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

Government Bill

Explanatory note

General policy statement

This Bill, which amends the Resource Management Act 1991 (the **RMA**), seeks to rapidly accelerate the supply of housing where the demand for housing is high. This will help to address some of the issues with housing choice and affordability that Aotearoa New Zealand currently faces in its largest cities.

This Bill requires territorial authorities in Aotearoa New Zealand's major cities to set more permissive land use regulations that will enable greater intensification in urban areas by bringing forward and strengthening the National Policy Statement on Urban Development (the **NPS-UD**).

The NPS-UD was gazetted in August 2020 and addresses restrictive land use regulations. It is a powerful tool for improving housing supply in Aotearoa New Zealand's urban areas. The NPS-UD classifies urban areas as tier 1, tier 2, and tier 3 urban environments, with tier 1 comprising Aotearoa New Zealand's largest cities.

The NPS-UD requires, among other things, that tier 1 territorial authorities amend their RMA plans to enable intensification in urban areas where people want to live and work. However, using the current process for plan making, territorial authorities will take until at least August 2024 to deliver the additional housing development capacity unlocked by the NPS-UD.

This Bill brings forward the implementation of the NPS-UD intensification policies by using the existing streamlined planning process (the **SPP**) with appropriate modifications. The SPP is an alternative to the process under Schedule 1 of the RMA that territorial authorities use when making or changing their plans. Its purpose is to provide an expeditious planning process, with opportunities for submissions and a hearing. The modified process introduced in this Bill is the intensification streamlined planning process (the **ISPP**).

In addition to this, the Bill introduces medium density residential standards (the **MDRS**) in all tier 1 urban environments. These will enable medium density housing to be built as of right (at least 3 dwellings of up to 3 storeys per site) across more of Aotearoa New Zealand's urban environments. For tier 1 territorial authorities, plan changes or plan variations that implement the intensification policies and incorporate the MDRS are known as intensification planning instruments. This Bill directs tier 1 territorial authorities to notify intensification planning instruments by 20 August 2022.

These amendments to the RMA are needed to—

- increase housing development capacity and promote provision of a wider variety of housing types in major cities. Implementation of the MDRS will enable increased housing supply and provision of dwelling types such as townhouses, flats, apartments, and other smaller dwellings. Such dwellings can be offered at a range of different price points, offering New Zealanders a wider variety of housing options to suit their needs at different stages in their lives. This will enable more people to live affordably in areas closer to their work, community facilities, and services:
- strengthen and accelerate the impact of the NPS-UD, by bringing forward implementation of the intensification policies of the NPS-UD using the ISPP. The ISPP and introduction of the MDRS (with immediate legal effect from the notification date of an intensification planning instrument) will enable housing intensification to occur faster, helping to alleviate some of the immediate housing shortages:
- encourage low-carbon cities through the provision of denser housing, especially within cities and metropolitan areas, near public transport hubs, or within walkable catchments of city or metropolitan centres. This Bill also encourages intensification in areas adjacent to smaller suburban centres in tier 1 urban environments where there are community services and commercial activities. Those areas are likely to be serviced by current public transport routes or by planned public transport routes. This will promote more efficient use of infrastructure and greater use of public transport:
- provide for multi-generational or extended family living arrangements by increasing the number of dwellings allowed on a site. The MDRS will provide opportunities to build additional units on current residential properties. This may reduce overcrowding and improve health outcomes, particularly for Māori and Pacific individuals, families, and whānau that may prefer extended family living arrangements:
- reduce overall costs to territorial authorities and their communities by providing a quicker and less litigious RMA plan-making process (the ISPP). This Bill will reduce resource consent requirements and the number of resource consent applications needed to build new houses or extend existing houses. Changes to policy 3(d) of the NPS-UD remove sub-city level demand assessments from

tier 1 councils that may have been required to implement the existing policy 3(d):

- ensure that the MDRS are integrated with the existing provisions of the NPS-UD by amending the NPS-UD. These amendments will occur through empowering the Minister for the Environment, in consultation with the Minister of Housing, to make consequential amendments to the NPS-UD.

Medium density residential standards (MDRS)

The MDRS will enable 3 storeys and 3 dwellings per site as of right. This means that developments of 3 storeys and 3 dwellings per site will be permitted activities in the RMA plans of territorial authorities, removing the need for a resource consent. The MDRS will also enable—

- more flexible height in relation to boundary standards to enable 3 storeys on average-sized sites:
- smaller private outlook spaces (space between windows and other buildings) and private outdoor living spaces (for example, balconies):
- reduced side yard setbacks to allow development closer to side boundaries:
- more resource consents (when needed) to proceed on a non-notified basis.

Territorial authorities that must apply MDRS

The MDRS will be applied by tier 1 territorial authorities. Tier 1 urban environments are Auckland, Hamilton, Tauranga, Wellington, and Christchurch. There are 14 tier 1 territorial authorities that are responsible for all or part of those tier 1 urban environments.

Where a tier 2 urban environment has acute housing need, the Minister for the Environment, in consultation with the Minister of Housing, may recommend that an Order in Council be made to require the relevant territorial authority to develop an intensification planning instrument, incorporating the MDRS using the ISPP.

Tier 2 urban environments are Whangārei, Rotorua, New Plymouth, Napier, Hastings, Palmerston North, Nelson, Tasman, Queenstown, and Dunedin. There are 10 tier 2 territorial authorities that are responsible for all or part of those tier 2 urban environments.

Areas that MDRS will apply to

Relevant territorial authorities will be required to apply the MDRS to all existing residential areas, except for areas zoned as large lot residential (as described in the National Planning Standards) or areas where qualifying matters apply.

Areas in tier 1 urban environments that are being rezoned as residential (for example, greenfield development) will also be required to apply the MDRS.

Qualifying matters

There may be areas that have specific characteristics that make it inappropriate to apply the MDRS in full. An example is the potential need to give effect to other national policy statements. These characteristics are referred to as qualifying matters. A qualifying matter exists where there is a need to balance the heights, densities, and other standards of the MDRS against the need to manage those specific characteristics.

Qualifying matters for applying the MDRS are the same as those defined in clause 3.32 of the NPS-UD. Where a qualifying matter applies, the relevant territorial authority may amend the densities and heights required by the MDRS as appropriate to accommodate the qualifying matter.

Where a relevant territorial authority determines that a qualifying matter limits the application of the MDRS, the authority must provide evidence to support this in its evaluation report, as required under section 32 of the RMA. Accommodating the qualifying matter must be balanced against the national significance of urban development and the objectives of the NPS-UD.

Immediate legal effect of MDRS

Residential zones implementing the MDRS will have immediate legal effect from the notification date of the intensification planning instrument, except for—

- areas proposing greater heights under the NPS-UD intensification policies than those listed in the MDRS as a permitted activity:
- areas where a qualifying matter has been identified:
- areas that were not previously relevant residential zones (for example, greenfield development or large lot residential areas).

This means the MDRS will have full weight in determining consent applications lodged on or after the date on which the intensification planning instrument is notified by a relevant territorial authority. All relevant territorial authorities must notify their intensification planning instruments no later than 20 August 2022, unless an Order in Council directs a tier 2 territorial authority to implement the MDRS later than that date.

Territorial authorities will incorporate the MDRS into their RMA planning documents using the ISPP.

Intensification streamlined planning process (ISPP)

This Bill introduces the ISPP, a modified streamlined RMA planning process for implementing the intensification policies of the NPS-UD. The ISPP establishes a set of standardised process steps that relevant territorial authorities will use to develop an intensification planning instrument. It will also be used to implement the MDRS.

This process will be quicker than the standard process under Schedule 1 of the RMA and will bring forward the outcomes sought by the intensification policies of the NPS-UD.

Territorial authorities will be required to use the ISPP to implement policies 3 and 4 (or policy 5 as relevant) of the NPS-UD.

The Minister for the Environment will have the power to make a direction to specify additional requirements that apply to a territorial authority undergoing the ISPP.

ISPP standardised process steps

The standardised process steps territorial authorities will follow when developing an intensification planning instrument using the ISPP are as follows:

- step 1: pre-notification consultation and engagement with iwi about the intensification planning instrument:
- step 2: intensification planning instrument is notified and the MDRS has immediate legal effect:
- step 3: submissions on the notified intensification planning instrument:
- step 4: further submissions on the notified intensification planning instrument:
- step 4a (optional): pre-hearing mediation:
- step 5: independent hearings panel (**IHP**) to conduct hearings on the intensification planning instrument:
- step 6: IHP report to territorial authority with recommendations:
- step 7: territorial authority makes its decisions:
- step 7a (if required): if the territorial authority does not agree with the IHP's recommendations, the Minister for the Environment will become the decision maker:
- step 8: intensification planning instrument is operative (including components that give effect to policies 3 and 4, or 5, of the NPS-UD).

IHPs

The ISPP requires the relevant territorial authority to appoint an IHP. The territorial authority will delegate its responsibilities for conducting hearings to the IHP. The IHP will then report its recommendations to the territorial authority. Those recommendations are not limited to the scope of submissions received by the IHP and may also include recommendations on other matters related to the intensification planning instrument.

Decision making within ISPP

The territorial authority remains the primary decision maker on an intensification planning instrument. However, if a territorial authority decides not to adopt the IHP's recommendations, the Minister for the Environment becomes the decision maker on those recommendations. The Minister for the Environment can accept the IHP's recommendations or make alternative recommendations.

Once a decision is issued, the RMA plan becomes operative. There are no appeals against intensification planning instruments that go through the ISPP. This will ensure

that intensification planning instruments are operative by mid-2023. If territorial authorities were to use a process under Schedule 1 of the RMA as they are currently required to, those RMA plan changes would not be operative until August 2024 or later.

Modification of policy 3(d) of NPS-UD

The Bill modifies policy 3(d) to reduce the application of the policy and therefore the scope of the assessment required by councils. Councils will now be required to enable building heights and density of urban form commensurate with the level of commercial activities and community services within and adjacent to zones described in the National Planning Standards as neighbourhood centre zones, local centre zones, and town centre zones (or equivalent zones).

