

Dear Parties

ENV-2016-AKL-000210 - WFH Properties Limited v Auckland Council

Topic: ENV-2017-304-000019 - PAUP - 080/081 - Zoning and Precincts - North - Silverdale North Precinct

Please find **attached** a consent order. A hard copy will not be provided unless specifically requested.

The Court's file has been closed.

Kind regards
Trent



Trent Grace

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BEFORE THE ENVIRONMENT COURT

IN THE MATTER	Local Government (Auckland Transitional Provisions) Act 2010 (LGATPA) and the Resource Management Act 1991 (RMA)
AND	of an appeal under section 156(3) of the LGATPA
BETWEEN	WFH PROPERTIES LIMITED ENV-2016-AKL-000210 Appellant
AND	AUCKLAND COUNCIL Respondent

Principal Environment Judge L J Newhook sitting alone under section 279 of the RMA

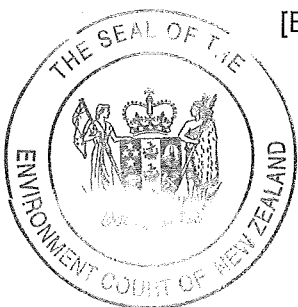
In **CHAMBERS** at Auckland

CONSENT ORDER

[A] Under s 279(2)(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 Appendix A to this order;
- (2) The appeal is otherwise dismissed.

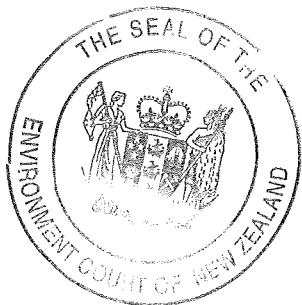
[B] Under s 285 of the Resource Management Act 1991, there is no order as to costs.



REASONS

Introduction

- [1] This appeal relates to the Proposed Auckland Unitary Plan. The Appellant, WFH Properties Ltd appealed the part of the decision by Auckland Council that accepted a recommendation of the Auckland Unitary Plan Independent Hearing Panel in relation to the Silverdale North Precinct, that recommendation having been specifically identified as being beyond the scope of submissions.
- [2] Specifically, the Appellant has appealed the Council's decision to remove the Silverdale North Precinct from the Unitary Plan, with Sub-Precinct B of the Silverdale North Precinct comprising land owned by the Appellant at Millwater, Silverdale.
- [3] This is the only appeal that relates to Sub-precinct B of the Silverdale North Precinct, albeit that there is another appeal relating to Silverdale North Precinct (by *Highgate Business Park Limited*, ENV-2016-AKL-000194), but focussed on Sub-precinct A.
- [4] No parties have given notice under s 274 of the RMA to become a party to the appeal.
- [5] Following discussions the parties have reached an agreement that will resolve this appeal.
- [6] In making this order the Court has read and considered the appeal and the joint memorandum of counsel in support of this draft consent order dated 10 March 2017.
- [7] 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.
- [8] The Court understands for present purposes that:



- (a) All parties to the proceeding have executed the memorandum requesting the order; and
- (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements of the RMA, including in particular Part 2.

Order

[9] Therefore, under s 279 of the RMA, the Court orders, by consent, the following amendments to the Unitary Plan:

- (a) That a new set of precinct provisions for the "Millwater South precinct" be inserted into Chapter I of the Auckland Unitary Plan, as set out in **Appendix A** to this Consent Order.

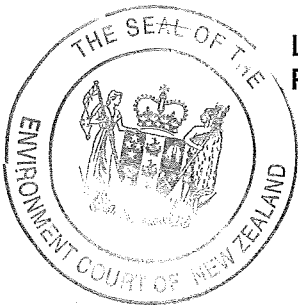
[10] The appeal by WFH Properties Limited is now resolved.

[11] There is no order as to costs.

DATED at Auckland this 17th day of March 2017



L J Newhook
Principal Environment Judge



APPENDIX A

Millwater South Precinct

I5XX.1 Precinct description [Final Precinct number to be confirmed]

The Millwater South precinct is located northwest of the original Silverdale town centre and applies to approximately 51 ha of land bounded by Wainui Road to the south and west, Manuel Road to the east and Grut Greens to the north. It is part of the wider Millwater residential area. It is characterised by a steep north east facing horseshoe shaped valley with views of Orewa and the coast from the higher areas.

The purpose of the precinct is to ensure that the development is carried out in an integrated way and that the urban form is consistent with the rest of the already developed Millwater area to the north. The precinct enables more intensive development than the underlying Single House zone and enables a mix of housing densities. The rules also apply a consistent approach to the development controls under which the rest of the Millwater area was developed.

