

ORIGINAL

Decision No: C/05/2000

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER of a reference under Clause 14 of
the First Schedule to the Act

BETWEEN WAKATIPU
ENVIRONMENTAL SOCIETY
INCORPORATED

RMA: 1394b/98

Referrer

AND QUEENSTOWN LAKES
DISTRICT COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge J R Jackson (sitting alone pursuant to section 279 of the Act)

In Chambers at CHRISTCHURCH

RECORD OF DETERMINATION OF APPEAL

Background

[1] This part of reference RMA 1394/98 (called RMA 1394b/98) relates to Bendemeer Farm in the Wakatipu Basin. The Wakatipu Environmental Society Incorporated ("the referrer") has referred to the Environment Court parts of the 1998 Queenstown Lakes District Council proposed district plan ("the revised plan"). The relevant parts of the reference relate to the following chapters of the revised plan:



- Chapter 12 which concerns “special zones”; and
- Chapter 15, which concerns subdivisions, development and financial contributions.

[2] On 16 September 1998 the referrer received the decision of the Queenstown Lakes District Council (“the Council”) on a submission it had made on the Council’s proposed plan as originally publicly notified on 10 October 1995. On 6 October 1998 the Court received this reference from the referrer. The relief sought was to delete the Bendemeer special zone and replace that with a “Rural General” zoning in the revised plan.

[3] Federated Farmers of New Zealand Incorporated (“FF”) and Bendemeer Farm Limited (“Bendemeer”) respectively gave notice that they wished to be heard on the appeal under section 271A of the Resource Management Act 1991 (“the Act”). On 15 October 1998 the Court received a letter from FF withdrawing its interest in this reference.

[4] At a hearing on 22 November 1999 in Queenstown, the Court adjourned this proceeding until a memorandum was filed with the Court as to the size of the building platforms proposed in the Bendemeer Special zone. Since then the Court has received a letter from Bendemeer as to the size of the building platforms which appear to be satisfactory.

[5] The Registrar has since received a joint memorandum of counsel (dated 22 November 1999) setting out a manner in which the reference with the approval of the Court, might be determined by consent. This was signed by counsel for the Council, counsel for the referrer, and the representative of Bendemeer. The Court has taken time to consider the proposed settlement carefully because the proposed Bendemeer Special zone is, as a matter of fact, in the important visual amenity landscapes described by the Court in its decision C180/99.



[6] Following further concerns of the Court, and a further memorandum to the parties on 5 May 2000, these difficulties as to the purpose of the zone, and its achievement by the zone rules were resolved by a conference of the parties in Queenstown on 8 May 2000. The Court still has some concern over two issues:

- (a) The unnatural allotment boundaries – which in some cases ignore the topography completely, presumably for ease of surveying (not a satisfactory reason); and
- (b) The density of development along the eastern edge of the land.

However, because the parties have agreed all matters and because in other respects the proposal is laudable in its efforts to achieve sustainable management of a large (in the context of the Wakatipu basin) area of land (110 hectares) I will make the orders as sought.

Orders

[7] Having considered the reference and the memorandum of the parties, the Court (by consent) orders:

- (1) Appeal RMA 1394b/98 is allowed to the extent set out in (2) below.
- (2) Under Clause 15(2) of the First Schedule to the Act the Court directs Queenstown Lakes District Council to modify the revised plan:
 - (i) by changing the rules and related zone plan in Part 12 (Special Zones-Rules of the revised plan) as follows:



- (a) Delete Bendemeer Zone Plan 'A' (under Controlled Activities) in the revised plan (page 12/33) and substitute the structural plan marked as Appendix "A" (attached to and forming part of this order).
- (b) By deleting sections 12.8 (Bendemeer Special Zone) and 12.9 (Bendemeer Zone Rules) of Chapter 12 and substituting the sections 12.8 and 12.9 in Appendix "B" attached to this record of determination. (For convenience and clarity:
- the altered passages are also included but shown with a line through them to show their deletion;
 - substituted passages are underlined).
- (ii) By inserting new rules into Part 15 of the revised plan (under subdivisions of land in the Bendemeer zone as follows:
- (a) Add a new rule 15.2.3.5(b) in the revised plan (page 15/9) as follows:
- (vii) *In the Bendemeer Special Zone the extent to which the subdivision, the location of Residential Building Platforms and proposed development maintains and does not compromise the ice sculptured legibility of the land within the zone particularly when viewed from State Highway 6 to the south of the zone, Morven Ferry and Arrow Junction Roads and any other public places to the south, excluding the Crown Range Road.*



