

**BEFORE THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY**

ENV-2018-CHC-

IN THE MATTER of an appeal under clause 14,
Schedule 1 of the Resource
Management Act 1991

BETWEEN **LAKEFIELD ESTATE
UNINCORPORATED GROUP**

Appellant

AND **CENTRAL OTAGO DISTRICT
COUNCIL**

Respondent

NOTICE OF APPEAL

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To: The Registrar
Environment Court
Christchurch

1. The Lakefield Estate Unincorporated Group appeals against a decision of the Central Otago District Council ('The Decision') on the following plan change:

(a) Plan change 12: Wooing Tree, Cromwell ('PC12').

2. The members of the Lakefield Estate Unincorporated Group made submissions on PC12 (Submission number 11/1-11/18, 39/1-39-6 and 40/1-40/9). The submitters now comprising the Lakefield Estate Unincorporated Group are as follows:

- (i) William Robert Dunbar
- (ii) Helen Kaye Wreford
- (iii) James Hunter
- (iv) Shirley Joan Hunter
- (v) Judith Anne Batt
- (vi) William Mervyn Batt
- (vii) Doreen Ann Braden
- (viii) Russell Wayne Braden
- (ix) Lorinda Lawson
- (x) Malcolm Lawson
- (xi) Alexander Mackenzie
- (xii) Robyn Mackenzie
- (xiii) Duncan John McCrostie
- (xiv) Liane Jane McCrostie
- (xv) Ricky Lindsay Mogensen

- (xvi) Megan Bridget Christensen
- (xvii) Fredrick James Black
- (xviii) Patricia Margaret O'Neill
- (xix) Kenneth Walter Patterson
- (xx) Patricia Mary Patterson
- (xxi) Amanda Jane Seyb
- (xxii) Kelvin John Seyb
- (xxiii) Cheryl Marie Tredinnick
- (xxiv) Leslie Raymond Tredinnick
- (xxv) William White
- (xxvi) Anne White

3. Lakefield Estate Unincorporated Group received notice of the Decision on 24 February 2018.
4. The Decision was made by the Central Otago District Council.
5. The Decision that Lakefield Estate Unincorporated Group are appealing is:

The entire decision of the Central Otago District Council in relation to PC12.

Points of appeal raised in relation to specific provisions, the reasons for the appeal, and relief sought in relation to the provisions are set out below.

6. The general reasons for the appeal are as follows:
 - (a) The Council erred in finding that provision for high density housing is appropriate and consistent with relevant Objectives and Policies of the Operative District Plan.

The decision does not provide adequate protection for the character and amenity of existing residential areas. The decision fails to recognise and protect the amenity values of the adjoining residential developments.

In relation to this matter the following provisions of the Central Otago District Plan are relevant:

- (i) Objectives 7.1.1, 7.1.2, 7.1.3; and
 - (ii) Policies 7.2.1, 7.2.2, 7.2.3, 7.2.4, 7.2.5, 7.2.6, 7.2.7.
- (b) The Council erred in finding that travellers accommodation, shops, and other activities within the BA (2) are appropriate activities within the Wooing Tree Overlay Area and consistent with the relevant objectives and policies of the Operative District Plan.

The development has the potential to have significant economic impact on the Town Centre (especially the Cromwell Mall). These effects have not been adequately assessed by the Council in the decision and may be significantly adverse. The expansion and intensification of these activities within the Wooing Tree Overlay Area also has potential to compromise the residential character and amenity values of the surrounding residential areas.

In relation to this matter the following provisions of the Central Otago District Plan are relevant:

- (i) Objectives 7.1.1, 7.1.2, 7.1.3, 8.1.1, 8.1.3; and
 - (ii) Policies 7.2.1, 7.2.2, 7.2.3, 7.2.4, 7.2.5, 7.2.6, 7.2.7, 8.2.1, 8.2.2, 8.2.4, 8.2.6, 8.2.7.
- (c) The Council has relied on the retention of open space and landscaping along the boundary of the site and within the overlay area without putting in place adequate rules or methods that will ensure that land is retained and appropriately managed for the intended purpose in perpetuity.

In relation to this matter the following provisions of the Central Otago District Plan are relevant:

- (i) Objectives 4.3.1, 4.3.3, 4.3.4, 4.3.9; and
 - (ii) Policies 4.4.2, 4.4.8, 4.4.10, 4.4.16.
- (d) The Council failed to assess the proposed plan change and determine whether it gives effect to the Regional Policy Statement. Nor does the decision set out how the Council have had regard to the relevant provisions of the Proposed Regional Policy Statement.