Beyond these areas, councils will have the flexibility to determine whether to introduce more permissive zoning than the MDRS requires. This provides councils with more ability to intensify housing in areas they see as appropriate, and in line with existing spatial plans.

Transitional provisions to provide clarity on when proposed plans or private plan change requests need to be withdrawn

There may be tier 1 territorial authorities that are currently preparing plan changes or variations to proposed plans to implement the NPS-UD intensification policies. Those territorial authorities may need to adjust their proposed plans once this Bill is enacted. For this reason, the Bill requires that proposed plans, or private plan changes accepted, must be withdrawn where it can be determined that the proposed instrument—

- intends to give effect to intensification policies of the NPS-UD:
- proposes changes to a residential zone that will be subject to the MDRS:
- creates a new relevant residential zone that does not incorporate the MDRS:
- has been notified on or before the enactment of the Bill but a hearing under clause 8B of Schedule 1 is not completed on or before 20 February 2022.

Territorial authorities will be required to use clause 8D of Schedule 1 of the RMA to withdraw those plan changes or proposed plan variations.

Empowering Ministers to make consequential amendments to NPS-UD

This Bill will empower the Minister for the Environment, in consultation with the Minister of Housing, to make changes to the NPS-UD to—

- remove current or potential inconsistencies between the NPS-UD and this Bill once enacted:
- clarify the relationship between the NPS-UD and this Bill:
- amend the NPS-UD definition of planning decision.

In using this power, the Minister will not be required to follow the standard process requirements for modifying national policy statements as laid out in the RMA.

Enabling amendment or inclusion of financial contributions provisions

This Bill clarifies that a local authority may amend its plan to require that financial contributions are charged for permitted activities. Relevant territorial authorities may amend or include new financial contributions policies in their district plans through the ISPP. This will support relevant territorial authorities with the cost of development infrastructure that may be required to incorporate the MDRS.

Minor and technical amendment to section 224 of RMA

This Bill makes a minor and technical change to section 224 of the RMA, which relates to restrictions on the deposit of a survey plan. Section 224 currently cross-references section 11(1)(a)(i) or (iii) of the RMA, which restricts subdivision of land unless the subdivision is expressly allowed and is shown on a survey plan. When section 11(1A) was repealed, that cross-reference was not updated. This Bill will amend the RMA so that section 224 correctly refers to section 11(a)(i) or (iii) of the RMA. This change is minor and technical in nature and is not a policy change or addition.

Departmental disclosure statement

The Ministry for the Environment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2021&no=83

Regulatory impact statement

The Ministry for the Environment and the Ministry of Housing and Urban Development produced a regulatory impact statement on 20 May 2021 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- https://environment.govt.nz/what-government-is-doing/cabinet-papers/regulatory-impact-statement-upzoning-land-housing/
- https://treasury.govt.nz/publications/informationreleases/ris

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. It provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 provides that the Bill amends the Resource Management Act 1991 (the **Act**).

Part 1
Urban densification policies and other matters

Subpart 1—Interpretation and definitions

Clause 4 amends section 2 of the Act to insert definitions relevant to the general policy being implemented by the Bill.

Key new definitions include intensification planning instrument, intensification streamlined planning process, medium density residential standards, National Policy Statement on Urban Development (**NPS-UD**), new residential zone, policy 3, policy 4, policy 5, relevant residential zone, residential unit, and residential zone.

Clauses 5 and 6 amend sections 43AA and 43AAC of the Act respectively to update the definitions of district plan and proposed plan to be consistent with other changes made by this Bill.

Subpart 2—Relevant territorial authority must incorporate medium density residential standards and other intensification policies into district plan

Clause 7 inserts cross-headings and *new sections 77E to 77P* into the Act.

Medium density residential standards

New section 77E contains further definitions that are relevant to the introduction of medium density residential standards (**MDRS**) and the interpretation of *new sections 77F to 77P* and *new Schedule 3A*.

New section 77F requires a relevant territorial authority to incorporate the MDRS into its district plan for the relevant residential zones, using the intensification streamlined planning process (**ISPP**) described in *new section 80F* and *new clause 95(1)* of Schedule 1 of the Act or, if the ISPP is inapplicable, other plan-making processes in the Act. New plan changes notified after the relevant intensification planning instrument is operative must also incorporate the MDRS for relevant residential zones, but using plan-making processes other than the ISPP (unless the ISPP process is applied by Order in Council under *new section 80E*).

The MDRS are described in detail in *new Schedule 3A* of the Act. They permit a considerable intensification of residential units in relevant residential zones in comparison with what is permitted under current district plans for districts of relevant territorial authorities. (In general, 3 residential units per site and a building of 3 storeys and up to 11 metres high, with an additional 1 metre in certain circumstances for the roof, will be a permitted activity.)

Relevant residential zones are all the different residential zones described in the national planning standards, except for large lot residential zones and, to avoid doubt, settlement zones.

Relevant territorial authorities are tier 1 authorities and those tier 2 territorial authorities that are specified by Order in Council as a territorial authority to which these provisions apply.

New section 77G provides that in certain areas within the area of a relevant residential zone, intensification may be more limited than would be allowed under the MDRS, but only if 1 or more of the following qualifying matters apply:

- a matter of national importance that decision makers are required to recognise and provide for under section 6 of the Act:
- a matter required in order to give effect to a national policy statement (other than the NPS-UD):
- a matter 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:
- a matter 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 use, to meet expected demand:
- any other matter that makes higher density, as provided for in the MDRS, inappropriate in the area, but only if *new section 77I* is satisfied.

New section 77H inserts further requirements that apply if a relevant territorial authority is amending its district plan and is proposing a change to make allowance for a qualifying matter provided for in *new section 77G*. The evaluation report referred to in section 32 of the Act must demonstrate why the territorial authority considers that the relevant area is subject to a qualifying matter, justify why that view is the correct one, make certain assessments, and assess the costs and broader impacts of imposing limits on development capacity, building height, or density, as relevant.

The evaluation report must also describe how the changes are consistent with the development outcomes set out in *new Schedule 3A* and why the changes proposed are limited only to those necessary to accommodate the qualifying matters.

New section 77I sets out a further requirement to be satisfied where the qualifying matter is the final one listed in *new section 77G*, namely, "any other matter that makes higher density as provided for by the MDRS inappropriate in an area".

New section 77J describes the way in which new applications for resource consents lodged on or after the date of notification of a district plan incorporating the MDRS must be considered by a consent authority.

Urban non-residential zones

New sections 77K to 77N require a relevant territorial authority to incorporate the other intensification policies for urban non-residential zones into its district plan using the ISPP or, if the ISPP is inapplicable, other plan-making processes in the Act.

The requirements of *new sections 77K to 77N* include a process and set of criteria, relating to qualifying matters, that are very similar to the processes and criteria set out in *new sections 77F to 77J*.

Amendment of NPS-UD

New section 77O amends the NPS-UD by replacing policy 3(d). *New section 77O* also enables the Minister for the Environment, after consulting the Minister of Housing, to amend the NPS-UD to—

- remove an inconsistency or a potential inconsistency between the NPS-UD and the Bill as enacted:
- amend or replace the definition of planning decision in the NPS-UD:
- otherwise clarify the interrelationship between that policy statement and this Bill, as enacted.

In making those amendments, the Minister does not need to follow the process requirements set out in sections 47 to 51 of the Act or the process set out in section 46A(4) of the Act. Also, there is no need to make an Order in Council, although the changes have the status of secondary legislation and are disallowable by Parliament.

Financial contributions

New section 77P enables a relevant territorial authority to include financial contributions provisions in its district plan or amend its financial contribution provisions (as applicable) using an intensification planning instrument.

New section 77Q enables a local authority to make a rule about financial contributions. It clarifies that a rule may be made providing for the payment of financial contributions for permitted activities.

Subpart 3—Relevant territorial authority must notify intensification planning instrument

Clause 8 inserts *new subpart 5A* into Part 5 of the Act.

New section 80D states that *new subpart 5A* and *new Part 6* of Schedule 1 provide a process for the preparation of an intensification planning instrument by a relevant territorial authority in order to achieve an expeditious planning process.

New section 80E empowers the making of regulations requiring specified tier 2 territorial authorities to incorporate the MDRS into their district plans and, in some cases, to give effect to policy 5 in their district plans. There are 2 powers to make regulations, as follows:

- a power to make regulations before 21 March 2022 requiring a tier 2 territorial authority to prepare a change to its district plan or a variation to its proposed district plan for the purpose of incorporating the MDRS and giving effect to policy 5 (*new section 80E(1)*):
- a power to make regulations on or after 21 March 2022 requiring a tier 2 territorial authority to prepare a change to its district plan or a variation to its proposed district plan for the purpose of incorporating the MDRS (*new section 80E(2)*).

Before making regulations under this new section, the Minister for the Environment, in consultation with the Minister of Housing, must be satisfied that the district of the relevant tier 2 territorial authority is experiencing an acute housing need. For the purposes of determining whether a district is experiencing an acute housing need, the Minister—

- must have regard to the median multiple in that district (that is, the median house price divided by the median gross annual household income); and
- may have regard to whether any other information indicates that there is an acute housing need in the area.

New section 80F requires certain territorial authorities to notify an intensification planning instrument, either by 20 August 2022 or, in the case of certain tier 2 territorial authorities, by a date specified in an Order in Council made under *new section 80E(2)*. The intensification planning instrument must be prepared in accordance with—

- the ISPP; and
- any requirements specified by the Minister for the Environment under *new section 80I*.

New section 80G limits the use of intensification planning instruments by providing that only 1 instrument may be notified, and it cannot be withdrawn. An intensification planning instrument cannot be used for any purpose other than those required under *new sections 77F(2), 77K(1), and 77P*.