- (b) Delete under the heading “Minimum Lot Area” in the table for the Bendemeer Zone, Bendemeer in Rule 15.2.6.3(i)(a) (under Lot Sizes) in the revised plan (page 15/16) and substitute the following:

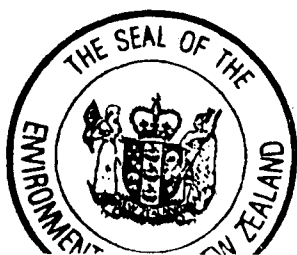
<i>Activity Area 1</i>	<i>1500 m²</i>
<i>Activity Area 2</i>	<i>2000 m²</i>
<i>Activity Area 3</i>	<i>2500 m²</i>
<i>Activity Area 4</i>	<i>3000 m²</i>
<i>Activity Area 5</i>	<i>4000 m²</i>
<i>Activity Area 6</i>	<i>6000 m²</i>
<i>Activity Area 7</i>	<i>7000 m²</i>
<i>Activity Area 8</i>	<i>50,000 m²</i>
<i>Activity Area 9</i>	<i>17,500 m²</i>
<i>Activity Area 10</i>	<i>7,500 m²</i>
<i>Activity Area 11</i>	<i>20 hectares</i>

- (c) Delete from Rule 15.2.6.3(iii) (under Subdivision Standards) in the revised plan (page 15/17) the heading:

iii *Building Platforms - Rural General, Rural-Lifestyle, Gibbston Character and Bendemeer (Activity Areas 1-7 only) Zones*

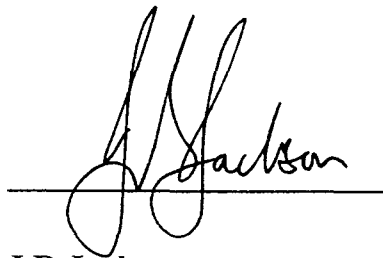
and substitute the following new heading:

iii *Building Platforms - Rural General, Rural-Lifestyle, Gibbston Character and Bendemeer (Activity Areas 1-8 only) Zones*



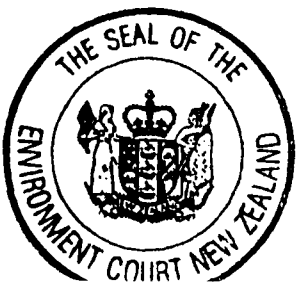
- (3) Leave is reserved to any party to make any corrections or amendments to sections 12.8 and 12.9 of the revised plan (as amended by this decision) to give consistency or correct any typographical errors.
- (4) In all other respects the decision of the Queenstown Lakes District Council notified on 10 October 1995 is upheld.
- (5) There is no order as to costs.

DATED at CHRISTCHURCH this 12th day of June 2000.

A handwritten signature in black ink, appearing to read 'J R Jackson', is written over a horizontal line.

