Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill

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Report of the Environment Committee

December 2021

Contents

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Chairperson

Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill

Recommendation

The Environment Committee has examined the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill.

We recommend by majority that the bill be passed, and that the House take note of our proposed amendments in this report.

Because of the tight timing for our report back to the House, we have not included our recommendations in a revision-tracked version (RT) of the bill. We would expect the House to have the opportunity to consider our recommendations through a revision-tracked Supplementary Order Paper (SOP) at the Committee of the whole House stage. We have asked the responsible Ministers to provide the committee with a draft version of such an SOP beforehand. We strongly recommend that the RT SOP be publicly available as soon as possible.

1 Introduction

About the bill

The Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill seeks to rapidly accelerate the supply of housing in urban areas where demand for housing is high. It would apply to territorial authorities in New Zealand's larger cities: Auckland, and greater Hamilton, Tauranga, Wellington, and Christchurch. The bill would amend the Resource Management Act 1991 (RMA) to require "tier 1" councils to set more permissive land use regulations to enable greater housing intensification.

The bill would do this in two main ways:

- It would introduce a streamlined process to enable tier 1 councils to implement the National Policy Statement on Urban Development (NPS-UD) more quickly.[1] The new intensification streamlined planning process (ISPP) would be based on the streamlined planning process in the RMA.
- The bill would also apply medium density residential standards (MDRS) in all tier 1 urban environments. They would enable medium density housing (up to three dwellings of up to three storeys per site) to be built as of right across more of New Zealand's urban environments.

[1] Tier 1 urban environments are Auckland, Hamilton, Tauranga, Wellington, and Christchurch. Fourteen tier 1 authorities are responsible for all or part of those tier 1 environments.

For tier 1 territorial authorities,[2] plan changes or plan variations that implemented the intensification policies and incorporated the MDRS would be known as intensification planning instruments (IPI).[3] The bill would require tier 1 territorial authorities to notify IPIs by 20 August 2022. An independent hearings panel (IHP) would be appointed to hear public submissions and make recommendations to a relevant territorial authority on its IPI. If the council did not agree with the IHP's recommendations, the Minister for the Environment would make a final decision.

The medium density residential standards (MDRS) would set a minimum level of development that tier 1 councils must allow in current and future residential zones. Some qualifying matters would allow councils to limit the application of the MDRS, if evidence supports this. Where qualifying matters have been addressed and finalised through a planning process, and the district plan is operative, they would still apply. We note that qualifying matters are a mechanism that can reduce the application of the MDRS, and we discuss these later in our report.

The bill should be passed with amendment

We recommend by majority that the bill be passed. In our report, we propose amendments to the bill.

Because of the tight timing for our report back to the House, and the nature of the amendments we propose, there has not been time to include our recommendations in a revision-tracked version of the bill. We would expect the House to have the opportunity to consider our recommendations through a Supplementary Order Paper (SOP) at the Committee of the whole House stage. We have asked the responsible Ministers to provide the committee with a draft version of such an SOP beforehand, to enable the committee to consider whether it incorporates our proposed amendments.

Some of us remain concerned that the shortened time frame has prevented the usual full scrutiny of the bill, and consideration of whether there are any implementation issues.

We acknowledge the challenges of the short time frame for public submissions, and appreciate the expertise presented in submissions and hearings presentations. These have contributed to changes in the bill.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House. Some of us remain concerned about the absence of a right of appeal to the Environment Court when a council does not accept the recommendations of the independent hearing panel, and a decision instead being made by the Minister for the Environment.

2 Throughout this report, we use the term "councils" to refer to territorial authorities.

3 We note that in our report we propose broadening the scope of intensification planning instruments (IPI).

2 Summary of proposed amendments to the bill

Summary of main amendments proposed

We make the following recommendations by majority to the House:

Intensification streamlined planning process (ISPP)

1. That the scope of the ISPP be broadened, so that in addition to the MDRS and NPS-UD, and financial contribution provisions, the IPI could also be used to:
   - change provisions in plans (including objectives, policies, rules, standards, and zones) that are consequential and complementary to the MDRS and NPS-UD intensification policies
   - enable provision of papakāinga.[4]

   For the avoidance of doubt, the ISPP could include provisions relating to subdivision, fences, earthworks, district-wide matters, infrastructure, qualifying matters, stormwater management (including permeability and hydraulic neutrality), provision of green space, and provision for additional community facilities and commercial services.
2. That the link between the MDRS and the NPS-UD be clarified. Both the MDRS and the NPS-UD need to be implemented via the IPI. Where the NPS-UD is applied to a "relevant residential zone", the underlying zoning 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.
3. That the bill clarify that existing plan provisions continue to have effect provided they are not inconsistent with the bill.
4. That the composition of the independent hearings panels must include at least one member with the knowledge, skills, and experience of tikanga Māori, whose appointment should be made in consultation with relevant iwi authorities.[5]
5. That the bill clarify that, if a qualifying matter has already been through a plan-making process, significant evidence would not need to be provided and the matter would not be reconsidered through the ISPP. The qualifying matter could be carried across, and council's assessment would focus on how to accommodate the qualifying matter through appropriate heights and densities. However, this would not apply to the "other matter" category of qualifying matters.

Medium density residential standards (MDRS)

6. That the seven MDRS included in the bill as introduced be amended as set out in this report.
7. That new MDRS standards (regarding glazing and landscaping) be inserted into the bill.
8. That the MDRS apply to all relevant residential zones in tier 1 council plans, rather than "urban environments". Our expectation is that the intensification instruments will provide for the non-residential activities that residents need. We note our understanding that the

[4] We consider that papakāinga should include housing on Māori land under the Te Ture Whenua Māori Act 1993, as well as general land owned by Māori.

[5] We note that section 34A of the RMA already provides for local authorities to consult iwi when appointing a commissioner with an understanding of tikanga Māori.

NPS-UD enables councils to use the ISPP process to provide for commercial activities, such as shops, to service the needs of new residential dwellings.

9. That the bill clarify that if a council wanted its plans to be more enabling of development, then it could omit any of the standards in the MDRS when they adopted it in its plans. If a council does this, it could not regulate for that effect in its plan.
10. That objectives and policies for the MDRS be included in the bill for councils to adopt.
11. That the MDRS apply to land designated for schools so that schools could also incorporate the standards.
12. That the bill clarify which parts of plans would have immediate legal effect; namely, that only the specified standards in the MDRS and the MDRS objectives and policies would have immediate legal effect.
13. That the bill clarify that councils could modify the MDRS and NPS-UD intensification policies to accommodate qualifying matters where such matters are present.
14. That the bill include Te Ture Whaimana o Te Awa o Waikato (Vision and Strategy for the Waikato River) and other treaty settlement legislation that provides for iwi participation, if necessary in order to give effect to it, as a qualifying matter for the MDRS and NPS-UD intensification policies.

