

BEFORE THE ENVIRONMENT COURT

Decision No. [2015] NZEnvC 196

IN THE MATTER of the Resource Management Act 1991

AND of an appeal pursuant to Clause 14 of the
First Schedule of the Act

BETWEEN APPEALING WANAKA
INCORPORATED

(ENV-2014-CHC-46)

Appellant

AND QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

AND NORTHLAKE INVESTMENTS LIMITED

Applicant

Court: Environment Judge J R Jackson
Environment Commissioner J R Mills
Environment Commissioner A C E Leijnen

Hearing: In Chambers at Christchurch

Date of Decision: 17 November 2015

Date of Issue: 17 November 2015

FINAL DECISION

A: Under section 293 of the Resource Management Act 1991 the Environment Court confirms that the Queenstown Lakes District Council must amend the Queenstown Lakes District Plan by inserting:



- (i) The Northlake Structure Plan, dated 30 September 2015 as attached and marked Appendix A;
- (ii) The Amended Northlake Special Zone objectives, policies and rules as attached and marked Appendix B;
- (iii) An addition to the “Appendix A3 Schedule of Protected Trees – Wanaka” in the operative district plan, as attached and marked Appendix C.

B: By consent costs are to lie where they fall.

REASONS

Introduction

[1] This decision first resolves questions about rules protecting trees (inter alia) in a potential extension to Wanaka township within the Queenstown Lakes District, then confirms other changes to the rules, and finally briefly considers the court’s powers on an appeal on a plan (change). Those issues arise in an appeal by Appealing Wanaka Incorporated (“AWI”) against a decision of the Queenstown Lakes District Council approving Plan Change 45, which proposes the residential development of a large area between the town of Wanaka and the Clutha River.

[2] By interim decision¹, dated 21 August 2015, this court generally approved Plan Change 45 (“PC45”) – subject to some changes – and directed the Queenstown Lakes District Council to prepare changes to the “Amended Structure Plan” (part of PC45) as indicated in the ‘Reasons’ section of the decision unless any party indicated by 30 September 2015 that they wished to call evidence on the issue. Leave was reserved for AWI to advise the court whether it wished to continue with any of its *ultra vires* allegations. The parties were directed to confer on the court’s powers to amend PC45 and on the matters of detail raised in the ‘Reasons’ section.

[3] Counsel for Northlake Investments Limited (“Northlake”) has lodged submissions, dated 30 September 2015. Northlake informs the court that AWI has elected not to continue with any of the *ultra vires* allegations and that it wishes to take



¹ [2015] NZEnvC 139.

no further part in the proceeding. Northlake has conferred with the Council and the submissions it has lodged represent the agreed position between Northlake and the Council. No party seeks costs².

[4] The Council has lodged a memorandum, dated 9 October 2015, confirming that it is in full agreement with the various amendments that have been made. The Council agrees with Northlake that all of the outstanding issues raised by the court have been addressed and the amendments give full effect to the court's interim decision.

Amendments to the Northlake Structure Plan

[5] First, as a preliminary point, we will confirm the Northlake Structure Plan³ annexed to this decision marked "A". We explain the changes between this and annexure "C" to the Interim Decision in the following paragraphs.

[6] The interim decision⁴ proposed the protection of patches of kanuka and native shrubs on Allenby Farm Limited's property. The Structure Plan has been amended and those patches of kanuka and native shrubs are shown as TPA 1 and TPA 2⁵. The court also proposed that the road be relocated to the south of the kanuka and native shrubs. The indicative required walkway/cycle link has been relocated slightly to avoid TPA2. The parties informed the court that no amendment was necessary in relation to roading because there is no indicative or required roading link shown within Activity Area ("AA") B1 because no such roading link is required within AA B1 to provide access to any other landowner's land⁶.

[7] The interim decision⁷ suggested an amendment to Activity Area ("AA") C4 and the adjoining AA E3 (both as shown on Annexure "C" to the Interim Decision) to include an additional area (part of the gully) within the AA E3 Building Restriction Area. AA E3 has been enlarged to include that additional area which the court suggested

² Submissions on behalf of Northlake Investments Limited, dated 30 September 2015, at [2].

³ This plan was attached to Mr Goldsmith's submissions dated 30 September 2015 and requires no further changes.

⁴ [2015] NZEnvC 139, p89 at [216].

⁵ Submissions on behalf of Northlake Investments Limited, dated 30 September 2015, at [5].

⁶ Submissions on behalf of Northlake Investments Limited, dated 30 September 2015, at [6].

⁷ [2015] NZEnvC 139, p89 at [217] (a).



should be subject to the Building Restriction Area overlay⁸. Further we recommended that former AA C4 should form part of AA E3 because of its natural attributes⁹. That amendment has been made to the Structure Plan¹⁰ and, as a consequence, former AA C5 is now renumbered as AA C4.

[8] We also proposed¹¹ that the land to the east of the gully in AA B5 should have minimum zoning size lots of 4,000m² to protect the visual amenities of the elevated houses to the south of Aubrey Road. This suggestion has been given effect to by shifting the boundary between AA E3 and (the new) AA C4¹² to reduce the area of AA B5 and increase the area of AA C4 (because AA C4 is already subject to a minimum lot size 4,000m² requirement).

[9] We put forward the idea of a walking track¹³ from the northwestern high point on the site which overlooks the public reserve and camping area at the start of the Clutha River down the ridge parallel to the Clutha River to connect the two walking/cycling links shown on the Structure Plan. That additional walking/cycling track link is now detailed in the amended Structure Plan¹⁴. The court suggested that this additional walking track link may not be suitable for mountain bikes because of potential erosion problems. However, the parties advise that it would be difficult to implement any such restriction. There is extensive mountain bike use of the Sticky Forest land which adjoins the Northlake Special Zone on its western side. Many of the mountain bikers would undoubtedly seek to use this new track regardless of any purported restriction and there are practical difficulties with devices intended to exclude bikes. Northlake says the practical response is to ensure that the track is sufficiently wide and robust to accommodate mountain bikers and walkers¹⁵. We accept that.

⁸ Submissions on behalf of Northlake Investments Limited, dated 30 September 2015, at [7].

⁹ Submissions on behalf of Northlake Investments Limited, dated 30 September 2015, at [11].

¹⁰ Because of this change the former AA C4 has vanished and the former AA C5 is now AA C4.

¹¹ [2015] NZEnvC139, P89 at [217](b).

¹² Because the former AA C4 has gone, what was AA C5 is now AA C4.

¹³ [2015] NZEnvC139, P90 at [218].

¹⁴ Submissions on behalf of Northlake Investments Limited, dated 30 September 2015, at [9].

¹⁵ Submissions on behalf of Northlake Investments Limited, dated 30 September 2015, at [10].



Legality of the tree protection rules

[10] Section 76(4B) of the Act states that there must be no blanket rules about the felling of trees in any urban environment. In its interim decision¹⁶ the court asked whether the proposed areas¹⁷ and rules for tree protection comply with section 76 (4B).

[11] Sections 76(4A) and (4B) of the Act¹⁸ — some of the more difficult (and arguably inconsistent with Part 2) provisions of the RMA — provide:

- (4A) A rule may prohibit or restrict the felling, trimming, damaging, or removal of a tree or trees on a single urban environment allotment only if, in a schedule to the plan,—
 - (a) the tree or trees are described; and
 - (b) the allotment is specifically identified by street address or legal description of the land, or both.
- (4B) A rule may prohibit or restrict the felling, trimming, damaging, or removal of trees on 2 or more urban environment allotments only if—
 - (a) the allotments are adjacent to each other; and
 - (b) the trees on the allotments together form a group of trees; and
 - (c) in a schedule to the plan,—
 - (i) the group of trees is described; and
 - (ii) the allotments are specifically identified by street address or legal description of the land, or both.

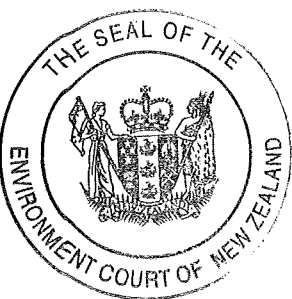
[12] Relevant to the interpretation of sections 76(4A) and (4B) is a new definition of “urban environment allotment” which was inserted by the 2013 Amendment Act and which is only applicable for the purposes of these sections. That definition is set out in section 76(4C) and is as follows:

- (4C) In subsections (4A) and (4B),—
 - group of trees** means a cluster, grove, or line of trees
 - urban environment allotment** or **allotment** means an allotment within the meaning of section 218—
 - (a) that is no greater than 4 000 m²; and

¹⁶ [2015] NZEnvC 139 at [221].

¹⁷ See the areas marked “TPA” on the Northlake Structure Plan.

¹⁸ Inserted by the Resource Management (Simplifying and Streamlining) Amendment Act 2009 and amended by the Resource Management Amendment Act 2013.



- (b) that is connected to a reticulated water supply system and a reticulated sewerage system; and
- (c) on which there is a building used for industrial or commercial purposes or as a dwellinghouse; and
- (d) that is not reserve (within the meaning of section 2(1) of the Reserves Act 1977) or subject to a conservation management plan or conservation management strategy prepared in accordance with the Conservation Act 1987 or the Reserves Act 1977.

[13] To address the concerns raised by the court the following amendments have been made¹⁹:

- (a) four separate Tree Protection Areas have been identified on the amended Structure Plan (TPA 1, TPA 2, TPA 3, TPA 4) to enable more specific identification by way of description and by way of legal title identification;
- (b) Appendix A3 of the Operative Queenstown Lakes District Plan already contains an Inventory of Protected Features concerning heritage buildings and heritage trees which are identified in different tables or schedules. The parties propose that an additional schedule (Appendix 3 to this decision) be added entitled “Protected Trees – Wanaka;”
- (c) each separate Tree Protection Area is described in the new Schedule by reference to the specific species of trees within that Tree Protection Area which are to be protected;
- (d) the legal description of the land contained in each individual Tree Protection Area is identified in the Schedule;
- (e) Objective 2, Policy 2.1, last bullet point on page 12.X – 2 has been amended to include reference to “...landscape or ecological feature...”
- (f) Objective 4, Policy 4.4 on page 12.X – 3 has been amended to include specific reference to “...within TPA3 and TPA 4...”
- (g) Rule 12.x.4.2.iii on page 12.X – 5 in the Northlake Plan Provisions has been amended to include specific reference to the new Schedule and to include a reference to retaining and enhancing indigenous ecological values;



¹⁹

Submissions on behalf of Northlake Investments Limited, dated 30 September 2015, at [16].

- (h) Rule 12.X.4.5x on page 12.X – 7 in the Northlake Provisions has been amended to include specific reference to the new Schedule.

[14] For the purpose of the new Schedule the relevant trees have been identified. Counsel commissioned Ms Anne Steven of Wanaka, an experienced landscape architect, to visit the PC45 site and to provide a description of the tree species within the four Tree Protection Areas. Ms Steven produced the plan attached to this decision as Appendix D identifying the species within the four Tree Protection Areas. As Ms Steven is well known to the court (and the court had carried out a site visit) the court is satisfied with the information provided by Ms Steven. Counsel did not consider it necessary to further complicate the District Plan by including the plan in Appendix D as a formal part of the PC45 Plan provisions and nor do we.

[15] Mr Goldsmith submitted that the amendments made to the plan provisions comply with sections 76(4A) and (4B) because²⁰:

- (a) section 76(4A) and (4B) require that the relevant “tree or trees” or “group of trees” be described. No method of description is described. It is submitted that the description must be such that the relevant tree or trees or group of trees can be clearly identified by reference to the District Plan so that there can be no doubt which tree or trees or group of trees are being referred to. The collective description of a group of trees in a schedule (which will be included in the District Plan), provided it gives sufficient clarity to landowners, complies with sections 76(4A) and (4B);
- (b) the trees to be protected are now clearly identified by species (Schedule in Appendix C) and by location (identified on the Structure Plan and in the Schedule in Appendix C);
- (c) each of the legal allotments which contains a TPA and which is described in the Schedule in Appendix C is (currently) more than 4,000m². Therefore the rules, referring to the Structure Plan do not, at present, contravene sections 76(4A) or (4B).



[16] However, counsel also responsibly submitted that that is not the end of the matter since each individual large allotment described in the Schedule in Appendix C will ultimately be subdivided. It is likely that all of the trees intended to be protected will end up within individual allotments which are smaller than 4,000m² and which fall within the definition of “urban environment allotment.” Mr Goldsmith perspicaciously wrote that the question to be asked is “whether subsequent subdivision will result in the proposed tree protections rules not complying with sections 76(4A) or (4B)?”

[17] When a later subdivision occurs the relevant legal descriptions will change. Each existing large allotment will be subdivided into a number of smaller allotments, with an allotment number and a DP number different from that contained in the Schedule in Appendix C. Counsel submitted that it cannot have been intended by the legislature that protection of the trees would vanish simply as a consequence of a mechanical survey exercise involving the subdivision of one large lot into a number of smaller lots²¹. Despite the amendments to section 76, territorial authorities still have a requirement to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna pursuant to section 6(c) of the Act and to maintain indigenous biological diversity. This has been taken into account in the wording of Appendix C and has been addressed by using the following formula in the table of legal descriptions to be inserted in the district plan:

Lot __DP__ (which includes the future legal description of any subdivided part of that lot which contains any part of Tree Protection Area TPA__, including any lot which qualifies as an urban environment allotment under s76(4C) of the Act.

[18] It is submitted that the formula falls within the requirements of section 76(4B)(c)(ii) in that “the allotments are specifically identified by...legal description of the land”. Counsel understands that section 76(4A) and (4B) were inserted into the RMA to address a concern held by Parliament about the practice of District Councils seeking to prevent the removal of trees (without first obtaining a resource consent) by use of blanket rules which generically referred to trees of a certain size and/or species without first going through the exercise of identifying specific trees or groups of trees which should be protected for specific reasons. Counsel argues it was envisaged that

²¹ Submissions on behalf of Northlake Investments Limited, dated 30 September 2015, at [27].



local authorities could still protect trees in urban areas that had been identified as part of a group (for example, by way of Schedule to a Plan). This understanding is supported by the commentary of the Local Government and Environment Select Committee's reading of the Resource Management Reform Bill 2012. Counsel also refers to a decision of the Environment Court on an application for declaration, where one of the court's recommendations was that all trees in a class within defined characteristics in a defined areas or zone would be sufficient to comply with the identification provisions requirements²². Further amendments in 2013 amended this approach and also added the definition of "urban environment allotment".²³

[19] It is submitted that the need to identify the legal description or street address in the District Plan is to ensure that councils specifically assess trees for protection, justify that protection and can accurately identify the properties that are subject to that protection. It is argued that that objective can be achieved in this case and that subdivision of a lot – which will always result in a new legal description – should not render such District Plan rules of no effect²⁴. Further, interpreting section 76(4B) with a rigid adherence to the words of the section would not be consistent with the requirements of the Interpretation Act 1999, in particular section 5(1) which states "the meaning of an enactment must be ascertained from its text and in the light of its purpose". Sections 5(2) and (3) are also relevant as they state that indications such as the analysis and explanatory material of the enactment are also relevant to ascertaining the enactment's meaning²⁵.

