Our advice

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What does the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 enable?

Background

In November 2021 we provided the Council with advice on the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill (**the Bill**).

After we provided that advice, the Bill went through the Select Committee process and its second and third reading. A number of changes were made to the Bill during that process.

The Bill received royal assent on 20 December 2021, becoming the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (the **Amendment Act**). The changes made in the Amendment Act have now been implemented in the Resource Management Act 1991 (the **Act**).

You have asked for our assistance in interpreting particular provisions in the Amendment Act, with a focus on the scope of the intensification streamlined planning process (**ISPP**) (and consequentially Intensification Planning Instruments (**IPIs**), and application of the Medium Density Residential Standards (**MDRS**) in certain areas.

Question and brief answers

We have split the questions you posed into categories under the subheadings below.

Changes made to the Bill in the Amendment Act

1. **In your e-mail dated 16 November 2021, you provided some draft advice around whether it was possible to rezone parts of the General Residential Zone (GRZ) to Large Lot Residential Zone (LLRZ) or Settlement Zone under the ISPP. Would this advice change in light of the final version of the Amendment Act?**

   No, despite the changes made in the Amendment Act, our advice on whether GRZ can be rezoned to LLRZ under an IPI remains the same.
   To use an IPI/the ISPP to rezone from GRZ to LRZ, the Council will need to determine that rezoning is required to incorporate the

MDRS, and give effect to policy 3 or 5 of the NPS-UD. As noted in that earlier advice, it may be that the existing GRZ can also give effect to the MDRS (or policy 3 of the NPS-UD), subject to a zone specific assessment.

Scope of the ISPP process

2. **There are some parts of the existing Future Urban Zone that are appropriate to be rezoned as Rural Lifestyle Zone. The Future Urban Zone is a rural zone that restricts subdivision and development. The Rural Lifestyle Zone is also a rural zone; however, it enables a greater level of development than the Future Urban Zone by providing for subdivisions with an average allotment size of 1ha. Can this rezoning be included within the scope of the ISPP?**

   Section 77G can only be used to rezone where the outcome is a residential zone. Section 77N can only be used to rezone where the outcome is a non-residential zone in an urban environment.

   Pursuant to the National Planning Standards we consider it would be difficult to demonstrate that the Rural Lifestyle Zone qualifies as a residential zone. However, if the Council is able to demonstrate that the area in question is intended to be predominantly urban, it may fit the definition of 'urban non-residential zone in an urban environment', and therefore fall within the ambit of section 77N.

   We note that the use of an IPI under section 77N must be for the purpose of giving effect to policy 3 of the NPS-UD. Therefore, any rezoning in reliance on this section must be for the purpose of achieving that outcome.

3. **The Council wishes to rezone a number of Council-owned sites that are currently zoned General Residential Zone to Open Space Zone. Can this be included within the scope of the ISPP?**

   If the Council can demonstrate that the relevant Open Space Zones that it intends to rezone are within an urban environment, section 77N could be relied on for the rezoning. However, such rezoning would have to be for the purpose of giving effect to policy 3 of the NPS-UD in the relevant area.

   Consideration will need to be given to whether the existing General Residential Zone can also give effect to policy 3 of the NPS-UD – if it can, the Council would need to justify why the rezoning is necessary to give effect to that policy.

Wāhi tapu sites

4. **Wāhi tapu sites will be considered as a qualifying matter. Can new wāhi tapu sites located in the urban environment be added to the schedule of wāhi tapu sites in the district plan as part of the ISPP?**

Section 80E(2) sets out examples of matters that could be considered "related provisions", which can also be amended through an IPI. However, for such matters to be included in an IPI they must "support or be consequential on" the MDRS and policy 3.

We interpret from these words that "related provisions" have a purpose which is secondary to the mandatory purposes of incorporating the MDRS and giving effect to policy 3. Amendments would qualify as "consequential" if they follow or are required *because* of changes to incorporate the MDRS or give effect to policy 3. Amendments could be said to "support" if they assist or enable amendments to incorporate the MDRS or give effect to policy 3.

It is likely that wāhi tapu sites would fall within "qualifying matters" under the list of "related provisions." The Council would need to demonstrate how introduction of wāhi tapu sites to the Schedule of such sites in the District Plan "supports or is consequential to" the MDRS or policies 3 and 4 of the NPS-UD.

5. **Can new wāhi tapu sites that are not located in the urban environment (i.e. located within rural zones) be added to the district plan as part of the ISPP?**

In line with the above, the Council would need to demonstrate how the introduction of wāhi tapu sites to the District Plan via an IPI "supports or is consequential to" the MDRS or policy 3 and 4 of the NPS-UD.

Therefore, there is still the underlying requirement that the IPI is being used to achieve either of those outcomes – and there must be a direct link between achieving that outcome and the introduction of wāhi tapu sites in the District Plan.

