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

Presented to the House in accordance with Standing Order 272

This legislative statement supports the second reading of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill. The Bill was introduced on 19 October 2021. A post select committee version of the Bill has not been reported due to timing constraints. A Supplementary Order Paper proposing amendments to the Bill has been introduced instead. When this statement discusses the Bill it refers to the version of the Bill in the Supplementary Order Paper.

What the Bill does

The Resource Management (Enabling Housing Supply and other Matters) Amendment Bill (the Bill) seeks to boost housing supply in urban areas. It does this by introducing:

- the Intensification Streamlined Planning Process (ISPP) to bring forward implementation of the intensification policies in the National Policy Statement on Urban Development (NPS-UD)
- medium density residential standards (the MDRS) for relevant residential zones in tier 1 areas.

The ISPP and MDRS will apply to all tier 1 councils¹. Tier 2 councils² may also be required to be included and Tier 3 councils can ask to be included in the legislation. Towns and smaller settlements with a population of less than 5,000 at the 2018 census and offshore islands will be exempt from the MDRS.

Intensification Streamlined Planning Process

The NPS-UD was gazetted in August 2020 and addresses restrictive land use

¹ Auckland Council; Hamilton City Council; Waikato District Council; Waipā District Council; Tauranga City Council; Western Bay of Plenty District Council; Wellington City Council; Porirua City Council; Hutt City Council; Upper Hutt City Council; Kāpiti Coast District Council; Christchurch City Council; Selwyn District Council; Waimakariri District Council.

² Whangarei District Council; Rotorua District Council; New Plymouth District Council; Napier City Council; Hastings District Council; Palmerston North City Council; Nelson City Council; Tasman District Council; Queenstown Lakes District Council; Dunedin City Council.

regulations. The NPS-UD requires, among other things, that tier 1 councils amend their Resource Management Act 1991 (RMA) plans to enable intensification in urban areas close to public transport routes, community facilities, workplaces, and city/metropolitan centres. These are the NPS-UD intensification policies.

This Bill requires tier 1 councils to use the ISPP to make the plan changes or plan variations that are needed to implement the NPS-UD intensification policies, as well as the MDRS. These changes or variations are collectively referred to as an 'intensification planning instrument' (IPI). An IPI can also be used to change provisions in plans (including objectives, policies, rules, standards, and zones) that are consequential and complementary to the MDRS and NPS-UD intensification policies, financial contributions and to enable the provision of papakāinga.

The ISPP is an expedited planning process, with opportunities for submissions and a hearing which will be run by an independent hearings panel (IHP). The ISPP states the steps that tier 1 councils will use to progress their IPI. IPI plan changes must be notified by councils by the existing NPS-UD deadline of August 2022.

The ISPP requires tier 1 councils to appoint an Independent Hearings Panel and delegate its responsibilities for conducting hearings. The IHP must have at least one member with tikanga expertise, with their appointment to be made following consultation with relevant iwi authorities. The IHP will then report its recommendations to the council. The council remains the primary decision-maker on an IPI. However, if a council 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 either accept the IHP's recommendations or make alternative recommendations.

The Bill proposes no appeals on IPIs that go through the ISPP. This approach will enable IPIs to be operative by mid-2023.

Introduction of Medium Density Residential Standards

The MDRS are a package of standards designed to enable up to three storeys and three dwellings on most sites. Developments that meet the standards will not need a resource consent, as they will be permitted activities. The MDRS will be required for all relevant residential zones in Tier 1 council plans.

Designations for schools in relevant residential zones or adjoining them may also rely on the MDRS if these are more permissive than existing conditions.

The MDRS include:

- height and height in relation to boundary standards that will allow for three

- storeys on most sites
- a requirement for private outlook spaces and at least 20m² private or shared outdoor living spaces
- a maximum site coverage of 50%
- a minimum of 20% landscaping per site and 20% glazing for street frontages
- a minimum of 1m side yard setbacks

Councils may make their residential zoning more enabling of development than the MDRS, but not less.

The Bill will also enable more resource consents (when needed) to proceed on a non-notified basis.

There may be areas with specific characteristics that make it inappropriate to apply the MDRS in full. These characteristics are referred to as 'qualifying matters'. Qualifying matters for applying the MDRS are the same as those defined in clause 3.32 of the NPS-UD. This includes where there may be natural hazards, or it's necessary to protect historic heritage or uphold Treaty commitments.

Te Ture Whaimana o Te Awa o Waikato (Vision and Strategy for the Waikato River) is a listed qualifying matter, along with other treaty settlement legislation that provides for iwi participation.

If a tier 1 council determines a qualifying matter limits the application of the MDRS, it must provide evidence to support this in its evaluation report, as required under section 32 of the RMA. The Bill provides for existing evidence to inform the justification of qualifying matters.

The standards in the MDRS and a set of MDRS objectives and policies will have immediate legal effect from the notification date of the intensification planning instrument, except in:

- 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
- new residential zones).

Existing plan provisions that are not inconsistent with the Bill will continue to have effect.

Transitional Provisions

Existing plan changes and full plan reviews will be able to proceed with adaptations to include the MDRS. The processes for this are:

- where a council has notified a proposed district plan change, they will use the ISPP to vary their proposed district plan to incorporate the MDRS and the NPS-UD intensification policies

- where a council or developer has notified plan changes, they will notify a variation to the plan change to ensure that it incorporates the MDRS.

MDRS Application to Tier 2 and Tier 3 councils

Where a tier 2 council has acute housing need, the Minister for the Environment, in consultation with the Minister of Housing and Minister for Māori Crown Relations: Te Arawhiti, may recommend that an Order in Council be made to require it to develop an intensification planning instrument, implementing the NPS-UD and MDRS using the ISPP.

The Bill allows Tier 3 councils to ask the Minister for the Environment to direct them to implement the MDRS and NPS-UD via the ISPP. The Minister for the Environment should determine whether the relevant tier 3 council is experiencing acute housing need and consult the Minister of Housing and Minister for Māori Crown Relations: Te Arawhiti.

Policy 3(d) of the NPS-UD

The Bill modifies policy 3(d) of the NPS-UD, removing the requirement for demand assessments. The amended policy 3(d) will require tier 1 councils to enable building heights and density of urban form commensurate with the level of commercial activities and community services within, and adjacent to neighbourhood centre zones, local centre zones and town centre zones (or equivalent zones).

Enabling amendment or inclusion of financial contributions provisions

This Bill clarifies that a council may amend its plan to require financial contributions be paid for permitted activities. Tier 1 councils can amend or include new financial contributions provisions in their district plans through the ISPP. This will support councils with the cost of developing infrastructure that may be required to incorporate the MDRS.

Financial contributions provisions are subject to the consultation requirements in the ISPP.