

BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No. [2018] NZEnvC 38

IN THE MATTER of the Resource Management Act 1991
AND of the Local Government (Auckland
Transitional Provisions) Act 2010
AND of an appeal against a decision on the
proposed Auckland combined plan pursuant
to s 156 of the Local Government (Auckland
Transitional Provisions) Act 2010
BETWEEN ROBERT ADAMS
(ENV-2016-AKL-197)
R & H DUNLOP FAMILY TRUSTS
(ENV-2016-AKL-242)
HOUSING CORPORATION OF NEW
ZEALAND
(ENV-2016-AKL-236)
RYMAN HEALTHCARE LIMITED AND
RETIREMENT VILLAGES ASSOCIATION
OF NEW ZEALAND
(ENV-2016-AKL-230)
Appellants
AND AUCKLAND COUNCIL
Respondent

Court: Environment Judge JA Smith sitting alone pursuant to s 279 of the
Resource Management Act 1991, on the papers

Parties: R Adams for himself
R Dunlop for the R & H Dunlop Family Trust
MJL Dickey and RS Ward for Auckland Council
CE Kirman and A Devine for Housing Corporation of New Zealand
Ryman Healthcare Limited and the Retirement Village Association
of New Zealand, abide decision of the Court
Knox Homes Trust Board (s 274 party), abide decision of the Court



Date of Decision: 6 April 2018

Date of Issue: 6 April 2018

FINAL DECISION OF THE ENVIRONMENT COURT

- A: The Auckland Council (**the Council**) is to amend the Auckland Unitary Plan in accordance with Annexure **A** hereto in final disposition of the appeals of R Adams and the R & H Dunlop Family Trust (**the Dunlop Trust**). This is subject to the wording of 4.8.2.2(d)(i) and 5.8.2.2(c)(i) being amended to read “windows and/or balconies” and 4.8.2.2(d)(iii) and 5.2.2.2(c)(iii) being amended to read “variations in building form and/or façade”. (Emphasis added.)
- B: Further, the Council is to amend its plan in accordance with Annexure **B** hereto in accordance with consent documents filed by Ryman Healthcare, Housing New Zealand Corporation, Knox Homes Trust Board, and K Vernon and the Council on 24 November 2017. That consent order was held in Court pending the finalisation for this appeal.
- C: Accordingly, all appeals are now disposed of. No application for costs has been filed, and accordingly the Court makes no order as to costs.

REASONS

Introduction

[1] By decision [2018] NZEnvC 008 (**the decision**) this Court resolved aspects of the appeals by the Dunlop Trust and Mr R Adams. There was a series of other appeals outstanding, but these have been resolved by the filing of a consent memorandum as noted at paragraph [5] of the substantive decision. The parties have complied with the Court’s directions, which required the Council to prepare the provisions with the parties’ commentaries.

Relevant text

[2] In assisting the parties, the Court provided possible wording for the relevant



provisions as Annexure B to its decision. All of these suggestions have been adopted by the parties, but there remains a dispute on several matters.

[3] The major issue is the wording in 4.8.2.2(d)(iii) and 5.2.2.2(c)(iii). This is wording that was proposed at an early stage, including at the hearing, which reads:

(iii) designing large-scale development (generally more than 15 dwellings) to provide for variations in building form or façade design as viewed from streets and public open spaces.

[4] This was not the subject of any comment by the Court as a result of the hearing. It now appears that both Mr Adams and the Dunlop Family Trust (Dunlop Trust) seek to delete the words "generally more than 15 dwellings". Dunlop Trust also seek to change both 4.8.2.2(d)(iii) and 5.8.2.2(c)(iii) from "building form or façade" to "building form and façade" as well as a change to (i) from "windows and" to "windows or".

Consideration

[5] I do not see anything particularly turning on the use of the words "and" as opposed to "or" in these provisions, and it is intended to provide for flexibility in the type of design solutions adopted. The Council considers that the amendments would compromise urban design outcomes, but I am not clear as to the reasoning why. There is no suggestion that there could not be a combination of doors, windows, balconies facing the street, or that the building form and façade design couldn't be used in conjunction.

[6] For that reason, I have concluded that, as a matter of simple inclusiveness, the word and/or should be used in both (i) and (iii). In my view, it has no effect on the design outcomes intended, and provides for flexibility.

