

[In Confidence]

Office of the Minister of Housing
Office of the Minister for the Environment
Cabinet Legislation Committee

Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill: Approval for Introduction

Proposal

1. We seek approval to introduce the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill (the Bill) to rapidly accelerate housing supply where the demand for housing is high.

Policy

Policy agreed by Cabinet

2. On 31 May 2021, Cabinet agreed [CAB-21-MIN-0188 refers] to amend the Resource Management Act 1991 (RMA) and the National Policy Statement on Urban Development 2020 (NPS-UD) to:
 - 2.1 create a streamlined planning process for intensification that enables the intensification outcomes from the NPS-UD to be achieved at least a year earlier
 - 2.2 require councils to implement medium density residential zones as a default setting within our major urban areas.

This Bill is needed to further accelerate housing supply

3. The NPS-UD was gazetted in August 2020 and addresses regulations that restrict land supply. It is a powerful tool for improving housing supply in our highest growth areas. It requires, among other things, that urban councils amend their District Plans to enable intensification in urban areas where people want to live and work.
4. Councils are making good progress implementing the NPS-UD. A key implementation milestone has just been reached, with Tier 1 and Tier 2 councils (representing our largest urban areas) completing the housing component of their housing and business development capacity assessments. These assessments will provide important supply and demand information, so councils can make informed decisions on how much development capacity to open up.
5. However, it will take until at least August 2024 for all the NPS-UD policies to be fully implemented, using current RMA processes. Given the seriousness of the housing crisis, we want the intensification that is enabled by the NPS-UD to occur faster.
6. We propose to do this by amending the RMA and the NPS-UD ahead of the Government's resource management reforms, which are also intended to increase

housing supply. Officials will work to ensure the policy intent in the Bill transitions appropriately into the wider resource management reforms.

The Bill supports a range of outcomes

7. This Bill will accelerate the intensification of housing in New Zealand's urban areas by:
 - 7.1 bringing forward the NPS-UD by enabling councils to implement all policies by mid-2023
 - 7.2 making medium density the default residential zone in our major urban areas by August 2022.
8. These amendments to the RMA will allow more homes to be built close to where people live and work. Increasing housing supply is one of the key actions Government can take to improve housing affordability in New Zealand's main cities.
9. Enabling greater intensification in existing urban areas will enable a range of benefits, including:
 - 9.1 a wider variety of housing options at a range of price points, specifically townhouses, flats and other small dwellings
 - 9.2 more productive and efficient use of urban land, with less pressure for urban dispersal/sprawl (including on to highly productive land)
 - 9.3 more efficient use of existing infrastructure where there happens to be under-utilization and surplus capacity
 - 9.4 greater access to active and public transport and associated reductions in greenhouse gas emissions, if the transport system also supports intensification and mode-shift by improving and prioritising these transport modes
 - 9.5 opportunities to build additional units on current residential properties and support extended and multi-generational family living arrangements, and assist older people to live closer to community services and infrastructure that will allow them to 'age in place'
 - 9.6 fewer activities requiring resource consents.
10. The Bill supports the Government's wider objectives for housing, resource management reforms, and climate change.

The intensification streamlined planning process will make it easier for councils to implement intensification policies

11. Tier 1 councils will use an new intensification streamlined planning process (ISPP) to implement the intensification policies under the NPS-UD. Tier 1 councils are those in the greater urban areas of Auckland, Hamilton, Tauranga, Wellington and Christchurch.
12. While the ISPP is based on the existing Streamlined Planning Process (SPP) available under the RMA, it will likely be faster, easier, and less costly for councils.

Using the ISPP will allow councils to achieve the intensification outcomes of the NPS-UD at least a year earlier than they would using standard RMA processes.

13. The ISPP has been modified from the existing SPP in four ways. It will:
 - 13.1. require the use of the ISPP for all plan changes related to NPS-UD
 - 13.2. include a set of standardised process steps that all councils will use
 - 13.3. require the use of an independent hearings panel
 - 13.4. have the relevant council as the final decision-makers. The Minister for the Environment will be the decision-maker if council and the panel disagrees
14. The ISPP will provide opportunities for iwi/Māori engagement and participation in two ways:
 - 14.1 pre-notification consultation about the ISPP process
 - 14.2 requiring relevant councils to make decisions in a manner that is consistent with iwi and Māori participation legislation, Mana Whakahono ā Rohe, or joint management agreement, when it is considering an independent hearing panel's recommendation.
15. Other stakeholders will have the opportunity to provide feedback and input via submissions and hearings processes.
16. There will be no right of appeal with the ISPP, however, decisions made under this process can be judicially reviewed. This is consistent with the existing SPP in the RMA.

