

IN THE MATTER

of the Resource Management Act
1991 ('the Act')

AND

IN THE MATTER

of an appeal pursuant to Clause
14 of the first schedule of the Act

BETWEEN

**NORFOLK SOUTHERN CROSS
LIMITED**

(ENV-2011-AKL-000109)

Appellant

AND

TAURANGA CITY COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge J A Smith sitting alone under section 279 of the Act

IN CHAMBERS at Auckland

CONSENT ORDER

Introduction

1. The Court has read and considered the appeal and the memorandum of the parties dated 10 February 2012.
2. No person has given notice of an intention to become a party to this appeal under section 274 of the Act.
3. The Court is making this order under section 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for the present purposes that:
 - (a) All the parties to the proceedings have executed the memorandum requesting this order; and
 - (b) All the parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Act, including in particular Part 2.

Order

Therefore the Court orders, by consent, that the appeal be allowed and the following amendments be made as detailed in **Annexure 1**;

Rule 14B.6.7 be amended as follows:



- (i) A new paragraph (g) is added to read:

For buildings above 12m in height, the minimum setback to a site boundary shall be 12m, or compliance with Appendix 14C (overshadowing) in the City Plan, whichever is greater.

- (ii) A new paragraph (h) is added to read:

For buildings above 12m in height, the outdoor developed landscape between the building and the boundaries between the points A-A¹ and B-B¹ on *Appendix 14J: Outline Development Plan, Grace Hospital, Cheyne Road* shall:

- (i) be a minimum of 10m deep except where no building is located within 20m of the relevant site boundary in which case a 5m *outdoor developed landscape* shall be provided along that boundary;
 - (ii) throughout, include tree species capable of growing at least 10m tall; and
 - (iii) not be used for car parking, paving, or other hard surfaces (other than vehicle crossings) or constraints to the successful establishment of trees within the site.
- (iv) Insert a note at the end of Rule 14B.6.7 as follows:

Note: For an indicative example of the interpretation of this rule, refer *Appendix 14J: Outline Development Plan, Grace Hospital, Cheyne Road* (Sheets 2 and 3).

- (b) That Appendix 14J: Outline Development Plan, Grace Hospital (Sheets 1, 2 and 3) annexed to this order as **Annexure 2** replace the decisions version of the Outline Development Plan

- (c) That Rule 14B.4.6 Grace Hospital, Cheyne Road be amended as follows:

14B.4.6 Grace Hospital, Cheyne Road Scheduled Site

- a) Within the Grace Hospital Cheyne Road Scheduled Site the following are permitted activities:

- i) Hospital facilities excluding accident and emergency clinics;
- ii) *Health Care Centres*;
- iii) Medical research and training;
- iv) Buildings and activities ancillary to hospital use;
- v) Café ancillary to the hospital.

...

- (d) That the heading for Rule 14B.6.7 Special Restricted Discretionary Activities – Standards and Terms – Grace Hospital Scheduled Site be amended as follows:



14B.6.7 Special Restricted Discretionary Activities – Standards and Terms – Grace Hospital Cheyne Road Scheduled Site

- (e) That the Rule 14B.6.8 Special Restricted Discretionary Activities – Matters of Discretion and Conditions – Grace Hospital Scheduled Site be amended as follows:

14B.6.8 Special Restricted Discretionary Activities – Matters of Discretion and Conditions – Grace Hospital Cheyne Road Scheduled Site

In considering any restricted discretionary activities within the Grace Hospital Cheyne Road Scheduled Site, the Council restricts the exercise of its discretion to:

- a) Consistency of buildings and activities with *Objective 14A.1.4 - Scheduled Sites in the Residential Zones* and *Policy 14A.1.4.1 a) and e) Scheduled Sites in the Residential Zones*;
- b) Consistency with the Outline Development pPlan contained in *Appendix 14J: Outline Development Plan, Grace Hospital, Cheyne Road*;

...

- 5. There is no order as to costs.
- 6. The appeal is otherwise dismissed.

