

BEFORE THE ENVIRONMENT COURT
AT WELLINGTON

I MUA I TE KŌTI TAIAO O AOTEAROA
KI TE WHANGANUI-A-TARA

IN THE MATTER of the Resource Management Act 1991
AND of an appeal under cl 14 of the First
Schedule to the Act
BETWEEN DESIGN NETWORK ARCHITECTURE
LIMITED
(ENV-2019-WLG-000137)
Appellant
AND HUTT CITY COUNCIL
Respondent

Environment Judge B P Dwyer sitting alone pursuant to s 279 of the Act

In Chambers at Wellington

CONSENT ORDER

- [A] Under s 279(1)(b) of the Act, the Environment Court orders, by consent, that chapters 4A, 4F, and 5E and the Medium Density Design Guide of the Lower Hutt District Plan are amended as set out in Appendix A
- [B] The appeal is otherwise dismissed.
- [C] Under s 285 of the Act, there is no order as to costs.



REASONS**Introduction**

[1] The Court has read the notice of appeal and the memorandum of the parties dated 12 August 2020.

Other relevant matters

[2] L Mead and Kāinga Ora - Homes and Communities gave notice of an intention to become parties to this appeal under s 274, and have signed the memorandum setting out the relief sought.

Orders

[3] The Court is making this order under s 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297. The Court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order;
- (b) all parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2!

DATED at Wellington this 31st day of August 2020



B P Dwyer
Environment Judge



4A General Residential Activity Area

4A 4 Rules

4A 4.2 Development Standards

Rule 4A 4.2.2 Site Coverage

(a) Construction or alteration of a building is a **permitted** activity if:

(i) The site coverage does not exceed 40%.

(b) Construction or alteration of a building that exceeds 40% site coverage is a **restricted discretionary** activity.

Discretion is restricted to:

(i) The effects on the amenity of adjoining sites.

(ii) The effects on the amenity of the surrounding residential area, the streetscape and adjoining public space.

Note: For proposals of two or more dwellings on a site, when addressing or assessing potential effects in relation to matters (i) and (ii) above, applicants and the Council can be informed by the relevant outcomes identified in the Medium Density Design Guide.

~~Where the proposal is for two or more dwellings, the following mixed use and medium density residential development design elements:~~

- ~~a) Building height~~
- ~~b) Recession planes and setbacks~~
- ~~c) Indoor and outdoor living spaces~~
- ~~d) Open space and boundary treatments~~
- ~~e) Entrances, carparking and garages~~
- ~~f) On-site stormwater management~~
- ~~g) End / side wall treatment~~
- ~~h) Building materials~~
- ~~i) Bike parking, storage and service areas~~
- ~~j) Privacy and safety~~
- ~~k) Landscaping~~



— l) — Historic character in Petone-Moera

~~When considering the matters in (iii), the Council will be principally guided by its Medium Density Design Guide.~~

Links to:

Objectives 4A 2.3, 4A 2.4

Policies 4A 3.1, 4A 3.2, 4A 3.4, 4A 3.6, 4A 3.7, 4A 3.8



Rule 4A 4.2.4 Recession Plane

- (a) Construction or alteration of a building is a **permitted** activity if the following reccession plane requirements are being met:

- (i) 2.5m +45° from all side and rear boundaries.

No reccession planes are required from road boundaries and existing or proposed internal boundaries within a site.

- (b) Construction or alteration of a building that does not meet the reccession plane requirements is a **restricted discretionary** activity.

Discretion is restricted to:

- (i) The effects on the privacy of adjoining sites.
(ii) The effects on shading of adjoining sites.
(iii) The effects on the amenity of the surrounding residential area and adjoining public space.

Note: For proposals of two or more dwellings on a site, when addressing or assessing potential effects in relation to matters (i), (ii) and (iii) above, applicants and the Council can be informed by the relevant outcomes identified in the Medium Density Design Guide.

