

BEFORE THE ENVIRONMENT COURT
AT AUCKLAND

I MUA I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

IN THE MATTER of the Resource Management Act 1991 (**the Act**)

AND of an appeal under clause 14 of the First Schedule to the Act in relation to Proposed Plan Changes 88D and 88G to the Operative Whangarei District Plan

BETWEEN ARA POUTAMA AOTEAROA
THE DEPARTMENT OF CORRECTIONS
(ENV-2020-AKL-000130)
Appellant

AND WHANGAREI DISTRICT COUNCIL
Respondent

Environment Judge J A Smith sitting alone under section 279 of the Act

IN CHAMBERS at Auckland

CONSENT ORDER

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

- (1) the appeal is allowed in part subject to the amendments set out in this order.
- (2) the appeal is otherwise dismissed.

B: Under s 285 of the Act, there is no order as to costs.



REASONS

Introduction

- [1] This appeal was brought by Ara Poutama Aotearoa The Department of Corrections against a decision of the Whangarei District Council on Plan Changes 88D and 88G, part of the Urban and Services plan change package to the Operative Whangarei District Plan.
- [2] Ara Poutama's submission sought to provide for the ongoing operation and upgrade of its non-custodial corrections facilities and supported accommodation units, as well as the establishment of new facilities. It also sought amendments to provide for community corrections facilities and activities including:
- (a) providing specific definitions for its activities; and
 - (b) requesting permitted activity status for community corrections facilities in the Commercial, Light Industrial, City Centre, Local Centre and Mixed Use and Waterfront Zones.
- [3] The Council's decision adopted the following activity status for Community Corrections Activity:

Zone	Activity Status
City Centre	Permitted
Local Centre	
Mixed Use	
Waterfront	
Commercial	Discretionary
Light Industrial	Non-Complying

- [4] Ara Poutama's appeal sought the amendment of the activity status for Community Corrections Activity from discretionary to permitted activity in the Commercial Zone, and from non-complying to permitted activity in the Light Industrial Zone.

The agreement reached

- [5] The parties have reached an agreement to amend the Commercial Zone and the Light Industrial Zone to make Community Corrections Activities a permitted activity subject to rule standards such as:



- (a) Setbacks; and
- (b) Buffer planting (to address reverse sensitivity concerns in the Light Industrial Zone).

[6] The parties are satisfied that the agreement reached falls within the Court's jurisdiction and is consistent with the sustainable purpose of other relevant requirements of the Act.

Consideration

[7] In making this order the Court has read and considered the appeal and the memorandum of the parties dated 13 November 2020.

[8] No parties have given notice of an intention to become a party under s 274 of the Act.

[9] The Court is making this order under section 279(1)(b) 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; and
- (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Act, including in particular Part 2.

Order

[10] Therefore the Court orders, by consent, that new rules COMZ-R27 and LIZ-R18 for Community Corrections Activity are incorporated into the Whangarei District Plan in accordance with Annexure A to this order (with new text shown underlined).

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



[12] The appeal is otherwise dismissed.

DATED at Auckland this 17th day of November 2020



J A Smith
Environment Judge

Annexure A

Commercial Zone (COMZ)

COMZ-R23	Grocery Store
COMZ-R24	Recreational Facilities
COMZ-R25	Emergency Services
COMZ-R26	Educational Facilities
<u>COMZ-R27</u>	<u>Community Corrections Activity</u>
	Activity Status: Permitted Where: <ol style="list-style-type: none">1. The activity is a primary activity or ancillary activity.2. All site boundaries which are adjoining a Residential, Waterfront or Open Space and Recreation Zone are 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.
	Activity Status when compliance not achieved: Discretionary

(And consequential amendments to COMZ rule numbers).

[DRAFTING NOTE: No deletions are necessary as, in accordance with rule HPW-R7 Application of Activity Definitions, the new specifically defined permitted activity rule COMZ-R27 for Community Corrections Activity over-rides the more general definition and discretionary rule COMZ-R30 for Place of Assembly.]



Light Industrial Zone (LIZ)

LIZ-R18	Community Corrections Activity	
	<p><u>Activity Status: Permitted</u></p> <p><u>Where:</u></p> <ol style="list-style-type: none"> 1. <u>The activity is a primary activity or ancillary activity.</u> 2. <u>All site boundaries which are adjoining a Rural Production, Residential or Open Space and Recreation Zone are planted with trees or shrubs to a minimum height of 1.8m above ground level and a minimum depth of 2m, except within 5m of a road boundary where the maximum height is 1.2m above ground level.</u> 3. <u>Any habitable room is setback at least 30m from all adjacent Heavy Industrial Zone boundaries.</u> 4. <u>Any outdoor area open to staff, customers or clients that is used for the purpose of teaching, outdoor dining or informal leisure or recreation space is:</u> <ol style="list-style-type: none"> a. <u>Setback at least 30m from all adjacent Heavy Industrial Zone boundaries; and</u> b. <u>Setback at least 30m from all adjacent Light Industrial Zone sites; or</u> c. <u>Within 30m of any Light Industrial Zone boundary and that boundary is planted with trees or shrubs to a minimum height of 1.8m above ground level and a minimum depth of 2m.</u> <p><u>Compliance Standard:</u></p> <p><u>LIZ-R18.3-4 do not apply to Heavy Industrial or Light Industrial Zone boundaries adjoining a road, or any Heavy Industrial or Light Industrial Zoning within a road in accordance with HPW-R6.</u></p>	<p><u>Activity Status when compliance not achieved: Discretionary</u></p>

(And consequential amendments to COMZ rule numbers).

[DRAFTING NOTE: No deletions are necessary as, in accordance with rule HPW-R7 Application of Activity Definitions, the new specifically defined permitted activity rule LIZ-R18 for Community Corrections Activity over-rides the more general definition and discretionary rule COMZ-R33 for Place of Assembly]