[7] So far as the issue of large-scale development, this was not the subject of any direct evidence. There was a general concern to avoid unnecessary intervention in the design of buildings, especially for medium developments between 4 and 15 units.

[8] For that reason, the Court did not make any alteration to this provision, nor was it addressed in any particular evidence beyond that of Mr Roberts and Mr Riley. Mr Roberts noted:

I consider that although medium scale developments (4-15 dwellings) may benefit from additional modulation and articulation, this becomes more critical for developments with multiple dwellings along a street frontage". For medium scale developments, the majority of dwellings are likely to be located in the depth of the site, and therefore will not directly impact on the safety and attractiveness of the street. I also note that assessment under the policies relating to built character in the MHS



and MHU zones (...) enable regard to be given to the attractiveness of the development.

[9] On balance, I have concluded that the Court reached the view that there was no need to interfere with this provision. Accordingly, it should remain as worded by the Council at the hearing, namely with the inclusion of the words "(generally more than 15 dwellings)".

[10] Given that the conclusions in this regard are consequential upon the decision of the Court, and are consistent with the drafting of the Court, I have concluded that the provisions annexed hereto and marked **A** should be adopted with the alteration in 4.8.2.2(d)(i) and 5.8.2.2(c)(i) of "windows and/or balconies" and 4.8.2.2(d)(iii) and 5.8.2.2(c)(iii) of "variations in building form and/or façade design".

Housing New Zealand Corporation, Ryman Healthcare and Retirement Villages Association of New Zealand appeal

[11] The remaining appeals were resolved by a consent document filed with the Court on 24 November 2017. The changes related only to policies H4.3, H5.3 and H6.3. That wording is agreed and does not conflict with any of the wording resolved by the Adams and Dunlop Trust appeals. Accordingly, those amendments are annexed hereto as **B**.

Outcome

[12] The Council is directed to make the changes effected by this Court in addition to those in **A** and **B** forthwith. No party has sought costs in respect of these proceedings and accordingly the Court makes no order for costs.

[13] These appeals are now finalised and are now at an end.



JA Smith
Environment Judge



H4. Residential – Mixed Housing Suburban Zone

H4.1. Zone description

The Residential – Mixed Housing Suburban Zone is the most widespread residential zone covering many established suburbs and some greenfields areas. Much of the existing development in the zone is characterised by one or two storey, mainly stand-alone buildings, set back from site boundaries with landscaped gardens.

The zone enables intensification, while retaining a suburban built character. Development within the zone will generally be two storey detached and attached housing in a variety of types and sizes to provide housing choice. The height of permitted buildings is the main difference between this zone and the Residential – Mixed Housing Urban Zone which generally provides for three storey predominately attached dwellings.

Up to three ~~two~~ dwellings are permitted as of right subject to compliance with the standards. This is to ensure a quality outcome for adjoining sites and the neighbourhood, as well as residents within the development site.

Resource consent is required for ~~three~~ four or more dwellings and for other specified buildings in order to:

- achieve the planned suburban built character of the zone;
- achieve attractive and safe streets and public open spaces;
- manage the effects of development on neighbouring sites, including visual amenity, privacy and access to daylight and sunlight; and
- achieve high quality on-site living environments.

The resource consent requirements enable the design and layout of the development to be assessed; recognising that the need to achieve a quality design is increasingly important as the scale of development increases.

H4.2. Objectives

- 1) Housing capacity, intensity and choice in the zone is increased.
- 2) Development is in keeping with the neighbourhood's planned suburban built character of predominantly two storey buildings, in a variety of forms (attached and detached). Development provides quality on-site residential amenity for residents and adjoining sites and the street.
- 3) Non-residential activities provide for the community's social, economic and cultural well-being, while being compatible with the scale and intensity of



development anticipated by the zone so as to contribute to the amenity of the neighbourhood.