New section 80G also provides that a local authority may not use the ISPP other than as permitted under *new section 80F(3)*.

New section 80H requires a relevant territorial authority to show in its intensification planning instrument—

- which provisions incorporate the MDRS; and
- which provisions in the operative district plan and any proposed plan are replaced by the MDRS.

New section 80I empowers the Minister for the Environment to make a direction to 1 or more relevant territorial authorities that specifies—

- the number of members that the relevant territorial authority must appoint to an independent hearings panel established under *new clause 96* of Schedule 1 of the Act:
- the level of experience and qualifications that a person must meet before the relevant territorial authority may appoint them to an independent hearings panel:
- 1 or more periods of time within which the relevant territorial authority must complete 1 or more stages of the ISPP:
- matters on which the relevant territorial authority must report to the Minister.

A direction under *new section 80I* may also include a statement of the Minister for the Environment's expectations.

New section 80J provides for the amendment of a direction and describes the process to be followed to do this.

New section 80K requires a relevant territorial authority to comply with a ministerial direction under *new section 80I* and to have regard to a ministerial statement of expectations.

Subpart 4—When rules incorporating MDRS have legal effect and are operative

Clause 9 amends section 86B to provide that a rule has immediate legal effect on notification by the relevant territorial authority (as distinct from having effect only once a decision on submissions relating to the rule is made and publicly notified) if it meets the following 3 qualifications:

- the rule must be proposed in an intensification planning instrument prepared using the ISPP:
- the rule must be proposed to apply to a relevant residential zone:
- the rule must not be proposed to apply in relation to a permissive area, a qualifying matter area, or a new residential zone.

Clause 10 amends section 86F to provide that a rule incorporating the MDRS must be treated as operative beginning at the time when that rule has immediate legal effect in accordance with section 86B (as amended).

Subpart 5—Other amendments

Clause 11 consequentially amends section 104 of the Act.

Clause 12 amends section 224 of the Act to correct a cross-reference.

Part 2
Amendments to schedules and new schedules

Subpart 1—Intensification streamlined planning process

Clause 13 amends clause 25 of Schedule 1 of the Act to require private plan changes to incorporate the MDRS, where relevant.

Clause 14 inserts *new Part 6*, comprising *new clauses 95 to 107*, into Schedule 1. *New Part 6* describes the ISPP.

How territorial authority notifies intensification planning instrument

New clause 95(1) requires a relevant territorial authority to prepare, notify, and progress an intensification planning instrument by following the relevant processes described in those clauses listed in *new clause 95(2)*. *New clause 95(2)* lists all of the clauses in Part 1 of Schedule 1 (the normal process for preparation, change, and review of policy statements and plans) that apply for the purposes of the ISPP.

What territorial authority must do in respect of independent hearings panel

New clause 96 requires a relevant territorial authority to—

- establish an independent hearings panel to conduct a hearing of submissions on the intensification planning instrument and make recommendations to the relevant territorial authority; and
- delegate to the panel the authority's functions that are necessary to enable the independent hearings panel to carry out its role.

New clause 97 lists the documents and information that the territorial authority must submit to the independent hearings panel for the purposes of its hearing.

Powers of independent hearings panel and process for recommendations

New clause 98 sets out the powers of the independent hearings panel, mainly by applying various provisions of sections 39 to 42 of the Act. *New clause 98(4)* empowers the independent hearings panel to—

- permit a party to question another party or a witness:
- prohibit cross-examination:
- permit cross-examination at the request of a party, but only if the panel is satisfied that it is in the interests of justice:
- regulate the conduct of any cross-examination.

New clause 99 requires an independent hearings panel to make written recommendations on the intensification planning instrument to the relevant territorial authority.

New clause 100 specifies how the independent hearings panel must provide its recommendations made under *new clause 99*.

Decisions on independent panel's recommendations

New clause 101 provides that the relevant territorial authority may decide to accept or reject a recommendation of an independent hearings panel. If a territorial authority rejects a recommendation, it must refer the recommendation to the Minister for the Environment. The territorial authority may provide an alternative recommendation to the Minister for any recommendation that it rejects.

New clause 102 requires the relevant territorial authority to publicly notify its decisions. The territorial authority must do so in a way that sets out the following information:

- each recommendation that it accepts; and
- each recommendation that it rejects and the reasons for doing so; and
- any alternative recommendation that it has provided for a rejected recommendation.

New clause 103 applies if the relevant territorial authority decides to accept all the recommendations of the independent hearings panel. In this case, the recommendations are, on notification under *new clause 102(1)*, incorporated into the district plan, and the plan, as altered, comes into force in accordance with clause 20 of Schedule 1.

New clause 104 applies if the relevant territorial authority decides to accept some, or none, of the recommendations of the independent hearings panel. The rejected recommendations must be referred to the Minister for the Environment. The Minister must decide—

- to accept or reject those recommendations; and
- whether to adopt an alternative recommendation put forward by a relevant territorial authority for any recommendation that the Minister rejects.

The Minister must notify the relevant territorial authority of their decisions. On notification, the relevant district plan (as altered by the Minister's decisions) becomes operative in accordance with clause 20 of Schedule 1.

New clause 105 requires the relevant territorial authority to publicly notify the Minister's decisions. The territorial authority must do so in a way that sets out the following information:

- each recommendation referred to the Minister that the Minister accepts; and
- each recommendation referred to the Minister that the Minister rejects and the reasons for doing so; and
- any alternative recommendation referred to the Minister that the Minister has adopted for a rejected recommendation.

New clause 106 provides that there is no right of appeal against decisions made under *new Part 6* of Schedule 1.

New clause 107 preserves rights of judicial review in respect of decisions made under *new Part 6* of Schedule 1.

Subpart 2—Other amendments

Clause 15 inserts *new Schedules 3A and 3B* into the Act.

Clause 16 inserts *new Part 4* into Schedule 12 of the Act (which deals with transitional and savings provisions for the Bill). *New Part 4* is set out in *Schedule 3* of the Bill.

New Schedule 3A of the Act sets out the MDRS.

Part 1 of *new Schedule 3A* deals with general matters.

Clause 1 defines the terms construction and subdivision and sets out 2 rules about the interpretation of the schedule.

Clause 2 provides that the construction and use of up to 3 residential units on 1 site is a permitted activity within each relevant residential zone. However, each residential unit must comply with the building standards set out in *Part 2 of new Schedule 3A*.

Clause 3 provides that the construction of more than 3 units on a site within a relevant residential zone or up to 3 residential units that do not comply with the building standards of *Part 2 of new Schedule 3A* in such a zone is a restricted discretionary activity and an application to carry out an activity of this kind must be treated accordingly.

Clause 4 excludes certain notification requirements in respect of the construction and use of certain dwellings within a relevant residential zone.

Clause 5 requires subdivision provisions (including rules and standards) to be consistent with the level of development permitted by the other clauses of *new Schedule 3A*.

Clause 6 sets out additional restrictions on subdivision requirements.

Clause 7 sets out a rule about common walls.

Clause 8 sets out a list of information that a relevant territorial authority must include in the district plan in relation to the MDRS incorporated in the relevant residential zones of that district plan.

Part 2 of new Schedule 3A relates to building standards.

Clause 9 sets out a key rule about building height. Buildings within a relevant residential zone must not exceed 11 metres in height, but, in certain circumstances, an additional metre to accommodate a roof is permitted.

Clause 10 sets out rules about the height of buildings in relation to boundaries.

Clause 11 deals with setbacks from boundaries.

Clause 12 deals with building coverage.

Clause 13 deals with impervious areas.

Clause 14 deals with outdoor living space (per unit).

Clause 15 deals with outlook space (per unit).

Schedule 2 sets out *new Schedule 3B* of the Act. *New Schedule 3B* sets out the text of policies 3, 4, and 5 of the NPS-UD, as published in 2020 (and as amended by *new section 77O(1)*).

Schedule 3 sets out *new Part 4* of Schedule 12 of the Act. *New Part 4* contains a transitional provision dealing with the status of proposed district plan changes and private plan changes in tier 1 urban environments that are underway but not completed at the time this Bill is enacted.

Hon David Parker

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Government Bill

Contents

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act **2021**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Resource Management Act 1991.

Part 1
Urban densification policies and other matters

Subpart 1—Interpretation and definitions

4 Section 2 amended (Interpretation)

In section 2(1), insert in their appropriate alphabetical order:

equivalent zone, in relation to a zone in the district of a territorial authority that has not yet implemented the zone framework in the national planning

standards, means the zone in that zone framework that is the nearest equivalent zone to the zone in question

intensification planning instrument means a change to a district plan or a variation to a proposed district plan—

(a) for the purpose of incorporating the MDRS; and

(b) that may also give effect to,—

(i) in the case of a tier 1 territorial authority, policies 3 and 4 of the NPS-UD; or

(ii) in the case of a tier 2 territorial authority that is required by regulations made under **section 80E(1)** to prepare a change to its district plan or a variation to its proposed district plan, policy 5 of the NPS-UD; and

(c) that may also amend or include provisions relating to financial contributions, if the relevant territorial authority chooses to amend its district plan under **section 77P(1)**

intensification streamlined planning process or **ISPP** means the planning process set out in **subpart 5A** of Part 5 and **Part 6** of Schedule 1

large lot residential zone means a zone listed as a large lot residential zone and described in standard 8 (zone framework standard) of the national planning standards (within the meaning of **section 77E**), or an equivalent zone

medium density residential standards or **MDRS** means the standards set out in **Schedule 3A** that apply to all relevant residential zones

National Policy Statement on Urban Development or **NPS-UD** means the National Policy Statement on Urban Development 2020—

(a) that was approved by the Governor-General under section 52(2) on 20 July 2020 and that came into effect on 20 August 2020; and