Tier 2 and tier 3 councils

15. That the Minister for the Environment be required to consult the Minister for Māori Crown Relations: Te Arawhiti, as well as the Minister of Housing, before directing a tier 2 council through an Order in Council (OIC) to implement the MDRS and give effect to the NPS-UD via the ISPP (noting that the bill as introduced would already require the Minister for the Environment to consult the Minister of Housing).
16. That the bill clarify that if a tier 2 council is included into the legislation via an OIC they need to prepare an IPI and go through the ISPP to: incorporate the MDRS, give effect to the NPS-UD, and if necessary change their financial contributions policies and make any consequential and complementary changes to their plans. The bill as introduced requires that tier 2 councils included via the OIC before 21 March 2022 would need to do this, but if the OIC was made after 21 March 2022 then tier 2 councils were directed only to incorporate the MDRS. Without such an amendment, this would result in those tier 2 councils needing to carry out multiple plan changes.
17. That the bill allow any tier 3 council (as defined by the NPS-UD) to ask the Minister for the Environment to direct it to implement the MDRS and NPS-UD via the ISPP. The Minister for the Environment, before approving or declining the request, should determine whether the relevant tier 3 council is experiencing acute housing need and consult the Minister for Māori Crown Relations: Te Arawhiti, as well as the Minister of Housing, before directing a tier 3 council through an OIC. The OIC for this would specify nomination dates for the resulting IPI.

Transitional provisions—existing plan changes

18. That the transitional provisions relating to existing plan changes and full plan reviews be redrafted, and that the current requirement to withdraw proposed district plans or private plan changes when the hearing has not been completed by 20 February 2022 be removed, instead allowing for “variations” in most cases.

- Councils that have already notified a proposed district plan at the time of the bill's commencement should not be required to modify their operative plans, and should instead use the ISPP to vary their proposed district plans to incorporate the MDRS and give effect to the NPS-UD intensification policies.
- Councils that have notified plan changes at the time of the bill's commencement (including private plan changes that councils have adopted or accepted) should notify a variation to the plan change to ensure that it incorporates the MDRS. They should notify the variation alongside their IPI and the plan change will be able to continue.
- We note that the bill as introduced provided, from the time of enactment, councils with discretion to reject a private plan change request that does not incorporate the MDRS, or work with the requestor under Schedule 1 processes to modify the request to incorporate the MDRS.
- A new transitional provision would enable councils to also choose to accept or adopt a private plan change request that proposes to adopt all the zone provisions of a relevant residential zone. In this instance, the council's IPI will incorporate the MDRS into relevant residential zones within scope of the private plan change.

Subdivisions

19. That the bill be amended to clarify that:
    - Subdivision would be a controlled activity for existing dwellings that meet the MDRS, new dwellings that are permitted under the MDRS, or dwellings that have been approved through a resource consent.
      We note that the bill does not change any of the existing plan provisions regarding subdivision, except to enable application of the MDRS.
    - Subdivision consent for residential units in accordance with the MDRS or an associated land use consent must not be publicly notified or given limited notification.

    We note that the bill does not prescribe a minimum size for a site, but we were advised that the practical effect of the MDRS (such as the standard for site coverage of no more than 50 percent) would prevent sites from being too small.

Financial contributions

20. That rules incorporating or updating financial contributions provisions in proposed plans that go through the ISPP should not have immediate legal effect. Instead, financial contributions provisions should be subject to the consultation requirements in the ISPP before coming into effect.

Further amendments

21. That further amendments be made to the bill as set out in this report, as well as minor, technical, and consequential amendments as set out in departmental advice.

3 Discussion of issues and proposed amendments

Intensification streamlined planning process (ISPP)

Clause 8 would insert new subpart 5A into the Act, providing for intensification planning instruments (IPI) and the intensification streamlined planning process (ISPP). Clause 14 would insert new Part 6 into Schedule 1, including further provisions regarding the intensification streamlined planning process.

Scope of intensification planning instruments (IPI)

Clause 4 would amend section 2 to define an "intensification planning instrument" (IPI) as a change to a district plan or a variation to a proposed district plan. The change must be for the purpose of incorporating the MDRS. As introduced, the bill allowed for councils to give effect to the intensification policies of the NPS-UD into plans[6] and amend or include provisions relating to financial contributions. We recommend that councils must give effect to the intensification policies of the NPS-UD in plans.

Clause 8, new section 80G, sets out the limitations that would apply to IPI and ISPP. New section 80G(1)(b) provides that a territorial authority could only use the IPI under new sections 77F(2), 77K(1), and 77P. Those sections relate to incorporating MDRS into plans, the duty of territorial authorities to incorporate other intensification policies into plans, and the review of financial contribution provisions.

We consider that the scope of what could be included in an IPI is too narrow, and recommend broadening it. We propose an amendment to enable councils to amend or develop provisions that support or are consequential on the MDRS and NPS-UD. This could include objectives, policies, rules, standards, and zones. It could also include provisions that are used across a plan relating to subdivision, fences, earthworks, district-wide matters, infrastructure, qualifying matters,[7] stormwater management (including permeability and hydraulic neutrality), provision of open space, and provision for additional community facilities and commercial services.

Some of us consider that developers who are proposing private plan changes should have access to the ISPP.

Papakāinga housing

Several submitters sought clarity on whether papakāinga housing provisions could be incorporated through the IPI and ISPP. We agree that councils should be able to use the ISPP for implementing papakāinga provisions and recommend amending the bill accordingly. We were advised some councils restrict papakāinga housing to Māori land owned under Te Ture Whenua Māori Act 1993. We encourage councils to provide a more enabling approach to papakāinga housing on a variety of different types of Māori owned land.

6 These are policies 3 and 4 for tier 1 councils and policy 5 for tier 2 councils.

7 We discuss qualifying matters in more detail later in our report.

Qualifying matters

The bill defines a "qualifying matter" as a matter referred to in new sections 77G or 77L. Those sections relate to making the MDRS or intensification policies less permissive if certain qualifying matters are present. Several submitters expressed concern that the bill might not allow the IPI to be used to implement measures to restrict density where a qualifying matter has been identified. We recommend amending the bill to make it clear that implementing measures to restrict density where a qualifying matter has been identified would be within the scope of the IPI.

Incorporating medium density residential standards into plans

Proposed new section 77F would require the MDRS to be incorporated into district plans. We recommend inserting a provision into new section 77F to make it clear that existing relevant provisions in plans that do not conflict with the MDRS or the implementation of the NPS-UD would continue to have effect. Namely, this would provide for district-wide matters, such as stormwater management, waterbody setbacks, and subdivision of land.

Regional policy statements

We understand that the ISPP has been designed for changes to territorial authority plans, rather than regional policy statements and regional plans. However, we note that specific objectives or policies in regional statements relating to density may sometimes conflict with the application of the MDRS and/or the NPS-UD. We recommend amending new section 77J to make it clear that provisions in regional policy statements that are inconsistent with the MDRS or the NPS-UD would not apply in decisions about consenting or district plan drafting. For example, policies that encourage single house typology and zoning would be inconsistent with the MDRS and NPS-UD.

Directions from the Minister

Proposed new section 80I would enable the Minister for the Environment to make directions to one or more councils setting out certain requirements. They include the number of panel members to be appointed to an independent hearings panel, as well as their level of experience and qualifications. The requirements could also include the time period within which the council must complete certain stages of the ISPP, and matters that they must report to the Minister.

We understand that the content of the direction is intended to be relevant for the whole process. We recommend amending new section 80I and new clause 104 of Schedule 1 to make it clear that the direction should be considered throughout the ISPP and that decision-makers should have regard to the content of the direction.

Iwi and Māori consultation

The requirement to consult with iwi authorities on the IPI during the ISPP is the same as that currently in the RMA for a standard plan change process. We propose amendments below to ensure that tikanga expertise is provided for on independent hearings panels. We note the consultation requirements for preparing a plan under clause 3 and clause 4A of Schedule 1 of the RMA would not be affected by the bill.