Medium density residential standards will enable greater development capacity and a wider variety of housing choice in our main centres

17. The introduction of medium density residential standards (previously referred to as 'medium density residential zones') as the default in our main urban areas enabling three storeys and three dwellings per site. Most local plan only enable two storeys and one dwelling.
18. All Tier 1 councils will be required to apply medium density residential standards (MDRS) to existing residential areas except for large lot zones. Councils will use the ISPP to implement the MDRS.
19. Exceptions will apply in certain circumstances, based on the qualifying matters set out in clause 3.32 of the NPS-UD. Qualifying matters include where there may be natural hazards, or its necessary to protect historic heritage or uphold Treaty of Waitangi commitments.
20. The standards that will support the MDRS are:
 - 20.1. more flexible height in relation to boundary and site coverage standards to enable three storeys on average-sized sites
 - 20.2. smaller private outlook spaces (ie space between windows and other buildings) and private outdoor spaces (eg balconies)

- 20.3.** development closer to side boundaries
- 20.4.** more resource consents will be able to proceed on a non-notified basis (ie without neighbour approvals), in situations when resource consents are needed.
- 21.** The MDRS also makes building above three stories (or more than 3 dwellings) easier, as the standards require that councils can only require a restricted discretionary consent for such developments and such consents cannot be publicly notified.
- 22.** Increasing the capacity for development in areas where demand is high will likely prompt a supply response, allowing more homes to be built. It is expected new housing developments will benefit from the new MDRS as soon as it is implemented by August 2022. The rate at which developments enabled through this Bill will be delivered is dependent on sector capacity and the impact of short-term supply chain constraints, including availability of labour and materials. However, we note that it generally takes time for a development to get from the planning stage to completion regardless of these factors.
- 23.** We note that Auckland has seen a significant increase in the number of townhouses, flats and smaller dwellings consented since 2016 when the Auckland Unitary Plan, and particularly its Mixed Housing Urban zone, became operative. We want to enable similar outcomes in other parts of the country, as well as more widely across Auckland.

Implementing the Medium Density Residential Standard

- 24.** Implementing the MDRS will not require people to build more densely but will remove planning barriers to make it easier to increase density where demand is highest.
- 25.** All Tier 1 councils will be required to amend their existing RMA plans by replacing all relevant residential zone standards and rules with the MDRS or more permissive standards and rules.
- 26.** To enable a fast supply response, the MDRS will have immediate legal effect when applied in existing residential areas. This means plans implementing the MDRS will have an impact once notified, rather than taking at least a further 12 months under current timeframes.
- 27.** While the Bill provides a requirement that areas identified for development in the future incorporate these standards, the MDRS will not have immediate legal effect in these zones. We consider it would not be appropriate due to the environmental and public participation considerations that have yet to play out in these areas.
- 28.** The seriousness of Aotearoa New Zealand's housing shortage and unaffordability may necessitate applying the MDRS in a Tier 2 urban area. The Bill gives the Minister for the Environment the power to apply the MDRS in Tier 2 urban areas via an Order in Council if the Minister of Housing and the Minister for the Environment consider there is acute housing need in the area. In this situation, Tier 2 councils would implement the MDRS via the ISPP.

Bill modifies policy 3(d) of the NPS-UD

29. As part of our mandate to make delegated decisions on these policy proposals, we have considered how changes could be made to the NPS-UD to provide greater clarification for councils when implementing the MDRS and ISPP, and reduce the work required to do so.
30. 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. Outside these areas, policy 3(d) directs councils to enable heights and density commensurate with accessibility and/or demand.
31. We consider the Bill should modify this policy to reduce its application. The amended policy 3(d) will require councils to enable building heights and density of urban form commensurate with the level of commercial activities and community services within and adjacent to neighbourhood centre zones, local centre zones and town centre zones (or equivalent zones).
32. This change will reduce the need for demand and accessibility assessments, limiting technical work for councils and enabling plans to be produced faster. It would also give councils more ability to intensify housing in areas they see as appropriate, and in line with existing spatial plans.
33. Although this change may lead to reduced development capacity in some areas, this is unlikely to be significant. This is because in many cases, the intensification required by policy 3(d) will be able to be achieved through the MDRS.

We seek approval to a minor and technical change to the NPS-UD

34. We also propose making a change to the definition of 'planning decision' in the NPS-UD. The Bill will change this definition to make it clear that it includes private plan changes adopted and accepted by a council. This is in response to an oral decision¹ from the Environment Court on preliminary questions about the relevance of the NPS-UD to a proposed private plan change to the Auckland Unitary Plan.

We seek approval to a minor and technical change to the RMA

35. Officials have advised that a minor and technical change to section 224 of the RMA is needed to support the policies in the Bill.
36. Certification under section 224 of the RMA is the final step in subdivision process enabling Land Information New Zealand to issue new titles. It is a critical step in enabling housing supply.
37. Section 11(1)(a) of the RMA was replaced in 2020. At that time, the cross-references to section 11 in section 224 should have been amended to refer to section 11(1)(a)(i) or (iii) instead of a section that was repealed (section 11(1A)(b)(i)). We propose this Bill be used to correct this omission. This aligns with the intent of the 2020 RMA amendments, and we do not consider that public consultation is needed.