(b) as amended by **section 77O(1)**

new residential zone means an area in an urban environment (within the meaning of **section 77E**) proposed to become a relevant residential zone that is not shown in a district plan as a residential zone

policy 3 means policy 3 in clause 2.2 of the NPS-UD, the text of which is set out in **Schedule 3B**

policy 4 means policy 4 in clause 2.2 of the NPS-UD, the text of which is set out in **Schedule 3B**

policy 5 means policy 5 in clause 2.2 of the NPS-UD, the text of which is set out in **Schedule 3B**

qualifying matter means a matter referred to in **section 77G** or **77L**

relevant residential zone—

(a) means all residential zones in an urban environment (within the meaning of **section 77E**); but

(b) does not include—

(i) a large lot residential zone:

(ii) to avoid doubt, a settlement zone

relevant territorial authority means both of the following:

(a) every tier 1 territorial authority:

(b) a tier 2 territorial authority that is required by regulations made under **section 80E(1) or (2)** to prepare a change to its district plan or a variation to its proposed district plan

residential unit—

(a) means a building or part of a building that is used for a residential activity exclusively by 1 household; and

(b) includes sleeping, cooking, bathing, and toilet facilities

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

settlement zone means a zone listed as a settlement zone and described in standard 8 (zone framework standard) of the national planning standards (within the meaning of **section 77E**), or an equivalent zone

tier 1 territorial authority means any of the following:

(a) Auckland Council:

(b) Christchurch City Council:

(c) Hamilton City Council:

(d) Hutt City Council:

(e) Kapiti Coast District Council:

(f) Porirua City Council:

(g) Selwyn District Council:

(h) Tauranga City Council:

(i) Upper Hutt City Council:

(j) Waikato District Council:

(k) Waimakariri District Council:

(l) Waipa District Council:

(m) Wellington City Council:

(n) Western Bay of Plenty District Council

tier 2 territorial authority means any of the following:

(a) Dunedin City Council:

(b) Hastings District Council:

(c) Napier City Council:

(d) Nelson City Council:

(e) New Plymouth District Council:

(f) Palmerston North City Council:

(g) Queenstown–Lakes District Council:

(h) Rotorua District Council:

(i) Tasman District Council:

(j) Whangarei District Council

5 Section 43AA amended (Interpretation)

(1) In section 43AA, replace the definition of **change** with:

change means—

(a) a change proposed by a local authority to a policy statement or plan under clause 2 of Schedule 1, including an intensification planning instrument notified under **section 80F(1) or (2)**; and

(b) a change proposed by any person to a policy statement or plan by a request under clause 21 of Schedule 1

(2) In section 43AA, replace the definition of **district plan** with:

district plan—

(a) means an operative plan approved by a territorial authority under Schedule 1, or a plan referred to in **clause 103(2)(b) or 104(5)(b)** of Schedule 1; and

(b) includes all operative changes to the plan (whether arising from a review or otherwise)

6 Section 43AAC amended (Meaning of proposed plan)

Replace section 43AAC(1)(b) with:

(b) includes—

(i) a proposed plan or a change to a plan proposed by a person under Part 2 of Schedule 1 that has been adopted by the local authority under clause 25(2)(a) of Schedule 1:

(ii) an intensification planning instrument notified under **section 80F(1) or (2)**.

Subpart 2—Relevant territorial authority must incorporate medium density residential standards and other intensification policies into district plan

7 New sections 77E to 77P and cross-headings inserted

After section 77D, insert:

*Interpretation of **sections 77E to 77P** and **Schedule 3A***

77E Interpretation

In this section, **sections 77F to 77P**, and **Schedule 3A**,—

national planning standards means the national planning standards published by the Ministry for the Environment in November 2019 and available on an Internet site maintained by that ministry

other intensification policies means—

(a) policy 3(a) and (b):

(b) policy 3(c) as it applies in relation to urban non-residential zones:

(c) policy 3(d) as it applies in relation to urban non-residential zones:

(d) in relation to a relevant tier 2 territorial authority referred to in **section 80E(1)**, policy 5 as it applies in relation to urban non-residential zones

urban environment means any area of land (regardless of size, and irrespective of territorial authority or statistical boundaries) that—

(a) is, or is intended by the relevant territorial authority to be, predominantly urban in character; and

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

urban non-residential zone means any zone in an urban environment that is not a residential zone.

Medium density residential standards

77F Medium density residential standards must be incorporated into plans

(1) Every relevant residential zone in an urban environment of a relevant territorial authority must have the MDRS incorporated into that zone.

(2) In order to give effect to **subsection (1)**, a relevant territorial authority must incorporate the MDRS into its district plan—

(a) using the ISPP:

(b) if the ISPP is inapplicable, using another plan-making process in this Act.

(3) In carrying out its functions under this section, the territorial authority must ensure that the provisions in its district plan for each relevant residential zone within the authority's urban environment give effect to the MDRS.

(4) In carrying out its functions under this section, each territorial authority—

(a) may create new residential zones or amend existing residential zones; and

(b) may make the MDRS more permissive in their requirements in relation to any area within a relevant residential zone than the requirements set out in **Schedule 3A**—

(i) to give effect to policy 3(c); or

(ii) to give effect to policy 3(d) or policy 5, as applicable; or

(iii) for any other reason; but

(c) 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.

77G Qualifying matters in applying medium density residential standards to relevant residential zones

A relevant territorial authority may make the MDRS less permissive in relation to an area within a relevant residential zone if that change is required to accommodate 1 or more of the following qualifying matters that are present:

(a) a matter of national importance that decision makers are required to recognise and provide for under section 6:

(b) a matter required in order to give effect to a national policy statement (other than the NPS-UD):

(c) a matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure:

(d) open space provided for public use, but only in relation to land that is open space:

(e) 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:

(f) a matter necessary to implement, or to ensure consistency with, iwi participation legislation:

(g) the requirement in the NPS-UD to provide sufficient business land suitable for low density uses to meet expected demand:

(h) any other matter that makes higher density as provided for by the MDRS inappropriate in an area, but only if **section 77I** is satisfied.

77H Requirements in relation to evaluation report

(1) This section applies if a territorial authority is amending its district plan (as required by **section 77F**).

(2) The evaluation report from the relevant territorial authority referred to in section 32 must, in relation to the proposed change,—

(a) in relation to an area for which the territorial authority is proposing to make an allowance for a qualifying matter, demonstrate why—

(i) the territorial authority considers that the area is subject to a qualifying matter; and

(ii) the qualifying matter is incompatible with the level of development permitted by the MDRS (as specified in **Schedule 3A**) for that area; and

(b) assess the impact that limiting development capacity, building height, or density (as relevant) will have on the provision of development capacity; and

(c) assess the costs and broader impacts of imposing those limits; and

(d) include—

(i) a description of how the provisions of the district plan are consistent with the development outcomes provided for in **Schedule 3A**:

(ii) a description of how modifications to the MDRS as applied to the relevant residential zones are limited to only those modifications necessary to accommodate qualifying matters, and in particular how they apply to any spatial layers relating to overlays, precincts, specific controls, and development areas, including—

(A) any operative district plan spatial layers; and

(B) any new spatial layers proposed for the district plan.

77I Further requirement about application of section 77G(h)

A matter is not a qualifying matter under **section 77G(h)** in relation to an area unless the evaluation report referred to in section 32 also—

(a) identifies the specific characteristic that makes the level of development provided by the MDRS (as specified in **Schedule 3A**) inappropriate in the area; and

(b) justifies why that characteristic makes that level of development inappropriate in light of the national significance of urban development and the objectives of the NPS-UD; and

(c) includes a site-specific analysis that—

(i) identifies the site to which the matter relates; and

(ii) evaluates the specific characteristic on a site-specific basis to determine the geographic area where intensification needs to be compatible with the specific matter; and

(iii) evaluates an appropriate range of options to achieve the greatest heights and densities permitted by the MDRS (as specified in **Schedule 3A**) while managing the specific characteristics.

77J Effect of incorporation of MDRS in district plan on new applications for resource consents

(1) This section applies in relation to the consideration by a consent authority of an application for a resource consent (a **new application**)—

(a) for an activity to which the MDRS is proposed to apply in an area in a relevant residential zone; and

(b) that is lodged on or after the date on which a relevant territorial authority notifies its intensification planning instrument incorporating the MDRS in its district plan under **section 80F(1) or (2)**, as applicable.

(2) If this section applies, the consent authority considering the new application must consider the plan or proposed plan and apply section 104(1)(b)(vi) in the following way:

(a) the provisions of the district plan or any proposed district plan (other than the intensification planning instrument), to the extent that these are inconsistent with the requirements of the MDRS, cease to have effect in relation to the consideration of the new application; and

(b) the provisions of the intensification planning instrument that incorporate the MDRS (as set out in **Schedule 3A**) apply in determining that new application.

(3) This section does not apply in relation to any area or site that is a permissive area or a qualifying matter area (within the meaning of **section 86B(6)**) or is in a new residential zone.

(4) This section does not affect the operation of subpart 7 of Part 5.

(5) To avoid doubt, the MDRS are irrelevant to the consideration of a new application unless and until the MDRS are incorporated into the relevant proposed district plan.

Urban non-residential zones

77K Duty of relevant territorial authorities to incorporate other intensification policies into plans

(1) A relevant territorial authority (other than a tier 2 territorial authority referred to in **section 80E(2)**) must give effect to the other intensification policies—

(a) using the ISPP:

(b) if the ISPP is inapplicable, using another plan-making process in this Act.

(2) In carrying out its functions under **subsection (1)**, the territorial authority must ensure that the provisions in its district plan for each urban non-residential zone within the authority's urban environment give effect to the changes required by policy 3 or policy 5, as the case requires.

(3) In carrying out its functions under **subsection (1)**, a relevant territorial authority—

(a) may create new urban non-residential zones or amend existing urban non-residential zones:

(b) may modify the requirements set out in policy 3(a), (b), or (c) to be more permissive than provided in those policies:

(c) may not modify the requirements set out in policy 3(a), (b), or (c) to be less permissive than provided in those policies unless authorised to do so under **section 77L**.

