

# SUBMISSION ON THE RESOURCE MANAGEMENT (ENABLING HOUSING SUPPLY AND OTHER MATTERS) AMENDMENT BILL

## Submission from Hutt City Council

### Introduction

This is a submission from the Hutt City Council (HCC) to Parliament's Environment Select Committee on the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill 2021 (the Bill).

The Bill's intent is *"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"*.

While HCC is overall supportive of the Bill's intent and welcomes political consensus on accelerating housing supply in our largest cities, it will have major impacts for our city that we are not willing to accept.

Council officers have also provided a submission on the technical aspects of the Bill which supplements this submission and is attached below from Helen Oram, Director, Environment and Sustainability.

### Lack of consultation with Local Government and iwi

HCC appreciates the intent to move at pace to accelerate housing intensification. However, we are disappointed that there has been no genuine engagement with local government and iwi prior to the Bill's introduction.

This lack of consultation has reduced our ability to meaningfully engage with our communities and further explain to them how these changes will impact on the existing District Plan and existing engagements already underway in planning for growth in our urban areas. In essence, there has been no real opportunity provided by the Government for any meaningful input. In addition, HCC has recently agreed its Long Term Plan - implementation of the Bill in its current form has the potential to undermine the projects that are already planned for.

HCC is also reviewing its District Plan, which has had to change tack already due to the National Policy Statement - Urban Development (NPS-UD), and will now once again have to be altered to give effect to this Bill. This makes it extremely difficult for councils to plan for urban development in our cities and puts added pressures on city planners.

### The National Policy Statement - Urban Development

This Bill proposes additions to earlier policy directions that are also compulsory for 'tier 1' councils like HCC to introduce. The NPS-UD requires us to enable buildings of at least six storeys within "walkable distance" of the CBD, Petone and train stations. This NPS-UD is the same directive that removes the ability of councils to require any new developments to provide off-street parking.

We agree that we need to allow for housing density. As we grapple with climate change (particularly looking to mode-shift out of cars) and the cost of three-water infrastructure, it

does not make sense to provide for high amounts of intensification further away from local amenities and good public transport.

That was precisely the rationale behind HCC’s Plan Change 43 agreed in 2019. The change has enabled much of the surge of infill housing in Lower Hutt of late.

The Medium Density developments allowed under Plan Change 43 were focused in eight areas chosen for their proximity to shops, schools, access to public transport and parks. Plan Change 43 also provided for additional housing throughout residential areas, including intensification of existing properties by enabling smaller houses to be built as of right. Other provisions in our District Plan enable inner city living apartments in Lower Hutt’s central business district and in tandem with the Riverlink development, and flats/townhouses built on top of retail and offices in suburban shopping areas such as Waterloo and Avalon/Park Ave.

Plan Change 43 is working. We have doubled the number of new dwellings consented in the last year and we expect that number to continue growing.

*Table one: Number of new dwellings consented*

Territorial authority or local board	Year ended September					
	2016	2017	2018	2019	2020	2021
Lower Hutt city	405	243	412	571	550	<b>1,142</b>

\* Source: Statistics New Zealand, Building Consents Issued as at September 2021

This Bill would completely override those changes and planning already in place. Instead of our targeted and bespoke approach, the Bill takes a blunt approach which enables developers to focus their attention on areas not well served by shops and public transport, meaning from August next year significant intensification can happen anywhere in the city. The NPS-UD directs that those housing developments will not be required to have off-street parking, leaving residents with limited transport choices.

**Carbon reduction and transport**

By enabling three storey housing without proximity to public transport, the Bill will further incentivise private vehicle transport and do little to decrease our carbon emissions. This directly contradicts the Government’s Emissions Reduction Plan and undermines our own Carbon Reduction Plan. Not only will this make it extremely difficult to move the dial on climate change in our city and across the country, it will also make it more difficult for our people to get around.

**HCC does not support the Bill in its current form**

HCC supports the intent of the Bill in providing for more housing but does not support the Bill itself as it undermines significant progress and planning to accelerate housing supply, in conjunction with providing access to basic amenities and public transport in Lower Hutt.