¹ *Eden-Epsom Residential Protection Society Incorporated v Auckland Council* [2021] NZEnvC 082

We seek approval to amend the RMA to clarify that councils can charge financial contributions for permitted activities

38. Councils have a range of tools to pay for infrastructure caused by growth, including development contributions and rates (governed by the Local Government Act 2002).
39. While not widespread, a small number of Tier 1 and 2 councils charge financial contributions (governed by the RMA). Case law has clarified that financial contributions can be charged for permitted activities². The MDRS will make a large number of additional activities permitted. We want councils to have certainty they can include provisions in their plans to charge financial contributions for the activities permitted by the MDRS.
40. We also consider there is an opportunity to amend the RMA to make it clear that all councils (not just Tier 1 or Tier 2 councils applying the MDRS) can include provisions in their plans that enable them to charge financial contributions for activities that do not require resource consent (permitted activities).
41. The Bill also enables Tier 1 councils (and Tier 2 councils if authorised by Order in Council) to use the ISPP to change or include financial contribution provisions in their district plans.

Minor policy matters

42. We have also made minor and technical decisions in line with the recommendations previously agreed to by Cabinet.
43. Of note, the Bill:
 - 43.1. clarifies notification dates for Tier 2 council plan changes if Cabinet agrees to require a Tier 2 council to apply the ISPP
 - 43.2. amends clause 25 of Schedule 1 of the RMA to ensure councils do not accept or adopt private plan change requests in Tier 1 urban environments which do not give effect to the MDRS (and Tier 2 if the MDRS applies)
 - 43.3. includes transitional provisions on the circumstances when councils will need to withdraw a proposed plan change, as a result of these proposals.

Issues likely to be contentious

44. These policy proposals will likely generate a high level of public interest and give rise to a broad range of views. Many stakeholders recognise the need for further housing intensification in our main urban areas, including the need to provide more housing that is well-connected to transport routes, employment and community facilities. Submitters were largely supportive of the policies outlined in the NPS-UD when it was consulted on in 2019.
45. Some will see benefits in removing barriers to medium density developments, particularly those under-represented in the housing market such as first home buyers and renters. Some homeowners will also see benefits, as fewer activities will require resource consents, such as when adding to or extending existing dwellings.

² *Carterton District Council v McCarron and Butler* [2014] DCR 90

46. Others will be concerned about the impact on their own properties and the aesthetic character of their neighbourhoods, as well as other factors associated with higher density living. These include increased noise, reduced sunlight, on-street parking pressures, and traffic congestion if intensification is not well planned for and delivered.
47. Some people may be concerned that appeal rights will be removed from intensification plan changes that go through the ISPP. This approach has been taken to ensure intensification planning instruments are operative by mid-2023. This is consistent with the existing SPP under the RMA, which also limits appeal rights. Removing appeal rights will be balanced by providing opportunities for Māori, iwi and public participation throughout. Judicial review rights continue to apply.
48. While infrastructure impacts are expected to be manageable in the short to medium term, councils may raise concerns about the impact of further intensification on existing infrastructure, and how they will pay for infrastructure costs caused by growth.
49. The Government is investing significant amounts of money in the infrastructure required to support housing, including through the \$3.8 billion Housing Acceleration Fund and \$460 million for housing and urban development shovel ready projects. Our Government has also passed the Infrastructure Funding and Financing Act 2020 to support councils to finance important infrastructure projects. Several projects are being actively explored.
50. While most councils use development contributions (governed by the Local Government Act 2002), the Bill clarifies the application of financial contributions for permitted activities. This proposal will support some Tier 1 and 2 councils to use financial contributions should they choose to.
51. Councils will also be able to charge for infrastructure costs caused by growth via development contributions, although existing policies will likely need to be updated by councils. § 9(2)(f)(iv)
52. Infrastructure funding and financing will also be addressed through other government work programmes, including reform of the resource management system and the Future for Local Government Review.
53. Councils are currently delivering work across a number of crucial government objectives, including through national direction on issues such as freshwater management. In addition, the sector is facing pressures from engagement and consultation demands from the resource management reform, local government reform and three waters proposals.
54. Councils are likely to raise concerns about the work required to incorporate the MDRS into their plans by August 2022. Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development and the Ministry for the Environment will support councils in this implementation. Officials will work with councils and Local Government New Zealand to see what implementation support would be most effective.

55. Although this Bill will have increased resourcing implications for councils in the short term, we expect that the changes implemented will reduce workloads for some councils over time. The Bill will also position councils well for future change and growth.