The following provisions of the Operative Regional Policy Statement are considered relevant (among others) under section 72 of the Resource Management Act 1991:

- (i) Objectives 5.4.1, 5.4.2, 5.4.3, 9.4.1, 9.4.3; and
- (ii) Policies 5.5.6, 9.5.4, 9.5.5.

The following provisions of the Proposed Regional Policy Statement are considered relevant (among others) under section 74 of the Resource Management Act 1991;

- (iii) Objective 4.5, 5.1, 5.4; and
 - (iv) Policies 4.5.1, 4.5.2, 4.5.3, 4.5.4, 4.5.6, 5.1.1, 5.4.3.
- (e) Overall the Appellant contends that Plan Change 12 does not achieve sustainable management.

7. Specific Points of Appeal

The paragraphs below set out the specific points of appeal. Much of the relief sought is for changes to the zones within the Wooing Tree Overlay Area. To assist with understanding of the relief sought two plans are attached at Appendix A to this appeal identifying the zone changes requested by the Appellant. The first as the amended District Plan Map and the second is the Master Plan included with the Plan Change.

(a) **Residential density –RRA(3)**

Reason

RRA (3) should reflect a similar residential density to the Lakefield Estate Development to protect the character and amenity of the area. The Lakefield Estate has a density of approximately one dwelling per 2125m² across the property; with three clusters of smaller residential allotments which vary between approximately 900m² and 1100m² and a larger balance Lot. This residential density implements Objective 7.1.1 and Policy 7.2.1, 7.2.2, 7.2.5 of the Operative District Plan. The PC12 decision sets a residential density of 1000m² which is considerably higher than the surrounding land. This is not consistent with the character and amenity of the surrounding sites and will compromise the amenity values of adjoining residents, particularly in the absence of any meaningful security regarding the establishment and/or retention of the vines and a pond between the Plan Change 12 site and Lakefield Estate.

Relief

The Lot density within RRA (3) areas subject to be Wooing Tree Overlay be amended to ensure an average Lot size of 2000m² coupled with a minimum lot size of 900m² as a restricted discretionary activity. The matters of discretion would be expanded to include the provision and protection of open space to maintain average Lot density and include the imposition of conditions to protect the open space in perpetuity.

(b) **Residential Density – RRA (11)**

Reason

RRA (11) enables subdivision to a much higher density than the surrounding land uses which may compromise character and amenity values of the residential area surrounding the PC12 site. This is particularly so given the sensitive location of the PC12 site at the entrance to Cromwell. A slightly lower density would more appropriately manage amenity values present within the area consistent with the Objectives and Policies of the Operative District Plan and the surrounding residential areas.

Relief

The Lot density within RRA (11) should be amended to require an average lot size of 500m².

(c) ***Residential Resource Area ('RRA') in the Wooing Tree overlay***

Reason

The decision enabled development of a centralised area for high density residential activity (including the ability to provide for 'Comprehensive Residential Development'). The decision anticipates that subdivision within the RRA shall not exceed a maximum Lot size of 350m² and a total of 50 Residential Lots. Such high density development is considered inappropriate within the Wooing Tree Overlay Area because it will undermine the character and amenity values of the adjoining residential activity and compromise the character of the area as a gateway to Cromwell. Further to that the rules do not provide sufficient certainty to ensure adequate provision of open space within and around the high density areas to maintain amenity values.

Relief

Residential Resource Area in the Wooing Tree Overlay Area is removed and replaced with RRA (11) as requested in (b) above.

(d) ***Residential density – North-Eastern RRA (11) and RRA (3)***

Reason

An area of RRA (11) is located in the north-eastern portion of the site. This is adjoined by RRA (3) which is to form a 'buffer' between Shortcut Road the higher density RRA (11).

The decision has erred in finding that RRA (3) provides adequate protection for the character and amenity values of the RRA (6) land to the East and to Lakefield Estate to the North. Further protection is required to avoid adverse effects and ensure that character and amenity of adjoining properties are protected consistent with the values of the area and the Objectives and Policies of the Operative Plan.

Relief

The North-Eastern corner RRA (11) be amalgamated into the RRA (3) that runs along Shortcut Road.

A buffer of 30 metres be provided along Shortcut Road and zoned Rural, consistent with the state highway frontages and subject to the same land use restrictions.

