16 November 2021

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Environment Committee
Parliament Buildings
Wellington

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Tēnā koutou katoa

Kāpiti Coast District Council submission on the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill

Kāpiti Coast District Council (the Council) thanks the Environment Committee for the opportunity to submit on the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill (the Bill). The Council is supportive of the Government's aims to address New Zealand's housing shortage and enable the delivery of a wider range of housing options, including more affordable homes.

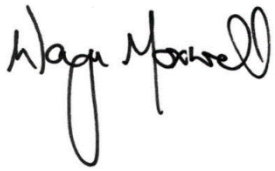
While our proposed approach to growth is aligned with the NPS-UD and, at a high level, the stated intent of the Bill, we are concerned that the implementation of some of the proposed changes will be complex, time-consuming, and could have significant unintended consequences. The Bill appears to be a blunt instrument which has the potential to create significant unease and frustration in our community when we have already embarked on consultation on our growth strategy. We are concerned that implementation of the MDRS, as proposed by this Bill, may result in delays to processes aimed at encouraging intensification of development in our District, which is the opposite of the Bill's intention.

We also have significant concerns about the impact that the proposed changes will have on our ability to plan and fund the infrastructure required to support the level of growth we expect to see in our district, when that growth is dispersed rather than concentrated around our town centres and transport nodes (as envisaged by the NPS-UD). Being able to prioritise and phase the necessary upgrades to support growth and to collect development contributions early in the development process is essential for us to maintain a level of affordability for our rate payers.

These changes also arrive against a backdrop of multiple reform imperatives from central government, including the wider RMA reform, three waters reform, and the review of local government. This context of uncertainty makes it difficult to understand and anticipate the full implications of these

proposed changes. We have identified several high-level issues that will create specific challenges for us in implementing this Bill. However, we have largely focussed our submission on the practical implementation issues associated with the Bill and the potential for unintended consequences so that we can ensure that, if the Bill proceeds largely as proposed, the provisions are both workable and will achieve the intent of the Bill.

The Council would like to present this submission to the Environment Select Committee.



Wayne Maxwell
CHIEF EXECUTIVE
Te Tumuaki Rangatira

Kāpiti Coast District Council Submission on the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill

Structure of our submission

1. Our submission first provides context for our district, including how we are growing, and how we are intending to accommodate that growth and implement the requirements of the NPS-UD.

2. Our submission is in two parts that should be read together to assist interpretation. The first describes the higher-level policy issues and concerns we have arising from the proposed changes to the Resource Management Act, as drafted in the Bill. The second covers the technical issues we have identified, as well as our proposals for how they could be resolved.

Key recommendations

3. Overall, our key concerns can be grouped under some high-level recommendations. We are seeking:

    a. A more nuanced approach to the application of the MDRS to direct growth to the most suitable areas and those that have existing or planned infrastructure capacity.

    b. A broader, more inclusive ISPP process that allows the inclusion of other matters, including papakāinga housing.

    c. More careful consideration of the impacts of the reforms on council's ability to plan for and fund the infrastructure required to support growth.

    d. Clarification that district-wide provisions with respect to the siting of buildings (such as those that manage natural hazards, historic heritage, sites of significance to mana whenua, and indigenous biodiversity) can continue to apply.

    e. Acknowledgement that for many, these changes may actually slow down the Council processes already in train to provide for growth and intensification (due to diverting resources to accommodate this new suite of changes) and will certainly increase the cost to Council of implementing the government's directives.

Kāpiti Coast District – Our context

4. The Kāpiti Coast District is a low-lying narrow coastal plain that extends along the western margins of the Tararua Range. The rivers and streams draining the Tararua Range meander through a diverse landscape, from regenerating native bush, mature forest and pasture in the foothills, through urban development to the sea. It is a coastal district that is susceptible to the effects of climate change including greater storm intensity, increased flooding and stormwater, sea level rise, coastal erosion, and warmer temperatures; as well as other natural hazards, such as earthquakes and landslides.

5. Our District is included in the Tier 1 Councils due to our proximity to Wellington, and we do function as part of a wider regional labour and housing market. However, as a District we are far from metropolitan with a population of 57,000 dispersed across a series of town- and

local centres along the coast. We also have some of the worst housing affordability in the region[1].

6. We expect the Kāpiti Coast District will continue to see the steady growth we've experienced over the last few decades. From 1996 to 2018 we grew at an average of 1.5 percent per annum – a similar rate to what is projected for the next 30 years. In terms of population numbers, this means our population has already grown by 23,000 people in the past 30 years and we expect a further 32,000 people to join our district over the next 30 years. By 2051, up to 90,000 people could call Kāpiti home. This growth won't happen all at once, but we need to anticipate it and plan for it now. We want to enable sustainable growth to get the best outcomes for existing residents and those who will join us. In light of this, Council is currently consulting on a proposed approach[2] to enabling growth in the District that will form the basis of a revised Growth Strategy.

7. Kāpiti Coast District Council's proposed approach to growth, *'Te tupu pai – Growing well'*, is intended to help us set a strategic direction so we can plan for infrastructure and other needs to support our expected population growth. Our growth approach is founded on a mix of growing up (intensification) and growing out (greenfield development), with an emphasis on intensification to the extent possible over time. Following the requirements of the NPS-UD, we propose significant intensification around Paraparaumu central and the Paraparaumu railway station (up to twelve storeys), as the District's "metropolitan centre"; and intensification around our other railway stations, and town and local centres. For the urban area more generally, we are proposing enabling density up to two to three storeys through forms of low to medium density development such as semi-detached and terraced housing. This is not out of step with what we understand to be the overall policy intent of the Bill, although we were anticipating being able to implement the provisions in a way that would give Council some control over infrastructure servicing, and the ability to take a more nuanced approach (such as discretion on effective site stormwater management).

Part A: Policy matters

Mana whenua aspirations

8. Iwi, hapū and whānau have expressed aspirations to develop papakāinga housing within the Kāpiti Coast district. The Council wishes to support this through working in partnership with mana whenua to develop papakāinga provisions that enable mana whenua to realise these aspirations. There are a number of iwi, hapū and whānau actively planning for the development of papakāinga, and as current District Plan rules are not very enabling of this the Council would like to enable that development through the district plan as soon as is practicable.

9. We are concerned that the Bill does not provide for multi-activity and multi-zone papakāinga provisions to be included within the narrow scope of the ISPP. This is an undesirable outcome, as it delays the ability for Council to provide for papakāinga developments until after the ISPP has run its course (this is expanded on further in paragraphs 68-72).