DATED this

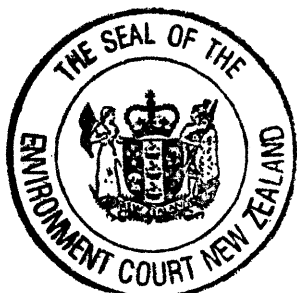
15th

day of

February

2012

J A Smith
Environment Judge



Annexure 1

14A.1.4 Objective – Scheduled Sites in the Residential Zones

The effects of the development on specific Scheduled Sites on the surrounding environment have been mitigated.

14A.1.4.1 Policy – Scheduled Sites in the Residential Zones

- a) By ensuring that land identified as a scheduled site is developed in a manner that enables the special permitted activities on the site to occur while addressing the potential adverse environmental effects on the surrounding environment in terms of:
- i) Overshadowing and *heights* of buildings;
 - ii) *Streetscape* with reference to setbacks, open space on site and landscaping;
 - iii) Traffic movements, access and parking;
- ...
- e) Land scheduled for hospital activities at Grace Hospital, Cheyne Road has regard to:
- i) Provision for the development and functioning of a hospital (including ancillary services) and the amenity of adjacent and adjoining residential properties by the application of specific assessment criteria to mitigate the effect of hospital activity in the environment to enable cohesive integration of hospital and suburban residential activity in the area.

14B.4 Scheduled Sites – Special Permitted Activity Conditions

Note: Where an activity does not comply with a Special Permitted Activity Rule it shall be considered a Discretionary Activity, unless stated otherwise.

14B.4.1 Scheduled Sites - General

All activities identified on a Scheduled Site identified on the *Plan Maps (Part B)* shall comply with the relevant *Outline Development Plan*, contained as an Appendix to this Chapter (where existent), *Rule 14B.4 Scheduled Sites - Special Permitted Activity Conditions* where relevant, and *Rule 14B.3 – Permitted Activity Rules*. In the event of any inconsistency between an *Outline Development Plan*, *Rule 14B.4 – Scheduled Sites – Special Permitted Activity Conditions* and *Rule 14B.3 – Permitted Activity Rules*, the *Outline Development Plan* and *Rule 14B.4* shall prevail. The following provisions are relevant to development within each Scheduled Site.

14B.4.6 Grace Hospital, Cheyne Road Scheduled Site

- a) Within the Grace Hospital Cheyne Road Scheduled Site the following are permitted activities:
- i) Hospital facilities excluding accident and emergency clinics;
 - ii) *Health Care Centres*;
 - iii) Medical research and training;
 - iv) Buildings and activities ancillary to hospital use;
 - v) Café ancillary to the hospital.
- b) The *gross floor area* of additional *buildings* or *building* additions shall not exceed 50m² as a permitted activity;
- c) Maximum *height* of *buildings* shall be 9 metres;
- d) *Buildings* shall comply with *Rule 14B.3.6 Overshadowing*;
- e) The maximum *site coverage* on *site* shall be 60%;
- f) All *buildings* shall be setback as shown on *Appendix 14J: Outline Development Plan, Grace Hospital, Cheyne Road*;
- g) Landscape planting shall be undertaken within the 5m *setback* on Cheyne Road;
- h) No service activities, loading bays, gas bottles, rubbish or recycling storage areas shall be visible from Cheyne Road or adjoining residential properties;
- Access to Cheyne Road shall be limited to three approved access points.



Note: Where an activity does not comply with a Permitted Activity Rule 14B.4.6 it shall be considered a Restricted Discretionary Activity, unless stated otherwise.

14B.4.7 Rules in Other Sections of the Plan

Activities within the Suburban Residential and Large Lot Residential Zones shall also comply with the following sections of *the Plan*:

- a) The provisions of *Chapter 4 – General Rules*;
- b) The provisions of *Chapter 7 – Heritage*;
- c) The provision of *Chapter 8 – Natural Hazards*;
- d) The provisions of *Chapter 9 – Hazardous Substances and Contaminated Land*;
- e) The provisions of *Chapter 11 – Financial Contributions*;
- f) The provisions of *Chapter 12 – Subdivision, Infrastructure and Services, Section 12G – Infrastructure and Services*;
- g) The provisions of any Plan Area.