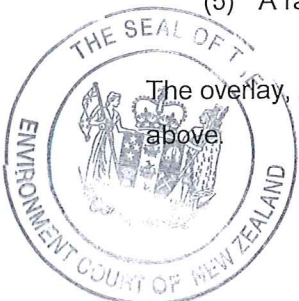
The zoning of the land in the Millwater South precinct is Single House.

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.

I5XX.2 Objectives

- (1) Subdivision and development are designed and implemented in a comprehensive, efficient and integrated manner.
- (2) Open space and land for community facilities are identified.
- (3) Significant views from public places are protected.
- (4) 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 character of the streetscape or neighbourhood in which they are located.
- (5) A range of housing types, densities and site sizes are provided in the precinct.

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



I5XX.3 Policies

- (1) Enable flexibility to develop a range of housing sizes, types and densities throughout the precinct.
- (2) Encourage higher densities around public open space.
- (3) Require and protect sunlight access to proposed and existing private outdoor living spaces to ensure they receive at least five hours of sunshine between 9am and 3pm on 22 March/September.
- (4) Require development of two or more dwellings to achieve the following outcomes:
 - (a) a high standard of architectural design;
 - (b) buildings that are well proportioned and articulated;
 - (c) landscaping that will reduce the appearance of building bulk and mass;
 - (d) a high standard of amenity including provision for and protection of privacy and solar access to private outdoor living spaces.
- (5) Discourage subdivision that creates rear sites.
- (6) Require that buildings and structures in the Subject to Building Restrictions area in the Millwater South I5XX.10 Precinct plan 1 do not obscure significant view shafts when viewed from identified public places.

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

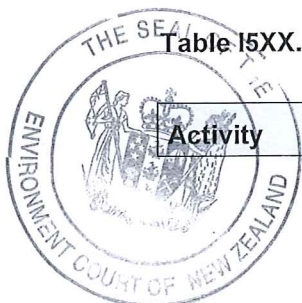
I5XX.4. Activity table

The provisions in any relevant overlays, zone and the Auckland-wide provisions apply in this precinct unless otherwise specified below. A blank in Table I5XX.4.1 table below means that the provisions of the overlays, zone or Auckland-wide apply.

Table I5XX.4.1 Activity table, specifies the activity status of land use, development and subdivision activities in the Millwater South 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 I5XX.4.1 Millwater South Precinct

Activity	Activity Status
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Use		
Accommodation		
(A1)	Two dwellings on a site	P
(A2)	Three or more dwellings on a site	RD

I5XX.5. Notification

- (1) Any application for resource consent for an activity listed in Table I5XX.4.1 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).

I5XX.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 Table I5XX.4.1 Activity table must comply with the following standards.

Development that does not comply with clauses I5XX.6.1 and I544.6.7 is a discretionary activity unless otherwise specified.

I5XX.6.1 Activities

- (1) Densities are those allowed in the Single House zone except for the following:
 - (a) The number of dwellings on a site must not exceed the limits specified below:

Table I5XX.6.1.1

Density – site size per dwelling	Percentage of dwellings in development area
150m ² -449.9m ²	25-35 per cent
450m ² -649.9m ²	30-50 per cent
650m ² +	20-40 per cent

- (b) Where two dwellings are proposed on a site, each dwelling must front a street.



- (c) Where two to four dwellings are proposed on a site, the site must be at least 15m wide:
- (i) at the site frontage; and
 - (ii) for at least 80 per cent of the length of its side boundaries.
- (d) Where five or more dwellings are proposed on a site, the site:
- (i) has a minimum net site area of 1200m²; and
 - (ii) is at least 20m wide:
 - at the site frontage;
 - for at least 80 per cent of the length of its side boundaries.

I5XX.6.2 Height

- (1) Buildings must not exceed a height of 9m.

I5XX.6.3 Side and Rear Yards

- (1) Buildings must be set back:
- (a) 3m from one side yard;
 - (b) 1m from any other side yard except where a wall is located on a boundary as provided for in clause H3.6.8.2 in the Single House zone; and
 - (c) 3m from rear yard, or for rear sites, 3m for one rear yard and 1m for any other rear yard.

I5XX.6.4 Private outdoor living space

- (1) For sites less than 450m², the Mixed Housing Suburban zone standards apply.