~~Where the proposal is for two or more dwellings, the following mixed use and medium density residential development design elements:~~

- ~~— a) — Building height~~
- ~~— b) — Recession planes and setbacks~~
- ~~— c) — Indoor and outdoor living spaces~~
- ~~— d) — Open space and boundary treatments~~
- ~~— e) — Entrances, carparking and garages~~
- ~~— f) — On-site stormwater management~~
- ~~— g) — End / side wall treatment~~
- ~~— h) — Building materials~~
- ~~— i) — Bike parking, storage and service areas~~
- ~~— j) — Privacy and safety~~
- ~~— k) — Landscaping~~
- ~~— l) — Historic character in Petone-Moera~~

~~When considering the matters in (iv), the Council will be principally guided by its Medium Density Design Guide.~~

Links to:
Objectives 4A 2.3, 4A 2.4



Policies 4A 3.4, 4A 3.5, 4A 3.7



Rule 4A 4.2.5 Yards

(a) Construction or alteration of a building is a **permitted** activity if:

(i) The building is not located within the following yard setbacks:

Front yards 3m

Side yards 1m

Rear yards 1m

(ii) One accessory building may be located in a side and/or rear yard, provided that the building does not extend more than 6m along the length of any boundary and is not located in a yard that is directly adjoining the rail corridor.

No yards are required along existing or proposed internal boundaries within a site.

Eaves may encroach into any yard by up to 0.6 m.

(b) Construction or alteration of a building that does not meet the yard requirements is a **restricted discretionary** activity.

Discretion is restricted to:

(i) The effects on the privacy of adjoining sites.

(ii) The effects on the amenity of the surrounding residential area, the streetscape and adjoining public space.

Note: For proposals of two or more dwellings on a site, when addressing or assessing potential effects in relation to matters (i) and (ii) above, applicants and the Council can be informed by the relevant outcomes identified in the Medium Density Design Guide.

~~Where the proposal is for two or more dwellings, the following mixed use and medium density residential development design elements:~~

~~— a) — Building height~~

~~— b) — Recession planes and setbacks~~

~~— c) — Indoor and outdoor living spaces~~

~~— d) — Open space and boundary treatments~~

~~— e) — Entrances, carparking and garages~~

~~— f) — On-site stormwater management~~

~~— g) — End / side wall treatment~~



- ~~h) Building materials~~
- ~~i) Bike parking, storage and service areas~~
- ~~j) Privacy and safety~~
- ~~k) Landscaping~~
- ~~l) Historic character in Petone-Moera~~

~~When considering the matters in (iii), the Council will be principally guided by its Medium Density Design Guide.~~

Links to:

Objectives 4A 2.3, 4A 2.4

Policies 4A 3.4, 4A 3.5, 4A 3.6, 4A 3.7



Rule 4A 4.2.12 Stormwater Retention

(a) Construction or alteration of a roofed building, excluding accessory buildings or additions to an existing building, is a **permitted** activity if:

(i) A rainwater tank is provided for the building that collects all rainwater from the roof of the building. The rainwater tank must have the following volumes:

Roof area of 100m² or less - 2,000 litre capacity.

Roof area of 100m² to 200m² - 3,000 litre capacity.

Roof area of more than 200m² - 5,000 litre capacity.

The tank must meet the specifications, and be installed in accordance with Acceptable Solution #1 from the Wellington Water guide *Managing Stormwater Runoff, The use of raintanks for hydraulic neutrality, Acceptable solution #1 dated June 2019*.

No rainwater tank is required for the construction of an Accessory Building.

(b) Construction or alteration of a roofed building, excluding accessory buildings or additions to an existing building, is a **restricted discretionary** activity.

Discretion is restricted to:

(i) The effects on the stormwater system.

(ii) The potential for increased surface ponding and flooding.

(iii) The mitigation of additional stormwater runoff through other means.

Links to:

Objective 4A 2.5

Policy 4A 3.9



4F Medium Density Residential Area Activity

4F 4 Rules

4F 4.2 Development Standards

Rule 4F 4.2.1 Site Coverage

(a) Construction or alteration of a building is a **permitted** activity if.

(i) The site coverage does not exceed 60%.

(b) Construction or alteration of a building that exceeds 60% site coverage is a **restricted discretionary** activity.

Discretion is restricted to:

(i) The effects on the privacy of adjoining sites.

