

## PROACTIVE RELEASE COVERSHEET

<b>Minister</b>	Hon Chris Bishop	<b>Portfolio</b>	RMA Reform
<b>Name of package</b>	RIS material for Resource Management (Consenting and Other System Changes) Amendment Bill	<b>Date to be published</b>	18 December 2024

List of documents that have been proactively released		
<i>Date</i>	<i>Title</i>	<i>Author</i>
12-Sep-24	Regulatory Impact Statement: Implementing changes to the National Policy Statement on Urban Development 2020 and making the Medium Density Residential Standards optional for councils	Ministry for the Environment Ministry of Housing and Urban Development
<p><b>Information redacted</b> <span style="float: right;"><b>YES</b></span></p> <p>Any information redacted in this document is redacted in accordance with the Ministry for the Environment's policy on proactive release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.</p> <p><b>Summary of reasons for redaction</b></p> <p>In the above document, information has been withheld under the following sections of the Official Information Act:</p> <ul style="list-style-type: none"> <li>S9(2)(ba)(i) – to protect information that would likely prejudice the supply of similar information in the future.</li> </ul>		

## Appendix A: Regulatory Impact Statement: Implementing changes to the National Policy Statement on Urban Development 2020 and making the Medium Density Residential Standards optional for councils

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### Coversheet

Proposal	Description
<p>Implementing changes to the National Policy Statement on Urban Development 2020 (NPS-UD) and making the Medium Density Residential Standards (MDRS) optional for councils</p>	<p>This Regulatory Impact Statement (RIS) considers three issues relating to the detail of the Going for Housing Growth (GfHG) land pillar:</p> <ul style="list-style-type: none"> <li>• Changes to the streamlined planning process (SPP), including for councils wanting to opt out of the MDRS.</li> <li>• A plan change process for councils who have not completed intensification planning instrument plan change processes by June 2025.</li> <li>• Ministerial roles in intervention powers in the Resource Management Act 1991 (RMA).</li> </ul>
<p><b>Relevant legislation</b></p>	<p>Resource Management Act 1991 (various sections)</p> <p>National Policy Statement on Urban Development 2020</p>
<p><b>Policy lead</b></p>	<p>Nicole Rennie, Ministry of Housing and Urban Development</p> <p>Bridget Murdoch, Ministry for the Environment</p>
<p><b>Source of proposal</b></p>	<p>Many of the proposals in this RIS relate to commitments in the National Party's 2023 GfHG Manifesto. Similarly, the coalition agreement between the National and ACT parties commits to making the MDRS optional.</p>
<p><b>Linkages with other proposals</b></p>	<p>Key linkages are with the other proposals that form part of the GfHG land pillar, which include introducing Housing Growth Targets, changes to intensification requirements, and the introduction of national direction on mixed use. These changes are being progressed through the national direction programme.</p>
<p><b>Limitations and constraints on analysis</b></p>	<p>Many of the proposals in this RIS relate to commitments in the National Party's 2023 GfHG Manifesto. Similarly, the coalition agreement between the National and ACT parties commits to making the MDRS optional. This has constrained the scope of options considered to achieve the desired outcomes. This RIS has also been prepared in the context of decisions taken by Cabinet in June 2024 in relation to the Cabinet paper <i>Going for Housing Growth: Implementing the First Stage</i> [CAB-24-MIN-0288.01 refers].</p>

	<p>There have been significant constraints on the policy development timeframe that has limited the depth at which options have been developed and analysed. For example, there has been no time to commission cost-benefit analysis on the proposals, and limited engagement, particularly with post settlement governance entities (PSGEs) and iwi/Māori.</p> <p>This has meant it has been difficult to fully assess potential implications the proposals may have on each council and their specific circumstances. This has been partially mitigated by developing options that provide flexibility to design a workable process for specific councils, that will be able to reflect local nuance.</p> <p>Analysis of non-monetised costs and benefits have been provided throughout the options analysis where possible.</p>
<p><b>Responsible Manager</b></p>	<p>Sarah McCarthy, Manager – Urban Policy, Ministry for the Environment</p> <p>Fiona McCarthy, Manager – Land Use and Land Markets, Ministry of Housing and Urban Development</p>
<p><b>Quality Assurance: Impact Analysis</b></p>	<p>The RIA Panel at the Ministry of Housing and Urban Development and the Ministry for the Environment has reviewed this Regulatory Impact Statement</p>

## Introduction

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The proposals in this Regulatory Impact Statement (RIS) build on decisions made by Cabinet in June 2024 in relation to the 'land pillar' of the Government's Going for Housing Growth (GfHG) programme. They complement and support the RIS for that process: *Regulatory Impact Statement: Going for Housing Growth – Freeing up land for development and enabling well-functioning urban environments*.<sup>3</sup>

Cabinet made a range of decisions in relation to GfHG that will be progressed through amendments to the Resource Management Act 1991 (RMA), and amendments to the National Policy Statement on Urban Development 2020 (NPS-UD). These decisions at a summary level included<sup>4</sup>:

- Introducing a requirement for Tier 1 and 2 councils to meet a Housing Growth Target by live zoning (ie, by enabling in an operative district plan) 30 years of feasible development capacity; ensuring that 'price indicators' (such as measures of urban fringe land price differentials) do not deteriorate over the medium-term
- Provide for intensification in the right places (including identifying strategic transit corridors and upzoning<sup>5</sup> around these, and enable heights and densities commensurate with levels of accessibility and demand)
- Enable a greater mix of activities/uses across an urban area, and enable small to midscale activities in areas subject to NPS-UD intensification
- Remove the ability for councils to set minimum floor area and balcony requirements
- Enable greenfield growth, through looking to extend Future Development Strategies<sup>6</sup> (FDS) out to 50 years, and strengthen policies in the NPS-UD to better support developers to progress private plan changes; and remove the ability for councils to use a rural urban boundary line (or equivalent) in a plan
- Make the Medium Density Residential Standards (MDRS) optional for councils, allowing councils to 'opt-out' via a streamlined planning process (SPP) plan change, provided they demonstrate how they will meet Housing Growth Targets
- New requirements for councils to provide Housing and Business Development Capacity Assessments<sup>7</sup> (HBAs) and underpinning data to central government, and a new ability for central government to require councils to amend part or all of their

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<sup>3</sup> Available here: <https://www.hud.govt.nz/assets/Uploads/Documents/Proactive-Releases/RIS-Going-for-Housing-Growth-Freeing-up-land-for-development-and-enabling-well-functioning-urban-environments.pdf>

<sup>4</sup> See CAB-24-MIN-0228.01 for detailed list of decisions.

<sup>5</sup> Changes to zoning in a district plan that enable an increased level of development.

<sup>6</sup> The NPS-UD requires councils to develop FDSs every 6 years in time to inform Long Term Plans (as required by the Local Government Act 2002). FDSs forms the basis for integrated, strategic and long-term planning. An FDS helps local authorities set the high-level vision for accommodating urban growth over the long term, and identifies strategic priorities to inform other development-related decisions.

<sup>7</sup> The NPS-UD requires councils to produce HBAs every 3 years in time for inform Long Term Plans (as required by the Local Government Act 2002). HBAs are designed to provide councils with a robust evidence base for housing and business land markets in order to inform plans, planning decisions, and related strategies such as FDSs.

HBA, or direct councils to use a specific plan change process, in the event of non-compliance with requirements.

This RIS covers three proposals requiring changes to the RMA, in order to make the MDRS optional and provide for new intervention powers:

1. Changes to the SPP, including to provide for councils wanting to opt out of the MDRS
2. A plan change process for councils who have not completed intensification planning instrument plan change processes<sup>8</sup> by June 2025
3. Ministerial roles in intervention powers in the RMA.

### **Status quo**

Recent national direction under the RMA, including the NPS-UD and MDRS, has sought to increase development opportunities in existing urban areas. The MDRS provide density standards for current and future residential zones. However, some concerns have been raised that the MDRS in particular provides insufficient flexibility for councils and communities.

Changes to the RMA to introduce the MDRS also provided a bespoke process for specified territorial authorities (councils)<sup>9</sup> to incorporate the MDRS and implement the intensification policies<sup>10</sup> in the NPS-UD (policies 3, 4 and 5): a modified streamlined planning process called the Intensification Streamlined Planning Process (ISPP). This included specific requirements around the scope of the plan change, provided for independent hearing panels (IHP) to hear submissions and make recommendations back to councils, and then provided for the Minister for the Environment (or their delegate) to make final decisions in instances where councils didn't agree with the IHP recommendations.