[1] Housing affordability index, 2010 – Infometrics.co.nz

[2] https://haveyoursay.kapiticoast.govt.nz/growing-well

10. Enabling papākāinga provisions to be incorporated into the ISPP would assist the government with meeting its commitments under MAIHI Ka Ora: The National Māori Housing Strategy 2021-2051. In particular:

    a. Priority 1 (Māori Crown Partnerships) creates an expectation of cohesion across government agencies to accelerate Māori housing and wellbeing outcomes;

    b. Including papakāinga in scope would help achieve early wins under Priority 2 (Māori-Led Local Solutions), which includes an action to "change policy settings to better deliver Māori-led local housing solutions in smaller regional centres";

    c. Priority 3 (Māori Housing Supply) requires actions that address barriers to papakāinga development and "reset settings/processes and policy to enable the building of more papakāinga";

    d. It would also mean papakāinga development doesn't have to wait for reform of the resource management system to occur (see Priority 5 Maori Housing System) to fix problems with current processes.

11. The National Policy Statement on Urban Development requires that the district plan "enable a variety of homes that enable Māori to express their cultural traditions and norms" (policy 1(a)(ii)) and must "take into account the values and aspirations of hapū and iwi for urban development" (policy 9(b)). Providing for the development of integrated Māori housing solutions is clearly within the scope of the NPS-UD, and the ability to incorporate papakāinga provisions within the ISPP would better enable Council to assist mana whenua with achieving their housing aspirations.

12. It is therefore sought that the Bill is amended to enable papakāinga provisions to be incorporated into the ISPP.

Our Growth Approach

13. Integral to our Growth Approach is an urban form and settlement pattern that will enhance urban efficiency through walkable neighbourhoods, enable housing opportunities through typology and location choice, and foster the reduction of carbon emissions while protecting Kāpiti's natural environment and regenerative and productive capacity. Community resilience to the effects of climate change and sea level rise is central to the core values of the growth approach. Kāpiti wants to grow in a manner that enhances the mauri of the district's environment (natural and built) and its communities, recognising they are interrelated.

14. To achieve these goals, we need to plan where growth is enabled, with timing and sequencing of development in-step with social and hard infrastructure provision. Providing the ability for Councils to be more nuanced in where they apply the MDRS will better allow them to direct development to where there is existing network capacity or where network upgrades are already planned.

15. Therefore we seek some flexibility in the spatial application and phasing of the MDRS provisions to allow us to provide for growth while encouraging it to occur in places and ways that will help us achieve healthy, thriving and resilient communities over time.

Coastal community assessment panel process

16. Kāpiti has commenced a coastal community assessment panel process to determine appropriate dynamic adaptive pathways in response to coastal hazards in the district. This has been a contentious local issue over the last decade and has come at considerable cost to Council in legal fees, expert advice and staff time. Robustness of the coastal science has been very much a matter of contention in the past. The Council has since committed to undertaking a community-led process (called Takutai Kāpiti) backed by robust science before determining a suitable coastal hazard zone and relevant District Plan provisions. This process has been in active development since mid-2019, and is consistent with Ministry for the Environment guidance.

17. While Council has been building the Takutai Kāpiti process, recent central government direction has effectively increased expectations for the density of existing urban environments along our coast. This increased pressure initially came through the NPS-UD and is increased by the proposed MDRS in the new Bill.

18. While it is correct that both the NPS-UD and the Bill provide Council with a technical solution to manage this issue (by applying coastal hazards as a qualifying matter to prevent increased heights and densities from being enabled), central government needs to appreciate the risk this poses to the Takutai Kāpiti process.

19. Council's initial intent was to defer any coastal-related plan change until 2023 after considering the recommendations from the Takutai Kāpiti process. This sequence was very consciously developed so that Council would be afforded a social licence through the process to progress a range of planning and other solutions. To have the investment in this process put at risk by conflicting and changing government policy direction is frustrating.

20. Council must now consider moving ahead of the Takutai Kāpiti process by delineating areas of the urban environment along the coast where this qualifying matter should apply through the 2022 intensification plan change. Such a decision:

    a. would likely take a precautionary approach by maintaining current planning provisions for affected coastal areas as a holding pattern until the community works through the science and adaptation (including land use planning) options

    b. would not be intended to pre-judge what the most suitable planning or other approaches might ultimately be for those affected areas – the intent would be to continue with the Takutai Kāpiti process to guide future decision-making on that.

21. But we are very concerned that an early move in the 2022 intensification plan change will look like pre-determination to some and we expect this will erode trust in the process, and in Council.

Infrastructure planning

22. The Kāpiti Coast has several challenges with regards to infrastructure delivery, which we have factored into our proposed approach for growth[3]. These include:

    a. *Significant stormwater management constraints:* The most heavily populated areas of the Kāpiti Coast are becoming increasingly vulnerable to the effects of climate

[3] https://haveyoursay.kapiticoast.govt.nz/growing-well

change. Many communities across the District rely on the efficient operation of a relatively flat urban drainage network to manage their flood risk, via streams and open channel drainage networks. There is also growing recognition that stormwater networks must be managed to contribute to protecting, restoring, connecting, and enhancing the natural environment; progressively maintaining and enhancing the water quality and flow regime of receiving environments over time (Te Mana o Te Wai). This has an impact on the choice of infrastructure and extent of land required for the conveyance, treatment and disposal of stormwater water.

b. *Poor transport connectivity and an over-reliance on private cars*: Our communities rely heavily on private cars due to poor connectivity, lack of investment in the rail network, poor levels of bus service, lack of integration within and between modes, and a lack of quality walking and cycling infrastructure. Access to key educational and health services located outside the District can be a significant issue for some of our communities.

c. *Variable three waters network capacity across the district:* Our three waters infrastructure has variable capacity across the district, and it is possible that water and wastewater infrastructure could require major upgrades to support the level and scope of intensification enabled by the Bill that has not been accounted for in our financial planning.

d. *Poorly designed existing neighbourhoods for climate resilience:* As many of our existing neighbourhoods were built without consideration of low-emissions living, we do not want to intensify those developments without addressing the factors that contribute to their greenhouse gas emissions, low environmental quality, and low climate resilience at the same time.

23. There is a need to ensure that sufficient space is included in developments to support infrastructure delivery for water, wastewater, stormwater and all modes of transport. We are concerned that a one-size-fits-all approach to medium-density residential development does not enable Council to encourage development in areas where infrastructure has sufficient existing or planned capacity.

24. *We therefore ask that the Bill is amended to include infrastructure delivery as a qualifying matter.*

Impact on investment planning for infrastructure

25. Council uses subdivision and resource consent information to assist with forecasting future growth and infrastructure investment planning, including how much to invest for growth in the district, where and when. Removing the need for resource consents while enabling intensification will affect our ability to plan effectively.