J R Jackson

Environment Judge

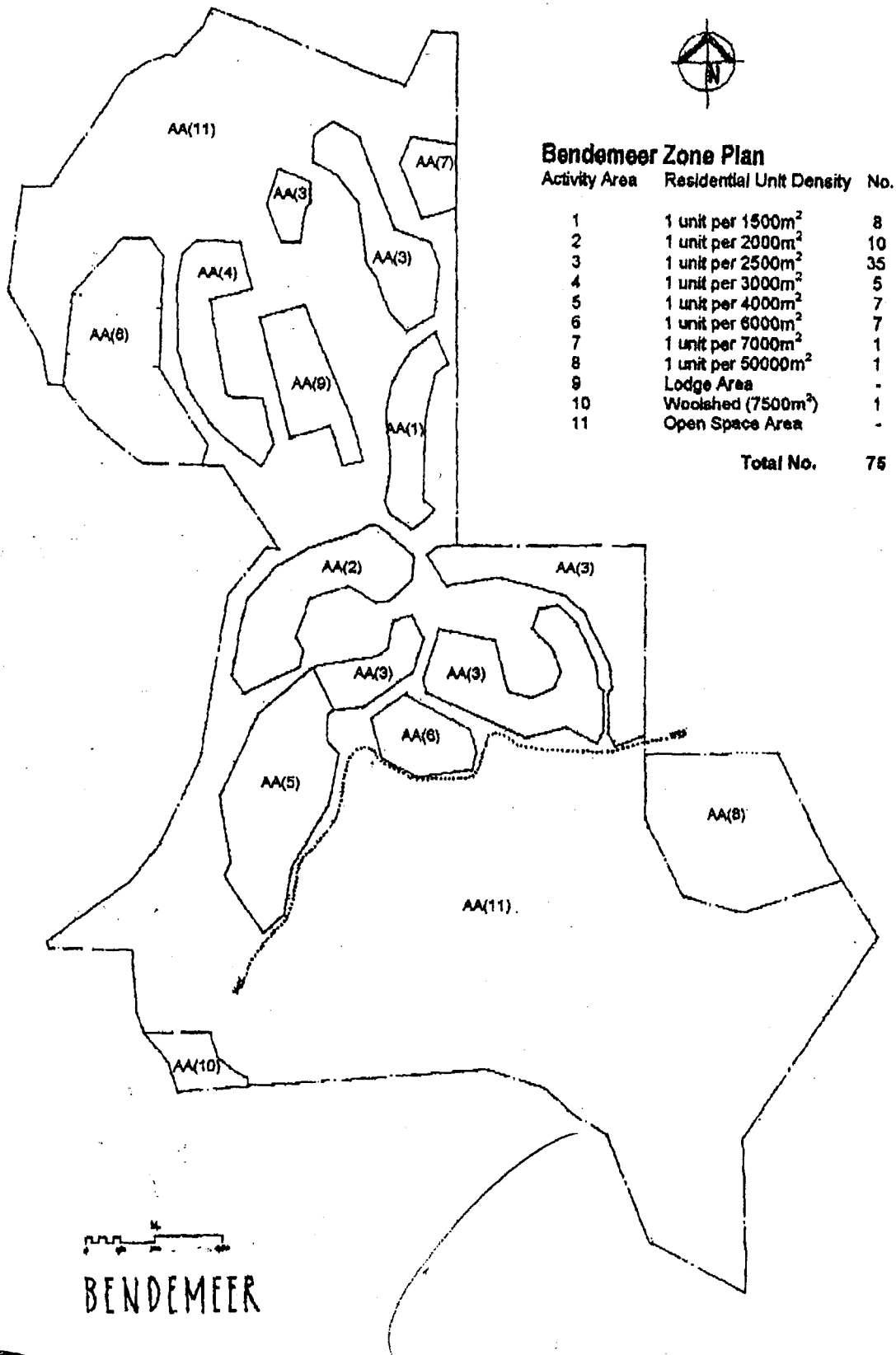


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N M Associates
ARCHITECTS AND PLANNERS



M. M. M.
W. W.

12.8 Bendemeer Special Zone

12.8.1 Resources and Values

The Bendemeer Zone is located east of Lake Hayes. The elevation and orientation makes the zone visible from the surrounding Wakatipu Basin and Crown Terrace, however landforms within the zone have the ability to hide or screen the effects of limited development.

The zone has strong rural character and amenities. These are important values which need to be taken account of in the development of the zone.

12.8.2 Resource Management Issues

(i) - Retaining the Character and Amenities of the Wakatipu Basin

The Bendemeer Zone is the most elevated residential zoning in the Wakatipu Basin. It is recognised as a site which can absorb development. This may not be possible in other elevated areas in the Basin, where adverse effects may arise.

(ii) Retaining Openness

To mitigate adverse effects of development on the character and amenities of the environment, the Council considers it essential to retain significant areas of open space free from structures. Such open space may come under significant pressure for future development. The Council considers the open space character of the area should be retained.

(iii) Protection of landscape features and enhancement of naturalness¹

The Bendemeer Zone is within a visual amenity landscape. It is characterised by pastoral activities, with limited structures, tree plantings and introduced grasses. The zones prominence as a visual amenity landscape is due to it's elevated position in the Wakatipu Basin, it's location adjacent scenic rural roads, and it's relationship to the outstanding natural features of Morven Hill and Lake Hayes. It is important that any subdivision and development within the zone recognise these values and enhance, where appropriate, the naturalness of the area.