This process was designed to enable faster implementation of the MDRS and intensification provisions in the NPS-UD than would be provided through the standard SPP or a regular (Schedule 1) plan change process. In particular, through no ability to appeal decisions (unlike the standard Schedule 1 plan change process), removing the requirement for

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<sup>8</sup> The RMA requires councils to incorporate the MDRS into their RMA plans and implement the intensification requirements in the NPS-UD by requiring plan changes (or variations) called an intensification planning instrument through the use of an alternative planning process to schedule 1 of the RMA, called the intensification streamlined planning process.

<sup>9</sup> Specified territorial authorities means any of the following:

- a. every tier 1 territorial authority (Auckland Council, Christchurch City Council, Hamilton City Council, Hutt City Council, Kāpiti Coast District Council, Porirua City Council, Selwyn District Council, Tauranga City Council, Upper Hutt City Council, Waikato District Council, Waimakariri District Council, Waipā District Council, Wellington City Council, Western Bay of Plenty District Council).
- b. a tier 2 or 3 territorial authority that is required by regulations to prepare and notify an intensification plan change (currently Rotorua Lakes Council).

<sup>10</sup> Policy 3 requires Tier 1 councils' plans to enable greater height and density in areas of high demand and access for housing and businesses where there is the greatest evidence of benefit (including in and around city, metropolitan, and town centres, and near rapid transit stops), unless a 'qualifying matter' makes this level of density inappropriate (policy 4). Policy 5 requires Tier 2 and Tier 3 councils' plans to enable heights and density commensurate with the greater of accessibility by public transport to a range of activities and services, or relative to demand for housing and business use in that location.

councils to seek approval from the Minister to use the process (unlike the SPP) and by including standardised process steps (unlike the SPP), to enable certainty in the housing system sooner. However, these processes have encountered a number of challenges particularly related to inflexibility to respond when circumstances change. For example, the RMA does not allow councils to withdraw its intensification plan change or remove any part of the MDRS other than via a qualifying matter.

Fifteen councils were required to implement the MDRS. The table below provides a summary of progress as of August 2024.

<b>Council</b>	<b>Status</b>	<b>Completion date / Current deadline for completion</b>
Kāpiti Coast District Council	Completed	20 August 2023
Selwyn District Council	Completed	20 August 2023
Hutt City Council	Completed	22 September 2023
Porirua City Council	Completed	14 December 2023
Upper Hutt City Council	Completed	20 December 2023
Western Bay of Plenty	Completed	1 March 2024
Rotorua District Council	Completed	31 March 2024
Wellington City Council	Completed	20 March 2024
Tauranga City Council	Substantive plan change: Complete Variation 1 – Tauriko West Growth Area: Public submissions period has closed. Hearings scheduled for late 2024/early 2025.	30 June 2024 (for its substantive plan change)  31 December 2025 (for Variation 1: Tauriko West Growth Area)
Waipā District Council	Four rejected IHP recommendations to be referred to the Minister for his decision.	30 August 2024
Waikato District Council	Hearings complete. IHP recommendations report released 22 March 2024.	22 October 2024
Waimakariri District Council	Hearings yet to commence.	17 December 2024
Hamilton City Council	Hearings scheduled to commence 4 September 2024.	20 December 2024
Christchurch City Council	Hearings complete. IHP recommendations report released 30 July 2024.	12 September 2024 (NPS-UD) 12 December 2025 (MDRS)
Auckland Council	Plan change hearings paused.	31 March 2026

In line with the commitment in the New Zealand National Party/Act Coalition Agreement to “legislate to make the MDRS optional for councils, with the need for councils to ratify any use of MDRS, including existing zones”, Cabinet has agreed to make the MDRS optional, and made the following detailed decisions relating to this proposal:

- Councils wishing to remove the MDRS will need to do so via a variation of the SPP.
- To amend the RMA to require all councils currently required to implement the MDRS to carry out a ratification vote to determine whether they wish to retain, alter or remove the MDRS from their urban areas, and notify the Minister of Housing and Minister for the Environment of their decision in writing.
- If councils votes to alter or remove the MDRS, they must start progressing a plan change to remove or alter the MDRS.
- For councils that have already implemented the MDRS and NPS-UD, they must demonstrate they comply with the Housing Growth Targets before being able to remove the MDRS.
- If councils opt-out of the MDRS, they will also be required to implement new intensification requirements and meet Housing Growth Targets.
- To require councils to prepare a transitional HBA before being able to opt out of the MDRS.

These decisions will provide for most councils to be able to opt-put of the MDRS. However, depending on the specific requirements relating to Housing Growth Targets, there is a risk some councils may not be able to provide for 30 years-worth of development capacity and therefore would be unable to opt out of the MDRS. For example, some councils are constrained by geographical constraints, natural hazards, requirements in other national direction instruments, and are experiencing issues with funding and financing tools for growth-related infrastructure.

Cabinet also noted that the Minister Responsible for RMA Reform is making decisions on the process requirements for each council that has not yet implemented the MDRS and NPS-UD, with the overarching objective to get the intensification provisions in the NPS-UD in place as soon as possible.

### **Overarching objectives**

Cabinet has agreed that the primary objective of GfHG is to *improve housing affordability and increase competition in urban land markets by significantly increasing the supply of developable land for housing, both inside and at the edge of our urban areas.*

Officials consider that the secondary objective of GfHG should be to *support well-functioning urban environments.* This secondary objective is the primary objective of the NPS-UD, and broadly covers matters such as supporting competitive land and development markets, improving access to employment, education and services, and assisting with emissions reduction.

Specific objectives related to each policy proposal assessed in this RIS are also outlined in each section. Each of the objectives within each proposal intend to be sub-sets of the above overarching objectives.

## Assessment Criteria

The following assessment criteria have been used when assessing options for all proposals in this RIS:

- **Effectiveness** – Extent to which the proposal contributes to the attainment of the relevant high-level objectives, including upholding Treaty Settlements. The proposal should deliver net benefits.
- **Efficiency** – Extent to which the proposal achieves the intended outcomes/objectives for the lowest cost burden to regulated parties, the regulator and, where appropriate, the courts. The regulatory burden (cost) is proportionate to the anticipated benefits.
- **Certainty** – Extent to which the proposal ensures regulated parties have certainty about their legal obligations and the regulatory system provides predictability over time. Legislative requirements are clear and able to be applied consistently and fairly by regulators. All participants in the regulatory system understand their roles, responsibilities and legal obligations.
- **Durability & Flexibility** – Extent to which the proposal enables the regulatory system to evolve in response to changing circumstances or new information on the regulatory system's performance, resulting in a durable system. Regulated parties have the flexibility to adopt efficient and innovative approaches to meeting their regulatory obligations.
- **Implementation Risk** – Extent to which the proposal presents implementation risks that are low or within acceptable parameters (eg, Is the proposal a new or novel solution or is it a tried and tested approach that has been successfully applied elsewhere?). Extent to which the proposal can be successfully implemented within reasonable timeframes.

Options are analysed using the following key:

Key for qualitative judgements:

++ much better than doing nothing/the status quo/counterfactual

+ better than doing nothing/the status quo/counterfactual

0 about the same as doing nothing/the status quo/counterfactual

- worse than doing nothing/the status quo/counterfactual

-- much worse than doing nothing/the status quo/counterfactual



## Issue 1 – Changes to the Streamlined Planning Process

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### Section 1: Problem definition

Councils need to be able to progress a plan change that is efficient and effective where they choose to remove or alter the MDRS. There are opportunities to design a flexible process that can be tailored according to the complexity of the plan change, balances risks to decision makers, and provides assurance Housing Growth Targets are met.

#### ***Cabinet agreed councils that vote to remove or alter the MDRS will use a modified version of the SPP***

Cabinet has agreed that councils that vote to remove or alter the MDRS will use a modified version of the SPP as opposed to existing plan change processes under the RMA (the Part 1, Schedule 1 plan change process or the SPP without modification) to remove or alter the MDRS and implement the updated NPS-UD at the same time. The two key drivers of this decision were:

- Speed – as set out above, the standard Schedule 1 plan change process involves a range of process steps, and is subject to merits appeals, meaning using the standard process may result in a long timeframe before Housing Growth Targets and other changes to the NPS-UD have an impact on the ground. In contrast, the SPP allows for more customisation of the processes councils need to follow, and does not provide for merits appeals, allowing for a faster plan change process.
- Oversight – the MDRS provided significant development capacity. While councils removing or altering the MDRS will still need to comply with the Housing Growth Targets, there is a strong case for close scrutiny of councils removing or altering the MDRS to ensure that they are complying with new requirements – both the quantity of development capacity provided (via compliance with Housing Growth Targets) and the location of capacity (via compliance with specific intensification requirements). The SPP allows for this scrutiny as there is Ministerial oversight of council plan changes at both the start and end of the plan change process.