26. While we may be able to use building consent data to assist with this, the shorter timeframe between issue of building consents and construction may not allow a more forward-looking/strategic approach for planning, and we may have to review and consult on our Development Contributions Policy more regularly to ensure it remains fit for purpose.

27. While the Bill does not remove the need for subdivision consent, it does provide for greater intensification to occur through infill development without the need for subdivision – with up to three three-storey homes able to be built on a single section (within permitted

standards). Depending on the extent to which this type of development occurs and how quickly, it could significantly affect our ability to anticipate and provide for growth within our infrastructure networks.

28. The flow-on effects in terms of staff resource and budget for Council will be significant, including:

    a. The Housing and Business Capacity Assessment (HBA) will need to be reviewed in order to gain an updated understanding of the short-fall in plan-enabled dwelling capacity as a result of the MDRS;

    b. We will need to reassess infrastructure capacity for each catchment for the revised HBA numbers;

    c. We will need to prepare cost estimates for the infrastructure upgrades above;

    d. We will need to update/amend the Long Term Plan (that has just been adopted at a significant cost to ratepayers) to incorporate the new budgets;

    e. We will then need to update our Development Contributions policy to capture these costs by DC catchment.

29. These latter two are statutorily prescribed and must be completed prior to being able to charge Development Contributions.

30. A basic estimate of c) above for Kāpiti Coast is an additional $200 - $400 million in infrastructure costs, spread across the district. This is not currently budgeted. This does not include the additional staff cost of the work required by a), b), d), and e) above.

31. We don't anticipate that increased intensification will result in savings in greenfield costs in our district, as greenfield developments are still occurring in Kāpiti as part of our growth approach which is founded on a mix of growing both up and out.

32. The likely impact is that our debt will increase significantly, due to these additional costs, and due to the inability to collect development contributions until after Code Compliance Certification under the Building Act - potentially two to three years down the track (or more).

33. *We therefore ask that the Bill is amended to include a mechanism to support infrastructure funding without having an impact on local councils and their ratepayers, and that minimises borrowings.*

Resource Consent as a trigger for the purposes of assessing and charging Development Contributions

34. Development Contributions are the primary mechanism used by Council for ensuring that the costs of development are borne by those who stand to benefit from that development. Put simply, development contributions require developers to pay for the infrastructure costs associated with servicing their development, rather than the community at large (who do not benefit) paying through their rates.

35. S198 of the Local Government Act 2002 (LGA) currently allows Councils to require Development Contributions on a development when a Resource Consent is granted. For developments where subdivision consent is not required, the proposed Bill will remove the

trigger for assessing and charging Development Contributions for developments that can occur as a permitted activity.

36. While other triggers are available, including Building Consent and service connections, these options affect the timing of when funding is received by Council to fund growth infrastructure. This means that council will be increasingly required to fund infrastructure costs upfront and attempt to collect development contributions after the fact.

37. Non-payment of development contributions is also likely to be an issue. S208(1)(a) of the LGA currently enables Councils to withhold a Code Compliance Certificate under section 224(c) or prevent the commencement of a resource consent under the RMA to prompt payment of Development Contributions owing on a development. The proposal to remove the need for a Resource Consent therefore removes the ability for Council to use this as an incentive for developers to pay. While Council could withhold a Code Compliance Certificate under s208, this relies on developers to apply for a Code Compliance Certificate.

38. For this reason, we recommend that s.198(1)(b) of the Local Government Act is amended to enable us to collect Development Contributions upon Building Consent application.

Hydraulic neutrality

39. A specific example of an infrastructure concern that requires attention is hydraulic neutrality of development. The ability to include hydraulic neutrality provisions in our District Plan is fundamental to mitigating the impact of development on a stormwater network that is already under pressure.

40. Council's hydraulic neutrality policy requires that water that is no longer able to be absorbed on site because of new hard surfaces must be able to be disposed on-site or stored on-site to be released at a rate that does not exceed the peak stormwater of the predevelopment situation for a specific design event.

41. We are concerned that both increased maximum site coverage and removing the need for a resource consent for Medium Density Residential Development (and consequently our ability to assess adequacy of solutions) could result in intensification that does not meet our requirements for hydraulic neutrality. This could result in flooding problems and costly remedial work being required.

42. On this basis we seek clarification that our ability to require hydraulic neutrality through district-wide provisions in our District Plan will remain following the enactment of this Bill.

Design quality for large developments

43. The ability for Council to guide the design of large developments ensures that developments consider matters associated with the broader urban environment such as accessibility to public and active modes of transport, vehicle access, provision of communal and public outdoor space, providing for functional matters such as waste collection, and consideration of the cumulative effects of large developments on sunlight access, daylight access and the visual environment. These matters contribute to the efficient functioning of the urban environment and the wellbeing of all those who live in it. Through well considered design it is entirely possible to both increase housing supply and provide for well-functioning and well-designed urban environments that also support low-emissions lifestyles. Enabling the

Council to have some discretion over the design of large developments is one tool to achieve this outcome.

44. It is clear that the policy intent of the bill is to enable a greater degree of housing supply across all Tier 1 districts, by permitting developments of up to three dwellings per site with a minimum degree of design control (beyond the standards themselves). The implication is that, where developments provide for more than three dwellings, the Council could retain some form of design control, such as through design guides applied as part of a land use consent. The Bill appears to support this by providing that developments with more than three dwellings are a restricted discretionary activity requiring land use consent (under Schedule 3A cl3(2)(a)).

45. However, the subdivision provisions of the Bill (specifically Schedule 3A cl6(a)(ii)) subvert this by allowing developments of greater than three dwellings to be created through a subdivision consent, without any requirement for a land use consent. The result is that the number of dwellings that can be constructed without a land use consent is limited only by the ability to fit dwellings on land in the subdivision within the standards, and the provision that developments larger than three dwellings are a restricted discretionary activity (as provided for in cl3(2)(a)), becomes effectively meaningless.

46. This also means that the Development Contribution will be an additional cost to the owner at the end of the process, rather than embedded in the land price by the developer. This shift to collecting it when building is completed should in theory see sale prices reduce as a result, but this may be unlikely in reality.

47. The Council is concerned that these subdivision provisions could result in large developments that are encouraged to maximise yield without regard to their arrangement, and do not consider, because they are not required to, the way in which they contribute to (or detract from) a well-functioning urban environment.

48. This approach will also have the effect of favouring horizontal development that maximises yield within the standards, rather than more intensive development that may breach the standards, but through appropriate design guidance provide better outcomes for housing supply and the quality of the urban environment.

49. Enabling housing supply can be achieved at the same time as achieving better outcomes for the urban environment - this is the thrust of the NPS-UD. Adjusting the bill to remove the provision that enables unlimited sized subdivisions without a land use consent would enable the bill to achieve these mutually beneficial outcomes. Ensuring that Councils can provide appropriate guidance over the design of large developments is considered to be a key component of achieving this outcome.

