



RMA Amendment Act 2021 – New Housing Supply Standards Guide

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RMA Amendment Act 2022 (New Housing Supply Standards) - Guide

Purpose of this Guide

This guidance has been prepared by Peter Reaburn, Director - Planning at Cato Bolam. It provides information, advice and observations on the new RMA Amendments. While the guidance is focussed on Auckland, the Amendments apply to all of New Zealand's major ("Tier 1") cities and, subject to whether Councils wish to engage, may apply to other cities and towns as well.

This information is being circulated internally to Cato Bolam staff and may be shared with clients; on the express basis they should not be relied on without further consultation with Cato Bolam. While the law is now in place there remain steps still to be followed – nothing yet (as of January 2022) is certain.

Why the Amendments?

The purpose of the RMA Amendments is to rapidly accelerate the supply of housing and help to address some of the issues with housing choice and affordability. The RMA Amendments follow on from the National Policy Statement on Urban Development (the NPS-UD) that would have resulted in changes to plans to introduce greater / easier provision for intensification by August 2024. The Labour government, supported by National and the Māori Party, has decided that is not quick enough. So the requirement is that the new standards for development (in Auckland and other Tier 1 cities) be introduced on or before 20 August 2022.

What is Proposed?

The Amendment Act prescribes a set of Medium Density Residential Standards (MDRS). In relevant residential zones, and subject to the ability of Councils to propose areas to be excluded, the MDRS will enable 3 storeys and 3 dwellings per site as of right, i.e. permitted activities on an existing site. Public notification of an application for resource consent will be precluded if the application is for the construction and use of 1, 2, or 3 residential units that do not comply with 1 or more of the density standards. An application for the construction or use of 4 or more residential units that comply with the MDRS must not be publicly notified or given limited notification.

A summary of the new MDRS standards that will apply to development in the relevant residential zones is:

Building height: Buildings must not exceed 11 metres in height, except that 50% of a building's roof in elevation, measured vertically from the junction between wall and roof, may exceed this height by 1 metre, where the entire roof slopes 15° or more.

Height in relation to boundary: Buildings must not project beyond a 60° recession plane measured from a point 4 metres vertically above ground level along all boundaries.

Yards:

- Front 1.5 metres
- Side 1 metre
- Rear 1 metre (excluded on corner sites)

Building coverage: The maximum building coverage must not exceed 50% of the net site area.

Outdoor living space:

- ground floor level 20 square metres accessible from the residential unit with a dimension of 3 metres (balconies at least 8 square metres with a minimum dimension of 1.8 metres. NB: may be grouped cumulatively by area in 1 communally accessible location.
- above ground floor level a balcony, patio, or roof terrace at least 8 square metres with a minimum dimension of 1.8 metres. NB: may be grouped cumulatively by area in 1 communally accessible location, in which case it may be located at ground level.

Outlook space: Outside the principal living room - 4 metres in depth and 4 metres in width; all other habitable rooms 1 metre in depth and 1 metre in width.

Windows to street: 20% of the street-facing façade in glazing (windows or doors).

Landscaped area: 20% of a developed site with grass or plants and can include the canopy of trees regardless of the ground treatment below them. The landscaped area may be located on any part of the development site and does not need to be associated with each residential unit.

The above MDRS are referred to in this Guide as the “Schedule 3A Standards”.

Compared to current standards the Schedule 3A Standards will enable—

- more flexible height in relation to boundary standards to enable 3 storeys on average-sized sites;
- generally greater building coverage;
- smaller private outlook spaces (space between windows and other buildings) and private outdoor living spaces (for example, balconies);
- reduced yard setbacks (particularly, front yards);
- more resource consents (when needed) to proceed on a non-notified basis.

Clause 3 of the new Schedule 1A states that there must be no other density standards relating to a permitted activity. It remains to be seen what the Council will do about other standards that apply, for instance in relation to circumstances where (over 3 units) a resource consent is required. It is prudent to expect that

existing standards that do not conflict with the MDRS will remain. This may include impervious area standards, which are often a limitation on development.

Where the Schedule 3A Standards are more lenient than current standards, the Schedule 3A Changes will apply. Any other standards that apply under the current plan provisions will continue to apply. It is of course possible that the Council may wish to change these other standards when the August 2022 changes are introduced, and/or introduce more lenient standards than the Schedule 3A Standards, but they are not obliged to do so.

The MDRS, when introduced, must also include prescribed objectives and policies¹ and may include other new objectives and policies.

Financial contributions may also be proposed (Sections 77DA and 77P). It will be of interest whether Councils will want to take the opportunity to look at financial contributions as an addition or alternative to development contributions.