The Amendment Act is focused on residential zones and urban environments. Therefore, where a wāhi tapu site is in an area that is not the subject of an IPI, it may be difficult for the Council to demonstrate how the addition of that site to the district plan "supports or is consequential to" the MDRS or policy 3.

6. **The Council wishes to amend some of the district wide provisions for wāhi tapu sites. These district wide provisions apply to wāhi tapu sites in all zones, including urban and rural zones. Can changes to district wide wāhi tapu provisions be included in the ISPP?**

The first questions are always whether either of the mandatory outcomes will be achieved, and whether there is a valid reason to use an IPI. If the answer to both questions is yes, then the Council can go on to consider whether changes are required to the district wide provisions in order to enable those purposes to be achieved.

However, the Council must be able to demonstrate a clear link between the amendments to the provisions for the wāhi tapu sites, and achieving the two mandatory outcomes. Put another way, why is it necessary to make amendments to the district wide provisions relating to wāhi tapu sites in order to achieve either of the two mandatory outcomes?

As noted earlier, it may be difficult to establish a link between wāhi tapu sites in rural zones and the areas subject to an IPI, given their focus on urban environments. However, the definition of urban environment in the Amendment Act anticipates that there may be some zones that, while not urban in nature currently, are intended to be in the future. This broadens the scope of areas that could be subject to an IPI – and therefore the scope of reasons why amending district wide wāhi tapu provisions relates to an IPI.

Other matters

7. **The Council is currently reviewing its Subdivision and Development Principles and Requirements document. This document outlines Council's requirements for the design and construction of infrastructure associated with new subdivision and development. This is a document incorporated by reference throughout the district plan, primarily as a matter of discretion within the subdivision rules. Can Council update references to this document throughout the District Plan (including within rural zones) as part of the ISPP?**

   In line with the above, the Council must be able to demonstrate that amending the references in its district plan to the Subdivision and Development Principles and Requirements (SDPR) is required because of changes in the District Plan to incorporate the MDRS, or give effect to policies 3 and 4 of the NPS-UD.

   In our view, there is scope to update references to the SDPR throughout the District Plan in all zones through an IPI, because doing so ensures that there is consistency in the infrastructure standards to be applied across the district. An alternative interpretation, that references can only be updated in zones subject to MDRS or policy 3, would have illogical outcomes.

   We therefore consider that amendments to all references to SDPR can be considered as "supporting" or "consequential to" the amendments required to incorporate the MDRS or give effect to policy 3, and fall within the scope of section 80E(b)(iii).

Implementing the MDRS

8. **Is the Council required to incorporate the MDRS into the General Residential Zone in Ōtaki/Waitohu, Ōtaki Beach, Te Horo Beach, Peka Peka, Paekākāriki, under s77G(1)? In answering this question, please comment on whether the**

exemption under (b)(ii) of the definition of relevant residential zone would apply to any of these areas.

Yes, because the General Residential Zone is a residential zone and the exemption for urban areas with a population under 5,000 does not apply if the Council intends the area to be part of an urban environment (which we understand to be the case here).

9. **Is the Council required to give effect to policy 3 of the NPS-UD in residential and urban non-residential zones in each of these areas, under ss77G(2) and 77N(2)?**

Yes, because each of these areas is within an urban environment and is either a residential zone (s77G(2)) or urban non-residential zone (s77N(2).

Reasoning explained

Overview of the Amendment Act

1. The Amendment Act aims to rapidly accelerate the supply of housing where the demand for housing is high, and directs councils to make changes to particular areas in their district plans through IPIs, using the ISPP.

2. The key sections introduced into the RMA by the Amendment Act are as follows:

    (a) Section 77G governs the intensification requirements in residential zones.

    (b) Section 77N governs intensification requirements in urban non-residential zones.

    (c) Section 80E governs the scope of what must be included in an IPI, and then sets out a range of matters that *may* be included in an IPI, if they "support or are consequential to" the mandatory matters.

3. The focus of the relevant provisions is on incorporating the MDRS in "relevant residential zones", and giving effect to policy 3, 4, and 5 of the NPS-UD in urban environments. These two outcomes are what we refer to as the two "mandatory outcomes" that IPIs must be used for.

Does our earlier advice require changing in light of the amendments

4. On 16 November 2021, we provided advice on the availability of using the ISPP to rezone from General Residential Zone (**GRZ**) to Large Lot Residential Zones (**LLRZ**). At that time, we advised that although the Bill was not entirely clear:

made to the Bill before it was enacted?

> …the availability of using the ISPP to rezone GRZ to LLRZ will depend on whether the rezoning is required to give effect to the MDRS (under [clause] 77F(2)). Given the LLRZ is a less intensive zone / has larger lots than the GRZ, we expect this may be a difficult argument to make. We make similar comments in relation to the possibility for rezoning to settlement zone.