12.8.3 Objectives and Policies

Objectives

Development managed and contained in both extent and location²

Development managed and contained so that it does not compromise the ice sculptured legibility of the land upon which [the] zone is located when viewed from surrounding public roads to the south of the zone other than the Crown Range Road³

Retention of significant areas of open space⁴

Maintenance and enhancement of naturalness, rural character and amenities⁵

Policies

~~Limitation of residential, visitor and/or commercial activities to ensure avoidance of adverse effects on open space, rural character and amenities.⁶~~

Limitation of residential, visitor and/or commercial activities within defined Activity Areas to ensure avoidance of adverse effects on open space, rural character, the ice sculptured legibility of the land and rural amenity values.⁵



¹ Inserted as a result of Courts minute 5 May 2000.

² Inserted through Consent Memorandum 22 November 1999.

³ Inserted through Consent Memorandum 22 November 1999.

⁴ Inserted as a result of Courts minute 5 May 2000.

⁵ Inserted through Consent Memorandum 22 November 1999.

⁶ Inserted through Consent Memorandum 22 November 1999.

- 2 *Strict adherence to long-term planning, especially the limited identification of residential, visitor accommodation and commercial activities and the placing of structures.*
- 3 *Avoidance of activities and development densities which may adversely affect rural character and amenities.*
- 4 *Enhancement of naturalness of the through zone through appropriate planting and landscaping.*
- 4 5 *Avoidance of proliferation of visitor accommodation and/or commercial activities.*
- 5 6 *Requiring the zone be fully serviced.*

Implementation Methods

The objectives and policies will be implemented through a number of methods:

District Plan

- a Rules designed to control bulk and location of buildings, external appearance, parking, signs, landscaping, access, reserves and subdivision.
- b Rules designed to achieve the integrated management of the effects of the use, development and protection of land.

Explanation and Principal Reason for Adoption

The Council considers the Zone needs to be managed and contained in both extent and location to avoid potential adverse effects of development on rural character and amenity. Integral in the avoidance of such adverse effects is the ability of the site to absorb a limited amount of development, while retaining a significant amount of open space. No future activities should jeopardise such an ability.

12.8.4 Environmental Results Anticipated

- Limited residential, visitor and commercial activities.
- Retainment of significant areas of open space.
- Maintenance and enhancement of naturalness,⁸ rural character and amenities.



⁷ Inserted as a result of Courts minute 5 May 2000.

⁸ Inserted as a result of Courts minute 5 May 2000.

12.9 Bendemeer Zone Rules

12.9.1 Zone Purpose

The purpose of the Bendemeer Zone is to enable the development of limited residential, commercial and visitor accommodation activities within an open rural environment. This is to be achieved while protecting the legibility of the ice-sculptured high points within the zone and enhancing the naturalness of the remainder of the landscape within the zone by appropriate planting and landscaping.²

12.9.2 District Rules

Attention is drawn to the following District Wide Rules which may apply in addition to any relevant Zone Rules. If the provisions of the District Wide Rules are not met then consent will be required in respect of that matter.

i	Heritage Protection	-	Refer Part 13
ii	Transport	-	Refer Part 14
iii	Subdivision, Development and Financial Contributions	-	Refer Part 15
iv	Hazardous Substances	-	Refer Part 16
v	Utilities	-	Refer Part 17
vi	Signs	-	Refer Part 18
vii	Relocated Buildings and Temporary Activities	-	Refer Part 19 ¹

12.9.3 Activities

12.9.3.1 Permitted Activities

Any Activity which complies with all the relevant **Site** and **Zone** Standards and is not listed as a **Controlled, Discretionary, Non-Complying or Prohibited Activity**, shall be a **Permitted Activity**.

12.9.3.2 Controlled Activities

The following shall be **Controlled Activities** provided they are not listed as a **Prohibited, Non-Complying or Discretionary Activity** and they comply with all the relevant **Site** and **Zone** Standards. The matters in respect of which the Council has reserved control are listed with each **Controlled Activity**.

(i) Buildings

~~The addition, alteration and construction of all buildings in Activity Areas (1) – (7), (8) and (9) of Bendemeer Zone Plan 'A' in respect of the location, external appearance, associated earthworks, access and landscaping.~~

(a) The addition, alteration and construction of buildings in activity Areas (1) to (7), (8), (9) and (10) of Bendemeer Zone Plan 'A' in respect of the location, external appearance, associated earthworks, access and landscaping.