Appointment and expertise of independent hearing panels

Proposed new section 96 provides that territorial authorities would need to establish independent hearing panels (IHP) and delegate necessary functions. An IHP would conduct a hearing of submissions on an IPI, and make recommendations to the relevant territorial authority about it.

As introduced, new section 96 does not contain a requirement for IHPs to have any members with tikanga expertise (although we note that section 34A of the RMA would be relevant to a council in delegating its functions). We recommend amending section 96 to require that at least one member have this expertise, with their appointment to be made following consultation with relevant iwi authorities. The Minister's direction would also be able to specify the number of IHP members, and their experience and qualifications.

We note advice that the bill would not prevent multiple territorial authorities from deciding to appoint a single IHP to conduct a joint hearing.

Matters that the independent hearing panel could consider

Proposed new section 99 specifies that an IHP would need to make recommendations to the territorial authority on the IPI. Under new section 99(2)(a), the IHP would not be limited to making recommendations within the scope of submissions made on the IPI. New section 99(2)(b) provides that the IHP could also make recommendations about any other matters relating to the IPI identified by the panel or any other person during the hearing.

We recommend amending new section 99(2)(b) to make it clear that any recommendations not in submissions would need to be related to a matter identified by the panel or another person during the hearing. We consider that this would be necessary for transparency and to ensure that a public record was available of any matters considered by the IHP.

Medium density residential standards (MDRS)

Requirement to incorporate the MDRS

Clause 7 of the bill as introduced, new section 77F, would require tier 1 territorial authorities to apply the medium density residential standards (MDRS) to every relevant residential zone in an urban environment.

Urban environments

Clause 7, new section 77E, would specify that an urban environment is any area of land that:

- is (or is intended to be) predominantly urban in character, and
- is (or is intended to be) part of a housing and labour market of at least 10,000 people.

We agree with submitters that, in practice, the criteria above would likely be difficult to apply, and would cause uncertainty about where the MDRS are intended to apply. We recommend that the MDRS does not apply to all towns with a population of less than five thousand people at the 2018 census, and offshore islands.

Objectives and policies to support the MDRS

As introduced, the bill does not contain any provisions that expressly state the objectives and policies of the MDRS. Some submitters suggested that it would be preferable to include objectives and policies for the MDRS in the legislation, to provide territorial authorities with more guidance and ensure a consistent approach to district plan-making.

We agree, and recommend including the following objectives and policies for the MDRS in a schedule to the bill.

District plan objectives:

- District plan objective 1: Well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.
- District plan objective 2: The zone provides for a variety of housing types and sizes that respond to housing need and demand; and the neighbourhood's planned urban built character of predominantly three-storey buildings.

District plan policies

- District plan policy 1: Enable a variety of housing typologies with a mix of densities within the zone, including three-storey attached and detached dwellings, and low-rise apartments.
- District plan policy 2: Apply the MDRS across all the relevant residential zones[8] of the district plan except in circumstances where a qualifying matter is relevant. Qualifying matters include 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.
- District plan policy 3: Encourage development to achieve attractive and safe streets and public open spaces, including by providing for passive surveillance.
- District plan policy 4: Require housing to be designed to meet the day-to-day needs of residents.
- District plan policy 5: Provide for developments not meeting permitted activity status, while encouraging high-quality developments.

We also recommend an amendment that requires territorial authorities to incorporate the objectives and policies into their respective district plans. These objectives and policies would have immediate legal effect when a council notifies their IPI.

Activity status and notification of consents

The MDRS would enable up to three residential units per site as a permitted activity. A resource consent would not be required, as long as the building standards in the bill were met. If the development was for more than three units, or they did not comply with the MDRS in the plan, then the development would be a restricted discretionary activity that requires a resource consent. However, the applications must not be publicly notified, except where a

[8] We note "relevant residential zones" would exclude towns where the population of the town was under five thousand people at the 2018 Census, and offshore islands.

council needed to assess the effects of the breaches of building standards (which we suggest renaming as “density standards”), the application could be subject to limited notification.

We note that where the NPS-UD is implemented in a residential zone at a scale more intensive than permitted by the underlying MDRS, then activities will require a consent on the basis that they are a restricted discretionary activity.

We note that the bill would not affect existing plans’ provision for mixed use, non-residential activities that would allow home-based businesses within parameters.

We note that, as part of implementing the bill, the Ministry for the Environment and Te Tūāpapa Kura Kāinga—Ministry of Housing and Urban Development would begin developing early next year, as a matter of priority, a national medium-density design guide, in consultation with local government and stakeholders.

Subdivision requirements

Clause 5 of proposed new Schedule 3A would require any subdivision provisions in plans, including rules and standards, to be consistent with the level of development permitted by the MDRS under the other provisions of new Schedule 3A. Providing for subdivision would enable development to occur at the anticipated level from the time the MDRS comes into force.

We consider it unclear what activity status should be afforded to a subdivision for it to be consistent with the level of development permitted. Given the technical nature of developing subdivisions, we consider that permitted activity status would not be appropriate, as it would not require a resource consent.

A controlled activity status would allow councils to have oversight and control of subdivision development. Councils would be able to impose conditions to ensure property titles were arranged lawfully, and that necessary infrastructure was provided.

We recommend the following amendments to the bill regarding subdivision:

- Subdivision would be a controlled activity for: existing dwellings that meet the MDRS, new dwellings that are permitted under the MDRS, or dwellings that have been approved through a resource consent.

  We note that the bill does not change any of the existing plan provisions regarding subdivision, except to enable application of the MDRS.
- Provision for vacant lot subdivision should be removed so that resource consent of four or more units cannot be side-stepped by splitting an existing section into two.
- Subdivision consent for residential units in accordance with the MDRS or an associated land use consent must not be publicly notified or given limited notification.

The density standards in the bill as introduced

The MDRS would include seven building standards to control the bulk and location of buildings, and manage the internal amenity of the site. We suggest that the term “building

standards" should instead be changed to "density standards", to avoid confusion with requirements under the Building Act 2004. The standards are set out in Part 2 of proposed new Schedule 3A of the RMA, to be inserted by Schedule 1 of the bill. Submitters suggested a variety of changes to the standards. We have considered them, and propose changes to four of the seven standards, as set out below.

Density standard	**Our proposed change**
Building height (clause 9 of new schedule 3A)	We do not propose any changes.
Height in relation to boundary (clause 10 of new schedule 3A)	We recommend that the height in relation to boundary should be reduced to 5 metres at side and rear site boundaries (not front / road boundaries), plus 60 degrees recession plane. We were advised that this would improve the balance between access to sunlight and enabling three storey dwellings in practice. Some of us consider that a further reduction of height in relation to boundary (or a change in the recession plane) may improve the balance between the desire for additional housing and provision of sunlight and amenity. However, we wish to better understand the impact any reduction would have on the number of units per site, prior to recommending any further reduction. Some others of us support the adoption of the Auckland Unitary Plan's standards in this regard.
Setbacks (clause 11 of new schedule 3A)	Submitters suggested changes to the setback requirements, with notable themes being encouraging protection of existing trees and improving interface with the street. We recommend that the front yard setback be reduced to 1.5 metres to improve the interface with the street. We recommend that the bill be amended to clarify that existing setbacks for water bodies, the coast, and infrastructure must be retained.