A summary how the Schedule 3A Standards compare to current zones in Auckland appears later in this Guide.

No changes are proposed to minimum vacant site size requirements in plans. The only relevant requirement relating to subdivision is that there can be no minimum site size around a dwelling that is proposed under the MDRS. In Auckland at least, that applies already. Subdivision of development established under the MDRS is deemed to be a controlled activity.

What are the Areas where the MDRS will apply?

The MDRS will only apply in urban zones, i.e. they will not apply in rural zones or future urban zones. Any plan change that introduces a residential zone must apply the MDRS.

Under the new Section 77F, and with some important exceptions, every relevant residential zone must have the MDRS incorporated into that zone. A relevant residential zone is defined as:

(a) means all residential zones in an urban environment (within the meaning of section 77E); but

(b) does not include—

(i) a large lot residential zone:

(ia) an area predominantly urban in character that the 2018 census recorded as having a resident population of less than 5,000, unless a local authority intends the area to become part of an urban environment:

(ib) an offshore island:

¹ The prescribed objectives and policies appear in clause 4A of Schedule 3A

(ii) to avoid doubt, a settlement zone

Every residential zone in an urban environment must give effect to policy 3 of the NPS(UD)² unless where a where a “qualifying matter” applies. Qualifying Matters include some fairly clear matters such as whether an area relates to matters of national importance, nationally significant infrastructure, open space, iwi interest, etc. The one of most interest in terms of how it could limit areas under which the MDRS applies is Section 77G(h) i.e:

any other matter that makes higher density, as provided for by the MDRS or policy 3, inappropriate in an area...

Policy 3 of the NPS (UD) is potentially very important to what will happen in respect of what zones will apply the MDRS. Section 77F refers to the requirement that every residential zone in an urban environment of a Tier 1 territorial authority must give effect to policy 3. Policy 3 reads (noting (d) has been amended):

Policy 3: In relation to tier 1 urban environments, regional policy statements and district plans enable:

- (a) in city centre zones, building heights and density of urban form to realise as much development capacity as possible, to maximise benefits of intensification; and*
- (b) in metropolitan centre zones, building heights and density of urban form to reflect demand for housing and business use in those locations, and in all cases building heights of at least 6 storeys; and*
- (c) building heights of at least 6 storeys within at least a walkable catchment of the following:*
 - (i) existing and planned rapid transit stops*
 - (ii) the edge of city centre zones*
 - (iii) the edge of metropolitan centre zones; and*
- (d) within and adjacent to neighbourhood centre zones, local centre zones, and town centre zones (or equivalent), building heights and density of urban form commensurate with the level of commercial activity and community services.*

It will be interesting to see how Councils may use Policy 3 as being an argument that the MDRS should not apply in areas not specifically envisaged by the policy for intensification. Cato Bolam considers this introduces a lot of current uncertainty as to where the MDRS may end up applying.

An evaluation report as per section 32 of the Act must demonstrate why the Council considers that the relevant area is subject to a qualifying matter and justify why that view is the correct one. In certain cases, where a qualifying

² Certain exceptions to height and density can be applied under NPS(UD) Policy 4

matter is already the basis for an existing overlay or control, a further evaluation report may not be required (Section 77HA).

There can be some confidence areas that are within an overlay that has limitations on density, height etc will at least be attempted to be included as a qualifying matter. But there is greater uncertainty relating to areas of Single House zoning in particular that do not have any overlays, precinct or other protections but are nevertheless not adjacent to or close to business zones or rapid transport stops. Councils can argue that the level of development that would be enabled by the MDRS in some more remote areas is inappropriate (see Section 77I). For this reason, Cato Bolam recommends caution in relation to whether it can be regarded as likely the MDRS will apply to any current Single House zoning in Auckland. We consider that in some areas, such as large areas of Single House zoning in West Auckland, the MDRS *should* apply, in a similar manner as already applies over much of South Auckland – but whether that turns out to be the case remains to be seen.

What can be said with greater confidence is that the new standards will apply to all current Mixed Housing Suburban and Mixed Housing Urban areas. It may well be the case that those two zones end up being amalgamated into one (3 storey) zone.

It can also be said, with some confidence, that the standards will be put into the Terraced Housing and Apartment Buildings Zone to the extent that they introduce more flexibility than the current Zone.

Provision for residential activity is also provided for in some non-residential zones, e.g. the Mixed Use Zone. The Council must make changes to those zones, as necessary, to align with the MDRS.

When will the MDRS Apply?

