



Aide-memoire

Bringing forward and strengthening the NPS-UD – options to provide greater flexibility for councils			
Date:	20 August 2021	Security level:	In Confidence
Priority:	Medium	Report number:	HUD: AMI21/22080623 MfE: BRF-498

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Hon David Parker Minister for the Environment	

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Minister's office to complete

<input type="checkbox"/> Noted <input type="checkbox"/> Seen <input type="checkbox"/> See Minister's notes <input type="checkbox"/> Needs change <input type="checkbox"/> Overtaken by events <input type="checkbox"/> Declined <input type="checkbox"/> Referred to (specify) _____	Comments
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Bringing forward and strengthening the NPS-UD – options to provide greater flexibility for councils

For: Hon Dr Megan Woods, Minister of Housing
Hon David Parker, Minister for the Environment

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Purpose

- 1 This paper provides information on options to increase flexibility for councils when intensifying housing, as part of measures to bring forward and strengthen the National Policy Statement on Urban Development (NPS-UD). It also provides further information on options to support greenfield developments.

Background

- 2 Cabinet has agreed several measures to bring forward and strengthen the NPS-UD. The proposed package of measures would:
 - enable the intensification outcomes from the NPS-UD to be achieved earlier
 - open up more development capacity by requiring tier 1 councils to implement a medium density residential standard (MDRS) as a default within residential zones in major urban areas.
- 3 You have requested further information on policy options to allow greater flexibility for councils when implementing these policies and to enable private plan changes in greenfield areas to use a streamlined planning process (SPP).

Enabling greater flexibility for councils

- 4 We have considered three options to enable greater flexibility for councils. These are:
 - a. modifying policy 3(d) of the NPS-UD
 - b. enabling the use of infrastructure requirements
 - c. adding a new qualifying matter that enables trading off intensification.
- 5 Our assessment has been based on the following criteria:
 - a. added flexibility for councils
 - b. the clarity and certainty any changes would provide for councils, therefore reducing the work required to produce Resource Management Act 1991 (RMA) plan changes
 - c. potential impacts on development capacity and urban form, including supporting intensification in areas where there is high accessibility and demand.
- 6 We have assessed each of the options against these criteria in Annex A.

Option One – modify and clarify policy 3(d) of the NPS-UD

- 7 Our recommended option is to modify **policy 3(d)** of the NPS-UD to provide greater direction where intensification should be enabled. This option would reduce workloads and costs for councils and better enable them to shape patterns of development.
- 8 **Policies 3(a), (b) and (c)** of the NPS-UD direct councils to intensify as much as possible within centre city zones and to at least six storeys within walkable catchments of centre city zones, metropolitan centres and rapid transit stops.
- 9 Outside of these areas, **policy 3(d)** of the NPS-UD directs councils to enable heights and density commensurate with accessibility and/or demand. Councils have identified some issues with this direction that make it difficult to implement, particularly the need for demand assessments. Current evidence of demand, including through the recently completed housing components of the Housing and Building Development Capacity Assessments (HBAs), does not necessarily provide good information of sub-city level demand and translating it to plan changes can be difficult. In addition, the MDRS means that this policy is less important – as in many cases the intensification required by policy 3(d) would have been achieved by upzoning from one storey or two to three storeys and allowing more dwellings per site.
- 10 We propose modifying policy 3(d) to focus primarily on accessibility and be more directive about how accessible areas should be identified. This could be achieved by defining accessible areas as locations within a walkable distance of major public transport routes or suburban centres. Councils would be required to consider appropriate heights and densities in these areas and, beyond these areas, would have the flexibility to determine whether to introduce more permissive zoning than the MDRS requires.
- 11 This option would have the benefits outlined below.
 - a. It would reduce workloads for councils. Councils would no longer need to undertake demand assessments. The need to undertake accessibility assessments would be reduced. This would reduce some of the technical complexity involved with producing plan changes, enabling plans to be produced faster.
 - b. It would support well-designed cities – as it would focus council attention on those areas that are well connected to public transport or are within a walkable distance of key services.
 - c. It would give councils more ability to intensify housing in areas they see as appropriate, and in line with existing spatial plans. It could, for example, limit some of the potential perverse impacts of policy 3(d), which may encourage cities to upzone far from city centres (that is where assessments have indicated strong demand, but accessibility is poor).
 - d. It would be relatively straight-forward to make the change. It could be implemented under the current Cabinet decisions, which enable you to make consequential changes to the NPS-UD via the proposed amendment Bill.
- 12 Although we have not yet undertaken detailed analysis, we consider it possible that this change could result in less development capacity being added in areas, such as suburbs that are high demand but not well serviced by public transport. However, the MDRS will still be applied to these areas. It is unlikely the MDRS will be significantly less enabling than any zoning councils would have enabled under the current version of policy 3(d).
- 13 Te Tūāpapa Kura Kāinga (HUD) and the Ministry for the Environment have discussed this option with the Ministry of Transport (MoT), and the potential benefits in terms of intensification in areas that are well-connected to public transport. As these discussions have been preliminary, officials from HUD, MfE, MoT and Waka Kotahi will need to work together to identify appropriate replacement wording if you decide to proceed with this option.