Impact analysis

56. A regulatory impact assessment was prepared in accordance with the necessary requirements and was submitted at the time that Cabinet or Cabinet committee approval of the policy relating to the Bill was sought [CAB-21-MIN-0188 refers].

Compliance

57. The Bill complies with each of the following:
- 57.1. the principles of the Treaty of Waitangi
 - 57.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
 - 57.3. the disclosure statement requirements. A departmental disclosure statement has been prepared and is attached to this paper
 - 57.4. the principles and guidelines set out in the Privacy Act 2020
 - 57.5. the Legislation guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
58. There are no relevant international standards and obligations.

Consultation

59. The following have been consulted: Treasury, Ministry of Transport, Department of Internal Affairs, Manatū Taonga Ministry for Culture and Heritage, Office for Seniors, Te Arawhiti, Office for Disability Issues, Ministry of Health, Ministry for Pacific Peoples, Ministry for Primary Industries, and Land Information New Zealand. The Department of Prime Minister and Cabinet was informed.
60. Officials intend to discuss these proposals with relevant councils and iwi and Māori groups once a public announcement has been made.

Binding on the Crown

61. The Act being amended by the Bill binds the Crown, except in the circumstances set out in section 4 of the RMA.
62. The Bill does not make changes to that section.

Creating new agencies or amending law relating to existing agencies

63. The Bill will not create new agencies or amend the law relating to existing agencies.

Allocation of decision-making powers

64. The Bill does not involve the allocation of decision-making powers between the executive, the courts and tribunals.

Associated regulations

65. Tier 2 councils can implement the MDRS and/or policy 5 of the NPS-UD via the ISPP, if authorised via an Order in Council. The Bill provides a flexible approach for supporting this process to reflect that Tier 2 councils may need to enter this process at different times. The Minister for the Environment, in consultation with the Minister of Housing, must be satisfied that the relevant Tier 2 council is experiencing acute housing for this to occur.
66. We will receive further advice from officials on which Tier 2 councils are experiencing acute housing need.

Other instruments

67. The Bill gives the Minister for the Environment the power to issue one or more directions to councils about the membership of a hearings panel for the ISPP. This direction may also include a statement of expectations. This direction is similar to the direction the Minister for the Environment issues under the Streamlined Planning Process and a relevant territorial authority must comply with it. This direction is secondary legislation.

Definition of Minister/department

68. The Bill does not include a definition of department. The Act being amended by the Bill defines 'Minister' as the Minister for the Environment. The Bill does not amend this definition.

Commencement of legislation

69. The Bill provides for the Act to come into force on the day after the date on which it receives Royal Assent.

Parliamentary stages

70. We propose that the Bill be introduced as soon as possible after receiving Cabinet approval, and that Bill be passed by 16 December 2021.
71. We propose the Bill should be referred to the Environment Committee.

Proactive release

72. We intend to proactively release this Cabinet paper and supporting briefings on the websites of Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development and the Ministry for the Environment.

Recommendations

The Minister of Housing and the Minister for the Environment recommend that the Committee:

1. **note** that New Zealand is facing a housing crisis and increasing the housing supply is one of the key actions the Government can take to improve housing affordability
2. **note** that the NPS-UD is a powerful tool for improving housing supply in our highest growth areas

3. **note** the intensification enabled by the NPS-UD needs to be brought forward and strengthened given the seriousness of the housing crisis and this can be done by amending the RMA and the NPS-UD ahead of the Government's resource management reforms
4. **note** that the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill seeks to bring forward and strengthen the NPS-UD by removing restrictive planning rules to rapidly accelerate the supply of housing by creating a streamlined planning process that:
 - 4.1. enables the intensification outcomes anticipated from the National Policy Statement on Urban Development 2020 to be achieved earlier, and;
 - 4.2. requires councils to implement medium density residential standards as default standards in residential zones within major urban area
5. **agree** that the Bill enables a change to the definition of planning decision in the NPS-UD to make it clear that it applies to both private plan changes adopted and accepted by a council
6. **agree** that the Bill makes a minor and technical amendment to section 224 of the RMA to amend a technical error and to support the policies in the Bill
7. **agree** that the Bill amends the RMA to enable local authorities to include provisions in their plans to enable financial contributions to be charged for permitted activities
8. **approve** the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill for introduction subject to the final approval of the government caucus and sufficient support in the House of Representatives
9. **note** that the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill holds a priority of category 2 on the 2021 Legislation Programme (must be passed by the end of 2021)
10. **agree** that the Bill be introduced as soon as possible
11. **agree** that the government propose that the Bill be:
 - 11.1. referred to the Environment Committee for consideration;
 - 11.2. enacted by 16 December 2021.

Authorised for lodgement

Hon Dr Megan Woods
Minister of Housing

Hon David Parker
Minister for the Environment

Proactively released under the provisions of the Official Information Act 1982