

**16 November 2021**

## **Submission of Infrastructure New Zealand on the Resource Management (Enabling Housing Supply) Amendment Bill**

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### **1. Introduction**

- 1.1 Infrastructure New Zealand welcomes this opportunity to make a submission on the Resource Management (Enabling Housing Supply) Amendment Bill (**the Bill**).
- 1.2 This is Infrastructure New Zealand's submission on the Bill.
- 1.3 Infrastructure New Zealand is New Zealand's peak industry body for the infrastructure sector. We promote best practice in national infrastructure development through research, advocacy and public and private sector collaboration. Our members come from diverse sectors across New Zealand and include infrastructure service providers, investors and operators.
- 1.4 We would like to appear before the Environment Committee (**the Committee**) to speak to our submission.
- 1.5 Please direct enquiries to Claire Edmondson, General Manager, at [claire.edmondson@infrastructure.org.nz](mailto:claire.edmondson@infrastructure.org.nz).

### **General remarks**

- 1.6 We are disappointed by the very short timeframe allowed for public submissions to be made on the Bill.
- 1.7 That said, we welcome this Bill and support its purpose. The Bill's proposals are significant and wide ranging.
- 1.8 We congratulate the Labour and National Parties for coming together and jointly driving this Bill. This shows both parties' concern for New Zealand's housing crisis and commitment to resolving it.
- 1.9 The Bill makes various procedural changes and may thus appear technical. At the heart of it, however, the Bill makes two key proposals:
  - (i) a streamlined process to hasten the implementation of the National Policy Statement on Urban Development (**NPS-UD**)
  - (ii) the development of up to three homes of up to three storeys on most sites up to 50% maximum coverage a permitted activity.
- 1.10 Infrastructure New Zealand supports both these core proposals.
- 1.11 We consider parallels will likely be drawn between the Bill's intentions, and the Housing Accords and Special Housing Areas Act 2013 (**HASHAA**) and the Auckland Unitary Plan Independent Hearings Panel process (**AUPIHP**), both of which have been considered success stories.
- 1.12 Infrastructure New Zealand submits that the Bill will facilitate urban development to occur.
- 1.13 The Bill deals a severe blow to two schools of thought, which have often exploited the system by getting creative in matters such as character and amenity value:
  - (i) Not In My Backyard [NIMBY]
  - (ii) Build Absolutely Nothing Anywhere Near Anything [BANANA].

## 2. A national direction in the right direction

- 2.1 Infrastructure New Zealand welcomes and supports this Bill. We consider it a new national direction in the right direction.
- 2.2 The Resource Management Act 1991 (**RMA**) has long been a frustration in terms of delivering:
  - homes that meet New Zealanders' needs and aspirations
  - infrastructure that meets communities' expectations.
- 2.3 New Zealand's resource management system in general has become too complex and is considered to be overrun by bureaucracy and able to be exploited by parties not supportive of a consent application. The poor administration of the RMA, the absence of adequate national direction and guidance and, at times, overzealous councils have often been cited as the causes.
- 2.4 There is thus frustration with the pace, processes, delays, costs and uncertainty around the RMA. The chair of the New Zealand Infrastructure Commission | Te Waihanga Dr Allan Bollard stated in a May 2021 article that anecdotally, consent costs spend on councils, planners, lawyers and landscape architects often dwarf the fees and margins paid to the engineers, architects and contractors who actually build infrastructure projects.
- 2.5 The challenge now is to move to a system that is cost effective and efficient.
- 2.6 This Bill will go some way in improving the efficiency of urban residential land markets and reduce the cost of developing residential dwellings. We are optimistic the proposed changes will have tangible effects on increasing the supply of residential dwellings.
- 2.7 This Bill, however, only serves as a stop-gap measure until the reform of the resource management system is complete.
- 2.8 Infrastructure New Zealand submits that this Bill provides a good opportunity to consider what needs to be reflected in the Natural and Built Environments and the Strategic Planning Bills.
- 2.9 Infrastructure New Zealand's position is that a well-functioning resource management system will:
  - integrate well with the wider urban planning system
  - simplify, streamline and shorten the length of processes
  - reduce the number of instances a consent application is required
  - recognise the net benefits of a project instead of decisions being made on the support and objections received on an application, which are often localised
  - enable critical and/or significant infrastructure to be consented/approved faster compared to under the RMA
  - negate the need for a statute like the COVID-19 Recovery (Fast-track Consenting) Act 2020 or the HASHAA to progress significant infrastructure projects or enable urban development
  - enable urban development to occur without vexatious objections.
- 2.10 A legislative reform much wider than the ambit of this Bill is therefore needed and to that end we reiterate our support for the reform of the resource management system and look forward to the introduction of the Natural and Built Environments and the Strategic Planning Bills to Parliament in 2022.
- 2.11 We highlighted our position in our submission into the Parliamentary inquiry regarding the exposure draft of the Natural and Built Environments Bill, and we consider it is worth reiterating these for this Bill given its intention and likely effect. We submit the Bill complements our above position.

