

BEFORE THE ENVIRONMENT COURT

IN THE MATTER of the Local Government (Auckland
Transitional Provisions) Act 2010
(LGATPA) and the Resource
Management Act 1991 (RMA)

AND of an appeal under section 156(1) of
the Act against a decision of the
Auckland Council on a
recommendation of the Auckland
Unitary Plan Independent Hearing
Panel on the proposed Auckland
Unitary Plan

BETWEEN HIGHGATE BUSINESS PARK
LIMITED
ENV-2016-AKL-000194
Appellant

AND AUCKLAND COUNCIL
Respondent

Principal Environment Judge L J Newhook sitting alone under s 279 of the
Resource Management Act 1991

IN CHAMBERS in Auckland.

CONSENT ORDER



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

- (1) the appeal is allowed subject to the amendments set out in Annexure A and Annexure B to this order; and
- (2) the appeal is otherwise dismissed.

[B] Under s 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

- [1] This order relates to the appeal by Highgate Business Park Limited against a decision by the Auckland Council to accept the recommendations by the Independent Hearings Panel on the Proposed Auckland Unitary Plan in relation to the Silverdale North Precinct.
- [2] Highgate Business Park appealed against the Council decision to accept recommendations by the Hearing Panel as it related to Topics 080 and 081 – Silverdale North Precinct.
- [3] The parties have now reached an agreement to amend the Unitary Plan, which will resolve this appeal in its entirety.
- [4] In making this order the Court has read and considered the notice of appeal dated 12 September 2016 and the memorandum of parties dated 24 March 2017.
- [5] Stride Holdings Limited and Stride Property Limited have given notice under s 274 of the RMA and have signed the memorandum setting out the relief sought.
- [6] The Court is making this order under s 279(1)(b) of the RMA, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297.

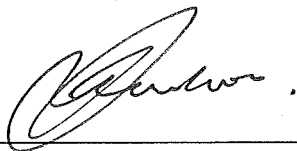


- [7] The Court understands for present purposes that:
- (a) All parties to the proceedings have executed the memorandum requesting this order.
 - (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction and conform to the relevant requirement and objectives of the RMA, including in particular Part 2.
- [8] The Court has also read the parties submissions concerning scope in relation to the amendments made in Annexure B, and is satisfied that that the Court has jurisdiction to make the amendments sought.

Order

- [9] Therefore, the Court orders the following, by consent:
- (a) The appeal is resolved in its entirety.
 - (b) The Respondent's Decision is confirmed, subject to the amendments to the Unitary Plan as shown in Annexures A and B attached; and
 - (c) There is no order as to costs.

DATED at Auckland this *13th* day of *April* 2017



L J Newhook
Principal Environment Judge



ANNEXURE A: HIGHGATE PRECINCT PROVISIONS



I54? Highgate Precinct

I54?.1 Precinct description

The Highgate precinct is located north of the original town of Silverdale and applies to approximately 15ha of land bounded by Highgate Parkway to the west, Wainui Road and residential development to the east and the Highgate industrial area to the south. Beyond Wainui Road to the east is the residential area of Millwater.

The purpose of the precinct is to ensure that the development of the area is carried out in an integrated way and to enable development of a business park style environment with greater amenity values than would be associated with an industrial zone.

The precinct is divided into three sub-precincts (A, B and C) as shown in I54?.10.1 Highgate: Precinct plan 1. Sub-precinct A comprises most of the area. Sub-precinct B is to provide a neighbourhood centre in the central part of the precinct to meet the day to day needs of the wider business community in Sub-precinct A and to also enable offices, hospitals, recreation facilities and tertiary education facilities. Sub-precinct C connects the neighbourhood centre in Sub-precinct B to the residential area to the north-east. In Sub-precinct C limits are placed on the scale and extent of retail activity.

The zoning of the land within the Highgate Precinct is Industry - Light Industry for Sub-precinct A and Business - Neighbourhood Centre for Sub-precincts B and C.

The provisions of Chapter I for the underlying zone and the Auckland-wide provisions of Chapter H apply in this precinct unless otherwise specified below.

I54?.2 Objectives

- (1) Subdivision and development are designed and implemented in a comprehensive, efficient and integrated manner.
- (2) Development does not create significant adverse effects on the primary road network and connections to that network.
- (3) High standards of urban design are achieved including distinctive architectural styles, attractive landscaping and the use of colours and materials that will not dominate the landscape setting or compromise the character of the streetscape or neighbourhood in which they are located.
- (4) A range of business development opportunities are created that will increase employment opportunities in an attractive working environment.

