



Briefing

| Amended Process for Implementing the Medium Density Residential Zone | | | |
|--|-------------|------------------------|------------------------------------|
| Date: | 17 May 2021 | Security level: | In Confidence |
| Priority: | Urgent | Report number: | MfE: BFR-40 HUD: BRF20/21050960 |

| Action sought | | |
|---|--|------------------|
| | Action sought | Deadline |
| Hon Dr Megan Woods Minister of Housing | Agree to the recommendations Note these decisions are required to enable officials to draft a Cabinet paper for late lodgement on 21 May 2021 and consideration by Cabinet Business Committee on 24 May 2021. | Noon 18 May 2021 |
| Hon David Parker Minister for the Environment | | |
| Hon Nanaia Mahuta Minister of Local Government | | |
| Hon Phil Twyford Associate Minister for the Environment | | |

| Contact for discussion | | | |
|------------------------|-----------------------------|--------------|-------------------------|
| Name | Position | Telephone | 1 st contact |
| Lesley Baddon | Director, MfE | 021 738 357 | ✓ |
| Rebecca Lloyd | Manager, MfE | 022 013 6139 | |
| Brad Ward | Deputy Chief Executive, HUD | § 9(2)(a) | |
| Jessica Ranger | Manager, HUD | § 9(2)(a) | ✓ |

| Other agencies consulted |
|--------------------------|
| None |

Minister's office to complete

- Noted
 - Seen
 - Approved
 - Needs change
 - Not seen by Minister
 - Overtaken by events
 - Declined
 - Referred to (specify)
- _____

Comments

Date returned to HUD:



Briefing

Amended Process for Implementing the Medium Density Residential Zone

For: Hon Dr Megan Woods, Minister of Housing
Hon David Parker, Minister for the Environment
Hon Nanaia Mahuta, Minister of Local Government
Hon Phil Twyford, Associate Minister for the Environment

Date: 17 May 2021 **Security level:** In Confidence
Priority: Urgent **Report number:** MfE: BFR-40
HUD: BRF20/21050960

Purpose

- 1 The purpose of this briefing is to update previous advice and seek agreement to a new, single process and deadline to implement the medium density residential zone (**MDRZ**) and the National Policy Statement on Urban Development (**NPS-UD**) intensification policies.

Executive summary

- 2 We received feedback from the Office of the Minister for the Environment on a draft Cabinet paper, that the proposals were likely to further contribute to an already complex Resource Management Act 1991 (**RMA**). There were concerns about the proposal adding two new bespoke processes to the legislation and that the proposed MDRZ timeframes were unrealistic.
- 3 We consider the simplest proposal is for councils to implement both the MDRZ and NPS-UD intensification policies through a single streamlined planning process (**SPP**). This will be called the intensification SPP (**ISPP**).
- 4 We recommend that the ISPP follow the NPS-UD intensification deadline, meaning councils will notify both MDRZ and NPS-UD intensification plan changes by August 2022. This will give councils time to prepare the plan changes and reduces the risk of councils being overly conservative in applying the MDRZ. While the timeframes for implementing the MDRZ are longer than previously proposed, officials consider the benefits of waiting three to four months for additional development capacity outweigh this longer implementation period.

Background

- 5 In February 2021, Ministers Woods, Parker, Mahuta and Twyford asked officials to consider several options for re-zoning land for housing.
- 6 Ministers met on 17 March 2021 and agreed to progress:
 - a. applying a MDRZ in tier 1 urban environments as defined in the NPS-UD (Auckland, Wellington, Tauranga, Hamilton and Christchurch)
 - b. amending the existing streamlined planning process to bring forward implementation of the NPS-UD.

Benefits of a single process

- 7 Ministers previously agreed that:
 - a. the MDRZ will be implemented via a new judicially-led process

- b. NPS-UD intensification plan changes will be brought forward using a new SPP.
- 8 Each of these processes would require amendments to the RMA. The Office of the Minister for the Environment has raised concerns about the use of two new processes in the RMA as they could be confusing and add unnecessary complexity. Officials were asked to look at how the two processes could be combined and simplified.
- 9 Officials agree that a single process has several benefits including:
- the legislation and subsequent processes will reduce complexity which may otherwise lead to unintended consequences
 - it will reduce the work required by councils, iwi and submitters because they will not have to be involved in and resource two separate processes
 - the process would be easier to communicate and for the public to understand and engage in.
- 10 Officials consider that a single notification date on or before August 2022 has several benefits over the two deadlines:
- it will be easier to deal with complex aspects such as the integration of the MDRZ and the NPS-UD policies, including providing for other heights and densities (especially between the three and six storey areas)
 - councils are less likely to take an overly conservative approach with more time to implement the MDRZ and its exemptions
 - public opposition may be less pronounced if the MDRZ implementation is rolled into wider NPS-UD implementation.