14 This change could have different impacts in different cities. In Wellington City, it would support the spatial plan recently approved by the council as the main additional areas proposed for intensification in the plan are on major bus routes. In Auckland, it would align with the initial steps taken by the council to identify 3(d) policy areas, though would reduce the scope of this work. In Christchurch, it could reduce concerns that previous high growth areas with poor transport links should have significant additional capacity added.

Description	Modify and clarify policy 3(d) of the NPS-UD
Main impacts	<ul style="list-style-type: none"> • Reduces workloads for councils to implement policy 3(d). • Provides clarification of the definition of 'accessibility', reducing ambiguity for councils. • Supports well designed cities. • Would provide some flexibility for councils to enable intensification in line with their existing spatial plans. • Would centre demand around accessibility. • Will encourage the use of public and active transport and increase access to community services.
Considerations	<ul style="list-style-type: none"> • Potential loss of capacity in high demand areas that are not well serviced by public transport – although MDRS applies to these areas. • Further policy work required to define 'accessibility' to ensure good outcomes.
Likely impact on process	<ul style="list-style-type: none"> • Lowest impact on process compared with other options. • Straightforward implementation.

Option Two – Enable infrastructure requirements

- 15 Councils are likely to raise concerns regarding gaps in infrastructure provision, particularly three waters services, and the potential for development enabled through the MDRS to have unexpected impacts on current services.
- 16 One way these issues are managed at present is via infrastructure requirements. These are rules in zoning that can stop a consent being issued if three waters infrastructure is not in place to service the site.
- 17 The MDRS would not allow councils to use infrastructure requirements in this way – as three storeys and three dwellings would be permitted without a resource consent.
- 18 We have considered a number of options to manage infrastructure concerns, including providing councils with more flexibility to identify areas where intensification is not immediately appropriate. If you indicated this was a priority, our current preferred mechanism would involve:
- introducing a new qualifying matter that allowed councils to require resource consents for building on some sites (including building that would be permitted by the MDRS elsewhere) if they had identified infrastructure constraints, and
 - requiring that consent applications for these sites could only be declined on a narrow basis – that is, if water infrastructure has insufficient capacity.
- 19 There would be advantages with this approach – zoning would be in place and would become enabling once infrastructure investment occurred. Councils would be unable to conflate infrastructure concerns with other planning concerns.
- 20 However, there are risks to this option. Councils may restrict large areas from development or use the qualifying matter to game where they intensify. It would provide an additional element in ISPP plan changes that could be challenged by those with status quo biases. This option could also reduce incentives on councils to provide infrastructure to support growth and address infrastructure deficits that have built up over time.
- 21 For this approach to be effective, it would have to be relatively straightforward for councils to implement. We would look at ways to do this as part of drafting the Bill.

Description	Enable infrastructure requirements
Main impacts	<ul style="list-style-type: none"> • Allows councils time to provide necessary infrastructure. • Consistent with the longer timeframes for three waters reform.
Considerations	<ul style="list-style-type: none"> • Does not support good urban form and will lead to more development further away from the jobs, services and community. • May allow councils to avoid infrastructure provision in some areas. • Is likely to push decision-making to the resource consent stage, which has inefficiencies and inconsistencies across the country. • Would reduce the overall effectiveness of this proposal as large areas may not be developed. • Could be used by those with status quo bias as a reason to challenge intensification in their area. • Adds complexity and delays to decisions on NPS-UD and MDRS.
Likely impact on process	<ul style="list-style-type: none"> • Would be more work than modifying policy 3(d) but less than adding a new qualifying matter that enables trading off intensification.