[20] We gratefully accept counsel's unopposed submissions and proposed solution and are satisfied that the proposed TPAs and rules comply with sections 76(4A) and (4B) of the RMA. It occurs to us that there may be another reinforcing option open to the Council as consent authority. At the time of subdivision a consent notice might be registered on the title for any new allotments (< than 4,000m²) alerting current and future property owners to the presence of the TPAs and their requirements.



²² *Re Auckland Council* [2011] NZRMA 546; (2011) 17 ELRNZ 433.

²³ Submissions on behalf of Northlake Investments Limited, dated 30 September 2015, at [31]-[33].

²⁴ Submissions on behalf of Northlake Investments Limited, dated 30 September 2015, at [34].

²⁵ Submissions on behalf of Northlake Investments Limited, dated 30 September 2015, at [35].

Other changes to the rules

Restricted Discretionary Residential Activity rule

[21] In the interim decision the court queried²⁶ the apparent disjunction between permitted activity consent status for residential buildings and restricted discretionary activity consent status for residential activities. The court was concerned that some categories of buildings appear permitted or controlled activities but the actual residential activity which will occupy them requires restricted discretionary consent. Thus the criteria which would be invoked to assess a residential activity will not necessarily be applied at the development of the building stage. This could mean that remnant stands of native planting are removed as only the TPA and Area E are protected and this outcome might not implement Objective 4 and Policy 4.2 of PC45.

[22] The rule which the court was concerned about was proposed rule 12.X.4.3.i. This rule was put forward in response to a decision issued by another division of the Environment Court during the course of PC45. In *Queenstown Airport Corporation v Queenstown Lakes District Council*²⁷ the court held that the Outline Development Plan (“ODP”) process used elsewhere in the Queenstown Lakes District Plan is *ultra vires* because the relevant ODP rules can determine the consent status of an activity. It was held that the consent status of an activity must be specified in the District Plan and cannot change as a result of a grant of consent. The court’s ruling raised a number of issues. The first is that it is generally desirable that the owner of a standard residential lot can build a standard residential dwelling without having to incur the costs and inconvenience of a consent process, provided the normal standards are complied with. Second, the ODP approach – so long as it is not used to determine activity status – has considerable merit because it requires a holistic approach to residential development of larger greenfields areas²⁸.

[23] Rule 12.X.4.3.i is the proposed solution to these issues since²⁹:

²⁶ [2015] NZEnvC 139 at [222].

²⁷ *Queenstown Airport Corporation v Queenstown Lakes District Council* [2014] NZEnvC 93 at [126]-[197].

²⁸ Submissions on behalf of Northlake Investments Limited, dated 30 September 2015, at [37]-[39].

²⁹ Submissions on behalf of Northlake Investments Limited, dated 30 September 2015, at [40].



- (a) it enables and requires consideration of all of the restricted discretionary matters detailed in rule 12.X.4.3.i relevant to the proposed ODP being considered under that rule;
- (b) this links through to subdivision rule 15.2.3.3(x) which applies restricted discretionary activity status to any subdivision where land use consent has previously been granted under rule 12.X.4.3;
- (c) any residential subdivision or development defaults to fully discretionary activity consent status if consent has not already been obtained under rule 12.X.4.3;
- (d) once that restricted discretionary activity consent (which will include a condition requiring compliance with an ODP) has been granted, the subsequent building of dwellings in accordance with the ODP approved as part of that consent is a permitted activity.

[24] With regard to the court's concern about remnant stands of native planting being removed, it is submitted that objective 4 and policy 4.2 are implemented by identification of the TPAs. At the moment all of that existing vegetation could be removed as a permitted activity. As soon as PC45 becomes operative that existing vegetation will be protected.

[25] One of the restricted discretionary assessment matters under rule 12.X.4.3.i and ii is "(h) Proposals to protect and enhance conservation values". That specific assessment matter relates directly to TPAs. Each TPA is part of a larger Activity Area. For example, when an application is made for consent under rule 12.X.4.3.i for residential activities (excluding buildings) in AA B1 one of the issues to be addressed is "proposals to protect and enhance conservation values" which will include protecting and enhancing the native bush within TPA 1 and TPA 2³⁰.

[26] Finally, from a practical perspective it is unlikely that any houses will be built until and unless subdivision has taken place and it is highly unlikely subdivision will take place until and unless a consent has been granted under rule 12.X.4.3. If there are any remnants of native bush which are not protected by a TPA and which still exist



³⁰

Submissions on behalf of Northlake Investments Limited, dated 30 September 2015, at [44].

when application for consent under rule 12.X.4.3 is made the opportunity will arise for the Council to impose protection. For these reasons counsel submits that the current rule regime properly and adequately implements objective 4 and policy 4.2 of PC45.

[27] The court accepts counsel's comprehensive submissions.

One residential unit per site

[28] The court suggested³¹ that the requirement for no more than one residential unit on a site may be counterproductive in terms of efficient site planning. Northlake accepts that point and the relevant rule has been deleted³².

Underground structures

[29] The court expressed a concern³³ that the rule permitting an underground structure to be excluded from maximum building coverage may reduce planting opportunities. Counsel concedes he had overlooked the fact that the Council has recently amended the definition of "coverage" in the District Plan to only apply to buildings at ground level or above ground level. The exemption is no longer required in PC45 and it has been deleted from rule 12.X.6.2.v on page 12.X-15 of the Plan provisions.

Eastern Edge of the Zone

[30] The court suggested³⁴ that there could be a rule addressing the eastern external edge of the zone where planting could assist the definition of this urban edge. Counsel says this is covered by rule 12.X.6.1.x(c) on page 12.X-11 which requires, on any residential site adjoining the Hikuwai Conservation Area, 100 percent planting coverage within a 4 metre setback from the boundary with the Hikuwai Conservation Area.

Activity Areas E1 and E4 – pastoral state

[31] The court expressed concern that rule 12.X.6.2.xi requires AAE1 and AAE4 to be maintained in a pastoral state, stating that this would not protect trees or encourage additional enhancement planting. The wording has been amended as follows:

³¹ [2015] NZEnvC 139, p91 at [222](b).

³² Previously rule 12.X.6.2.viii on page 12.X-16 of Closing Submissions Version Northlake Plan Provision dated 1 May 2015.

³³ [2015] NZEnvC 139, p92 at [222](c).

³⁴ [2015] NZEnvC 139, p92 at [222](d).



In Activity Area E1 and Activity Area E4 existing trees, shall be retained and any additional enhancement planting, once established shall also be maintained except that this rule does not apply to wilding tree species (particularly those spreading from the adjoining land outside the zone to the west) which shall be removed.

[32] Counsel has correctly assumed that the court is not advocating the retention of the wilding trees currently spreading from Sticky Forest to the west.

Power to amend PC45

[33] The court asked the parties whether it had the power to make the necessary changes to PC45 or whether it would need to utilise the powers given under section 293, which give the court the ability to direct changes to a plan which are not otherwise within jurisdiction due to the scope of the appeal.

[34] Counsel submitted that the court has jurisdiction to makes the changes proposed in the interim decision for the following reasons³⁵:

- (a) PC45 involves the rezoning of land from Rural General to a mixed low and medium density urban zone. The requested rezoning was granted by the Council. The appeal by Appealing Wanaka sought cancellation of the Council's decision and reinstatement of the Rural General zoning. Any outcome which falls between the urban zoning requested and the Rural General zoning sought under appeal is *prima facie* within jurisdiction;
- (b) in deciding whether or not to confirm the rezoning the court is required to ensure that the objectives, policies and rules of PC45 implement the existing objectives and policies of the operative District Plan;
- (c) the changes requested or suggested by the court are all relatively minor and are all directed at achieving the objectives and policies of PC45 and so are within jurisdiction.



³⁵

Submissions on behalf of Northlake Investments Limited, dated 30 September 2015, at [52].

[35] The extent to which the court's jurisdiction is extended by the content of a plan change was discussed by Fisher J in *Westfield (New Zealand) Ltd v Hamilton City Council*³⁶, where he said:

[73] ... I think it is implicit in the legislation that the jurisdiction to change a plan conferred by a reference is not limited to the express words of the reference. In my view it is sufficient if the changes directed by the Environment Court can fairly be said to be foreseeable consequences of any changes directly proposed in the reference.

[74] Ultimately, it is a question of procedural fairness. Procedural fairness extends to the public as well as to the submitter and the territorial authority. Adequate notice must be given to those who might seek to take an active part in the hearing before the Environment Court if they know or ought to foresee what the Environment Court may do as a result of a reference. This is implicit in ss292 and 293. The effect of those provisions is to provide an opportunity for others to join the hearing if proposed changes would *not* have been within the reasonable contemplation of those who saw the scope of the original reference.

We consider that remains the law despite subsequent amendments in 2005 to the First Schedule and section 293 of the Act. So we accept counsel's submissions and find that the changes to be made to PC45 can fairly be said to be foreseeable consequences of any changes directly proposed in the appeal.

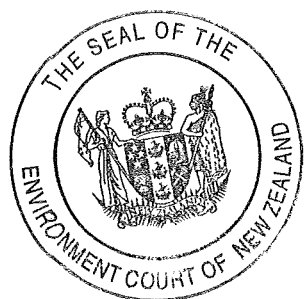
[36] However, the ultimate question here is "what is the source of the court's power to make any changes (otherwise within jurisdiction) to a plan change as decided by the council?"

[37] The First Schedule is quite terse as to the court's powers in relation to appeals on a plan or plan change. Clause 15 simply states:

15 Hearing by the Environment Court

- (1) The Environment Court shall hold a public hearing into any provision or matter referred to it.
- (2) If the Environment Court, in a hearing into any provision of a proposed policy statement or plan (other than a proposed regional coastal plan), directs a local authority under section 293(1), the local authority must comply with the court's directions.

³⁶ *Westfield (New Zealand) Ltd v Hamilton City Council* [2004] NZRMA 556 at 574-595. "Reference" is easily able to be substituted with the words "plan appeal".



- (3) Where the court hears an appeal against a provision of a proposed regional coastal plan, that appeal is an inquiry and the court—
 - (a) shall report its findings to the appellant, the local authority concerned, and the Minister of Conservation; and
 - (b) may include a direction given under section 293(1) to the regional council to make modifications to, deletions from, or additions to, the proposed regional coastal plan.

In *Environmental Defence Society v Otorohanga District Council*³⁷ Judge Kirkpatrick simply summarised this as requiring that the Environment Court “... is to hold a hearing into the provision and make its own decision on that”³⁸. However, with respect, it is not quite as simple as that. A closer reading of clause 15(2) suggests that the court’s alternatives are either to refuse the appeal (and confirm the local authority’s decision) or to give directions under section 293. The effect of the 2005 amendment to clause 15 is, at first sight, that the court cannot simply substitute its own decision. As Gendall J found or, rather, held in *Federated Farmers Inc v Mackenzie District Council*³⁹:

The jurisdiction is to direct that changes be made, not to make the changes and direct that they be implemented.

[38] When the local authority refers its proposed changes back to the Environment Court, the court may (or may not) “confirm” them. It is unclear whether this confirmation is under section 293 or, perhaps, under section 290 as “amend[ment] of the earlier local authority decision”. We consider the former is more plausible because, while section 290 appears to be applicable to any appeal, it is qualified by subsection (4) which states that nothing in the section affects “any specific power or duty” of the court under (amongst other provisions) the RMA itself. It seems to us that the clause 15(2) and section 293 powers and duties are precisely such precise powers and duties. We consider, but do not have to decide, that the only direct power the court has on appeal is to confirm the council’s decision (by rejecting the appeal) or to confirm changes under section 293 once the process in section 293(1) has been carried out.

³⁷ *Environmental Defence Society v Otorohanga District Council* [2014] NZEnvC 070 at [11].
³⁸ *Environmental Defence Society v Otorohanga District Council* [2014] NZEnvC 070 at [11].
³⁹ *Federated Farmers Inc v Mackenzie District Council* [2015] NZRMA 52(HC) at [153].



Outcome

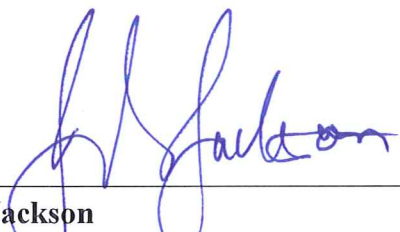
[39] It is recorded that Appealing Wanaka Incorporated does not wish to pursue any of its allegations of *ultra vires* against the Council.

[40] The court is satisfied with the submissions on behalf of the Council and Northlake that it has jurisdiction to make the changes to amend PC45 in the manner suggested by those parties.

[41] The Council's decision on PC45 and the attached amendments are confirmed, with the effect that the amended Structure Plan, the amended objectives, policies and rules and added Schedule (to go at the end of Appendix A3) must be inserted in the Queenstown Lakes District Plan. Also attached to this decision is a plan showing the Tree Protection Areas.

[42] The parties are agreed that costs are to lie where they fall.

For the court:



J R Jackson
Environment Judge

**Attachments**

- A: Amended Northlake Special Zone Plan Provisions for the Queenstown Lakes District Plan
- B: Northlake Structure Plan
- C: Addition to "Appendix A3 Schedule of Protected Trees – Wanaka" in the operative district plan
- D: Tree Protection Areas – Existing Vegetation Plan

APPENDIX (A)

Amended Northlake Special Zone Plan Provisions





community and commercial activities that meet some daily needs and act as a focal point for the Northlake community.