(b) The addition, alteration and construction of one (1) residential unit and one (1) accessory outbuilding building in Activity Area (8) of Bendemeer Zone Plan 'A' in respect of the location, external appearance, associated earthworks, access and landscaping.¹⁰

12.9.3.3 Discretionary Activities

Buildings



The addition, alteration and construction of all buildings in Activity Areas ~~(10)~~ (11)¹¹ of Bendemeer Zone Plan 'A' in respect of the location, bulk, height, external appearance, associated earthworks, access and landscaping.

(ii) **Visitor Accommodation**

Any visitor accommodation activities in Activity Area ~~(8)~~ (9)¹² of Bendemeer Zone Plan 'A'.

(iii) **Commercial Activities**

Any Commercial activities in Activity Areas ~~(8) and (9)~~ (9) and (10)¹³ of Bendemeer Zone Plan 'A'.

12.9.3.4 Non-Complying Activities

The following shall be **Non-Complying Activities**, provided they are not listed as a **Prohibited Activity**:

(i) **Commercial Activities**

All commercial activities in Activity Areas ~~(1) to (7), and (10)~~ (1) to (8) and (11)¹⁴ of Bendemeer Zone Plan 'A'.

(ii) **Factory Farming**

(iii) **Forestry Activities**

(iv) **Mining Activities**

(v) **Service Activities**

(vi) **Industrial Activities**

vii **Airports**

Airports **OTHER THAN** the use of land and water for emergency landings, rescues and fire fighting.¹⁵

(viii) **Visitor Accommodation**

Any visitor accommodation activities in Activity Areas ~~(1) to (7), (9) and (10)~~ (1) to (8), (10) and (11)¹⁵ of Bendemeer Zone Plan 'A'.

(viii) **Residential Activities**

(a) Any residential activities in Activity Areas ~~(1) to (7)~~ (1) to (8)¹⁶ not contained within a Residential Building Platform approved under Rule 15.2.6.3.

(b) Any residential activities in Activity Area ~~(8)~~ (9)¹⁷ of Bendemeer Zone Plan 'A' except as provided for part of any visitor accommodation activity.

(c) Any residential activities in Activity Areas ~~(9) and (10)~~ and (11)¹⁸ of Bendemeer Zone Plan 'A'.

¹¹ Inserted through Consent Memorandum 22 November 1999.

¹² Inserted through Consent Memorandum 22 November 1999.

¹³ Inserted through Consent Memorandum 22 November 1999.

¹⁴ Inserted through Consent Memorandum 22 November 1999.

¹⁵ Inserted through Consent Memorandum 22 November 1999.

¹⁶ Inserted through Consent Memorandum 22 November 1999.

¹⁷ Inserted through Consent Memorandum 22 November 1999.

¹⁸ Inserted through Consent Memorandum 22 November 1999.



- (d) Any residential activity exceeding one (1) residential unit and accessory outbuilding in Activity Area (8) of the Bendemeer Zone Plan 'A'.¹⁹

Any Activity which is not listed as a **Prohibited Activity** and which does not comply with one or more of the relevant **Zone Standards**, shall be a **Non-Complying Activity**.

12.9.4.5 Prohibited Activities

The following shall be **Prohibited Activities**:

Panelbeating, spray painting, motor vehicle repair or dismantling, fibreglassing, sheet metal work, bottle or scrap storage, motorbody building, fish or meat processing, or any activity requiring an Offensive Trade Licence under the Health Act 1956.

12.9.5 Non-Notification of Applications

- (a) ²⁰Any application for a resource consent for the following matters may be considered without the need to obtain a written approval of affected persons and need not be notified in accordance with Section 93 of the Act, unless the Council considers special circumstances exist in relation to any such application:

i All applications for **Controlled Activities**.

- (b) Prior to an application for Resource Consent for a Non Complying Activity being processed by the council on a non-notified basis pursuant to section 94(2) of the Act written approval of the Wakatipu Environmental Society Incorporated must be provided to the Council pursuant to Section 94(2)(b).²¹

12.9.6 Standards

12.9.6.1 Site Standards

(i) Setback from Internal Boundaries

Minimum setback from internal boundaries of any building for any activity shall be 6 m.

(ii) Access

Each residential unit shall have legal access to a formed road.