(ii) The effects on the amenity of the surrounding residential area, the streetscape and adjoining public space.

Note: When addressing or assessing potential effects in relation to matters (i) and (ii) above, applicants and the Council can be informed by the relevant outcomes identified in the Medium Density Design Guide.

The following mixed use and medium density residential development design elements:

- a) — Building height
- b) — Recession planes and setbacks
- c) — Indoor and outdoor living spaces
- d) — Open space and boundary treatments
- e) — Entrances, carparking and garages
- f) — On-site stormwater management
- g) — End / side wall treatment
- h) — Building materials
- i) — Bike parking, storage and service areas
- j) — Privacy and safety



— k) — Landscaping

~~When considering the matters in (iii), the Council will be principally guided by its Medium Density Design Guide.~~

Links to:

Objectives 4F 2.2, 4F 2.3, 4F 2.4, 4F 2.5

Policies 4F 3.2, 4F 3.3, 4F 3.4, 4F 3.5, 4F 3.6, 4F 3.8



Rule 4F 4.2.3 Recession Planes

(a) Construction or alteration of a building is a **permitted** activity if the following reversion plane requirements are being met:

- (i) 3.5m +45° from all side and rear boundaries.
- (ii) For sites adjoining other Residential Activity Areas the reversion plane requirements of the adjoining Residential Activity Area shall be complied with at the shared boundary.

No reversion planes are required from side or rear boundaries within the Medium Density Residential Activity Area where there is an existing or proposed common wall between two buildings.

No reversion planes are required from road boundaries and existing or proposed internal boundaries within a site.

(b) Construction or alteration of a building that does not meet the reversion plane requirements is a **restricted discretionary** activity.

Discretion is restricted to:

- (i) The effects on the privacy of adjoining sites.
- (ii) The effects on shading of adjoining sites.
- (iii) The effects on the amenity of the surrounding residential area, the streetscape and adjoining public space.

Note: When addressing or assessing potential effects in relation to matters (i), (ii) and (iii) above, applicants and the Council can be informed by the relevant outcomes identified in the Medium Density Design Guide.

~~The following mixed use and medium density residential development design elements:~~

- ~~a) Building height~~
- ~~b) Recession planes and setbacks~~
- ~~c) Indoor and outdoor living spaces~~
- ~~d) Open space and boundary treatments~~
- ~~e) Entrances, carparking and garages~~
- ~~f) On-site stormwater management~~
- ~~g) End / side wall treatment~~
- ~~h) Building materials~~
- ~~i) Bike parking, storage and service areas~~
- ~~j) Privacy and safety~~



— k) — Landscaping

~~When considering the matters in (iv), the Council will be principally guided by its Medium Density Design Guide.~~

Links to:

Objectives 4F 2.2, 4F 2.3, 4F 2.4, 4F 2.5

Policies 4F 3.2, 4F 3.3, 4F 3.4, 4F 3.5, 4F 3.6, 4F 3.8



Rule 4F 4.2.4 Yards

(a) Construction or alteration of a building is a **permitted** activity if:

(i) The building is not located within the following yard setbacks:

Front yards 2m

Side yards 1m

Rear yards 1m

(ii) One accessory building may be located in a side and/or rear yard, provided that the building does not extend more than 6m along the length of any boundary and is not located in a yard that is directly adjoining the rail corridor.

No yard requirements apply along site or rear boundaries where there is an existing or proposed common wall between two buildings.

No yard requirements apply along existing or proposed internal boundaries within a site.

Eaves may encroach into any yard by up to 0.6 m.

(b) Construction or alteration of a building that does not meet the yard requirements is a **restricted discretionary** activity.

Discretion is restricted to:

- (i) The effects on the privacy of adjoining sites.
- (ii) The effects on the amenity of the surrounding residential area, the streetscape and adjoining public space.

Note: When addressing or assessing potential effects in relation to matters (i) and (ii) above, applicants and the Council can be informed by the relevant outcomes identified in the Medium Density Design Guide.