5. That advice focused on the interpretation of clause 80G(1)(b) in the Bill, which set out the three purposes that the ISPP could be used for. In the Amendment Act, that clause has been deleted, and replaced with section 80E:

> **80E Meaning of intensification planning instrument**
>
> (1) In this Act, intensification planning instrument or IPI means a change to a district plan or a variation to a proposed district plan—
>
> (a) that must—
>
> (i) incorporate the MDRS; and
>
> (ii) give effect to,—
>
> (A) in the case of a tier 1 territorial authority, policies 3 and 4 of the NPS-UD; or
>
> (B) in the case of a tier 2 territorial authority to which regulations made under section 80E(1) apply, policy 5 of the NPS-UD; or
>
> (C) in the case of a tier 3 territorial authority to which regulations made under section 80FB(1) apply, policy 5 of the NPS-UD; and
>
> (b) that may also amend or include the following provisions:
>
> (i) provisions relating to financial contributions, if the specified territorial authority chooses to amend its district plan under section 77P:
>
> (ii) provisions to enable papakāinga housing in the district; and
>
> (iii) related provisions, including objectives, policies, rules, standards, and zones, that support or are consequential on—
>
> (A) the MDRS; or
>
> (B) policies 3, 4, and 5 of the NPS-UD, as applicable.
>
> (2) In subsection (1)(b)(iii), related provisions also includes provisions that relate to any of the following, without limitation:
>
> (a) district-wide matters:
> (b) earthworks:
> (c) fencing:

(d) infrastructure:
(e) qualifying matters identified in accordance with section 77G or 77L:
(f) storm water management (including permeability and hydraulic neutrality):
(g) subdivision of land.

6. The amendment to this section appears to be a direct result of the Select Committee recommendation that the scope of the ISPP process be broadened, in effect broadening the scope of matters that could be included in an Intensification Planning Instrument (**IPI**).[1]

7. The relevant provisions for incorporating the MDRS into district plans have been carried through to the Act in a new section 77G. The key change to section 77G in the Act appears to be the introduction of a reference to policies 3 and 5 of the NPS-UD. As a Tier 1 authority, it is policy 3 of the NPS-UD that is relevant to the Council.

8. This again appears to be a direct result of the Select Committee recommendation that the link between the MDRS and the NPS-UD be clarified. The Select Committee Report states: [2]

> Both the MDRS and NPS-UD need to be implemented via the IPI. Where the NPS-UD is applied to a "relevant residential zone", the underlying zone will include the MDRS (at a minimum) and therefore any greater level of intensification (e.g. a six storey building) will likely require resource consent as a restricted discretionary activity.

9. The effect of the changes to these provisions in the Act appears to be a clarification that IPIs must be used to *both* incorporate the MDRS (in a relevant residential zone), and give effect to policies 3 and 4 of the NPS-UD (in any zone in an urban environment).

10. Section 80E of the Act also sets out a number of matters that an IPI *may* amend or include. Section 80E(2) includes a list of "related provisions" that may be amended or included, if they "support or are consequential on the MDRS, or policies 3, 4, or 5 of the NPS-UD, as applicable".[3] This provision makes it clear that the focus of IPIs is still on incorporating the MDRS or giving effect to policy 3 and 4, but provides the Council with more scope to amend other provisions where doing so is necessary to achieve either of those purposes.

11. However, the ability to create new zones is still constrained by the specified territorial authorities' relevant duties and functions. That is, a specified territorial authority may create new zones "in carrying out its functions" under section 77G.

1 As a general comment, we note that the Amendment Act appears to place more focus on the IPIs themselves and what can be included in them, rather than on the ISPP; so the focus is on the scope of the instrument, rather than the process for implementing that instrument. In substance, this does not appear to have any significant effect.
2 Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill 2020 83—1 (Select Committee Report) – see summary on page 4.
3 RMA section 80E(1)(b)(iii).

12. Under section 77G, those functions are to:

    12.1 Incorporate the MDRS into the relevant residential zones; and

    12.2 give effect to policy 3 of the NPS-UD in residential zones in an urban environment.

13. These provisions demonstrate that for the Council to rezone from GRZ to LLR, it must be able to demonstrate that its reason for doing so to carry out either of the two functions set out above.

14. As noted in our earlier advice, it may be that the existing GRZ can also give effect to the MDRS (or policy 3 of the NPS-UD). A zone-specific assessment will be necessary.

Can the ISPP be used to rezone from Future Urban Zone to Rural Lifestyle Zone?

15. We understand that the Council considers that some parts of the existing Future Urban Zone are appropriate to be rezoned as Rural Lifestyle Zone. The Future Urban Zone is a rural zone that restricts subdivision and development. The Rural Lifestyle Zone is also a rural zone; however, it enables a greater level of development than the FUZ by providing for subdivisions with an average allotment size of 1ha.