Instead, we request that HCC and other tier 1 councils that have demonstrated real progress in accelerating intensive housing supply not be affected by the Bill, and rather the Bill be used as a fallback for when such progress is not made or where such measures are not

entrenched in official council plans. This would allow councils who are already enabling housing intensification in a bespoke way for their cities to just get on and do it, rather than cause delays and create cities that end up choking on their own growth in 10-20 years. HCC implores the Environment Select Committee to reconsider the scope of this Bill and allow councils who have demonstrated real progress and planning to continue implementation without Parliament tearing up the blueprint.

# SUBMISSION ON THE RESOURCE MANAGEMENT (ENABLING HOUSING SUPPLY AND OTHER MATTERS) AMENDMENT BILL

## Officers' Submission

To the Environment Committee,

### **Submission of Hutt City Council officers on the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill**

I welcome the opportunity to make a submission on this bill.

Lower Hutt is now a fast-growing city, and our latest projections show that we expect to need to add 24,773 new housing units by 2051<sup>1</sup>. Given our city is constrained by hills and water, there is little room for greenfield expansion of the city, and we expect most or all of our growth in the coming decades to come from intensification.

Providing for this intensification is a major piece of work for the Council, and to further this in a way that is holistic with the other planning challenges our city faces, we have been conducting a complete review of our district plan that aims to notify an entirely new plan by August 2022. This plan will need to implement not just the National Policy Statement on Urban Development, but also the National Planning Standards, the Wellington Regional Policy Statement, and refresh dated provisions around issues for mana whenua, significant natural hazards, indigenous biodiversity, historic heritage, and more.

Responding to growth was also a key theme of our 2021-2031 Long Term Plan, which doubled capital investment to help provide the infrastructure needed for intensification.

The content of the medium density residential standards can relatively easily be incorporated into the new plan, although some clarifications would be welcome. However, we are concerned that the proposed separate intensification streamlined planning process to include those standards risks confusion and unnecessary work for both Council and the public, as well as risking a less coherent and less integrated district plan.

Yours sincerely



**Helen Oram**

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<sup>1</sup> Including the 15-20% 'competitiveness margin' required by the National Policy Statement on Urban Development.

## **Director – Environment and Sustainability**

### **Hutt City Council**

#### **Introduction**

1. This submission represents the views of officers of the Hutt City Council and not the Council itself.
2. Accordingly, this submission does not express a political view on the overall policy this bill advances but relates to matters of implementation.
3. The short timeframe for submissions has limited our ability to provide detailed suggested changes to individual provisions. We would welcome the opportunity to work further with the Committee on any areas where it accepts in principle that changes are needed.
4. The key areas this submission covers are:
  - The challenges and risks that the requirement to use a separate intensification streamlined planning process causes for the coherence and integrity of the City of Lower Hutt District Plan, in addition to other simultaneous plan changes, compared to the ability to use a single process
  - The clarity of the proposed Medium Density Residential Standards
  - The inconsistency around Policy 3(d) as it relates to both qualifying matters and the ability to be “more permissive” than the bill requires in urban non-residential areas
  - The effect of the proposed change to Policy 3(d) of the National Policy Statement on Urban Development
  - The transitional provisions relating to private plan changes in progress.
5. This submission consists of a discussion of the potential impacts of the bill and then suggested changes relating to each of the key areas.

#### **Discussion**

##### *Intensification Streamlined Planning Process (ISPP)*

6. Hutt City Council has been working since May 2019 on a complete review of the city’s district plan, with the aim of notifying a new plan in August 2022. This review needs to tackle numerous issues that are not addressed in the current plan or are out of date, including:
  - Implementing the National Policy Statement on Urban Development (NPS-UD)
  - Implementing the National Planning Standards
  - Implementing the latest Wellington Regional Policy Statement
  - Updating significantly out-of-date provisions relating to historic heritage, sites of significance to Māori, natural features and landscapes, indigenous biodiversity, and addressing risk from natural hazards – all of which are key NPS-UD “qualifying matters”.