50. It is considered appropriate that Council is meaningfully able to have a limited amount of discretion where developments are larger than three dwellings (as provided for in cl3(2)(a), however, to ensure that this provision remains meaningful, it is sought that cl6(a)(ii) of Schedule 3A is removed from the Bill.

Coordinated government approach to qualifying matters

51. In order to incorporate the MDRS, the Bill requires the Council to provide for a complex array of changes to the District Plan in a short time frame. Where the government has an interest in how the provisions of the Bill are incorporated into a District Plan, the provision

of coordinated advice from central government would assist Council with providing for this in an efficient manner, within the limited time available.

52. Providing for qualifying matters is one example of this complexity, where a range of ministries, departments, state owned enterprises and requiring authorities may seek to have qualifying matters provided for. At the same time, other parts of central government, such as Kāinga Ora, may seek a minimal application of qualifying matters.

53. *To assist Council with efficient and consistent application of the MDRS, it is sought that all those government entities who may have an interest in qualifying matters are to advise their position on these matters and provide Council with sufficient information to satisfy the s32 requirements imposed by the Bill. Such advice must be internally coordinated within government so that there are no inconsistencies between the approaches sought by the range of government entities to the application of qualifying matters.*

54. This will improve the likelihood of achieving the government's desired outcomes for housing and avoid a situation where government entities expend both their and Council's time and resources on submissions through the plan change process.

Implementation resources and support

55. The implementation of the Bill will be complex, time-consuming and inflexible to the particular circumstances of the Council.

56. As noted earlier, the substance of the proposed changes to the Act is generally consistent with the overall approach to intensification signalled in our draft District Growth Strategy. However, the proposed changes to the Act will have significant implications for the scope and programme of changes to our District Plan. These include:

    a. The District Plan must adopt the MDRS in the district's current residential zones (except where qualifying matters apply). This significantly increases the scope of the intensification component of the plan change. Whereas changes to the district plan to implement the NPS-UD intensification policies on their own could have been achieved through adjustments to existing district plan provisions, the requirement to incorporate the MDRS essentially necessitates a full review of the General Residential Zone chapter, with consequential amendments that will cascade across the District Plan.

    b. Instead of a single "Urban Development Plan Change", Council must now run two separate plan change processes:

        i. A plan change to enable intensification and incorporate the MDRS, following the mandatory Intensification Streamlined Planning Process (ISPP). The plan change must be notified by 20 August 2022, and is likely to take a year to run its course (to be completed by mid-2023).

        ii. A plan change for other elements (such as papakāinga provisions) that cannot be incorporated into the ISPP under the Bill as it stands.

57. In addition to this, assessments of plan-enabled dwelling capacity prepared recently by council to inform our growth strategy will be out of date as they do not account for the MDRS. It is anticipated that there will be an increase in plan-enabled dwelling capacity in

existing urban areas as a result of incorporating the MDRS, however this is not able to be quantified until the HBA is redone.

58. These changes will significantly increase the Council's workload, under a tight statutory deadline. Specifically:

    a. Whereas the previous approach to enabling intensification could have been achieved through amendments to existing District Plan provisions, incorporating the MDRS is likely to require a full review of the General Residential Zone chapter, and/or the creation of a new Residential Zone chapter;

    b. Incorporating the MDRS will require numerous consequential amendments across the District Plan;

    c. The HBA should be reviewed in order to gain an updated understanding of the short-fall in plan-enabled dwelling capacity as a result of the MDRS;

    d. Council must now prepare and undertake pre-notification engagement on two draft plan changes;

    e. Council must now prepare two section 32 evaluation reports, both of which respond to different statutory and policy contexts. There is also additional information that must be included in the section 32 report associated with intensification;

    f. Council must now administer two separate (and distinct) plan change processes, including notification, hearings and decisions, about sufficiently similar content that it will be confusing to the public and likely hamper participation;

    g. There may be additional work for Council that will only become apparent once Council progresses with the detailed implementation of the proposed changes.

59. On this basis it is estimated that the work required to prepare the plan changes could be at least double the amount anticipated prior to the changes to the Act being announced. This is contrary to the assertion in paragraph 76 of the Regulatory Impact Statement which states: *"The requirement to use the new planning process for the NPS-UD intensification plan changes is unlikely to require additional resourcing from Council. The timeframe for developing proposed plan changes – the most resource intensive phase for Councils – will not be changed. In the later phases of the process, the initiative will reduce work for Councils, as the process for implementing the NPS-UD will be shorter and Councils will not have to respond to appeals."*

60. While we agree that removing appeals will reduce the work for Councils, the upfront effort to develop the plan changes – and communicate them – will add significantly to our work.

Part B: Technical Submission

Summary of technical submission

61. Interpreting the requirements of the Bill is not straightforward, requiring a significant amount of internal cross referencing of provisions and reference to multiple sources of interpretation. In addition to this, the Bill introduces a range of new terms and highly bespoke provisions into the planning legislation (the MDRS themselves). As a result, while the policy intent behind the Bill may be clear, the provisions of the Bill are not.

62. As a result of this complexity, the Council is not satisfied that it has been able to come to a clear understanding of the range of new requirements being created by the Bill. This is concerning, as the Council has a short amount of time within which to understand and implement its provisions.

63. In order to achieve the policy intent of the Bill, and avoid the risk of attracting judicial review (which is the only recourse under the Bill), the Council must be able to clearly understand its provisions so that it can efficiently and effectively implement them within the law. The provisions must therefore be drafted to be workable and interpretable.

64. The following submissions seek to improve both the workability and interpretability of the provisions of the Bill from the perspective of the Council. The submissions can be summarised as follows:

    a. The scope of the ISPP is too narrow to provide for an integrated approach to enabling housing supply. This can be improved by broadening its scope and enabling the ISPP to be used multiple times (but within a defined period);

    b. The Bill appears to enable only the simplest form of greenfield rezoning, and does not provide for more complex, multi-topic greenfield rezoning. The Bill should be amended to provide for a range of types of greenfield rezoning;

    c. The Bill should be amended to broaden the scope of matters that can be provided for in a "new residential zone";

    d. The Bill should be amended to enable papakāinga provisions in any zone to be incorporated into the ISPP;

    e. The Bill should be amended to ensure that district-wide provisions that manage a range of s6 matters (such as natural hazards, historic heritage, sites of significance to mana whenua, and indigenous biodiversity) can continue to apply as "qualifying matters";

    f. The meaning of "other building standards" and the restriction on their application across the District Plan, outlined in Schedule 3A cl2(3), must be clearly defined in order to avoid unintended consequences (such as the removal of earthworks standards, or the removal of all building standards from non-residential buildings in other zones);

    g. The meaning of "engineering standards" as it is used in Schedule 3A cl8(b) should be clearly defined;

    h. The meaning of "impervious area" as used in Schedule 3A cl13 should be clearly defined;

    i. The outdoor living space standard in Schedule 3A cl14 should be adjusted to ensure that some form of outdoor living space standard is provided for residential units that are not ground floor units;

    j. The outlook space standard in Schedule 3A cl15 should be adjusted to clearly define what can and cannot be included in an outlook space, and to avoid introducing unnecessary complexity to the design of apartment buildings.