Given these decisions, councils need to be able to progress a plan change that is efficient and effective, while maintaining flexibility to tailor the process according to the complexity of the plan change. It also needs to provide for some oversight to ensure that Housing Growth Targets are met.

#### ***The current SPP involves an application process which may create unnecessary additional effort, time and costs for local and central government***

The RMA requires councils to apply to the Minister for the Environment to use the SPP. The intent of a SPP is to give flexibility in plan-making processes and timeframes, allowing the Minister to tailor it to specific issues and circumstances. The RMA sets out ‘entry’ criteria for when the SPP may be used, and minimum process requirements relating to engagement with iwi authorities, public participation and consideration of evidence. Other requirements, process steps, and timeframes can be tailored to the scale and significance of the plan change.

Ministry for the Environment (MfE) officials’ initial advice to the Minister on the use of the SPP (ie, assessing whether the plan change meets the entry criteria and contains sufficient information) typically takes one to five months. Resource constraints within MfE and the Minister’s time constraints to make decisions may also affect these timeframes.

However, given councils will be *required* to use it to remove or alter the MDRS, a full application process may create unnecessary, inefficient steps, as the outcome – whether to use an SPP or not – has already been determined.

The cost of SPPs vary due to the scale and complexity of the application. For previous SPPs, some councils engaged consultants to assist them completing specific stages of the process, and to meet timeframes set out in the Minister's Direction. For example, in order for a council to lodge a SPP application and for the Minister to determine whether a particular plan change proposal is suitable to go through this process, councils need to undertake preparatory work to scope the plan change proposal, consider how the proposal meets the 'entry' criteria, undertake pre-application consultation (including with iwi), send an initial draft to Ministry officials for feedback (non-statutory step), and apply in writing to the Minister. The time taken by Officials and the Minister are not cost recoverable.

The Minister for the Environment is also the final decision maker on all elements of a SPP plan change, with appeals limited to specific circumstances<sup>11</sup>. The timeframes to complete the SPP vary, but SPPs undertaken to date have taken between 6 months and 18 months from a council's application to the Minister to use the SPP to the Minister making their final decision to approve it (excluding councils' preparatory work and pre-application consultation).

***The current SPP provides Ministerial oversight, but there are opportunities to design a process that balances risks to decision makers, while providing assurance Housing Growth Targets are met***

The Ministerial oversight provided as part of the SPP is both a strength and a risk of the process. The core benefit associated with Ministerial oversight is that it provides for central government to ensure planning instruments are consistent with the RMA and national direction (ie, ensuring there is sufficient development capacity). However, in addition to the cost and time involved for both central and local government, the Ministerial role at the end of the process shifts the risk and accountabilities associated with these decisions from councils to the Minister. Having the Minister at the end of the process is also viewed as a justification for reducing appeals to the Environment Court as this is seen as additional oversight in the process.

The advice on the Minister's final decision to approve the plan change takes appropriately three to four months. These timeframes are driven by the requirement in legislation for the Minister to consider compliance with procedural requirements, legislation and national direction, and any statement of expectations. As with the application process, resource constraints within MfE and the Minister's time constraints to make decisions may also affect these timeframes.

However, the plan changes to remove or alter the MDRS will likely include a range of other matters beyond meeting Housing Growth Targets to ensure any proposed changes are integrated and comprehensive. This has led officials to consider alternative decision-making options at the end of the SPP to reflect the more comprehensive nature of these plan

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<sup>11</sup> Limited appeals are available only on decisions of a requiring authority or heritage protection authority relating to designations, heritage orders, and notices of requirement.

changes to support local accountability and balance risks to decision makers. In addition, there are central government resourcing risks if Ministerial decision making is retained.

### ***Most SPPs use Independent Hearing Panels (IHP)***

The use of an IHP is available under any plan change process (Part 1, Schedule 1, and the current SPP). The use of an IHP was mandatory as part of the ISPP. An IHP can provide a useful check and balance on councils' decision making in a plan change process.

The Minister currently can set the number of and expertise of IHP members through their direction at the beginning of the SPP. In some other plan change processes (such as the process to develop the first Auckland Unitary Plan), the Minister has had the ability to appoint members to the IHP.

Through the ISPP, officials identified a number of ways in which accountability of IHPs could be improved, to support decision making aligned with the NPS-UD. One is included as part of Issue 1A, and two additional options on the makeup of the IHP are provided in Issue 1C.

## **Specific objectives for issue 1**

In addition to the overarching objectives set out above, our specific objectives for a plan change process to make the MDRS optional and implement NPS-UD policy for issue 1 are:

- A faster and more efficient process to reduce the period of ambiguity in the planning framework/district plan provisions and to ensure quicker outcomes for delivery of housing
- A process that enables Housing Growth Targets and intensification requirements to be met through the plan change
- Flexibility to tailor the process and scope according to the complexity of the plan change.

## Section 2: Options

**Officials have analysed options in relation to the design of the ‘front end’, IHPs, and ‘back end’ of the streamlined planning process.**

Where a council has been directed to use the SPP to remove or alter the MDRS and related matters, the following proposed changes to the SPP will apply.

### *Issue 1A: ‘Front end’ options*

Option	Description
Option A1: Status quo	<p>The steps to prepare and lodge an SPP application include:</p> <ul style="list-style-type: none"> <li>• Council considers whether it is appropriate to use the SPP for its proposed planning instrument, and how it meets the ‘entry’ criteria (RMA section 80C<sup>12</sup>).</li> <li>• Non statutory step: Council should discuss proposal with MfE officials and provide a draft application for initial feedback.</li> <li>• Council applies in writing to the Minister for the Environment requesting a direction to use the SPP. Information requirements (clause 75, schedule 1<sup>13</sup>).</li> </ul> <p>Ministerial consideration of the SPP request includes:</p> <ul style="list-style-type: none"> <li>• The Minister considers the council's written request, whether sufficient information has been provided, any obligations set out in iwi participation arrangements or legislation, and the purpose of the SPP and any other relevant matters. The Minister can require the council to provide further information (clause 76(3), schedule 1). At this point, the Minister can decline the request with reasons.</li> <li>• If the Minister decides to set a direction<sup>14</sup>, the Minister must consult on the content of the proposed SPP with the</li> </ul>

<sup>12</sup> A summary of the ‘entry criteria’ in section 80C includes:

- Implements a national direction
- Public policy reasons for urgent preparation
- Meets a significant community need
- Addresses unintended consequences of a plan or policy statement
- Combines several plans or policy statements into a Combined Plan
- Expeditious preparation required in circumstances comparable to above.

<sup>13</sup> Summary of information requirements in clause 75, schedule 1 includes:

- description of the planning issue and how it meets any entry criteria
- an explanation of why the SPP is appropriate
- desired process and timeframes
- identification of affected parties
- summary of consultation undertaken or proposed to be undertaken, including iwi
- implications of using process for iwi participation legislation or Mana Whakahono ā Rohe.

<sup>14</sup> The minimum requirements of an SPP include (clause 78, schedule 1):

	<p>relevant council and relevant Ministers of the Crown. The Minister must also consult with requiring authorities, or any person who requested private plan change if relevant and may consult with any other person.</p> <ul style="list-style-type: none"> <li>• The Minister can add additional process steps and timeframes including reporting requirements or other RMA processes.</li> <li>• The Minister may change proposed process/timeframes as a result of this consultation.</li> </ul>
<p>Option A2: Amended 'front end'</p>	<p>Proposed changes to the 'front end' could include amending the RMA, to require all of the following proposed changes:</p> <ul style="list-style-type: none"> <li>• The use of SPP to remove or alter the MDRS and related matters (section 80C).</li> <li>• Where a council is wanting to remove or alter the MDRS and related matters, instead of "applying" to the Minister to use the SPP, the council must instead meet certain information requirements. This would remove the requirement for the Minister to assess the "appropriateness of using the SPP"<sup>15</sup>, and enable the Minister to determine the process steps and requirements in a direction.</li> <li>• Where a council is wanting to add topics in an SPP in addition to removing or altering the MDRS and related matters, these topics can progress together as one SPP. However, the additional topics would be assessed in accordance with the current 'entry' criteria<sup>16</sup> and information requirements.<sup>17</sup></li> <li>• Require councils to provide sufficient information to the Minister to demonstrate the proposed planning instrument will provide enough feasible development capacity to meet Housing Growth Targets.</li> <li>• Require councils to provide sufficient information to the Minister to demonstrate the proposed planning instrument will meet the intensification requirements of the NPS-UD.</li> </ul>

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- consultation on proposed planning instrument with affected parties (including with Minister) and iwi (if not already undertaken)
  - public or limited notification
  - opportunity for written submissions
  - a report showing how submissions were considered and any resulting changes made to the proposed planning instrument
  - evaluation report on the proposed planning instrument under s32/32AA
  - timeframe for completion of SPP.