The road layout is integrated with the landscape and provides a safe, attractive and well-connected network that includes cycling and walking routes.



The overlay, Auckland-wide and zone objectives apply in the precinct in addition to those specified above.

15.44.3 Policies

Sub-precinct A

- (1) Encourage a comprehensive and integrated approach to urban design.
- (2) Require resource consent applications for buildings and earthworks to manage the siting, design and appearance of buildings, provide landscaping, and to maintain high levels of amenity consistent with a business park like environment.
- (3) Enable and encourage the establishment of land use activities that will attract knowledge and people based businesses and a more limited or different range of business activities than might expect to be found in an industrial zone.
- (4) Require all buildings and development to be sited and designed to present a high quality built form.
- (5) Discourage the use of materials and bright corporate colours that will visually impact on the landscape.
- (6) Require all buildings and development on sites in sub-precinct A adjoining Wainui Road and the residential development west of Wainui Road, to be sited and designed to present an attractive façade and landscaping that is compatible with an interface to residential areas.
- (7) Discourage retail activity that could compromise the commercial viability of the Silverdale town centre.
- (8) Discourage industrial activities that could compromise the business park environment of the sub-precinct.
- (9) Avoid business activities which require air or water discharge consents.

Sub-precincts B and C

- (10) Require buildings and development to achieve a high standard of visual amenity that will enhance the identity, aesthetics and character of the sub-precinct.
- (11) Minimise the use of bright corporate colours to reduce competition for dominance by buildings and signage.
- (12) Require active frontages to buildings that address two street corners.
- (13) Enable the development of small service business and retail activities to support and provide a focal point for the business community in sub-precinct A and the adjoining residential area.
- (14) Enable the development of hospitals, recreation facilities and tertiary education facilities that will complement the knowledge and people based businesses in Sub-precinct A.



(15) In Sub-precinct C, discourage the extent and scale of retail activity that could compromise the commercial viability of the Silverdale town centre.

(16) Exempt on-site parking.

The overlay, Auckland-wide and zone policies apply in the precinct in addition to those specified above.

I547.4. Activity table

The provisions in any relevant overlays, zone and the Auckland-wide provisions apply in this precinct unless otherwise specified below. A blank in Tables I547.4.1 and I547.4.2 Activity tables below means that the provisions of the overlays, zone or Auckland-wide apply.

Tables I547.4.1 and I547.4.2 Activity tables, specify the activity status of land use, development and subdivision activities in the Highgate Precinct pursuant to section 9(3) and 11 of the Resource Management Act 1991 or any combination of all of these sections where relevant.

Table I547.4.1 Highgate Precinct – Sub-precinct A:

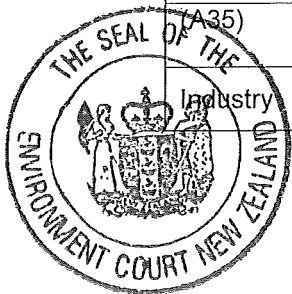
Activity		Activity Status
Use		
Accommodation		
(A1)	Visitor accommodation and boarding houses	D
Commerce		
(A2)	Commercial services	P
(A3)	Commercial sexual services	D
(A4)	Conference facilities	D
(A5)	Drive-through restaurants	RD
(A6)	Entertainment facilities	P
(A7)	Funeral directors' premises	D
(A8)	Garden centres	RD
(A9)	Marine retail	RD
(A10)	Motor vehicle sales	RD
(A11)	Offices up to 500m ² gross floor area per tenancy	P
(A12)	Offices greater than 500m ² gross floor area per tenancy	RD
(A13)	Offices that are accessory to the primary activity on the site and the office gross floor area exceeds 30 per cent of all buildings on the site	P
	Recreation Facilities	P
	Retail accessory to an industrial activity on the site,	P



Activity		Activity Status
Use		
	provided the retail gross floor area does not exceed 10 percent of all buildings on the site.	
(A16)	Service stations	RD
(A17)	Trade suppliers	RD
Community		
(A18)	Artworks	P
(A19)	Care centres	RD
(A20)	Community facilities	D
(A21)	Education facilities	P
(A23)	Healthcare facilities	P
	Hospitals	RD
(A24)	Justice facilities	D
(A25)	Recreation facility	P
	Tertiary education facilities	RD
Industry		
(A26)	Industrial activities	RD
(A27)	Waste management facilities	NC
(A28)	Storage and lock-up	D
Mana Whenua		
(A29)	Marae complex	P
Development		
(A30)	New buildings	RD
(A31)	Additions and alterations to buildings	RD