77L Qualifying matters in application of other intensification policies to urban non-residential areas

A relevant territorial authority may modify the requirements of policy 3(a), (b), or (c) in an urban non-residential zone to be less permissive than provided in those policies only to the extent necessary to accommodate 1 or more of the following qualifying matters that are present:

(a) a matter of national importance that decision makers are required to recognise and provide for under section 6:

(b) a matter required in order to give effect to a national policy statement (other than the NPS-UD):

(c) a matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure:

(d) open space provided for public use, but only in relation to land that is open space:

(e) 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:

(f) a matter necessary to implement, or to ensure consistency with, iwi participation legislation:

(g) the requirement in the NPS-UD to provide sufficient business land suitable for low density uses to meet expected demand:

(h) any other matter that makes higher density development as provided for by policy 3(a), (b), or (c), as the case requires, inappropriate in an area, but only if **section 77N** is satisfied.

77M Requirements governing application of section 77L

(1) This section applies if a relevant territorial authority is amending its district plan (as required by **section 77K**) and proposes to make a change to accommodate a qualifying matter.

(2) The evaluation report referred to in section 32 must, in relation to the proposed change,—

(a) demonstrate why—

(i) the territorial authority considers that the area is subject to a qualifying matter; and

(ii) the qualifying matter is incompatible with the level of development provided for in the other intensification policies; and

(b) assess the impact that limiting development capacity, building height, or density (as relevant) will have on the provision of development capacity; and

(c) assess the costs and broader impacts of imposing those limits.

77N Further requirements about application of section 77L(h)

A matter is not a qualifying matter under **section 77L(h)** in relation to an area unless the evaluation report referred to in section 32 also—

(a) identifies the specific characteristic that makes the level of urban development required within the relevant paragraph of policy 3 inappropriate; and

(b) justifies why that characteristic makes that level of urban development inappropriate in light of the national significance of urban development and the objectives of the NPS-UD; and

(c) includes a site-specific analysis that—

(i) identifies the site to which the matter relates; and

(ii) evaluates the specific characteristic on a site-specific basis to determine the geographic area where intensification needs to be compatible with the specific matter; and

(iii) evaluates an appropriate range of options to achieve the greatest heights and densities provided by the other intensification policies while managing the specific characteristics.

Amendment of NPS-UD

77O Amendment of NPS-UD

(1) Policy 3 in the NPS-UD is amended by replacing paragraph (d) with:

"(d) within and adjacent to neighbourhood centre zones, local centre zones, and town centre zones (or equivalent), building heights and density of

urban form commensurate with the level of commercial activity and community services."

(2) The Minister for the Environment, after consulting the Minister of Housing, may amend the NPS-UD to make any changes that the Minister for the Environment is satisfied are required as a result of the enactment of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act **2021** to—

(a) remove an inconsistency or a potential inconsistency between the NPS-UD and that Act; or

(b) amend or replace the definition of planning decision in the NPS-UD; or

(c) otherwise clarify the interrelationship between the NPS-UD and that Act.

(3) In making the changes referred to in **subsection (2)**,—

(a) the Minister is not, despite section 46A(3), required to follow the requirements of sections 47 to 51 or the process set out in section 46A(4); and

(b) no Order in Council is required.

Financial contributions

77P Review of financial contributions provisions

(1) Each relevant territorial authority may, if it considers it appropriate to do so, include financial contributions provisions, or change its financial contributions provisions, (as applicable), in the district plan, and, if it does so, may notify them in the intensification planning instrument required under **section 80F(1) or (2)**.

(2) In this section and **section 77Q**, **financial contribution** has the same meaning as in section 108(9).

77Q Local authority may make rule about financial contributions

(1) A local authority may make a rule requiring a financial contribution for any class of activity, other than a prohibited activity.

(2) A rule requiring a financial contribution must specify in the relevant plan or proposed plan—

(a) the purpose for which the financial contribution is required (which may include the purpose of ensuring positive effects on the environment to offset any adverse effect); and

(b) the manner in which the level of the financial contribution will be determined; and

(c) when the financial contribution will be required.

Subpart 3—Relevant territorial authority must notify intensification planning instrument

8 New subpart 5A of Part 5 inserted

After section 80C, insert:

Subpart 5A—Intensification planning instruments and intensification streamlined planning process

80D What this subpart and Part 6 of Schedule 1 do

This subpart and **Part 6** of Schedule 1 provide a process for the preparation of an intensification planning instrument by a relevant territorial authority in order to achieve an expeditious planning process.

80E Regulations requiring tier 2 territorial authority to change district plan

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations before 21 March 2022 requiring a tier 2 territorial authority to prepare a change to its district plan or a variation to its proposed district plan for the purpose of—

(a) incorporating the MDRS; and

(b) giving effect to policy 5.

(2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations on or after 21 March 2022 requiring a tier 2 territorial authority to prepare a change to its district plan or a variation to its proposed district plan for the purpose of incorporating the MDRS.

(3) An Order in Council made under **subsection (2)** must specify the date by which the tier 2 territorial authority must notify a change to its district plan or a variation to its proposed district plan.

(4) Before recommending the making of regulations under **subsection (1) or (2)**, the Minister must—

(a) consult the Minister of Housing; and

(b) be satisfied that the district of the relevant tier 2 territorial authority is experiencing an acute housing need.

(5) The Minister, in determining whether a district is experiencing an acute housing need,—

(a) must have regard to the median multiple in that district (that is, the median house price divided by the median gross annual household income), calculated according to publicly available data; and

(b) may have regard to whether any other information indicates that there is an acute housing need in the district.

(6) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

80F Relevant territorial authority must notify intensification planning instrument

(1) The following territorial authorities must notify an intensification planning instrument on or before 20 August 2022:

- (a) every tier 1 territorial authority:
- (b) a tier 2 territorial authority that is required by regulations made under **section 80E(1)** to prepare a change to its district plan or a variation to its proposed district plan.

(2) A tier 2 territorial authority that is required by regulations made under **section 80E(2)** to prepare a change to its district plan or a variation to its proposed district plan must notify an intensification planning instrument on or before the date specified in those regulations.

(3) A territorial authority must prepare the intensification planning instrument—

- (a) using the ISPP; and
- (b) in accordance with—
  - (i) **clause 95** of Schedule 1; and
  - (ii) any requirements specified by the Minister in a direction made under **section 80I**.

80G Limitations on intensification planning instruments and ISPP

Intensification planning instruments

(1) A relevant territorial authority must not—

- (a) notify more than 1 intensification planning instrument:
- (b) use the intensification planning instrument for any purpose other than those required under the following provisions:
  - (i) **section 77F(2)** (medium density residential standards must be incorporated into plans):
  - (ii) **section 77K(1)** (duty of relevant territorial authorities to incorporate other intensification policies into plans):
  - (iii) **section 77P** (review of financial contributions provisions):
- (c) withdraw the intensification planning instrument.

ISPP

(2) A local authority must not use the ISPP other than as permitted under **section 80F(3)**.

80H Intensification planning instrument must show MDRS incorporation

(1) When a relevant territorial authority notifies its intensification planning instrument in accordance with **section 80F(1) or (2)**, it must show in the instrument—

(a) which provisions incorporate the MDRS; and

(b) which provisions in the operative district plan and any proposed plan are replaced by the MDRS, and therefore cease to apply to new applications.

(2) The identification of a provision in an intensification planning instrument as required in **subsection (1)**—

(a) does not form part of the instrument; and

(b) may be removed, without any further authority than this subsection, by the relevant territorial authority once the instrument becomes operative.

80I Minister may make direction

(1) The Minister may direct 1 or more relevant territorial authorities in relation to the following requirements:

(a) the number of panel members that the relevant territorial authority must appoint to an independent hearings panel established under **clause 96(1)(a)** of Schedule 1:

(b) the level of experience and qualifications that a person must meet before the relevant territorial authority may appoint that person to an independent hearings panel:

(c) 1 or more periods of time within which the relevant territorial authority must complete 1 or more stages of the ISPP:

(d) matters on which the relevant territorial authority must report to the Minister.

(2) The direction may also include the Minister's statement of expectations for the relevant territorial authority.

(3) In deciding the content of the direction, the Minister must have regard to **section 80D**.

(4) A direction made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

80J Amendment of direction

(1) The Minister may initiate an amendment of a direction made under **section 80I**.

(2) A relevant territorial authority may request in writing that the Minister amend a direction made under **section 80I** that applies to that territorial authority, setting out the reasons for the request.

(3) The Minister may amend the direction as the Minister thinks appropriate.

(4) Unless an amendment made under this section has no more than a minor effect or is made to correct a technical error, **section 80I(1), (2), and (3)** applies.

(5) An amendment made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

80K Relevant territorial authority must comply with direction

(1) A relevant territorial authority—

(a) must comply with the terms of a direction given under **section 80I** (other than in respect of the Minister's statement of expectations included in the direction); but

(b) must have regard to that statement.

(2) The direction applies as from time to time amended in accordance with **section 80J**.

Subpart 4—When rules incorporating MDRS have legal effect and are operative

9 Section 86B amended (When rules in proposed plans have legal effect)

(1) In section 86B(1), replace "under clause 10(4) of Schedule 1" with "under clause 10(4), **102(1), or 105(1)** of Schedule 1, as applicable".

(2) In section 86B(1)(a), after "subsection (3)", insert "or **(3A)**".

(3) After section 86B(3), insert:

(3A) A rule in a proposed plan has immediate legal effect if the rule—

(a) is proposed in an intensification planning instrument prepared using the ISPP; and

(b) is proposed to apply to a relevant residential zone; and

(c) is not proposed to apply to any of the following areas:

(i) a permissive area:

(ii) a qualifying matter area:

(iii) a new residential zone.

(4) In section 86B(5), replace "subsection (3)" with "subsections (3) and **(3A)**".