H4.3. Policies

- 1) Enable a variety of housing types including integrated residential development such as retirement villages.
- 2) Achieve the planned suburban built character of predominantly two storey buildings, in a variety of forms by:
 - a) limiting the height, bulk and form of development;
 - b) managing the design and appearance of multiple-unit residential development; and
 - c) requiring sufficient setbacks and landscaped areas.
- 3) Encourage development to achieve attractive and safe streets and public open spaces including by:
 - a) providing for passive surveillance
 - b) optimising front yard landscaping
 - c) minimising visual dominance of garage doors
- 4) Require the height, bulk and location of development to maintain a reasonable standard of sunlight access and privacy and to minimise visual dominance effects to adjoining sites.
- 5) Require accommodation to be designed to:
 - a) provide privacy and outlook; and
 - b) be functional, have access to daylight and sunlight and provide the amenities necessary to meet the day-to-day needs of residents.
- 6) Encourage accommodation to have useable and accessible outdoor living space.
- 7) Restrict the maximum impervious area on a site in order to manage the amount of stormwater runoff generated by a development and ensure that adverse effects on water quality, quantity and amenity values are avoided or mitigated.
- 8) Enable more efficient use of larger sites by providing for integrated residential development.
- 9) Provide for non-residential activities that:
 - a) support the social and economic well-being of the community;
 - b) are in keeping with the ~~with~~ the scale and intensity of development anticipated within the zone;
 - c) avoid, remedy or mitigate adverse effects on residential amenity; and



- d) will not detract from the vitality of the Business – City Centre Zone, Business – Metro Centre Zone and Business – Town Centre Zone.

- 10) Recognise the functional and operational requirements of activities and development.

H4.4. Activity table

Table H4.4.1 Activity table specifies the activity status of land use and development activities in the Residential – Mixed Housing Suburban Zone pursuant to section 9(3) of the Resource Management Act 1991.

Table H4.4.1 Activity table (relevant extract)

(A3)	Up to two <u>three</u> dwellings per site	P	Standard H4.6.4 Building height; Standard H4.6.5 Height in relation to boundary; Standard H4.6.6 Alternative height in relation to boundary; Standard H4.6.7 Yards; Standard H4.6.8 Maximum impervious areas; Standard H4.6.9 Building coverage; Standard H4.6.10 Landscaped area; Standard H4.6.11 Outlook space; Standard H4.6.12 Daylight; Standard H4.6.13 Outdoor living space; Standard H4.6.14 Front, side and rear fences and walls
(A4)	Three <u>Four</u> or more dwellings per site	RD	Standard H4.6.4 Building height; Standard H4.6.5 Height in relation to boundary; Standard H4.6.6 Alternative height in relation to boundary; Standard H4.6.7 Yards

H4.5 Notification

- 1) Any application for resource consent for the following activities will be considered without public or limited notification or the need to obtain the written approval from affected parties unless the Council decides that special circumstances exist under section 95A(4) of the Resource Management Act 1991:
 - a) ~~three~~ four or more dwellings per site that comply with all of the standards listed in Table H4.4.1 Activity table
 - b) an integrated residential development that complies with all of the standards listed in Table H4.4.1 Activity table;
 - c) New buildings and additions to buildings which do not comply with H4.6.5 Height in relation to boundary, but comply with Standard H4.6.6 Alternative height in relation to boundary.
 - d) development which does not comply with H4.6.14 (1a) Front, side and rear fences and walls; or
 - e) development which does not comply with Standard H4.6.15 Minimum dwelling size.



- 2) Any application for resource consent for an activity listed in Table H4.4.1 Activity table and which is not listed in H4.5(1) above will be subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991.
- 3) 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).

H4.6. Standards

H4.6.1. Activities listed in Table H4.4.1 Activity table.

- 1) Activities and buildings containing activities listed in Table H4.4.1 Activity table must comply with the standards listed in the column in Table H4.4.1 called Standards to be complied with.

H4.6.1. Home occupations

.....

H4.6.4. Building height

Purpose: to manage the height of buildings to:

- achieve the planned suburban built character of predominantly one to two storeys;
- minimise visual dominance effects;
- maintain a reasonable standard of residential amenity for adjoining sites; and
- provide some flexibility to enable variety in roof forms.

.....

H4.6.5. Height in relation to boundary

Purpose: to manage the height and bulk of buildings at boundaries to maintain a reasonable level of sunlight access and minimise adverse visual dominance effects to immediate neighbours.

.....

H4.6.6 Alternative height in relation to boundary

Purpose: to enable the efficient use of the site by providing design flexibility where a building is located close to the street frontage, while maintaining a reasonable level of sunlight access and minimising overlooking and privacy effects to immediate neighbours.

.....

H4.6.7 Yards

Purpose:



to maintain the suburban built character of the streetscape and provide sufficient space for landscaping within the front yard;

- to maintain a reasonable standard of residential amenity for adjoining sites;
- to ensure buildings are adequately set back from lakes, streams and the coastal edge to maintain water quality and provide protection from natural hazards; and
- to enable buildings and services on the site or adjoining sites to be adequately maintained.