14B.6 Restricted Discretionary Activity Rules

The following are Restricted Discretionary Activities:

- a) Any Permitted Activity in the Suburban Residential Zone that does not comply with a maximum of two of the following Permitted Activity conditions:
 - i) *Rule 14B. 3.3 – Streetscape*;
 - ii) *Rule 14B.3.4 a) i), a) iii), a) iv), b), d), e) – Setbacks*;
 - iii) *Rule 14B.3.5 – Setbacks*;
 - iv) New, or alterations to existing fences, where a site adjoins an *Open Space Zone*, the *Coastal Marine Area*, or the edge of a bank of a *permanently flowing river or stream*, or *wetland* located within the defined *setback* where that fence is proposed to be constructed greater than 1.2 metres in *height*; 1.8 metres in *height* and does not consist of *visually permeable materials*;
 - v) *Rule 14B. 3.6 – Overshadowing*;
 - vi) *Rule 14B. 3.9 – Access*;
- b) Any Permitted Activity in the Large Lot Residential Zone that does not comply with:
 - i) *Rule 14B. 3.3 – Streetscape*;
 - ii) *Rule 14B.3.4 a) i), a) iii), a) iv), b), d), e) – Setbacks*;
 - iii) *Rule 14B. 3.5 – Setbacks*;
 - iv) *Rule 14B. 3.6 – Overshadowing*;
 - v) *Rule 14B. 3.9 – Access*;
- c) Any Controlled Activity on The Elms Scheduled Site that does not comply with the Special Controlled Activity Standards and Terms;
- d) Office ancillary to a *Showhome*;
- e) Any Special Permitted Activity on the Grace Hospital Cheyne Road Scheduled Site that does not comply with the Special Permitted Activity Standards and Terms;
- f) Any Special Restricted Discretionary Activity on the Grace Hospital Cheyne Road Scheduled Site;
- g) Any activity identified as a Restricted Discretionary Activity for the zone in *Table 14B.1* within the Wairakei Residential Zone.

14B.6.7 Special Restricted Discretionary Activities – Standards and Terms – Grace Hospital Cheyne Road Scheduled Site

- a) The special permitted activity conditions of *Rule 14B. 4.6* shall apply with the exception of *14B. 4.6 b) and c)*;
- b) Maximum height of buildings shall be as defined on the Outline Development Plan, *Appendix 14J: Outline Development Plan, Grace Hospital, Cheyne Road*;
- c) Buildings which face Cheyne Road shall have a minimum of 30% glazing within the walls facing the Cheyne Road Boundary. Glazing shall be two way and allow some visibility of



- activities within the building when viewed from Cheyne Road and passive surveillance of Cheyne Road from the hospital building. External screens can be used over glazing;
- d) External materials and finishes on buildings and structures will have reflectance value less than 75% selected from BS5252 hue range of Group A, B and C. Group D and E are excluded;
 - e) The public frontage of buildings (facing the site boundaries, or the inner open space of the site) shall have relief features in the main façades. A minimum setback, stepping or architectural relief (relief feature) of 1.5 metres, perpendicular to the wall façade; shall occur a minimum of every 10 metres of the length of the wall façade. The relief feature shall be capable of casting shadow onto the adjacent façade, to achieve the appearance of smaller residential scale units. Relief features can include balconies, verandas, courtyards or recessed entry points;
 - f) The main entrances to buildings shall be accessed from the main central open space within the *site*.
 - g) For buildings above 12m in height, the minimum setback to a site boundary shall be 12m, or compliance with Appendix 14C (overshadowing) in the City Plan, whichever is greater.
 - h) For buildings above 12m in height, the *outdoor developed landscape* between the building and the boundaries between the points A-A¹ and B-B¹ on Appendix 14J Outline Development Plan, Grace Hospital, Cheyne Road shall:
 - i) be a minimum of 10m deep except where no building is located within 20m of the relevant site boundary in which case a 5m *outdoor developed landscape* shall be provided along that boundary;
 - ii) throughout include, tree species capable of growing at least 10m tall; and
 - iii) not be used for car parking, paving, or other hard surfaces (other than vehicle crossings) or constraints to the successful establishment of trees within the site.

