

The Government's RM (Enabling Housing Supply) Amendment Bill

Local Government New Zealand's submission on the Government's Bill proposing to amend the Resource Management Act 1991 to rapidly accelerate the supply of housing where the demand for housing is high.

November 2021

We are. LGNZ.

LGNZ is the national organisation of local authorities in New Zealand and all 78 councils are members. We represent the national interests of councils and promote the good governance of councils and communities. LGNZ provides advocacy and policy services, business support, advice and training to our members to assist them to build successful communities. Our purpose is *to be local democracy's vision and voice* and our vision is *to create the most active and inclusive democracy in the world*.

Introduction

Local Government New Zealand (LGNZ) thanks the Government for the opportunity to submit on its *Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill* (the Bill).

We are concerned about the short timeframe for consultation that could impact the feasibility and workability of the proposed policies. At the same time, LGNZ acknowledges there is a housing crisis that is a matter of urgency. LGNZ recommends the Government carefully consider feedback from the local government sector to ensure Ministers and government officials can provide expedient guidance on the pathway forward and revise operational aspects of the policies where needed to ensure they will be effective in enabling housing supply where the demand for housing is high.

Planning reform is needed to enable affordable housing

As New Zealand's local government peak body, LGNZ has prepared high-level sector input for the Government's consideration. We agree with the Government that the planning system is a contributing factor to the scarcity of land for housing supply, including choice in the market within urban areas. We also appreciate that bold action is required to improve housing affordability.

The local government sector is aware of the role planning plays in enabling housing supply, which is a key

reason why councils have long called for reform of our resource management system. That reform is now finally underway. In March 2021, the sector also called on the Government to exercise its stewardship obligations to ensure system settings and central government participation enable sufficient and responsive investment in infrastructure to support more planning that would theoretically enable an increase in housing supply.

Funding reform needs to accompany planning reform

However, our sector remains concerned that the current institutional settings, funding and financing framework and available toolkit of council funding and financing tools related to infrastructure do not sufficiently serve our current and future challenges. This is especially so when considering the infrastructure investment demand created by the proposed Medium Density Residential Standards (MDRS) across our cities. Creating central government funds – for example, the Housing Acceleration Fund (HAF) – are a welcome short-term reprieve but will not be enough without complementary measures. One-off funds are not a sustainable solution to our infrastructure funding challenges, which the Bill exacerbates. A step change in planning requirements necessitates a step change in our infrastructure funding and financing system.

How to pay for infrastructure is a long-standing challenge that successive policy reforms (National Policy Statement for Urban Development Capacity, National Policy Statement for Urban Development, and the Resource Management reform) have chosen to ignore. This is again being under-considered in the intervention proposed by the Bill and its supporting evidence. We would remind the Environment Committee that one of the reasons why councils have used planning as a handbrake on development is because they have sought to constrain infrastructure investment to fit their funding and financing envelope over their planning period. Removing the planning constraint, as the Bill does, is a necessary first step but it is not sufficient in and of itself to unleash the residential development boom sought.

In our view the cost-benefit analysis supporting the Bill has not sufficiently explored the infrastructure costs that the Bill will impose on cities. That is largely because it has overly limited its focus to direct costs, the estimated development contributions and infrastructure growth charges, and other indirect infrastructure charges that are passed onto ratepayers.

It has not examined the costs imposed by the broader system in which infrastructure investment decisions take place. For example, the National Policy Statement for Freshwater Management has introduced hard freshwater environmental limits (E.coli, nitrogen, phosphorous etc) that metropolitan councils will have to meet. Should the planned increase of population in an area be likely to increase pollution attributes over and above these bottom lines as a result of higher urban density, it will require additional investments in major infrastructure elsewhere in the system to enable this development (such as stormwater network and wastewater treatment plant upgrades). These infrastructure investments tend to take a long time to plan, gain consent, and fund (let alone build), which drags on the responsiveness of the system and is not considered anywhere in the cost benefit analysis. Taken at face value, the evidence supporting the Bill seems to assume that if developers and communities make the funds available for infrastructure investment through development contributions this activity will automatically and instantly occur frictionlessly. As illustrated in the example, this is very much not the case.

Nor does the analysis consider the political economy risks to funding infrastructure, whereby existing residents opposed to increased density use democratic processes to resist development. This is an existing problem that

the Bill is trying to fix (Nimbyism and the weaponisation of planning rules) but by only focussing on planning reform the likely result is that the anti-development focus will shift to the political economy surrounding infrastructure funding. This is not an insignificant risk, given how highly leveraged Tier 1 cities currently are, and how oversubscribed available funding is likely to be now and into the medium term.