Table I54?4.2 Highgate Precinct – Sub-precinct B:

Activity		Activity Status
Use		
Commerce		
(A32)	Offices greater than 500m ² gross floor area per tenancy	RD
(A33)	Hospitals	RD
(A34)	Recreation facilities	P
(A35)	Tertiary education facilities	RD
Industry		



Activity		Activity Status
Use		
(A36)	Industrial laboratories	P
Development		
(A30)	New buildings	RD
(A31)	Additions and alterations to buildings	RD

Table I54?.4.3 Highgate Precinct – Sub-precinct C:

Activity		Activity Status
Use		
Commerce		
(A37)	Food and beverage	P
(A38)	Offices greater than 500m ² gross floor area per tenancy	RD
(A39)	Hospitals	RD
(A40)	Recreation facilities	P
(A41)	Retail up to 200m ² gross floor area per tenancy provided that the total extent of frontage of retail activities along the Street Frontage notation, shown in I54?.10.1 Highgate: Precinct plan 1, does not exceed 50m	P
(A42)	Retail not otherwise provided for in this table	NC
(A43)	Tertiary education facilities	RD
Industry		
(A44)	Industrial laboratories	P
Development		
(A45)	New buildings	RD
(A46)	Additions and alterations to buildings	RD

I54?.5. Notification

- (1) Any application for resource consent for an activity listed in Table I54?.4.1 and I54?.4.2, Activity table will be subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991.
- (2) When deciding who is an affected person in relation to any activity for the purposes of section 95E of the Resource Management Act 1991 the Council will give specific consideration to those persons listed in Rule C1.13(4).



I54?6 Standards

The standards applicable to the zone, overlays and Auckland-wide apply in this precinct.

All activities listed as permitted or restricted discretionary in Tables I54?.4.1 and I54?.4.2 Activity tables must comply with the following standards.

Development within sub-precincts A and B that does not comply with clauses I54?.6.1 and I54?.6.2 is a discretionary activity, unless otherwise specified.

I54?.6.1 Activities in sub-precinct A

- (1) Any retailing of any goods manufactured on the site must not exceed 25 per cent of the gross floor area set aside for manufacturing or 250m² whichever is less.
- (2) Development that does not comply with clause 1 above is a non-complying activity.
- (3) Buildings must not exceed 15m in height unless 35 per cent of the required parking is provided within the envelope of the building in which case the maximum height is 20m.
- (4) No more than 90 per cent of the site may be covered by impervious surfaces.
- (5) Buildings must be set back at least 3m from the front yard.
- (6) Buildings must be set back at least 3m from each side yard or 6m from one side yard.
- (7) All buildings must be set back at least 6m from a residential site or a stormwater detention pond.
- (8) A minimum of 50 per cent of the front yard must be landscaped and each landscaped area must have a minimum dimension of 3m. Fencing must not be constructed along the outside boundary of or within the area required to be landscaped.
- (9) Any storage or service areas must be fully enclosed or screened from public view by a wall not less than two metres in height or must be screened by densely planted landscaping with a minimum dimension of 3m.
- (10) Retaining walls must not exceed a maximum height of:
 - (a) 1.5m in a front yard
 - (b) 3m in a side or rear yard.

I54?.6.2 Activities in sub-precincts B and C

- (1) The maximum setback from any street frontage must be 1m.

I54?.6.3. Subdivision

The subdivision standards in the E38 Subdivision Business apply in the Highgate precinct unless otherwise specified below.



I54?.6.3.1 Sub-precinct A

- (1) The following subdivision controls apply in sub-precinct A.
- (2) Sites must comply with the following minimum road frontage width:
 - (a) Front sites: 25m
 - (b) Rear sites: 9m.
- ((3) Landscaping proposed on land surrounding stormwater detention ponds must be implemented prior to the issue of a certificate under section 224(c) of the Resource Management Act 1991.
- (4) Landscaping of streets must provide for the planting of one tree on each side of the road at 15m intervals.
- (5) Landscaping proposed on publicly owned land must be implemented prior to the issue of a certificate under section 224(c) of the Resource Management Act 1991.

I54?.7 Assessment – controlled activities

There are no controlled activities in the precinct.