(5) After section 86B(5), insert:

(6) For the purposes of **subsection (3A)**,—

permissive area means an area in a relevant residential zone identified as permitting a height limit higher than 11 metres plus 1 metre, as shown in the diagram in **clause 9 of Schedule 3A**

qualifying matter area means an area in respect of which the relevant territorial authority has proposed, in accordance with **section 77F(4)(c)**, that a qualifying matter apply.

10 Section 86F amended (When rules in proposed plans must be treated as operative)

(1) In section 86F(1), replace "A rule in a proposed plan must be treated as operative" with "Subject to **subsection (3)**, a rule in a proposed plan must be treated as operative".

(2) After section 86F(2), insert:

(3) A rule that has immediate legal effect under **section 86B(3A)** must be treated as operative (and any previous rule as inoperative) beginning at the time at which the rule has immediate legal effect.

Subpart 5—Other amendments

11 Section 104 amended (Consideration of applications)

In section 104(1), after "Part 2", insert "and **section 77J**".

12 Section 224 amended (Restrictions upon deposit of survey plan)

In section 224, replace "section 11(1A)(b)(i)" with "section 11(1)(a)(i) or (iii)".

Part 2
Amendments to schedules and new schedules

Subpart 1—Intensification streamlined planning process

13 Part 2 of Schedule 1 amended

After clause 25(4), insert:

(4A) A relevant territorial authority must not accept or adopt a request if it does not incorporate the MDRS as required by **section 77F(1) and (2)**.

14 New Part 6 inserted into Schedule 1

In Schedule 1, after clause 94, insert:

Part 6
Intensification streamlined planning process

How relevant territorial authority notifies intensification planning instrument

95 How relevant territorial authority notifies intensification planning instrument

What relevant territorial authority must do to notify intensification planning instrument

(1) A relevant territorial authority must prepare, notify, and progress an intensification planning instrument by following the relevant processes described in **subclause (2)**.

Application of Part 1 of this schedule

(2) The following clauses of Part 1 of this schedule apply to the extent that they are relevant to a relevant territorial authority:

(a) clause 1A (which requires a proposed policy statement or plan to be prepared in accordance with any applicable Mana Whakahono a Rohe):

(b) clause 1B (which relates to iwi participation legislation):

(c) clause 2(1) (which requires a local authority to prepare a proposed policy statement or plan):

(d) clause 3(1), (2), and (4) (which relates to consultation requirements):

(e) clause 3B (which relates to consultation with iwi authorities):

(f) clause 3C (which relates to previous consultation under other enactments):

(g) clause 4A (which requires a local authority to fulfil certain pre-notification requirements concerning iwi authorities):

(h) clause 5(1)(a) and (b)(i), (1A), (1B), (2), and (3) to (6) (which requires a local authority to publicly notify a proposed policy statement or plan that it has decided to proceed with):

(i) clause 6 (which relates to who may make submissions on a publicly notified proposed policy statement or plan):

(j) clause 7(1) and (2) (which requires a local authority to give public notice of certain matters relating to submissions):

(k) clause 8(1) and (2) (which enables certain persons to make further submissions):

(l) clause 8A (which relates to serving copies of further submissions made under clause 8):

(m) clause 8AA (which enables a local authority to arrange a meeting with a person who has made a submission on a proposed policy statement or

plan for the purpose of clarifying or facilitating the resolution of any matter relating to the statement or plan):

(n) clause 8B (which requires a local authority to hold a hearing into submissions on its proposed policy statement or plan):

(o) clause 16A (which enables a local authority to initiate variations to a proposed policy statement or plan).

(3) In the clauses referred to in **subclause (2)**,—

(a) references to a **local authority** are to be read as references to a relevant territorial authority; and

(b) references to a **proposed policy statement or plan** are to be read as references to an intensification planning instrument.

What relevant territorial authority must do in respect of independent hearings panel

96 Relevant territorial authority must establish independent hearings panel and delegate necessary functions

(1) A relevant territorial authority must—

(a) establish an independent hearings panel to—

(i) conduct a hearing of submissions on the intensification planning instrument once it has been notified by the relevant territorial authority; and

(ii) make recommendations, after the hearing of submissions is concluded, to the relevant territorial authority; and

(b) appoint 1 member of the panel to be the chairperson of the panel.

(2) The relevant territorial authority must delegate the necessary functions to the independent hearings panel.

(3) In this clause, **necessary functions**—

(a) means the functions, powers, or duties that the independent hearings panel requires to carry out its role under **subclause (1)(a)**; and

(b) includes the functions, powers, or duties that a local authority requires in order to hold a hearing under clause 8B of this schedule; but

(c) does not include—

(i) the approval of a proposed policy statement or plan under clause 17 of this schedule:

(ii) this power of delegation.

97 Relevant territorial authority must submit intensification planning instrument documents to independent hearings panel

A relevant territorial authority must submit the following documents and information, as relevant, to the independent hearings panel that it has established under **clause 96(1)(a)**:

(a) the intensification planning instrument that was publicly notified:

(b) any variation made to the intensification planning instrument under clause 16A of this schedule:

(c) the relevant territorial authority's evaluation report prepared under section 32:

(d) the submissions on the intensification planning instrument received by the closing date for submissions:

(e) the relevant territorial authority's summary of the decisions requested by submitters:

(f) further submissions on the intensification planning instrument received by the closing date for further submissions:

(g) submissions received after the closing date for submissions or further submissions:

(h) information about when the submissions described in **paragraph (g)** were received:

(i) the planning documents that are recognised by an iwi authority and lodged with the relevant territorial authority:

(j) documentation relevant to any obligations arising under any relevant iwi participation legislation, joint management agreement, or Mana Whakahono a Rohe:

(k) any other relevant information.

Powers of independent hearings panel and process for recommendations

98 Powers of independent hearings panel

(1) To the extent applicable, an independent hearings panel has the same duties and powers as a local authority under the following provisions:

(a) section 39 (which provides for how hearings are to be conducted), except section 39(2)(c) and (d):

(b) section 39AA (which enables a hearing to be conducted using remote access facilities):

(c) section 40 (which provides for the persons who may be heard at a hearing):

(d) section 41 (which provides for the application of certain provisions of the Commissions of Inquiry Act 1908):

(e) section 41A (which relates to the control of hearings):

(f) section 41B (which provides for the giving of directions as to the time for providing evidence in relation to a hearing):

(g) section 41C (which sets out the directions and requests that may be given before or at a hearing), except section 41C(4):

(h) section 41D (which provides for submissions to be struck out before or at a hearing):

(i) section 42 (which provides for the protection of sensitive information).

(2) If an independent hearings panel exercises a power under section 41D,—

(a) a person whose submission is struck out has a right of objection under section 357(2) as if the references in that subsection to an authority were references to an independent hearings panel; and

(b) sections 357C, 357D, and 358 apply to the independent hearings panel as the body to which an objection is made under section 357(2).

(3) An independent hearings panel may decide to accept or reject any late submission.

(4) At a hearing, an independent hearings panel may—

(a) permit a party to question another party or a witness:

(b) prohibit cross-examination:

(c) permit cross-examination at the request of a party, but only if the panel is satisfied that it is in the interests of justice:

(d) regulate the conduct of any cross-examination.

99 Independent hearings panel must make recommendations to territorial authority on intensification planning instrument

(1) An independent hearings panel must make recommendations to the relevant territorial authority on the intensification planning instrument.

(2) The independent hearings panel—

(a) is not limited to making recommendations only within the scope of submissions made on the intensification planning instrument:

(b) may make recommendations on any other matters relating to the intensification planning instrument identified by the panel or any other person during the hearing.

(3) An independent hearings panel, in formulating its recommendations, must be satisfied that, if the relevant territorial authority were to accept the panel's recommendations, sections 85A and 85B(2) (which relate to the protection of protected customary rights) would be complied with.

100 How independent hearings panel must provide recommendations

(1) The independent hearings panel must provide its recommendations to the relevant territorial authority in 1 or more written reports.

(2) Each report must—

(a) set out the panel's recommendations on the provisions of the intensification planning instrument covered by the report; and

(b) identify any recommendations that are outside the scope of the submissions made in respect of those provisions; and

(c) set out the panel's recommendations on the matters raised in submissions made in respect of the provisions covered by the report; and

(d) state the panel's reasons for accepting or rejecting submissions; and

(e) include a further evaluation of the intensification planning instrument undertaken in accordance with section 32AA (requirements for undertaking and publishing further evaluations).

(3) Each report may also include—

(a) matters relating to any alterations necessary to the intensification planning instrument as a consequence of matters raised in submissions; and

(b) any other matter that the panel considers relevant to the intensification planning instrument that arises from submissions or otherwise.

(4) In stating the panel's reasons for accepting or rejecting submissions in accordance with **subclause (2)(d)**, each report may address the submissions by grouping them according to—

(a) the provisions of the intensification planning instrument to which they relate; or

(b) the matters to which they relate.

(5) To avoid doubt, a panel is not required to make recommendations in a report that address each submission individually.

Decisions on independent panel's recommendations

101 Relevant territorial authority to consider recommendations

(1) The relevant territorial authority—

(a) must decide whether to accept or reject each recommendation of the independent hearings panel; and

(b) may provide an alternative recommendation for any recommendation that the authority rejects.

(2) The relevant territorial authority must refer to the Minister—

(a) each rejected recommendation, together with the authority's reasons for rejecting the recommendation; and

(b) any alternative recommendation that the authority has provided under **subclause (1)(b)**.

(3) The relevant territorial authority must make decisions under **subclause (1)** in a manner that is consistent with any relevant iwi participation legislation, Mana Whakahono a Rohe, or joint management agreement.

(4) When making decisions under **subclause (1)**, the relevant territorial authority—

(a) is not, subject to **subclause (2)**, required to consult any person or consider submissions or other evidence from any person; and

(b) must not consider any submission or other evidence unless it was made available to the independent hearings panel before the panel made the recommendation that is the subject of the relevant territorial authority's decision; and

(c) may seek clarification from the independent hearings panel on a recommendation in order to assist the relevant territorial authority to make a decision under **subclause (1)**.