Note: For an indicative example of the interpretation of this rule, refer Appendix 14J: Outline Development Plan, Grace Hospital, Cheyne Road (Sheets 2 and 3).

Note: Any Special Restricted Discretionary Activity on the Grace Hospital Cheyne Road Scheduled Site that does not comply with Rule 14B.6.7 shall be considered a Discretionary Activity.

14B.6.8 Special Restricted Discretionary Activities – Matters of Discretion and Conditions – Grace Hospital Cheyne Road Scheduled Site

In considering any restricted discretionary activities within the Grace Hospital Cheyne Road Scheduled Site, the Council restricts the exercise of its discretion to:

- a) Consistency of buildings and activities with *Objective 14A.1.4 - Scheduled Sites in the Residential Zones* and *Policy 14A.1.4.1 a) and e) Scheduled Sites in the Residential Zones*;
- b) Consistency with the Outline Development Plan contained in *Appendix 14J: Outline Development Plan, Grace Hospital, Cheyne Road*;
- c) The effects of *building* bulk and scale on the suburban residential character and amenity values of the locality, both within the *site*, and in the surrounding area;
- d) The maintenance and enhancement of open space and landscape planting to ensure development makes a positive contribution to visual amenity and to help offset the impact of the built development on the site;
- e) Design and layout of development to break up vertical and horizontal mass through location on the site and the detail of building façades, and to ensure a streetscape complimentary to the surrounding residential environment;
- f) Whether new *buildings* and *structures* take into account and respond to the character, design and materials of existing buildings within the *site*;
- g) The extent to which the proposal incorporates on-site outdoor developed landscape that integrates *buildings*, facilitates the safe use of private, public or common use areas on the *site* and softens the visual effect of the development on the surrounding environment;



- h) Screening of outdoor *service areas* and storage areas, including refuse storage areas, from any adjacent or adjoining *residential sites* and from the road frontage;
- i) Parking, vehicle and pedestrian access and manoeuvring allows for the safe and efficient movement of pedestrians and vehicles within the *site* and the adjacent road network and integration with the public transport infrastructure;
- j) Signage that is visible externally from the *site* is of a design, scale and location consistent with maintenance of the amenity of the surrounding suburban residential environment.

14B.7 Discretionary Activity Rules

The following are Discretionary Activities:

- a) Any Permitted Activity in the Suburban Residential Zone that does not comply with three or more of the following:
 - i) *Rule 14B.3.3 – Streetscape;*
 - ii) *Rule 14B.3.4 a) i) and a) iii), a) iv), b), d), e) – Setbacks;*
 - iii) *Rule 14B.3.5 – Setbacks;*
 - iv) *Rule 14B.3.6 – Overshadowing;*
 - v) *Rule 14B.3.9 – Access;*
 - vi) *Rule 14B.3.10 – Outdoor Living Area.*
- b) Activities in the Suburban Residential Zone and Large Lot Residential Zone not complying with:
 - i) *Rule 14B.3.1 – Residential Development Density;*
 - ii) *Rule 14B.3.2 – Building Height;*
 - iii) *Rule 14B.3.7 – Site Coverage (Suburban Residential);*
 - iv) *Rule 14B.3.8 – Site Coverage (Large Lot Residential);*
 - v) *Rule 14B.3.13 – Secondary Independent Dwellings.*
- c) Any Permitted Activity that does not comply with the Special Permitted Activity Rules for any Scheduled Site;
- d) Any Controlled Activity that does not comply with *Rule 14B.5.3.1 or Rule 14B.5.3.2 - Comprehensive Development;*
- e) Any Restricted Discretionary Activity that does not comply with *Rule 14B.6.3 Standards and Terms - Activities not complying with Rule 14B.3.4 d) and e);*
- f) An Office Ancillary to a *Showhome* that does not comply with *Rule 14B.6.5 – Standards and Terms for an Office Ancillary to a Showhome;*
- g) Any Special Restricted Discretionary Activity on the Grace Hospital Cheyne Road Scheduled Site that does not comply with *Rule 14B.6.7* shall be considered a Discretionary Activity;
- h) Any Activity which is not a Permitted, Controlled, Restricted Discretionary, or Non-Complying Activity;
- j) Any Activity listed in *Table 14B.1* as a Discretionary Activity.