16. As outlined above, sections 77G, 77N, and 80E govern when an IPI may be used; 77G is relevant to rezoning when the outcome is a residential zone, whereas 77N is relevant to rezoning when the outcome is a non-residential zone in an urban environment.

Section 77G

17. Section 77G sets out the intensification requirements in residential zones:

> **77G Duty of specified territorial authorities to incorporate MDRS and give effect to policy 3 or 5 in residential zones**
>
> (1) Every relevant residential zone of a specified territorial authority must have the MDRS incorporated into that zone.
>
> (2) Every residential zone in an urban environment of a specified territorial authority must give effect to policy 3 or policy 5, as the case requires, in that zone.
>
> (3) When changing its district plan for the first time to incorporate the MDRS and to give effect to policy 3 or policy 5, as the case requires, and to meet its obligations in section 80F, a specified territorial authority must use an IPI and the ISPP.
>
> (4) In carrying out its functions under this section, a specified territorial authority may create new residential zones or amend existing residential zones.
>
> (5) A specified territorial authority—

(a) must include the objectives and policies set out in clause 6 of Schedule 3A:
(b) may include objectives and policies in addition to those set out in clause 6 of Schedule 3A, to—
(i) provide for matters of discretion to support the MDRS; and
(ii) link to the incorporated density standards to reflect how the territorial authority has chosen to modify the MDRS in accordance with section 77H.

…

18. We interpret these provisions to enable the Council to up-zone any zone to residential zone, if doing so enables subsections (1) or (2) to be realised. Therefore, rezoning under this section is not limited to zones that are currently residential – the requirement is just that the outcome must be the creation of a "relevant residential zone" or "residential zone", depending on whether it is subsection (1) or (2) that is being engaged.

19. The question is therefore whether rural lifestyle zone is a residential zone.

20. "Residential zone" is defined in section 2 of the Act as "*all residential zones listed and described in standard 8 (zone framework standard) of the national planning standard or an equivalent zone".*

21. "Relevant residential zone" is defined as:[4]

(a) …all residential zones; but

(b) does not include—

(i) a large lot residential zone:

(ii) an area predominantly urban in character that the 2018 census recorded as having a resident population of less than 5,000, unless a local authority intends the area to become part of an urban environment…

22. The National Planning Standards provide:

22.1 Rural Lifestyle Zone is a Rural Zone, for "*Areas used predominantly for a residential lifestyle within a rural environment on lots smaller than those of the General rural and Rural production zones, while still enabling primary production to occur"*.

22.2 Future Urban Zone is a Special Purpose Zone, for "*Areas suitable for urbanisation in the future and for activities that are compatible with and do not compromise potential urban use*".

23. The definition of Rural Lifestyle Zone in the National Planning Standards refers to an area used for "predominantly for a

4 RMA section 2(1).

residential lifestyle". It is possible that this could meet the carve out for "equivalent zone" from the Standards. However, given that Rural Lifestyle Zone is listed under the Rural Zone Chapter in Table 4 of Standard 4 of the National Planning Standards, we consider the correct interpretation is that it is a rural zone.

24. We therefore do not consider that the Council could rely on section 77G to rezone from Future Urban Zone to Rural Lifestyle zone, because that section only provides for rezoning where the outcome is a residential zone. In the current circumstances, while Rural Lifestyle Zone may enable more development than a Future Urban Zone, in principle a rural zone is not a residential zone. This indicates that the proposed rezoning is beyond the scope of section 77G.

Section 77N

25. Section 77N of the Act governs intensification requirements in non-residential zones, and states:

> **77N Duty of specified territorial authorities to give effect to policy 3 or policy 5 in non-residential zones**
>
> (1) When changing its district plan for the first time to give effect to policy 3 or policy 5, and to meet its obligations under section 80F, a specified territorial authority must use an IPI and the ISPP.
>
> (2) In carrying out its functions under subsection (1), the territorial authority must ensure that the provisions in its district plan for each urban non-residential zone within the authority's urban environment give effect to the changes required by policy 3 or policy 5, as the case requires.
>
> (3) In carrying out its functions under subsection (1), a specified territorial authority—
>
> (a) may create new urban non-residential zones or amend existing urban non-residential zones:
>
> (b) may modify the requirements set out in policy 3 to be less enabling of development than provided for by policy 3, if authorised to do so under section 77O.

26. The two key criteria under this provision are involvement of an "urban non-residential zone" in the territorial authority's "urban environment".

27. Section 77F defines urban non-residential zone as "*any zone in urban zone that is not a residential zone".*

28. Residential zone is then defined as:[5]

5 RMA section 2(1).

> … all residential zones listed and described in standard 8 (zone framework standard) of the national planning standard or an equivalent zone

29. As noted above, a plain reading of the Future Urban Zone and Rural Lifestyle Zone listed in standard 8 of the National Planning Standards indicates that both zones are classified as "non-residential".