A single intensification streamlined planning process will unlock development capacity from August 2022

- 11 We propose a single process, with several elements designed to ensure development capacity is unlocked as soon as possible. These elements are:
- require councils to include the MDRZ in the plan changes they are currently required to notify by August 2022.** Having a single process for both the MDRZ and intensification under the NPS-UD is less ambiguous and resource-intensive for councils. Considering both forms of intensification at the same time will reduce the workload required to determine plan changes and make it easier for Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (**HUD**) and the Ministry for the Environment (**MfE**) to support implementation. HUD and MfE will work with councils to understand how to best support their plan change preparation.
 - ensure that the key rules of the MDRZ have immediate legal effect and full weighting in decision-making as soon as plans are notified.** A change to the RMA could facilitate this by making rules of the MDRZ have immediate legal effect and specifying what rules in operative plans would be replaced by the notified rules in the legislation for the MDRZ and making those rules inoperative. This would allow three-stories and three units to be built immediately after August 2022. Rules to be changed include density, height, height in relation to boundary and site coverage. These rules would work alongside the potential direct removal of minimum balcony size and floor area requirements. The effectiveness of this option could be greater than simply relying on immediate legal effect of rules, because the act of removing the previous set of rules would mean there are no previous rules to compare to or balance against. This would mean plans implementing the MDRZ would have an impact *once notified* (August 2022), rather than following full submissions, hearings and decision processes (a further year).
 - amend the RMA to provide for an amendment to the NPS-UD** to ensure the MDRZ outcomes are incorporated into the non-prescriptive intensification outcomes,

that is, places not within walking distance of a centre or rapid transit stop (policy 3(d) NPS-UD¹).

- 12 Jointly, these three changes would enable significant new plan-enabled capacity for housing, without the need for a split process. Capacity enabled by the MDRZ would be unlocked by August 2022, and further capacity as envisaged by the NPS-UD would be realised approximately 12 months later. We are likely to see a supply response soon after August 2022 as developers are well positioned to deliver three-storey buildings enabled under the MDRZ. Developers will have an indication that this capacity is forthcoming when the legislation is public.
- 13 We are confident that this is a much more workable solution than the previous proposals. A single holistic, integrated plan change process will reduce complexity in decision-making for councils, submitters and independent panel members. Having one process for both changes including one round of notification, call for submissions and hearing process would ensure that intensification is considered holistically. It would ensure that decision-making is joined up, avoiding overlaps and other unintended consequences of a split hearing and decision.
- 14 An outline of the timeline and decision-making elements is provided in **Annex A**.

The role of the Environment Court judge in the planning process

- 15 We have considered ways to involve an Environment Court judge in the process as a check and balance. However, we do not currently have a recommended option.
- 16 The options rely on an Environment Court judge having capacity for a role in 14 plan changes that are progressing simultaneously, which requires careful consideration so that it is workable. There may be benefit in having a judge or other centralised expertise involved in the preparation stage of the plan changes, for example in assisting councils to determine qualifying matters.
- 17 We propose that officials consult the Chief Environment Court Judge on where a judge would have the most impact in the planning process as a check and balance.
- 18 We will provide advice to you following this consultation. We recommend you seek delegated authority to make these decisions in the Cabinet paper.

Recommended actions

It is recommended that you:

- a. **Note** Ministers agreed in March 2021 to establish a default medium density residential zone and bring forward implementation of the intensification policies of the National Policy Statement on Urban Development. This was proposed to be implemented through two different new processes
- b. **Note** a single process will reduce complexity and workload for councils, and provide greater certainty to developers and the public

Noted

Noted

¹ Policy 3(d) in all other locations in the tier 1 urban environment, building heights and density of urban form commensurate with the greater of:

- (i) the level of accessibility by existing or planned active or public transport to a range of commercial activities and community services; or
- (ii) relative demand for housing and business use in that location

- c. **Agree** to a single intensification streamlined planning process to implement the medium density residential zone and the plan changes to fully implement the National Policy Statement on Urban Development *Agree / Disagree*
- d. **Agree** that the intensification streamlined planning process be required to be notified by August 2020 (as already required for intensification policies under the National Policy Statement on Urban Development) *Agree / Disagree*
- e. **Agree** to seek delegated authority to establish the steps and detail of the intensification streamlined planning process *Agree / Disagree*
- f. **Agree** to amend the Resource Management Act 1991 so that key rules of the medium density residential zone have immediate legal effect and full weighting in decision-making as soon as proposed plan changes are notified *Agree / Disagree*
- g. **Agree** to amend the Resource Management Act 1991 to provide for an amendment to the National Policy Statement on Urban Development to ensure that it meets the revised urban intensification objectives including those of the medium density residential zone *Agree / Disagree*
- h. **Agree** to officials consulting the Chief Environment Court Judge on the most effective and efficient role of an existing or retired Environment Court judge in the intensification streamlined planning process. *Agree / Disagree*