14B.7.1 Assessment of Discretionary Activities

In considering a Discretionary Activity the *Council's* discretion is unrestricted. The Council will consider any relevant matter with particular regard to the relevant Objectives and Policies of the Plan.

14B.8 Non-Complying Activities

The following are Non-Complying Activities:

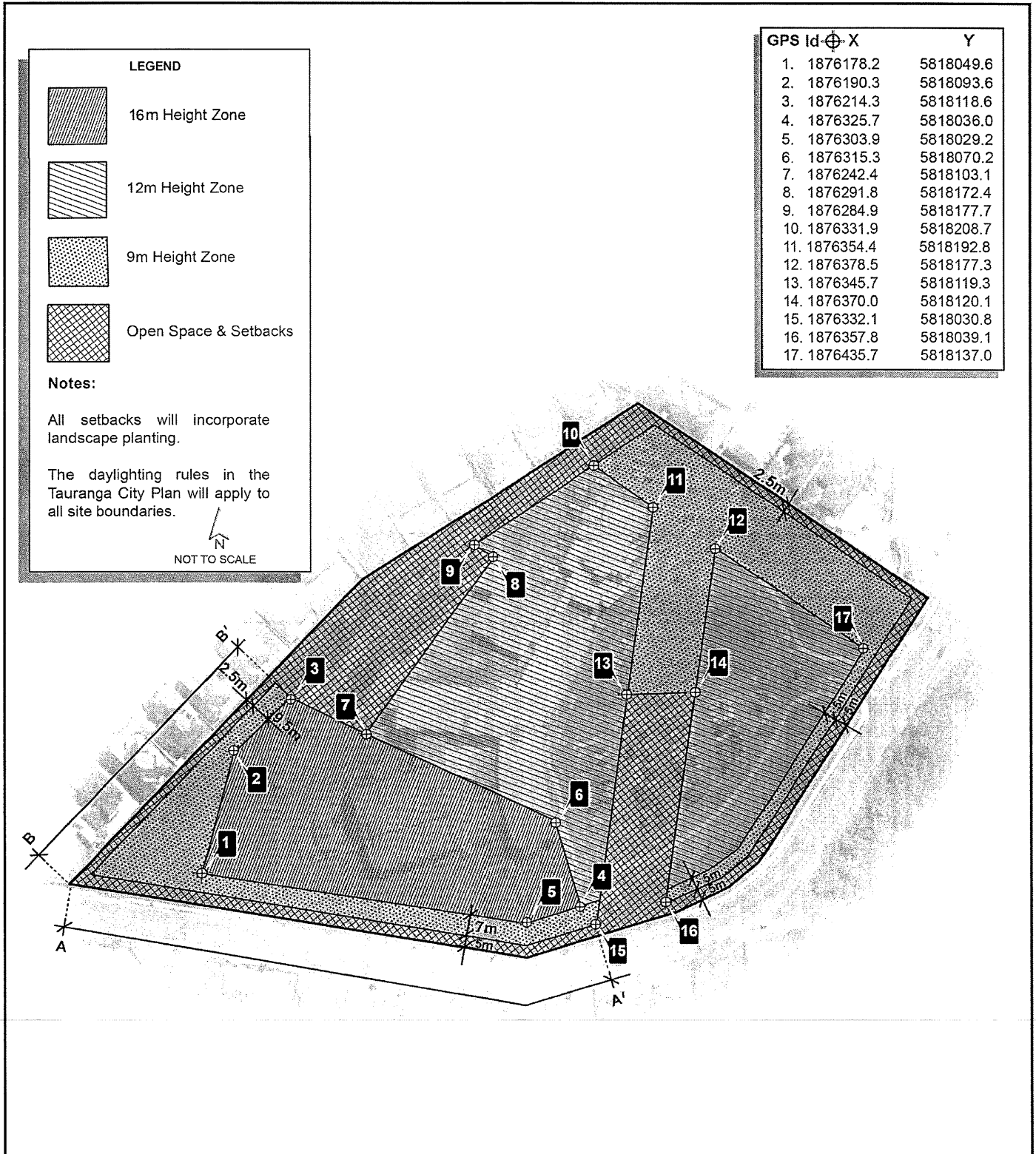
- a) Any Permitted Activity that does not comply with *Rule 14B.3.4 a) ii) – Setbacks;*
- b) Any homestay that does not comply with *Rule 14B.3.11 – Homestay;*
- c) Any home-based business that does not comply with *Rule 14B.3.12 - Home-based Business;*
- e) Any Permitted Activity that does not comply with *Rule 14B.3.14 - Heavy Machinery;*
- f) Any Activity listed as Non-complying in *Table 14B.1;*