12.X Northlake Special Zone

Issues, Objectives and Policies

The purpose of the Northlake Special Zone is to provide for a predominantly residential mixed use neighbourhood. The area will offer a range of housing choices and lot sizes ranging from predominantly low to medium density sections, with larger residential sections on the southern and northern edges. The zone enables development of the land resource in a manner that reflects the zone's landscape and amenity values.

The Northlake Special Zone includes a Structure Plan showing existing and proposed roads, the position of Activity Areas, Building Restriction Areas and Tree Protection Areas. Subsequent provisions refer to these terms. An important component of the Zone is the need to submit an Outline Development Plan as part of an application for consent to specified activities prior to development, to ensure the Zone is developed in an integrated manner.

12.X.1 Issues

i Landscape and Amenity

Northlake is located within a landscape which contributes to the amenity of the wider Wanaka area. It is important to recognise and achieve high quality amenity outcomes. The urban edge needs to be located to preserve the landscape values enjoyed from Lake Wanaka and the Clutha River.

ii Community

Development in Northlake shall occur in a manner that provides for the integration of activities important for the social wellbeing of the community. There is potential to establish a small precinct with

iii Ecology

Years of pastoral farming have degraded natural values. However, through protecting remnants of mostly kanuka vegetation and encouraging tree planting, some values can be restored and enhanced. Development near the boundary of the Hikuwai Conservation Area shall be managed so as to reinforce and protect the values of that area.

iv Open Space and Recreation

Northlake presents opportunities to provide open spaces and trails that will contribute to the Wanaka community's social and economic wellbeing. Continued and increased opportunities to access Lake Wanaka and the outlet to the Clutha River can be secured as part of the development of the land.

v Efficient Land Use

It is important that residentially zoned land is used efficiently in order to promote housing affordability and relieve pressure to develop other more sensitive land in and around Wanaka.

vii Infrastructure

Development of the zone will require the provision of services including water supply, sewage disposal, stormwater disposal, telecommunications and electricity supply.

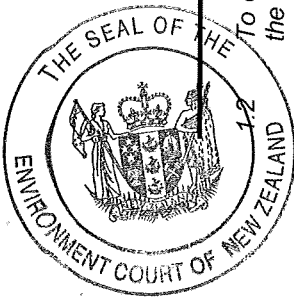
12.X.2 Objectives and Policies

Objective 1 – Residential Development

A range of medium to low density and larger lot residential development in close proximity to the wider Wanaka amenities.

Policies

- 1.1 To establish a mix of residential densities that will provide a residential environment appealing to a range of people.



NORTHLAKE SPECIAL ZONE

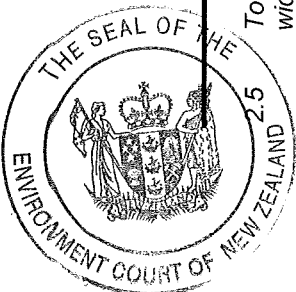
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Policies

- | | |
|---|--|
| <p>1.2 To enable medium density living within the less sensitive parts of the zone in order to give Northlake a sense of place and to support a neighbourhood commercial and retail precinct.</p> <p>1.3 To maintain and enable residential lot sizes in Activity Areas A and C4 consistent with the adjacent Rural Residential Zone.</p> <p>1.4 To enable and encourage low density residential activities within Activity Areas B1 – B5.</p> <p>1.5 To enable and encourage larger residential lot sizes within Activity Areas C1 – C3.</p> <p>1.6 To enable and encourage medium density residential activities within Activity Area D1.</p> <p>1.7 To provide for small scale neighbourhood retail activities to serve the needs of the local community within Activity Area D1 and to avoid visitor accommodation, commercial, retail and community activities and retirement villages within Activity Areas other than within Activity Area D1.</p> <p>1.8 To provide for community activities, including educational facilities, to serve the needs of the Northlake community and to be available for use by the wider Wanaka community.</p> <p>1.9 To enable affordable housing by providing for cost effective development and by requiring a range of lot sizes and housing typologies, including 20 affordable lots (as defined in Rule 15.2.20.1).</p> | <p>2.1 To use a Structure Plan to establish:</p> <ul style="list-style-type: none"> • The location of Activity Areas • The primary road network • Required walking and cycle connections • Areas where buildings are prevented from occurring due to landscape sensitivity • Areas where existing vegetation forms an important landscape or ecological feature and should be protected <p>2.2 To require development to be consistent with the Northlake Structure Plan.</p> <p>2.3 To require the use of Outline Development Plans in resource consent applications for Activity Areas B1 to B5, C1 to C4 and D1 in order to:</p> <ul style="list-style-type: none"> • implement the objectives and policies of the Zone and the relevant Activity Area and the Northlake Structure Plan; • determine the general location of anticipated future activities and built form within the Activity Area; • achieve any required density range within the relevant Activity Area; • achieve appropriate integration of anticipated future activities. <p>2.4 To achieve a high level of integration through residential lot layout, street design, recreational areas (including walkways/ cycleways, parks and open spaces) and landscaping through the resource consent process using Outline Development Plans.</p> |
|---|--|

Objective 2 – Urban Design

Development demonstrates best practice in urban design and results in a range of high quality residential environments.



NORTHLAKE SPECIAL ZONE

12

- 3.6 To provide safe, attractive, and practical routes for walking and cycling, which are well linked to existing or possible future passenger transport and local facilities and amenities within the zone.

To ensure that development recognises and relates to the wider Wanaka character and is a logical extension of the urban form of Wanaka.

- 2.6 To enable visitor accommodation, commercial, retail and community activities and retirement villages within Activity Area D1 including limited areas of small scale neighbourhood retail to service some daily needs of the local community, while maintaining compatibility with residential amenity and avoiding retail development of a scale that would undermine the Wanaka Town Centre and the commercial core of the Three Parks Special Zone.

- 2.7 To enable educational facilities to service the needs of the Wanaka community, while maintaining compatibility with residential amenity.

Objective 3 – Connectivity

Development that is well-connected internally and to networks outside the zone.

Policies

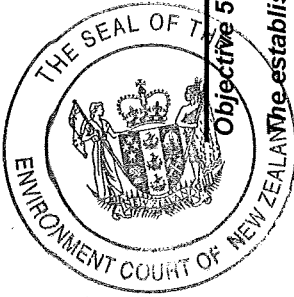
- 3.1. To ensure that roading is integrated with existing development and the existing road network.
- 3.2. To promote a logical and legible road layout, minimising cul-de-sacs where practical.
- 3.3 To require public cycling and walking trails through the zone that link to existing and potential trails outside the zone.
- 3.4 To enable public transport to efficiently service the area, now and in the future.
- 3.5 To reduce travel distances through well connected roads.

Objective 4 – Landscape and Ecology

Development that takes into account the landscape, visual amenity, and conservation values of the zone.

Policies

- 4.1 To identify areas where buildings are inappropriate, including ridgelines, hilltops and other visually prominent landforms, and to avoid buildings within those areas.
- 4.2 To maintain and enhance the nature conservation values of remnants of indigenous habitat, and to enhance the natural character of the northeast margin of the zone.
- 4.3 To ensure that roads are designed and located to minimise the need for excessive cut and fill and to respect natural topographical contours.
- 4.4 To ensure that trees within the Tree Protection Areas are retained, and that any individual trees that are removed or felled within TPA3 or TPA4 are progressively replaced with non-wilding species so as to ensure development is reasonably difficult to see from the Deans Bank trail (northern side of the Clutha River), to retain a predominantly treed foreground when viewed from the Deans Bank trail, and to retain a predominantly treed background when viewed from Outlet Road.



NORTHLAKE SPECIAL ZONE

12

Objective 5 – Recreation

The establishment of areas for passive and active recreation.

Policies

- 5.1. To identify areas for passive and active recreation, and to encourage connections between recreational areas.
- 5.2. To ensure that community recreation areas are located on flatter areas within the zone.
- 5.3. To encourage the provision of public access to the Clutha River.
- 5.4. To require provision of community facilities at an early stage in the development of the zone.

Objective 6 – Infrastructure

Provision of servicing infrastructure to cater for demands of development within the zone in an environmentally sustainable manner and to enhance wider utility network systems where appropriate.

Policies

- 6.1. To provide safe and efficient road access to the zone from Aubrey Road and Outlet Road.
- 6.2. To provide for transport network upgrades when required.
- 6.3. To design local streets to ensure safe, low speed traffic environments.
- 6.4. To utilise low impact design solutions that minimise adverse environmental effects resulting from stormwater runoff.
- 6.5. To provide for water storage facilities for the benefit of the wider Council network as well as for the zone.

12.X Northlake Special Zone Rules

12.X.3 District Rules

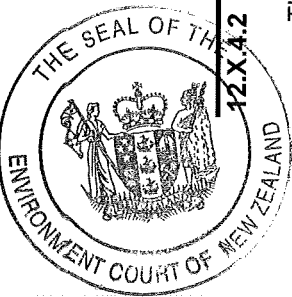
Attention is drawn to the following District Wide Rules which may apply in addition to any relevant Zone Rules. If the provisions of the District Wide Rules are not met then consent will be required in respect of that matter:

- (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

12.X.4 Activities

12.X.4.1 Permitted Activities

- i. Any Activity which complies with all the relevant Site and Zone Standards and is not listed as a Controlled, Restricted Discretionary, Discretionary, Non-Complying or Prohibited Activity, shall be a Permitted Activity.
- ii. Non-residential activities involving up to one full time equivalent person who permanently resides elsewhere than on the site and occupying no more than 40m² of the gross floor area of the buildings on a site.



NORTHLAKE SPECIAL ZONE

12

Controlled Activities

12.X.4.2

The following shall be **Controlled Activities** provided that they are not listed as a **Prohibited, Non-Complying, Restricted Discretionary 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 in Activity Area A

The addition, external alteration or construction of buildings within Activity Area A, with the exercise of Council's control limited to:

- (a) The location, external appearance and design of buildings;
- (b) Roof and wall colours;
- (c) Associated earthworks and landscaping.

ii. Buildings in Activity Areas C1 to C4

The addition, external alteration or construction of buildings within the Activity Areas C1 to C4, with the exercise of Council's control limited to:

- (a) The location, external appearance and design of buildings;
- (b) Roof and wall colours;
- (c) Infrastructure and servicing;
- (d) Associated earthworks and landscaping;
- (e) Access.

iii. Removal of trees from the Tree Protection Areas

The removal and/or felling of a tree which is within a Tree Protection Area shown on the Northlake Structure Plan and which is described in the Schedule "Protected Trees – Wanaka"

in the Inventory of Protected Features in Appendix A3, with the Council's discretion limited to:

- (a) the extent of tree removal in the context of retention of a predominantly treed area;
- (b) the timing, type and density of replacement trees;
- (c) the method of removal of trees;
- (d) retention and enhancement of indigenous ecological values.

12.X.4.3 Restricted Discretionary Activities

The following shall be **Restricted Discretionary Activities** provided that 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 limited its discretion are listed with each **Restricted Discretionary Activity**.

i. Residential Activities (excluding buildings) in Activity Areas B1 to B5 and C1 to C4

Any application for consent under this rule shall include a proposed Outline Development Plan as part of the proposed conditions of consent in respect of all of the relevant Activity Area. The exercise of Council's discretion shall be limited to:

- (a) Indicative subdivision design, density of residential units, lot configuration and allotment sizes;
- (b) Roading pattern and vehicle access arrangements, including integration with existing development;
- (c) Proposed road and street designs, including landscaping;
- (d) Location and suitability of pedestrian and cycling connections and linkages to surrounding pedestrian and cycling networks;
- (e) Location and suitability of open space and recreational amenity spaces;
- (f) The proposed methods of servicing by infrastructure;
- (g) Proposed methods of low impact stormwater disposal;
- (h) Proposals to protect and enhance conservation values;



NORTHLAKE SPECIAL ZONE

12

Measures to address any adverse effects resulting from any contaminated sites;
The extent to which natural topography is respected, where practical;

- (j) Integration of the Outline Development Plan with other parts of the zone, or with other consents with Outline Development Plans;
- (m) Design controls and implementation methods for managing outcomes on sites with internal setbacks of less than 1.5 m and / or lot sizes smaller than 400m²;
- (n) Species of trees (Note: required to be specified for the purposes of Rule 12.X.6.1.xi).

ii. Residential, Visitor Accommodation, Commercial, Retail and Community Activities and Retirement Villages (all excluding buildings) in Activity Area D1

Any application for consent under this rule shall include a proposed Outline Development Plan as part of the proposed conditions of consent in respect of all of Activity Area D1. The exercise of Council's discretion shall be limited to:

- (a) Indicative subdivision design, density of residential units, lot configuration, maximum number of residential units proposed for any retirement village, and allotment sizes;
- (b) Location of any visitor accommodation, commercial, retail, retirement village and community activities;
- (c) Roading pattern and vehicle access arrangements, including integration with existing development;
- (d) Proposed road and street designs, including landscaping;
- (e) Location and suitability of pedestrian and cycling connections and linkages to surrounding pedestrian and cycling networks;
- (f) Location and suitability of open space and recreational amenity spaces;
- (g) The proposed methods of servicing by infrastructure;
- (h) Proposed methods of low impact stormwater disposal;
- (i) Proposals to protect and enhance conservation values;
- (j) Measures to address any adverse effects resulting from any contaminated sites;
- (k) The extent to which natural topography is respected,

where practical;

- (l) Integration of the Outline Development Plan with other parts of the zone, or with other consents with Outline Development Plans;
- (m) Design controls and implementation methods for managing outcomes on sites with internal setbacks of less than 1.5 m and / or lot sizes smaller than 400m²;
- (n) Species of trees (Note: required to be specified for the purposes of Rule 12.X.6.1.xi).

iii. Residential Buildings

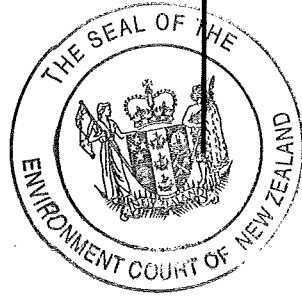
The addition, external alteration or construction of **buildings with more than three residential units**, with the exercise of Council's discretion limited to:

- (a) The location, external appearance and design of buildings;
- (b) Infrastructure and servicing;
- (c) Associated earthworks and landscaping; and
- (d) Access

iv. Buildings for Visitor Accommodation, Commercial, Retail and Community Activities and Retirement Villages within Activity Area D1

The addition, external alteration or construction of buildings for visitor accommodation, commercial, retail and community activities and retirement villages within Activity Area D1, with the exercise of Council's discretion limited to:

- (a) The location, external appearance and design of buildings;
- (b) Infrastructure and servicing;
- (c) Associated earthworks and landscaping;
- (d) Access;
- (e) The amount of vehicle parking, its location and layout;
- (f) Location of buildings on the site;
- (g) Hours of operation; and
- (h) Integration between the proposed building and other



NORTHLAKE SPECIAL ZONE

12

consents with Outline Development Plans relevant to the site.

vi. Airports

Airports other than the use of land and water for emergency landings, rescues and fire fighting.