30. In order for section 77N to be relied on for rezoning from to Rural Lifestyle Zone, the Council would need to demonstrate that the particular areas which are sought to be rezoned are in an area that meets the definition of "urban environment".

31. "Urban environment" is defined in the NPS-UD as:

> **urban environment** means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:
>
> (a) is, or is intended to be, predominantly urban in character; and
>
> (b) is, or is intended to be, part of a housing and labour market of at least 10,000 people

32. Notably, this definition provides that the area in question "is, or is intended to" be predominantly urban in character. In our view, this anticipates that some areas may not *currently* be predominantly urban in character, but if the intention is that at some point in the future they will be predominantly urban in character, then those areas would fall within the scope of this definition.

33. We note that the word "and" in the definition indicates that both those limbs must be met for the definition to be satisfied.

34. These definitions indicate that for the Council to be able to rely on section 77N to rezone to Rural Lifestyle Zone, it would need to:

    34.1 determine that the Rural Lifestyle Zone in question will fit the definition of Urban Environment – so that it fits the definition of "non-residential urban environment" (section 77N(2));

    34.2 determine that such rezoning is required in order for the Council to give effect to policy 3 of the NPS-UD (section 77N(3)(a)).

35. In carrying out this assessment, the Council will need to consider whether the rezoning is required for the policy 3 of the NPS-UD to be given effect to – or can that policy be given effect to under its current zoning as Future Urban Zone?

36. The difficulty here is that Future Urban Zone clearly seems to fit the definition of "non-residential urban environment" that section 77N provides for – but for Rural Lifestyle Zone to fit that definition, its intended future use must be taken into consideration. It may well be

that the Rural Lifestyle Zone that the Council has in mind is better designed to give effect to Policy 3 of the NPS-UD than Future Urban Zone – this will require a site specific analysis.

*Does the proposed rezoning fall within the scope of any of the matters that **may** be amended or included in an IPI?*[6]

37. As well as setting out the two outcomes that an IPI must achieve, section 80E of the Act provides that certain matters *may* be included in an IPI, which can be summarised as:

    37.1 Provisions relating to financial contributions;

    37.2 Provisions to enable papakāinga housing in the district; and

    37.3 Related provisions, including objectives, policies, rules, standards and zones, that support or are consequential on the MDRS, or policies 3, 4, and 5 of the NPS-UD, as applicable.

38. The first two matters are not relevant to this question. In terms of the third, the Act sets out a list of matters that can be considered "related provisions". However, these are still qualified by the requirement that amending or including such "related provisions" must support or be consequential to achieving either of the two mandatory outcomes. We interpret this to mean that it must be demonstrated that the first two outcomes will be achieved through the IPI before considering whether any "related provisions" need to be amended or included in the IPI.

39. We also interpret from these words that "related provisions" have a purpose which is secondary to the mandatory purposes of incorporating the MDRS and giving effect to policy 3. Amendments would qualify as "consequential" if they follow or are required *because* of changes to incorporate the MDRS or give effect to policy 3. Amendments could be said to "support" if they assist or enable amendments to incorporate the MDRS or give effect to policy 3.

40. If the Council can demonstrate that the Rural Lifestyle Zone fits the definition of "non-residential zone in an urban environment", and the rezoning is required to give effect to policy 3 of the NPS-UD, then applicability of this section will not need to be considered – as the rezoning could occur in reliance on section 77N.

41. However, if that cannot be established, for this provision to be relied on, the Council would need to be able to point to some other amendment that validly uses section 77F and 77N, and then demonstrate that rezoning to Rural Lifestyle Zone "supports or is consequential" to that change.

Can General Residential

42. As outlined above, section 77N provides for the creation of urban non-residential zones in the Council's urban environment.

6 RMA section 80E(1)(b).

Zones be rezoned to Open Space Zone under an IPI?

43. General Residential Zone meets the definition of residential zone under the National Planning Standards.[7]

44. "Open Space Zone" is not listed in the Standards as a residential zone, but is listed under the "open space and recreation zones". It is defined as "*Areas used predominantly for a range of passive and active recreational activities, along with limited associated facilities and structures".* However, while not a residential zone, Open Space Zones could potentially fall within the scope of the definition of "urban environments", if the Council can demonstrate that the area:

    (a) is, or is intended to be, predominantly urban in character; and

    (b) is, or is intended to be, part of a housing and labour market of at least 10,000 people

45. The Council would need to demonstrate how the Open Space Zone that is intended to be rezoned fits is part of an urban environment. In our view, "predominantly urban" indicates that the definition does not necessarily mean that every part of the Open Space Zone needs to be urban in character. For example, an Open Space Zoned park surrounded by residential or other urban zones could still be part of the urban environment, but an Open Space Zone that was not contiguous with urban areas would struggle to qualify. The definition indicates that an assessment of whether an "urban environment" exists can be broader than looking at just one zone, but instead can take into account a group of zones, and whether all those zones together make up an urban environment.

