



THE ASSOCIATION FOR RESOURCE MANAGEMENT PRACTITIONERS

Te Kahui Ture Taiao

**SUBMISSION ON THE RESOURCE MANAGEMENT (ENABLING HOUSING
SUPPLY AND OTHER MATTERS) AMENDMENT BILL**

TO: The Environment Committee

Parliament Buildings

Wellington

Email: en@parliament.govt.nz

Submission on behalf of

**Te Kahui Ture Taiao/the Association for Resource Management Practitioners
(RMLA)**

SUMMARY

- 1 The RMLA welcomes the intent of the *Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill* (“the Bill”) to accelerate housing supply where demand for this is highest. However, we are concerned this Bill has been rushed and is based on an unjustified assumption that the Resource Management Act 1991 (“RMA”) is the central cause of the current housing supply and housing affordability issues. The RMLA strongly supports addressing those issues and acknowledges that the planning system is one factor that has contributed to them.
- 2 That said, the planning process is not the only – or even the primary – reason that Aotearoa’s major cities are currently facing a housing crisis. If it was, the three previous attempts to substantively amend the RMA in the name of “enabling growth” would have had far more of an impact than they did. There are other, more critical factors at play. These include lack of infrastructure capacity, capacity constraints in construction personnel/materials, and population growth/immigration settings.
- 3 The RMLA strongly suggests that Government’s time and effort could much more usefully be focused on addressing those matters, rather than further undermining the integrity and effectiveness of the planning system by amending the RMA yet again. As it currently stands, the RMLA is concerned that the Bill:
 - a. Raises significant natural justice and access to justice issues;
 - b. Will fail to achieve its intended objectives; and
 - c. Could well result in worse built form and urban growth outcomes than will be achieved in accordance with the NPSUD and current planning provisions – in other words, create exactly the opposite outcome from what it is intending.

INTRODUCTION

- 4 This Submission is made by Te Kahui Ture Taiao/the Association for Resource Management Practitioners (RMLA). We promote best practice implementation of environmental policy and law in New Zealand.
- 5 The RMLA has a mixed membership. Members include lawyers, planners, judges, environmental consultants, urban designers, environmental engineers, local authority officers and councillors, central government policy analysts, industry representatives and others. Currently the Association has some 1,000 plus members. Within such an organisation there are inevitably a divergent range of interests in views of members.
- 6 While some in the membership have been consulted in preparing this submission, it is not possible within the time available for the RMLA to form a single universally accepted view on the proposed regulations. It should also be noted that a number of members may be providing their own individual feedback and those may represent quite different approaches to the views expressed here.
- 7 The RMLA’s main objective in making submissions on Government proposals is to ensure that a coherent and workable body of resource management and environmental law and practice is developed in New Zealand. As a result, the RMLA’s submissions focus on what (if any) changes should be made to the proposal to ensure that it will:
 - a. Be consistent with the general framework of existing laws and policies and legally sound;
 - b. Be practicable, effective and efficient;
 - c. Assist in promoting best practice; and
 - d. Produce high quality environmental outcomes.

SUBMISSION

- 8 The purpose of the Bill is to rapidly accelerate the supply of housing where the demand for housing is high to help address issues with housing choice and affordability in our largest cities. To do this, the Bill provides a plan making process for introducing *Medium Density Residential Standards* (“MDRS”).
- 9 At the outset, the RMLA recognises the importance of urban policy and plan provisions as key influences on housing supply and city development, and supports sound policy to increase housing supply and improve housing affordability. In that regard, the RMLA considers that the Bill will go some way towards:
- a. Increasing housing capacity in those areas close to transport and community services;
 - b. Accelerating delivery of the outcomes intended under the NPSUD.
- 10 That said, the RMLA has a number of concerns regarding the Bill, in particular relating to the:
- a. Placement of a statute with major implications for urban policy outside the mainstream of the reformed resource management structure;
 - b. Significant dilution of democratic process at several levels that the Bill represents; and
 - c. Underlying resource management rationale and economic basis for the Bill.
- 11 To that end, the RMLA’s submission on the Bill addresses the following, before making some concluding remarks:
- a. Expected outcomes from the Bill relative to the intended outcomes;
 - b. Democratic process/natural justice issues; and
 - c. The economic rationale for the Bill.

Expected versus intended outcomes from the Bill

- 12 The RMLA is concerned that as drafted, the Bill will not achieve its intended objectives and worse, may in fact result in a number of unintended (and contrary) outcomes, for several reasons.