12.X.4.4 Discretionary Activities

The following shall be **Discretionary Activities** provided they are not listed as **Non-Complying Activities** or **Prohibited Activities** and they comply with all the relevant **Zone Standards**.

- i. Any Activity which is not listed as a **Non-Complying Activity** or **Prohibited Activity** and which complies with all the **Zone Standards** but does not comply with one or more of the **Site Standards** shall be a **Discretionary Activity** with the exercise of the Council's discretion being confined to the matter(s) specified in the standard(s) not complied with.
- ii. **Residential Activities** (excluding buildings) in **Activity Areas B1 to B5 and C1 to C4 and Residential, Visitor Accommodation, Commercial, Retail and Community Activities and Retirement Villages** (all excluding buildings) in **Activity Area D1** where an **Outline Development Plan** is proposed for only part of **Activity Areas B1 to B5, C1 to C4 and D1**.

12.X.4.5 Non Complying Activities

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

- i. **Factory Farming**
- ii. **Forestry Activities**
- iii. **Mining Activities**
- iv. **Service Activities**
- v. **Industrial Activities**

12.X.4.6 Prohibited Activities

The following shall be **Prohibited Activities**:

- xi. 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**.

vii. Building Restriction Area (including Tree Protection Area) – Activity Areas E1-E4

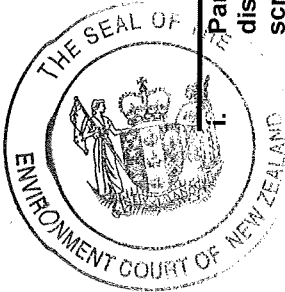
Any building (including buildings ancillary to residential use) and any domestic curtilage activities, including gardens, paved areas, and parking (except for the purpose of vehicle access) in **Activity Areas E1-E4**.

viii. The use or development of land within any of Activity Areas B1 to B5, C1 to C4 and D1 that is not in accordance with Rule 12.X.4.3.i or Rule 12.X.4.3.ii in respect of all of that Activity Area or under Rule 12.X.4.4.ii in respect of part of that Activity Area.

ix. Visitor Accommodation, Commercial, Retail and Community Activities and Retirement Villages within Activity Areas A, B1 to B5 and C1 to C4.

x. Removal of trees from the Tree Protection Area

The removal and/or felling of a tree which is within a **Tree Protection Area** shown on the **Northlake Structure Plan** and which is described in the **Schedule "Protected Trees – Wanaka"** in the **Inventory of Protected Features** in **Appendix A3**, other than as approved under **Rule 12.X.4.2.iii**.



NORTHLAKE SPECIAL ZONE

12

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.

relates.

- If any application in respect of all or part of Activity Area B1 includes an Outline Development Plan which includes the use of Peak View Ridge for vehicle access, then the owners of land that gain access off Peak View Ridge shall be considered potentially adversely affected
- For the purposes of this rule, a consent application's Outline Development Plan includes a variation to a consent's Outline Development Plan.

ii. Applications for the exercise of the Council's discretion in respect of the following **Site Standards**:

- (a) Access;
- (b) Outdoor Living Space;
- (c) Earthworks

12.X.6

Standards

12.X.6.1

Site Standards

i. **Nature and Scale of Non-Residential Activities**

- (a) Within Activity Areas A, B1 – B5, and C1 – C4 no more than one full time equivalent person who permanently resides elsewhere than on the site may be employed in a non- residential activity.
- (b) Within Activity Areas A, B1 – B5, and C1 – C4 no more than 40m² of the gross floor area of the buildings on a site shall be used for non-residential activities.
- (d) No goods, materials or equipment shall be stored outside a building, except for vehicles associated with the activity parked on the site overnight and the storage of outdoor items ancillary to activities located on the site.
- (e) All manufacturing, altering, repairing, dismantling or processing of any materials, goods or articles shall be carried out within a building.

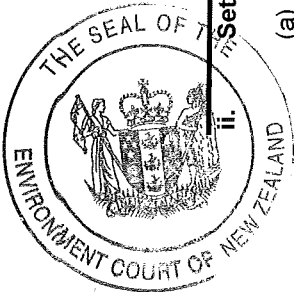
12.X.5 Non-Notification of Applications

Any application for a resource consent for the following matters may be considered without the need to obtain the written approval of affected persons and need not be notified in accordance with Section 95A and 95B of the Act, unless the Council considers special circumstances exist in relation to any such application:

- i. All applications for **Restricted Discretionary Activities**, except that where the owners of land adjoining an area subject to a consent application with an Outline Development Plan may be affected by a proposed roading connection (or lack thereof) then notice may be served on those persons considered to be potentially adversely affected if those persons have not given their written approval.

Note:

- For the purposes of this rule, "adjoining" means land that shares a boundary with the part of the Northlake Special Zone to which the consent application's Outline Development Plan



NORTHLAKE SPECIAL ZONE

12

Setback from Roads

- (a) The minimum setback from road boundaries of any building shall be 4.5m except within Activity Area D1;
- (b) The minimum setback from road boundaries of any building within Activity Area D1 shall be 3m.

iii. Setbacks from Internal Boundaries

- (a) In all areas aside from Activity Area D1, and except as provided for below, the minimum setback from internal boundaries for any building shall be:

Front Site

One setback of 4.5m and all other setbacks 2m.

Rear Sites

Two setbacks of 4.5m and all remaining setbacks to be 2m.

- (b) Within Activity Areas D1 the minimum setback from internal boundaries for any building shall be 1.5m unless otherwise authorized through a consent under Rule 12.X.4.3.i, Rule 12.X.4.3.ii or Rule 12.X.4.4.ii.

- (c) Accessory buildings for residential activities other than those used for the housing of animals may be located within the setback distances from internal boundaries, where the total length of the walls of accessory buildings within the setback does not exceed 7.5m in length and there are no windows or openings, other than for carports, along any walls within 2m of an internal boundary.

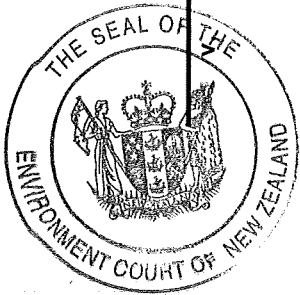
- (d) Eaves, porches, balconies, bay or box windows, steps, chimneys and similar parts of buildings may be located within the minimum building setback as follows:
 - (i) eaves up to 0.6m into the setback; and
 - (ii) balconies and bay or box windows of less than 3m in length may project into the setback by up to 0.6m. Only one such balcony or bay or box window, intrusion is

- permitted on each setback of each building; and
- (iii) porches and steps up to 0.6m into a setback; provided they measure no more than 2m parallel to the nearest internal boundary and provided that the floor level of any such porch or the top of any steps shall be no higher than 1m above ground level. Only one such porch or set of steps is permitted on each setback of each building; and
- (iv) chimneys may project into the setback by up to 0.6m provided that the chimney measures no more than 1.2m parallel to the nearest internal boundary. Only one chimney is permitted on each setback of each building; and
- (v) no part of any balcony or window which is located within a setback shall be higher than 3m above ground level.
- (e) No setback is required from an internal boundary where buildings share a common wall on that boundary.
- (f) No setback is required from a rear lane within Activity Area D1.

iv. Continuous Building Length

Where the aggregate length along one elevation of buildings measured parallel to any internal boundary or internal boundaries exceeds 16m; either:

- (a) The entire building(s) shall be set back an additional 0.5m for every 6m of additional length or part thereof from the minimum yard setback (continuous façades) at the same distances from the boundary; or
 - (b) That part of the building(s) which exceeds the maximum building length shall be progressively set back 0.5m for every 6m of additional length or part thereof from the minimum yard setback (varied façade(s) with stepped setbacks from the boundary).
- Refer Appendix 4*



NORTHLAKE SPECIAL ZONE

12

Outdoor Living Space

- (a) The minimum provision of outdoor living space for each residential unit at the ground floor level contained within the net area of the site shall be:
 - (i) For residential activities within Activity Area D1, 40m² contained in one area with a minimum dimension of 4m; In addition, it is to be directly accessible from the principal living room, has a gradient not exceeding 1:20, is free of buildings, parking spaces, servicing and manoeuvring areas, and excludes any area with a dimension of less than 1m.
 - (ii) In all other Activity Areas 36m² contained in one area with a minimum dimension of 4.5m.

- (b) The minimum provision of outdoor living space for each residential unit above ground level shall be 8m² contained in one area with a minimum dimension of 2m.
- (c) The outdoor living space shall be readily accessible from a living area.
- (d) No outdoor living space shall be occupied by:
 - (i) Any building, other than an outdoor swimming pool or accessory building of less than 8m² gross floor area; or
 - (ii) A driveway or parking space; or
 - (iii) Areas to be used for the storage of waste and recycling.

vi. Garages

In Activity Areas B1 – B5 and D1 garages and carports must be setback at least level with the front façade (i.e. the façade facing the street) of the residential unit.

vii. Walls and Fences

No walls or fences shall be located within a setback from roads, except that:

- (a) Fences within a road setback in Activity Areas C1 – C4 are allowed up to 1.2m high provided they are post and wire.
- (b) Fences within the setback of Outlet and Aubrey Roads and a minimum of 8m from the road boundary along the lot side boundaries are allowed up to 1.2m high provided they are post and wire.
- (c) Fences within setbacks from the boundaries of parks and reserves, within 4m of the boundary of the Hikuwai Conservation Area, and within 2m of a Building Restriction Area, are allowed up to 1.2m high provided they are post and wire.

viii. Access

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

ix. Earthworks

The following limitations apply to all earthworks (as defined in this Plan), except for earthworks associated with a subdivision that has both resource consent and engineering approval.

(a) Earthworks

- (i) The total volume of earthworks does not exceed **200m³** per site (within a 12 month period). For clarification of "volume", see interpretative diagram 5.
 - (ii) The maximum area of bare soil exposed from any earthworks where the average depth is greater than 0.5m shall not exceed **400m²** in area within that site (within a 12 month period).
 - (iii) Where any earthworks are undertaken within 7m of a Water body the total volume shall not exceed **20m³** (notwithstanding provision 17.2.2).
 - (iv) No earthworks shall:
 - a. expose any groundwater aquifer;
 - b. cause artificial drainage of any groundwater aquifer;
 - c. cause temporary ponding of any surface water.
- (b) Height of cut and fill and slope
- (i) The vertical height of any cut or fill shall not be greater



NORTHLAKE SPECIAL ZONE

12

than the distance of the top of the cut or the toe of the fill from the site boundary (see interpretative diagram 6). Except where the cut or fill is retained, in which case it may be located up to the boundary, if less or equal to 0.5m in height.

- (ii) The maximum height of any cut shall not exceed 2.4m.
- (iii) The maximum height of any fill shall not exceed 2m.
- (c) Environmental Protection Measures
 - (i) Where vegetation clearance associated with earthworks results in areas of exposed soil, these areas shall be revegetated within 12 months of the completion of the operations.
 - (ii) Any person carrying out earthworks shall:
 - a. Implement erosion and sediment control measures to avoid soil erosion or any sediment entering any water body. Refer to the Queenstown Lakes District earthworks guideline to assist in the achievement of this standard.
 - b. Ensure that any material associated with the earthworks activity is not positioned on a site within 7m of a water body or where it may dam or divert or contaminate water.
 - c. Implement appropriate dust control measures to avoid nuisance effects of dust beyond the boundary of the site. Refer to the Queenstown Lakes District earthworks guideline to assist in the achievement of this standard.
 - (d) Protection of archaeological sites and sites of cultural heritage
 - (i) The activity shall not modify, damage or destroy any Waahi Tapu, Waahi Taoka or archaeological sites, or in the Kai Tahu ki Otago Natural Resource Management Plan.
 - (ii) The activity shall not affect Ngai Tahu's cultural, spiritual and traditional association with land adjacent to or within Statutory Acknowledgment Areas.
 - (iii) If koiwi (human skeletal remains), waahi taoka

(resource or object of importance including greenstone/pounamu), waahi tapu (place or feature of special significance) or other artefact materials are discovered work shall stop, allowing for a site inspection by the appropriate Runaka and their advisors. These people will determine if the discovery is likely to be extensive and whether a thorough site investigation will be required. Materials discovered should be handled and removed by takata whenua who possess knowledge of tikanga (protocol) appropriate to their removal or preservation.

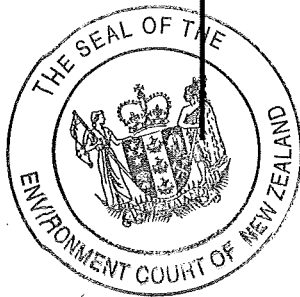
x. Landscaping and Planting

- (a) In Activity Area C1, 10% landscaping coverage of residential sites shall be achieved through the planting of trees species specified under Rule 12.X.4.3.i.

Note: For the purposes of this rule (a) above:

- (i) 'tree' shall be a species that will grow above 5.5m at maturity.
- (ii) 'coverage' shall be trees planted at a maximum of 5m between centres of trees.
- (iii) planting shall be completed within 12 months of Code of Compliance certification of a building on the site in accordance with the Building Act 2004.

- (b) In Activity Area C1, where any residential site boundary adjoins the Building Restriction Area, planting within a four metre setback from that boundary shall achieve 100% coverage using kanuka, red tussock, coprosma, pittosporum and hebe species, with a minimum of two of these species.
- (c) In Activity Area C4, where any residential site adjoins the Hikuwai Conservation Area or Aubrey Road, planting within a four metre setback from that



NORTHLAKE SPECIAL ZONE

12

boundary shall achieve 100% coverage using kanuka, red tussock, coprosma, pittosporum and hebe species, with a minimum of two of these species.