(e) Maximum Residential AllotmentsReason

The Master Plan submitted with the Plan Change request identifies 40 RRA (3), 86 RRA (11) and 31 RRA allotments (being 157 allotments in total) within the subdivision. This plan was provided to the Lakefield Estate members as part of the consultation and set their expectations regarding the proposed density of development within the Wooing Tree Overlay Area. In comparison, the decision accepts that there can be a maximum number of 60 RRA (3), 100 RRA (11) and 50 RRA allotments (being 210 allotments in total) within the development if the land is developed to the full extent that the provisions allow.

The appellants consider that the maximum number of allotments provided for in the decision is too high and will come at the cost of open space areas and amenity values. The provision of adequate open space area is necessary to maintain the character and amenity of the area. The maximum number of allotments within RRA (3) and RRA (11) will need to be re-assessed in accordance with the densities provided above in [a]-[d] above. Further, the Appellant seeks protection within the rule framework limiting the total number of allotments to be created within the Wooing Tree Overlay Area to ensure that adequate open space is provided for.

Relief

If the densities requested in relief at (a)-(d) above are not implemented the following relief is requested:

- (i) A maximum number of residential allotments the Wooing Tree Overlay Area is no more than 160.

(f) Internalised Residential DensityReason

Higher density housing is most appropriately concentrated within the site (as opposed to around the perimeter of the site). This allows the effects of it to be contained as much as possible and minimise the effect of higher density development on the character and amenity values of the surrounding land.

The appellant proposes an amended layout which amends the external layer of RRA (11) that is visible from SH8, Luggate-Cromwell Road and the Lakefield Estate to be RRA (3) to assist in internalising the effects of higher density development within the Wooing Tree Overlay Area.

Relief

The amended Plans at Appendix A identifies re zoning within the Wooing Tree Overlay Area to address the concerns of the Appellants:

- (i) Allotments to be amended to be RRA (3):
- (ii) Allotments to be amended to be RRA (11):
- (iii) 30m buffer areas to be provided along Shortcut road.

(g) Establishment of a Business Resource Area (BA(2))Reason

The establishment of a Business Resource Area does not implement the Objectives and Policies that seek to maintain the existing business area as a 'focal point' for the community and ensure that the unique values of the Cromwell Mall are preserved (Objective 8.1.1 and 8.1.3; Policy 8.2.2, 8.2.6 and 8.2.7).

Relief

- (i) Delete the BA 2 Zone from PC12 entirely; or
- (ii) Delete the southern area of BA2 enabling more limited expansion of activities related to or ancillary to the

existing Wooing Tree tasting room activities development and amend Rule 8.3.6(xiii) to reflect the reduced areas and proportions to building coverage in that rule.

In the event that the Court concludes that BA(2) can be appropriately incorporated into the development the Appellants seek the following further relief [h]-[k] below.

(h) Location of Business Area (2)

Reason

The internal area of the site has more capacity to absorb the effects of new or intensified commercial activity without compromising the residential amenity enjoyed by neighbouring properties. The Council has failed to consider the various locations available for a Business overlay area.

It is inappropriate to locate BA (2) area along the boundary of existing residential housing. Internalising BA (2) will facilitate a better connection between the established business centre within Cromwell and reduce the potential for reverse sensitivity effects to arise or be exacerbated.

Relief

The Business Overlay area should be relocated to a centralised area of the application site avoiding a boundary with the Lakefield Estate Land to the North East and providing for some limited expansion of commercial activities to the South.

The area north of the Wooing Tree tasting room, currently identified as BA (2) should be replaced with RRA (3) discussed in [d] above.

(i) Access to Business Area

Reason

The decision provides for temporary access along the north-eastern boundary of the site. Traffic effects such as noise and dust will therefore be proximate to the established Lakefield Estate development. This has

the potential to undermine the character and amenity of the residential area.

The relief above seeks to have the BA(2) area reduced so that it is no longer adjacent to the boundary with Lakefield Estate. If the relief above is not granted the Appellants consider it necessary to impose further restrictions on activities within the BA(2) area where it is adjacent to the northern boundary of the site. This would ensure that the character and amenity of surrounding residential activities were appropriately protected from the higher intensity development provided for by the BA(2) zone. (Objective 7.1.3 and Policy 7.2.1 and 7.2.6).

A buffer along this boundary would mitigate the effects of this new and intensified land use on the existing properties consistent with Objective 8.1.3 and Policy 8.2.6. The Decision only imposed a buffer with respect to shops under Rule 8.3.6(i)(c).