Building coverage (clause 12 of new schedule 3A)	We do not propose any changes.
Impervious area (clause 13 of new schedule 3A)	We recommend deleting this building standard from the MDRS, with the subject matter of the standard instead being dealt with as a district-wide matter for councils to determine.
Outdoor living space (per unit) (clause 14 of new schedule 3A)	We recommend increasing the outdoor living area for a ground unit to 20 square metres. Later in our report, we recommend that developers be allowed to group outdoor space requirements for units so that they can be used communally, rather than be provided for per unit. The outdoor living area should be at least the cumulative total of the individual spaces. We recommend allowing developers to choose to provide outdoor space as grouped for communal use, rather than only provide outdoor space per unit. This would allow more flexibility, and address concerns that some units would only have a very small outdoor space. Communal spaces could also provide for more space and flexibility for BBQ areas and hangi and umu pits.
Outlook space (per unit) (clause 15 of new schedule 3A)	We recommend that the outlook space be increased so that it is 4 metres by 4 metres for the principal living room window. We also recommend that the 1 metre by 1 metre be applied to all other windows in habitable rooms, not just one window as proposed in the bill. We recommend that the bill clarify that an outlook space can be: above or below another outlook space (in a vertical configuration); and under buildings, such as balconies; and over driveways or footpaths within the site, as long as it is not obstructed by structures such as fences.

Additional density standards

Submitters suggested including a number of additional density standards in the bill. We recognise the need to ensure that the MDRS results in liveable, well-designed homes. To help ensure liveability and improve aesthetics, we recommend including the following additional density standards in the bill.

Proposed additional density standard	Proposed description
Landscaping requirement	We recommend amending the bill so that a minimum 20 percent of a site must be set aside for planting, grass, or tree canopy. Ensuring that green space is provided would also incentivise the maintenance of existing trees on a site. Some of us would prefer a minimum of 35 percent of a site set aside for planting, grass, or tree canopy. Some of us favour no standard, and that the offsetting of felled trees could be done in public spaces.
Glazing requirement	We recommend amending the bill so that a minimum of 20 percent of the front façade of a building is glazed. This could be in the form of windows, doors, or sliders. Glazing would allow for passive surveillance from inside the building, and improve the appearance of the building from the street view. Glazing would also avoid blank street-facing walls, or walls with very few windows.

Qualifying matters

As noted earlier, clause 7, new section 77F would require the MDRS to be incorporated into plans and apply to every relevant residential zone. However, the bill also recognises that not all areas are appropriate for intensification. Clause 7, new section 77G would enable a territorial authority to make the MDRS zoning less permissive if the change was required to accommodate any qualifying matters. Qualifying matters set out in new section 77G include:

- matters of national importance that decision makers are required to recognise and provide for under section 6 of the RMA. This includes matters such as the natural

character of the coastal environment, outstanding natural features and landscapes, historic heritage, and significant risks from natural hazards.[9]

- matters required in order to give effect to a national policy statement (other than the NPS-UD)
- matters required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure
- open space provided for public use, but only in relation to land that is open space
- the need to give effect to a designation or heritage order, but only in relation to land that is subject to the designation or heritage order
- matters necessary to implement, or to ensure consistency with, iwi participation legislation
- the requirement in the NPS-UD to provide sufficient business land suitable for low density uses to meet expected demand:
- any other matter that makes higher density as provided for by the MDRS inappropriate in an area, but only the additional requirements set out in new section 77I are satisfied.

As noted above, the qualifying matters set out in new section 77G include a matter of national importance and a matter required to ensure that nationally significant infrastructure operates safely or efficiently, and avoid reverse sensitivity concerns. This could include ensuring residential housing is safely set back from high voltage transmission lines, and other infrastructure such as airport noise areas, in order to avoid reverse sensitivity concerns. There is also scope for councils to identify other qualifying matters.

We recommend amending section 77G to clarify that territorial authorities could use qualifying matters to modify the application of the MDRS and policy 3 of the NPS-UD in residential and non-residential zones.

Additional qualifying matters

We recommend adding Te Ture Whaimana o Te Awa o Waikato (Vision and Strategy for the Waikato River), and other treaty settlement legislation that provides for iwi participation, if necessary in order to give effect to it, as a qualifying matter for the MDRS and NPS-UD intensification policies.

Proposed new section 77G(b) provides that a matter required to give effect to a national policy statement is one example of a qualifying matter. We recommend amending that section to include the New Zealand Coastal Policy Statement as a qualifying matter. We

[9] The matters of national importance under section 6 of the RMA include: (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development; (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development; (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna; (d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers; (e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga; (f) the protection of historic heritage from inappropriate subdivision, use, and development; (g) the protection of protected customary rights; (h) the management of significant risks from natural hazards.

note that departmental officials are determining whether other legislation and additional national direction needs to be referred to.

To ensure that the qualifying matters framework functions as intended, we suggest several amendments to section 77H. Our proposed amendments would clarify councils' decision-making discretion. They would also ensure that:

- qualifying matters could be used to modify the relevant building height or density requirements under policy 3(c) and (d) of the NPS-UD
- the language aligns with that used in other parts of the bill
- requirements in relation to the evaluation report were consistent with the purpose of section 32 of the RMA.

Evidence required to justify qualifying matters

The information requirements for qualifying matters are contained in proposed new sections 77H, 77I, 77M, and 77N. New section 77H would require an evaluation report (under section 32 of the RMA) to be produced that details the evidence that supports the restriction of height and densities.

Some submitters queried the proposed information requirements for qualifying matters. They pointed out that a lot of time and resources would have already been invested in evaluation and assessment of information relating to qualifying matters that had already been through a plan-making process. We understand that it is intended that councils and decision-makers should be able to rely on evidence and provisions relating to a qualifying matter (under new section 77G(a) to (g)) if they had already been tested under a plan-making process.

For clarity, we recommend amending the bill to specify that if a qualifying matter had already undergone a public plan-making process, the extent of these matters would not be relitigated but how they relate to the MDRS would need to be addressed. Our proposed amendment would mean that councils would not need to provide significant evidence to justify the inclusion of specified qualifying matters. Instead, councils' assessment would focus primarily on how to accommodate the existing qualifying matter through appropriate heights and densities.

The qualifying matters provisions in the bill give councils flexibility to manage development in areas where a qualifying matter is present. For example, there would be different ways to manage hazards depending on the nature of the hazard. Where a significant hazard exists, such as an identified flood flow path, a council could identify that area as being inappropriate for any further development. Where a lesser hazard exists such as a ponding area, a council could use the qualifying matters to still allow some additional intensification if appropriate but with additional requirements such as higher floor heights. The extent of the area to which a qualifying matter applied could be carried over into the IPI.

The nature of the provisions within the qualifying matter area would be considered through the ISPP process. The operative district plan rules would remain in place until the ISPP process was completed and the new IPI rules became operative.

Other matters that make higher density inappropriate

Proposed new section 77I specifies further requirements about the application of section 77G(h) for "other matters". That section relates to any other matter that makes higher density as provided for by the MDRS inappropriate in an area. We recommend amending section 77I to make it clear that qualifying matters could be used to modify the relevant building height or density requirements under policy 3(c) and (d) of the NPS-UD.