Potential to undermine integrated planning objectives of NBEB and SPB

- 13 First, the Bill has appeared as another part of a wider strategy for urban policy to be driven by different statutes, separate from the proposed Natural and Built Environments (“NBEB”) and the Spatial Planning (“SPB”) legislation. As a result, the Bill and the National Policy Statement on Urban Development 2020 (“NPSUD”) will together have a major influence on land use patterns of the main cities. They will direct the housing development possible in most locations throughout cities, influencing land use on more than 60% of urban land area, as well as directly affecting business and public sector land use.
- 14 Land use is the critical driver of effects and outcomes, affecting city form and function, urban living environments, housing and land markets, the biophysical environment, and at the higher level, liveability, urban efficiency and therefore sustainability.
- 15 The dominant role of the Bill and NPSUD will mean that the later NBEB and SPB statutes, with their wider purposes of holistic guardianship and planning, can have only limited influence on the urban land use outcomes which are critical to their purposes. The land use and wider urban liveability and sustainability outcomes will be guided not by the more comprehensive objectives which normally underpin urban policy settings, but by the tight – and necessarily more limited – focus on housing supply and affordability in the Bill and NPSUD. The RMLA suggests that may not form the basis for best practice planning.

- 16 The influence of the MDRS (and NPSUD) will be hard-wired into its structure. The mechanism is simple, a comprehensive up-zoning of land to enable capacity which is many times greater than that required to serve anticipated growth. There are two main effects from ubiquitous zoning. One is elimination of differentiation within residential areas of cities. The other is that future development will be driven wholly or primarily by the choices of individual property owners – not by the regional spatial plans to be prepared under the SPA or combined plans to be prepared under the NBEA. This is because once a site’s development potential is ‘anticipated in the Plan’ there is little scope to amend individuals’ proposals to better meet community needs. Further, if a large number of medium density developments are now permitted, there is little opportunity for Councils to exercise oversight and facilitate a high-quality residential environment.

Planning system not the primary driver of housing supply and affordability issues

- 17 Second, as repeatedly acknowledged in the Regulatory Impact Statement (“RIS”) prepared in respect of the Bill, there are a multiple drivers of high house prices and reasons why the market is not delivering the volume or kind of housing supply required. The zoning of land and consequent resource consent process is only one of those factors. Other important inputs into house prices include population growth, low interest rates and investor activity. Factors that constrain delivery of housing, despite zoning provisions, include inadequate infrastructure capacity, site topography and other physical constraints increasing construction and engineering costs, construction personnel and materials shortages, investor activity (land banking) and owner preferences.
- 18 Thus, just because you zone land for medium density development, you cannot assume that is what will be delivered. There is no way of forcing a landowner in an inner-city suburb to redevelop their property in accordance with the MDRS, even if you put provisions in place. For example, the majority of landowners in Auckland’s central city suburbs are unlikely to put three dwellings on their property, even if they are able to. As was very clearly demonstrated through the process of developing the partly operative Auckland Unitary Plan (“AUP”), most residents chose to live in those areas because of their current amenity and character – and they are very resistant to that being changed.
- 19 There have already been three substantive reforms of the RMA aimed at simplifying resource management processes and making housing/urban development easier. These were the Resource Management Amendment Acts 2009 and 2013, and the Resource Legislation Amendment Act 2017. Clearly, these have failed, by themselves, to have the desired level of impact on housing supply and affordability..
- 20 As such, the RMLA suggests:
- a. This highlights the importance of taking a comprehensive approach through the resource management reforms in combination with other measures, rather than single-focus initiatives; and
 - b. It is time to consider why the previous reform attempts have failed and what basis (if any) there is for expecting another round of RMA amendments will succeed by themselves, where their several predecessors did not.
- 21 In undertaking such reflection, it may be concluded that the reason previous reform has not been effective as anticipated is because – as accepted in the RIS – the RMA is but one element of the housing supply and affordability puzzle. And perhaps it is now time to tackle those issues in another way – rather than continuing to expect there is a simple (or single) solution to the problem.
- 22 Critically, it does not appear there has been any consideration as to whether the Bill is actually required, based on the current planning provisions in place in all Tier 1 cities. In particular, there is no reference to the recently completed substantial detailed assessments, through the

NPSUD's HBA process, of housing development, capacity and planning provisions in all the Tier 1 and Tier 2 cities, to address housing sufficiency over the short, medium and long terms (30+ years). The MfE's review of those HBAs is still under way. In the cases of Auckland and Hamilton, at least, the HBAs show the cities have plenty of feasible capacity past the long term.