Note: For the purposes of rules (b) and (c) above:

- (i) 'coverage' shall be achieved by planting at a maximum of 2m between plants
- (ii) planting shall be completed within 12 months of Code of Compliance certification of a building on the site in accordance with the Building Act 2004.

- (d) On residential sites adjoining Outlet Road, tree planting within a 3.5 m setback from that road shall achieve 100% coverage.

Note: For the purposes of rule (d) above:

- (i) 'tree planting' shall consist of species that will be higher than 1.5 at maturity spaced at a maximum of 5m between centres of trees.
- (ii) planting shall be completed within 12 months of Code of Compliance certification of a building on the site in accordance with the Building Act 2004.
- (iii) this rule shall not apply to Activity Area A.

- (e) Within the Tree Protection Areas, any tree that dies shall be replaced within 12 months by a non-wildling evergreen tree.

xi. Outlook Space

- (a) An outlook space must be provided from the face of a building containing windows or balconies to a habitable room. Where the room has two or more external faces with windows or balconies the outlook space must be provided from, in order of priority, the face with the largest balcony or largest area of glazing.

- (b) The minimum dimensions for a required outlook space are as follows:

- (i) principal living room: 6m in depth and 4m in width
- (ii) principal bedroom: 3m in depth and 3m in width
- (iii) all other habitable rooms: 1m in depth and 1m in width.

- (c) The depth of the outlook space is measured at right angles to and horizontal from the window or balcony to which it applies. Where the outlook space applies to a balcony, it must be measured from the outside edge of the balcony.

- (d) The width of the outlook space is measured from the centre point of the largest window on the building face to which it applies or from the centre point of the largest balcony.

- (e) The height of the outlook space is the same as the floor height, measured from floor to ceiling, of the building face to which the control applies.

- (f) Outlook spaces may be within the site, over a public street, or other public open space.

- (g) Outlook spaces required from different rooms within the same dwelling may overlap.

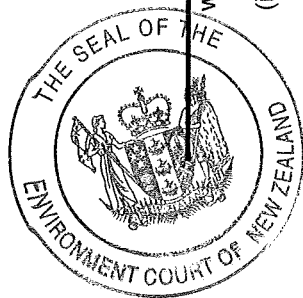
- (h) Outlook spaces must:

- (i) be clear and unobstructed by buildings
- (ii) not extend over adjacent sites or overlap with outlook spaces required by another dwelling.

- (i) An outlook space at ground floor level from a principal living room may be reduced to 4m deep if privacy to adjacent dwellings is provided by fencing at least 1.6m in height.

xii. Universal Access

- (a) Where an attached multi-unit development contains 10 or more dwellings, 20 per cent of those dwellings must comply



NORTHLAKE SPECIAL ZONE

12

with the following:

(i) doorways must have a minimum clear opening width of 810mm

(ii) stairwells must have a minimum width of 900mm

(iii) corridors must have a minimum width of 1050mm

(iv) the principal means of access from the frontage, or the parking space serving the dwelling, to the principal entrance of the dwelling must have:

- a minimum width of 1.2m
- a maximum slope of 1:20
- a maximum cross fall of 1:50.

(b) Where the calculation of the dwellings required to be universally accessible results in a fractional dwelling, any fraction that is less than one-half will be disregarded and any fraction of one-half or more will be counted as one dwelling.

(c) All dwellings required to be universally accessible must provide at least one parking space for people with a disability. The dimensions and accessible route requirements for such parking spaces are detailed in Section 5.5 of the New Zealand Building Code D1/AS1 New Zealand Standard for Design for Access and Mobility – Buildings and Associated Facilities (NZS 4121-2001).

xiii. Sustainable development

(a) In new attached multi-unit developments containing five or more dwellings, each dwelling must be designed and constructed to achieve:

(i) a minimum 6-star level from New Zealand Green Building Council Homestar Tool (2013), or

(ii) certification under the Living Building Challenge

(b) This control does not apply to:

(i) extensions and alterations to existing buildings

(ii) converting an existing building to a dwelling

(iii) new developments containing four or fewer dwellings.

xiv. Separation between buildings within a site

(a) Buildings must be separated where the habitable room of a dwelling has windows or balconies that face out to the wall of another building on the same site (the facing wall). Where the room has two or more external faces with windows or balconies the building separation must be applied from, in order of priority, the face with the largest balcony or the largest area of glazing.

(b) The separation space required must be free of buildings for the depth, width and height set out below.

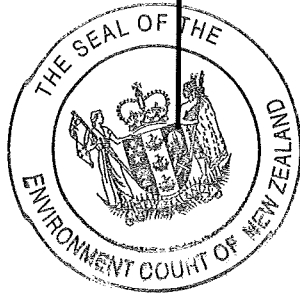
(c) The depth of the separation space is measured at right angles to, and horizontal from, the window or balcony to which it applies across to the facing wall, excluding eaves or guttering. Where the building separation applies to a balcony, it is measured from the outside edge of the balcony.

(d) For the principal living room, the depth of the separation space required is equal to the height of the facing wall above the floor level of the habitable room, or 15m, whichever is the lesser.

(e) For the principal bedroom, the depth of the separation space required is 6m.

(f) For other habitable rooms, the depth of the separation space required is 3m.

(g) The width of the separation space is 50 per cent of its depth



NORTHLAKE SPECIAL ZONE

12

and is measured from the centre point of the largest window on the building face to which it applies or from the centre point of the largest balcony.

- (h) The height of the separation space is from the height of the floor or balcony upwards, clear to the sky except that eaves or gutters may protrude into it.
- (i) Where the adjacent building is not perpendicular to the distance being measured, the minimum separation depth required must be measured as an average around the centre line of the window/balcony.

12.X.6.2 Zone Standards

i. Structure Plan

All activities and developments must be carried out in accordance with the Structure Plan, provided that this rule does not apply to an amendment of boundaries of up to 50m between Activity Areas B1 - B5 and D1.

ii. Outline Development Plan & Staging Plan

- (a) A consent application with an Outline Development Plan lodged under Rule 12.X.4.3.i or Rule 12.X.4.3.ii shall identify required walkway/ cycleway links and required roading links within 50m of their positions shown on the Structure Plan,
- (b) A consent application with an Outline Development Plan for Activity Area B1 lodged under Rule 12.X.4.3.i shall identify the required public walkway / cycleway to Aubrey Road shown on the Structure Plan together with the legal method to implement it.
- (c) A consent application with an Outline Development Plan lodged under Rule 12.X.4.3.i or Rule 12.X.4.3.ii shall be accompanied by a Staging Plan to indicate the proposed timeframes for development in the relevant parts of the Northlake Special

Zone to enable infrastructure servicing works to be programmed. The first consent with an Outline Development Plan lodged shall be accompanied by a Staging Plan for the whole of the Northlake Special Zone and this is to be progressively revised as subsequent consents and Outline Development Plans are lodged over time.

Note: The purpose of this rule is to inform Council of when infrastructure works may need to be programmed. The Staging Plan is not intended to apply as a condition of consent.

iii. Density

The density of residential units within each Activity Area shall achieve limits set out in Table 1 plus or minus fifteen per cent (15%).

Table 1:

Activity Areas	Density (residential units per hectare)
A & C4	N/A
B1 – B5	10
C1 – C3	4.5
D1	15

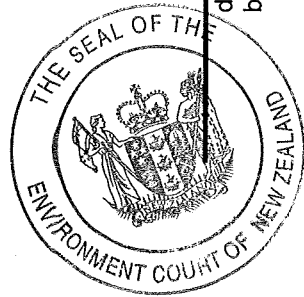
Density shall be calculated for each Activity Area on an individual basis on the gross area of land available for development and includes land vested or held as reserve, open space, access or roading but excludes the Building Restriction Area and Tree Protection Area and any land developed or intended to be developed for activities other than residential activities.

iv. Building Height

Ground slope in relation to building height shall be determined by measurement over the extremities of each building elevation.

- (a) Flat sites

Where all elevations indicate a ground slope of less than 6



NORTHLAKE SPECIAL ZONE

12

degrees (approximately 1:9.5), then the maximum height for buildings shall be:

- 8.0m for residential activities within Activity Areas A, B1 – B5, and C2 – C4;
- 5.5m in Activity Area C1;
- 10.0m for activities within Activity Area D1,

and in addition no part of any building shall protrude through a recession line inclined towards the site at an angle of 40° and commencing at 2.5m above ground level at any given point on the site boundary:

except:

- (i) Gable, hip, dormer and other similar projections may encroach beyond the recession lines provided they are contained within a calculated area(s) no greater than 6m² with the apex no higher than a point 1m below the maximum height for the zone and the base of the area(s) at the level of recession line protrusion.
- (ii) The recession line shall not apply to buildings that share a common wall on an internal boundary and shall not apply to Activity Area D1.

(b) Sloping sites

Where any elevation indicates a ground slope of greater than 6 degrees (approximately 1:9.5) then the maximum height for buildings shall be 7.0m:

except:

- (i) No part of any accessory building located within the setback distances from internal boundaries shall protrude through recession lines inclined towards the site at an angle of 25° and commencing at 2.5m above ground level at any given point along each internal boundary.
- (ii) In Activity Area C1 building height shall be limited to one story and 5.5 m above ground level,

v. Building Coverage

The maximum building coverage for all activities on any site shall be:

- (a) 40% in Activity Areas A, B1 – B5, C1 – C4
- (b) 65% in Activity Area D1.

vi. Noise

- (a) Sound from non-residential activities measured in accordance with NZS 6801:2008 and assessed in accordance with NZS 6802:2008 shall not exceed the following noise limits at any point within any other site in this zone:

- (i) Daytime (0800 to 2000 hrs) 50 dB L_{Aeq}(15 min)
- (ii) Night-time (2000 to 0800 hrs) 40 dB L_{Aeq}(15 min)
- (iii) Night-time (2000 to 0800 hrs) 70 dB L_{AFmax}

- (b) Sound from non-residential activities which is received in another zone shall comply with the noise limits set in the zone standards for that zone.

- (c) The noise limits in (a) and (b) shall not apply to construction sound which shall be assessed in accordance and comply with NZS 6803:1999.

- (d) The noise limits in (a) shall not apply to sound associated with airports or windfarms. Sound from these sources shall be assessed in accordance and comply with the relevant New Zealand Standard, either NZS 6805:1992, or NZS 6808:1998. For the avoidance of doubt the reference to airports in this clause does not include helipads other than helipads located within any land designated for Aerodrome Purposes in this Plan.

vii. Lighting, Glare and Controls on Building Materials

Any activity that does not comply with the following standards:

- (a) All fixed exterior lighting shall be directed away from adjacent sites and roads; and
- (b) No activity on any site shall result in greater than a 3.0 lux spill (horizontal and vertical) of light onto any other site measured



NORTHLAKE SPECIAL ZONE

12

at any point inside the boundary of the other site, provided that this rule shall not apply where it can be demonstrated that the design of adjacent buildings adequately mitigates such effects.

- (c) External building materials shall either:
- (i) be coated in colours which have a reflectance value of between 0 and 36%; or
 - (ii) consist of unpainted wood (including sealed or stained wood), unpainted stone, unpainted concrete, or copper;

except that:

- (i) architectural features, including doors and window frames, may be any colour; and
- (ii) roof colours shall have a reflectance value of between 0 and 20%.

viii.

Retail

- (a) No retail activity shall occur within the Northlake Special Zone except in Activity Area D1.
- (b) No retail activity shall have a gross floor area exceeding 200m².
- (c) The total amount of retail floor area within the Northlake Special Zone shall not exceed 1000m².

ix.

Roof Design

In Activity Area C1 at least 80% of the surface area of roofs shall have a roof pitch that is between a 25 and 40 degree slope.

Note: For the purposes of this rule, 'surface area' shall be measured from directly above the building using a 2-dimensional plan.

x.

Activity Areas E1 & E4

In Activity Area E1 and Activity Area E4 existing trees shall be retained and any additional enhancement planting, once established, shall also be maintained except that this rule does not apply to wilding tree species (particularly those spreading from the adjoining land outside the zone to the west) which shall be removed.

12.X.7

Assessment Matters

12.X.7.1

General

- (a) The following Assessment Matters are methods included in the District Plan in order to enable the Council to implement the Plan's policies and fulfill its functions and duties under the Act.

- (b) In considering resource consents for land use activities, in addition to the applicable provisions of the Act, the Council shall apply the relevant Assessment Matters set out in Rule 12.X.7.2 below.

- (c) In the case of *Controlled, Restricted Discretionary and Discretionary Activities*, where the exercise of the Council's discretion is restricted to the matter(s) specified in a particular standard(s) only, the assessment matters taken into account shall only be those relevant to that/these standard(s).

- (d) In the case of *Controlled Activities*, the assessment matters shall only apply in respect to conditions that may be imposed on a consent.

- (e) Where an activity is a *Discretionary Activity* because it does not comply with one or more relevant Site Standards, but is also specified as a *Controlled Activity* in respect of other matter(s), the Council shall also apply the relevant assessment matters for the *Controlled Activity* when considering the imposition of conditions on any consent to the discretionary activity.