7. The Council has made substantial progress on this review, including commissioning significant amounts of technical work, and is currently in the process of approving draft plan chapters for the purpose of public consultation in early 2022.
8. The direction of the NPS-UD has been incorporated throughout the review and is not easy to separate from the other changes likely to be proposed in the new plan.
9. By contrast, the proposed Medium Density Residential Standards could be easily incorporated into the new plan.
10. Accordingly, we are concerned that the “streamlined” process proposed in this Bill may be anything but that.
11. The Bill proposes that Hutt City Council must implement policies 3 and 4 of the NPS-UD, and the Medium Density Residential standards through the new “streamlined” process, but cannot make any other changes to the plan, let alone completely replace the plan, at the same time.
12. If Hutt City Council cannot implement the NPS-UD, Medium Density Residential Standards, National Planning Standards, and the qualifying matters by notifying a single new district plan, it would be forced to split this new district plan up into at least two or possibly more separate plan changes and associated processes. These plan changes could be split up as follows:
  - A non-Schedule 1 plan change to update the current plan into the National Planning Standards format.
  - A conventional Schedule 1 plan change to make consequential amendments to the plan to implement the National Planning Standards (e.g., updating definitions).
  - A conventional Schedule 1 plan change to address a range of district-wide chapters, particularly natural hazards, and heritage, which have not been reviewed since the District Plan was made operative in 2004. These district-wide chapters are ‘qualifying matters’ in the plan and would be relevant in implementing the NPS-UD and MDRS.
  - A “streamlined” plan change as proposed by the Bill to implement the NPS-UD policies 3 and 4, and the MDRS.
  - A new district plan, or a series of topic-specific plan changes to implement all other topics that have been found through our comprehensive review to need updating.
13. The above plan changes and associated processes could be undertaken simultaneously or in a staged approach. Either way, this would create substantial extra work for Council, would reduce the integration and coherence of the resulting district plan, and would be confusing and burdensome for the public, particularly submitters on any of these plan changes.
14. It would also add significant complexity if changes come out of the hearing or appeals process for one or more of the plan changes that would need to be reflected in the others through a variation, particularly to qualifying matters areas.

15. Hutt City Council, like other local authorities, government agencies, and private sector firms is currently struggling to fill vacancies for qualified and experienced planners given the current workloads across the sector.
16. Therefore, meeting the August 2022 deadline while managing the extra workload from multiple plan changes either simultaneously or staged processes would inevitably also mean a compromised and lower-quality plan.
17. Alternatively, Hutt City Council could decide to only proceed with the “streamlined” plan change to implement the NPS-UD policies 3 and 4 and the MDRS by August 2022 due to this statutory requirement. However, focusing on this element alone could result in poor outcomes for Lower Hutt and its residents, as it would not address issues such as natural hazards.
18. The proposed new s77F(2)(b) provides that a plan-making process other than the intensification streamlined planning process can be used if that process is “inapplicable”. One option is to clarify that this includes a situation where a local authority has notified an entirely new plan that gives effect to the NPS-UD and MDRS.
19. Another option would be a hybrid process that would allow our new district plan to be proposed and heard as a whole, rather than being separated into separate plan changes, while still incorporating the key features of the streamlined process that help to implement the NPS-UD faster.
20. Our recommendations set out these options.

#### *Medium Density Residential Standards*

21. The proposed Medium Density Residential Standards (MDRS) are unclear regarding which types of other district plan rules are precluded by Schedule 3A cl 2(3).
22. The building standards cover only “bulk and location” controls for buildings. They do not include other normal permitted activity conditions such as those that manage construction itself, such as limits on noise and vibration, or requirements about a building that do not affect its bulk and location, such as requirements for stormwater detention tanks in areas with stormwater issues, or noise insulation near highways and railways.
23. It is not clear if the intent was to limit only bulk and location controls, or whether those other permitted activity conditions are excluded from use in district plans. We think it would be appropriate for district plans to still include controls for these issues.
24. It is also not clear whether provisions are precluded if they are not specific to residential areas and are contained in district-wide chapters.
25. It is also not clear whether the provisions also affect rules relating to structures, rather than buildings, which often have their own rules, such as limits on the height of fences.
26. The use of the term “building standard” implies that other standards can also be applied to residential units, as long as they are not building standards. Therefore, a clear definition of “building standards” would resolve this issue.