At the time of notification of the MDRS (on or before 20 August 2022) the Schedule 3A Standards that are proposed in the relevant residential zones (i.e. excluding any zones the Council is proposing be excluded) will have immediate legal effect, i.e. replace the equivalent current standards³. Where more lenient standards than the Schedule 3A Standards are proposed they will not have immediate effect, i.e. will need to await the completion of the ISPP as explained below.

In all other situations the MDRS will apply from the date that the territorial local authority makes decisions which accept IHP recommendations or (if the territorial local authority doesn't accept the IHP recommendations, from the date that the Minister notifies the Minister's decisions.

³ See the new Section 86BA

The Intensification Streamlined Planning Process (ISPP)

An “intensification streamlined planning process” (the ISPP) is proposed to incorporate the MDRS into the plans (including the AUP). The following are the steps:

- step 1: pre-notification consultation and engagement with iwi about the intensification planning instrument:
- step 2: intensification planning instrument is notified and the MDRS has immediate legal effect:

NB: As noted above the new standards will apply (have immediate effect) from the date they are notified (only proposals for greater flexibility will not apply immediately), and then will only be amended by a streamlined submissions and decision-making process after that, with (essentially) the Minister for the Environment having the final say.

- step 3: submissions on the notified intensification planning instrument:
- step 4: further submissions on the notified intensification planning instrument:
- step 4a (optional): pre-hearing mediation:
- step 5: independent hearings panel (IHP) to conduct hearings on the intensification planning instrument (note that the IHP may allow cross-examination in these hearings):
- step 6: IHP reports to territorial authority with recommendations:
- step 7: territorial authority makes its decisions:
- step 7a (if required): if the territorial authority does not agree with the IHP’s recommendations, the Minister for the Environment will become the decisionmaker:
- step 8: intensification planning instrument is operative (including components that give effect to policies 3 and 4, or 5, of the NPS-UD).

It will be seen from the above that the IHP and, in particular, the Minister, have wide-ranging abilities in respect of the ultimate standards that will be applied, and in what areas. Auckland Council, as an example, may have its own idea on what should be in (and out), but that will then be considered by the IHP and then, if Council doesn’t agree with their recommendations, decided on by the Minister, with no right of appeal (although judicial review is a possibility).

It is expected that the process will be fully complete sometime in 2023.

Immediate Implications

No change will happen until the MDRS are notified – on or before 20 August 2022. Strictly speaking, nothing changes until it changes. Developers may wish to wait until the time is right to confidently benefit from the new provisions. For much

development that is likely to be August 2022. However there will be a time between now and then that some applications can be confidently put together, i.e. preparations made for what is coming. Any application in the system as at the notification date of the new MDRSs will be considered under that new regime.

Comparison Table

Provisions	Proposed MDRS	Single House Zone	Mixed Housing Suburban Zone	Mixed Housing Urban Zone	Terraced Housing and Apartment Buildings Zone
Dwellings Permitted	3	1	3	3	0
Building Height	11m	8m	8m	11m	16m
Height in Relation to Boundary	4m + 60°	2.5m + 45°	2.5m + 45° (Alternative HIRB available within 20m of frontage)	3m + 45°	2.5m + 45° adjoining SHZ or MHS or 8m + 60° for first 20m from frontage then 8m and 8m + 60° 2m in from boundary
Yards	Front – 1.5m Side / Rear 1m	Front – 3m Side / Rear 1m	Front – 3m Side / Rear 1m	Front – 2.5m Side / Rear 1m	Front – 1.5m Side / Rear 1m
Building Coverage	50%	35%	40%	45%	50%
Landscaped Area	20%	40%	40%	35%	30%
Impervious Coverage	N/A	60%	60%	60%	70%
Outdoor Living Space	20m ² with a dimension of 3m ground floor 8m ² + 1.8m upper floors	N/A	20m ² with a dimension of 4m ground floor 5-8m ² + 1.8m upper floors	20m ² with a dimension of 4m ground floor 5-8m ² + 1.8m upper floors	20m ² with a dimension of 4m ground floor 5-8m ² + 1.8m upper floors
Outlook	Principal Living Room 4m x 4m Other Habitable Rooms 1m x 1m	N/A	Principal Living Room 6m x 4m Principal Bedroom 3m x 3m Other Rooms 1m x 1m	Principal Living Room 6m x 4m Principal Bedroom 3m x 3m Other Rooms 1m x 1m	Principal Living Room 6m x 4m Principal Bedroom 3m x 3m Other Rooms 1m x 1m
Glazing to Street	20%		N/A	N/A	N/A