I54?.8 Assessment - restricted discretionary activities

I54?.8.1 Matters of discretion

The Council will restrict its discretion to all of the following matters when assessing a restricted discretionary activity resource consent application, in addition to the matters specified for the relevant restricted discretionary land use activities in the overlay, Auckland-wide or zone provisions:

- (1) New buildings or additions and alterations to buildings in sub-precincts A, B and C Drive-through restaurants, garden centres, marine retail, motor vehicle sales, service stations, industrial activities and trade suppliers in sub-precinct A:
 - (a) the effects of the siting, design, appearance and landscaping of buildings and development on the character of the area;
 - (b) the effects of the overall development layout, including the layout and design of roads and pedestrian linkages on the character of the area.
- (2) Hospitals, Tertiary Education Facilities, Offices greater than 500m² in sub-precincts A, B and C and Industrial Activities, Trade suppliers and Care Centres in sub-precinct A:
 - (a) the effects of the intensity and scale of the development on the future character of the area;
 - (b) the effects of the design and location of parking areas and vehicle access and servicing arrangements on visual amenity of the streetscape and on pedestrian safety;



- (c) the effects of industrial activity on adjoining activities;
- (d) the effects of development on the adjoining transport network, except industrial activities.

(3) Subdivision:

- (a) the effects of subdivision on road layout, pedestrian linkages and site frontage widths.

154? 8.2 Assessment criteria

The Council will consider the relevant assessment criteria below for relevant restricted discretionary activities, in addition to the assessment criteria specified for the relevant restricted discretionary activities overlay, Auckland-wide or zone provisions:

- (1) New buildings or additions and alterations to buildings in sub precinct A, Drive-through restaurants, garden centres, marine retail, motor vehicle sales, service stations, industrial activities and trade suppliers:
 - (a) the extent to which the proposal complies with 154?.10.1 Highgate: Precinct plan 1;
 - (b) the extent to which new buildings, or additions and alterations to buildings, and the activities achieve high standards of urban design and achieve a business park like environment;
 - (c) the extent to which landscaping and planting enhances the amenity values and character of the streetscape and surrounding area and mitigate the visual effects of buildings and development to comply with policy 4;
 - (d) the extent to which outdoor storage areas compromise the high quality built environment envisaged in the sub-precinct; and
 - (e) the extent to which building heights and the height of a building in relation to the boundary compromise the business park character of the sub-precinct or reduce sunlight to outdoor areas provided for the use of employees or customers.
- (2) Hospitals, Tertiary Education Facilities, Care Centres, Offices greater than 500m², Trade Suppliers and Industrial Activities:
 - (a) the extent to which the activities are adversely affected by surrounding industrial activity and whether mitigation is proposed;
 - (b) the extent to which the intensity and scale of the development, arising from the numbers of people and/or vehicles using the site, is consistent with the expected amenity values of the surrounding area and any whether practicable mitigation measures are proposed to manage those effects;



- (c) the extent to which the traffic generated adversely affects the function, safety and efficient operation of the adjoining transport network, including pedestrian movement, particularly at peak traffic times; and
- (d) the extent to which the implementation of mitigation measures are proposed to address adverse effects and which may include measures such as travel planning, providing alternatives to private vehicle trips including accessibility to public transport.

(3) Industrial activities:

- (a) the extent to which the activity has an adverse effect on adjoining activities, particularly those involve the gathering of people;
- (b) the extent to which industrial activities:
 - (i) involve unscreened outdoor storage areas which adversely affect amenity values;
 - (ii) create any discharges to air or water which require a resource consent and which adversely affect amenity values.

(4) Sub-precinct B and C- New buildings or additions and alterations buildings:

- (a) the extent to which new buildings or additions and alterations buildings, achieve high standards of urban design and are developed and landscaped to comply with the policies for sub-precincts B or C as the case may be;
- (b) the extent to which buildings have active edges to the street;
- (c) the extent to which adverse visual effects of car parking and storage areas, when viewed from any public road or public open space, are mitigated by landscaping within yards to soften and assist with their visual screening and maintain or enhance the overall cohesiveness of the urban and landscape form.

(5) Subdivision

- (a) the extent to which proposed layout of roads follow the alignment and extent of the road layout shown on the I54?10.1 Highgate: Precinct plan 1.

