

PLAN CHANGE 26

ENABLING HOUSING SUPPLY AMENDMENT ACT

Issues and Options

April 2022

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Issue	Reason for Issue	Author	Reviewer	Date
1	To examine issues and options relating to draft plan change 26 Enabling Housing Supply Act	Jo Cook-Munro	Tony Quickfall	April 2022

1 Executive Summary

On 20 December 2021, the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (the Amendment Act) was passed into law. The Amendment Act requires territorial authorities in New Zealand's major cities to set more permissive land use regulations as well as requiring tier 1 territorial authorities to amend their district / regional plans under the Resource Management Act 1991 to enable intensification to occur.

Waipā District Council is defined as a tier 1 local authority.

The purpose of this report is to:

- (a) provide an introduction to the Amendment Act; and
- (b) outline the major requirements of the draft plan change; and
- (c) set out preferred options for progressing into detailed analysis around costs, benefits, efficiency and effectiveness.

2 Introduction

On 20 December 2021, the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (the Amendment Act) was passed into law. The Amendment Act has amended the Resource Management Act 1991 to rapidly accelerate the supply of housing where the demand for housing is high. Central government believe that this will help to address some of the issues with housing choice and affordability that Aotearoa New Zealand currently faces in its largest cities.

The new Act addresses issues relating to housing affordability and choice by bringing forward the implementation of intensification policies contained in the National Policy Statement on Urban Development (National Policy Statement). The Amendment Act requires territorial authorities in New Zealand's major cities to set more permissive land use regulations as well as requiring tier 1 territorial authorities to amend their district / regional plans under the Resource Management Act 1991 to enable intensification to occur.

As well, the Amendment Act introduces medium density residential standards in all tier 1 urban environments. Waipā, Hamilton and its surrounds are categorised as a tier 1 urban environment and Waipā District Council as a tier 1 council (“specified council”). This means that Waipā District Council is legally required to notify a plan change to incorporate the medium density residential standards and intensification into the operative Waipā District Plan by **20 August 2022**.

Under the Amendment Act, a new streamlined process has been introduced so tier 1 councils can implement the National Policy Statement’s intensification policies faster. Under the streamlined process, a panel of independent hearings commissioners must be engaged to hear and recommend on the plan change. Elected members who are accredited hearings commissioners are not able to sit on the panel.

The Amendment Act also confers extraordinary and unprecedented powers to the independent commissioners to undertake cross examination and make decisions beyond the scope of submissions.

The Council accepts or rejects the recommendations of the hearings panel either in whole or part. The Minister for the Environment will make the final decision if the Council rejects the commissioners’ recommendations. There are no rights of appeal for either the Council decision or the Minister’s decision.

3 What is required

Section 7 of the Amendment Act inserts a new section 77F into the Resource Management Act 1991 outlining the duty of specified territorial authorities to incorporate the medium density residential standards and give effect to policy 3 or 5 in residential zones.

As a specified authority, Waipā District Council must include the objectives and policies set out in clause 4A of Schedule 3A and may include objectives and policies in addition to those set out in the clause 4A of Schedule 3A to:

- (i) provide for matters of discretion to support the medium density residential standards; and
- (ii) link to the incorporated density standards to reflect how the territorial authority has chosen to modify the medium density residential standards in accordance with s 77F.

In order to include the medium density residential standards and required objectives and policies, Waipā District Council is required to prepare an intensification planning instrument (or “IPI”) and use the intensification streamlined planning process (or “ISPP”) to incorporate it in the District Plan. Council has established draft plan change 26 as its IPI.

New section 80DA of the Amendment Act requires that the IPI (Waipā draft plan change 26) must incorporate the medium density residential standards and give effect to policies 3 and 4 of the National Policy Statement. The IPI may also amend or include:

- (i) provisions relating to financial contributions
- (ii) provisions to enable papakāinga housing
- (iii) related provisions including objectives, policies, rules, standards and zones that support or are consequential on the medium residential standards or policies 3, 4 and 5 of the NPD-UD as applicable.

3.1 Medium Density Residential Standards

The medium residential standards are included in Part 1 of Schedule 3A which also contains objectives and policies that must be included in a district plan. In addition to these mandatory changes, Council is also required to amend or delete exiting provisions in the district plan that are contrary to the medium density residential standards.