Infrastructure funding and financing constraints

- 23 Third, even if there was an appetite or need to intensify in some of Auckland's existing Single House Zone areas, the reality is there is often insufficient infrastructure to support such growth – in terms of open space, roads, schools, hospitals and three-waters. To illustrate, it is noted that four significant private plan changes are currently being progressed to enable greenfields development in Drury (which is identified as one of the Government's key growth areas in the recent Government Policy Statement on Urban Development). Auckland Council and Auckland Transport have submitted in opposition to all four plan changes, seeking that they be declined and the area remain undeveloped for at least ten years – despite the fact that they are currently zoned Future Urban under the AUP and that at one of those plan changes is in an area that the Council's own Future Urban Land Supply Strategy identifies should be "development ready" by 2022.
- 24 The sole basis for Auckland Council and Auckland Transport's opposition to the plan changes is that there is currently no ability to finance and fund the infrastructure required to support that growth, essentially because they have already committed all the funds they have available for such works over the next ten years. If that is the case, then at least for Auckland, this indicates that the city's infrastructure may well be overwhelmed by the level of mainly brownfields/infill intensification proposed by the Bill.
- 25 This problem is not confined to the urbanisation green or brownfields areas of our cities but also occurs in existing urban areas where there are issues with upgrading infrastructure capacity and resilience to serve greater numbers of people. Spatial planning and differentiated residential zoning allows councils and central government infrastructure providers to anticipate where growth will occur and plan for and fund required infrastructure upgrades in their Long Tern Plans.
- 26 The above has serious implications for both the built and natural environment outcomes that would result from such intensification. The RMLA suggests such outcomes could fall well short of the vibrant, quality urban areas that we should be creating. Our population do not only need warm, dry houses – they also need access to quality healthcare, parks, schools and transport facilities, if they are to truly thrive.
- 27 The Bill simply assumes these facilities will be delivered in line with its densification objectives, without having done any analysis (or providing any realistic avenue through which) to ensure that will actually be the case. Where are the robust provisions (or complementary policy initiatives) to ensure that the resources needed to plan for and provide increased infrastructure capacity are available? The proposed new sections 77P and 77Q in clause 7 are not sufficient to address this issue. The RMLA suggests this is a serious oversight in the Bill.

Quality of the urban outcomes that will result from the MDRS

- 28 Fourth, the RIS makes it clear that the MDRS in the Bill (and the Bill's focus on medium density development) are largely based on the AUP's Mixed Housing Urban ("MHU") zone. Yet as far as the RMLA is aware, there has been no consultation with Auckland Council as to the effectiveness of the MHU zone and quality of built form outcomes it is delivering.
- 29 The RMLA also has concerns that as presently drafted, the MDRS could potentially result in significant privacy/overlooking and shading effects being generated as of right, in many areas. Again, the focus should not be purely on providing people with "a house" – but ensuring we provide sufficient houses with at least a basic level of amenity for their residents. The RMLA suggests that having 3 storey balconies set 1m off internal boundaries in a suburban context (or

2m separation between facing townhouses) does not even provide sufficient space for residents to practice appropriate physical distancing with neighbours during a pandemic – let alone ensure a quality built form.

- 30 The cost benefit analysis has estimated costs of -\$1.0Bn to -\$1.75Bn from the Bill, from loss of sunshine, loss of views and ‘environmental costs’. A substantial proportion of these negative effects would accrue to existing properties, which would no longer be protected by requirements for resource consents. The MHU zone contains additional provisions (including regarding sunlight access and larger outdoor areas than proposed in the MDRS) to address this issue, which have not also been included in the MDRS.
- 31 These potential issues are only intensified by the fact that the Bill provides “rules”, without any associated objectives or policies. Such “bottom up” drafting is the antithesis of good planning practice, and sound economics. The RMA requires that objectives and policies be set to address identified planning/resource management issues, and that rules then be set which implement those objectives and policies. The RMLA sees no reason why the MDRS should be allowed to be drafted any differently. Without providing relevant objectives and policies for guidance, there is no certainty as to how the standards will be interpreted and applied, or as to the outcomes that may result.