12.X.7.2

Assessment Matters



In considering whether or not to grant consent or impose conditions, the Council shall have regard to, but shall not be limited by, the following assessment matters:

NORTHLAKE SPECIAL ZONE

12

i. Controlled Activity Consent – Buildings in Activity Area A (Rule 12.X.4.2.i)

- (a) The extent to which the location of buildings and associated earthworks and landscaping breaks the line and form of the landscape with special regard to skylines, ridges, hills and prominent slopes.
- (b) The extent to which roof and wall colours are recessive and will not stand out against the surrounding background.

ii. Controlled Activity Consent – Buildings in Activity Areas C1 to C4 (Rule 12.X.4.2.ii)

- (a) The extent to which designs contribute to a coherent neighbourhood theme, utilising gabled roof forms and materials such as stone, shingles, natural timber, plaster and weather boards
- (b) The extent to which controls on the design and location of accessways and earthworks may be appropriate to mitigate the visual effects resulting from modifications to the landform
- (c) The extent to which roof and wall colours are in the range of dark greys, browns and blacks

iii. Restricted Discretionary Activity – Residential Activities in any of Activity Areas B1 to B5 and C1 to C4 (Rule 12.X.4.3.i) and Residential, Visitor Accommodation, Commercial, Retail and Community Activities and Retirement Villages in Activity Area D1 (Rule 12.X.4.3.ii)

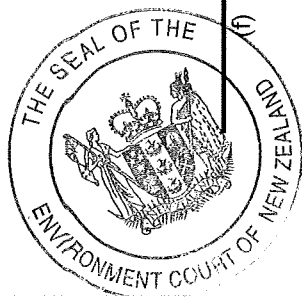
- (a) In regard to **indicative subdivision design**
 - (i) Whether the street blocks are designed to be walkable. Where practical within Activity Areas B1 – B5 in particular, block sizes larger than 1.5 ha and block lengths (between intersections, not including rear service lanes) longer than 200m are discouraged.
 - (ii) The extent to which the subdivision layout minimises, as far as practical, the number of rear sites that do not front the street.
 - (iii) The extent to which the subdivision design responds positively to the underlying topography and landscape characteristics.
 - (iv) Whether the street and lot configuration is likely to encourage house orientations that maximise solar gain. North-south street orientations and grid road designs that promote connectivity are encouraged to support such a lot configuration. designs that promote connectivity are encouraged to support such a lot configuration.
 - (v) Whether proposed open spaces and walkways are likely to feel safe, including through benefiting from passive surveillance from surrounding uses.
 - (vi) Whether the edges of the Activity Area are designed to relate to the adjoining land, and provide for potential road and pedestrian or cycle connections to adjoining land.
- (b) In regard to **road pattern and vehicle access arrangements**
 - (i) Whether the road pattern realises opportunities to connect streets. Where practical, cul-de-sacs, except those that are short and straight, should be avoided.
 - (ii) The extent to which a grid road design with vehicle or pedestrian connections, particularly within Activity Areas B1 – B5 and D1 is utilised



NORTHLAKE SPECIAL ZONE

12

- to promote connectivity and to avoid a conventional suburban design with unnecessarily meandering road forms. Curved roads that respond positively to landforms and topography are acceptable, provided these are well-connected.
- (iii) The extent to which the roading pattern connects with existing development, including other consents with Outline Development Plans and road networks outside the zone.
- (iv) Whether road connections to and from Outlet Road and Aubrey Road are provided for generally as shown on the Structure Plan.
- (v) Whether vehicle access arrangements to and from private properties minimise where practical the number of direct accesses onto Outlet Road. Where practical, access should be achieved from other roads.
- (vi) Whether provision should be made for bus stop(s) (now or in the future).
- (c) In regard to **road and street designs**
- (i) Whether road and street design cross sections show key dimensions and features of roads and associated footpaths, rear lanes, cycleways (when relevant and appropriate), on-street parking and stormwater management infrastructure.
- (ii) Whether road and street design cross sections are shown to be proposed for use in appropriate locations reflecting the likely role and function of the road or street.
- (iii) Whether road and street designs will enable safe, efficient and pleasant use by vehicles, pedestrians and cyclists. Consideration should be given to matters such as width, footpath availability, traffic calming measures, and cycle lanes.
- (iv) The extent to which road and street designs make a positive contribution to the amenity of the zone.
- Whether, where practical, in Activity Area C1-C4 the use of kerb and channel is avoided and grass swales utilised.
- (v) The extent to which the types of street trees and the density of planting proposed will aid in softening the visual effects of domestication of the landscape when viewed from outside of the zone and contribute to urban amenity and character.
- (d) In regard to **open space areas, pedestrian and cycle links**
- (i) The extent to which public access to places of public interest and enjoyment is created and enhanced.
- (ii) Where terrain and site constraints do not enable connections between streets: safe, convenient and attractive walking and cycle connections should be provided if practical.
- (iii) Provision of a range of public open spaces, including larger natural areas, and smaller urban parks and playgrounds.
- (iv) The extent to which parks, reserves, walkways and cycleways are comprehensively designed and laid out so as to create connections between open spaces and provide alternative routes in which to navigate the zone without the use of roads.
- (e) In regard to **infrastructure**
- (i) The extent to which development can be serviced by existing infrastructure, or where upgrades are required, that these upgrades are planned and managed.
- (ii) The extent to which development is staged to ensure cost effective provision of infrastructure and any required upgrades.



NORTHLAKE SPECIAL ZONE

12

In regard to approaches to stormwater disposal

- (i) Whether, where practical, low impact design solutions are employed.
- (ii) Whether, where possible, safe and practical proposals to integrate stormwater management facilities into an attractive public realm and/or conservation corridors are proposed.

(g) In regard to conservation values

- (i) The extent to which remnant islands of kanuka and matagouri shrubland are protected.

(h) In regard to contaminated sites

- (i) Whether any contaminated sites exist that would be a risk to human health or the environment and, if so, what measures have been taken to address these sites.
- (ii) Whether a Preliminary Site Investigation is required to ensure compliance with the National Environmental Standard for soil contaminants.

(i) In regard to controls on built form in Activity Area D1

- (i). Whether controls are proposed that will ensure that buildings in close proximity to one another will achieve reasonable levels of amenity and privacy.
- (ii). Whether controls on built form will promote an attractive streetscape;
- (iii). Whether appropriate mechanisms, including consent conditions and/or private covenants, are proposed to ensure controls on built form will be adhered to by subsequent house builders and owners.

- (j) In regard to Residential Activities in any of Activity Areas B1 to B5 and C1 to C4, where a consent with an Outline Development Plan has previously been granted under Rule 12.X.4.3.i

- (i) The extent to which varied consent and Outline

Development Plan takes into account, and enables integration with, existing Residential Activities already developed in accordance with the previously consent and Outline Development Plan.

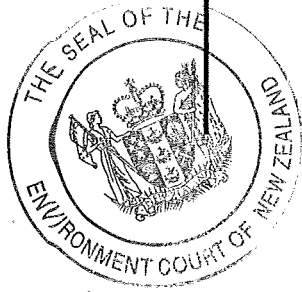
- (k) In regard to Residential, Visitor Accommodation, Commercial, Retail and Community Activities and Retirement Villages in Activity Area D1, where a consent with an Outline Development Plan has previously been granted under Rule 12.X.4.3.ii

- (i) The extent to which a varied consent and Outline Development Plan takes into account, and enables integration with, existing Residential, Visitor Accommodation, Commercial, Retail, and Community Activities and Retirement Villages already developed in accordance with the previously consent and Outline Development Plan.

- (ii) The extent to which those activities may be of a nature, scale or frequency that would undermine the integrity of the consent and Outline Development Plan previously granted under Rule 12.X.4.3.ii.

iv. Restricted Discretionary Activity – Buildings with more than three residential units within Activity Area D1 (Rule 12.X.4.3.iii)

- (a) Whether the development positively contributes to the streetscape through the location and design of the built form, carparking, balconies, ground floor levels, accessways, the treatment of the public/ private interface, and landscaping.



NORTHLAKE SPECIAL ZONE

12

- (b) Whether buildings are able to achieve a high level of connection with the street, including establishing local character and evoking visual interest from street users.
- (c) Whether the design creates a visual connection between land uses and the street, including through having windows that face the street.
- (d) Whether views from the street into sites are clearly drawn to land use activities and entrance points, with garages being a recessive visual feature.
- (e) Whether the visual effect of monotonous or repetitious facades created by same or similar unit types have been avoided or mitigated through articulation of building frontages.
- (f) Whether the design, colour and choice of building materials will contribute to a coherent theme for the street and neighbourhood.
- (g) Whether communal car parking is designed so that spaces are broken up and easily identifiable with each unit and commercial-style continuous parking areas are avoided.
- (h) Whether there are suitable places to store cycles within residential units (such as garages) or secure and convenient cycle parking / storage is available for each unit.
- (i) Whether each unit is designed to minimise loss of privacy and nuisance effects between other units, such as by off-setting windows in close proximity to one another.
- (j) Whether waste and recycling material can be appropriately stored within the grounds of each area, or convenient, appropriately sized and designed communal areas for the storage of waste are available.

- (k) Whether the design of the building(s), open spaces, carparking, access, and landscaping successfully mitigates the adverse effects on adjoining properties in terms of:

- (i) Noise, vibration and lighting from vehicles
- (ii) Protecting privacy for residential neighbours.

- (l) Whether private and public space are clearly demarcated

- (m) Whether proposals to utilise innovative, cost effective building designs, methods and materials that may support the provision of affordable housing are not unreasonably precluded.

v.

Restricted Discretionary Activity – Buildings for Visitor Accommodation, Commercial, Retail and Community Activities and Retirement Villages within Activity Area D1 (Rule 12.X.4.3.iv)

- (a) Whether the design of the building(s), open spaces, carparking, access, and landscaping successfully mitigates the adverse effects on adjoining properties in terms of:
 - (i) Noise, vibration and lighting from vehicles
 - (ii) Protecting privacy for residential neighbours.
- (b) Whether buildings, taking account of their proposed location, function and visibility, will make an attractive contribution to the streetscape or landscape.
- (c) Whether the design, colour and choice of building materials will contribute to a coherent theme for the street and neighbourhood, in general accordance with the architectural style shown in the following images.



NORTHLAKE SPECIAL ZONE

12

associated with the activity parked on the site overnight) would have an adverse effect on the residential amenity of neighbours or the streetscape.

(h) Whether any landscaping associated with buildings, for the purposes of mitigation or beautification, would:

- (i) Result in adverse effects on neighbouring properties;
- (ii) Be practical to maintain.

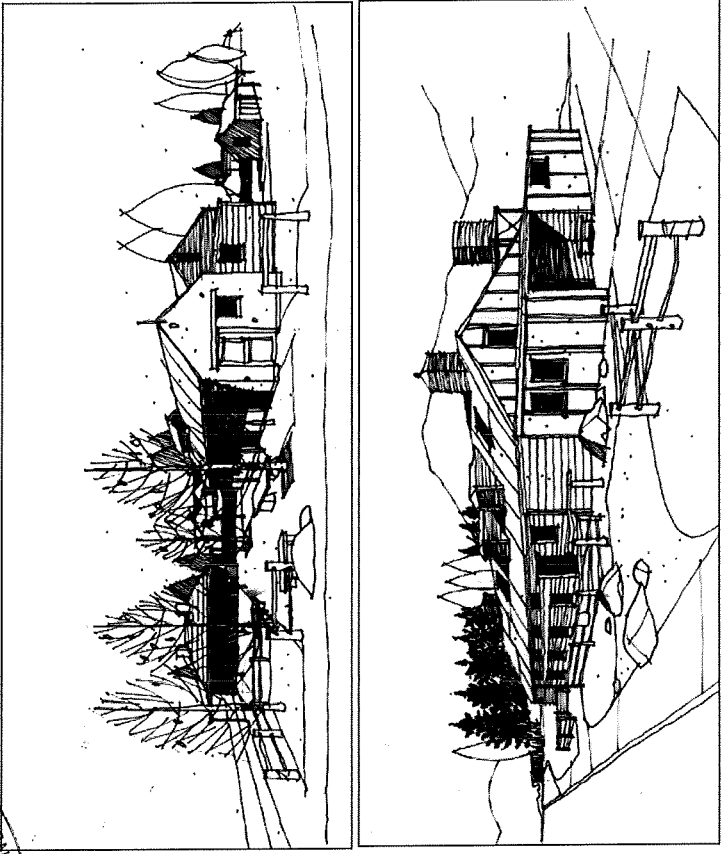
(i) Whether sufficient car and cycle parking is available or proposed either on site or through shared or common areas.

(j) Whether car parking is appropriately located and designed.

(k) Whether the building contributes to the creation of an active street frontage.

(l) Whether, for buildings which adjoin open spaces, an appropriate interface is achieved with that open space that makes the open space feel safe and attractive.

(m) The extent to which any proposed retail activities are limited to small scale retail activities intended to primarily service the local neighbourhood catchment, such as dairies, hairdresser, cafés/restaurants and food takeaway shops.



(d) Whether the buildings would be attractive when viewed from elevated locations inhabited or frequented by people.

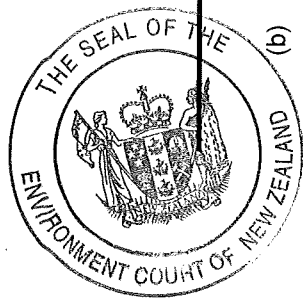
(e) Whether the building is setback from the road or not and the extent to which it is set back.

(f) Whether any area set aside for the storage of waste is adequately sized and designed to enable the separation, storage and collection of recyclable waste.

(g) The extent to which the outside storage of any goods, materials or equipment (including vehicles

vi. Site Standard – Nature and Scale of Non-Residential Activities (Rule 12.X.6.1.i)

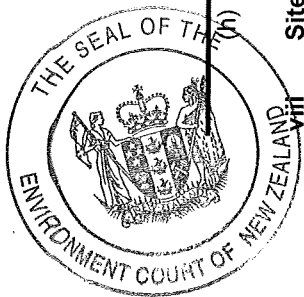
(a) The extent to which the scale of the activity and the proposed use of the buildings will be compatible with the scale of other buildings and activities in the surrounding area and will not result in visual dominance as a result of the area of buildings used, which is out of



NORTHLAKE SPECIAL ZONE

12

- character with the low density suburban environment.
- (b) The extent to which the character of the site will remain dominated by landscaping rather than by buildings and areas of hard surfacing.
- (c) The extent to which the activity will result in the loss of residential activity on the site.
- (d) The extent to which the activities on the site remain dominated by residential activity, rather than by activities which are not associated with or incidental to residential activity on the site.
- (e) Any adverse effects of the activity in terms of noise, vibration, glare, loss of privacy, traffic and/or parking congestion.
- (f) The extent to which the activity provides a local function by meeting the needs of residents principally within the surrounding residential environment.
- (g) The ability to mitigate any adverse effects of the increased scale of activity.
- (h) The extent to which the activity will detract from the coherence and attractiveness of the site as viewed from adjoining roads and sites.
- (i) Any adverse effects of the activity on the outlook of people on adjoining sites, including the loss of residential character.
- (j) The extent to which the activity will be compatible with the appearance, layout and functioning of other sites in the adjoining area.
- (k) The ability to mitigate any adverse effects of the activity on adjoining roads and sites.
- (l) The extent to which additional employment will result in levels of traffic generation or pedestrian activity which are incompatible with the character of the surrounding residential area.
- (m) The extent to which additional employment is an integral and necessary part of other activities being undertaken on the site and assists in providing alternative home-based employment and income generating opportunities for residents or occupiers of the site.
- vii Site Standard – Setback from Roads (Rule 12.X.6.1.ii)**
- (a) The provision of adequate space for landscaping in the vicinity of road boundaries, which will mitigate the effects of the building intrusion into the street scene;
- (b) The ability to provide adequate on-site parking and manoeuvring for vehicles;
- (c) The compatibility of proposed building with the appearance, layout and scale of other buildings and sites in the surrounding area, including the setback of existing buildings in the vicinity from road boundaries;
- (d) The proposed building size, form, proportions, roof line, style and external appearance that is similar to or in keeping with those of existing buildings on the site;
- (e) The provision of an equal or greater amount of open space on the site that contributes to the sense of space and openness as viewed from public places;
- (f) Significant (more than minor) public and pedestrian amenity values in terms of building appearance and function resulting from the setback infringement;
- (g) The extent and effect of shadowing on any adjacent property or public road; and



NORTHLAKE SPECIAL ZONE

12

(h) Any likely future increases in the usage of the road.

likely future residents.