~~(iii) The following mixed use and medium density residential development design elements:~~

- ~~a) Building height~~
- ~~b) Recession planes and setbacks~~
- ~~c) Indoor and outdoor living spaces~~
- ~~d) Open space and boundary treatments~~
- ~~e) Entrances, carparking and garages~~
- ~~f) On-site stormwater management~~
- ~~g) End / side wall treatment~~



- h) — Building materials
- i) — Bike parking, storage and service areas
- j) — Privacy and safety
- k) — Landscaping

~~When considering the matters in (iii), the Council will be principally guided by its Medium Density Design Guide.~~

Links to:

Objectives 4F 2.2, 4F 2.3, 4F 2.4, 4F 2.5

Policies 4F 3.2, 4F 3.3, 4F 3.4, 4F 3.5, 4F 3.6, 4F 3.8



Rule 4F 4.2.10 Stormwater Retention

(a) Construction or alteration of a roofed building, excluding accessory buildings or additions to an existing building, is a **permitted** activity if:

(i) A rainwater tank is provided for the building that collects all rainwater from the roof of the building. The rainwater tank must have the following volumes:

Roof area of 100m² or less - 2,000 litre capacity.

Roof area of 100m² to 200m² - 3,000 litre capacity.

Roof area of more than 200m² - 5,000 litre capacity.

The tank must meet the specifications, and be installed in accordance with Acceptable Solution #1 from the Wellington Water guide *Managing Stormwater Runoff, The use of raintanks for hydraulic neutrality, Acceptable solution #1 dated June 2019*.

No rainwater tank is required for the construction of an Accessory Building.

(b) Construction or alteration of a roofed building, excluding accessory buildings or additions to an existing building, that does not meet the rainwater tank requirements is a **restricted discretionary** activity.

Discretion is restricted to:

- (i) The effects on the stormwater system.
- (ii) The potential for increased surface ponding and flooding.
- (iii) The mitigation of additional stormwater runoff through other means.

Links to:

Objective 4F 2.6

Policy 4F 3.9



5E Suburban Mixed Use Activity Area

5E 4 Rules

5E 4.2 Development Standards

Rule 5E 4.2.2 Recession Planes

(a) Construction or alteration of a building is a **permitted** activity if the following recession plane requirements are being met:

- (i) For sites adjoining a Residential Activity Area the recession plane requirements of the adjoining Residential Activity Area shall be complied with at the shared boundary.

No recession planes are required from road boundaries, boundaries within the Suburban Mixed Use Activity Area and existing or proposed internal boundaries within a site.

(b) Construction or alteration of a building that does not meet the recession plane requirements is a **restricted discretionary** activity.

Discretion is restricted to:

- (i) The effects on the amenity of adjoining residential sites.
- (ii) The effects on the privacy of adjoining residential sites.
- (iii) The effects on shading of adjoining residential sites.

Note: When addressing or assessing potential effects in relation to matters (i), (ii) and (iii) above, applicants and the Council can be informed by the relevant outcomes identified in the Medium Density Design Guide.

The following mixed use and medium density residential development design elements:

- a) — Building height
- b) — Recession planes and setbacks
- c) — Indoor and outdoor living spaces



- ~~— d) — Open space and boundary treatments~~
- ~~— e) — Entrances, carparking and garages~~
- ~~— f) — On-site stormwater management~~
- ~~— g) — End / side wall treatment~~
- ~~— h) — Building materials~~
- ~~— i) — Bike parking, storage and service areas~~
- ~~— j) — Privacy and safety~~
- ~~— k) — Landscaping~~

~~When considering the matters in (iv), the Council will be principally guided by its Medium Density Design Guide.~~

Links to:

Objectives 5E 2.2, 5E 2.3

Policies 5E 3.4, 5E 3.5, 5E 3.6, 5E 3.7, 5E 3.8



Rule 5E 4.2.3 Yards

(a) Construction or alteration of a building is a **permitted** activity if the following yard requirements are being met:

(i) For sites adjoining a residential activity area the building is not located within the following yard setbacks:

Side yards 3m along the shared side boundary

Rear yards 3m along the shared rear boundary

No yard requirements apply along road boundaries, boundaries within the Suburban Mixed Use Activity Area and existing or proposed internal boundaries within a site.

(b) Construction or alteration of a building that does not meet the yard requirements is a **restricted discretionary** activity.