<sup>15</sup> Clause 75, Schedule 1 of the RMA.

<sup>16</sup> Section 80C of the RMA.

<sup>17</sup> Clause 75, Schedule 1 of the RMA.

	<ul style="list-style-type: none"> <li>• The Minister may require the council to provide further information, including on the quantity or location of the development capacity provided by the proposed planning instrument, before the council may proceed with the planning instrument to opt out of the MDRS.</li> <li>• For SPPs that remove or alter the MDRS, the Minister is not required to consult on the proposed SPP.<sup>18</sup> Require the Minister to consult with the relevant local authority on the proposed direction.</li> <li>• At the point at which a plan change is notified, councils must publish updated information about their development capacity to demonstrate the proposed planning instrument will provide enough development capacity to meet Housing Growth Targets and other aspects of the NPS-UD. This may be the same assessment provided to the Minister to set the direction if there has been no material change since that point.</li> <li>• The IHP and council must have particular regard to the Minister’s statement of expectations in making its recommendations.</li> </ul>
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**Issue 1B: Decision making at the ‘Back end’ of the SPP options**

Option	Description
Option B1: Status quo	<p>Councils are required to submit their finalised planning instrument to the Minister for approval within the required timeframes. The Minister may approve the planning instrument, refer it back to the council for further consideration (with or without specific recommendations), or decline to approve the planning instrument. In deciding what action to take, the Minister <u>must</u> have regard to whether the council has complied with procedural requirements, a Ministerial statement of expectations, and requirements under legislation and national direction (clause 84, schedule 1).</p> <p>The final decision is then notified by the council and becomes operative (clause 90 and clause 20, Schedule 1).</p>
Option B2: alternative decision making model similar to the Auckland Unitary Plan (AUP)	<p>This option would be similar to the decision making model that was put in place for the AUP and FPP. This model would replace the current decision making model for all SPPs (not just those relating to plan changes that remove or alter the MDRS).</p>

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<sup>18</sup> Clause 76, Schedule 1 of the RMA.

<p>process and Freshwater Planning Process (FPP)</p>	<p>Under this model, an Independent Hearings Panel (IHP) makes recommendations to a council. For any recommendations accepted by the council, these aspects of the plan change become operative with no appeal rights. Recommendations rejected by the council can be appealed on merit to the Environment Court. There would be no role for the Minister in making decisions on a plan, and subsequently no ability for a Minister to consider council assessments of development capacity to inform whether to accept a plan change.</p> <p>This option would retain the ability for the Minister to set a 'direction' at the start of the SPP. This sets out the number of and expertise of IHP members, reporting requirements, timeframes for the process and a ministerial 'statement of expectations'. The statement of expectations for council and IHP would include a requirement for Housing Growth Targets to be met (and to produce HBAs to support this check), and for compliance with NPS-UD policy.</p> <p>This option would mean an IHP must be included in the process steps of a SPP which will require the consideration of section 34A of the RMA by the council. This means that a council when appointing commissioners to its IHP it must consult tangata whenua on whether it is appropriate to appoint a commissioner with an understanding of tikanga Māori and of the perspectives of local iwi or hapū. If the council considers it appropriate it must appoint at least 1 commissioner, in consultation with iwi authorities. The Minister is also still able to provide direction to the make up of the IHP.</p>
<p>Option B3: ISPP decision making model</p>	<p>This option would carry across the existing ISPP decision making model to plan changes that involve withdrawing or amending the MDRS. Under this model, a Minister has decision making responsibility in relation to the end of a plan change process only where a council rejects a recommendation of an Independent Hearings Panel. The Minister could only choose between the IHP recommendation or the council recommendation (not substitute their own). There would be no statutory role for council assessments of development capacity to inform Ministerial decision making.</p>

**Issue 1C: Makeup of IHP panel**

Option	Description
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Option C1: Status quo	The Minister may direct councils in respect of the level of experience and qualifications a person must meet to be appointed to an IHP, but may not appoint specific members to a panel.
Option C2: Minister has ability to appoint IHP members	This option would expand the Minister's powers to enable the Minister to appoint one or more IHP members as part of the 'front end' of the SPP process. However, the Minister would not be required to appoint members. The Minister would still have the ability to direct councils in respect of the experience and qualifications of IHP members.

How do the options compare to the status quo?

**Issue 1A: 'Front end' options**

	<b>Option A1 – Status Quo</b>	<b>Option A2 – Amended 'front end'</b>
<b>Effectiveness</b>	0	<b>HUD and MfE assessment: +</b> Requirement for council to submit information relating to the quantity and location of development improves the likelihood of compliance with NPS-UD.
<b>Efficiency</b>	0	<b>HUD and MfE assessment: +</b> Process changes to streamline front end improve the efficiency and likely speed of the plan change process, although the requirement to provide information about development capacity will require resource from councils.
<b>Certainty</b>	0	<b>HUD and MfE assessment: 0</b> Improves certainty by clarifying and simplifying the pathway to entering the streamlined planning process. However, could create ambiguity by creating some MDRS-specific changes to the SPP process that are not carried over to other parts of the system (however this could be clarified as much as possible through legislative drafting, non-statutory guidance, and central government implementation support for councils).
<b>Durability &amp; Flexibility</b>	0	<b>HUD and MfE assessment: 0</b> As durable and flexible as the status quo.
<b>Implementation Risk</b>	0	<b>HUD and MfE assessment: 0</b> No material implementation risks relative to the status quo.



<b>Overall assessment</b>	0	+
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## Issue 1B: Decision making options for the 'back end' of the SPP

	<b>Option B1 – Status Quo</b>	<b>Option B2 – alternative decision making model similar to the AUP and FPP processes</b>	<b>Option B3 – ISPP decision making model</b>
<b>Effectiveness</b>	0	<p><b>HUD assessment: --</b></p> <p>No ministerial oversight as to quality and quantity of development capacity. Prospect of appeal only provides a weak incentive to accept IHP recommendations.</p> <p><b>MfE assessment: 0</b></p> <p>Compliance with Housing Growth Targets and other NPS-UD policy relies on IHP and Council following Ministerial direction and NPS-UD requirements. Any non-compliance could be followed up with Ministerial intervention powers outside the SPP process.</p>	<p><b>HUD and MfE assessment: -</b></p> <p>Limited ministerial oversight as to quality and quantity of development capacity. Does not ensure IHP recommendations are compliant with NPS-UD.</p>
<b>Efficiency</b>	0	<p><b>HUD and MfE assessment: +</b></p> <p>Substantial reduction in time and costs for central government, faster for local government if they agree with IHP recommendations (eg, no appeals). Places onus on local government to make the right decisions and not defer to Minister.</p>	<p><b>HUD assessment: +</b></p> <p><b>MfE assessment: 0</b></p> <p>Some reduction in costs for central government, may be faster for local government (depending on number and complexity of rejected recommendations).</p>
<b>Certainty</b>	0	<p><b>HUD and MfE assessment: +</b></p> <p>Prospect of appeal on rejected recommendations limits certainty of outcome for local government, but more certainty for accepted recommendations.</p>	<p><b>HUD and MfE assessment: +</b></p> <p>Ministerial decision on rejected recommendations limits certainty of outcome for local government, but less-so than broad Ministerial role at present.</p>
<b>Durability &amp; Flexibility</b>	0	<p><b>HUD and MfE assessment: +</b></p> <p>As flexible as the status quo. More durability through the council retaining greater ownership of their plan.</p>	<p><b>HUD and MfE assessment: -</b></p> <p>Ministerial decision making is limited to agreement with the IHP or council recommendation. No ability to refer back to council to direct it to make changes.</p>
<b>Implementation Risk</b>	0	<b>HUD and MfE assessment: 0</b>	<b>HUD and MfE assessment: -</b>