46. If that can be established, then the Council could rely on section 77N(3)(a) to use an IPI to rezone an existing zone to Open Space Zone. We note that this rezoning would have to be for the purpose of giving effect to policy 3 of the NPS-UD in that zone.

Can new wāhi tapu sites located in the urban environment be added to the schedule of wāhi tapu sites in the district plan as part of an IPI?

47. IPIs may only be used if the matters in either section 77G or 77N are satisfied. Put another way, an IPI is a vehicle for giving effect to two outcomes; either incorporating the MDRS, or giving effect to policy 3 of the NPS-UD. Therefore, in the first instance, introduction of wāhi tapu sites to the district plan must be in relation to one of those outcomes.

48. As a result, the first step in determining whether wāhi tapu sites can be added to the schedule would be demonstrating that all the requirements in either section 77G or 77N are met, and that an IPI can validly be used.

49. The next step is considering whether the introduction of wāhi tapu sites meets one of the matters that *may* be included in an IPI. As highlighted above, section 80E sets out matters that *may* be included in an IPI, which can be summarised as:

7 See Table 4 Standard 4; GRZ is listed under "Residential" Zones.

49.1 Provisions relating to financial contributions;

49.2 Provisions to enable papakāinga housing in the district; and

49.3 Related provisions, including objectives, policies, rules, standards and zones, that support or are consequential on the MDRS, or policies 3,4, and 5 of the NPS-UD, as applicable.

50. Section 80E(2) sets out examples of matters that could be considered "related provisions", which includes qualifying matters identified in accordance with section 77I or 77O.

51. Qualifying matters enable the Council to make the MDRS zoning less permissive (to the extent necessary) if the change is required to accommodate any qualifying matter.

52. Wāhi tapu sites appear to fall within the first qualifying matter, being "a matter of national importance that decision makers are required to recognise and provide for under section 6".[8]

53. We note that this approach is endorsed by Policy 2 of clause 4A of Schedule 3A, which states:

> (2) A territorial authority must include the following policies in its district plan:
>
> …
>
> (b) **apply the MDRS across all relevant residential zones in the district plan except in circumstances where a qualifying matter is relevant** (including matters of significance such as historic heritage and the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, **wāhi tapu**, and other taonga):

54. These policies must be included in the Council's first IPI.[9]

55. To rely on section 80E to include new wāhi tapu sites in the Schedule of such sites in the District Plan, the Council would need to demonstrate how introduction of wāhi tapu sites "*supports or is consequential to*" the MDRS or policies 3 and 4 of the NPS-UD. If an area that is subject to an IPI includes known wāhi tapu sites that are not currently scheduled, we consider that it would arguably be consequential to that IPI that those wāhi tapu sites are added to the District Plan. To find otherwise would result in illogical outcomes – mainly that wāhi tapu sites would not be protected, despite there being clear intentions that such sites would be qualifying matters.

Can new wāhi tapu sites that are not located in the urban

56. As outlined above, the use of IPIs is limited to amendments where the outcome is a residential zone (section 77G), or a non-residential zone in an urban environment (section 77N).

8 RMA section 77I(a) and section 77O(a).
9 RMA section 77G(5)(a).

environment be added to the district plan as part of an ISPP?	57. If the proposed wāhi tapu sites are not in urban environments, then it is unlikely that those areas would be subject to an IPI – because the requirements in neither section 77G or 77N would be met. 58. There is of course section 80E(b)(iii) that states that IPIs may be used to amend "related provisions". However, the requirement is that such amendments "support or are consequential on" the MDRS and giving effect to policy 3. As noted above, we interpret this to mean that amendments would qualify as "consequential" if they follow or are required *because* of changes to incorporate the MDRS or give effect to policy 3. 59. In order for the inclusion of wāhi tapu sites not in urban environments to be included in an IPI, the Council would need to demonstrate how this requirement is satisfied. 60. IPIs (and the Amendment Act more generally) are focused on enabling housing urban environments, and more specifically, residential zones. Therefore, it may be difficult for the Council to demonstrate how introducing wāhi tapu sites to non-urban areas in the District Plan links to that purpose.
Can changes to district wide wāhi tapu provisions be included in an ISPP?	61. As set out above, section 80E(1)(b) provides for amendments to district wide matters as "related provisions" *if* it can be demonstrated that such amendments "support or are consequential on the MDRS or policies 3,4, and 5 of the NPS-UD". 62. The Council would need to be able to demonstrate a clear link between the amendments to the wāhi tapu sites, and achieving the two mandatory outcomes. Put another way, why is it necessary to make amendments to the district wide provisions relating to wāhi tapu sites in order to achieve either of the two mandatory outcomes? 63. As noted above, because the provisions introduced by the Amendment Act are focused on residential zones and urban environments, we consider it would be difficult to make amendments to wāhi tapu provisions in non-residential and non-urban zones, because they are simply beyond the scope of areas that the provisions focus on.
Can references in a District Plan to a particular document be updated through the ISPP process?	64. As well as the two matters that an IPI *must* include, section 80E(1)(b) provides that an IPI *may* amend provisions that support or are consequential on the MDRS, or policies 3 and 4 of the NPS-UD. 65. Therefore, the Council would need to be able to demonstrate that amending the references in its district plan to the Subdivision and Development Principles and Requirements (**SDPR**) document supports or is consequential to the MDRS, or policies 3 and 4 of the NPS-UD.