.....

H4.6.8 Maximum impervious area

Purpose:

- to manage the amount of stormwater runoff generated by a development, particularly in relation to the capacity of the stormwater network and potential flood risks;
- to support the functioning of riparian yards, lakeside yards and coastal yards and water quality and ecology;
- to reinforce the building coverage and landscaped area standards; and
- to limit paved areas on a site to improve the site's appearance and cumulatively maintain amenity values in a neighbourhood.

.....

H4.6.9 Building coverage

Purpose: to manage the extent of buildings on a site to achieve the planned suburban built character of buildings.

.....

H4.6.10 Landscaped area

Purpose:

- to provide for quality living environments consistent with the planned suburban built character of buildings within a generally spacious setting; and
- to maintain the landscaped character of the streetscape within the zone.

.....

HA.6.11 Outlook space

Purpose:

- to ensure a reasonable standard of visual privacy between habitable rooms of different buildings, on the same or adjacent sites; and
- in combination with the daylight standard, manage visual dominance effects within a site by ensuring that habitable rooms have an outlook and sense of space.



.....

H4.6.12 Daylight

Purpose:

- to ensure adequate daylight for living areas and bedrooms in dwellings, supported residential care and boarding houses; and
- in combination with the outlook standard, manage visual dominance effects within a site by ensuring that habitable rooms have an outlook and sense of space.

.....

H4.6.13. Outdoor living apace

Purpose: to provide dwellings, supported residential care and boarding houses with outdoor living space that is of a functional size and dimension, has access to sunlight, and is directly accessible from the principal living room, dining room or kitchen and is separated from vehicle access and manoeuvring areas.

.....

H4.6.14 Front, side and rear fences and walls

Purpose: to enable fences and walls to be constructed on a front, side or rear boundary or within a front, side or rear yard to a height sufficient to:

- provide privacy or dwellings while enabling opportunities for passive surveillance of the street
- minimise visual dominance effects to immediate neighbours and the street.

.....

H4.6.15 Minimum dwelling size

Purpose: to ensure dwellings are functional and of a sufficient size to provide for the day to day needs of residents, based on the number of occupants the dwelling is designed to accommodate.

.....

H4.7 Assessment – controlled activities

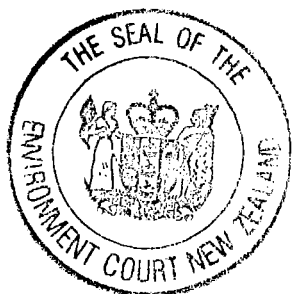
.....

H4.8. Assessment – restricted discretionary activities

H4.8.1 Matters of discretion

The Council will restrict its discretion to all of the following matters when assessing a restricted discretionary activity resource consent application:

- 1) for three four or more dwellings on a site:



- a) the effects on the neighbourhood character, residential amenity...

H4.8.2 Assessment criteria

The Council will consider the ~~relevant~~ assessment criteria below for restricted discretionary activities to the extent relevant to the proposal:

...

- 2) for ~~three~~ four or more dwellings on a site:

- a) the extent to which or whether the development achieves the purpose outlined in the following standards or what alternatives are provided that result in the same or better outcome:

- (i) Standard H4.6.8 Maximum impervious areas;
- (ii) Standard H4.6.9 Building Coverage;
- (iii) Standard H4.6.10 Landscaped area;
- (iv) Standard H4.6.11 Outlook space;
- (v) Standard H4.6.12 Daylight;
- (vi) Standard H4.6.13 Outdoor living space;
- (vii) Standard H4.6.14 Front, side and rear fences and walls; and
- (viii) Standard H4.6.15 Minimum dwelling size

- b) ~~refer to Policy H4.3(1);~~ The extent to which the development contributes to a variety of housing types in the zone and is in keeping with the neighbourhood's planned suburban built character of predominantly two storey buildings (attached or detached) by limiting the height, bulk and form of the development and managing the design and appearance as well as providing sufficient setbacks and landscaped areas.

- ~~c) refer to Policy H4.3(2);~~

- d) ~~refer to Policy H4.3(3);~~ The extent to which development achieves attractive and safe streets and public open space by:

(i) providing doors, windows and balconies facing the street and public open space

(ii) minimising tall, visually impermeable fences

(iii) designing large scale development (generally more than 15 dwellings) to provide for variations in building form or façade design as viewed from streets and public open spaces.