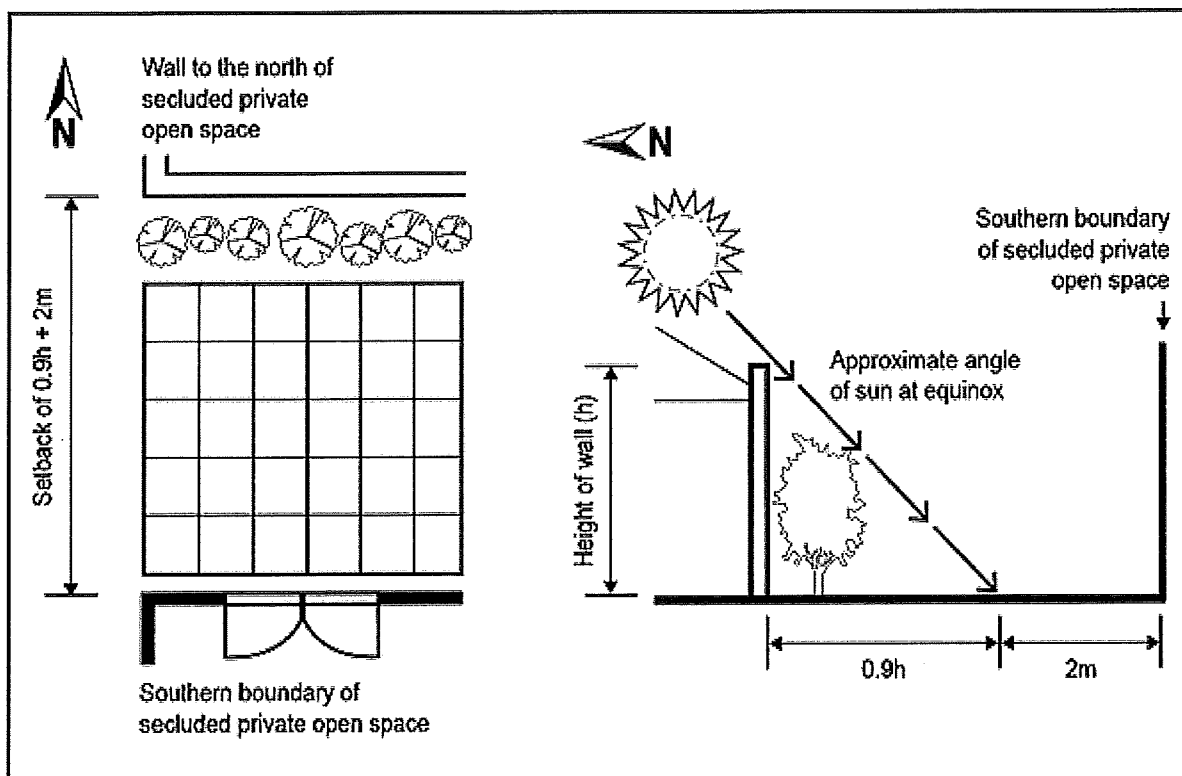
I5XX.6.5 Sunlight access to the private outdoor living space of proposed and existing dwellings

- (1) Private outdoor living space must be located to receive at least five hours of sunshine between 9am and 3pm on 22 March/September.
- (2) A wall or building on a side or rear boundary allowed by clause H3.6.8.2 in the Single House zone must not reduce sunlight to the private outdoor living space of another dwelling to less than five hours between 9am and 3pm on 22 March/September. The private outdoor living space of another dwelling is deemed to be any area behind the front facade of the dwelling that contains a square measuring at least 4.5m by 4.5m. If existing sunlight to the private outdoor living space of another dwelling is already less than required by this rule, the amount of sunlight must not be further reduced.



- (3) The southern boundary of any private outdoor living space must be set back from a wall on the north of the space at least $(2 + 0.9h)$ metres, where 'h' is the height of the wall (Refer Figure I5XX.6.4.1).

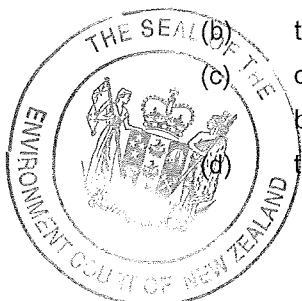
Figure I5XX.6.4.1: Sunlight access to private outdoor living space



I5XX.6.6 Additional controls for sites 450m² to 650m²

I5XX.6.6.1 Height in relation to boundary

- (1) No part of any building shall exceed a height equal to 3m plus the shortest horizontal distance between that part of the building and any site boundary, except a front boundary, and except that on side boundaries within 14m of the road frontage, the maximum height of a building shall not exceed a height equal to 5m plus the horizontal distance between that part of the building and the side boundary.
- (2) This rule shall not apply to:
- chimneys, radio and television aerials, domestic satellite dishes less than 1m in diameter;
 - the apex of any roof or gable end not exceeding 1m² in area;
 - dormers not exceeding 2m in width (not more than two per building facing the same boundary); and
 - those parts of buildings that share a common wall on a site boundary.