This is why LGNZ has long argued for planning reform to be pursued in tandem with funding and financing reform. The Bill is a missed opportunity in this regard, particularly as successive Governments have shown an unwillingness to consider system-wide funding and financing reform. If we continue to rely on the public purse, either at the local or central government level, to pay for growth related infrastructure, growth will never pay for growth. Good steps have been made in this regard recently, specifically the introduction of the Infrastructure Funding and Financing Act, but in the absence of urgent refinements to strip out high transaction costs, is likely to only cater to a very few bespoke large-scale projects that don't come around very often in New Zealand.

System stewardship still absent

The Government is currently progressing major reform programmes in three waters service delivery (drinking, waste and stormwater) and resource management that propose to significantly reshape the landscape of New Zealand's institutional settings and structures for provision of infrastructure. This has led to the Review into the Future for Local Government. However, an overarching strategy that integrates planning, infrastructure supply and institutional settings and structures is much needed.

While LGNZ is not opposed to the proposals of the Bill, the policies and requirements focused on the planning systems do not appear strategically coordinated with other cross-cutting reform efforts – many of which circle around long-standing issues about how we plan, fund and deliver infrastructure, public goods and housing. The Government needs to take responsibility for stewarding the reform efforts as a coherent whole.

We acknowledge the need for, and have called for, a range of reforms to streamline planning practices, including adjacent but critical legislative architecture governing our investment practices and the supply of infrastructure, including local government's funding and financing framework.

The Government's Regulatory Impact Statement appropriately identifies a range of barriers that work counter to markets being able to deliver the volume or kind of supply we need. These barriers include planning constraints but are not limited to planning. More importantly, barriers also cover New Zealand's institutional and system settings and structures that govern the supply of infrastructure, including central government functions related to the supply of local public goods, as well as the low productivity and capacity in the construction industry, among others.

Summary

Overall, our view is that the Government's approach appears overly focused on the planning system. While the Government is right in addressing bottlenecks in the planning system, the introduction of the Bill appears hasty and one-dimensional. It presents a missed opportunity to lead in consultation with the local government sector and coordinate interventions across a number of relevant areas that contribute to lack of supply. Yes, a step change is needed, but this requires Government to progress any large scale and fundamental reforms in a

coordinated fashion to ensure the strategy is coherent and aligned across Government. It is not just about institutional structures and planning, but also about how our funding and financing framework – and the underpinning institutional settings – can drive investment in ways more responsive to local needs as well as national interests.

Our key response to the Government's Bill is that increasing development capacity is important but will not on its own be enough to drastically increase supply while at the same time maximising the benefits of urban development and minimising the costs urban growth imposes. We agree that streamlining the planning system and enabling much more development capacity is a necessary precursor but must be complemented by interventions designed to address other even more important barriers to increasing housing supply (see RIS p.5). It is critical that the risks of fast-paced amendments with untested policies be mitigated by doubling down on informing the proposal with the operational expertise of the local government sector, to ensure implementation of the policies is feasible (see RIS, p.3-4).

Our submission is broken into comments on proposed outcomes and principles followed by comments on key themes and areas of inquiry. We recommend that the Environment Committee take our views in concert with specific councils' and council groups' comments. This will ensure their comments on how the proposed approach can be best implemented at an operational level is reflected alongside our high-level input. We urge central government officials to seriously consider our submission alongside those submissions that contain more technical expertise. Finally, where we are silent on a matter, this should be taken as deferral to those with more insight, rather than acquiescence.

Comments on key themes and areas

In reviewing the Government's Bill and supporting evidence base, we focus on the following key themes and areas. Some require immediate attention by the Minister for the Environment and government officials.