Site Standard – Setbacks from Internal Boundaries (Rule 12.X.6.1.iii)

- (a) The ability to mitigate adverse effects of the proposal on adjoining sites.
- (b) The extent to which a lower building coverage may offset or reduce the need to infringe upon the setback.
- (c) The purpose of the building or part of the building located within the setback.
- (d) The extent to which topography is considered in regard to the layout of adjoining sites and effects on access to daylight and sunlight.

ix. Site Standard – Continuous Building Length (Rule 12.X.6.1.iv)

- (a) Any adverse effects of the continuous building length in terms of visual dominance by building(s) of the outlook from the street and adjoining sites, which is out of character with the local area.
- (b) The ability to mitigate any adverse effects of the continuous building length through increased separation distances, screening or use of other materials.

x. Site Standard – Outdoor Living Space (Rule 12.X.6.1.v)

- (a) The extent to which the reduction in outdoor living space and/or its location will adversely affect the ability of residents to provide for the outdoor living needs of likely future residents of the site.
- (b) Any alternative provision on, or in close proximity to, the site for outdoor living space to meet the needs of

- (c) The extent to which the reduction in outdoor living space or the lack of access to sunlight is compensated for by alternative space within buildings with access to sunlight and fresh air.
- (d) The extent to which provision is made elsewhere within the zone for communal open space amenity areas. Such spaces should be easily accessed and well connected to surrounding activities, have good sunlight access and protection from prevailing winds.

xi. Site Standard – Garages (Rule 12.X.6.1.vi)

Whether the breach of standard would result in:

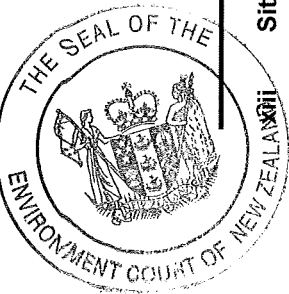
- i. Visual dominance of the frontage of a residential building by a garage when viewed from the street;
- ii. The obstruction of sight lines from the street to windows of living areas or the main entrance of the house;
- iii. The diminishing of the coherence of the design and built form of the street.

xii. Site Standard – Walls and Fences (Rule 12.X.6.1.vii)

(a) Whether the breach of the standard would result in:

- i. Public places (including streets and parks) appearing less safe or attractive; or
- ii. An outcome at odds with the character of the zone; or
- iii. The obstruction of sight lines from the street to windows of living areas or the main entrance to the house.

- (a) Whether any measures have been taken to reduce potential adverse effects, for example through the use of permeable or transparent fencing materials.



NORTHLAKE SPECIAL ZONE

12

Site Standard – Access (Rule 12.X.6.1.viii)

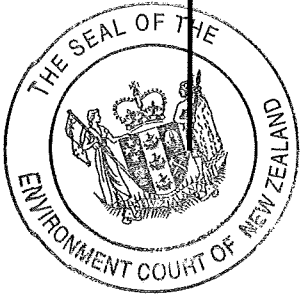
- (a) The extent to which alternative formed access can be assured to the activity in the long-term.
- (b) The extent to which the level and nature of the use will make it unlikely that access by way of a formed road will ever be necessary.

xiv. Site Standard – Earthworks (Rule 12.X.6.1.ix)

- (a) Environmental Protection Measures
 - (i) Whether and to what extent proposed sediment/erosion control techniques are adequate to ensure that sediment remains on-site.
 - (ii) Whether the earthworks will adversely affect stormwater and overland flows, and create adverse effects off-site.
 - (iii) Whether earthworks will be completed within a short period, reducing the duration of any adverse effects.
 - (iv) Where earthworks are proposed on a site with a gradient >18.5 degrees (1 in 3), whether a geotechnical report has been supplied to assess the stability of the earthworks.
 - (v) Whether appropriate measures to control dust emissions are proposed.
 - (vi) Whether any groundwater is likely to be affected, and any mitigation measures are proposed to deal with any effects. NB: Any activity affecting groundwater may require resource consent from the Otago Regional Council.
- (b) Effects on landscape and visual amenity values:
 - (i) Whether the scale and location of any cut and fill will adversely affect:

- the visual quality and amenity values of the landscape;
 - the natural landform of any ridge line or visually prominent areas;
 - the visual amenity values of surrounding sites.
- (ii) Whether the earthworks will take into account the sensitivity of the landscape.
 - (iii) The potential for cumulative effects on the natural form of existing landscapes.
 - (iv) The proposed rehabilitation of the site.
- (c) Effects on adjacent sites:
 - (i) Whether the earthworks will adversely affect the stability of neighbouring sites.
 - (ii) Whether the earthworks will change surface drainage, and whether the adjoining land will be at a higher risk of inundation, or a raised water table.
 - (iii) Whether cut, fill and retaining are done in accordance with engineering standards.
 - (d) General amenity values:
 - (i) Whether the removal of soil to or from the site will affect the surrounding roads, and neighbourhood through the deposition of sediment, particularly where access to the site is gained through residential areas.
 - (ii) Whether the activity will generate noise, vibration and dust effects, which could detract from the amenity values of the surrounding area.
 - (iii) Whether natural ground levels will be altered.
 - (iv) The extent to which the transportation of soil to or from the site will generate any negative effects on the safety or efficiency of the road network.

(e) Impacts on sites of cultural



NORTHLAKE SPECIAL ZONE

12

heritage value:

- (i) Whether the subject land contains Waahii Tapu or Waahii Taoka, or is adjacent to a Statutory Acknowledgement Area, and whether tangata whenua have been notified.
- (ii) Whether the subject land contains a recorded archaeological site, and whether the NZ Historic Places Trust has been notified.

xv. **Site Standard – Landscaping and Planting (Rule 12.X.6.1.x)**

Whether and the extent to which landscaping and / or planting proposed in breach of the standard will achieve amenity outcomes anticipated by the standards from viewpoints outside of the site.

KEY

- Zone Area = 219.2 HA (excludes legal roads)
- Activity Areas
- Activity Area boundary
- Required pathway / cycle links
- Primary entries
- Secondary entries (indicative)
- Building Restriction Area
- Tree Protection Area and Building Restriction Area
- Required road links

A - E

Activity Areas

Activity Area boundary

Required pathway / cycle links

Primary entries

Secondary entries (indicative)

Building Restriction Area

Tree Protection Area and Building Restriction Area

Required road links

Map Labels:

- C1 1.10 HA
- C2 5.5 HA
- C3 1.5 HA
- C4 4.5 HA
- C5 10.5 HA
- C6 1.5 HA
- C7 1.5 HA
- C8 1.5 HA
- C9 1.5 HA
- C10 1.5 HA
- C11 1.5 HA
- C12 1.5 HA
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- C99 1.5 HA
- C100 1.5 HA

NORTHLAKE STRUCTURE PLAN
REFERENCE 1240-SK59 - SCALE = 1:8000 AT A3 - 30 SEP 2015



Amend as underlined below:

14. Transport

14.2.4 Site Standards

14.2.4.1 Parking and Loading

...

iv Parking Area and Access Design

...

In the LDR and MDR subzones of the Three Parks Zone and in the Northlake Special Zone, all back lanes serving residential units shall be in accordance with the standards set out in NZS 4404:2004 except as identified in the table below:

The actual number of units serviced or the potential number of units serviced by the back lane as a permitted or restricted discretionary activity, whichever is the greater.		Minimum legal width	Maximum legal width
Back lanes servicing 1 to 16 residential units		5 metres	6 metres

Provided that:

- (a) Where any back lane adjoins a local distributor or higher road in the hierarchy, including a State Highway, it shall have a 6m legal

width for a minimum length of 6m as measured from the legal road boundary.

- (b) No back lane shall serve sites with a potential to accommodate more than 16 residential units on the site and adjoining sites.
- (c) Back lanes shall have legally enforceable arrangements for maintenance put in place at the time they are created.



Amend as underlined below:

15. Subdivision, Development and Financial Contributions

Add new policies under Objective 5 – Amenity Protection

Policies:

- 5.9 To require that subdivision within the Northlake Special Zone be consistent with the Northlake Structure Plan.
- 5.10 To ensure subdivision within the Northlake Special Zone implements the objectives and policies for the Northlake Special Zone in Part 12.X.

15.2.3.3 Discretionary Subdivision Activities

Amend as follows:

Except where specified as a Controlled Activity in Rule 15.2.3.2 above, and except where specified as a non-complying Activity in 15.2.3.4 below:

.....

- (ix) Within the Northlake Special Zone – any subdivision of any of Activity Areas B1 to B5, C1 to C4 and D1 into more than one lot prior to a grant of consent for the relevant Activity Area under Rule 12.X.4.3.i or Rule 12.X.4.3.ii.

(x) Within the Northlake Special Zone any subdivision shall be a Restricted Discretionary Activity with the Council's discretion restricted to:

- (a) The extent to which the subdivision is consistent with the Northlake Structure Plan and any relevant consent's Outline Development Plan consented under Rule 12.X.4.3.i or Rule 12.X.4.3.ii;
- (b) The extent to which the subdivision would undermine the integrity of the Northlake Structure Plan and any relevant consent's Outline Development Plan consented under Rule 12.X.4.3.i or Rule 12.X.4.3.ii;
- (c) Those matters in respect of which the Council has reserved control under Rule 15.2.3.2.

15.2.3.6 Assessment Matters for Resource Consents

Add the following:

.....

(d) Northlake Special Zone – Assessment Matters

- (i) In considering whether to grant consent for subdivision in accordance with Rule 15.2.3.3(ix) the Council shall have regard to, but not be limited by, the following assessment matter:
- (a) The extent to which the proposed subdivision may preclude or adversely affect the integrated planning and development, development and approval of any of Activity Areas B1 to B5, C1 to C4 and D1.

15.2.6.3 Zone Subdivision Standards – Lot Sizes and Dimensions

Add the following to the table in Zone Subdivision Standard 15.2.6.3(a):

Zone	Minimum Lot Area
Northlake Special Zone	Activity Areas A & C4 4000m ²
	Activity Area C1 1200m ²

Add the following as Zone Subdivision Standard 15.2.6.3xi:

- (xi) Within the Northlake Special Zone Activity Area E1 shall be held in not more than one allotment.

15.2.8 Property Access

Add the following Zone Standard 15.2.8.2A:

15.2.8.2A Zone Subdivision Standards – Northlake Special Zone – Access onto Aubrey Road

- (i) No additional vehicle access shall be created from Activity Area A onto Aubrey Road.

15.2.8.3 Assessment Matters for Resource Consents

Add the following:

Proposed Northlake Special Zone – Post Decision Version 30/09/15
WPG-895085-7-120-V5

- (xiii) Within the Northlake Special Zone:

(a) The extent to which additional development will adversely affect the operation of the Outlet Road/Aubrey Road intersection (including walkway/cycleway crossing paths).

(b) The number and design of vehicle accesses from Activity Area C4 onto Aubrey Road.

15.2.6.4 Assessment Matters for Resource Consents

Add the following as Assessment Matter 15.2.6.4i(j):

- i Lot Size and Dimensions

...
(j) Within the Northlake Special Zone, whether and the extent to which the lot size:

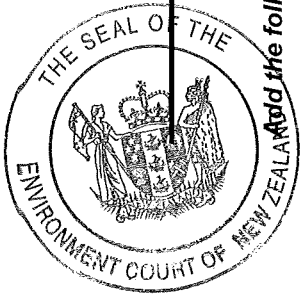
(i) Can be achieved without undermining or adversely affecting desirable outcomes promoted by any relevant consent with an Outline Development Plan.

(ii) Will achieve greater efficiency in the development and use of the land resource.

(iii) Will assist in achieving affordable or community housing.

(iv) Can be adequately serviced without adverse effect on infrastructural capacity.

(v) Will achieve residential amenities such as privacy and good solar orientation.



Add the following Zone Standard 15.2.16.3

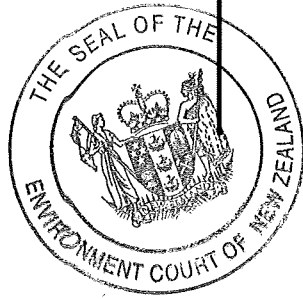
15.2.16 Open Space and Recreation

.....

15.2.16.3 Zone Subdivision Standard – Northlake Special Zone - Community Facilities

- (i) This rule applies to subdivision of land situated north of Aubrey Road, Wanaka, which is zoned Northlake Special Zone ("Northlake") (excluding Activity Area A) as shown on Planning Maps 18, 19 and 20 in addition to any other applicable subdivision rules.
- (ii) There shall be no restriction under this rule on the first stage(s) of subdivision which create a total of up to 50 individual residential lots within Northlake (excluding Activity Area A). This rule only applies to any subsequent subdivision that creates a total of more than 50 residential lots within Northlake.
- (iii) No resource consent shall be granted for any subdivision that will result in the cumulative total creation of more than 50 residential lots within Northlake unless the community facilities detailed in subclause (iv) below have been constructed and are operational and available to the public, or any such resource consent includes a condition requiring that the community facilities detailed in subclause (iv) below must be completed, operational and available to the public prior to the issuing of any s224c certificate in respect of such subdivision (excluding Activity Area A).
- (iv) For the purposes of this rule:

- (a) Community facilities' means an indoor 20m – 25m lap pool, a fitness/gym facility, a children's play area, and at least one tennis court.
- (b)' Operational' includes operating on a commercial basis requiring payment of commercial user charges as determined by the commercial operator.
- (c)' Available to the public' means open and available for use by any member of the public willing to pay the relevant user charges for such facilities (excluding the play area which is likely to be free).
- (d) The Council shall impose a condition on any resource consent enabling the construction and operation of the community facilities requiring them to be available to the public as detailed in this rule.