We note that the bill would not alter existing historic heritage protections. Historic heritage is a matter of national importance under section 6 of the RMA, and so would be considered a qualifying matter under new sections 77G(a) and 77L(a). Where it can be justified, there is also scope in the bill for retention of special character that does not meet the definition of historical heritage as an "other matter".

We note that councils can exempt areas where there are likely impacts of climate change.

Some submitters outlined their concerns about how intensification would affect the operation of nationally significant infrastructure. An example is concerns about additional noise limits being imposed. We note that the safe or efficient operation of nationally significant infrastructure is a qualifying matter that would enable councils to modify the MDRS or intensification policies.

Some submitters suggested that infrastructure pressures should be added as a specific qualifying matter. There is a risk that such a qualifying matter would place a long-term restriction on development in certain areas, rather than focussing on the provision of infrastructure. We discuss other ways of addressing infrastructure issues later in our report.

Immediate legal effect

Clause 9 would amend the RMA so that a rule incorporating the MDRS in relevant residential zones would have immediate legal effect on notification of the intensification planning instrument (IPI). This excludes when the IPI proposes a more permissive rule (for example, to implement the NPS-UD), is a qualifying matter, or relates to a new residential zone.

Qualifying matters established after IPI notification

Submitters pointed out the possibility that a development could begin after an IPI has legal effect but before submissions and hearings are concluded. It could then be determined that a development was in a qualifying area, so it would not meet the requirement of being a permitted activity.

We acknowledge that there is a low risk that a qualifying matter could be missed during the pre-notification stage, and later identified during the ISPP. The risk will be mitigated through pre-notification consultation and through councils taking a precautionary approach when identifying possible qualifying matters. We note that if a building is completed post-notification, but later found to be in a qualifying area, it would be considered to have existing use rights.

Clarifying which provisions will have immediate legal effect upon IPI notification

We note submitters' comments that the bill as drafted is unclear about which provisions would have immediate legal effect upon notification of an IPI. We recommend amendments to the bill to clarify that immediate legal effect would apply only to:

- the MDRS for: height, height in relation to boundary, setbacks, building coverage, outdoor living space, outlook space, windows to street, and landscaped area
- the objectives and policies we recommend inserting for the MDRS.

Ability to require tier 2 councils to implement the ISPP, and an option for other councils to request it

Clause 8, new section 80, would empower the Governor-General to make Order in Council regulations (OIC) requiring a tier 2 council to use the ISPP to incorporate the MDRS and relevant NPS-UD intensification policies. The Minister for the Environment would need to recommend the regulations. They would first need to consult the Minister of Housing and be satisfied that the relevant tier 2 district was experiencing an acute housing need.

We believe that the Minister for the Environment should also have to consult the Minister for Māori Crown Relations: Te Arawhiti before making the recommendation. We recommend amending section 80E(4) to this effect.

We do not believe it is necessary to require all tier 2 councils to apply the MDRS, but the Minister should be able to direct them to do so, through this OIC process, as required by an acute housing need. This is because the reasons for housing need vary in each area and other responses could be more appropriate.

For tier 3 councils, the approach is different. We consider that any tier 3 territorial authority should be able to make a request of the Minister for the Environment for approval to adopt the MDRS and give effect to Policy 5 of the NPS-UD through the ISPP. We recommend amending section 80E accordingly.

Proposed new section 80E(5)(a) would require the Minister for the Environment to consider the median multiple in the district when determining whether a district is experiencing an acute housing need.[10] This would be calculated according to publicly available data. We recommend deleting the reference to "calculated according to publicly available data" in this section. This is because the most recent data needs to be used for the median multiple to be useful. However, publicly available data about median household incomes at the territorial authority level is not published regularly and could be several years out of date.

We note a technical drafting error in new section 80E(2) relating to tier 2 councils. The drafting would require a tier 2 council that is included via OIC after 21 March 2022 to incorporate the MDRS through the ISPP, but does not enable the council to also give effect to Policy 5 of the NPS-UD or amend its financial contributions policies. This would result in such a tier 2 council needing to carry out multiple plan changes. We recommend broadening the scope of these plan changes to ensure that tier 2 councils are able to prepare an IPI

[10] The median multiple is the median house price divided by the median gross annual household income.

which is comprehensive and includes the broader IPU scope that applies to tier 1 councils and tier 2 councils included before 21 March 2022.

Enabling schools to benefit from the medium density residential standards

Submitters pointed out that the bill would only apply to residential zones and residential units. They consider that this would result in community facilities and services experiencing increased demand due to intensification, but being unable to easily respond to the demand.

We note that many of the Minister of Education's designations for schools include controls relating to urban form, such as height and setbacks. We do not think these controls would be appropriate when the controls for the surrounding residential zone enable further intensification. We believe schools should have the opportunity to keep pace with increased student numbers resulting from intensification by being able to use their sites innovatively.

Proposed new section 77J relates to the effect of incorporating the MDRS into a district plan on new applications for resource consents. We recommend amending the heading of the section to also include "and on some existing designations".

We also recommend an amendment to new section 77J that would enable schools that need more classrooms to add additional storeys rather than removing more of their green spaces. Our proposed amendment would relate to a designation for a school's land that was in, or adjoined, a relevant residential zone. Works undertaken under that designation could rely on the zone provisions of the relevant residential zone if they were more permissive than the controls included in the designation.

We note the importance of enabling non-residential activities (mixed uses) in residential zones. We were advised that the NPS-UD provides sufficient provision for this, such as objective 1 regarding well-functioning urban environments and policy 1(c) regarding accessibility.

Examples of urban non-residential zones

We note that urban non-residential zones include: any industrial zone, commercial zone, large format retail zone, mixed use zone, special purpose zone, city centre zone, metropolitan centre zone, town centre zone, local centre zone, and neighbourhood centre zone.

Transitional provisions

Schedule 3 would insert new Part 4, clause 31, into Schedule 12 of the RMA. This would be a transitional provision dealing with the status of partly completed district plan proposals and private plan changes. Under clause 31, any proposed district plan or change to a private plan that had not had a hearing completed by 20 February 2022 would need to be withdrawn. We understand that this provision is to ensure that the MDRS would be applied consistently across tier 1 councils.

A number of submitters expressed concern that the transitional provision would not align with the broader intent of the bill, which is to enable supply. They consider that the capacity

for housing development would be reduced if proposed district plans or plan changes were withdrawn.

We agree that the transitional provision could affect housing supply in the short term. We consider that proposed district plans and plan changes that are well progressed should be able to proceed. We therefore recommend removing the requirement for them to be withdrawn.

We recommend amending the transitional provision to enable the following:

- For the proposed district plans that have already been notified, councils could use a variation process to incorporate the MDRS and the NPS-UD intensification requirements.
- Plan changes, including private plan changes, that have been notified at the time of enactment could proceed. In a case where a decision on the plan change had not been notified at the time of enactment, a variation to the plan change could then be notified alongside the relevant council's IPI to ensure that the plan change incorporates the MDRS and the NPS-UD.
- After enactment, new requests for private plan changes to rezone land could be accepted by a council where the IPI could incorporate the MDRS and the NPS-UD.