1. The lack of consultation with councils and other stakeholders risks feasibility of processes and other aspects of implementation, as well as unintended consequences.
 - a. **Guidance/comment:** A key concern we have with the approach taken by the Government is that the Bill was developed in isolation and was undertaken without input from those with operational and technical expertise, namely councils. The policy development process usually allows for this operational expertise to be considered through the Select Committee process, but the truncated timeframes mean submitters have not been able to fully consider the impacts. As a result, there is a significant risk that the policies and processes proposed will encounter implementation challenges on the ground. We would encourage officials to coordinate with the Tier 1 councils to obtain technical input, help with implementation aspects or refining policies.
2. Strains the broader relationship between central and local government, especially following other reforms where a partnership approach has resulted in top-down decisions and without consultation with the sector.
 - a. **Guidance/comment:** A long-standing weakness of New Zealand's public governance is that policy development tends happens centrally in Wellington and insufficiently engage with how policy is operationalised and practiced at the coal face. Central government and local

government have acknowledged this weakness and have been increasingly working together in partnership to address this systemic flaw, as seen in the Three Waters Reforms, Future for Local Government, and RM reform initiatives. These joint initiatives are driving better outcomes by combining the national policy and system stewardship perspective of central government with the local operational expertise and experience of councils. The unilateral nature of how the Bill was developed puts that partnership at risk (we note the only reviewing agencies of the RIS were MfE, HUD and the Treasury - none of which are operational/delivery agencies). We note that the review panel of the RIS itself (see p.4) has pointed out that there is broader risk to the relationship between central and local government. We strongly suggest that further housing policy development (particularly in the areas of planning and infrastructure funding and financing reform) be developed in partnership with affected councils to address avoidable blind spots and operational challenges.

3. A key concern the Bill seeks to address is speed of implementation, and hence introduces a new intensification streamlined planning process (ISPP) with changes coming into legal effect at the point of notification. It is unclear how this streamlining will be enabled within the existing system.
 - a. **Guidance/comment:** A key goal of the Bill is to deliver density faster under the current system by making use of the ISPP. However, clear operational guidance is urgently needed if the desired efficiency outcomes are to eventuate. This is because there are numerous legislatively-mandated practices that councils must comply with that could unintentionally frustrate efforts to streamline the system, but that must nevertheless be complied with. For example, the Bill requires councils to notify the new proposed plan changes by August 2022. However, as noted in the RIS, these plan changes are not likely to become operative until at least two years after this as councils will follow the standard Schedule 1 process in the RMA to update their plans. These processes provide a two-year window to complete submissions, hearings, and release decisions following notification of proposed plans, and development cannot commence until appeals to these plans are resolved. This specifically highlights why it is important for central government and local government to work closely together to co-develop guidance on how to deliver on the outcomes sought. The new ISPP will specify a high-level approach or process, with expectations from the Minister for the Environment. There is a need for Government to outline as soon as possible the Minister for the Environment's expectations around the ISPP. More broadly, in our view the unintended consequences discussed above build the case for a systemic reform programme over piecemeal and ad hoc interventions.
4. There is risk that the problem definition of why the planning system is restrictive is overly focused on the planning system. In our experience, decisions in the planning system tend to be driven by community preference and available funding within the confines of the law - not by preference alone.
 - a. **Guidance/comment:** Government appears to be overly focused on the RMA and planning, but changes to the key issues for supply originate elsewhere. It is also important to acknowledge that funding is just one barrier to enabling residential urban development. Other challenges include the capacity, capability and sophistication of the development and construction sectors, construction costs, financing barriers, as well as the immaturity of spatial planning

practice in New Zealand among others. We need the Government to address all these key barriers, which is not just planning. It is worth re-emphasising that planning constraints reflect constraints elsewhere in the system. We acknowledge that work on these matters is being considered by other Government departments, but there does not appear to be a joined-up plan, but rather a sequence of individual workstreams that do not meaningfully connect.

5. Wider urban outcomes problem due to lack of infrastructure funding and financing solutions and support (see RIS, para 22b, p.10; and paras 69-70, p.19)
 - a. **Guidance/comment:** The CBA and RIS acknowledge that there is real risk that radical increases in development within cities will create costs (negative externalities) in our cities due to increased density, especially congestion, air quality and some other issues due to loss of amenity. Some of these costs are real productivity drains and cannot be mitigated or offset without significant investment in infrastructure to integrate growth through intelligent urban development that reduces the costs of increased density. But this requires off-balance sheet infrastructure funding solutions. In light of this being out of sight, the RIS and CBA have factored in unavoidable costs and netted these off. In our view the CBA still stacks up – but only if the costs don't escalate. There is real need for off-balance sheet infrastructure funding solutions and investment to offset costs of higher densities.

We hope that this response is useful in your deliberations. LGNZ staff are happy to continue to work with the Government in relation to the Bill. If you would like to engage further, please contact Grace Hall, LGNZ Policy Manager, at grace.hall@lgnz.co.nz.