolve the appeal in full; and
- (c) 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.


[25] I am satisfied that an appropriate outcome has resulted. Overall, I consider the purposes of the Act are broadly met.

Orders

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

- (a) Whangarei District Plan map 67Z shows that portion of the land at 129 Port Road (Lot 2 DP 44670) outlined in red in the plan at **Annexure 1** as zoned Waterfront Zone and Precinct 10 (Waterfront Commercial Precinct);
- (b) A new Precinct 10 (Waterfront Commercial Precinct) is included in the Waterfront Zone Chapter of the Whangarei District Plan in accordance with **Annexure 2**;
- (c) The appeal is otherwise dismissed.

[27] There is no order as to costs in respect of the matters covered by this order.



J/A Smith
Environment Judge

The seal of the Environment Court of New Zealand is circular, featuring the coat of arms of New Zealand in the center. The text "THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND" is inscribed around the perimeter. A blue ink signature is written over the seal and extends to the right, crossing a horizontal line that serves as a signature line.

Annexure 1



Annexure 2

PREC10 – Waterfront Commercial Precinct (WCP)

Issues

Commercial and industrial activities are present within a portion of the Waterfront Zone at 129 Port Road, Whangarei. The Waterfront Commercial Precinct recognises the established nature of these activities and provides for the ongoing use and development of the land within a suitable planning framework.

Objectives

PREC10-O1 – Enabled Activities	Provide for on-going operation of industrial and trade retail activities located in the Waterfront Commercial Precinct while managing adverse effects on the adjacent Waterfront Zone.
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Policies

PREC10-P1 – Enabled Activities	To provide for the efficient and effective use of existing resources and the on-going operation of existing activities by enabling existing industrial activities and trade retail activities located in the Waterfront Commercial Precinct.
PREC10-P2 Cross Precinct Boundary Effects	To maintain and enhance the amenity of Waterfront Zone by: <ol style="list-style-type: none"> 1. Avoiding adverse noxious effects. 2. Avoiding, remedying or mitigating adverse external effects such as visual effects, traffic, dust, noise and odours from incompatible land use activities. 3. Mitigating cross-precinct boundary effects including through building setbacks, building frontage and access, hours of operation and landscaping.

Rules

PREC10-R1	<p>Outdoor Areas of Storage or Stockpiles</p> <p>Activity Status: Permitted</p> <p>Where:</p> <ol style="list-style-type: none"> 1. The outdoor area of storage or stockpile: <ol style="list-style-type: none"> a. Complies with rules WZ-R3 – R5. b. Is screened from view from public places, surrounding sites, and the Waterfront Zone adjacent to the precinct. <p><i>Note:</i></p> <ol style="list-style-type: none"> 1. Any application shall comply with information requirement WZ-REQ1. 	Activity Status when compliance not achieved: Discretionary
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PREC10-R2	Motor Vehicle Sales	
	<p>Activity Status: Permitted</p> <p>Where:</p> <ol style="list-style-type: none"> 1. The activity is a primary activity or ancillary activity. 2. The precinct boundary, excluding road frontage, is either <ol style="list-style-type: none"> i. Planted with trees or shrubs to a minimum height of 1.8m above ground level and a minimum depth of 1m, except within 5m of a road boundary where the maximum height is 1.2m above ground level; or ii. Fenced or screened to a maximum height of 1.8m above ground level, except within 5m of a road boundary where the maximum height is 1.2m above ground level. 	<p>Activity Status when compliance not achieved: Restricted Discretionary</p> <p>Matters of discretion:</p> <ol style="list-style-type: none"> 1. Mitigation measures to manage adverse effects on the adjacent Waterfront Zone. 2. Mitigation measures to manage adverse effects and reverse sensitivity between incompatible activities both within the Precinct and the adjacent Waterfront Zone.

PREC10-R3	General Retail	
	<p>Activity Status: Permitted</p> <p>Where:</p> <ol style="list-style-type: none"> 1. The activity is located at ground floor. 2. The activity is a primary activity or ancillary activity. 3. The activity does not involve the retail or dispensing of motor vehicle fuels. <p>Note:</p> <ol style="list-style-type: none"> 1. <i>An activity involving the retail of motor vehicle fuels that does not fall within the definition of a service station is a general retail activity. Refer to WZ-R35 for the underlying Waterfront Zone rule relating to service stations.</i> 	<p>Activity Status when compliance not achieved: Discretionary</p>

PREC10-R4	General Industry	
PREC10-R5	Manufacturing	
PREC10-R6	Storage	
PREC10-R7	Repair and Maintenance	
PREC10-R8	Garden Centres	
PREC10-R9	Trade Suppliers	
PREC10-R10	Hire Premise	
PREC10-R11	General Commercial	
	<p>Activity Status: Restricted Discretionary</p> <p>Where:</p> <ol style="list-style-type: none"> 1. The activity is a primary activity or ancillary activity. 2. The activity does not operate or open for visitors, clients, deliveries or servicing outside the hours of 06:00 and 18:00. 3. The precinct boundary, excluding road frontage, is either <ol style="list-style-type: none"> i. Planted with trees or shrubs to a minimum height of 1.8m above ground level and a minimum depth of 1m, except within 5m of a road boundary where the maximum height is 1.2m above ground level; or ii. Fenced or screened to a maximum height of 1.8m above ground level, except within 5m of a road boundary where the maximum height is 1.2m above ground level. <p>Matters of discretion:</p> <ol style="list-style-type: none"> 1. Effects on the adjacent Waterfront Zone. 2. Reverse sensitivity effects. 3. Adverse effects between incompatible activities, both within the Precinct and within the adjacent Waterfront Zone (cross-precinct boundary). 4. Site layout, location of vehicle access, orientation of buildings, location of main entrance to buildings, vehicle entrance to buildings. 5. The nature of the activity and any noxious characteristics. 	<p>Activity Status when compliance not achieved: Discretionary</p>