

MEMORANDUM

TO: Quentin Budd, Consents Team Leader
FROM: Diana Aquilina, Legal Counsel
DATE: 12 March 2024

INTRODUCTION

- The purpose of this memorandum is to outline Council's interpretation of Rule 2.4.1.3(b) ("Rule") of the Operative Waipā District Plan (ODP), and in particular Council's view on whether the first sentence of the Rule requires compact housing to comprise a minimum of seven or more dwellings per site:
 - only within the compact housing overlay identified on the Planning Maps ("Narrow Interpretation"); or
 - within all three locations specified in the first sentence of the Rule ("Broad Interpretation").
- This memorandum is produced in response to Mr Lang's memorandum of 29 February 2024, which concluded that the Narrow Interpretation ought to apply ("Narrow Interpretation"). For the reasons set out in this memorandum, Council's view is that it is the Broad Interpretation applies.

RULE AND INTERPRETATION PRINCIPLES

- District Plans must be interpreted by having regard to the plain meaning of the words but also the immediate context in which they are used, including the objectives and policies of the plan¹.
- The Rule provides:

Compact housing seven or more dwellings per site located within the compact housing overlay identified on the Planning Maps, or as provided for in Rule 2.4.1.3.c., or within the following areas of the C1 and C2/C3 Structure Plan areas:

Within 200m of an active recreation open space, the Town Belt, a neighbourhood centre or a school;
or

Within 100m of a local centre or local open space; or

Within a 'compact housing' overlay identified within the structure plan maps.

For compact housing within the C1 and C2/C3 Structure Plan areas, non-compliance with any of the performance standards in Section 2.4.2 shall retain Restricted Discretionary Activity status (and this rule prevails over any rule to the contrary).

Assessment will be restricted to the following matters:

Building location, bulk and design; and

Landscaping; and

¹ *Powell v Dunedin City Council* [2004] 3 NZLR 721

Location of parking areas and vehicle manoeuvring; and

Crime Prevention through Environmental Design; and

Traffic generation and connectivity; and

Noise; and

Stormwater disposal; and

Alignment with any relevant Urban Design Guidelines approved by Council.

These matters will be considered in accordance with the assessment criteria in Section 21.

PLAIN MEANING OF RULE

5. On the plain reading of the first sentence of the Rule, the words “seven dwellings or more per site” are clearly linked to all locations listed in that sentence, not just the first. The Narrow Interpretation ignores the prominent placing of the minimum dwelling requirement at the beginning of the Rule and goes against the logical flow of the sentence. This is particularly as the minimum dwelling requirement is the only additional condition specified in the sentence, apart from the specified locations. Given this, and its placement at the beginning of the sentence, it logically follows that the minimum dwelling requirement applies to all listed locations, rather than simply the first. Taking the Narrow Interpretation would involve artificially dividing the sentence into three separate parts after the word “compact housing”, without any punctuation or otherwise to support that approach.
6. The plain and more logical reading of the sentence supports taking the Broad Interpretation.

CONTEXT OF RULE

7. Compact housing is defined in the District Plan as follows (emphasis added):
*housing development in which the design of buildings, their layout, access and **relationship to one another** has been planned in a **comprehensive manner to achieve compatibility between all buildings** on a Site or Sites. This can include Papakāinga housing, terraces, duplexes, apartments and town houses, but excludes retirement village accommodation and associated care facilities.*
8. District Plan Policy 2.1.3 provides:
These [compact housing] development options are required to be comprehensively designed, co-ordinated with infrastructure provision, take into account key elements of character, and address effects on neighbouring properties
9. District Plan Policy 2.3.4.5(i) further provides:
in all cases compact housing shall be comprehensively designed and shall incorporate the sustainable design and layout principles
10. The definition of compact housing in the ODP clearly contemplates that this form of housing by its very nature entails multiple dwellings. From the policy principles in the District Plan, it is also clear that “compact housing” is intended to be established at a larger scale in order to meet the objective for this form of housing to be “comprehensively designed”.

11. The definition and policy objectives clearly support taking the Broad Interpretation of the Rule. If the Narrow Interpretation of the Rule was followed, then the Rule would enable as a restricted discretionary activity the construction of only 1 or 2 “compact housing” dwellings at any one time. This would enable staggered, ad-hoc and piecemeal development of this form of housing, contrary to the “comprehensive design” policies set out of the ODP, and could fall outside the scope of the definition of compact housing itself.
12. The Broad Interpretation better aligns with the definition of ‘compact housing’ in the ODP, and supports the ODP policy principles, as clearly requiring minimum dwelling levels across all the specified locations better enables the comprehensive design of this housing type.

ADDITIONAL SUPPORT

13. The Broad Interpretation is also reinforced by viewing the history of the Rule itself. Council, in its Plan Change 7 decision-report, considered inclusion of the C1 and C2/C3 growth cells in the Rule. As part of this, it specifically considered and rejected the request by a plan change submitter for this Rule to be amended to allow single compact housing sites in the C1 and C2/C3 growth cells. This supports the view that the Rule should be interpreted to align with the Broad Interpretation.
14. Mr Lang relies on the requirements of Rule 2.4.2.44 to support the Narrow Interpretation of the Rule. However, we do not see how this is the case. Rule 2.4.2.44 relates to performance standards and any non-application of this Rule does not negate the application of the minimum dwelling requirement in Rule 2.4.1.3(b). This is especially in light of the Policy specified in Policy 2.3.5.2 to “encourage creative and innovative approaches to urban design and development within the ...C2 and C2/C3 Structure Plan Area”, which supports the intention to enable more freedom with design in this area. However, this does not limit the need for this to be undertaken in a comprehensive fashion by having minimum dwelling numbers.

CONCLUSION

15. After considering the interpretation of the Rule against the settled principles of interpretation as outlined above, Council’s view is that the Broad Interpretation of the Rule applies.