I54?.9. Special information requirements

An application for the development listed below generally in accordance with I54?.10.1 Highgate: Precinct plan 1 must be accompanied by the information set out below:

- (1) New buildings, and alterations and additions to buildings, and subdivision must provide the following information:

Where a site adjoins Wainui Road, or the residential sites to the west of Wainui Road,



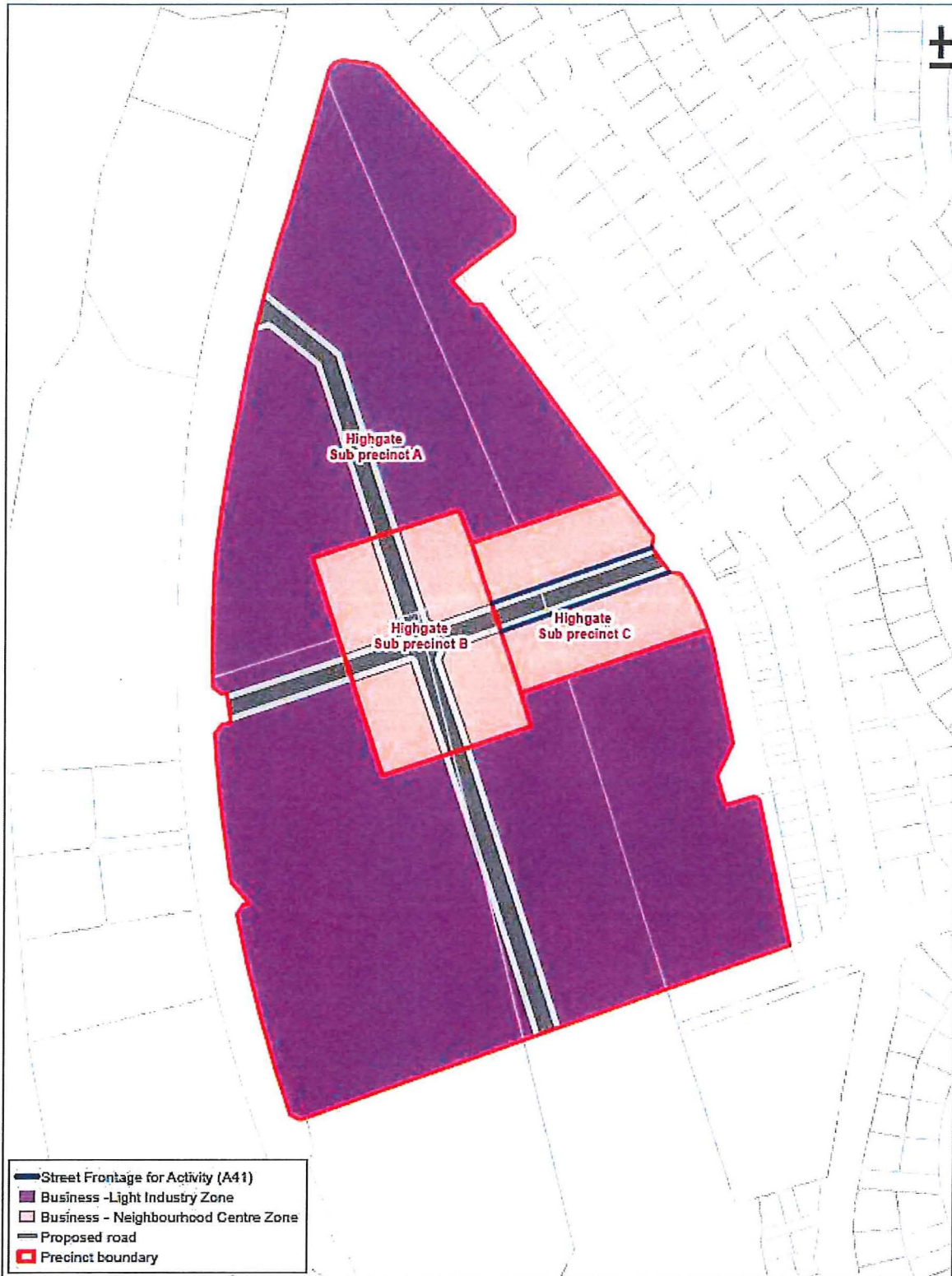
a photomontage or perspective sketch showing the proposed scale and form of the buildings when viewed from the adjacent portion of Wainui Road or the western boundary of the residential sites west of Wainui Road.

- (b) Where development within sub-precinct A adjoins sub-precincts B or C, a photomontage or perspective sketch showing the proposed scale and form of buildings when viewed from sub-precinct B or C as the case may be.

