

In the Environment Court of New Zealand
at Christchurch

I mua i te Kōti Taiao o Aotearoa
I te rohe o Ōtautahi

ENV-2022-CHC-

under: Resource Management Act 1991

in the matter of: Proposed Plan Change 4 to the Christchurch District
Plan

between: **Airbnb Australia Pty Ltd**
Appellant

and: **Christchurch City Council**
Respondent

Notice of appeal by Airbnb Australia Pty Ltd against decision on
proposed plan change 4 to Christchurch District Plan

Dated:

17 May 2022

Reference: J M Appleyard (jo.appleyard@chapmantripp.com)
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NOTICE OF APPEAL AGAINST DECISION ON PROPOSED CHANGE TO A PLAN

Clause 14(1) of First Schedule, Resource Management Act 1991

To The Registrar
Environment Court
Christchurch

- 1 Airbnb Australia Pty Limited (*Airbnb*) appeals against a decision of Christchurch City Council (*Council*) on proposed Plan Change 4 to the Christchurch District Plan - short term accommodation (*PC4*) (*the Decision*).
- 2 Airbnb made a submission and further submission on PC4.
- 3 Airbnb is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (*RMA*).
- 4 Airbnb received notice of the Decision on 31 March 2022.
- 5 Airbnb is willing to participate in alternative dispute resolution.

Reasons for the appeal

- 6 The general reasons for the appeal are that the Decision:
 - 6.1 is contrary to Part 2 of the RMA and does not promote the sustainable management of physical resources, including enabling people and communities to provide for their health and safety, and their social, economic and cultural well-being;
 - 6.2 does not promote the efficient use and development of physical resources;
 - 6.3 will not enable social, economic and cultural wellbeing;
 - 6.4 do not represent the most appropriate way of exercising the Council's functions, having regard to the efficiency and effectiveness of other reasonably practicable options, and is therefore not appropriate in terms of section 32 and other provisions of the RMA; and
 - 6.5 is contrary to good resource management practice.
- 7 Without limiting the generality of the above, the specific reasons for Airbnb's appeal are set out below.
 - 7.1 The Decision was wrong to conclude that the limited evidence of adverse effects on localised residential character and amenity justified the provisions determined in the Decision.
 - 7.2 The Decision was wrong to confirm the provisions that it did in light of the economic evidence before the Hearings Panel. In particular, in light of the unanimous conclusions of the expert economics witnesses as to:

- (a) the benefits of short term guest accommodation to the district;
 - (b) the lack of any economic rationale for the PC4 provisions; and
 - (c) the fact that discretionary or non-complying consent status in the PC4 provisions is at odds with the narrow scope of effects that the Council is seeking to manage.
- 7.3 The Decision results in a complex, restrictive, inefficient, and ineffective matrix of objectives, policies and rules across multiple zones in the Christchurch District Plan which are not necessary to manage localised residential and character effects, and will impose significant cost on those wishing to undertake short term visitor accommodation activity.
- 7.4 The Decision imposes objectives, policies, and rules that are disproportionate to the nature and scale of the problem identified as requiring regulation through District Plan provisions.
- 7.5 The Decision misunderstood and misapplied the Environment Court's decision in *Archibald v Christchurch City Council* [2019] NZEnvC 207.

Objectives and policies

- 7.6 Airbnb opposes Objective 14.2.9 and Policy 14.2.9.1 as determined in the Decision. These provisions are unduly prescriptive and impose an inappropriately high burden, in light of the scale and significance of the issue they seek to regulate. Many aspects of these provisions are not appropriate, not enforceable, nor supported by evidence, including (for example) the requirement that visitor accommodation in a residential unit be managed such that each residential block retain a high proportion of residential activities, and each residential activity retain a high proportion of residential neighbours.

Hosted visitor accommodation rules

- 7.7 Airbnb generally supports the rules that provide for hosted visitor accommodation as a permitted activity subject to obligations to keep records and to have check-in procedures in place for guests checking in between 2200 and 0600.
- 7.8 However Airbnb opposes the maximum 6 person threshold above which discretionary resource consent is required for hosted visitor accommodation and the maximum 12 person threshold above which non-complying resource consent is required for hosted visitor accommodation. This requirement is not necessary when the host will be present on site at all times, nor is it supported by evidence of adverse effects.