Add the following Zone Standard 15.2.20

15.2.20 Affordable Residential Lots

15.2.20.1 Zone Subdivision Standard – Northlake Special Zone

(i) The development of Activity Area D1 shall result in 20 affordable lots.
For the purpose of this rule:

- (a) 'affordable lots' means a residential lot, capable of accommodating a 3 bedroom residential unit, which is marketed for sale at a maximum price of \$160,000.00 adjusted annually to account for inflation in accordance with the Consumer Price Index from an initial date of 1 January 2014.
- (b) A residential lot used for retirement village purposes shall not be deemed to meet this requirement.
- (c) A legal method must be implemented which will ensure that each of the required 20 affordable lots are delivered to the market. That legal method must include a three month option in favour of the Queenstown Lakes Community Housing Trust whereby the Trust may purchase the lot or nominate the purchaser of the lot.



Amend as underlined below

16. Hazardous Substances

16.2 Hazardous Substances Rules

7 – Rural Residential and Rural Lifestyle only	30 litres	50 litres
8.1	20 litres	20 litres
8.2	20 litres	20 litres

...

TABLE 1 : QUANTITY LIMITS FOR HAZARDOUS SUBSTANCES IDENTIFIED IN SCHEDULE 1

RESIDENTIAL, RURAL LIFESTYLE AND RURAL RESIDENTIAL ZONES, NORTHLAKE SPECIAL ZONE AND ACTIVITY AREAS 1, 2A, 2B, 2C, 4, 6 & 7 OF THE REMARKABLES PARK ZONE

Schedule 1 Class	Column A	Column B
1a ¹ – storage only	Nil	Nil
1b1 – storage only	15 kg	15 kg
2	250 litres	10,000 litres
3a ²	50 litres	50 litres
3b, 3c	1200 litres	1200 litres
3u	1200 litres - 3b, 3c only	1200 litres - 3b, 3c only
4.1	10 kg	10 kg
4.2, 4.3	100 kg	100 kg
5.1	100 kg	100 kg
5.2	5 kg	5 kg
6	20 litres	20 litres
7 – except for Residential and Rural Lifestyle	10 litres	10 litres



Amend as underlined below:

18. Signs

18.2 Signs - Rules

18.2.5 Zone Standards

(ii) Other Signs

(a) Standards:

Sign Type	Maximum Area	Additional
Above Ground Floor Signs	2 m ²	
Arcade Directory Sign	3 m ²	Shall list only the names of the occupiers of the arcade. Shall be displayed at the entrances to the arcade only.
Upstairs Entrance Sign	1.5m ²	Shall contain only the name of the activity of the occupier using that entrance.
Above Verandah Signs	2 m ²	

LOW DENSITY RESIDENTIAL, LOW DENSITY AND MEDIUM DENSITY RESIDENTIAL SUBZONES (THREE PARKS ZONE), HIGH DENSITY RESIDENTIAL, THE TOWN CENTRE TRANSITION SUB-ZONE, RESIDENTIAL ARROWTOWN HISTORIC MANAGEMENT, RURAL RESIDENTIAL ZONES, REMARKABLES PARK ZONE (except Activity Areas 3, 5 and 8), BALLANTYNE ROAD MIXED USE ZONE ACTIVITY AREAS D AND E AND ACTIVITY AREAS 1, 3 AND 4 OF THE KINGSTON VILLAGE SPECIAL ZONE, NORTHLAKE SPECIAL ZONE.

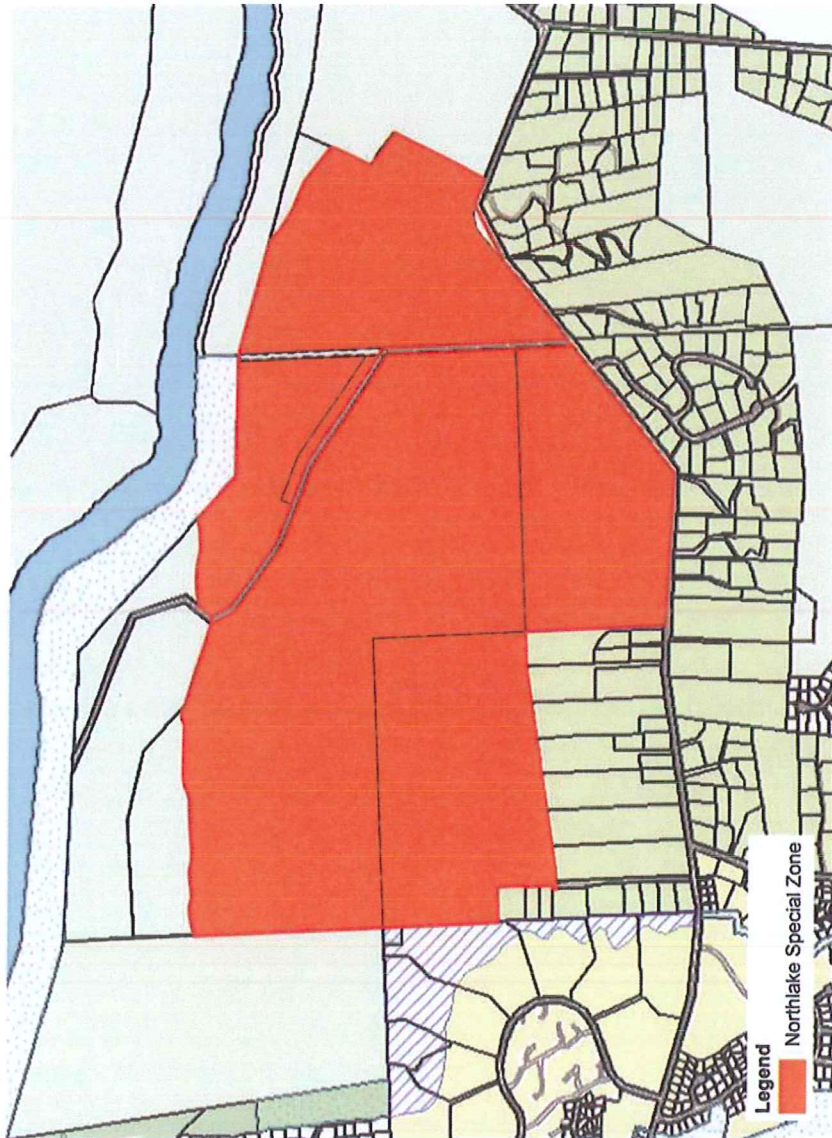
(i) On any site signage shall:

- have a maximum area of 0.5 m²
- either be attached to a building or be free-standing
- (ii) If the sign is located at the front of the site it shall:
 - not project over any road or service lane
 - not extend over any footpath unless
 - (b) it is at least 2.5 m above the footpath
 - (c) it does not extend more than 1m over a footpath
- (iii) Notwithstanding (i) above signage for recreation grounds, churches, medical facilities, nursing homes, educational institutions and community buildings shall have a maximum of 2m² per site and either by attached or by free-standing
- (iv) Notwithstanding (i) above, visitor accommodation in Residential Zones may have two signs at each separate entrance/exit:
 - One sign which identifies the site and has a maximum area of 2m²
 - One sign which contains the words 'vacancy' and 'no and does not exceed 1m x 0.15m in dimension.



Volume 3 – Planning Maps

Planning Maps 18, 19 and 20 are to be amended to show the Northlake Special Zone covering the following area:



Proposed Northlake Special Zone – Closing Submission Version 01/05/15

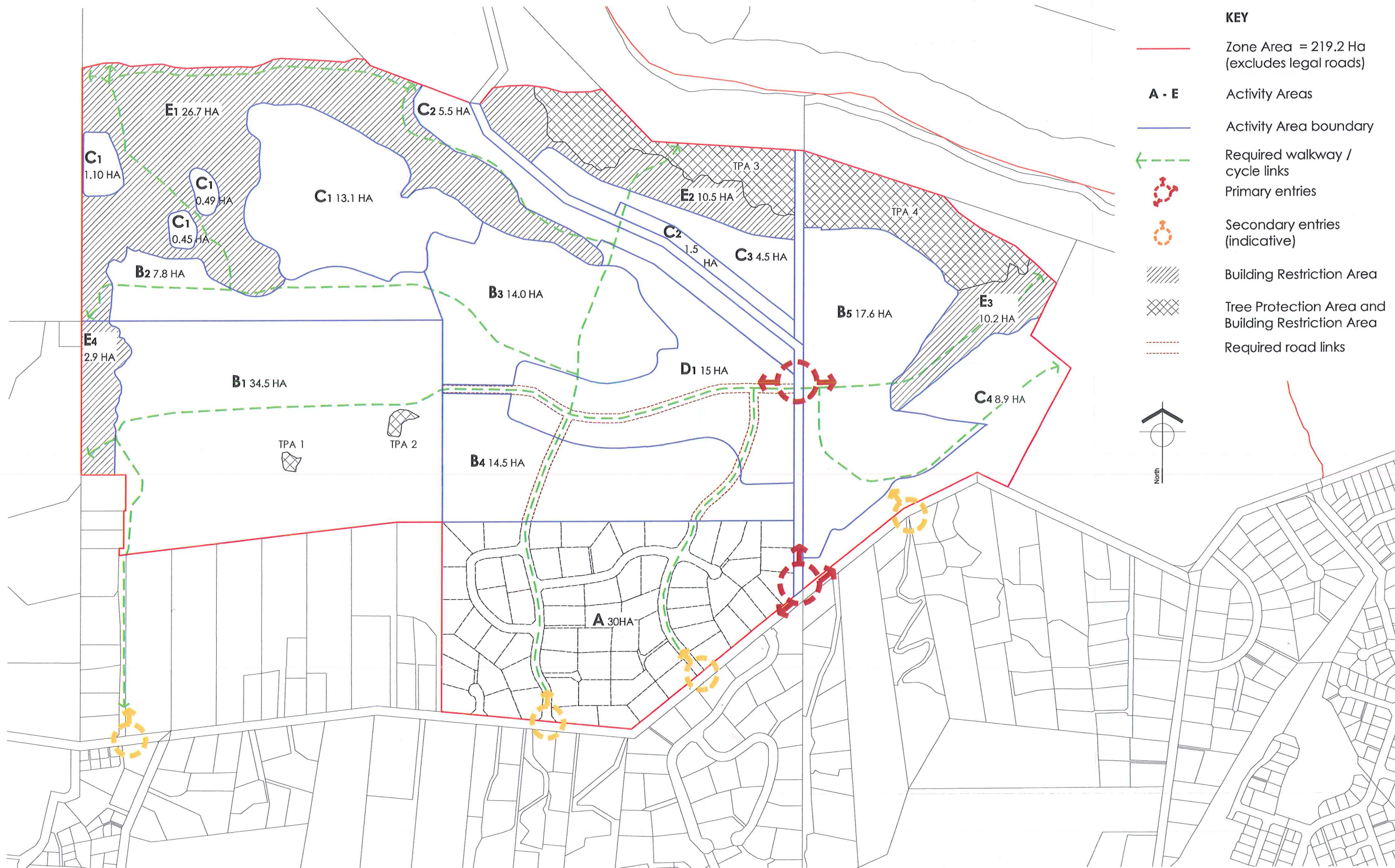
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APPENDIX B

Amended Northlake Structure Plan





NORTHLAKE STRUCTURE PLAN

REFERENCE 1949-SK59 - SCALE = 1:8000 AT A3 - 30 Sep 2015



APPENDIX C

Additional Schedule to be inserted at the end of Appendix A3
(Inventory of Protected Features) of the District Plan

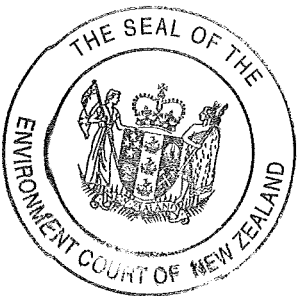
PROTECTED TREES – WANAKA

Ref No	Plan Reference	Description of Trees	Legal Description
TPA1	Northlake Structure Plan, Northlake Special Zone, Part 12 of the District Plan	Small group of kanuka with minor matagouri fringe component	Lot 3 DP 300408 (which includes the future legal description of any subdivided part of that lot which contains any part of Tree Protection Area TPA1, including any lot which qualifies as an urban environment allotment as defined in s76(4C) of the Act).
TPA2	Northlake Structure Plan, Northlake Special Zone, Part 12 of the District Plan	Small group of kanuka with minor matagouri fringe component	Lot 3 DP 300408 (which includes the future legal description of any subdivided part of that lot which contains any part of Tree Protection Area TPA2, including any lot which qualifies as an urban environment allotment as defined in s76(4C) of the Act).
TPA3	Northlake Structure Plan, Northlake Special Zone, Part 12 of the District Plan	Mosaic of mixed age pines with fringe and understorey kanuka and minor coprosma and matagouri, plus a group of kanuka, matagouri and coprosma at the western end, plus a group of mainly mature kanuka approximately in the middle	Lot 68 DP 371470 (which includes the future legal description of any subdivided part of that lot which contains any part of Tree Protection Area TPA3, including any lot which qualifies as an urban environment allotment as defined in s76(4C) of the Act).
TPA4	Northlake Structure Plan, Northlake Special Zone, Part 12 of the District Plan	Mosaic of mixed age pines with fringe and understorey kanuka and minor coprosma and matagouri at the western end and on the southern side, plus a group of mainly mature kanuka, groups of plantation pines, and some Douglas Firs.	Lot 1 DP 27290 (which includes the future legal description of any subdivided part of that lot which contains any part of Tree Protection Area TPA4, including any lot which qualifies as an urban environment allotment as defined in s76(4C) of the Act).



APPENDIX D

Tree Protection Areas – Existing Vegetation Plan





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Client & Location
Plan Change 45

Purpose & Drawing Title
Northlake Structure Plan
Reference 1949-SK59 22/09/15
Baxter Design Group

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		Date Created:	29/09/2015

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