- (3) Where a site boundary adjoins a site in the precinct with a site size of 650m² or greater that is not part of a multi-unit development then rule H3.6.7.6 Single House height in relation to boundary shall apply to that boundary.

I5XX.6.6.2 Yards

Table I5XX.6.6.2.1 Yards

Yard	Dimension
Front	3m
Side	One yard of 1m and one yard of 3m
Rear	See 4.6.3 below

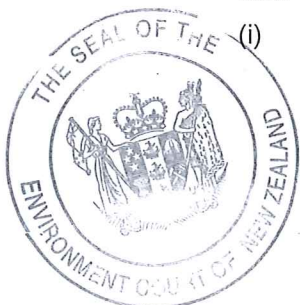
Front Yards: The siting of the building does not cause vehicles parked on site to protrude over the front boundary of the site.

Notwithstanding the above, the following additional rules also apply:

- (1) Bay windows, steps, verandas, porches and balconies may protrude into the 3m maximum front yard but shall not be closer than 1.5m to the front boundary;
- (2) No fence, wall, or screen located within the front yard may exceed 0.8m in height; and
- (3) Where a garage faces the street, then the front wall (containing the garage door) of the garage shall be set back a minimum of 6m from the front boundary.

I5XX.6.6.3 Rear Yards/Open Space

- (1) The minimum rear yards dimensions must be as follows;
 - (a) For sites accessed from street frontages oriented between NW (315°) and NE (45°) of the lot:
 - (i) The minimum rear yard depth extending across the entire width of the site shall be sufficient to accommodate a 6m wide by 6m deep private open space that is directly adjoining and accessible from the living room or kitchen of the associated dwelling.
 - (b) For sites accessed from street frontages oriented between SW (225°) and SE (135°) of the site:
 - (i) The minimum rear yard depth extending across the entire width of the site must be sufficient to accommodate a 6m wide by 6m deep private open space that is directly adjoining and accessible from the living room or kitchen of the associated dwelling.



- (c) For sites accessed from street frontages oriented between NE (45°) and SE (135°) and NW (315°) and SW (225°) of the site:
 - (i) The minimum rear yard depth extending across the entire width of the site shall be sufficient to accommodate a 4.5m wide by 6m deep private open space that is directly adjoining and accessible from the living room or kitchen of the associated dwelling.

I5XX.6.6.4 Building Frontages

- (1) The total area of all attached or detached garages doors or the open façade of a carport fronting the street shall not occupy more than 35 per cent of the building frontage which excludes:
 - (a) Any vertical faces that are located more than 3m to the rear of the garage door; and
 - (b) Any roof.

I5XX.6.7 Additional controls for two or more dwellings

- (1) The Mixed Housing Suburban zone standards, except for building height, apply where two or more dwellings are proposed on a site.

I5XX.6.8 View Protection

- (1) Buildings and structures (including a parapet, chimney, communication device, tank or building services component, ornamental tower or lift tower) on any land identified within the view shafts shown on Precinct Plan 1 must not exceed the height limits specified in the standards for the underlying zone.
- (2) Development that does not comply with clause (1) above is a non-complying activity.

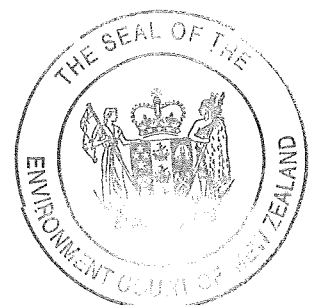
I5XX.6.9 Subdivision

I5XX.6.9.1 General

- (1) The following subdivision controls apply.
- (2) Site sizes must comply with the net site area specified in the table below:

Table I5XX.6.9.1.1 Minimum net site size

Site size per dwelling	Percentage of sites in development area
150m ² -449.9m ²	25-35 per cent



450m ² -649.9m ²	30-50 per cent
650m ² +	20-40 per cent

- (3) All residential sites must have:
- (a) a minimum frontage and access of 6m; and
 - (b) a minimum 0.5m landscaped strip on each side of a carriageway within a jointly owned accessway or right of way.

