

Proposed addition to the Cabinet paper: *Bringing forward upzoning of land for housing to remove minimum floor area and balcony requirements*

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| Security Level | In Confidence | MfE Priority: | Urgent |

| | Action sought: | Response by: |
|---|---|--------------------|
| To Hon Dr Megan Woods, Minister of Housing | Agree to the recommendations in this briefing | Midday 13 May 2021 |
| To Hon David Parker, Minister for the Environment | | |
| To Hon Nanaia Mahuta, Minister of Local Government | | |
| To Hon Phil Twyford, Associate Minister for the Environment | | |

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|---|----------------------------------|
| Actions for Minister's Office Staff | Return the signed report to MfE. |
| Number of appendices and attachments Nil | N/A |

Ministry contacts

| Position | Name | Cell phone | 1 st contact |
|---|----------------|------------|-------------------------|
| Manager, Ministry for the Environment | Rebecca Lloyd | s 9(2)(a) | |
| Director, Ministry for the Environment | Lesley Baddon | s 9(2)(a) | ✓ |
| Manager, Ministry of Housing and Urban Development | Jessica Ranger | s 9(2)(a) | ✓ |
| Deputy Chief Executive, Ministry of Housing and Urban Development | Brad Ward | s 9(2)(a) | |

Proposed addition to the Cabinet paper: *Bringing forward upzoning of land for housing to remove minimum floor area and balcony requirements*

Purpose

1. Minister Twyford has proposed amending the Resource Management Act 1991 (RMA) to remove minimum floor area and balcony requirements from district plans. This briefing seeks your agreement to add this proposal to the Cabinet paper: *Bringing forward upzoning of land for housing*.

Key messages

Minimum floor area and balcony requirements add costs to development and could be removed by amending the RMA

2. Minimum floor area and balcony requirements are a form of council regulation that add to the total cost of development, particularly for apartments at the lower end of the market. Removing these requirements will increase housing supply by enabling more homes to be built at cheaper price points. Council have used the RMA to regulate for matters that would more appropriately be dealt with under other legislation (such as the Building Act 2004).
3. Amending the RMA to bring forward upzoning for housing presents an opportunity to remove minimum floor area and balcony requirements from district plans. However, this will add to the already significant obligations on councils anticipated by the upzoning Cabinet paper. The proposal to remove minimum floor area and balcony requirements is therefore included as an option for your consideration.
4. The proposal is that councils would not be able to specify minimum floor area or balcony requirements for new developments in district plans either using rules, resource consent conditions or other criteria. However, developers would still be able to size dwellings as desired and choose to provide balconies as they see fit. Councils may also choose to impose other controls to achieve indoor amenity, such as window size or opening requirements, or increase sunlight access requirements, which may have lesser cost implications.
5. Removing minimum floor area and balcony requirements could operate in a similar way to the provisions in the RMA that prohibit blanket tree protection rules (ie, rules protecting every tree of a certain type within a district) and the National Policy Statement on Urban Development (NPS-UD), which requires the removal of minimum car parking requirements.
6. The proposal would have the most impact in tier 1 urban environments, due to the nature of development in urban areas and the increased demand for higher density development in these areas. Like the prohibition on blanket tree protection rules, it would operate across the country.
7. Table 1 below provides a short analysis of the pros and cons of removing minimum floor area and balcony requirements in district plans.
8. There would not be significant additional drafting work to add this proposal to the previously agreed package of changes to the RMA, but it is not included in the current Regulatory Impact Statement.

Table 1: Pros and cons of removing minimum floor and balcony area requirements

| Pros | Cons |
|--|--|
| <ul style="list-style-type: none"> • Reduces costs for new, particularly smaller, apartments • Reduces regulatory barriers to building affordable apartments • Allows individuals to trade-off private indoor and outdoor space with access to public open space and other public amenities • May reduce crowding in existing dwellings, including: <ul style="list-style-type: none"> ○ staying in parental home ○ sharing rooms ○ temporary accommodation (including emergency housing, cars, garages and vans) • Reduces double regulation (absolute minimum sizes already regulated under building system) • Increases competitiveness of inner-city rental market (primarily in central Auckland) • Allows for market to better match demographic makeup | <ul style="list-style-type: none"> • Size of smaller apartments built by developers may reduce to sizes that impact wellbeing or the functionality of apartments • Increased pressure on public open space in inner-city locations • Risk of poor perception of apartments encourages community opposition to intensive development • Any removal of balcony requirements may further discourage apartment uptake • Smaller apartment sizes could adversely impact accessibility, particularly for mobility impaired persons who are typically on lower incomes • Balconies are often used for clothes drying (despite common body corporate rules prohibiting it); no balconies may result in additional cost and energy requirements from using electric driers or by drying clothes inside, which has health implications |

Where do these rules apply and what are the requirements

9. In our five largest urban environments, where apartments are enabled, minimum balcony rules apply in Auckland, Waikato, Waipā, Christchurch City, Porirua, Upper Hutt, Hutt City, Tauranga, Western Bay of Plenty and Selwyn. The size requirements for balconies are between 5m² and 10m².
10. Minimum floor area rules apply in Auckland, Hamilton, Waipā, Christchurch City and Western Bay of Plenty. Tauranga is proposing these rules in their city centre zone. The minimum floor area requirements for studio units are between 30 – 35m², and 40 – 50m² for one-bedroom units. Some councils also have requirements for two and three-bedroom units.
11. Wellington City does not impose either requirement, but design guides have the effect of controlling these matters.
12. A balcony is not required in Auckland where the unit is at least 35m² for studio units and 50m² for one or more-bedroom units.
13. In Christchurch City, the minimums are more prescriptive for two and three-bedroom units. The minimum floor area is 35m² for a studio, 45m² for a one-bedroom unit, 60m² for a two-bedroom unit and 90m² for three or more-bedroom units.