Option Three – Adding a new qualifying matter that enables trading off intensification

- 22 Our previous paper [BRF-446 / AMI20/21080608] provided advice on the option of creating a new qualifying matter that would give councils greater flexibility to reduce intensification in some areas in return for more intensification in others. This would require outlining certain circumstances where a reduction in intensification would be acceptable. These circumstances could include infrastructure issues.
- 23 Although this option would provide councils greater flexibility to trade-off intensification, it could have a number of negative outcomes impacting both development capacity released and urban form. It could be used to exempt high-demand suburbs that have traditionally opposed intensification, and make decision-making slower and more complicated.
- 24 It would also require careful design and adding it to the Bill would take significant additional time to re-draft.

Description	Adding a new qualifying matter that enables trading off intensification
Main impacts	<ul style="list-style-type: none"> • May assist councils to trade off where intensive development can occur in response to potential constraints.
Considerations	<ul style="list-style-type: none"> • Inconsistent with the policy intent behind qualifying matters – which relate to protections in the Resource Management Act. • Not well-integrated with the intent of the MDRS, which is intended to apply broadly. • Could be used by councils to justify more limited intensification in areas that need it most via an increase in intensification in other areas. • Could delay the development of intensification plan changes, as additional work would be required by councils to prepare plans. • Adds complexity and delays to decisions on NPS-UD and MDRS. • Could result in status quo bias as it could be used as a reason to challenge intensification. • Would likely to have an impact on timing and creates a risk that councils are not ready to notify intensification plan changes in August 2022.
Likely impact on process	<ul style="list-style-type: none"> • Would have the greatest impact of all options considered on the legislation process.

Further information on enabling greenfield developments

- 25 We have previously provided you with advice on enabling private plan changes to use the streamlined planning process (SPP) in the RMA if they meet certain criteria. Officials consider

this proposal could be beneficial if properly targeted, particularly for developments in planned growth areas.

- 26 Officials have developed a set of criteria that would determine whether it is appropriate for a private plan change to use an SPP:
 - a. the subject land is already zoned for future urban development or in an identified growth area
 - b. the rezoning will provide significant development capacity
 - c. the area will be well connected along existing or planned transport routes.
- 27 These new criteria for greenfield developments would be in addition to existing criteria in the RMA that plan changes need to meet to use the SPP. These existing criteria require a plan change to address urgent need, implement national direction, or meet a significant community need.
- 28 The Ministry for the Environment notes there would be some resourcing implications for councils, the Ministry, and the Minister for the Environment arising from any additional use of the SPP for private plan changes. There would also be design considerations relating to the decision-making role of the Minister for the Environment and the role of councils that would need to be worked through.

Incorporating private plan changes in the intensification streamlined planning process

- 29 Officials have further explored how to enable greenfield developments through the intensification streamlined planning process (ISPP).
- 30 We consider there is benefit in enabling councils to choose to adopt and incorporate private plan changes in their intensification plan changes and progress them through the ISPP. This would enable councils to bring forward development capacity from greenfield developments sooner, ensure greater plan consistency, and create process efficiencies for both councils and developers.
- 31 Any private plan changes for greenfield developments enabled under this process would need to be in line with the MDRS. However, unlike the MDRS, the private plan change would not have legal effect until the decisions are released after a submissions and hearings process.
- 32 One limitation with this approach is timing. Developers would need to be ready to proceed with a private plan change in time for the August 2022 deadline for public notification of the intensification plan changes. However, this would be an interim measure with the new resource management system in place soon after this deadline.
- 33 Incorporating private plan changes adopted by councils in the ISPP would achieve similar outcomes as enabling private plan changes to use the SPP over the next year. It would be a straightforward addition for officials to make to the ISPP. It could be done on its own, or as part of a package with the SPP proposal if you wanted to provide a longer-term way to enable private plan changes in greenfield areas.