I5XX.7 Assessment – controlled activities

There are no controlled activities in the precinct.

I5XX.8. Assessment - restricted discretionary activities

I5XX.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) Three or more dwellings on a site

Development generally in accordance with I5XX.10.1 Millwater South Precinct Plan 1:

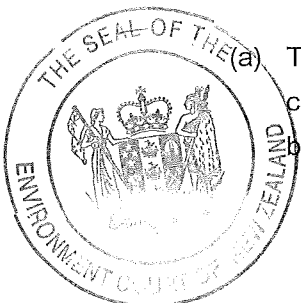
- (a) the effect of the siting, scale, form, design, appearance of development and landscaping of buildings and development on the amenity and character of the area;
- (b) the effects of development on sunlight access to outdoor living space; and
- (c) the effects of development on views as identified by the view shafts in Precinct Plan 1.

I5XX.8.2 Assessment criteria

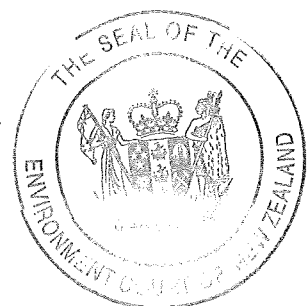
The Council will consider the relevant assessment criteria below for relevant restricted discretionary activities, in addition to the assessment criteria specified for the relevant restricted discretionary activities overlay, Auckland-wide or zone provisions:

- (1) Three or more dwellings on a site

- (a) The extent to which landscaping and planting enhances the amenity values and character of the streetscape and surrounding area and mitigates the visual effects of building and development.



- (b) The extent to which the location and height of any buildings or structures within the view shafts identified in Precinct Plan I5XX.1.1 obscure views to features or public places protected by the relevant view shaft.
- (c) The extent to which the construction, additions, alterations or the relocation of any buildings should be developed and landscaped to comply with policy 4.
- (d) The extent to which the bulk, shape and design of buildings:
 - (i) is consistent with the buildings in the neighbourhood;
 - (ii) adversely affects public enjoyment of public open space, including the street; and
 - (iii) adversely affects the provision of landscaping on the site, on neighbouring sites or on the street.
- (e) The extent to which the setback of a building from a side or rear boundary allows for the efficient use of the site while respecting the character of the neighbourhood and the amenity of adjacent sites.
- (f) The extent to which the location of buildings:
 - (i) results in significant shading effects;
 - (ii) results in a significant reduction in visual and/or aural privacy;
 - (iii) results in significant adverse visual impacts;
 - (iv) adversely affects the safe and efficient operation, including maintenance, of any utility or network utility; and
 - (v) adversely affects practical access to the rear of the site.
- (g) The extent to which additional building coverage compromises the character of the streetscape and surrounding neighbourhood and whether any effects are off-set by additional landscaping.
- (h) The extent to which garage(s) dominate the street frontage.
- (i) The extent to which street frontages of dwellings provide potential for surveillance of the street.
- (j) The extent to which private outdoor living space is located on the north side of the dwelling , and if not, whether it is oriented to the side or rear of the dwelling to maximise solar access and avoid unreasonable overshadowing from a wall on its northern boundary. Consideration will also be given to:



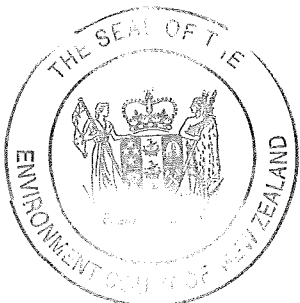
- (i) whether the private outdoor living space receives adequate levels of sunlight;
 - (ii) the usability and amenity of the private outdoor living space based on the sunlight it will receive; and
 - (iii) whether the private outdoor living space is directly accessible to and part of the associated dwelling.
- (k) The extent to which the location of any wall on a boundary unreasonably overshadows any north facing windows or the private outdoor living space of any adjacent property.

I5XX.9 Special information requirements

An application for the following activities must be accompanied by the following additional information to that required in the underlying zone required to address the matters for discretion.

Buildings, and alterations and additions to buildings, and subdivision on must provide the following information:

- (1) Where three or more dwellings are proposed a design statement equivalent to that required for more than five dwellings in the Mixed Housing Suburban zone must be prepared in accordance with the Special Information requirements of the residential zones (refer to Chapter I clause 12).



I5XX.10 Precinct plans

I5XX.10.1 Precinct Plan 1: Millwater South Precinct