(iii) Earthworks

iv Earthworks

- (a) No cut or batter (other than routine repair and maintenance of operational tracks in Activity Area (10) of the Bendemeer Zone Plan 'A') shall exceed 2.0 m in vertical height. **Except** that such cut or batter shall not exceed 3.0 m in vertical height for more than 10% of its length.
- (b) All cuts and batters shall be laid back such that their angle from the horizontal is no more than 65 degrees.
- (c) All impervious surfaces are to be vegetated.
- (d) No earthworks shall exceed 1000 m³ in total volume or 2500 m² in total area.

¹⁹ Inserted through Consent Memorandum 22 November 1999.

²⁰ Inserted through Consent Memorandum 22 November 1999.

²¹ Inserted through Consent Memorandum 22 November 1999.



12.9.6.2 Zone Standards

(i) Residential Density

(a) The following residential densities shall not be exceeded:

Activity Area (1)	1 Residential Unit per 1500 m ²
Activity Area (2)	1 Residential Unit per 2000 m ²
Activity Area (3)	1 Residential Unit per 3200 2500 ²² m ²
Activity Area (4)	1 Residential Unit per 4000 3000 ²³ m ²
Activity Area (5)	1 Residential Unit per 5000 4000 ²⁴ m ²
Activity Area (6)	1 Residential Unit per 6000 m ²
Activity Area (7)	1 Residential Unit per 7000 m ²
Activity Area (8)	1 Residential Unit per 50000m ² . ²⁵

(b) The total residential density for Bendemeer Zone shall not exceed 75 residential units.

(ii) Building Height

~~The maximum height for all buildings shall be:~~

Activity Areas (1) to (6)	7 m
Activity Area (7)	5 m
Activity Area (8) and (9)	9 m
Activity Area (10)	8 m

The maximum height for all buildings shall be:

Activity Areas (1) to (6)	7 m
Activity Area (7)	5 m
Activity Area (9) and (10)	9 m
Activity Area (11)	8 m

(iii) Visitor Accommodation

Visitor accommodation, commercial and residential activities in Activity Area ~~(8)~~ (9)²⁶ of Bendemeer Zone Plan 'A' shall be limited to one building with a maximum gross floor area not exceeding 3000 m².

(iv) Commercial Activities

Commercial activities in Activity Area ~~(9)~~ (10)²⁷ of Bendemeer Zone Plan 'A' shall be limited to one building, in addition to the existing woolshed, of no more than 500 m² gross floor area.

(v) Noise

(a) All activities in the Zone shall be conducted so the following noise levels are not exceeded at the boundary of any other site in the zone:

Daytime (0800 - 2000 hours) 55dBA L₁₀

Night-time (2000 - 0800 hours) 45dBA L₁₀ and L_{max} of the Lower 75 dBA or the background sound level plus 30 dBA

(b) Noise levels shall be measured and assessed in accordance with NZS 6801:1991 and NZS 6802:1991.

²² Inserted through Consent Memorandum 22 November 1999.

²³ Inserted through Consent Memorandum 22 November 1999.

²⁴ Inserted through Consent Memorandum 22 November 1999.

²⁵ Inserted through Consent Memorandum 22 November 1999.

²⁶ Inserted through Consent Memorandum 22 November 1999.

²⁷ Inserted through Consent Memorandum 22 November 1999.



(vi) **Building Coverage**

The building coverage for residential units in Activity Areas ~~(1) — (7)~~ (1) to (8)²⁸ of the Bendemeer Zone Plan 'A' on any site shall not exceed 500 m².

(vii) **Nature and Scale of Activities**

The nature and scale of all non-residential activities in Activity Areas ~~(1) — (7), and (10)~~ (1) to (8) and (11)²⁹ shall not exceed a maximum gross floor area of 40 m².

(viii) **Glare and Light Spill**

(a) All lighting to accessways and roading within the zone shall be kept to a minimum, and directed downwards, so as to avoid light spill.

(b) All exterior lighting shall be no higher than 4 m above finished ground levels.

(ix) **Services**

All power and telecommunication and other reticulated services are to be underground.


(x) **Delineation of Boundaries**

No linear shelterbelts or plantings shall be permitted along the boundaries of individual dwelling allotments.

xi **Refuse Management**

All refuse shall be collected and disposed in a Council approved landfill site. There shall be no landfill site situated within the zone.

> Decision 20/21/00
Decision 5/11.1.2



²⁸ Inserted through Consent Memorandum 22 November 1999.

²⁹ Inserted through Consent Memorandum 22 November 1999.