Democratic process/natural justice issues

- 32 The RMLA also has a number of democratic process/natural justice issues relating to the Bill.

Lack of consultation over Bill

- 33 First, it is clear that the Bill has been progressed without any input from key stakeholders such as local authorities, infrastructure providers, iwi or organisations such as the RMLA and New Zealand Planning Institute. In this regard, the following comment from the Quality Assurance Panel on page 4 of the RIS must be highlighted:

“There has been no public consultation on the proposals which means that the potential consequences identified in the RIS are not fully understood. The Panel wishes to particularly highlight the lack of consultation with local councils, which may pose implementation risks for the policy proposals in this paper, and a broader risk to the relationship between central and local government.”

- 34 The RMLA shares those concerns. In this regard, it is noted that the Bill is cutting across the established processes of resource management reform, which has been undertaken in good faith by councils, communities, government entities, the business sector and individuals. The Bill’s potential to direct urban outcomes, and thus effectively bypass the core resource management statutes, has already been noted.

Insufficient Consideration of the Bill

- 35 Second, the rush and timing of the Bill raises further disquiet. A Bill with wide ranging implications has been released not only without any consultation, but also with only a very short response time – for both submitters and the Environment Committee. The RMLA is concerned that the time provided for response by submitters and Committee consideration is not proportionate to the far reaching and significant changes to existing urban environments, and individual urban communities, resulting from the MDRS (and NPSUD) intensification directives.
- 36 Further, the Bill’s rushed release compares poorly with the approach adopted for resource management reforms. The Randerson Review process had solid – and balanced – expertise, high levels of expert input, rigorous debate and has afforded opportunity for significant stakeholder engagement at multiple stages in the process. This has provided the opportunity for Parliament to be able to draw from New Zealand’s combined knowledge base. By contrast,

the only assessment offered for this Bill is a cost-benefit analysis, and there has been no opportunity for clarification or peer review.

- 37 Further, the truncated select committee process means submitters will have limited ability to produce their own expert evidence and detailed analyses such that these process deficiencies are unlikely to be remedied.

Removal of public participation

- 38 Third, as drafted, the Bill will significantly curtail public participation in resource management processes, by both removing appeal rights and the need for many resource consents. Both will substantially reduce the role and influence of communities, generally referenced as democratic process.
- 39 No provision for appeal rights for a plan change process again raises significant natural justice concerns, as were identified with the previous “Streamlined Planning Process” introduced via the 2017 Amendment Act. The introduction of yet another alternative planning process to the RMA (i.e. the ISPP) also increases the cost and complexities of participation in resource management processes and is a further barrier to participation. There also appears to be no justification for introducing the ISPP and removing appeal rights, other than “the need for speed” and desire to avoid what the RIS describes as “lengthy appeals processes”.
- 40 However, a careful assessment of the AUP hearings process, for example, does not justify such concerns, particularly where the Environment Court is concerned. Of the 67 appeals filed with the Environment Court in September 2016 following notification of decisions on the AUP, 48 were resolved or withdrawn (often as a result of Court-facilitated mediation) by the end of 2017. Seven more appeals were similarly disposed of by June 2018. The Court issued decisions on 11 of the 12 remaining appeals by June 2018, at the latest. The only remaining appeal is on hold, awaiting the determination of High Court proceedings.
- 41 Given the limited scope of appeals that required any hearing time before the Environment Court, the vast majority of the AUP was therefore able to become operative within just over a year from appeals being filed. RMLA does not consider that in the context of the combined plan for Aotearoa’s largest city, this time frame constitutes anything near a “lengthy delay”. This is particularly so in the context of the improvement in planning outcomes that are delivered through the appeals process.
- 42 It is accepted that a very small number of the AUP’s provisions are still under appeal – but these relate to appeals in the High Court and beyond. They are not the result of any delays at Environment Court level. In general the Environment Court as a specialist jurisdiction is well placed for the speedy resolution of appeals. There is a risk that wholesale removal of appeal rights may see more judicial reviews of Council decisions, which (by contrast to addressing merits in the Environment Court) are typically lengthy and expensive.
- 43 The RMLA accordingly strongly supports the retention of appeal rights to the Environment Court, including under the Bill’s proposed ISPP. In this regard, there is a real risk that the Bill’s proposed process will seriously undermine public participation in the decision-making process, giving rise to issues of natural justice. The lack of appeal rights combined with the directive and very permissive nature of the MDRS promulgated by central government rather than through community participation will significantly undermine the current ability of a community to have a say about local environmental outcomes anticipated in RMA plans. This is contrary to the fundamental principles of the RMA and it does not represent either good planning practice or due legal process.
- 44 The Bill is not a piece of relatively minor legislation, with a purpose of ‘tidying up’ things. It is a major piece of legislation because it has major consequences for urban policy, and our cities, which will provide for over three-quarters of New Zealand’s population growth into the long term. As a matter of natural justice, those communities must have adequate opportunity to