## Hastening the implementation of the NPS-UD

- 2.12 The NPS-UD requires, among other things, that territorial authorities in the tier one urban environments of Auckland, Hamilton, Tauranga, Wellington and Christchurch to amend their RMA plans to enable intensification in urban areas.
- 2.13 We note the Government announced the NPS-UD in July 2020 and that councils have considered its many requirements, including those around a Housing and Business Assessment.
- 2.14 The current process for plan making, however, means territorial authorities will take until at least August 2024 to deliver the additional housing development capacity unlocked by the NPS-UD.
- 2.15 We therefore submit in favour of the Bill's intention to bring forward the implementation of the NPS-UD intensification policies by using a modified process, namely, the intensification streamlined planning process (**ISPP**) that will enable 'intensification plan changes' to be implemented more quickly.
- 2.16 We note the ISPP will modify the existing streamlined planning process (**SPP**), the SPP being an alternative process for plan making or changes to provide an expeditious planning process, with opportunities for submissions and a hearing.
- 2.17 We support the ISPP mechanism, especially given its efficiency and cost effectiveness.

## IHPs and over-riding powers

- 2.18 Infrastructure New Zealand notes the ISPP mechanism will require the relevant territorial authority to appoint an independent hearings panel (**IHP**). We support this.
- 2.19 We also note the IHP will then report its recommendations to the territorial authority and that recommendations will not just be limited to the scope of submissions received by the IHP but may also include recommendations on other matters related to the intensification planning instrument. We support this, too.
- 2.20 We observe parallels will be drawn between the ISPP mechanism and the AUPIHP process.
- 2.21 A fundamental difference, however, is if Auckland Council rejected a recommendation from the AUPIHP, the matter could be appealed to the Environment Court. The Bill proposes that under the ISPP, if a council rejects a panel's recommendation, 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.
- 2.22 Given the process the ISPP requires combined with the housing crisis that demands urgent action, we do not oppose the Bill's proposal to giving the Minister for the Environment these overriding powers. We note the ability to seek a judicial review has been preserved. While not a directly comparable example, we take some comfort in the overall operation of the COVID-19 Recovery (Fast Track Consenting) Act 2020.

## Medium density residential standards

- 2.23 The Bill's key proposal is that of the introduction of medium density residential standards (**MDRS**) in New Zealand's main urban areas to enable a wider variety of housing choice.
- 2.24 Infrastructure New Zealand strongly supports the Bill's proposal that the MDRS will enable the development of up to three homes of up to three storeys on most sites up to 50% maximum coverage of the site as of right, that is, they will be permitted activities and not require a resource consent.
- 2.25 We also submit in favour of the MDRS enabling:
- 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.
- 2.26 Infrastructure New Zealand supports the Bill’s proposal for the MDRS to have immediate legal effect from the notification date, that is, by August 2022.
- 2.27 We submit in favour of the proposal to require the tier one urban environments of Auckland, Hamilton, Tauranga, Wellington, and Christchurch (served by 14 tier 1 territorial authorities) to apply the MDRS in the first instance, with territorial authorities in tier two urban environments only being affected if they experience an acute housing need.

### Unshackling growth: Competitive urban land markets

- 2.28 The Bill unshackles growth by supporting more competitive urban land markets by making the urban residential land market more responsive.
- 2.29 Developers will be undertaking negotiations with landowners with the certainty that they will be able to build at least three dwellings on qualifying sites and not have to apply for resource consents, thereby hastening the development process.
- 2.30 Some developers may also consider agglomeration benefits of purchasing several adjoining sites at the same time. This will be especially prevalent in brownfield areas.
- 2.31 Greenfield areas may operate a bit differently and it is likely the level of intensification may not be that high as compared to brownfield areas. Again, this is market forces at play in terms of what the market demands.
- 2.32 Given greenfield areas often do not have a well-functioning town centre or social infrastructure such as schools within a walkable catchment from the outset, or have access to rapid/frequent public transport services, the demand for intensification housing tends to be lower than in well-served brownfield areas.
- 2.33 Infrastructure New Zealand submits in favour of the Bill’s proposal to modify policy 3(d) of the NPS-UD to reduce the application of the policy and therefore the scope of the assessment required by councils. We observe that the new policy would require councils 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 will provide councils with more ability to intensify housing in areas they see as appropriate.