66. We understand that the SDPR are referred to throughout the District Plan, and not just in zones that will be subject to the MDRS or policy 3 of the NPS-UD. The test is therefore whether updates to references to the SDPR in zones that are not subject to the MDRS or policy 3 support or are consequential to incorporating the MDRS or giving effect to policy 3. As noted earlier in this advice, we interpret this test to mean that amendments would qualify as "consequential" if they follow or are required *because of* changes to incorporate the MDRS or give effect to policy 3. Amendments could be said to "support" if they assist or enable amendments to incorporate the MDRS or give effect to policy 3.

67. Although we are not across the detail of the updates to the SDPR, at a general level we anticipate there should be a good prospect of demonstrating that incorporating a reference to the updated version throughout all zones supports the MDRS, because it forms an important part of the Council's process for ensuring subdivision and development are carried out properly. This will be of increased importance as density of development increases.

68. The alternative interpretation is that the Council could only update references to the SDPR in zones that are subject to the MDRS or policy 3 of the NPS-UD. In our view, this interpretation would have unintended consequences; most notably, there would be two different (and potentially inconsistent) infrastructure standards across the district. We do not consider that this would be an intended outcome of the Amendment Act, as such an interpretation would be inconsistent with the Act's purpose.

69. For completeness, we note that clause 34 of Schedule 1 of the RMA sets out the consultation requirements for any proposals to incorporate material by reference. Therefore, if the Council decides to include references to the SDPR in an IPI, it would be appropriate to also consult in compliance with clause 34 in parallel with consultation on the IPI.

Application of NPS-UD policy 3 to areas under 5,000 in population

70. We understand that the Kāpiti Coast district contains a number of areas that, at the 2018 census, had a population of less than 5,000. These areas are:

    (a) Ōtaki/Waitohu, which at the 2018 census had a population of 4,500;

    (b) Ōtaki Beach, population 1,818 in 2018;

    (c) Te Horo Beach, population 1,442 in 2018;

    (d) Peka Peka, population 612 in 2018;

    (e) Paekākāriki, population 1,746 in 2018.

71. You have indicated that these areas meet the NPS-UD definition of "urban environment", because:

71.1 they are, or are predominantly intended to be, urban in character; and

71.2 they are, or are intended to be, part of a housing and labour market of at least 10,000 people, namely:

(a) The Kāpiti Coast Functional Urban Area, which includes Te Horo Beach, Peka Peka and Paekākāriki. This area had a population of 46,683 at the 2018 census.

(b) The Ōtaki Functional Urban Area, which includes Ōtaki/Waitohu and Ōtaki Beach. This area had a population 6,984 at the 2018 census, and is projected to have a population of 11,631 over the "long term" (which is defined in the NPS-UD as between 10 and 30 years).

72. On this basis, you have asked us to consider the following:

72.1 Is the Council required to incorporate the MDRS into the General Residential Zone in each of these areas, under s77G(1)? In answering this question, you have asked us to comment on whether the exemption under (b)(ii) of the definition of *relevant residential zone* would apply to any of these areas.

72.2 Is the Council required to give effect to policy 3 of the NPS-UD in residential and urban non-residential zones in each of these areas, under ss77G(2) and 77N(2)?

73. The relevant parts of section 77G state:

(1) Every relevant residential zone of a specified territorial authority must have the MDRS incorporated into that zone.

(2) Every residential zone in an urban environment of a specified territorial authority must give effect to policy 3 or policy 5, as the case requires, in that zone.

74. Under section 77G, councils have a duty to incorporate the MDRS into every relevant residential zone. In our view, that will include relevant residential zones that are within urban environments. In addition, councils also have a duty to give effect to policy 3 or 5 of the NPS-UD in all residential zones (including relevant residential zones) that fall within urban environments.[10]

75. Under section 77N(2), the Council must also give effect to the changes required by policy 3 of the NPS-UD in each urban non-residential zone within the urban environment in its district. Urban non-residential zone is defined as:[11]

10 Policy 3 for Tier 1 urban environments and Policy 5 for Tier 2 and 3 urban environments.
11 RMA section 77F.

…any zone in an urban environment that is not a residential zone.