*Application of qualifying matters and discretion to be “more permissive” than NPS-UD requires.*

27. It is also unclear what types of changes to the rules are allowed by s77F(4)(b) and s77K(3)(b), where rules can be “more permissive”. This should be clarified. Our understanding would be that being “more permissive” would cover:
  - a. Increasing the value of a maximum limit or decreasing the value of a minimum limit
  - b. Providing for additional exceptions in which a standard does not apply
  - c. Choosing not to include a standard at all
  - d. Applying additional standards not included in Schedule 3A, as long as they only apply when one of the Schedule 3A standards is not met
  - e. Rewriting a standard to be expressed in a different way, as long as logically any situation in which the standard in the schedule would be met would also meet the requirement of the different standard (e.g., providing a height limit that was expressed above the minimum floor height instead of the ground height, where the minimum floor level is higher).
28. Likewise, s77F, s77K, s77L are inconsistent about when qualifying matters may be used and when council has the discretion to be more permissive. The bill proposes that in residential areas, NPS-UD Policies 3(c) and 3(d) may be used. Policies 3(a) and 3(b) obviously do not apply.
29. But in other urban non-residential areas, only policies 3(a), 3(b), and 3(c) may be used for qualifying matters, and council may not be any more permissive than required by Policy 3(d).
30. This would lead to perverse situations in an area when Policy 3(d) might require greater heights and densities than Policy 3(c) itself would, after taking qualifying matters into account.
31. It also creates the difficult task that council cannot allow any margin for error or judgement – it must be exactly as permissive as required by Policy 3(d), no more and no less.
32. This inconsistency should be fixed, so that qualifying matters can be used to be less permissive than any of policies 3(a) to 3(d) in any area, to the degree necessary. Likewise, council should be able to choose to be more permissive than what is required by Policy 3(d) in any area if it chooses.

*Change to NPS-UD Policy 3(d)*

33. As part of the district plan review, Hutt City Council has already completed a significant amount of work in assessing the district’s urban area in terms of accessibility and demand, and we expect to complete this work by mid-January 2022.
34. The changes in the Bill to Policy 3(d) of the NPS-UD would therefore not reduce the amount of assessment required as the work has largely already been done.

35. Our preliminary assessment has found that reducing the scope of Policy 3(d) will substantially reduce the area to be considered for building heights and densities more enabling than the MDRS.
36. While the Council has the option to go beyond Policy 3(d) and upzone in other areas, it would need to justify this independently of the NPS without support from the NPS's policies, thus unnecessarily replicating much of the background work already completed in the section 32 report for the NPS-UD.
37. Our recommendation is that councils should have the option to apply the existing Policy 3(d) if they are in a position to do so, and that this decision should be included in the limitation on appeals.

*Status of partly completed private plan change requests*

38. Hutt City Council has accepted a private plan change request that will be affected by the transitional provisions of this bill. Submissions and further submissions have closed, and a hearing is scheduled for February 2022. Based on the initial hearing schedule, this hearing is anticipated to finish slightly over a week before the 20 February deadline set in this bill.
39. However, as there will be matters in contention at this hearing, the hearing panel may seek additional information from the applicant or submitters, which may result in the hearing not being closed by 20 February.
40. We appreciate the intent that ongoing plan changes should be consistent with the MDRS provisions.
41. We do however think it is unreasonable for private plan changes close to completion to be forced to be abandoned if they could be completed before the MDRS will be implemented. This creates an additional financial burden for the applicant (in this case, a not-for-profit society), and inconvenience and uncertainty for submitters.
42. The intent of the transitional measures can still be met while allowing flexibility in the case of delays to the private plan change hearings.
43. Accordingly, we recommend that the private plan change be permitted to continue as long as a decision on the private plan change is made prior to notification of the intensification planning instrument.
44. The requirement that the applicant withdraw the plan change also creates uncertainty in the event that the applicant does not do so. We recommend that this situation could be avoided by just deeming the plan change to have been withdrawn.

**Key Recommendations**

45. Due to the complexity of the parts of the RMA affected by the Bill, for clarity, all references to provisions are given with respect to the principal Act.