65. The following paragraphs are structured in sections to correspond the range of technical matters being submitted on. The final paragraph of each section outlines the changes sought to the Bill for each matter.

The narrow scope of the ISPP

66. The Bill requires that an *intensification planning instrument (IPI)* is notified by the 20th of August 2022, using the *intensification streamlined planning process (ISPP)*. The scope of the ISPP is the same as the intensification planning instrument, which is limited to:

    a. Incorporating the MDRS into the District Plan;

    b. Giving effect to policies 3 and 4 of the NPS-UD; and

    c. Amending or including financial contributions provisions.

67. As provided for in s80G, the ISPP can only be used once.

68. The narrow range of matters that can be included in the ISPP is problematic for Kāpiti Coast District Council. Prior to the announcement of the Bill, the Council was working on the preparation of an "Urban Development Plan Change" that would have implemented the intensification policies of the NPS-UD alongside a range of other housing and urban development matters, such as providing for greenfield urban development and papakāinga housing provisions.

69. The purpose of this plan change would have been to address a range of housing and growth matters in an integrated manner. However, as a result of the Bill, the Council is now required to restructure its plan change programme to run at least two separate plan changes to cover these matters. Specifically:

    a. A plan change to incorporate the MDRS, the intensification policies of the NPS-UD and changes to financial contributions provisions using the mandatory ISPP;

    b. A separate plan change to cover topics that cannot be included in the ISPP, such as most forms of greenfield rezoning and papakāinga provisions (see submissions below on these matters), using the Schedule 1 process.

70. While it is technically possible to run these plan changes in parallel, this situation would be highly undesirable, for the following reasons:

    a. The two plan changes would run on separate timelines, with the intensification plan change being decided on much earlier than the parallel Schedule 1 plan change. Because of the extensive nature of changes to the District Plan required to incorporate the MDRS, there will be matters within the intensification plan change (such as residential provisions, changes to centres provisions, changes to building and engineering standards, and changes to definitions and measurement standards), that will impact on the Schedule 1 plan change. However, the Schedule 1 plan change must be based on the provisions of the current operative District Plan. As a result, if the Council were to run the two plan changes in parallel, the Schedule 1 plan change would need to be varied to incorporate the outcome of the intensification plan change, once the intensification plan change becomes operative. This would be inefficient for Council, and would waste the time of submitters, who may be required to submit twice on the Schedule 1 plan change.

b. Running parallel plan changes under distinct statutory processes will be confusing for the public and submitters, who may not be able to distinguish which plan change they are submitting on;

c. Running concurrent plan changes is likely to put further pressure on iwi capacity, and could reduce their ability to be meaningfully engaged in both plan changes.

71. The narrow scope of the ISPP does not recognise the range of issues associated with improving housing supply (such as complex greenfield development or papapkāinga provisions) and does not provide for these to be dealt with alongside intensification in an integrated manner. This could be addressed by broadening the scope of the ISPP, and providing territorial authorities with a greater degree of flexibility in how it can be used.

72. *Specifically, it is submitted that the following amendments are made to the Bill:*

a. That the scope of the ISPP is broadened to provide for a range of additional matters (see submissions below for submissions on the scope of the ISPP);

b. In order to provide flexibility for territorial authorities to restructure an integrated plan change programme around the MDRS, it is sought that the Bill is amended to enable the ISPP to be used more than once, but within a defined time period (for example, before 20 August 2024). This would not change the requirement to notify an IPI that incorporates the MDRS and the intensification policies of the NPS-UD by 20 August 2022.

Scope of the ISPP as it relates to greenfield rezoning

73. It is understood that the intent of the Bill is to provide for the rezoning of areas to enable greenfield development, so long as they incorporate the Medium Density Residential Standards (explanatory note, p.3). As worded, the Bill appears to attempt to enable some form of greenfield development through the reference to creating new residential zones or amending existing residential zones identified in s77F(4)(a).

74. Enabling greenfield development through a District Plan can take a range of forms depending on the scale and level of complexity of the area being considered. Firstly, it is important to define what “greenfield development” actually means in a general sense. Put simply, greenfield development is the process of developing a non-urban area into an urban area.

75. Enabling greenfield development through the District Plan means making changes to the District Plan to this effect, however the level of change required can be quite broad, depending on the size and complexity of the area. Enabling residential greenfield development over a small area of land with low levels of complexity could simply involve re-zoning the area to a relevant residential zone. However, enabling greenfield development over a large or complex area of land could involve a range of other changes to the District Plan, including: incorporation of centres and open space zones; identifying locations for roads, access or other forms of infrastructure; and identifying parts of the area that may be inappropriate to develop due to matters such as natural hazards, indigenous biodiversity, or significance to mana whenua, and providing for these areas in some way.

76. At a minimum, enabling residential greenfield development over a small area of land with low levels of complexity would require the following interrelated set of changes to the District Plan:

    a. Identifying an area of land in the district to be re-zoned;

    b. Removing the existing Rural zoning (which in the Kāpiti Coast District includes the General Rural, Rural Production, Rural Lifestyle and Future Urban Zones) or Open Space zoning from that area of land;

    c. Adjusting the existing General Residential zone, or creating a new Residential zone, to apply to that same area of land.

    d. Enabling greenfield development in larger more complex areas could also involve the following further changes to the District Plan in addition to those outlined above:

    e. Adjusting existing (or creating new) centres, open space or other urban non-residential zones to apply to identified areas within the greenfield development appropriate for those uses;

    f. Applying precincts or other forms of spatial overlay to provide for a range of building heights or densities within different parts of the greenfield development;

    g. Incorporating a structure plan into the District Plan to provide for the location of roads, infrastructure, or other matters specific to the greenfield development;

    h. Adjusting other spatial overlays that deal with district-wide resource management matters such as flooding, earthquake hazard, indigenous biodiversity, reverse sensitivity, historic heritage and sites and areas of significance to mana whenua that may apply to areas within the greenfield development;

    i. In addition to this, rezoning of rural land as “future urban zone” is an important tool for Council to provide for future urban growth. While the future urban zone does not immediately enable urban development, it is a useful tool for signalling the intended future extent of the urban environment, and for protecting the land from fragmentation through subdivision where this may prevent comprehensive future urban development.