(iv) optimising front yard landscaping



(v) providing safe pedestrian access to buildings from the street

(vi) minimising the visual dominance of garage doors, walkways or staircases to upper level dwellings, and carparking within buildings as viewed from streets or public open spaces

e) refer to Policy H4.3(4); The extent to which the height, bulk and location of the development maintains a reasonable standard of sunlight access to sunlight and privacy and minimises visual dominance to adjoining sites.

f) refer to Policy H4.3(5); The extent to which dwellings:

(i) Orientate and locate windows to optimise privacy and encourage natural cross ventilation within the dwelling

(ii) Optimise sunlight and daylight access based on orientation, function, window design and location, and depth of the dwelling floor space

(iii) Provide secure and conveniently accessible storage for the number and type of occupants the dwelling is designed to accommodate.

(iii) (iv) Provide the necessary storage and waste collection and recycling facilities in locations conveniently accessible and screened from streets and public open spaces.

g) refer to Policy H4.3(6); The extent to which outdoor living space:

(i) Provides for access to sunlight

(ii) Provides privacy between the outdoor living space of adjacent dwellings on the same site and between outdoor living space and the street.

(iii) When provided at ground level, is located on generally flat land or is otherwise functional.

1. Amend Chapter H5 Residential Mixed Housing Urban Zone of the Auckland Unitary Plan (Operative in Part) as follows:

H5. Residential – Mixed Housing Urban Zone

H5.1. Zone description

...

Up to ~~three~~ two dwellings are permitted as of right subject to compliance with the standards. This is to ensure a quality outcome for adjoining sites and the neighbourhood, as well as residents within the development site.

Resource consent is required for ~~three~~ four or more dwellings and for other specified buildings in order to:

...

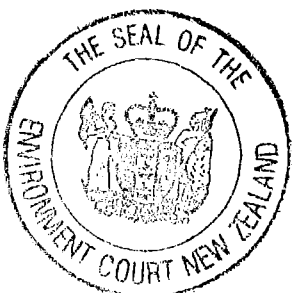


Table H5.4.1 Activity table (relevant extract)

(A3)	Up to two <u>three</u> dwellings per site	P	Standard H5.6.4 Building height; Standard H5.6.5 Height in relation to boundary; Standard H5.6.6 Alternative height in relation to boundary; Standard H5.6.7 Height in relation to boundary adjoining lower intensity zones; Standard H5.6.8 Yards; Standard H5.6.9 Maximum impervious areas; Standard H5.6.10 Building coverage; Standard H5.6.11 Landscaped area; Standard H5.6.12 Outlook space; Standard H5.6.13 Daylight; Standard H5.6.14 Outdoor living space; Standard H5.6.15 Front, side and rear fences and walls
(A4)	Three <u>Four</u> or more dwellings per site	RD	Standard H5.6.4 Building height; Standard H5.6.5 Height in relation to boundary; Standard H5.6.6 Alternative height in relation to boundary; Standard H5.6.7 Height in relation to boundary adjoining lower intensity zones; Standard H5.6.8 Yards

H4.5 Notification

- 1) Any application for resource consent for the following activities will be considered without public or limited notification or the need to obtain the written approval from affected parties unless the Council decides that special circumstances exist under section 95A(4) of the Resource Management Act 1991:
 - a) ~~three~~ four or more dwellings per site that comply with all of the standards listed in Table H4.4.1 Activity table

...

H5.8. Assessment – restricted discretionary activities

H5.8.1 Matters of discretion

The Council will restrict its discretion to all of the following matters when assessing a restricted discretionary activity resource consent application:

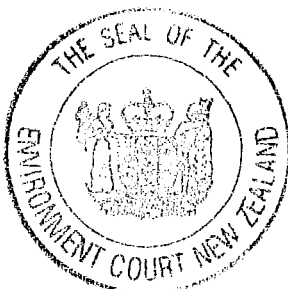
...

- 2) for ~~three~~ four or more dwellings per site:
 - a) the effects on the neighbourhood character, residential amenity...

H5.8.2 Assessment criteria

The Council will consider the relevant assessment criteria below for restricted discretionary activities to the extent relevant to the proposal:

...