## 3. Windfall development contributions revenue and funding the infrastructure deficit

- 3.1 We observe that modelling suggests the proposed medium density rules put forward by the Bill are expected to add a further 48,200 – 105,500 dwellings in tier one urban areas over the next five to eight years. This has to be supported.
- 3.2 We also observe that projections for development contributions (DCs) tend to be based on district plan-enabled capacity. The growth unshackled by the Bill is therefore likely to be beyond plan-enabled capacity and thus result in DCs revenues in excess of projections. [Otherwise, comments that the infrastructure is not there or not planned for to service the growth unshackled by this Bill are baseless lies.]

- 3.3 This effectively means councils would be able to generate much more DCs revenue than anticipated, which may allow them to comfortably fund any additional growth-related infrastructure not already projected to be provided, though we expect these to be uncommon, e.g. increased infrastructure capacity to cater for higher levels of stormwater runoff due to greater impermeable surface areas.
- 3.4 The fixed costs of other infrastructure such as streetlights and cycleways to service existing dwellings (on current site configurations) should generally remain unaffected or only be affected at the margin.
- 3.5 We do not anticipate an immediate need to increase the number of libraries, streetlights, parks, and other community infrastructure in a catchment. True, the capacity of these may need to be expanded over time when these assets are due for replacement/renewals. Because this unshackled growth has not been anticipated in councils' district plans or growth projections/DCs policies, councils will have the option of directing a portion of the extra DCs revenues they will generate towards these renewal activities and reduce the rates burden. This is on top of extra rates councils would be able to generate as a result of an increase in the rating base to fund renewals and/or expansions to increase asset/infrastructure capacity.
- 3.6 Because councils are increasingly directing DCs revenue to 'one pot' instead of demonstrating causal nexus to each growth-related infrastructure project – i.e. demonstrating the portion of a DCs bill to each project funded – councils will have the ability to fund their infrastructure deficit.
- 3.7 As an example, the Auckland City Rail Link has already been costed and Auckland Council's share of the project's cost comes from the likes of rates and DCs. DCs for new developments have included a portion for the Auckland City Rail for the past several years. The Bill's flow on effect of increasing DCs revenue beyond that anticipated/projected will mean more DCs revenue potentially being collected than projected (assuming the other plan-enabled capacity is taken up). In this instance, we do not expect Auckland Council to reduce the Auckland City Rail Link component of DCs bills.
- 3.8 Given the above, Infrastructure New Zealand is sceptical about the argument of insufficient infrastructure to meet the needs and expectations of this unanticipated growth because, as noted above, the infrastructure is already there, particularly in brownfield areas.
- 3.9 We submit that the Committee should require those putting forward the argument of inadequate (growth-related) infrastructure to service this unshackled growth to provide explicit evidence of exactly what extra infrastructure will be needed in existing catchments.

## 4. Unintended consequences

- 4.1 We observe the Bill's intentions will only start being realised after August 2022. While we appreciate this timeline is likely a reflection of councils' capability and capacity restrictions, Infrastructure New Zealand submits it is important that the Committee consider whether transitional provisions/mechanisms – e.g. something akin to the HASHAA or the COVID-19 Recovery (Fast Track Consenting) Act 2020 where resource consents are still required but the process is expedited – are needed to avert a situation where resource consent applications for residential dwellings (and thus the supply of residential dwellings) plunges significantly as developers choose to hold off new developments that are not yet consented to well after August 2022 so they can build up to three dwellings on suitable sites without having to apply for resource consents.
- 4.2 We are also concerned that developers may decide to just build three dwellings even on sites situated in areas that would benefit from more dwellings/significant intensification – e.g. sites that are located close to rapid/frequent public transport networks and other community

amenities/facilities – in order to avoid costly, lengthy and bureaucratic council consenting processes, thereby resulting in less than optimal outcomes.

- 4.3 We submit the Committee take this into consideration and consider stop-gap measures such as those provided by the HASHAA for sites identified in district plans as ideal for more than just three dwellings so that the plan-enabled capacity is taken up.
- 4.4 To this end, we submit that the Bill should require those intending to take advantage of the ability to develop up to three homes of up to three storeys without having to apply for a resource consent to notify their local council or the Ministry for the Environment so that these statistics are able to be made publicly available just like building consents and code compliance certificates data are published. In addition to tracking the level of uptake, this requirement will provide two key benefits:
- (i) councils would have the option of approaching a developer to advise the developer they can build more than just three dwellings on their site (particularly where the development of more dwellings would result in better outcomes, e.g. sites close to a rapid transport network) and offer to expediate the consenting process and even offer sweeteners such as bonus density
  - (ii) notify councils of developments taking place at a particular site and thus enable them to undertake compliance inspections for matters such as excess sediment run-off or improper disposal of unused/excess concrete.

## 5. Conclusion

- 5.1 Infrastructure New Zealand thanks the Committee for the opportunity to make a submission on the Bill.
- 5.2 We would welcome the opportunity to engage with the Committee further in finalising its report.

16 November 2021