Relief

A 30m buffer zone should be imposed along the boundary of BA (2) and Lakefield Estate applicable to all activities within the zone. The temporary access should be re-aligned further to the south away from Lakefield Estate boundary. Methods should also be included to ensure that this buffer is landscaped and protected in perpetuity.

(j) Business Area – permitted activities

Reason

The decision includes a prescriptive list of commercial activities that can be undertaken as permitted activities within BA (2). Several definitions have been included to assist in implementing the permitted activity rules; ('local product', 'on site production', 'regional product' and 'tourist focus'). These definitions are not overly straight forward, but do assist in confining the activity permitted within the BA(2) area. However, creating a permitted activity rule reliant on these definitions does not provide an opportunity for oversight regarding the nature of activities that will establish within the zone. The Appellants also consider that any new or intensified activities within the BA(2) area should be related to existing Wooing Tree Commercial Activities.

To ensure that there is certainty around the types of activity undertaken controlled activity status should be applied to commercial activities specifically provided for. This would also improve certainty with respect to the intent of Rule 8.3.5(iii) which sought to prevent the application of the permitted baseline.

Rule 8.3.1(iii)(a) also provides for all forms of travellers accommodation as a permitted activity. The Council have erred in concluding that travellers accommodation would not compromise the character and amenity values of the area.

Relief

Amend Policy 8.2.8 to remove reference to travellers accommodation and delete Rule 8.3.1(iii)(a);

Rule 8.3.1(iii)(b) be amended to a controlled activity to ensure that Council has the opportunity to filter the types of activities that are undertaken within BA (2). The matters of control would include:

- (i) The nature of goods to be sold. The Council must be satisfied that there is a relationship between the goods to be sold or the activity and the existing Wooing Tree activity;
- (ii) Ongoing information collection requirements to ensure that those goods do not change significantly in the future;
- (iii) Requirement that retailers must provide this information to the Council on request.

(k) **Business Area - Height**

Reason

The decision held that a 10m height restriction is appropriate as this will provide flexibility with respect to building design, including travellers accommodation. Given the proximity of the BA (2) to existing residential development a height restriction of 7.5 m which applies in the context of Residential Resource Area, Residential Area (3) and Residential area (11) is more appropriate as it better reflects the character and amenity

values of the surrounding residential activity (Objective 7.1.1 and Policy 7.2.1). It will reduce the prominence of the Business Area within the PC12 site allowing it to integrate more easily with the character of the surrounding area.

Relief Sought

The height within the BA (2) zone should be restricted to 7.5m.

(l) Rural Buffer zone

Reason

PC12 includes a 30m buffer zone along SH8. The decision anticipates that this will be protected. The rules provide an inadequate framework in order to achieve this. More certainty is necessary to ensure that this aspect of the proposal is actually implemented. A failure to implement this would significantly compromise amenity values and undermine Objective 4.3.1, Policy 4.4.2 and 4.2.16 to maintain an attractive gateway to Cromwell.)

As discussed above, it is also considered appropriate to extend the buffer zone along Shortcut Road to better manage the interface between the PC12 site and the surrounding area by maintaining a greater degree of openness.

Relief

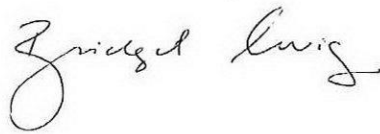
- (i) Include as a standard for Rule 4.7.4(iii) the requirement to impose conditions (by way of consent notice or covenant) to ensure on-going legal protection of the buffer zone as described in para 20 of the matters of consideration for Rule 4.7.4(iii).
- (ii) Include a further rule in Rule 4.7.5 so that failure to comply with 4.7.4(iii) as described above is a non-complying activity.
- (iii) Move Rule 4.7.5(vii) in to Rule 4.7.5A so that buildings are a prohibited activity.

8. Other relief

- (a) The Appellants seek any further or consequential relief (including amendments to any provisions) as may be necessary to give effect to the relief sought in this appeal; and
- (b) Costs of and incidental to this appeal.

9. I attach the following documents to this notice:

- (a) a copy of my submission or further submission (with a copy of the submission opposed or supported by my further submission);
- (b) a copy of the relevant decision (or part of the decision);
- (c) any other documents necessary for an adequate understanding of the appeal;
- (d) a list of names and addresses of persons to be served with a copy of this notice.



Address for service

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Advice to Recipients of Copy of Notice

How to Become a Party to Proceedings

You may be a party to the appeal if you made a submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court, and serve copies on the other parties, within 15 working days after the period for lodging a notice of appeal ends. Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

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

How to Obtain Copies of Documents Relating to Appeal

The copy of this notice served on you does not attach a copy of the relevant decision. These documents may be obtained, on request, from the Appellant.

