

BEFORE THE ENVIRONMENT COURT

ENV-2020-AKL-000113

IN THE MATTER

Of an appeal pursuant to Clause 14(1) of Schedule 1,
of the Resource Management Act 1991

AND

BETWEEN

NORTHLAND DISTRICT HEALTH BOARD

Appellant

AND

WHANGAREI DISTRICT COUNCIL

Respondent

AND

NEW ZEALAND TRANSPORT AGENCY

s274 Party

NOTICE OF WITHDRAWAL

8 January 2021

To: The Registrar
Environment Court
Auckland

1. The **Northland District Health Board** is the Appellant in the proceeding *Northland District Health Board v Whangarei District Council* **ENV-2020-AKL-000113**. This Memorandum is in addition to the 'Notice of Withdrawal In-Part' dated 1 December 2020 and serves as notice of withdrawal of these proceedings.
2. The Respondent has informed the Appellant that rule HOSZ-R12.1.d Building and Major Structure Setbacks (building setback from Mean High Water Springs) will be corrected pursuant to clause 16(2) of the RMA (refer **Attachment A**, WDC memo dated 21 December 2020).
3. This correction satisfies the Appellant's outstanding matter of Appeal and therefore the Appeal is withdrawn in its entirety.



Ian McAlley
for Northland District Health Board
Date: 8 January 2021

Attachment A:
WDC Memo
1 December 2020

Memorandum

To District Plan Manager

From Support Assistant (District Plan)

Subject **Clause 16(2) Minor Amendment - Urban and Services, Recommendations of the Hearing Panel**

Date 21 December 2020

Introduction

Council has the capacity to correct errors and “make an amendment, without further formality, to its proposed policy statement or plan to alter any information, where such an alteration is of minor effect, or may correct any minor errors.” under Clause 16 (2) of the First Schedule to the Resource Management Act 1991.

The correction of minor errors, has to be considered according to guidelines developed through case law.

Case law states that the test in determining whether an amendment is authorized by Clause 16(2) is “does the amendment affect (prejudicially or beneficially) the rights of some members of the public, or is it neutral?” Only if it is neutral is an amendment permitted by Clause 16(2).

The decision to correct minor errors was delegated in terms of Section 34 of the Resource Management Act to the District Plan Manager.

Issue

1. The identification of an error in the Hospital Zone Chapter (HOSZ) in the Urban and Services Decision Version.

Resolution

1. Pursuant to Clause 16(2) of the First Schedule to the Resource Management Act 1991, that Rule HOSZ-R12.1(d) of the HOSZ Chapter of the Decision Version of District Plan be amended as set out below:

d. 2720m from Mean High Water Springs or the top of the bank of any river that has a width exceeding 3m excluding bridges, culverts and fences.


Reasons

The decision version of the HOSZ requires buildings to be setback 27m from Mean High Water Springs (MHWS). However, the Commissioners’ Recommendation Report indicates that the setback in HOSZ-R12.1(d) should have been reduced to 20m. The excerpt below is from paragraph 142 of Part 8 of the Commissioners’ Recommendation Report:

In relation to the proposed 27m setback from MHWS/top of the bank of any river over 3m width, we have taken the view elsewhere that where submissions allow this should be reduced to 20m. We believe that this would still achieve the benefits outlined by Mr Badham in the RoR.

The amendment to reduce the setback to 20m was not made in the decision version of the HOSZ, likely due to a formatting or clerical error. Amendment is needed to correct the rule to reflect the correct wording.

~~ACCEPT / DECLINE / AMEND RECOMMENDATION~~



Robert Burgoyne
Manager District Plan