(5) To avoid doubt, the relevant territorial authority may accept recommendations of the independent hearings panel that are beyond the scope of the submissions made on the intensification planning instrument.

102 Notification of relevant territorial authority's decisions

(1) The relevant territorial authority must publicly notify its decisions made under **clause 101(1)** in a way that sets out the following information:

(a) each recommendation of the independent hearings panel that it accepts; and

(b) each recommendation of the independent hearings panel that it rejects and the reasons for doing so; and

(c) any alternative recommendation that it has provided for a rejected recommendation.

(2) Not later than 5 working days after the relevant territorial authority's decisions under **subclause (1)** are publicly notified, the authority must serve the public notice on every person who made a submission on the intensification planning instrument.

(3) The relevant territorial authority must also—

(a) make a copy of the public notice and the decisions under **clause 101(1)** publicly available (whether physically or by electronic means) at all of its offices, and all public libraries in its district; and

(b) include with the notice a statement of the places where a copy of the decision is available; and

(c) send or provide, on request, a copy of the decision within 3 working days after the request is received.

103 What happens if relevant territorial authority accepts all recommendations of independent hearings panel

(1) This clause applies if the relevant territorial authority decides to accept all the recommendations of the independent hearings panel.

(2) On the notification under **clause 102(1)** of the relevant territorial authority's decisions,—

(a) all the recommendations of the independent hearings panel are incorporated into the district plan that has been subject to the ISPP; and

(b) the plan (as altered by those recommendations) becomes operative in accordance with clause 20.

104 What happens if relevant territorial authority accepts some, or none, of recommendations of independent hearings panel

(1) This clause applies if the relevant territorial authority—

(a) decides to accept some, or none, of the recommendations of the independent hearings panel; and

(b) refers, under **clause 101(2)(a)**, 1 or more recommendations to the Minister.

(2) The Minister must decide—

(a) to accept or reject any or all of the recommendations referred to the Minister under **clause 101(2)(a)**; and

(b) for any recommendation that the Minister rejects, whether to adopt an alternative recommendation referred to the Minister under **clause 101(2)(b)**.

(3) For the purposes of **subclause (2)**, the Minister may take into account only those considerations that the independent hearings panel could have taken into account when making its recommendation.

(4) Once the Minister has made decisions under **subclause (2)**, the Minister must, as soon as practicable, notify the relevant territorial authority in writing of those decisions and the Minister's reasons for making them.

(5) On the notification under **clause 105(1)** of the Minister's decisions,—

(a) all the recommendations of the independent hearings panel (as accepted by the relevant territorial authority and as accepted or altered by the Minister's decisions) are incorporated into the district plan that has been subject to the ISPP; and

(b) the plan (as altered by those recommendations) becomes operative in accordance with clause 20.

105 Notification of Minister's decisions

(1) Once the Minister has notified a relevant territorial authority under **clause 104(4)** of decisions made under **clause 104(2)**, the relevant territorial authority must publicly notify those decisions.

(2) The relevant territorial authority must publicly notify the Minister's decisions made under **clause 104(2)** in a way that sets out the following information:

(a) each recommendation referred to the Minister under **clause 101(2)(a)** that the Minister accepts; and

(b) each recommendation referred to the Minister under **clause 101(2)(a)** that the Minister rejects and the reasons for doing so; and

(c) any alternative recommendation referred to the Minister under **clause 101(2)(b)** that the Minister has adopted for a rejected recommendation.

(3) Not later than 5 working days after the Minister's decisions under **clause 104(2)** are publicly notified, the relevant territorial authority must serve the public notice on every person who made a submission on the intensification planning instrument.

(4) The relevant territorial authority must also—

(a) make a copy of the public notice and the decisions under **clause 104(2)** publicly available (whether physically or by electronic means) at all of its offices, and all public libraries in its district; and

(b) include with the notice a statement of the places where a copy of the decisions are available; and

(c) send or provide, on request, a copy of the decisions within 3 working days after the request is received.

Appeals and judicial review

106 Scope of appeal rights

There is no right of appeal under this Act against any decision or action of the Minister, a relevant territorial authority, or any other person under this Part.

107 Judicial review

Nothing in this Part limits or affects any right of judicial review a person may have in respect of any matter to which this Part applies.

Subpart 2—Other amendments

15 New Schedules 3A and 3B inserted

After Schedule 3, insert the Schedules 3A and 3B set out in **Schedules 1 and 2** of this Act.

16 Schedule 12 amended

In Schedule 12,—

(a) insert the Part set out in **Schedule 3** of this Act as the last Part; and

(b) make all necessary consequential amendments.

Schedule 1
New Schedule 3A inserted

s 15

Schedule 3A
MDRS to be incorporated by relevant territorial authorities

s 77F

Part 1
General

1 Interpretation

(1) In this schedule, unless the context otherwise requires,—

construction includes construction and conversion, and additions and alterations to an existing residential unit

subdivision means the subdivision of land, as defined in section 218(1).

(2) Terms used in this schedule that are defined in **section 77E** have the same meaning in this schedule as they do in that section.

(3) Terms used in this schedule that are defined in the national planning standards have the same meaning in this schedule as they do in those standards.

2 Permitted activities

(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.

3 Restricted discretionary activities

(1) A relevant residential zone must allow as a restricted discretionary activity the activities referred to in **subclause (2)(a) and (b)**.

(2) The activities referred to in **subclause (1)** are—

(a) to construct and use more than 3 residential units on a site within a relevant residential zone (whether or not they comply with the building standards set out in **Part 2**); or

(b) to construct and use 1, 2, or 3 residential units that do not comply with the building standards set out in **Part 2**.

4 Certain notification requirements precluded

(1) An application for the construction and use of 1, 2, or 3 residential units that do not comply with 1 or more of the building standards in **Part 2** must not be publicly notified.

(2) An application for the construction or use of 4 or more residential units that comply with the building standards in **Part 2** must not be—

(a) publicly notified; or

(b) given limited notification.

Subdivision requirements

5 General subdivision requirements

Any subdivision provisions (including rules and standards) must be consistent with the level of development permitted under the other clauses of this schedule.

6 Further rules about subdivision requirements

Without limiting **clause 5**,—

(a) there must be no minimum lot size, shape size, or other size-related subdivision requirements for the following:

(i) any allotment with an existing residential unit, if the subdivision does not increase the degree of any non-compliance with the building standards set out in **Part 2**:

(ii) any allotment with no existing residential unit, or for which no existing land use consent for a residential unit has been granted, or (in the case of joint land use and subdivision applications) for which applications are being concurrently considered, if it can be demonstrated by the applicant for the resource consent—

(A) that it is practicable to construct on every allotment within the proposed subdivision, as a permitted activity, a residential unit; and

(B) that each residential unit complies with the building standards set out in **Part 2**:

(b) there must be no minimum lot size, shape size, or other size-related subdivision requirements for the subdivision of land around residential units if—

(i) they are approved under a land use resource consent; and

(ii) no vacant allotments are created.

7 Rules about common walls

For the purposes of **clause 6(a)(i)**, if a subdivision is proposed between residential units that share a common wall, the requirements as to height in relation to boundary and set-back standards set out in **Part 2** do not apply along the length of the common wall.

Other matters

8 Other matters to be included in district plan in relation to MDRS

The relevant territorial authority must include the following information in relation to the MDRS within the district plan:

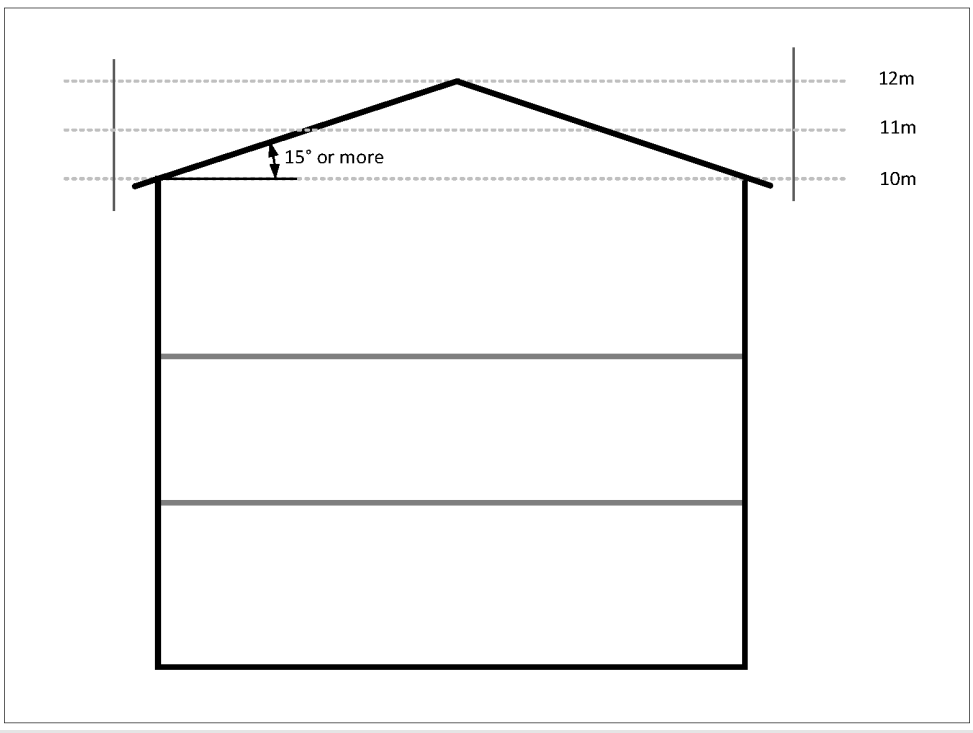
(a) the enabling objectives and policies for the MDRS; and

(b) a reference to relevant engineering standards applying in the relevant residential areas to which the MDRS apply.