76. In essence:

76.1 if a zone is in an urban environment, the Council has a duty to give effect to policy 3 or 5 of the NPS-UD in that zone; and

76.2 if a zone is a relevant residential zone, the Council has a duty to incorporate the MDRS into that zone.

Urban environment

77. Urban environment is defined in the NPS-UD as:

> **urban environment** means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:
>
> (a) is, or is intended to be, predominantly urban in character; and
>
> (b) is, or is intended to be, part of a housing and labour market of at least 10,000 people

78. You have indicated to us that the areas listed in your 26 January 2022 email have been classified as "Functional Urban Areas" by Statistics NZ, and that these areas are likely part of a housing and labour market of at least 10,000 people. You have also explained that these areas either are or are intended to be predominantly urban in character.

79. This indicates that those areas would meet the definition of "urban environment" in section 77F. Therefore, all zones in those areas (including residential zones and urban non-residential zones) would need to give effect to policy 3.

Relevant residential zone

80. A relevant residential zone is defined as:[12]

> (a) …all residential zones; but
>
> (b) does not include—
>
> (i) a large lot residential zone:
>
> (ii) an area predominantly urban in character that the 2018 census recorded as having a resident population of less than 5,000, unless a local authority intends the area to become part of an urban environment:
>
> (iii) …

81. Further, a residential zone is defined as:[13]

12 RMA section 2(1).
13 RMA section 2(1).

> … all residential zones listed and described in standard 8 (zone framework standard) of the national planning standard or an equivalent zone

82. The list of areas that you provided us with will only meet the definition of "relevant residential zone" if the Council intends them to become part of an urban environment. Otherwise, because they have populations of under 5,000, those areas would be excluded by paragraph (b)(ii) of the definition of "relevant residential zone", and therefore section 77G(1) would not apply, and the MDRS would not need to be implemented in those areas.

83. In our view, despite the definition of relevant residential zone using the words "unless a local authority *intends* the area *to become* part of an urban environment" (our emphasis), it would be consistent with the purpose of the Amendment Act to read this as including areas that are *already* part of an urban environment. Otherwise, the MDRS would need to be implemented in small areas that will be part of an urban environment in the future but not in small areas that are already part of an urban environment. We cannot see how that would have been the intention.

84. We have set out our understanding of the status of each of the relevant zones in Annexure A. In summary, in our view the Council is required to:

    84.1 incorporate the MDRS into the General Residential Zone in Ōtaki/Waitohu, Ōtaki Beach, Te Horo Beach, Peka Peka, Paekākāriki, under s77G(1), because the General Residential Zone is a residential zone and the exemption for urban areas with a population under 5,000 does not apply if the Council intends the area to be part of an urban environment (which we understand to be the case here); and

    84.2 give effect to policy 3 of the NPS-UD in residential and urban non-residential zones in each of these areas, under ss77G(2) and 77N(2), because each of these areas is within an urban environment and is either a residential zone (s77G(2)) or urban non-residential zone (s77N(2).

Please call or email to discuss any aspect of this advice

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Annexure A – status of zones

Area	Zone in the Operative District Plan	Population (2018 Census)	Functional Urban Area Grouping by Statistics NZ	Urban Environment?	Relevant Residential Zone?	Urban Non-Residential Zone?	Applicable requirements
Ōtaki/Waitohu *These are separate adjacent Stats NZ SA2 Units, however the General Residential Zone is continuous across the two*	General Residential Zone	4,500	Ōtaki Functional Urban Area	Yes.	Yes, because this area is part of an urban environment.	No. Zone is residential.	MDRS NPS-UD Policy 3
	Town Centre Zone				No. Zone is not residential.	Yes.	NPS-UD Policy 3
	General Industrial Zone				No. Zone is not residential.	Yes.	NPS-UD Policy 3
Ōtaki Beach	General Residential Zone	1,818			Yes, because this area is part of an urban environment.	No. Zone is residential.	MDRS NPS-UD Policy 3
Te Horo Beach *Part of the Te Horo Stats NZ SA2 Unit*	General Residential Zone	1,442	Kāpiti Coast Functional Urban Area	Yes.	Yes, because this area is part of an urban environment.	No. Zone is residential.	MDRS NPS-UD Policy 3
Peka Peka	General Residential Zone	612			Yes, because this area is part of an urban environment.	No. Zone is residential.	MDRS NPS-UD Policy 3
Paekākāriki	General Residential Zone	1,746			Yes, because this area is part of an urban environment.	No. Zone is residential.	MDRS NPS-UD Policy 3
	Local Centre Zone				No. Not residential.	Yes.	NPS-UD Policy 3