For private plan changes that have been lodged with the council, but not notified, at the time of the bill's enactment, the plan change must be amended to include MDRS. Once the MDRS has been included, the plan change could be notified as a private plan change or be adopted by the council and put through the ISPP within the IPI. The bill would enable the MDRS within the plan change area but does not require the application to the typology of houses proposed. It is the intent of the majority of this committee that private plan changes in progress are, at the least, not significantly delayed, and at best could be accelerated by this bill. The bill represents a maximum permitted intensification per site without a need for a resource consent, rather than minimum. Some plan change applicants may see the bill as an opportunity to increase the number of dwellings within their proposal.

Several submitters with master plan developments under way noted the risk of delays associated with developers having to resize and scale up their planned infrastructure capacity to meet the requirements of the underlying MDRS zoning. The majority of us consider this can be worked through expeditiously through the ISPP.

Some of us believe that new private plan changes should be able to take advantage of the new ISPP process, regardless of a council's adoption of the private plan change.

Financial contributions

We note that the RMA authorises financial contributions and that they provide funding to address the adverse effects of a development on the environment. We were advised that the use and application of financial contributions has been ambiguous, despite case law confirming that financial contributions can be charged for permitted activities. The bill would make it clear that a territorial authority may include provisions in its district plan to charge financial contributions for any class of activity, excluding a prohibited activity.

Clause 7, new section 77P, would enable a territorial authority to include or amend provisions for financial contributions, or amend existing financial contributions provisions, in its plan using an IPI. We understand that this is intended to support territorial authorities with the cost of development infrastructure that could be required to incorporate the MDRS.

Proposed new section 77P provides that any changes to financial contributions policies that are proposed and going through the ISPP would have immediate legal effect when the relevant IPI was notified in August 2022. We consider that it would be more appropriate for the financial contributions provisions to be subject to consultation through the ISPP before they have legal effect. We recommend amending the bill accordingly.

We note that development contributions as provided for under the Local Government Act 2002 continue to apply, and can be updated by councils as required to help fund infrastructure. We note that the existing legislation does not permit charging development contributions and financial contributions for the same matter (referred to by some as "double dipping"). This bill would not change the regime for development contributions, but would enable councils to adopt financial contributions. Some of us continue to have concerns about councils' ability to adequately fund infrastructure through development and financial contributions.

Our consideration of related matters

Several matters were raised during submissions that we wish to note.

Infrastructure

We heard a wide range of comments about infrastructure matters. Submitters expressed varying levels of concern about the capacity of existing infrastructure to cope with growth, and the ability for additional infrastructure to be added at the same pace as the housing intensification envisaged by the bill. We acknowledge the significant responsibility placed on local government to implement the bill. We have suggested some amendments that will assist councils in amending their district-wide provisions in plans (including about infrastructure) through the ISPP. The bill would also allow local authorities to recalibrate how they use funding tools such as financial contributions. The bill may mean that local authorities will update their development contributions policies under the Local Government Act 2002. We have noted that there are alternative options outside of the bill to assist with the funding and financing of infrastructure. The MDRS will shift patterns of development and the number of dwellings, which is different from the increased demand on infrastructure arising from overall population growth. The majority of us consider that the overall impacts on infrastructure will be manageable in the short term.

Issues raised by Māori

We have proposed amendments to the bill to help address the issues raised by Māori and others in their submissions. We proposed strengthening the requirement for independent hearing panels to have tikanga expertise. We suggested clarifying the provisions to facilitate papakāinga housing. We also proposed amending the bill to ensure that the Minister for Māori Crown Relations: Te Arawhiti is consulted, in addition to the Minister of Housing, when certain decisions are being made by the Minister for the Environment. We note that further

work will be carried out to ensure the bill reflects the intention to uphold Te Ture Whaimana o Te Awa o Waikato and other Treaty settlement legislation.

Building design and effects of development on people and the environment

New Zealand is facing both a housing crisis and a climate crisis. Low emissions and resource-efficient building design should be encouraged through further work by the Government. The Environment Committee is currently conducting a separate briefing on reducing construction and demolition waste from going to landfill. We will continue our work in this area, and would encourage the building and construction sector to separate their waste materials on construction sites, and be more proactive in diverting waste from landfill and toward beneficial recovery and reuse.

Disabled people face additional challenges finding housing due to the poor accessibility of buildings. We expect that the review of the building standards in the Building Act will help address this significant issue facing the community. We also note the benefits of universal design principles.

We acknowledge the importance of people having access to nature and green space, and the benefits to human health and wellbeing, and the importance of urban trees. We hope that our suggestion of a new density standard for landscaping will help retain some existing trees, and also help address concerns about the amenity of the new housing. We expect councils to consider the adequacy of open space provision when drafting their IPI.

The bill does not affect the requirement for developments to have building consents under the Building Act. We note that work to review the building code is under way by the Government. There is a climate change aspect to this review.

We are mindful that covenants on urban land under the Property Law Act could hinder intensification by placing restrictions on future land use. We understand the Government intends to undertake further work on this to establish whether law change or other intervention is required.

4 Differing views

ACT New Zealand view

Despite the rushed process, with only three weeks allowed from the committee calling for submissions to the closure of hearing them, we received a number of high quality submissions from people with deep knowledge of the industry. Many of these were damning of the bill, and the process around it. It is very regrettable that the committee has not had sufficient time to consider this feedback and will not be issuing a proper report on the bill and the public's view on it.

The committee should take the feedback it received and the circumstances into account. It should ask for additional time. Failing that, it should report back to the House that the bill should not proceed. Because the Labour and National members have not supported that course of action, ACT's views are recorded in this differing view.

ACT agrees that there is a major problem with housing affordability, and that it is a supply-side problem requiring a supply-side solution. ACT members have taken this position for over a decade.

Housing supply is New Zealand's single largest long-term problem. It deserves a serious response, one that analyses the problem, weighs the costs and benefits of different options, and chooses the best one.

However this bill has not done that. It will not deliver more affordable homes in a shorter time frame than the current RMA processes allow. The reasons are:

- The initial secrecy which preceded the introduction of the bill, and the lack of consultation with developers, councils, and professionals means that the many flaws with the bill identified during the shortened submission period cannot be resolved within the time available.
- It fails to enable more land to be serviced by infrastructure and fails to address long-term infrastructure financing and funding problems that are the real constraint on housing supply, according to multiple submitters. In other words, the bill solves the wrong problem.
- It creates a new and complex planning and consenting regime for the new Medium Density Residential Standard (MDRS) which will run parallel to the existing RMA processes for all other necessary land development matters such as earthworks, traffic impacts, and so on, and this will increase, not decrease, the resources, time, and cost required to consent developments.
- A new fast-track planning regime under the bill is only available to councils, not the private developers who deliver most of the homes; they will be stuck with the existing RMA processes which can take years to progress plan changes.
- The bill will actually *cancel* many planned homes because Schedule 3 nullifies high quality master planned developments which will be required to adopt the MDRS for lower-density areas of their developments. Years of work and millions of dollars in land development design will have been wasted, and the homes due to be delivered by these schemes will be delayed by years. We heard at committee that there may be as many

as 15,000 homes in Auckland and Waikato, and almost 10,000 in Canterbury, affected in this way.

- Implementation issues which result from rushed and poorly thought out legislation will further delay consenting and building new homes.

Infrastructure

ACT believes that the proposed reform has missed the opportunity to address long-term issues with infrastructure funding and financing. That, and the time required to obtain consents, connect to existing (and build new) infrastructure, delays projects and adds excessive cost to new homes.