		Reduces risk for the Minister (eg, no role in decision making on plans), but increases risk as to outcome. Provides for local government ownership of the plan, which increases likelihood of implementation.	Judicial review risk for the Minister retained, and increased risk as to outcome.
<b>Overall assessment</b>	0	<b>HUD assessment: -</b> <b>MfE assessment: +</b>	<b>HUD assessment: -</b> <b>MfE assessment: 0</b>

**Issue 1C: Makeup of IHP panel**

	<b>Option C1 – Status Quo</b>	<b>Option C2 – Minister has ability to appoint IHP members</b>
<b>Effectiveness</b>	0	<b>HUD and MfE assessment: +</b> Option can be used to ensure the expertise of the IHP, improving likelihood of compliance with obligations.
<b>Efficiency</b>	0	<b>HUD and MfE assessment: -</b> Any appointments would likely need to be agreed through the Cabinet Appointments and Honours Committee, which would add time and resource to the direction process.
<b>Certainty</b>	0	<b>HUD and MfE assessment: +</b> Improves certainty as to the qualities and qualifications of IHP members.
<b>Durability &amp; Flexibility</b>	0	<b>HUD and MfE assessment 0</b> Reduces flexibility for councils, however provides additional flexibility for the Minister and improves confidence in the regulatory system.
<b>Implementation Risk</b>	0	<b>HUD assessment: 0</b> <b>MfE assessment: -</b> Same amount of risk as status quo. Similar approach has been successfully applied before in AUP model. Availability of commissioners may constrain who is able to sit on particular plan changes. If appointed via APH process, fees framework may limit the commissioners that make themselves available.
<b>Overall assessment</b>	0	<b>HUD assessment +</b> <b>MfE assessment 0</b>

**Discussion****‘Front end’**

Both the Ministry of Housing and Urban Development (HUD) and MfE recommend Option A2 in relation to the ‘front end’ of the SPP.

Option A2 simplifies the process for councils seeking to use the SPP in relation to removing or altering the MDRS and implementing changes to the NPS-UD, removing unnecessary process steps and application criteria.

Option A2 also ensures that there is an ability for the Minister to assess compliance with Housing Growth Targets before a council can progress a plan change to remove or alter the MDRS. While it is possible that the content of a proposed planning instrument may be

materially altered following the submission of an application to use the SPP, a check at this point in the process nevertheless reduces the risk of a planning instrument not complying with Housing Growth Targets and other aspects of the NPS-UD. The risk of non-compliance subsequently in the process could be addressed through appropriate checks at the 'back end' of the process.

This option could involve a change in practice in how councils apply to use the SPP. Specifically, it would require a plan change to be sufficiently advanced for councils to be able to estimate the development capacity that would be enabled. While this could be a change in practice, it would not necessarily extend the timeframe for the SPP – it would simply shift the application process to be later in the plan development process and as councils have more certainty of their plan change being accepted to use SPP this is not as much of an issue compared to the status quo.

Option A2 would remain a tailored process which allows for local context and to meet local needs, for example the ability to incorporate the context of local Treaty settlement acts. The Minister however will no longer have a role to consider consultation with iwi authorities as part of a council using an SPP for removing and altering the MDRS (and related matters). To mitigate this, existing RMA provisions in clauses 1A to 3C, Schedule 1 will continue to apply to councils when using an SPP. This requires consultation with iwi authorities and when preparing a plan, it must be in accordance with any applicable Mana Whakahono a Rohe. Matters that do not fall within the MDRS and related matters category will still use the normal SPP application process and entry criteria.

### ***Decision making at the 'back end' of SPP process***

MfE strongly recommends Option B2 in relation to decision making at the 'back end' of the SPP process. The use of an IHP, and final decisions sitting with the Council ensures local government retains ownership of the plan, and remains accountable for local decisions. It would also minimise risk to the Minister for the Environment and officials (eg, judicial review) by removing Ministerial decision making on the plan.

While there would be no role for the Minister to provide a check on the final development capacity provided through a plan, MfE officials consider that Ministerial direction at the beginning of the process will provide clear expectations for both IHP recommendations and Council decisions. The Minister will also have the enforcement powers provided in the RMA at their disposal if there is evidence of non-compliance.

This option would provide an efficient process for councils, especially where there is agreement between the council and an IHP. There would be opportunities throughout the process to resolve issues eg, through expert conferencing prior to final recommendations and decision making. Councils would likely be incentivised to work with an IHP to avoid appeals, as opposed to deferring difficult, and potentially political, decisions to the Minister.

Tweaks to the process at the 'front end' to allow the Minister to specify the number of and expertise of IHP members could mitigate concerns regarding the quality of IHP decisions.

While the Environment Court may end up making decisions where the council and an IHP do not agree, mediation between appellants and the council could be undertaken, which further supports devolved decision making and natural justice. Existing powers for Ministers to intervene would still be available at any point in the process. The Environment Court also

has the right capacity and capability to make these kinds of planning decisions as well as the ability to make new provisions which the Minister does not have.

It is important that any modification of the SPP process provides appropriate checks and balances for process and decision making, recognising that these decisions have impacts on private property rights, and that there are only limited opportunities for appeals. Where accountability for decision making lies (eg, with councils or the Minister) is also a key consideration. MfE considers that on balance Option B2 would support council ownership and accountability for the plan (and therefore its implementation) while still providing for a flexible process to efficiently deliver development capacity to meet Housing Growth Targets and NPS-UD policy.

MfE also considers this option is more appropriate when a Minister requires the use of a SPP (which has been agreed by Cabinet). There are strong issues natural justice issues with the Minister requiring Councils to use a process where they make the final decision as well.

MfE considers that other options are not feasible from an MfE resourcing perspective, and should they be implemented, would require additional funding to accommodate advising on these processes. The ISPP process was agreed to by MfE for a limited number of plan changes and for a certain timeframe. MfE's resourcing has not been predicated on these decisions continuing to be made by the Minister.

HUD strongly recommends Option B1 (status quo) in relation to decision making at the 'back end' of the SPP. HUD considers that only Option B1 is consistent with discussion in the *Going for Housing Growth: Implementing the First Stage* Cabinet paper, which stated that:

- Councils would be required to prepare a 'transitional HBA' before they are able to opt out or amend the application of the MDRS, demonstrating that they comply with the Housing Growth Targets.
- Councils who vote to remove or alter the MDRS would be required to use a variation of the Streamlined Planning Process. The Cabinet paper explicitly noted that the SPP provides for central government oversight and approval of council plan changes.

HUD considers that a Ministerial check at the 'back end' of the plan change process is even more important than at the front end, given the potential for a proposed plan change to be materially amended by either a council or an IHP subsequent to the SPP application process. The ability for a Minister to approve, decline, or refer a proposed planning instrument back to the council with recommendations for change following these steps provides a credible mechanism for Ministers to intervene to ensure that only plan changes that give effect to the amended NPS-UD (including Housing Growth Targets) are made operative. In particular, HUD considers a Ministerial check that is built into the plan change process is much more credible and timely than the use of a discretionary enforcement tool within the RMA *after* a plan change has been made operative.

HUD acknowledges that the current SPP Ministerial approval mechanism creates a heavy resourcing burden for MfE, and delays for councils. However, HUD considers the level of Ministerial oversight critical to ensuring sufficient development capacity.

### ***Makeup of IHP***

HUD recommends Option C2 in relation to the makeup of the IHP. Enabling the Minister to appoint people to the IHP will improve the Minister's confidence in the expertise of the IHP,

and improve the likelihood the IHP will make recommendations that comply with their obligations. This model has previously been successfully used as part of the Auckland Unitary Plan process. Any appointments would likely need to be agreed through the Cabinet Appointments and Honours Committee, which would add time and resource to the direction process. However, on balance, HUD considers that the improved effectiveness of this option outweighs the reduced efficiency. Option C2 would be even more important if the AUP model for the back end (Option B2) is chosen, to ensure that the Minister has confidence when the Minister does not have a role in final decision making.

MfE consider that Ministerial appointments to an IHP would be appropriate in some circumstances, but may not in others (eg, if the Minister appoints the IHP, and then makes decisions on the plan then there is a very limited role for the Council in the plan change process). Lessons from the Freshwater Planning Process have demonstrated a number of challenges with appointing commissioners to IHPs, including that the fees framework under the Cabinet Appointments and Honours Committee is low for remunerating commissioners. There are also additional process steps (and therefore resourcing for agencies) required to appoint through the Cabinet process; and these challenges would need to be carefully worked through.