Part 2
Building standards

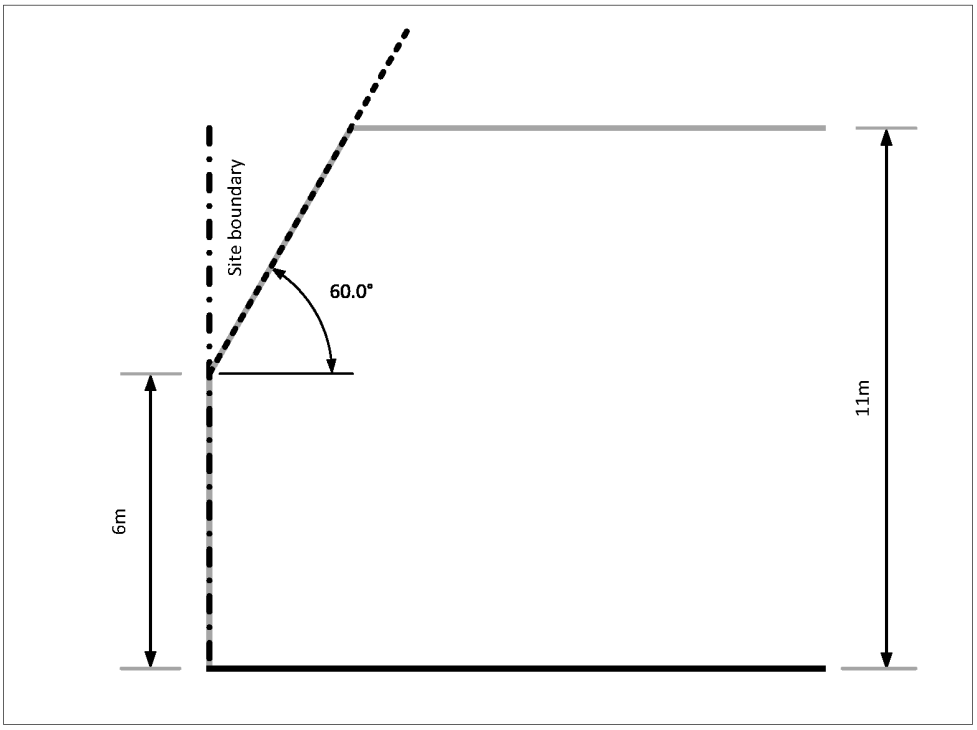
9 Building height

Buildings must not exceed 11 metres in height, except that 50% of a building's roof in elevation, measured vertically from the junction between wall and roof, may exceed this height by 1 metre, where the entire roof slopes 15° or more, as shown on the following diagram:



10 Height in relation to boundary

(1) Buildings must not project beyond a 60° recession plane measured from a point 6 metres vertically above ground level along all boundaries, as shown on the following diagram. Where the boundary forms part of a legal right of way, entrance strip, access site, or pedestrian access way, the height in relation to boundary applies from the farthest boundary of that legal right of way, entrance strip, access site, or pedestrian access way.



(2) This standard does not apply to—

(a) a boundary with a road:

(b) existing or proposed internal boundaries within a site:

(c) site boundaries where there is an existing common wall between 2 buildings on adjacent sites or where a common wall is proposed.

11 Setbacks

(1) Buildings must be set back from the relevant boundary by the minimum depth listed in the yards table below:

Yard	Minimum depth
Front	2.5 metres
Side	1 metre
Rear	1 metre (excluded on corner sites)

(2) This standard does not apply to site boundaries where there is an existing common wall between 2 buildings on adjacent sites or where a common wall is proposed.

12 Building coverage

The maximum building coverage must not exceed 50% of the net site area.

13 Impervious area

The maximum impervious area must not exceed 60% of the site area.

14 Outdoor living space (per unit)

A residential unit at ground floor level must have an outdoor living space that is at least 15 square metres and that comprises ground floor or balcony or roof terrace space that,—

(a) where located at ground level, has no dimension less than 3 metres; and

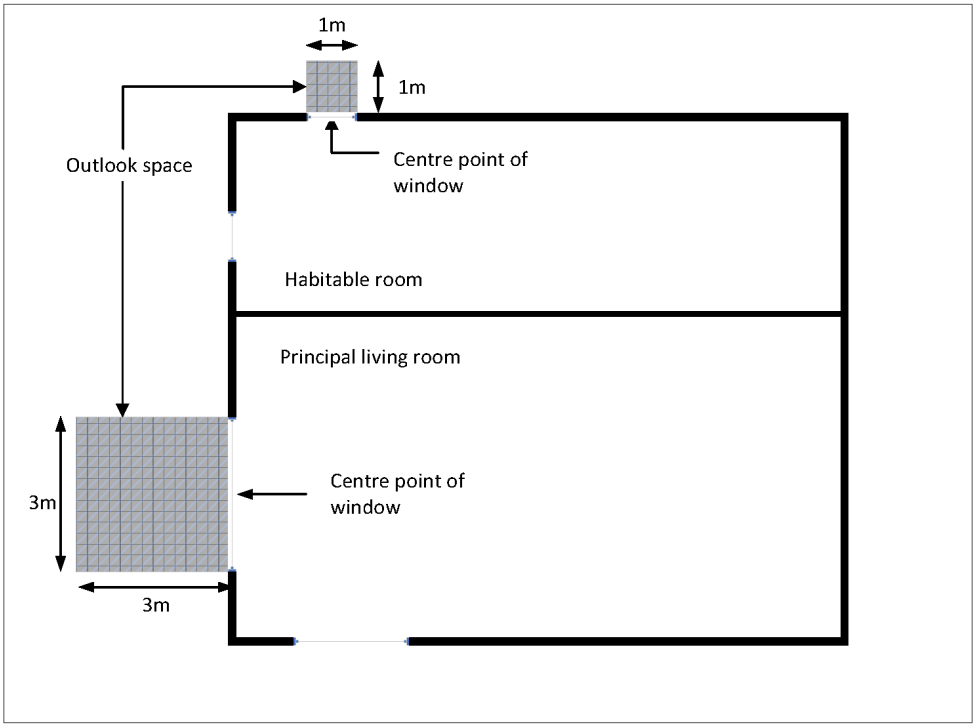
(b) where provided in the form of a balcony, patio, or roof terrace, is at least 8 square metres and has a minimum dimension of 1.8 metres; and

(c) is accessible from the residential unit; and

(d) is free of buildings, parking spaces, and servicing and manoeuvring areas.

15 Outlook space (per unit)

(1) An outlook space must be provided from habitable room windows as shown in the diagram below. Where the room has 2 or more windows, the outlook space must be provided from the largest area of glazing.



(2) The minimum dimensions for a required outlook space are as follows:

(a) a principal living room must have an outlook space with a minimum dimension of 3 metres in depth and 3 metres in width; and

(b) all other habitable rooms must have an outlook space with a minimum dimension of 1 metre in depth and 1 metre in width.

(3) The width of the outlook space is measured from the centre point of the largest window on the building face to which it applies.

(4) Outlook spaces may be within the site or over a public street or other public open space.

(5) Outlook spaces required from different rooms within the same building may overlap.

(6) Outlook spaces must—

(a) be clear and unobstructed by buildings; and

(b) not extend over an outlook space or outdoor living space required by another dwelling.

Schedule 2
New Schedule 3B inserted

s 15

Schedule 3B
Policies 3, 4, and 5 of National Policy Statement on Urban Development 2020 (as amended by section 77O(1) of the Act)

ss 2(1), 77O(1)

Policy 3: In relation to tier 1 urban environments, regional policy statements and district plans enable:

(a) in city centre zones, building heights and density of urban form to realise as much development capacity as possible, to maximise benefits of intensification; and

(b) in metropolitan centre zones, building heights and density of urban form to reflect demand for housing and business use in those locations, and in all cases building heights of at least 6 storeys; and

(c) building heights of least 6 storeys within at least a walkable catchment of the following:

  (i) existing and planned rapid transit stops:

  (ii) the edge of city centre zones:

  (iii) the edge of metropolitan centre zones; and

(d) within and adjacent to neighbourhood centre zones, local centre zones, and town centre zones (or equivalent), building heights and density of urban form commensurate with the level of commercial activities and community centres.

Policy 4: Regional policy statements and district plans applying to tier 1 urban environments modify the relevant building height or density requirements under Policy 3 only to the extent necessary (as specified in subpart 6) to accommodate a qualifying matter in that area.

Policy 5: Regional policy statements and district plans applying to tier 2 and 3 urban environments enable heights and density of urban form commensurate with the greater of:

(a) the level of accessibility by existing or planned active or public transport to a range of commercial activities and community services; or

(b) relative demand for housing and business use in that location.

Schedule 3
New **Part 4** inserted into Schedule 12

s 16

Part 4
Provision relating to Resource Management (Enabling Housing Supply and Other Matters) Amendment Act **2021**

31 Status of partly completed proposed plans and private plan change requests in tier 1 urban environments

(1) This clause applies to the following in relation to the district plan of a tier 1 territorial authority:

- (a) a proposed district plan:
- (b) a private plan change accepted under clause 25(2)(b) of Schedule 1.

(2) **Subclause (3)** applies if the instrument containing the proposed district plan or private plan change referred to in **subclause (1)**—

- (a) does, in whole or in part, 1 or more of the following things:
  - (i) gives effect to policy 3 or 4:
  - (ii) proposes changes to a relevant residential zone and those changes do not incorporate the MDRS:
  - (iii) creates a new residential zone that does not incorporate the MDRS; and
- (b) has been notified on or before the commencement of this clause but a hearing under clause 8B of Schedule 1 is not completed on or before 20 February 2022.

(3) If this subclause applies,—

- (a) the territorial authority must withdraw the part or whole of the proposed plan as relevant under clause 8D of Schedule 1; or
- (b) in a case where a private plan change has been accepted, the applicant must withdraw the request under clause 28 of Schedule 1.

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