

HUTT CITY COUNCIL

RM16-4-7c  
26 September 2005

Chair and Members <b>STRATEGY AND POLICY COMMITTEE</b>
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PLAN CHANGE 7 -  
SUBDIVISION ALLOTMENT DESIGN STANDARD EXEMPTIONS

Report No. S&P2005/5/2

RECOMMENDATIONS:

That the Committee:

- (i) note the report and supporting materials;
- (ii) recommend that Council approve the promulgation of a proposed District Plan Change 7 as shown in Appendix 1 of the report;
- (iii) recommend that Council determine that the proposed Plan Change will have immediate effect upon the public notification under clause 5 of the First Schedule of the Resource Management Act 1991; and
- (iv) recommend that Council allow officers to make any minor non-policy changes to the details of Proposed Plan Change 7 should the need arise.

**1. PURPOSE OF REPORT**

- 1.1 This report details why a Plan Change is required in regard to Rule 11.2.2(p) in the District Plan's Subdivision Chapter and recommends promulgation of a Plan Change.

**2. SIGNIFICANCE OF DECISION**

- 2.1 The decision sought does not meet any of the thresholds set out in Part 1 of the Decision-Making Checklist. The level of compliance required with the Local Government Act 2002 decision-making requirements is therefore lower and consequently it was not necessary to complete Part 2 of the checklist.

3. **BACKGROUND**

- 3.1 Rule 11.2.2(p) in the District Plan's Subdivision Chapter states when a subdivision does not have to meet the usual allotment design standards and terms. Council Officers have received inquiries about the interpretation of the rule and it is considered it is open to interpretation and therefore needs to be changed to ensure the District Plan's objectives and policies are achieved.
- 3.2 A public discussion document has not been prepared as the Plan Change is minor and only aims to ensure that a rule achieves its intended purpose.

4. **COMMENT**

**Subdivision Rule 11.2.2 (p)**

- 4.1 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 that a subdivision does not have to meet allotment design standards and terms.

- 4.2 Rule 11.2.2 (p);

*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.*

- 4.3 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 house on a site. The rule exists as it would be unreasonable to not allow subdivision to occur if the houses have been legally established under different standards and terms prior to notification of the District Plan in 1995. However as the rule stands, due to the broad definition of 'building' in the District Plan, it could be argued that the rule should be interpreted to apply to all structures that meet the definition of

building, rather than just dwelling houses and therefore could allow exceptions to the rule that were not intended.

4.4 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.

4.5 The definition of building clearly captures a range of structures beyond dwelling houses such as garden sheds and retaining walls over 1.2m.

4.6 If the rule is not changed it could be tested by an application seeking to subdivide a site containing 'buildings' that are not dwelling houses which is not the intention of the rule. The applicant could argue that the rule should be interpreted using the definition within the District Plan rather than being considered in the broader context of the District Plan.

4.7 For example a 700m<sup>2</sup> site that has a house and a garden shed could be subdivided as controlled activity with the house on an undersized lot of 300m<sup>2</sup> and the garden shed on the 400m<sup>2</sup> site (which meets the minimum net site area rule of 400m<sup>2</sup>). The garden shed could then be demolished and a house erected on the site as a permitted activity.

4.8 The resulting intense development 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.*

- 4.9 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 necessary to change rule 11.2.2(p) so only in the intended circumstances, where two legally established houses exist, do allotment design standards and terms not apply.
- 4.10 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 being included. Therefore in order to ensure that the rule is not open to interpretation it is considered necessary to change the wording to clarify that in regard to residential and rural activity areas that it only relates to dwelling houses.
- 4.11 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.

**5. CONSULTATION**

- 5.1 Consultation on the proposed plan change will be carried out in accordance with the process set out in the First Schedule of the Resource Management Act 1991.

**6. POLICY CONSIDERATIONS**

- 6.1 The policy considerations have been analysed and discussed above and in the Section 32 Report attached as Appendix 2.

**7. FINANCIAL CONSIDERATIONS**

7.1 There will be some costs associated with promulgating a Plan Change but this can be met from the current budget provisions.

**8. LEGAL CONSIDERATIONS**

8.1 The Proposed Plan Change has been prepared in accordance with the provisions of the Resource Management Act 1991 and will be promulgated in accordance with the provisions of the First Schedule.

**9. PUBLICITY CONSIDERATIONS**

9.1 Appropriate publicity will be actioned at the time the Proposed Plan Change is promulgated.

**10. OTHER CONSIDERATIONS**

10.1 There are no other considerations at this stage.

**11. APPENDICES**

Appendix 1: Proposed Plan Change 7

Appendix 2: Section 32 Report

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Approved by:

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## Proposed Plan Change 7 - Subdivision Allotment Design Standard Exemptions

The Plan Change separates the Rural and Residential Activity Areas from all other Activity Areas.

The wording of rule 11.2.2(p) is changed by inserting the words *Commercial, Business, Recreation, Community Health and Community Iwi Activity Areas* after the words *In all* and before *Activity Areas*.

The previous rule 11.2.2(q) remains unchanged although it is renumbered 11.2.2(r).

A new rule 11.2.2(q) is inserted after 11.2.2. (p) as follows:

*In all Residential and Rural Activity Areas the allotment design standards and terms shall not apply:*

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

The proposed amendments are as follows:

### **Chapter 11 Subdivision**

#### **11.2.2 Controlled Activities**

- (p) In all Commercial, Business, Recreation, Community Health and Community Iwi 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.

- (q) In all Residential and Rural Activity Areas the allotment design standards and terms shall not apply:
  - (i) where there are existing dwelling houses on an allotment prior to December 1995; and
  - (ii) the subdivision of that allotment does not create an allotment with no dwelling house.

Compliance with all other standards and terms is necessary.

- (r) Any subdivision located wholly within Avalon Business Activity Area (Sub-Area 2).

## 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:*

- (iii) where there are existing buildings on an allotment prior to December 1995; and*
- (iv) 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:*

- (g) any fence not exceeding 2 metres in height;*
- (h) any retaining wall not exceeding 1.2 metres in height;*
- (i) 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.*
- (j) all structures less than 1.2 metres in height and 20m<sup>2</sup> in area;*
- (k) all tents and marquees erected on a temporary basis for a period not exceeding 3 months;*
- (l) 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.