## Issue 2 – Process for councils with active plan changes

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### Section 1: Problem definition

Councils were required to notify plan changes to implement the NPS-UD and MDRS using an accelerated plan change process, the ISPP. The RMA does not allow for these plan changes to be withdrawn once notified and the ISPP can only be used once.

Auckland Council (progressing Plan Change 78 (PC78)) and Christchurch City Council (progressing Plan Change 14) are currently required to finish the ISPP by 31 March 2026 and 12 December 2025 respectively, after the estimated enactment date of RMA Bill 2 and the process to amend national direction (including the NPS-UD as part of GfHG) in mid-2025.

Tauranga City Council has completed its substantive plan change (Plan Change 33). Before Plan Change 33 was completed, the council initiated a variation (a change to include a new area (Tauriko West) to the already notified Plan Change 33). The variation also needs to progress through all the steps of the ISPP. The variation is due to be completed by 31 December 2025, after the estimated enactment date of RMA Bill 2 and national direction (mid-2025).

These three councils may not want to continue implementing the MDRS through this plan change once new legislation is enacted. There may also be confusion for the public if councils continued to implement the MDRS, while the legislative process allowing them to remove it was underway. However, implementing the NPS-UD remains a ministerial priority.

Auckland Council has made it clear that it wants to progress mitigations for natural hazards alongside intensification requirements, which the scope of the ISPP does not provide for.

Without legislative change, councils will be required to complete these plan changes and then straight away likely enter into a new plan change process to alter it, creating unnecessary cost and uncertainty for ratepayers, councils and end users of the plan. s 9(2) (ba)(i)

This necessitates an alternative process for those plan changes that are anticipated to still be 'live' at the estimated enactment date of RMA Bill 2 and national direction changes.

### Specific objectives for issue 2

The overarching objectives set out above apply to this issue. In addition to the overarching objectives set out above, our specific objectives when determining a process for councils with active plan changes are:

- Development capacity is enabled as soon as possible
- Ensuring a cost-effective process for councils and submitters
- Clarity for the public.

In some cases there is a conflict between the first (on one hand) and second and third (on the other) objectives.



## Section 2: Options

We have analysed four options.

Option	Description
Option 1: Status quo	<p>The councils are required to finish their current plan changes, on the timeframes determined in the current Ministerial directions. This would align with the other councils who have already completed their plan changes, or are expected to by the time legislation making the MDRS optional is passed.</p> <p>For Auckland, this would mean holding hearings on the MDRS and NPS-UD, including on qualifying matters. Submitters would prepare evidence and attend hearings. Decisions would be made on the current NPS-UD requirements, eg, the size of walkable catchments.</p> <p>The comprehensive plan change mitigating the risk from natural hazards would be postponed until PC78 was completed.</p> <p>Auckland Council would then have the opportunity to use the SPP to remove or alter the MDRS, and implement the new GfHG policies, once PC78 was completed (currently schedule 31 March 2026).</p> <p>Christchurch City Council has already held hearings on the MDRS, and the IHP has made their recommendations. They would be required to vote on those recommendations, before having the opportunity to prepare a new plan change removing or altering the MDRS.</p> <p>Tauranga City Council have hearings for the Tauriko West variation set for early December. It anticipates the IHP to have recommendations in the first quarter of 2025 after which a Council vote will take place.</p>
Option 2A: Withdraw with criteria that the council is satisfied of (council is decision maker)	<p>The RMA is amended to allow councils to withdraw its plan change if the council is satisfied of its progress and implementation of the current NPS-UD policy 3. This criteria would be set in legislation.</p> <p>If councils withdraw their plan change, they will be required to use the SPP to implement the GfHG policies.</p> <p>Note: withdrawal does not remove provisions that have already been made operative (ie, the Auckland City Centre provisions will not be withdrawn, if they are completed as expected).</p>

<p>Option 2B: Withdraw with criteria that the Minister for the Environment is satisfied of (Minister is decision maker)</p>	<p>The RMA is amended to allow councils to apply to the Minister for the Environment to withdraw their intensification plan changes.</p> <p>There are set criteria which councils must meet to be able to withdraw their plan changes. The criteria would include the Minister considering how much of the current NPS-UD has been made operative. The Minister has discretion to approve or decline the council's application. This criteria would be set in legislation.</p> <p>If councils withdraw their plan change, they will be required to use the SPP to implement the GFHG policies.</p> <p>Note: withdrawal does not remove provisions that have already been made operative (ie, the Auckland City Centre provisions will not be withdrawn, if they are completed as expected).</p>
<p>Option 3: Withdraw no criteria</p>	<p>The RMA is amended to allow councils to withdraw its plan change.</p> <p>There are no set criteria which councils must meet to be able to withdraw their plan changes.</p> <p>If councils withdraw their plan change, they will be required to use the SPP to implement the GFHG policies.</p> <p>Note: withdrawal does not remove provisions that have already been made operative (ie, the Auckland City Centre provisions will not be withdrawn, if they are completed as expected).</p>

## How do the options compare to the status quo?

Note: HUD and MfE agree on the options assessment.

	<b>Option 1 – status quo</b>	<b>Option 2A – Withdraw with criteria that the council is satisfied of</b>	<b>Option 2B - Withdraw with criteria that the Minister for the Environment is satisfied of</b>	<b>Option 3 - Withdraw no criteria</b>
<b>Effectiveness</b>	0	- Delays current NPS-UD implementation in Auckland (and associated development capacity), but may result in the implementation of the new GfHG policies sooner.	+ Potentially less delay for implementing the current NPS-UD implementation in Auckland (and associated development capacity).	- Delays current NPS-UD implementation in Auckland (and associated development capacity), but may result in the implementation of the new GfHG policies sooner.
<b>Efficiency</b>	0	++ Less costly option for councils, with less confusion for the public.	+ Less costly than status quo, but some cost may still occur with delayed certainty for the public compared to the other options.	++ Least costly option for councils, with less confusion for the public.
<b>Certainty</b>	0	- Responsibility of NPS-UD progression and implementation sits with the council which means less certainty. Provides certainty on the long term plan provisions in Auckland sooner.	0 Discretion for Minister on withdrawal means less certainty for council, however more consistent with changing legislative context.	+ Councils will be able to withdraw its plan change without needing to meet any criteria.

<b>Durability &amp; Flexibility</b>	0	<p style="text-align: center;">+</p> <p>More flexibility to address matters in a more integrated way, meaning that council doesn't have to enter into another plan change straight away (more durable).</p>	<p style="text-align: center;">++</p> <p>More flexibility to address matters in a more integrated way, while also enabling flexibility for the Minister to incentivise their objectives.</p>	<p style="text-align: center;">+</p> <p>More flexibility to address matters in a more integrated way, meaning that council doesn't have to enter into another plan change straight away (more durable).</p>
<b>Implementation Risk</b>	0	<p style="text-align: center;">0</p> <p>No material implementation risk relative to status quo.</p>	<p style="text-align: center;">0</p> <p>No material implementation risk relative to status quo.</p>	<p style="text-align: center;">+</p> <p>Less implementation risks relative to the status quo.</p>
<b>Overall assessment</b>	0	0	+	+

## Discussion

Both HUD and MfE prefer any of the other options compared to the status quo (Option 1). This is because withdrawal will likely result in less confusion for the public, and may be more cost effective for councils. Allowing withdrawal would achieve a better planning outcome for Auckland in particular, as it would allow Auckland to consider matters of natural hazards and zoning for the former Auckland Light Rail corridor alongside intensification requirements, resulting in a more cohesive plan. It would also be a simpler process which would be easier for the public to understand.

Officials do not prefer Option 1 because it would be likely to incur unnecessary costs to both central government and the councils, as well as requiring some councils and its associated Independent Hearings Panels (IHPs) to continue with hearings on a plan change that they intend to substantially amend. s 9(2)(ba)(i)

This situation is different to other councils that have been required to complete their MDRS plan changes (rather than being allowed to withdraw), because:

- Other councils' plan changes did not, or are not expected to, overlap with the legislative process to make the MDRS optional, reducing potential confusion for the public.
- There are a range of complex interactions between Auckland's current plan change and required plan changes to address issues such as natural hazards and the Auckland Light Rail corridor that were not present (or present to a lesser extent) for other councils.
- Many other councils were further along in their plan change process than Auckland, Christchurch, and Tauranga's Tauriko West variation, meaning there was much less additional cost incurred by other councils in completing their plan change than would be by these councils.