*Intensification Streamlined Planning Process – Option to use traditional Schedule 1 process for a new plan*

46. Change the proposed new s77F(2)(b) and s77K(1)(b) to clarify situations in which the ISPP is “inapplicable”, including the situation where a new plan has been proposed that gives effect to the MDRS and other intensification policies.
47. Provide in s77F and s77K that where the ISPP is inapplicable, the MDRS and NPS-UD must be implemented using one of the usual Schedule 1 processes.
48. Change the proposed new s80F to provide that a territorial authority does not need to notify an intensification planning instrument if it has, after the bill comes into effect, notified a new plan that gives effect to the MDRS and other intensification policies.
49. Change the proposed new s86B(3A) to provide that rules which give effect to the MDRS take immediate legal effect even if they are not proposed in an intensification planning instrument.

*Intensification Streamlined Planning Process – Option for a hybrid streamlined all-in-one process for notifying a new plan*

50. We have not identified which specific sections of the bill would need to be updated to provide for a hybrid process but if the Committee is interested in this approach, we would like the opportunity to work with the Committee and potentially the Ministry for the Environment on developing this.
51. One option would be a process that follows the traditional Schedule 1, and:
  - Allows notification of an entirely new plan
  - Uses an independent hearing panel
  - Provides that the MDRS provisions take immediate legal effect, as with the ISPP process
  - Otherwise provides for the standard 2-year time limit
  - Allows the territorial authority to either accept or reject any recommendations of the independent panel
  - Limit appeals where recommendations are accepted, for any provisions.
  - Where the recommendations are rejected and do not relate to NPS-UD intensification, provide for conventional appeal rights
  - Where the recommendations are rejected and do relate to NPS-UD intensification, use the process in the ISPP where the Minister will make the final decision.

*Medium Density Residential Standards*

52. In the new Schedule 3A, provide a definition of “building standard” that makes clear that the term:
  - Only covers residential buildings, and not structures (e.g., fences), or non-residential buildings

- Only relates to bulk, location, and design standards, rather than those that affect how construction is carried out such as limits on earthworks, construction noise, and vibration
- Excludes permitted activity standards that apply in district-wide chapters and do not affect the bulk and location of buildings, such as requirements for noise insulation in highway and rail buffers, stormwater detention tanks, or controlling lighting and signage.

53. In clause 2 of the new Schedule 3A, clarify that a residential unit must only comply with the standards set out in Part 2 where the district plan is not more permissive than those standards.

*Application of qualifying matters and discretion to be “more permissive” than NPS-UD requires.*

54. Clarify the meaning of “more permissive” in s77F(4)(b) and s77K(3)(b). Our understanding would be that you can be more permissive by:

- Increasing the value of a maximum limit or decreasing the value of a minimum limit
- Providing for additional exceptions in which a standard does not apply
- Choosing not to include a standard at all
- Applying additional standards not included in Schedule 3A, as long as they only apply when one of the Schedule 3A standards is not met
- Rewriting a standard to be expressed in a different way, as long as logically any situation in which the standard in the schedule would be met would also meet the requirement of the different standard (e.g., providing a height limit that was expressed above the minimum floor height instead of the ground height, where the minimum floor level is higher).

55. In s77K(3)(b) and s77L, add that a territorial authority can also use a qualifying matter to modify the requirements of NPS-UD Policy 3(d).

56. In s77K(3)(c), add that a territorial authority can also be more permissive than the requirements of NPS-UD Policy 3(d), and for any other reason, as well as just for Policies 3(a), (b), and (c).

57. Change to NPS-UD Policy 3(d)

58. Change the proposed Policy 3(d) in the proposed s77O and the proposed new Schedule 3B to allow a council to choose between applying the old Policy 3(d) and the new one.

59. Change the proposed new clause 106 of Schedule 1 (limiting appeals on local authority decisions) or provide a new clause of the principal Act to limit appeals on the territorial authority’s decision about which version of the policy to use to only judicial review.

60. Status of partly completed private plan change requests

61. Change the proposed Part 4 of Schedule 12 to provide that:

- cl 31(2)(b): a private plan change may continue as long as a decision on the plan change is made prior to notification of the intensification planning instrument
- cl 31(3)(b): provide that if the deadline is reached, the private plan change is deemed to have been withdrawn, rather than requiring the applicant to withdraw it.