Jessica Ranger
**Manager, Te Tūāpapa Kura Kāinga –
Ministry of Housing and Urban
Development**

17 / 05 / 21

Hon Dr Megan Woods
Minister of Housing

..... / /



Lesley Baddon
**Director, Urban and Infrastructure, Ministry
for the Environment**

17 / 05 / 21

Hon David Parker
Minister for the Environment

..... / /

Hon Nanaia Mahuta
Minister of Local Government

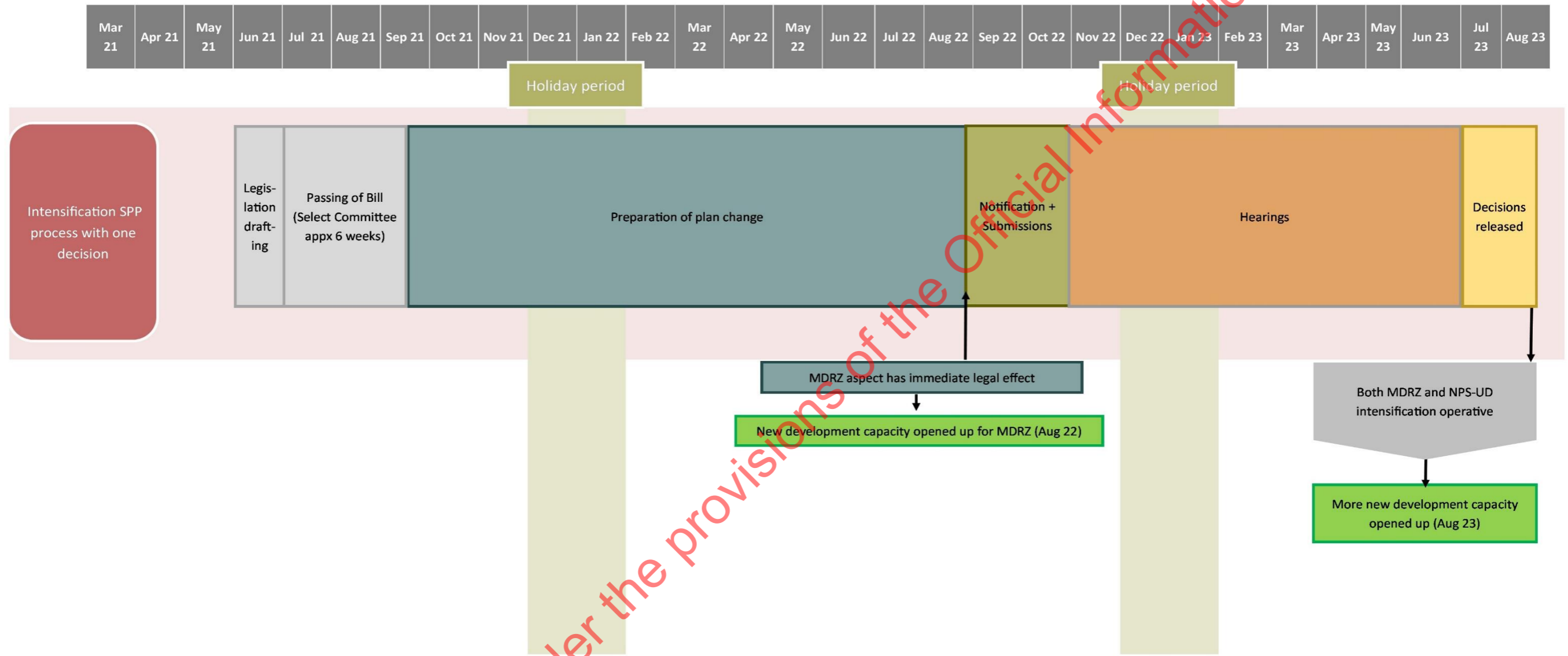
..... / /

Hon Phil Twyford
Associate Minister for the Environment

..... / /

Proactively released under the provisions of the Official Information Act 1982

Annex A: New Intensification Streamlined Planning Process



Proactively released under the provisions of the Official Information Act 1982