2) for ~~three~~ four or more dwellings on a site:

a) the extent to which or whether the development achieves the purpose outlined in the following standards or what alternatives are provided that result in the same or better outcome:

- (i) Standard H5.6.9 Maximum impervious areas;
- (ii) Standard H5.6.10 Building Coverage;
- (iii) Standard H5.6.11 Landscaped area;
- (iv) Standard H5.6.12 Outlook space;
- (v) Standard H5.6.13 Daylight;
- (vi) Standard H5.6.14 Outdoor living space;
- (vii) Standard H5.6.15 Front, side and rear fences and walls;
and
- (viii) Standard H5.6.16 Minimum dwelling size

b) ~~refer to Policy H5.3(1)~~ The extent to which the development contributes to a variety of housing types at higher densities in the zone and is in keeping with the neighbourhood's planned suburban built character of predominantly ~~two~~ three storey buildings (attached or detached) by limiting the height, bulk and form of the development and managing the design and appearance as well as providing sufficient setbacks and landscaped areas.

~~c) refer to Policy H5.3(2);~~

c) ~~refer to Policy H5.3(3)~~ The extent to which development achieves attractive and safe streets and public open space by:

(i) providing doors, windows and balconies facing the street and public open space

(ii) minimising tall, visually impermeable fences

(iii) designing large scale development (generally more than 15 dwellings) to provide for variations in building form or façade design as viewed from streets and public open spaces.

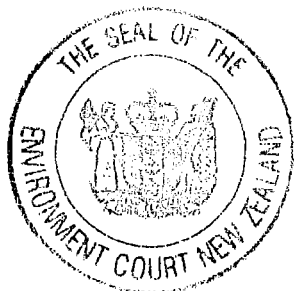
(iv) optimising front yard landscaping

(v) providing safe pedestrian access to buildings from the street

(vi) minimising the visual dominance of garage doors, walkways or staircases to upper level dwellings, and carparking within buildings as viewed from streets or public open spaces

d) ~~refer to Policy H5.3(4)~~ The extent to which the height, bulk and location of the development maintains a reasonable standard of sunlight access and privacy and minimises visual dominance to adjoining sites;

e) ~~refer to Policy H5.4(5)~~ The extent to which dwellings:



(i) Orientate and locate windows to optimise privacy and encourage natural cross ventilation within the dwelling

(ii) Optimise sunlight and daylight access based on orientation, function, window design and location, and depth of the dwelling floor space

(iii) Provide secure and conveniently accessible storage for the number and type of occupants the dwelling is designed to accommodate.

(iii) (iv) Provide the necessary waste collection and recycling facilities in locations conveniently accessible and screened from streets and public open spaces.

f) refer to Policy H5.3(6) The extent to which outdoor living space:

(i) Provides for access to sunlight

(ii) Provides privacy between the outdoor living space of adjacent dwellings on the same site and between outdoor living space and the street.

(iii) When provided at ground level, is located on generally flat land or is otherwise functional



1. Amend Chapter H4 Residential – Mixed Housing Suburban Zone of the Auckland Unitary Plan (Operative in Part) as follows:

H4. Residential – Mixed Housing Suburban Zone

H4.3. Policies

...

- (5) Require accommodation to be designed to meet the day to day needs of residents by:

- (a) provideing privacy and outlook; and
- (b) ~~be functional, have~~ providing access to daylight and sunlight and provideing the amenities necessary ~~to meet the day-to-day needs of~~ for those residents.

...

2. Amend Chapter H5 Residential – Mixed Housing Urban Zone of the Auckland Unitary Plan (Operative in Part) as follows:

H5. Residential – Mixed Housing Urban Zone

H5.3. Policies

...

- (5) Require accommodation to be designed to meet the day to day needs of residents by:

- (a) provideing privacy and outlook; and
- (b) ~~be functional, have~~ providing access to daylight and sunlight and provideing the amenities necessary ~~to meet the day-to-day needs of~~ for those residents.

...

3. Amend Chapter H6 Residential – Terrace Housing and Apartment Building Zone of the Auckland Unitary Plan (Operative in Part) as follows:

H6. Residential – Terrace Housing and Apartment Building Zone

H6.3. Policies

...

- (6) Require accommodation to be designed to meet the day to day needs of residents by:

- (a) provideing privacy and outlook; and
- (b) ~~be functional, have~~ providing access to daylight and sunlight and provideing the amenities necessary ~~to meet the day-to-day needs of~~ for those residents.

...