- f) Any Restricted Discretionary Activity that does not comply with *Rule 14B.6.10.2 – Development Yield and Staging*, *14B.6.10.3 – Papamoa Beach Road Capacity*, *Rule 14B.6.10.4 – Stormwater management*.

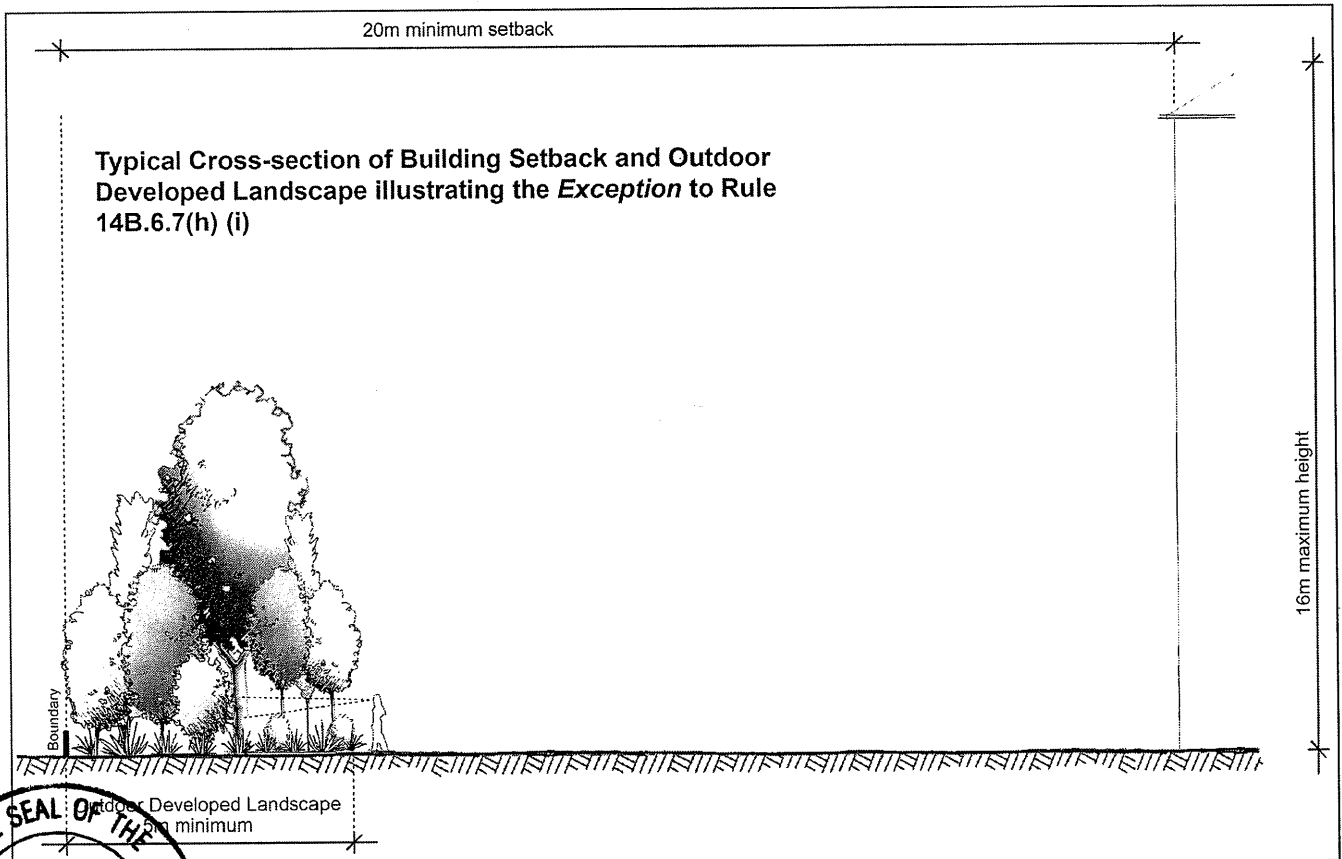
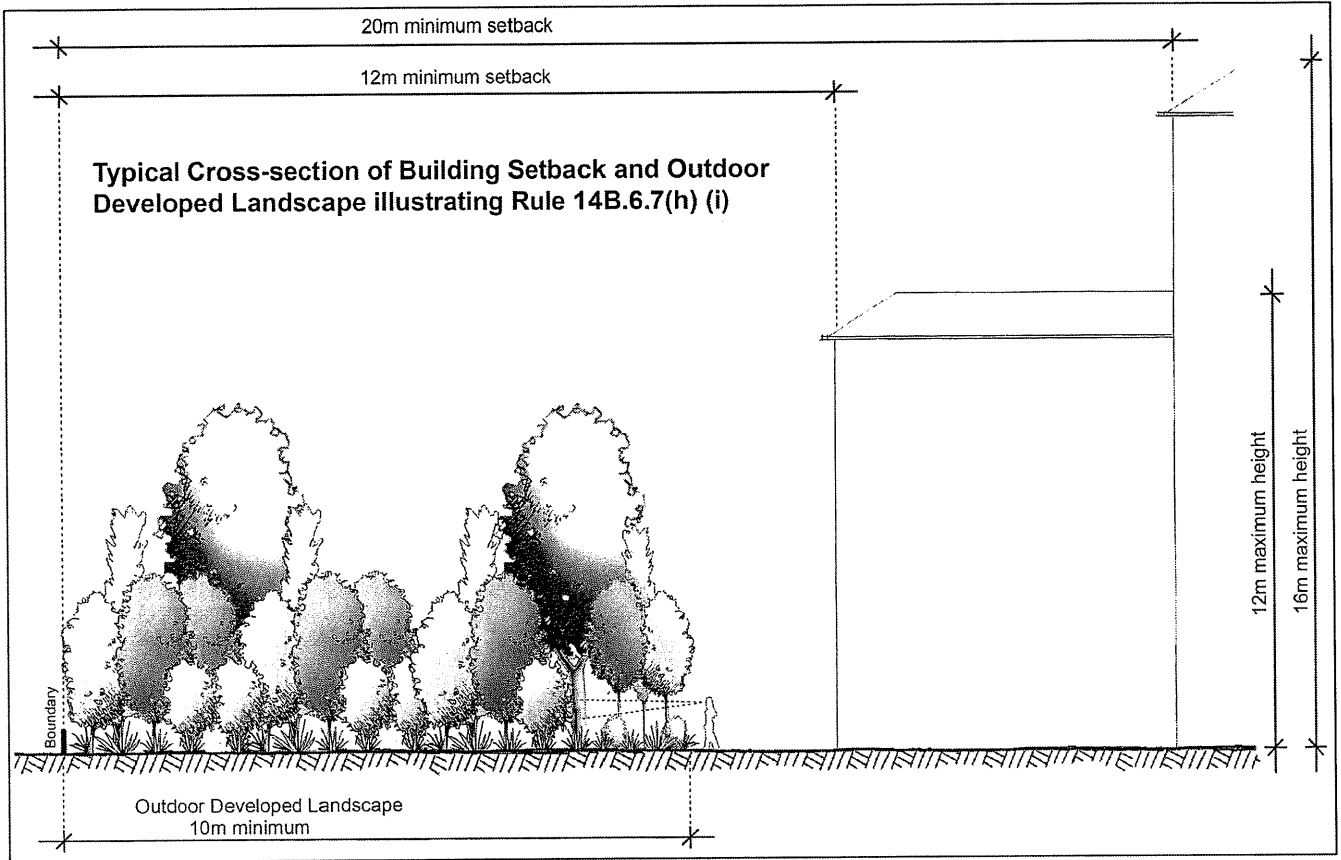