Councils would then likely progress a new plan change once their current plan changes were completed, potentially reflecting a different position on the application of the MDRS, depending on the outcome of the Council's vote, incurring additional cost.

On its face, Option 1 may result in development capacity being added faster than the other options as the original NPS-UD (and MDRS) would be progressed. However, officials anticipate if Option 1 was progressed, central government support and/or intervention would be required to ensure the councils completed the plan change within the required timeframe. Transitional provisions would also be required to ensure the councils continued to complete its ISPP following the introduction of new legislation and national direction requirements. This is likely to result in negative public perception and confusion regarding the process, and involve central government resource. In addition, Option 1 may result in a delay in implementation of the Going for Housing Growth-related changes to the NPS-UD as council attention would be diverted to implementation of the original NPS-UD.

HUD recommends Option 2B because the requirement for councils to apply to the Minister to withdraw would enable the Minister to require further implementation of the current NPS-UD requirements by refusing the council be allowed to withdraw until some provisions are made operative, if they chose to. This aligns with previous Ministerial letters sent to Auckland.

MfE recommends Option 3. While both Options 2B and 3 meet the objectives, we are uncertain as to whether in practice this would result in a different outcome to withdraw without criteria, given the Minister Responsible for Resource Management Reform has

outlined in letters to the Mayors of Christchurch and Auckland, and put in gazetted 'directions' to these councils his expectations for implementation of the NPS-UD. We do not consider these additional steps and costs in the 2B process for both central and local government would deliver additional benefit. While option 2B provides a strong requirement for councils to ensure implementation, it introduces a process and decision making point which introduce risk and potential for judicial review.

HUD does not prefer Option 3 as it will remove any potential incentive to continue implementing the NPS-UD in Auckland. However, it would be an effective option for Christchurch and Tauranga. Christchurch City Council officials support the ability to withdraw the un-operative parts of their plan change and are expected to have its NPS-UD aspects of its plan change operative by the end of 2024. Tauranga City Council officials advise that it is very likely their variation will be complete before the law is enacted, meaning this policy would not be relevant to them.

Auckland Council officials prefer Option 3 as it would allow them to withdraw its plan change without delay regardless of its progress implementing the NPS-UD. An integrated process has been endorsed by the council's Planning, Environment and Parks Committee.

## Issue 3 – Responsible Ministers for intervention powers

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### Section 1: Problem definition

Currently, monitoring councils' compliance with the NPS-UD and MDRS requirements is jointly undertaken by the MfE and HUD, with existing Ministerial intervention powers sitting with the Minister for the Environment.

Cabinet has agreed to two new legislative powers for central government to support compliance with the new GfHG policies. Cabinet agreed to amend the RMA to provide:

- central government with a power to require councils to amend part or all of their HBA, in the event of non-compliance with requirements
- intervention powers in the event of non-compliance with Housing Growth Targets or urban national direction, including an ability to direct councils to use a specific plan change process.

Cabinet did not make decisions on which Ministers would be responsible for the use of the new powers. MfE considers that both of these powers should apply to national direction more generally so propose options to address that.

Given the Ministry of Housing and Urban Development's joint role in monitoring the NPS-UD, and the Minister of Housing's lead role in developing the Going for Housing Growth policies, officials have also analysed whether the Minister for the Environment and the Minister of Housing should have a joint decision making role in relation to use of existing powers under the RMA (rather than solely by the Minister for the Environment).

### Specific objectives for issue 3

In addition to the overarching objectives set out above, our specific objectives in relation to Ministerial powers are to ensure appropriate central government stewardship and oversight is provided for in the system to monitor implementation of and compliance with the GfHG policies. This will ensure central government's GfHG compliance monitoring, and implementation support to councils, are supported by opportunities for relevant Ministers to intervene if necessary.

### Section 2: Options

Officials have analysed four options.

Option	Description
Option 1: All powers, including new powers sit with the Minister for the Environment	The Minister for the Environment would be responsible for the use of any intervention power relating to the implementation of the NPS-UD. The Minister of Housing could receive advice on the implementation of the NPS-UD, and use current relationship processes to request the Minister for the Environment to use intervention powers.

<p>Option 2: Existing RMA powers sit with the Minister for the Environment, and new powers sit with the Minister of Housing</p>	<p>The Minister of Housing would review the available information on HBAs and, if it did not meet requirements, require councils to amend part or all of their HBA. If non-compliance continued, the Minister of Housing would be able to direct the council to progress a plan change using a specific process (eg, the SPP). The Minister of the Environment would be able to use the existing RMA intervention powers, including oversight of the SPP.</p>
<p>Option 3: Minister for the Environment has existing powers and Minister for the Environment and Minister of Housing both are jointly responsible for the new powers</p>	<p>The above applies, however the Minister of Housing and Minister for the Environment would need to jointly agree to use the new powers.</p>
<p>Option 4: Minister of Housing and Minister for the Environment are jointly both responsible for all intervention powers</p>	<p>The Minister of Housing and Minister for the Environment would jointly monitor compliance with the NPS-UD and intervene if necessary. This would include joint oversight over the SPP when plan changes progressed implementing the GfHG powers.</p>

Officials have not analysed a status quo, as there is no established status quo for which Minister/s should be responsible for the new powers and requirements. Option 1 is the closest option to status quo.



## How do the options compare to the status quo?

	<b>Option 1 – Minister for the Environment responsible for all intervention powers</b>	<b>Option 2 – New powers sit with MinHous, existing with MinEnv</b>	<b>Option 3 – New powers are joint MinHous and MinEnv, existing with MinEnv</b>	<b>Option 4 – Joint MinHous and MinEnv responsibility for intervention powers</b>
<b>Effectiveness</b>	0 No statutory opportunity for a key Minister (Housing) to intervene as per objective, but standard practice provides for this.	0/+ Both relevant Ministers have ability to intervene, but at different points in implementation process.	+ Both relevant Ministers have access to more intervention tools.	++ All relevant Ministers have the full range of intervention tools available.
<b>Efficiency</b>	0	0	- Higher cost with multiple Ministers involved.	-- Higher cost with multiple Ministers involved.
<b>Certainty</b>	++ Complete clarity of roles and responsibilities.	+ Clearly defined roles and responsibilities.	- Potential confusion about roles and responsibilities.	-- Potential confusion about roles and responsibilities – exacerbated by the number of powers shared.
<b>Durability &amp; Flexibility</b>	+ Provides an enduring legislative change to support the Minister for the Environment’s system stewardship role.	+ Ensures a housing focused lens, responding to the changing circumstances of a more direct role for the government in local planning via national direction.	+ Ensures a housing focused lens, responding to the changing circumstances of a more direct role for the government in local planning via national direction.	+ Ensures a housing focused lens, responding to the changing circumstances of a more direct role for the government in local planning via national direction.

<b>Implementation Risk</b>	<p>0 Aligned with status quo, no implementation risk.</p>	<p>- Some implementation risk with new processes required for MinHous, but manageable.</p>	<p>- Some implementation risk with new processes required for MinHous, but manageable.</p>	<p>-- Some implementation risk with new processes required for MinHous. Large amount of shared decision making.</p>
<b>Overall assessment</b>	<p>+</p>	<p>0/+</p>	<p>-</p>	<p>--</p>

## **Discussion**

MfE recommends Option 1.

It is standard practice for the Minister for the Environment to consult other relevant Ministers as part of consideration of exercising powers, particularly in instances where issues cross ministerial portfolios.

MfE considers giving the Minister for Housing joint access to these powers would likely set a precedent for other Ministerial portfolios that have interests in national direction under the RMA (eg, energy, highly productive land and telecommunications). MfE considers it is more appropriate that decisions made about extending the role of other Ministers in relation to RMA planning processes, including the Minister of Housing is considered alongside advice on the role of ministers more generally through phase 3 resource management reform.

MfE recommends that the ability to require an amendment to an HBA is broadened so the Minister for the Environment can require councils to amend any document that national direction requires them to prepare. MfE also recommends that the ability for the Minister for the Environment to require councils to use a particular plan change in the event of non-compliance with Housing Growth Targets or urban national direction is broadened so that it can be used as a result of non-compliance with any form of national direction.