Discretion is restricted to:

(i) The effects on the amenity of adjoining residential sites.

(ii) The effects on the privacy of adjoining residential sites.

Note: When addressing or assessing potential effects in relation to matters (i) and (ii) above, applicants and the Council can be informed by the relevant outcomes identified in the Medium Density Design Guide.

The following mixed use and medium density residential development design elements:

- a) — Building height
- b) — Recession planes and setbacks
- c) — Indoor and outdoor living spaces
- d) — Open space and boundary treatments
- e) — Entrances, carparking and garages
- f) — On-site stormwater management
- g) — End / side wall treatment
- h) — Building materials
- i) — Bike parking, storage and service areas
- j) — Privacy and safety
- k) — Landscaping



~~When considering the matters in (iii), the Council will be principally guided by its Medium Density Design Guide.~~

Links to:

Objectives 5E 2.2, 5E 2.3

Policies 5E 3.4, 5E 3.5, 5E 3.6, 5E 3.7, 5E 3.8



Rule 5E 4.2.9 Stormwater Retention

(a) Construction or alteration of a roofed building, excluding accessory buildings or additions to an existing building, is a **permitted** activity if:

(i) A rainwater tank is provided for the building that collects all rainwater from the roof of the building. The rainwater tank must have the following volumes:

Roof area of 100m² or less - 2,000 litre capacity.

Roof area of 100m² to 200m² - 3,000 litre capacity.

Roof area of more than 200m² - 5,000 litre capacity.

The tank must meet the specifications, and be installed in accordance with Acceptable Solution #1 from the Wellington Water guide *Managing Stormwater Runoff, The use of raintanks for hydraulic neutrality, Acceptable solution #1 dated June 2019* (Appendix General Residential X).

(b) Construction or alteration of a roofed building, excluding accessory buildings or additions to an existing building, that does not meet the rainwater tank requirements is a **restricted discretionary** activity.

Discretion is restricted to:

(i) The effects on the stormwater system.

(ii) The potential for increased surface ponding and flooding.

(iii) The mitigation of additional stormwater runoff through other means.

Links to:

Objective 5E 2.5

Policy 5E 3.9



Medium Density Design Guide

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3.3 INDOOR AND OUTDOOR LIVING SPACES

Provide outdoor living spaces that are directly accessible from an indoor living area to which they relate and ideally face north, west or east to receive direct sunlight



In Suburban Mixed Use Activity Areas each dwelling must have a minimum outdoor living space area of 10m² with a minimum dimension of 2m.

For dwellings located entirely above ground floor level the outdoor living space requirement can be satisfied by providing a balcony or roof terrace with a minimum area of 5m² with a minimum dimension of 2m.



In the Medium Density Residential Activity area, each dwelling must have a minimum outdoor living space over 20m² with a minimum dimension of 3m.

For a dwelling located entirely above ground floor, the outdoor living space requirement can be satisfied by providing a balcony or roof terrace with a minimum area of 10m² with a minimum dimension of 2m.



In the General Residential Activity Area each dwelling must have a minimum outdoor living area of 50m² with a minimum dimension of 4m. The minimum outdoor living area in a Comprehensive Residential Development is 20m² with a minimum dimension of 3m.

For a dwelling located entirely above ground floor the outdoor living space can be a balcony or roof terrace with a minimum area of 10m² with a minimum dimension of 2m.

In many instances the outdoor living space will be a dwelling's primary space for outdoor entertainment, relaxing and recreation. Its quality and accessibility can have a significant impact on amenity. Outdoor living space should be directly accessible from the dwelling to which it relates, ideally from living areas.

Indoor and outdoor living space should have a reasonable level of privacy from adjoining units, good access to sunlight, shelter from prevailing winds, and a sense of openness. In some developments, a unit's outdoor living space may be located in the front yard.

Linking outdoor areas with the main living areas of a dwelling, e.g. lounge or dining room, it encourages their use, provides a pleasant outlook and allows greater flexibility for small spaces by allowing them to function as extensions to the indoor areas of the house.



The most desirable option is to provide direct access and large glazing to allow free movement between indoors and out.