Unhosted visitor accommodation rules

- 7.9 Airbnb opposes the inconsistent and variable thresholds for guest numbers and total night limits, and the inconsistent permitted activity standards and matters of control across different zones confirmed by the Decision.
- 7.10 Airbnb supports a consistent, District-wide, permitted activity rule for unhosted visitor accommodation for up to 12 guests, and up to 180 total nights per year.

- 7.11 Airbnb opposes the Decision to set controlled activity status for all unhosted visitor accommodation, regardless of scale, in the Central City, Residential Banks Peninsula (excluding Akaroa, Duvachelle, Wainui), Residential Small Settlement (excluding Banks Peninsula areas), Residential Hills Zones, and throughout Residential zones in Christchurch City. This consent requirement introduces costly, inappropriate, unnecessary and inefficient regulation into the District Plan.
- 7.12 Airbnb opposes discretionary activity status for unhosted visitor accommodation activity which cannot meet permitted or controlled thresholds. Airbnb also opposes non-complying activity status for unhosted visitor accommodation which exceeds 12 guests. Both discretionary and non-complying activity statuses are inappropriately onerous and are disconnected to the aspects of the activity sought to be managed, which are limited in scope and clearly defined. Open-ended discretion to decline consent is not appropriate and results in extended, expensive, and uncertain consenting processes which are not reasonable in light of the scale and significance of the issues sought to be regulated through such rules.
- 8 Airbnb supports the Decision's determination that no application for hosted or unhosted visitor accommodation should be publicly notified. Airbnb considers limited notification should also be precluded in the rules in light of the evidence of effects.

Relief

- 9 Airbnb seeks the following relief:
- 9.1 Amendments to the Christchurch District Plan objectives, policies, and rules as follows:
- (a) Objective 14.2.9 be amended to achieve an appropriate balance between enablement of visitor accommodation in residential zones, maintenance of residential environment and amenity values, and protection of strategic infrastructure from incompatible activities.
 - (b) Policy 14.2.9.1 be deleted and replaced with a policy that is less prescriptive and which achieves an appropriate balance between enablement of visitor accommodation in residential zones, maintenance of residential environment and amenity values, and protection of strategic infrastructure from incompatible activities.
 - (c) Hosted visitor accommodation activity be provided for as a permitted activity in all zones, irrespective of the number of guests hosted or total nights, with appropriate activity standards.
 - (d) Unhosted visitor accommodation activity be provided for as a permitted activity in all zones where the activity takes place for a total of 180 nights per year and accommodates up to 12 guests, with activity standards that provide for obligations to keep records, liaise with neighbours, and have check-in procedures in place for guests checking in between 2200 and 0600.

- (e) Unhosted visitor accommodation for more than 180 total nights per year and over 12 guests be provided for as a controlled activity.
- (f) Rules that preclude public and limited notification.
- (g) For avoidance of doubt, Airbnb does not oppose the specific rules confirmed in the Decision which apply to hosted or unhosted visitor accommodation located within overlays associated with strategic infrastructure.

9.2 Any further or other relief necessary to address the matters referred to in this appeal.

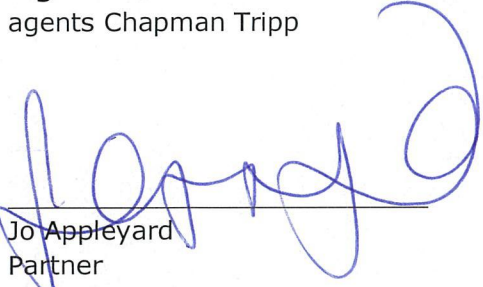
10 The following documents are attached to this notice:

10.1 a copy of Airbnb's submission and further submission (**Annexure 1**)

10.2 a copy of the decision (**Annexure 2**)

10.3 a list of names and addresses of persons to be served with a copy of this notice (**Annexure 3**).

Signed for and on behalf of Airbnb Australia Pty Limited by its solicitors and authorised agents Chapman Tripp



Jo Appleyard
Partner
17 May 2022

Address for service of person:

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ADVICE TO RECIPIENTS OF COPY OF NOTICE OF APPEAL

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission and (or or) the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.