Appendix 14J: Outline Development Plan, Grace Hospital, Cheyne Road Sheet 1

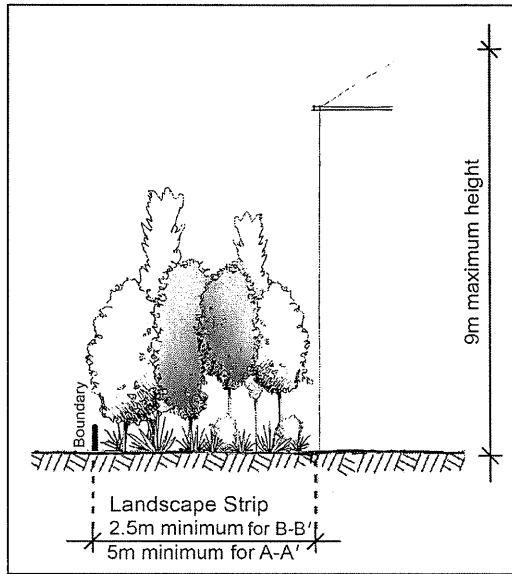


Appendix 14J:

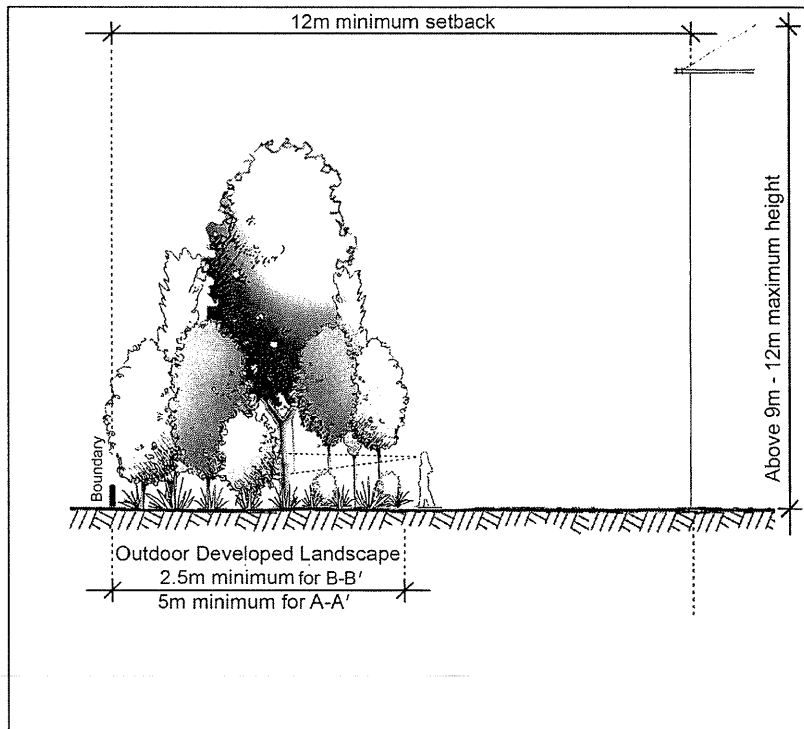
Outline Development Plan, Grace Hospital, Cheyne Road Sheet 2



Appendix 14J: Outline Development Plan, Grace Hospital, Cheyne Road Sheet 3



Typical Cross-section of Building and Landscape Strip
for Buildings up to 9 metres in height



Typical Cross-section of Building and Outdoor Landscape
Development adjacent to Boundaries (A-A' and B-B') for
buildings above 9 metres in height to 12 metres maximum
height