Construction and use of one or more residential units on a site is a restricted discretionary activity if it does not comply with the density standards once they are included in the district plan. Some current rules default to restricted discretionary when the standard is not met (e.g. daylight control) and already have matters of discretion listed in the Plan. However, many others default to discretionary or non-complying (e.g. setbacks and height) and will now need to have matters of discretion included. This will also have a flow-on effect to Section 21 – Assessment Criteria and Information Requirements.

The medium density residential standards specify there are to be no other density standards included in the district plan (as per Schedule 3A, Part 1, cl2(3)). A review of other performance standards in the Waipā district plan reveal a number that may need to be deleted including:

- 2.4.2.6 - Minimum building setback from Te Awa Cycleway.

- 2.4.2.8 - Maximum building length.
- 2.4.2.9 – Cambridge Park Structure Plan; building setback from escarpment (but this could be a qualifying matter if a hazard area).
- 2.4.2.13 – impermeable surfaces no longer included in medium density residential standards but the rule in our district plan is permissive and could impact on density.
- 2.4.2.14 – St Kilda Structure Plan Area – has a combined site coverage and impermeable surfaces rule.
- 2.4.2.43 – Secondary dwelling – will need to determine what to do with this rule as potentially no longer relevant for the relevant residential zones within the urban areas of Cambridge and Te Awamutu.

3.2 Subdivision

The subdivision requirements must be provided for as a controlled activity. This is for the subdivision is for the purpose of the construction and use of residential units which comply with the medium density residential standards and is consistent with the level of development permitted.

Where the medium density residential standards are complied with and no vacant lots are created there are no requirements for minimum lot size, shape size or other size related subdivision requirement.

A review of all subdivision provisions including objectives, policies and rules will need to be undertaken to identify what objectives, policies and need to be addressed under the plan change.

3.3 Financial Contributions

The IPI may include financial contribution changes. This is to recognise that the unplanned level of intensification may need specific developer funding that is not planned or budgeted for in the Long-Term Plan or development contributions under the Local Government Act.

Chapter 18 of the Waipā district plan already contains quite comprehensive financial contributions rules and formulae. However staff recommend a comprehensive review of Chapter 18 in light of the level of potential intensification, and changes as needed to fund any unplanned infrastructure.

3.4 Related provisions

Section 80DA(1)(b) of the Amendment Act allows councils to include related provisions (including objectives, policies, rules, standards and zones) in the IPI that support or are consequential on the MDRS or policies 3, 4 and 5 of the NPS-UD.

The scope of these potential changes are broad and may also include provisions relating to districtwide matters, earthworks, fencing, infrastructure, qualifying matters, stormwater management and subdivision.

3.5 Legal Risk

The Amendment Act does not provide for the right of appeal on the decisions made by the specified local authority of the Minister. The right to take a judicial review on the process of the plan change is provided for. It should be noted that as this plan change is unprecedented and mandated, it is unknown if any legal risk around process challenge is increased, reduced or the same.

4 Qualifying Matters

The Amendment Act provides for the use of qualifying matters which exempt a relevant residential zone within the urban areas of Cambridge and Te Awamutu from having the medium density residential standards applied. The section reads as follows:

“77G Qualifying matters in applying medium density residential standards and policy 3 to relevant residential zones

A relevant specified territorial authority may make the MDRS and the relevant building height or density requirements under policy 3 less permissive enabling of development in relation to an area within a relevant residential zone if that change is required 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 NPSUD) or the New Zealand Coastal Policy Statement 2010:*
 - (ba) a matter required to give effect to Te Ture Whaimana o Te Awa o Waikato—the Vision and Strategy for the Waikato River:*
 - (bb) a matter required to give effect to the Hauraki Gulf Marine Park Act 2000 or the Waitakere Ranges Heritage Area Act 2008:*
- (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 or policy 3, inappropriate in an area, but only if section 77I is satisfied”.*

Qualifying matters that are being investigated for Waipā include:

- Te Ture Whaimana o Te Awa o Waikato (the Vision and Strategy for the Waikato River). Legal advice has been received which sets out a framework for incorporating this into the IPI.
- Flood Hazards. Legal advice has been received confirming that Waipā District Council is able to incorporate the recently updated flood hazard maps into the IPI.
- Main Trunk Line going through Te Awamutu
- Character areas. A consultant has been commissioned to review character areas across Cambridge and Te Awamutu.
- Section 6 matters in the Resource Management Act 1991 - significant natural areas, viewshafts, archaeological sites, Māori sites of significance, historic and built heritage and designations.