Submitters, including developers and councils, told the committee that the main barrier to getting more homes built was the availability of local wastewater and stormwater infrastructure, and the time and cost to connect to networks. This means zoning more land for theoretical development will not have a real effect on the number of homes supplied in New Zealand.

One submitter pointed out that a long-planned council project to separate 100-year-old combined wastewater and stormwater networks in central Auckland was ten years behind schedule, and that no further development could take place in that area until the project is completed, although it was zoned for much more intensive apartments and terraced housing under the current Auckland Unitary Plan.

Developers stated that obtaining a decision from a council on new connections to the wastewater and stormwater network can take 12 to 18 months, even though developers carry out their own modelling to show whether the impact of their scheme can be absorbed by the network or whether upgrades are required.

Developers told the committee that they are often then compelled to pay millions of dollars to upgrade local infrastructure networks in order to get approval to build in existing urban areas. Those costs flow directly on to the price of a new home in that development. However, other developments which follow can then connect to the upgraded network without having to contribute any more than the standard development contribution fee for each new connection.

This creates perverse incentives for some developers to wait until upgrades are completed by others before proceeding with housing development in existing urban areas, and unfairly loads infrastructure costs onto some new home buyers.

The status quo approach is completely inappropriate to incentivise the provision of infrastructure in a way that fairly allocates the costs of existing and new services over a reasonable time frame. We conclude it would be better to solve these practical problems so that existing zoning can be used, than to radically rezone most of residential New Zealand.

ACT supports the building of new homes, and we understand that homes come with infrastructure costs that need to be met. That is why we proposed a policy to ensure that local councils receive a payment equivalent to 50 percent of the GST for every new dwelling constructed in its territory.

The policy provides both an incentive for councils to enable building, and a means of covering some of the costs that fall on them as a result. It transforms development from being a source of cost to a source of revenue.

- Immediately repurpose the Housing Accelerator Fund to share 50 per cent of the GST collected on new building and construction with the councils, to be used to cashflow the upgrade of infrastructure capacity in a more fair and equitable manner.
- Begin planning for establishing the fund as an enduring system for GST sharing across all councils.

ACT believes the Government should tap into private sector investment to help fund new projects faster and at less cost to New Zealanders. By using public-private partnerships, the Government can limit the cost and risk taken on by taxpayers and councils.

- Immediately fast track and seek proposals under the Infrastructure Funding and Financing Act.
- Immediately begin work to seek out and secure private capital for new infrastructure projects (ACT has supported combining Crown Infrastructure Partners and the Infrastructure Commission with this mandate, but we are open to discussion on the method of delivery).

ACT has asked that the committee write to the Business Committee requesting that the bill be made an omnibus bill so that these initiatives can be included. We regret that Labour and National did not support even this procedural motion.

Medium Density Residential Standards

Submitters including Auckland Council, developers, and urban designers gave evidence that the MDRS was not necessary, and would not add any more homes than what is already allowed under the existing fully tested and litigated Auckland Unitary Plan zones such as the Mixed Housing Suburban (MHS) zone.

ACT believes that the Government should abandon the MDRS and use the existing Auckland MHS Zone to achieve intensification in residential areas not already zoned for higher density.

ACT proposes that, instead of imposing an entirely new zone, the legislation should simply require that zones with lower intensity than those that currently exist are upzoned to the MHS zone and, in cities where such a zone does not exist, use the MHS zone. The exemption from resource consents could remain, simply using the Auckland MHS rules, and removing the restriction on further quality standards in building consents.

Planning and consenting delays

One developer estimated their annual overheads at around $1 million per project, which means any delay beyond the maximum 20 day requirement to process consents under the RMA adds greatly to the cost of new homes. They claimed to regularly experience delays of one to two years, and in extreme cases have spent seven years obtaining planning permission through hearings and appeals.

The bill establishes a fast-track planning process for councils to establish the MDRS zoning and set up streamlined consenting processes under that plan change.

ACT believes that any fast-track planning and consenting process that is made available to councils and Government departments such as Kāinga Ora should be available to private developers as well.

Master planned developments

The committee was advised that the bill will actually reduce the supply of new homes in the immediate term. Many master-planned developments with the potential to deliver tens of thousands of homes in the next three to four years are likely to be effectively sterilised by the bill.

That is because the bill requires master planned developments to up-zone single house zones to the MDRS zone, which allows for three homes at three storeys.

Developers raised the risk that the MDRS zone is totally incompatible with the size, scale, and location of their developments, which already provide a high average density through apartment and terraced zones.

Infrastructure in master-planned developments such as Stonefields in Auckland is designed to handle exactly the number and configuration of homes inside the development, to minimise the risk of sewer overflows and stormwater contamination and effects on local ecosystems.

Developers contend they will be forced to abandon many years of work costing millions of dollars on land development engineering, specialist ecology and environmental reports for the current plans and designs.

They are rightly concerned that if their plans are forced to include the MDRS zone, that years and millions of dollars will have been wasted designing a development that will not be allowed to proceed under the current plan and consenting approach.

ACT supports an exemption from the requirement to incorporate the MDRS for master planned developments which are well progressed although not yet notified, in recognition that tens of thousands of homes due to be delivered in the next two to three years will be at risk if these developments do not proceed as currently planned and designed.

Summary

We agree with commentators who have called the bill “KiwiBuild 2”. It is a high profile housing policy that is supposed to be a breakthrough but instead solves the wrong problem. Just as KiwiBuild focused on buildings when the real shortage is of sections, this bill focuses on zoning when the real issues are elsewhere in the housing supply chain.

ACT considers that the RT SOP, when made publicly available, should be referred back to select committee for further public submissions and consideration by the committee.

Green Party of Aotearoa New Zealand view

Truncated process

Reducing the select committee process on the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill from the usual six months to six weeks has created significant challenges for public scrutiny, participation, and review by the select committee. It is less likely to result in good law as there has not been time for all the committee's proposed amendments to be drafted and fully considered. The shortened time frame has created particular challenges, as the bill was not informed by earlier public consultation, so the select committee was the first opportunity for public input and refinement of the overall policy direction and how it is implemented.

The Green Party acknowledges the huge effort by councils, iwi and hapū, community organisations, the urban design community, developers, and others to prepare and present submissions within the constrained timetable. There was significant expertise in the public submissions and hearing presentations and this led to some changes. Further changes are needed.

Bill's intent

The Green Party strongly supports intensification of housing development and urban renewal to help tackle our housing crisis, avoid urban sprawl, protect productive land for food growing, reduce transport emissions, and protect our climate. The question is not whether to intensify; it is how.

The bill seeks to improve housing choice and affordability by enabling infill development of three storeys and three dwellings on urban residential lots as a permitted activity with no need for a resource consent. The Green Party agrees with an overall approach of more planning certainty to encourage intensification of housing in existing urban areas. However, applying the MDRS as a "one size fits all" approach to virtually all residential zones[11] across Auckland, Tauranga, Hamilton, Wellington, and Christchurch is a missed opportunity to do density well.

It is a missed opportunity to create more liveable and resilient cities and neighbourhoods and the "well-functioning urban environments" that enable people and communities to provide for their wellbeing which the National Policy Statement on Urban Development (NPS-UD) requires. The Medium Density Residential Standards (MDRS) and the bill's approach do not take account of how to cohesively transition streets, blocks, and neighbourhoods from predominantly single storey dwellings to higher-density typologies. A more robust policy process could have facilitated the same level of planning certainty for new development, without these potential pitfalls.