77. The ISPP can only be used for a narrow range of purposes, as outlined in s80G(1)(b). This links to the provisions of s77F, where s77F(4)(a) attempts to give territorial authorities the ability to enable greenfield residential development. However, as worded, the Bill does not appear to properly enable the rezoning of an area for greenfield residential development, as the provisions do not provide for the necessary adjustment required to the existing rural or open space zoning that would be required as part of rezoning any non-urban area for development.

78. The Bill also does not provide for any other adjustments to the District Plan to enable greenfield development in larger or more complex areas (as noted above), or create future urban zones.

79. It is therefore sought that:

a. The Bill is amended to authorise territorial authorities to adjust existing rural or open space zonings as a part of the process of rezoning;

b. The Bill is amended to provide for the range of other changes to the District Plan that might be required to enable greenfield development in larger or more complex areas (as outlined above). This could potentially be undertaken by broadening the scope of the ISPP to provide for policy 2 of the NPS-UD, in addition to policy 3 and 4.

Scope of the ISPP as it relates to non-MDRS related activities within new residential zones

80. An option for incorporating the MDRS into the Kāpiti Coast District Plan includes creating a new residential zone complete with a new chapter in the District Plan that would include appropriate objectives, policies and rules to give effect to the MDRS. In principle, this appears to be authorised by s77F(4)(a), which enables a territorial authority to create new zones to incorporate the MDRS. In this context, the direction to incorporate the MDRS into a residential zone is presumed to mean providing for the permitted and restricted discretionary activities prescribed in cl2 and cl3 of Schedule 3A of the Bill.

81. However, residential zones in the Kāpiti Coast District Plan provide for a range of activities that go beyond the scope of the activities prescribed in cl2 and cl3 of Schedule 3A. These activities include (but are not limited to):

a. Providing for the construction of fences and retaining walls (subject to standards) as a permitted activity;

b. Providing for shared and group accommodation, and supported living accommodation, as a permitted activity;

c. Providing for some forms of farming, such as horticulture and market gardening, as a permitted activity (subject to standards);

d. Providing for home businesses and home craft occupations as a permitted activity (subject to standards).

e. A range of restricted discretionary, discretionary and non-complying rules to provide for activities that are less desirable in the residential zone.

82. Under the text of the Bill, it is unclear whether territorial authorities are authorised under s77F(4)(a) to include provisions not related to the MDRS (such as those provisions identified above) within new residential zones that are created to incorporate the MDRS. This lack of clarity means that it is difficult to determine whether new residential zones that incorporate the MDRS and other matters can be included within the scope of the ISPP. This is because under s80G(1)(b)(i), the territorial authority can only use the ISPP to incorporate the MDRS into plans (and not other matters).

83. It is considered that Council would be better able to incorporate the MDRS into the District Plan if it was properly authorised to create a new residential zone to provide for a range of matters in addition to the MDRS.

84. It is therefore sought that the Bill is amended to enable new residential zones to be created that provide for a range of matters, so long as they also incorporate the MDRS.

Scope of the ISPP as it relates to papakāinga provisions

85. Papakāinga provisions are becoming increasingly commonplace in modern district plans. While they are commonly associated with housing, papakāinga may also provide for a range of activities in addition to housing, such as cultural, community or commercial activities. There is no nationally consistent definition of what papakāinga are (nor would this necessarily be appropriate). Rather the purpose of papakāinga are determined by mana whenua, and their definition in district plans are developed in partnership with mana whenua.

86. In addition to this, appropriate locations for papakāinga are often not limited to the boundaries of any particular zone within the district plan. Rather, their location are determined by, amongst other matters, those locations where mana whenua have an ancestral connection to the land. As it is often not appropriate or practicable to link their location to a specific zone on this basis (or even the urban environment generally), papakāinga provisions can apply to a broad range of residential and non-residential zones, including rural zones, special purpose zones, and some urban non-residential zones.

87. Where mana whenua express a desire to establish papakāinga within the district, enabling papakāinga by providing for them within district plans is consistent with s6(e) of the RMA. In relation to urban environments, it is also consistent with the following policies in the National Policy Statement on Urban Development:

    a. "Well-functioning urban environments… have or enable a variety of homes that enable Māori to express their cultural traditions and norms (policy 1(a)(ii)"); and

    b. "Local authorities, in taking into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) in relation to urban environments, must… take into account the values and aspirations of hapū and iwi for urban development".

88. Because papakāinga provisions can provide for a range of activities (in addition to housing), can be associated with a range of zones (in addition to relevant residential zones) and do not neatly fall within the scope of the intensification policies of the NPS-UD, the Bill does not appear to authorise including papakāinga provisions within the Intensification Planning Instrument (IPI) or ISPP. This is a poor outcome because:

    a. Incorporating papakāinga provisions in a district plan would provide for housing that enables iwi, hapū and whānau to express their cultural traditions and norms;

    b. Iwi and hapū in the Kāpiti Coast District have expressed a desire for papakāinga provisions to be incorporated into the District Plan as soon as is practicable; and

    c. Providing for papakāinga provisions to be included in the ISPP could enable them to be incorporated into district plans in a more timely manner, particularly where they are given immediate legal effect.

89. On this basis it is sought that:

    a. The Bill is amended to provide that papakāinga provisions may be incorporated into the IPI and ISPP; and

b. *That papakāinga provisions would have immediate legal effect once the IPI is notified.*

Ability for district-wide rules to continue to apply as qualifying matters

90. Consistent with the National Planning Standards, the Kāpiti Coast District Plan manages a range of district-wide matters through district-wide provisions. Many of these matters relate to s6 of the RMA. The application of many of these provisions is managed through spatial overlays identified in the district plan maps. The matters managed in this way include:

    a. Flood hazard rules;

    b. Earthquake hazard rules;

    c. Historic heritage rules, including rules that manage notable trees;

    d. Rules associated with sites and areas of significance to mana whenua;

    e. Rules associated with ecosystems and indigenous biodiversity;

    f. Rules associated with outstanding natural features and landscapes;

    g. Coastal building line restrictions used to manage coastal erosion hazard.

91. District-wide provisions are an efficient and effective means of managing issues that do not conform to the boundaries of any particular zone. This is in part why district-wide matters and spatial overlays are provided for in the National Planning Standards. In addition to this, many of the matters being dealt with through these provisions would meet the definition of a qualifying matter under ss77G(a)-(g).