Other qualifying matters may be identified as the plan change progresses and these will be reported back to the Strategic Planning and Policy Committee.

5 National Planning Standards

The medium density residential standards have been written in the language and formatting set out in the National Planning Standards. Council has yet to start working on incorporating the National Planning Standards into the district plan.

This mandatory plan changes signals the start of making the district plan consistent with the National Planning Standards. In addition to the medium density residential standards, the Amendment Act uses definitions from the National Planning Standards throughout. A review of the current definitions in the district plan will be needed to ensure consistency with the new definitions being introduced as part of the mandatory plan change.

In addition if any other sections of the district plan need amending as a result of the mandatory plan change, this would provide Council with the opportunity to ensure that any amendments made are consistent with the National Planning Standards.

6 Options

There are three options available to the Council in respect of implementing the Amendment Act, and undertaking an IPI through draft Plan Change 26:

6.1 Option 1 – Do nothing

This option would retain the status quo and not amend the district plan in any way. There would be no cost or resourcing needs associated with this option, but it is not viable as it goes against the directives that have come from central government that

all tier 1 local authorities must include the medium density residential standards in their district plans.

6.2 Option 2 – Do minimum plan change

This option would insert the medium density residential standards only into the district plan and would contain consequential amendments to ensure there are no objectives, policies and rules that are less permissive or contrary to the medium density residential standards.

Under this option, Council would not put forward any qualifying matters to exempt residential areas from the medium density residential standards which would result in all relevant residential areas in the urban areas of Cambridge and Te Awamutu.

This is a simple answer to what Council has been asked to do. If this option was pursued, we would not explore the amendment of the financial contribution provisions and would rely on what is currently in Section 18 of the District Plan. The plan change would have full legal effect from 20 August 2022.

If this option was pursued it would not address the concerns that have been raised by elected members in respect of the impact of the medium density residential standards on the character of Cambridge and Te Awamutu and the rural environment of the Waipā district as a whole. However, it would achieve a savings in the budget as there would be no need to explore potential qualifying matters and engaging external consultants to undertake the research required.

Option 2 and the plan change outcome has the potential to erode the urban quality in respect of the good place-making that Council is seeking to achieve.

6.3 Option 3 – Comprehensive plan change

This option would insert the medium density residential standards into the district plan, would review the financial contributions, and would use qualifying matters to exempt certain residential areas within the urban areas of Cambridge and Te Awamutu from the standards.

As well, the plan change would ensure that the amendments to the district plan are consistent with the National Planning Standards in the use of language and formatting used.

The cost for option 3 is higher than for option 2, with additional use of external consultants to explore potential qualifying matters and to provide the necessary evidence to support the inclusion of specific areas as qualifying matters.

Option 2 and 3 provide for some cost savings through a shared commissioner panel. Option 3 will be time intensive and has the potential to be one of the few plan changes notified in 2022 given the level of detail required to justify any qualifying matters used.

However, option 3 has the ability to exempt specific areas within the urban zones of Cambridge and Te Awamutu from the application of the medium density residential standards which would allow lower density or the status quo to remain. This would go some way towards minimising the risk of legal challenge to process and achieving better place-making outcomes in Waipa’s residential zones.

6.4 Budget

Options 2 and 3 have implications in terms of budget and resourcing. The budget (loan funded, no rates impact) has been confirmed for a comprehensive plan change and is set out below.

Budget:	Operating (direct costs, excludes staff time)	
	Year 21/22	\$120,560 (external consultants).
	Year 22/23	\$202,300 (independent commissioners and external consultants).
	TOTAL	\$322,860

6.5 Preferred option

Option 3 is preferred as it is considered:

- a) to be the most comprehensive and detailed way to ensure the medium density residential standards are not applied to unsuitable areas for this form of residential density;
- b) to be more defensible to legal challenge on process;
- c) that it will deliver the best overall place-making outcomes in terms of intensification no-go areas, infrastructure roll-out, and urban form.

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