

# Proposed District Plan Change 7 – Subdivision Allotment Design Standard Exemptions

## Section 32 Report

### 1. Introduction

Proposed Plan Change 7 – Subdivision Allotment Design Standard Exemptions, changes a rule in Chapter 11 – Subdivision of the District Plan which states when a subdivision does not have to meet allotment design standards and terms.

### 2. Background

Currently Rule 11.2.2 (p) applies to all activity areas and states that if there are existing buildings on an allotment prior to December 1995 and if no vacant lots will be created then a subdivision does not have to meet allotment design standards and terms.

Rule 11.2.2 (p) is as follows;

11 *Subdivision*

11.2.2 *Controlled Activities*

*Rule 11.2.2(p) In all activity areas the allotment design standards and terms shall not apply:*

- (i) where there are existing buildings on an allotment prior to December 1995; and*
- (ii) the subdivision of that allotment does not create a vacant allotment (i.e with no buildings).*

*Compliance with all other standards and terms is necessary.*

The Plan Change aims to ensure that the rule achieves its intended purpose, which when applied to residential and rural allotments, is to provide an exemption from the allotment design standards and terms where there is more than one legally established dwelling houses on a site. However due to the broad definition of 'building' in the District Plan, and if a literal interpretation of the wording is taken, the rule could be interpreted to apply to all structures that meet the definition of building, rather than just dwelling houses, and therefore could allow exceptions to rule 11.2.2(p) that were not intended.

The District Plan's definition of building and dwelling house is;

***Building:***

*Means any structure or part of a structure, whether temporary or permanent, movable or immovable, but for purposes of this Plan excludes:*

- (a) any fence not exceeding 2 metres in height;*
- (b) any retaining wall not exceeding 1.2 metres in height;*
- (c) satellite dishes with a diameter not exceeding 0.6m and antennas 2.5m above the maximum height permitted on the activity area or the rules in Chapter 13 – Utilities.*
- (d) all structures less than 1.2 metres in height and 20m<sup>2</sup> in area;*
- (e) all tents and marquees erected on a temporary basis for a period not exceeding 3 months;*
- (f) all signs, as defined in this Plan.*

***Dwelling House:***

*A building providing self contained residential accommodation for a person, a family or a non-family group and includes a foster home, women's refuge, accommodation for up to five boarders/lodgers and residential facilities for up to and including seven people but excludes:*

- (a) comprehensive residential developments;*
- (b) detention facilities;*
- (c) visitor accommodation;*
- (d) health care service; and*
- (e) boarding houses.*

The definition of building clearly includes a wide range of structures and is not restricted to residential buildings. In contrast the definition of dwelling house is much more limited.

While it is considered that the rule should be interpreted in the overall context of the District Plan, which would lead to the conclusion that 'building' means 'dwelling house' a literal interpretation of the rule would result in all structures within the definition of building included. If Rule 11.2.2(p) is not changed it could lead to the rule being tested by a subdivision application seeking to subdivide a site containing 'buildings' which are not dwelling houses. For example in the General Residential Activity Area a 700 m<sup>2</sup> site that has a house and a garden shed could be subdivided as a controlled activity with the house on an undersized lot (less than 400m<sup>2</sup>) and the garden shed on a site which meets the minimum net site area of 400m<sup>2</sup>. Potentially the garden shed could then be demolished and a dwelling house erected on the site as a permitted activity.

The subdivision and subsequent construction of a dwelling house as a permitted activity would result in intensification of land use and would not meet the following objectives and policies of the District Plan.

#### *4A 1.1.1 Residential Character and Amenity Values*

*Objective: To maintain and enhance the amenity values and residential character of the General Residential Activity Area of the City*

*Policies: (c) To ensure residential amenity values are retained, protected and enhanced through the establishment of a net site area per dwelling house.*

#### *4A 1.2.1 Building Height, Scale, Intensity and Location*

*Objective: To avoid, remedy or mitigate adverse effects caused by building height, intensity and location on the amenity values of adjacent residential sites and the residential character of the surrounding residential area.*

*Policies: (a) To establish a minimum net site area and maximum site coverage requirement to ensure medium density development is achieved.*

The net site area and site coverage permitted activity conditions are the main means of achieving the objectives and implementing the policies stated above. Therefore it is considered necessary to change rule 11.2.2(p) so only in the intended circumstances, where two legally established dwelling houses exist, do allotment design standards and terms not apply. The rule needs to be changed so it is clear that when applied to the Residential and Rural Activity Areas that only where there are more than two existing dwelling houses do allotment design standards and terms not have to be met.

Rule 11.2.2(p) does not need to be changed in relation to other activity areas besides Residential and Rural due to those activity areas not having a net site area permitted activity condition.

### **3. Conclusion**

Section 32 of the Resource Management Act 1991 requires that a number of evaluations are carried out before a proposed District Plan Change is publicly notified. The requirements of that evaluation are –

- (3) *An evaluation must examine –*
  - (a) *the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and*
  - (b) *whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.*

[[3A)...

- (4) *For the purposes of [[the examinations referred to in subsections (3) and (3A)]], an evaluation must take into account –*
- (a) *the benefits and costs of policies, rules, or other methods; and*
  - (b) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.*

A Section 32 analysis of the rules and objectives in the Subdivision Chapter was undertaken when the District Plan was notified. The proposed Plan Change is not changing objectives or policies and is only clarifying a rule that could be open to challenge and if successful would be contrary to the objectives and policies of the Residential and Rural Activity Areas. It is considered that the rule is still the most efficient and effective way to achieve the objectives and policies of the District Plan and is necessary to ensure that only in the intended limited circumstances do subdivisions not have to meet the Allotment Design Standards and Terms.