92. S77F(4)(c) requires that a territorial authority "may not make any requirement less permissive than those set out in Schedule 3A unless authorised to do so under section 77G and, if so, only to the extent necessary to accommodate the qualifying matter". It is a requirement of cl2 of Schedule 3A that "a relevant residential zone must allow as a permitted activity the construction and use of 1, 2, or 3 residential units on each site". It is presumed that the reference to "any requirement" in s77F(4)(c) refers to, inter alia, any requirement in a district plan that may prevent or frustrate the construction and use of 1, 2, or 3 residential units on a site in a relevant residential zone as a permitted activity.

93. District-wide rules could affect the ability to construct and use 1, 2 or 3 residential units on a site, as a permitted activity under the MDRS. For example:

    a. A District-wide rule on flood ponding hazard may require that the ground floor of a building is constructed above the 1:100 year flood level. This may restrict the practical ability for a three-storey building to be constructed within the height standard prescribed in the MDRS.

    b. A District-wide rule on stream or river corridor hazards may require that buildings cannot be located within a stream or river corridor as a permitted activity. On some sites, this may limit the ability to construct and use 3 residential units as a permitted activity.

c. A District-wide rule on historic heritage may prevent the demolition of a scheduled heritage building as a permitted activity. This may limit the ability to construct 3 residential units on the same site as a permitted activity;

d. A District-wide rule on indigenous biodiversity may prevent or restrict the construction of a building within a scheduled ecological site as a permitted activity. The rule may also restrict associated activities, such as vegetation clearance. This in turn may limit the ability to construct 3 residential units on a site as a permitted activity.

94. However, where a qualifying matter exists, s77G only authorises a territorial authority to "make the MDRS less permissive". As the MDRS are not the same as district-wide rules, it is not clear that district-wide rules can continue to apply as a means of managing a qualifying matter. Rather, the Bill appears to only authorise alterations to the MDRS themselves, presumably through bespoke alterations to the provisions of the relevant residential zone. This is an undesirable outcome because:

95. District-wide provisions and spatial overlays are provided for by the National Planning Standards and are the most efficient and effective means of providing for matters that do not conform to zone boundaries;

96. The approach proposed by the Bill would significantly increase the complexity of the residential zone provisions, in order to provide bespoke alterations to the MDRS in specified areas of the zone where a qualifying matter applies.

97. It is considered that the most appropriate way for many qualifying matters to be provided for is to enable them to be addressed through district-wide provisions.

98. It is therefore sought that:

a. The wording of s77G is amended to authorise territorial authorities to provide for qualifying matters through district-wide provisions;

b. This could be achieved by mirroring the text of s77F(4)(c). On this basis, s77G could be adjusted to read: "A relevant territorial authority may make <u>any requirement less permissive than those set out in Schedule 3A</u> to accommodate 1 or more of the following qualifying matters…".

Definition and scope of "building standards" and "other building standards"

99. Schedule 3A cl2 provides that (emphasis added):

> *(1) A relevant residential zone must allow as a permitted activity the construction and use of 1, 2, or 3 residential units on each site.*
>
> *(2) Each residential unit must comply with the **building standards** set out in Part 2.*
>
> *(3) There must be no **other building standards** included in a district plan additional to those set out in Part 2 relating to a permitted activity.*

100. The term "building standards" used in cl2(2) is not defined, although it could be interpreted to mean only those standards listed in Part 2 of Schedule 3A (based on the text of the clause).

101. The term “other building standards” used in cl2(3) is also not defined. Without clear definition of this term, its interpretation is potentially open-ended. Given the extensive requirement outlined in cl2(3) that “there must be no *other building standards* included in a district plan” relating to a permitted activity, the meaning of “other building standards” has potentially significant implications for the extent to which a range of standards that apply to permitted activities throughout the district plan must be removed.

102. If any or all of the following standards were considered to be “other building standards”, then the bill as written would require them to be removed from the district plan where they relate to a permitted activity:

a. *Standards that prescribe the size and physical appearance of a building and its relationship to property boundaries.* These are the standards covered by Part 2 of Schedule 3A, as well as other standards that are known to appear in district plans such as building length, façade material, façade offset and floor area ratio standards.

b. *Standards that control the horizontal or vertical relationship of a building in relation to other features.* These include coastal setbacks standards, setbacks from waterbodies, setback or exclusions from ecological sites, and standards that require a building to be excluded from or raised above a flood hazard. These standards are important as they often address matters associated with s6 of the Act (see also the submission on district wide provisions as qualifying matters).

c. *Standards that relate to the performance of a building.* These include noise, vibration and ventilation provisions for managing reverse sensitivity effects on state highways, railways, ports and airports, as well as seismic/geotechnical design standards as they relate to earthquake hazards. These standards are important, as they manage building performance issues that are not otherwise regulated through the Building Act (while seismic engineering is managed at a general level through the Building Act, the spatial location of activities sensitive to seismic risks are not).

d. *Standards that relate to activities associated with or ancillary to the construction of a building.* These include matters such as earthworks and land stability standards, temporary acoustic and vibration effects standards, dust and sediment control standards, and temporary activity standards (such as construction traffic management). These standards are important as they manage the temporary effects of construction activities, which could be significant in the absence of specified standards.

e. *Standards that prescribe the design and construction of features and structures associated with buildings (but which are not themselves buildings).* These include matters such as vehicle access design standards, lighting standards, three waters infrastructure standards and hydraulic neutrality standards. These standards are important, as they ensure that development integrates with network utilities and other kinds of infrastructure.

103. It is clear that the intent of the Bill is to limit the ability for district plans to apply further standards associated with the size and physical appearance of buildings, and their relationship to property boundaries (as outlined in (a) above), and it is contended that the

definition of "other building standards" is intended to cover this type of standard. It is also contended that the restriction on "other building standards" is not intended to apply to the other standards that relate to buildings, as outlined in (b) to (e) above, as these manage a wide variety of important resource management issues.

104. In addition to this, the restriction on "other building standards" outlined in cl2(3) appears to apply to any permitted activity in the district plan, not just residential units in a relevant residential zone. Interpreted in this way, building standards that relate to permitted activities that are not residential units (such as accessory buildings, industrial buildings, commercial buildings, religious buildings or any other building), anywhere in the district plan, must be removed.

105. It is contended that it is not the intent of the Bill to regulate building standards associated with buildings that are not residential units in a relevant residential zone, and that therefore this restriction should not apply to all building activities across the district plan.

106. It is submitted that the uncertainty associated with the scope and definition of "building standards" and "other building standards" must be resolved in order for a territorial authority to understand the extent of changes required to a district plan as a result of a Bill.