I54?.10. Precinct plans

I54?.10.1 Highgate: Precinct Plan 1



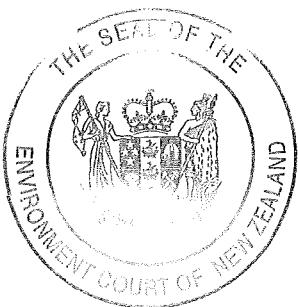


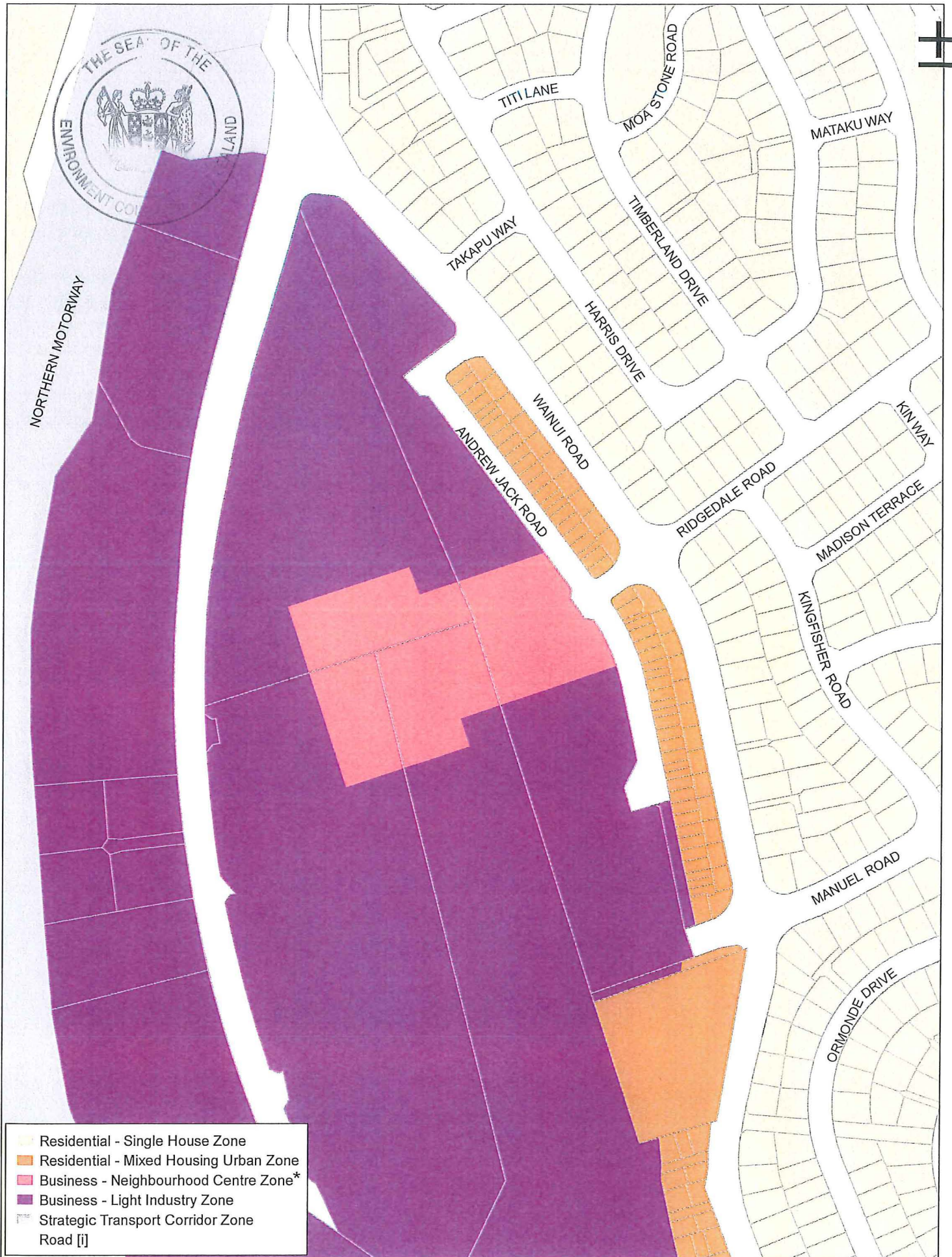
Highgate Precinct plan

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ANNEXURE B: ZONING MAP





*Neighbourhood Centre Zone to be increased to allow development of net area of 2 hectares in sub-precincts B and C



Highgate: proposed zone change