

5. PROPOSED VARIATION 58: AMENDMENT TO LIVING ZONE

Officer responsible
Environmental Services Manager

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The purpose of this report is to provide additional information to the Regulatory and Consents Committee in respect of Variation 58 to the Plan be notified. This variation concerns extending the date that exceptions apply in respect of residential site density for sites created between the date of notification of the Plan (24 June 1995) and the date of the release of decisions on the Proposed Plan (8 May 1999).

EXISTING RULES – WHAT THEY SAY

Rules 2.2.1 and 2.4.1 require that each residential unit in the Living 1, 2 and H Zones shall be contained within a its own separate site with a minimum net area as given in these rules. Various exceptions apply to these rules.

One of these exceptions concerns Special Amenity Areas. These exceptions state that in SAM areas 6, 12 and 14 contained in the Living 2 Zone, the standards for the Living 1 Zone shall apply (see 2.2.1 (b) page 2/15 and 2.4.1 (e) page 2/21). In rule 2.4.1, a further exception states that within SAM areas 8, 8a and 8b, the minimum net area is 500m² (see 2.4.1 (a)).

A further exception that applies in both 2.2.1 and 2.4.1 allows residential units to be erected on sites smaller than the normal minimum, where these sites were already approved at the date of notification of the Plan (i.e. 24 June 1995) **and** where **all** other standards are met.

The exact wording of this exception in rule 2.2.1 is:

“for residential units to be erected on fee simple titles, or on vacant shares of fee simple titles over which there is/are existing cross-lease(s), or on unit titles where a proposed unit development plan is already approved, as at the date of notification of the District Plan (24 June 1995), there shall be no minimum net area, provided that all other applicable development standards are complied with. The applicable development standards are:

Clause 2.2;

Part 9, Clause 5.2; and

Part 13, Clauses 2.2 and 2.3.

(Refer also to subdivision rules in Part 14 for further cross-leases which require subdivision consent.)”

Similar wording exists in rule 2.4.1.

Rule 4.3.14 in the subdivision section also enables there to be no minimum net area where subdivision consent has already been obtained or where a certificate of compliance or resource consent has been issued for a building, before the date of the notification of the Plan.

PREVIOUS DISCUSSION ON PROPOSED VARIATION 58

At the meeting of the Regulatory and Consents Committee on 15 March 2002 the Committee considered proposed Variation 58 to the Plan. This variation proposed to change the wording of these exceptions to say, “as at the date of the release of the District Plan (8 May 1999)”.

This change was proposed due to a change in the definition of net site area which occurred via a decision on the City Plan.

In the notified version of the Proposed Plan the definition of net site area allowed up to 30m² of a site used for access purposes to be exempt from the definition of net site area. Following the release of decisions on the Proposed Plan in May 1999 the 30m² exemption was removed. As a result, sections were created between the date of the notification of the Proposed Plan (24 June 1995) and the release of decisions (8 May 1999) that do not comply with the current site density requirements. Resource consent for a restricted discretionary activity would now be required to establish a residential unit on such sections.

If people legally created a lot of 420m² in the Living 1 Zone between June 1995 and May 1999, it is reasonable that they should not have to apply for a land use consent.

At the meeting of 15/3/02 the Committee was happy to exclude lots of 420m² in the Living 1 Zone created between June 1995 and May 1999, but was concerned about exempting lots of less than 420m².

WHAT NEXT?

As a result of the Committee concerns, and following legal advice, Variation 58 has now been redrafted so that the existing rules (2.2.1 and 2.4.1) remain essentially unchanged for lots created before 24 June 1995 and an exception is added for lots created between 24 June 1995 and 8 May 1999. Consistent with the definition of "net site area" at the time, this exception would limit the minimum lot size to 30m² less than the minimum net area required per residential unit during this time period.

Please see attached variation with proposed wording changes for rules 2.2.1 and 2.4.1.

These proposed amendments:

- Enable the existing exception to continue to apply to lots created before June 1995.
- Require lots created between June 1995 and May 1999 to meet the minimums as specified in the new exception, provided they comply with all other development and critical standards.

Changing rule 4.3.14 of the subdivision section to be consistent with the changes proposed for 2.2.1 and 2.4.1 has been discussed with Ted Barwell, Subdivisions Officer. Various different minimum lot areas have applied between June 1995 and May 1999. For example in the Living 1 Zone alone, taking into account the old definition for net site area, the minimum has been 420m², and 330m² or 390m² with building commitment. Consequently, amending 4.3.14 to be consistent with 2.2.1 and 2.4.1 would result in a very complicated rule. As clause 4.3.14 only applies where subdivision consent or a certificate of compliance or resource consent for building has already been approved, it is considered that amending rule 4.3.14 to refer to the date of release of the Plan would have minimal effect. Consequently, it is proposed that rule 4.3.14 continue to refer to the date of the release of decisions on the Plan.

The proposed changes will not result in the creation of any new lots that are below the minimum net area required by rules concerning residential site density or subdivision.

Recommendation: That the Council initiate Variation 58 pursuant to Clause 16A of the First Schedule of the Resource Management Act 1991.

Recommendation from the Chair:

1. That the Section 32 report be received.
2. That Variation 58 be adopted and publicly notified.