107. Therefore it is submitted that:

a. *For clarity, the term "building standards" should be defined to mean only those standards listed in Part 2 of Schedule 3A;*

b. *The term "other building standards" must be clearly defined. This should be defined to mean only those standards that prescribe the size and physical appearance of a building and its relationship to property boundaries;*

c. *That the restriction on "other building standards" is limited to residential units within relevant residential zones. This could be achieved by re-wording cl2(3) as follows: "there must be no other building standards included in a district plan additional to those set out in Part 2 relating to the permitted activity required by sub-clause (1)".*

Definition and scope of "engineering standards"

108. Schedule 3A cl8(b) requires that a district plan must include "a reference to relevant engineering standards applying in the relevant residential areas to which the MDRS apply".

109. The meaning of "engineering standards" is not defined in the Bill, nor is it defined in the Act or the National Planning Standards. It is also unclear whether there is a difference between an "engineering standard" and an "other building standard".

110. In the context of the Kāpiti Coast District Plan, engineering standards are generally considered to be standards that manage the design of infrastructure associated with development, or standards that manage the effects of development on the provision, functioning or maintenance of infrastructure. These include:

a. Standards associated with the provision of network utility infrastructure, and managing the effects of development on network utility infrastructure, as contained in the *Infrastructure* chapter;

b. Standards associated with the provision of roading and other forms of access, and for managing the effects of development on the transport network, as contained in the *Transport* chapter;

c. Standards incorporated by reference under Part 3 of Schedule 1 of the RMA, such as the *Kāpiti Coast District Council Subdivision and Development Principles and Requirements 2012*.

111. In addition to this, the term "reference" in cl8(b) implies that engineering standards an only be incorporated by reference, rather than included directly within a district plan. As noted above, the Kāpiti Coast District Plan includes engineering standards both within the District Plan and through material incorporated by reference.

112. To improve interpretation of this clause, and to enable territorial authorities to appropriately provide for engineering standards within the district plan, the following amendments to the Bill are sought:

a. That a definition of "engineering standards" is included within the Bill, and that this definition includes standards provided for within the Infrastructure and Transport chapters of the district plan (as defined by the National Planning Standards) as well as material incorporated by reference under Part 3 of Schedule 1 of the RMA;

b. That the term "reference" used in cl8(b) is replaced with the term "include".

Impervious area standard

113. Schedule 3A cl13 states that "the maximum impervious area must not exceed 60% of the site area". "Impervious area" is not defined in the Bill, nor is it defined in the RMA or the National Planning Standards. Some district plans already provide a definition of "impervious area". For example, the Auckland Unitary Plan defines "Impervious Area" as:

> *An area with a surface which prevents or significantly retards the soakage of water into the ground.*
>
> *Includes:*
>
> - *roofs;*
> - *paved areas including driveways and sealed/compacted metal parking areas, patios;*
> - *sealed and compacted metal roads; and*
> - *layers engineered to be impervious such as compacted clay.*
>
> *Excludes:*
>
> - *grass and bush areas;*
> - *gardens and other vegetated areas;*
> - *porous or permeable paving and living roofs;*
> - *permeable artificial surfaces, fields or lawns;*
> - *slatted decks;*

- *swimming pools, ponds and dammed water; and*
- *rain tanks.*

114. It is important that the term is defined to provide district plan users with certainty as to what kinds of surface the standard is intended to provide for as a permitted activity. A clear definition of the term will also help to clarify the scope of discretion when considering a breach of the standard as a restricted discretionary activity.

115. It is therefore sought that the Bill is amended to include a clear definition of "impervious area".

Outdoor living space standard

116. Schedule 3A cl14 specifies an outdoor living space requirement for a residential unit located at ground floor level. There is no specified outdoor living space requirement for a residential unit not located at ground floor level (for example, residential units located above the ground floor level).

117. The standard appears to assume that 3 residential units would only be provided for at ground floor level as a permitted activity. However, it would be entirely possible to construct three residential units stacked vertically (as apartments) as a permitted activity under the standards. In this instance, the top two units would not be "residential units at the ground floor level" and would therefore not be required to provide any outdoor living space. This is considered to be an undesirable outcome in the context of the degree of intensification intended to be enabled by the standards.

118. It is contended that the outdoor living space provided for in cl14(b) would, as a minimum, provide appropriate outdoor living space for residential units that are not at ground floor level. An amended standard would need to be carefully constructed so that it does not contravene cl14(d). For example, recessed balconies or balconies that are vertically stacked are an appropriate means of providing outdoor living space, however these would not comply with cl14(d) as written, because they are not free of "buildings". Given that cl14(d) appears to be constructed with ground level outdoor living space in mind, it may be unnecessary to apply this subclause to outdoor living space located above ground level.

119. It is therefore sought that cl14 is amended to include an outdoor living space standard for residential units that are not at ground floor level. This would involve:

a. Applying cl14(b) as the outdoor living space for residential units that are not at ground floor level;

b. Clarifying that cl14(d) would not apply to outdoor living space located above ground level.

Outlook space standard

120. Schedule 3A cl15 requires that "an outlook space must be provided from habitable room windows". While the clause goes on to give this requirement some substance, the term "outlook space" is undefined in the Bill, the RMA or the National Planning Standards. It is important that this term is defined, in order for district plan users to understand the matters that the standard is intending to regulate. Without a clear definition, the standard is difficult to interpret. For example:

a. Can trees or other vegetation be located within an outlook space?

b. Can structures that are not buildings (such as fences, retaining walls, decks, rainwater tanks and so on) be located within an outlook space?

c. Can a vehicle parking space be located within an outlook space?

121. It is contended that an "outlook space" is intended to be a space that is free of buildings adjoining the window of a habitable room within a residential unit. An appropriate definition of the term could use words to this effect.

122. In addition to this, cl15(6)(b) requires that outlook space must not extend over an outlook space or outdoor living space required by another dwelling. This subclause appears not to account for situations where residential units are stacked vertically (such as apartments). In this instance, the subclause would require that windows for each apartment must be offset from the apartment below, in order to ensure that the outlook space for an upper-level apartment does not extend over the outlook space associated with a lower level apartment. This would increase the complexity of building design, and result in inefficient building planning, for little apparent benefit. This could be remedied by amending the wording of the subclause so that an outlook space "must not extend <u>into</u> an outlook space or outdoor living space required by another unit".

123. Further, cl15(6)(b) introduces the term "dwelling". This is not a term defined in the RMA or the national planning standards (although the term dwellinghouse is defined in the RMA). It is suggested that for simplicity, this term is replaced with "residential unit", which is the term used throughout the MDRS.

124. In order to improve the interpretation of the outlook space standard, the following amendments to the Bill are sought:

a. That a definition of "outlook space" is included in the Bill;

b. To ensure rational apartment building design is enabled, that cl15(6)(b) is amended to provide that outlook space "must not extent <u>into</u> an outlook space or outdoor living space required by another residential unit";

c. To avoid introducing new terms into the standard, that the term "dwelling" is replaced with "residential unit".