Because we are proposing to extend the scope of these powers, we consider this power should sit with the Minister for the Environment, given their system oversight and stewardship role of the resource management system. In MfE's view, any proposed changes to the RMA should, as much as possible, be fit for purpose across the system to support enduring legislative changes, and integrated policy outcomes and decisions.

HUD is neutral on the options, and does not provide a recommendation. HUD supports the widening of the new powers to encompass all national direction.

### **Broadening of powers agreed to by Cabinet on enforcing HBAs**

Although Cabinet agreed to amend the RMA to provide central government with a power to require councils to amend part or all of their HBA, in the event of non-compliance with requirements officials recommend that this requirement is brought up a level so that councils can be required to amend any documents that they were required by national direction to prepare.

Because we are proposing to extend the scope of the change, we consider this power should sit with the Minister for the Environment, given their system oversight and stewardship role.

There are currently limited examples of documents required to be prepared by national direction (regional biodiversity strategies, freshwater action plans, FDSs and HBAs). However, this change can be used to future proof national direction provisions in the Act.

A requirement to consult other relevant Ministers could be included if necessary, however, we think that in practice, as is the case in general, Ministers will consult their colleagues about matters that impact their portfolio interests and therefore this is not required.

This change consistent with MfE's position that as much as possible changes to the RMA should work across the board for all topics/activities and should not be made in relation to one topic/activity only. We also think this change would still achieve the desired outcome for GfHG.

## Options package

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The table below sets out agencies' preferred options packages.

	<b>HUD preferred option</b>	<b>MfE preferred option</b>
Issue 1A – SPP 'front end'	Option A2: Amended 'front end'.	Option A2: Amended 'front end'.
Issue 1B – SPP 'back end'	Option B1: Status quo.	Option B2: alternative decision-making model similar to the Auckland Unitary Plan (AUP) process and Freshwater Planning Process (FPP).
Issue 1C - IHPs	Option C2: Minister has the ability to appoint IHP members.	Neutral on inclusion as part of this package.
Issue 2 – Process for councils with active plan changes	Option 2B: Withdraw with criteria that the Minister for the Environment is satisfied of (Minister is decision maker).	Option 3: Withdraw without criteria.
Issue 3 – Responsible Minister for Intervention Powers	Neutral.	Option 1: All powers, including new powers sit with the Minister for the Environment.



### **Cost/Benefit Analysis**

The costs and benefits of the overall Going for Housing Growth land pillar are set out in: *Regulatory Impact Statement: Going for Housing Growth – Freeing up land for development and enabling well-functioning urban environments.*

The proposals set out in this RIS relate to details of policy issues for which high-level decisions have already been made. As such, decisions on the details do not materially alter the costs and benefits set out in the initial RIS.

### **Treaty implications**

Iwi, hapū and other urban Māori communities are anticipated to have an interest in the process and outcomes of removing or altering the MDRS and if councils withdraw its intensification plan change. PSGE's, iwi and other Māori groups have not been consulted on the recommendations in this Regulatory Impact Statement. Officials do not consider there to be direct impacts to Treaty settlement redress but it is difficult to fully assess the impacts on Treaty settlement obligations and broader rights and interests without engagement with relevant PSGE's, iwi and other Māori groups.

The SPP will remain a tailored process which allows for local context and to meet local needs, for example the ability to incorporate the context of local settlement acts. The Minister however will no longer have a role to consider consultation with iwi authorities as part of a council using an SPP for removing and altering the MDRS (and related matters). To mitigate this, existing RMA provisions in clauses 1A to 3C, Schedule 1 will continue to apply to councils when using an SPP. This requires consultation with iwi authorities and when preparing a plan it must be in accordance with any applicable Mana Whakahono a Rohe. Matters that do not fall within the MDRS and related matters category will still use the normal SPP application process and entry criteria.

MfE and HUD have different preferred recommendations for changes to the decision making at the end of an SPP. MfE's preference for the final decision-making structure for all SPPs will allow for independent decision making and removes potentially political decision making from going to the Minister. MfE's preference will mean an IHP must now be included in the process steps of a SPP which will require the consideration of section 34A of the RMA by the council. This means that a council when appointing commissioners to its IHP it must consult tangata whenua on whether it is appropriate to appoint a commissioner with an understanding of tikanga Māori and of the perspectives of local iwi or hapū. If the council considers it appropriate it must appoint at least 1 commissioner, in consultation with iwi authorities. The Minister is also still able to provide direction to the make up of the IHP. HUD's preference does not change the status quo, and therefore does not have any impacts on the existing Treaty implications. HUD's option would not limit the Minister from directing a Council to use an IHP but it would not be a requirement.

### **Consultation**

Engagement with councils and other stakeholders has been undertaken in relation to the Going for Housing Growth land package as a whole, some of which as touched on the issues discussed in this RIS.

Targeted consultation on some of the specific issues considered in this RIS has taken place with officials from Auckland Council, Christchurch City Council, Tauranga City Council, and Wellington City Council.

Auckland Council and Christchurch City Council are supportive of having the ability to withdraw, compared to the status quo.

Wellington City Council and Tauranga City Council are supportive of changes to the SPP to make it a simpler process to access, they were agnostic regarding the specific decision making but noted in the case of Wellington City Council a previous set of councillors voted not to progress an SPP as they wished to preserve appeal rights. Auckland Council supports the AUP decision making process.

All councils are supportive of having a wide scope to any future plan change process.

Other councils will be impacted by the changes to the SPP. Further engagement with councils will be undertaken over the coming months, and councils will have an ability for formally submit on the proposals when the Resource Management Amendment Bill implementing these decisions is considered by Select Committee.

## **Implementation**

These proposals will be implemented through an RMA Amendment Bill, likely to be introduced in the last quarter of 2024. This means the proposals will likely be in place by mid-2025, with implementation by councils to follow.

Councils seeking to remove or alter the MDRS will have to give effect to the Housing Growth Targets requirements, intensification changes, and direction on mixed-use through the same plan change they use to remove the MDRS, ie, the modified SPP process.

For councils that choose to retain the MDRS, further work will be done by HUD and MfE to develop a process and determine a timeframe for implementation that takes into account other new or amended national direction under the RMA that councils will have to implement as part of the wider Resource Management Reform programme. The Minister Responsible for Resource Management Reform will make decisions on this through the resource management Phase 2 reform national direction process. This will recognise the significant investment already made in district planning processes to implement the MDRS and intensification policies.

Central government will need to support councils in these plan change processes, especially given councils are at different stages of implementation. This includes managing Ministerial roles in relation to the SPP for any council that proposes to remove or alter the MDRS. Beyond this, good practice would include producing non-statutory guidance, engagement with councils and other stakeholders, and transparent monitoring and evaluation, such as an implementation, monitoring and evaluation plan. The level of support provided will be subject to agency resourcing and Ministerial priorities, and is considered an implementation risk if sufficient agency resourcing cannot be provided. However, there are opportunities to standardise certain aspects of the proposals including the use of templates for SPP directions and information requirements.

Some additional guidance may be required to support councils to understand the changes to the SPP process. Councils may also need guidance on the withdrawal process.

These proposals are dependent on changes to the NPS-UD.

## Monitoring

HUD and MfE will monitor the effect of the proposals both as they are implemented, and following then, to determine the effectiveness of the proposals and whether any unintended consequences have arisen. This includes officials providing advice to the Minister/s on:

- applications to use the SPP, and applications from councils to withdraw their plan changes
- progress on plan change processes for councils that have not yet completed their intensification plan changes to incorporate the MDRS into their plans, and implement the NPS-UD intensification policies
- the need to use any intervention powers (on a case-by-case basis).

The timing of such monitoring will be informed by timing of council plan change processes, which is still to be determined.

The effectiveness of the monitoring and evaluation will be improved by some of the proposals eg, information requirements before progressing an SPP prior to opting out of the MDRS, as well as clearer requirements in the NPS-UD. In addition to these, some relevant data could be obtained via MfE's National Monitoring System, which collects data from all local authorities on their RMA processes, including any plan changes to implement national direction. Other information could be gathered through direct interactions with relevant councils.

If monitoring reveals issues, intervention actions are available to central government (Ministerial responsibilities will depend on decisions on the options set out in Issue 3), including to:

- investigate the performance of local authorities in giving effect to the proposals
- provide recommendations to local authorities on improving their performance
- direct plan changes or reviews (including the proposed new power to direct the use of a streamlined planning process)
- as a last resort, appoint someone to carry out the local authority's functions and duties.

Evaluation or review will occur following completion of council plan changes to implement the proposed options.