The bill incentivises infill development of single suburban sections and relatively small lots. Submitters noted this risks increased fragmentation of lots through cross lease and unit title arrangements, making land more difficult to redevelop in future if single owners prevent others from redeveloping their land. By permitting one type of intensification through the

[11] Except "large lot" and "settlement" zones as defined in the National Planning Standards.

MDRS, the bill has no incentives for alternatives. There is no incentive (such as additional development rights, or greater height limits on larger sites) to encourage developers to aggregate lots and develop whole blocks in a co-ordinated way that enables well designed perimeter block apartments and units. These can enable retention of green space and existing urban trees by reducing the fragmentation of rear yards.

Partnership with local government missing

In a housing crisis, the Green Party recognises that we need urgent action to boost housing supply and sustainable intensification of urban areas through national direction. However, the Green Party is disappointed that the Government did not consult local government and interested stakeholders to develop the bill and its density standards and avoid implementation issues. A partnership between central and local government which respects the role of local elected councils, their essential role in place-making, and their knowledge and representation of local communities would better implement principles of subsidiarity and appropriate decision making. It would also help ensure urban intensification is well integrated with existing and planned infrastructure capacity, from public and active transport routes, to wastewater and stormwater and community services, because liveable neighbourhoods require more than just new houses.

We recognise that some councils have faced challenges in providing for housing intensification in central areas through the existing planning and consenting processes due to a range of factors. While councils such as Auckland, Hamilton, Tauranga, and Christchurch have been making considerable progress in implementing the NPS-UD already, this bill can provide councils with a broader mandate to accelerate this work.[12]

When it comes to implementing this direction in the specific local context of each area, the Green Party seeks changes to give councils more ability to focus infill development around existing commercial centres and transport routes, and where wastewater, stormwater, and other infrastructure and community facilities are adequate, or capacity upgrades are planned.

Even with the changes suggested by select committee, the work and evidence required of councils to apply the “qualifying matters” in new section 77G to change how the MDRS apply in residential zones risks being burdensome. Under new section 77H councils need to provide significant evidence that a qualifying matter exists to limit development “to the extent necessary to accommodate the qualifying matter”. The high evidential burden and the cumbersome process creates more planning work and could limit the use of qualifying matters. It also risks limited action to restrict residential development in areas affected by rising sea levels, flooding, or other natural hazards or where it would degrade outstanding natural features with cultural heritage values such as Auckland’s volcanic maunga.

Intensification Streamlined Planning Process

The bill increases ministerial power by providing for the Minister to be the overall decision maker on plan provisions in the ISPP, if councils decide not to accept the recommendations

[12] The Auckland Unitary Plan (AUP) for example already enables 900,000 new dwellings, and the number of new building consents granted annually has more than doubled.

of the Independent Hearing Panel on the intensification planning instrument. The Green Party would prefer a similar model to that used for the Auckland Unitary Plan to enable access to the Environment Court appeals process where panel recommendations are not agreed to by a council.

Papakāinga housing

Papakāinga housing can be provided for through an intensification planning instrument but is not permitted as of right on Māori land owned under the Te Ture Whenua Māori Act or Māori-owned general land in the same way that infill development of three storey units are. Further changes are needed here. This is an example of a change that the select committee could have recommended, were more time available to consider the bill and to consult with iwi and hapū.

Plan changes

The select committee's recommended changes to the transitional provisions would allow private plan changes to proceed. While the MDRS would apply as an underlying zoning to allow future infill development, there is no requirement for developers to modify plan change applications on city fringes to achieve intensification and avoid urban sprawl. In plan changes which upzone rural land to residential, the bill should be promoting an increase in medium density homes and enabling associated community and commercial services. Upzoning also needs to be done in a manner that protects highly productive land and provides access to public and active modes of transport.

Selwyn/Waikirikiri is one of Aotearoa New Zealand's fastest growing districts. There are 18 plan change requests lodged with council to provide 12,000 houses. If the bill included a new density standard of an average of 40 to 50 dwellings per hectare across the plan change site, excluding reserves, waterways, and non-housing areas, for example, it would provide more affordable housing and more choice for home buyers. Such a standard would help avoid more sprawling, car-dependent suburbs with only single-storey houses on small lots which have characterised new residential subdivisions around Christchurch, Rolleston, Prebbleton, and Lincoln.

Because the bill does not amend the Property Law Act, developers can continue to use covenants in new subdivision developments to protect single storey housing development and frustrate future intensification.

Density standards (formerly building standards)

As Auckland Council and many submitters noted, the proposed building standards risk producing poor outcomes for individual sites, homes, neighbours, and neighbourhoods.

The select committee has recommended improving the building standards, renamed as density standards, by increasing outdoor space to 20 square metres per unit, increasing outlook, requiring 20 percent of a building's street frontage to be windows, and requiring 20 percent of the site to be landscaped. The standards are still less comprehensive and more permissive, including in relation to height-to-boundary and recession planes, than standards for medium density dwellings in the Auckland Unitary Plan's mixed housing urban zone and similar zones in other plans.

The bill allows councils to have fewer or more permissive bulk and location and other density standards; but not stronger ones to provide for less bulky buildings, more natural light to reduce energy costs and avoid dampness, more green space, and better connections between dwellings and the street. More flexibility is needed here to ensure better quality, low energy-intensive, climate friendly homes.

There are no standards that encourage urban water conservation on site or accessibility standards such as Lifemark that promote or require universal design so new dwellings are accessible by seniors and disabled people. In 2014 the Committee on the Rights of Persons with Disabilities recommended that consideration be given to ensuring that new future private houses are made fully accessible. It is disappointing this recommendation is not being implemented through a new standard to future-proof the new builds the bill enables.

Including detailed density standards in primary legislation is equivalent to including the building code in the Building Act. The Green Party believes it would be preferable to notify new Schedule 3A as regulations under the RMA, as part of the National Planning Standards or as national environmental standards. This would allow the building standards to be more easily updated, improved, or amended than primary legislation can be. The very short parliamentary time frame for the bill risks implementation issues, including with the standards, because of the limited time to consider and improve the bill.

Urban trees

The bill allows intensification as of right with no protection for existing trees. This is despite mature trees being felled at pace for infill development in Auckland and Christchurch. Urban trees reduce the urban heat island effect, reduce the pressure on stormwater systems, improve air quality, provide habitat for wildlife, and make our cities more pleasant places to live. If we can change the law urgently to promote housing development, we should be able to do the same for nature. The Green Party wants to see the 20 percent landscaped area standard increased to encourage the retention of existing trees, and controls on felling of existing trees higher than 6 metres.

Appendix

Committee procedure

The Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill was referred to the committee on 26 October 2021. The closing date for submissions was 16 November 2021. We received and considered 966 submissions from interested groups and individuals. We heard oral evidence from 183 submitters via videoconference.

We received advice on the bill from the Ministry for the Environment and the Ministry of Housing and Urban Development. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office advised us on legal drafting matters.

Committee members

Hon Eugenie Sage (Chairperson)
Rachel Brooking
Tāmati Coffey
Simon Court
Anahila Kanongata'a-Suisuiki
Hon Scott Simpson
Tangi Utikere
Angie Warren-Clark
Nicola Willis

Advice and evidence received

The documents that we received as advice and evidence are available on the Parliament website, www.parliament.nz.