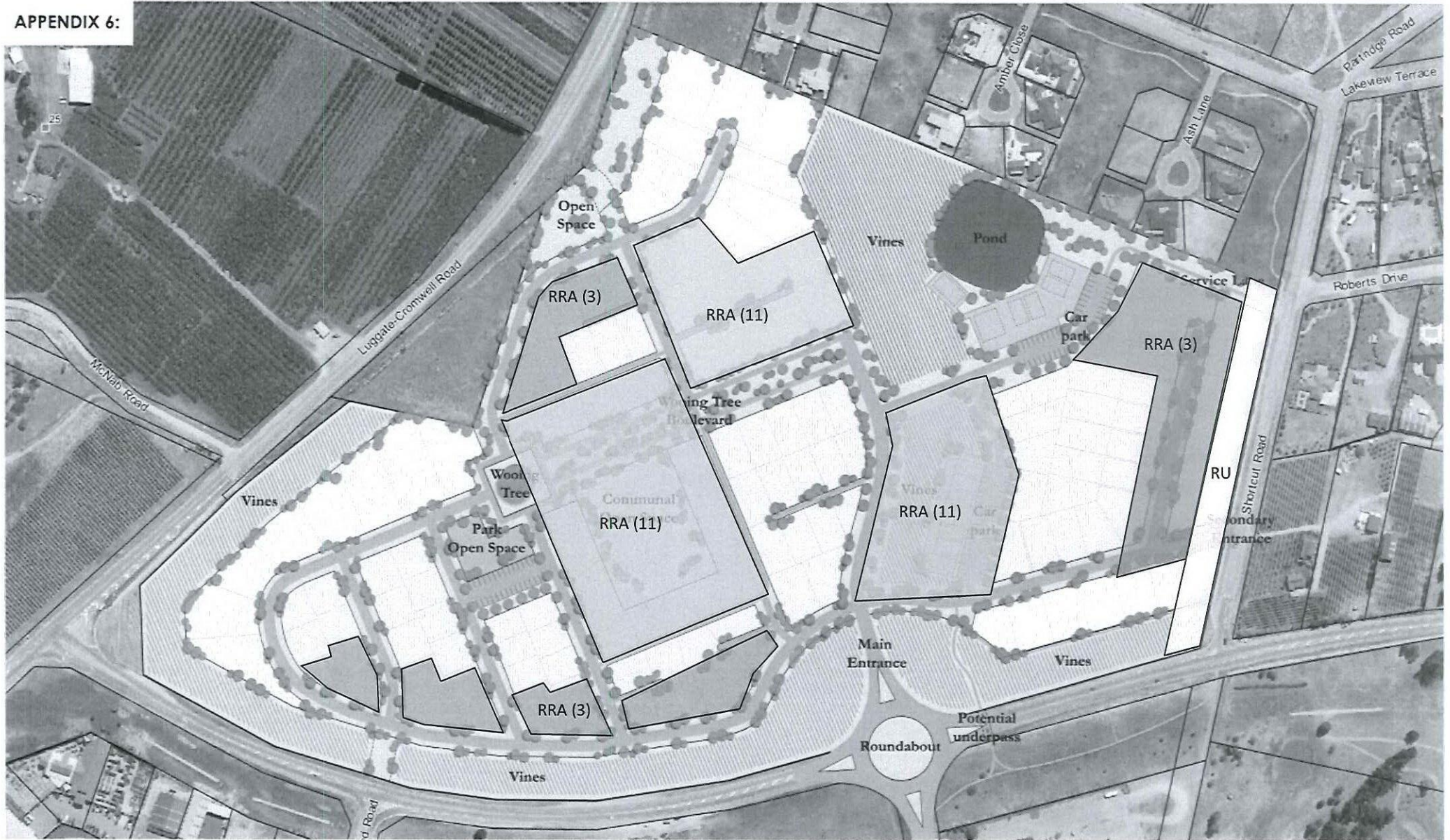
Advice

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

Appendix A



APPENDIX 6:



LEGEND

- Lowest Density Residential - R [RRA (3)]
- Medium Density Residential - R [RRA (11)]
- Highest Density Residential - R
- Light Commercial / Visitor Accommodation - B [BA (2)]



FUTURE
DEVELOPMENT
MASTERPLAN

SCALE 1:2500 @ A3
DATE 22.02.2017