Legislation – next steps

- 34 PCO has made good progress drafting the Bill to implement these measures and we expect to provide a version to your office soon.
- 35 We recommend passing the Bill before the end of the year. This is necessary to provide councils with sufficient certainty to start work on implementing the MDRS, while continuing to develop their intensification plan changes, so they can meet the NPS-UD's requirement for public notification in August 2022.
- 36 If the third reading was scheduled for 16 December (the final sitting day of the year), lodging of the LEG Cabinet Committee paper and Bill could be as late as 9 September and still allow up

to two months for select committee consideration. Lodging after this date would require an even shorter select committee period, or enactment of the Bill in early 2022.

- 37 If the Bill is passed in early 2022, there may not be sufficient time for councils to complete their intensification plan changes and implement the MDRS by the August 2022 public notification deadline. In this situation, we suggest pushing back the deadline by several months to give councils more time. Any delay would need to consider the timing of local government elections (8 October 2022).

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Annex A: Table of options to enable greater flexibility for councils

Proactively released under the provisions of the Official Information Act 1982

Annex A: Assessment of options to enable greater flexibility for councils

Assessment criteria	Option 1 – Modify and clarify policy 3(d) of the NPS-UD	Option 2 – Enable infrastructure requirements	Option 3 – Adding a new qualifying matter that enables trading off intensification
	<i>Modify policy 3(d) of the NPS-UD to provide greater direction where intensification should be enabled.</i>	<i>A new qualifying matter that allows councils to require resource consents in certain areas for sites that would otherwise be permitted by the MDRS but have infrastructure constraints.</i>	<i>A new qualifying matter that would give councils greater flexibility to reduce intensification in some areas in return for more intensification in others.</i>
Added flexibility for councils	+ <ul style="list-style-type: none"> Would provide some flexibility for councils to enable intensification in alignment with their existing spatial plans. 	+ <ul style="list-style-type: none"> Allows councils time to provide necessary infrastructure. Consistent with the longer timeframes for three waters reform. 	+ <ul style="list-style-type: none"> May assist councils to trade off where intensive development can occur in response to potential constraints.
Clarity and certainty for councils	+ <ul style="list-style-type: none"> Reduce workloads for councils to implement policy 3(d). Providing clarification of the definition of 'accessibility' will reduce ambiguity for councils. 	- <ul style="list-style-type: none"> Is likely to push decision-making to the resource consent stage, which has inefficiencies and inconsistencies across the country. Could be used by those with status quo bias as a reason to challenge intensification in their area. Adds complexity and delays to decisions on NPS-UD and MDRS. 	- <ul style="list-style-type: none"> Adds complexity and delays to decisions on NPS-UD and MDRS. Could delay the development of intensification plan changes, as additional work would be required by councils to prepare plans. Could result in status quo bias as it could be used as a reason to challenge intensification. Would likely to have an impact on timing and creates a risk that councils are not ready to notify intensification plan changes in August 2022.
Potential impacts on development capacity and urban form	+ <ul style="list-style-type: none"> Supports well designed cities. Would centre demand around accessibility. Will encourage the use of public and active transport and increase access to community services. Potential loss of capacity in high demand areas that are not well serviced by public transport – although MDRS applies to these areas. 	- <ul style="list-style-type: none"> Does not support good urban form and will lead to more development further away from jobs, services and community. May allow councils to avoid infrastructure provision in some areas. 	- <ul style="list-style-type: none"> Could be used by councils to justify more limited intensification in areas that need it most by increasing intensification in other areas. Not well-integrated with the intent of the MDRS, which is intended to apply broadly.
Overall assessment	+	+/-	-
Considerations associated with this option	<ul style="list-style-type: none"> Further policy work required to define 'accessibility' to ensure good outcomes. 	<ul style="list-style-type: none"> Would reduce the overall effectiveness of the MDRS proposal as large areas may not be developed. 	<ul style="list-style-type: none"> Inconsistent with the policy intent behind qualifying matters – which relate to protections in the Resource Management Act 1991.

KEY	+ mostly positive outcomes	+/- mixture of positive and negative outcomes	- mostly negative outcomes
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