participate in the planning instruments that will have such a fundamental impact on every aspect of their everyday lives. There is no justification for that opportunity to be removed, or the role of the judiciary in facilitating that participation to be usurped by the executive, as the Bill proposes.

Immediate effect of MDRS standards

- 45 Fourth, clause 10 of the Bill proposes to amend section 86F of the RMA, to provide that the MDRS will not only have immediate legal effect, but be treated as operative (and any previous rule as inoperative), from the time it is notified. This proposal is both entirely unprecedented in any previous planning legislation and significantly undemocratic.
- 46 Effectively, it means that landowners will be able to rely on (and develop in accordance with) the plan changes by which the MDRS are introduced, before submissions on those plan changes are even made, let alone heard and determined. That includes, for example, the provisions regarding what qualifying matters are present, and where. For Auckland at least, the issue of qualifying matters is certainly going to be particularly contentious.
- 47 What is to be done if, for example, a plan change is notified which applies the MDRS to a particular area, because no qualifying matters are considered to be present. But several local residents submit on the plan change, challenging that interpretation and arguing that there are relevant qualifying matters in respect of that area. Those submitters are successful – but in the meantime, their neighbours have started construction in reliance on the MDRS? Are the neighbours to then pull down such construction they have completed? This could result in some very unsatisfactory outcomes.

Economic rationale for the Bill

- 48 RMLA is concerned that the economic rationale for the Bill is poor. Our initial assessment shows that adopting different assumptions and methods which more closely represent how cities and land markets work produces quite different outcomes for growth and the mix of costs and benefit mixes.
- 49 Of particular note, the claimed ‘failure’ of the AUP, which is presented as a key reason why the MDRS Bill is required at all, and with such urgency, is not supported by the evidence of Auckland’s performance.
- 50 In our assessment, the evaluation of the Bill – the cost and benefit analysis – has limitations in scope and methodology. Of particular note, the core method used to assess likely housing outcomes is a significant departure from the evaluation methods required for the NPSUD, and relies instead on a highly simplified approach. The NPSUD approach offers much sounder assessment of housing capacity and sufficiency, and is being implemented through the HBA process.
- 51 Other specific concerns regarding the cost-benefit analysis used to support the Bill relate to the following:
- a. Inconsistent treatment of with-MDRS and without-MDRS futures;
 - b. Apparent omission of zoning change effects on property value uplifts;
 - c. Lack of recalibration to account for city-wide market readjustment of capacity changes;
 - d. An assumed major down-turn in population growth without MDRS;
 - e. Lack of calibration to the current economy structure; and
 - f. Reliance on a highly simplified notion of the ‘expected’ city form and function.
- 52 While we note that some concerns may be resolved through consultation, others are quite fundamental. They accordingly require significantly more assessment and consideration, before

changes as significant and wide-reaching as those proposed in the Bill are enacted, without any robust assessment of their potential effects.

Likely Outcomes

- 53 The MDRS provisions are likely to see unintended outcomes. There is obvious conflict with the objectives of the NPSUD with its focus on housing development around centres and transit hubs, as the MDRS will instead favour development in outer areas, not the inner suburbs. This is because lower property values in outer areas will mean the gains from intensification will be relatively higher, while larger site sizes and lower existing density there will mean intensification is easier logistically.
- 54 The more dispersed development within cities, and reduced potential to intensify in inner areas and around centres, can be expected to see higher infrastructure costs, including because of reduced opportunity to realise economies of scale where intensification is concentrated rather than dispersed.

SUBMITTER DETAILS

- 55 The RMLA seeks an opportunity to be heard in support of this submission.



Signature of Sally Gepp, President on behalf of the Association for Resource Management Practitioners

Date: 16 November 2021

Address for Service: RMLA, PO Box 89187, Torbay, Auckland 0742

Telephone: 027 272 3960

Email: karol.helmink@rmla.org.nz

Contact Person: Karol Helmink