Regulation contained in other statutes

14. Other legislation regulates aspects of buildings including:

- Building Act 2004¹ – sets out standards for sizes of rooms for particular uses to ensure they are safe and useable
- Residential Tenancies (Healthy Homes Standards) Regulations 2019 – has requirements around ventilation, insulation, moisture and draught stopping
- Housing Improvement Regulations 1947 – requires a space or room of at least 14m².

There is a body of evidence supporting the removal of these requirements

15. Grimes and Mitchell surveyed property developers active in the Auckland market, for their 2015 report *Impact of Planning Rules, Regulations, Uncertainty and Delay on Residential Property Development*. This report was prepared for Motu Economic and Public Policy Research and focuses on the 'affordable' part of the market. The report estimated that balcony size requirements increased the costs of an apartment by \$40,000 to \$70,000 per unit, and minimum floor area requirements result in fewer low-cost dwellings being developed.²
16. A 2014 report prepared by MRCagney (commissioned by Auckland Council) examined the economic impacts of rules on minimum apartment and balcony areas in the proposed Auckland Unitary Plan (PAUP). This report found that the rules would have two negative economic impacts. "First, people who would have chosen to live in small apartments will be negatively affected by the reduced availability of this housing type. Second, the reduction in the availability of housing will in turn increase demand for other types of housing, causing prices to rise across the board."³
17. The MRCagney report found no evidence to support the contention the PAUP minimum floor area and balcony rules would improve residential amenity and wellbeing. Grimes and Mitchell did not attempt to value the benefits of the planning rules and regulations and instead highlighted that this is an issue more appropriately considered by local and central government.
18. The Productivity Commission, in their 2015 report *Using Land for Housing*, recommended councils remove minimum floor space and balcony requirements for apartments from district plans. The report found the requirements created costs unlikely to be outweighed by any benefits.

Previous proposal to remove constraining urban development

19. When the National Policy Statement on Urban Development (NPS-UD) was being prepared more directive intervention in resource management plans was considered. This included a proposal to remove rules, such as minimum floor area and balcony requirements, that constrain urban development. Submissions were sought on these matters, but few, particularly substantive ones were received either for or against this proposal. Implementation of the NPS-UD was prioritised and the proposal to develop more directive intervention was not progressed.

¹ The purpose of the Building Act 2004 includes ensuring: people who use buildings can do so safely, buildings have attributes that contribute appropriately to the health and wellbeing of those who use them, people can escape in a fire, buildings are designed, constructed and able to be used in ways that promote sustainable development.

² Grimes A, Mitchell I. 2015. *Impacts of planning rules, regulations, uncertainty and delay on residential property development*. Motu Working Paper 15-02. Wellington: Motu Economic and Public Policy Research.

³ MRCagney. 2014. *The economic impacts of minimum apartment and balcony rules*. Prepared for Auckland Council. Auckland: MRCagney.

Other barriers to small dwellings

20. Some banks in New Zealand are hesitant to lend against small dwellings. Either they do not lend at all or require significantly higher deposits than for larger properties (eg, some require a 50 per cent deposit).

Optional text for the Cabinet paper: Bringing forward upzoning of land for housing

21. You have an option to include text in the Cabinet paper: *Bringing forward upzoning of land for housing* to propose amending the RMA to remove minimum floor area and balcony requirements from district plans. We have drafted the following text for you to review prior to including it in the Cabinet paper should you wish to do so:

We want to reduce the costs of development by removing expensive regulation. Currently, councils can impose minimum floor area and balcony requirements for new dwellings. These requirements increase the costs of apartments and limit the supply of affordable apartments. We propose to remove minimum floor area and balcony requirements from district plans across New Zealand. This will mean councils would not be able to specify minimum floor area or balcony requirements for new dwellings. However, developers would still be able to size dwellings and choose to provide balconies as they see fit.

To implement this change we are proposing an amendment to the RMA to prevent councils from having rules requiring floor areas or balconies to be of a minimum size.

22. If you would prefer, another option is to state in the Cabinet paper that you would like to remove minimum floor area and balcony requirements and seek delegated authority to make this decision at a later date.

Risks

23. Officials have only carried out a limited analysis of the impacts of removing minimum floor area and balcony requirements. However, there is a reasonable amount of data on this issue and its costs are readily available. The impact on district plans containing these requirements will need to be considered and an approach to removing these rules developed.
24. Officials consider removing these requirements will reduce development costs and enable more houses to be built. However, we have concerns about the quality of what might be built. We will need to work through this if the proposal progresses.
25. There may be a perception that nationwide regulation is being used to address what is primarily an issue for Auckland. While the removal of these requirements will have the most significant impact in Auckland, it will also reduce development costs in Christchurch, Tauranga and the Hutt Valley.
26. There may be a risk that this proposal is perceived as a ban on balconies or a push towards enabling poor quality development. This can be mitigated through clear communication and guidance to local authorities on implementation, including on providing sufficient access to public or shared open space. There may be a high level of interest about the proposal at select committee.
27. Under the RMA, there is a significant test to pass to demonstrate that removing the ability to regulate these matters is in accordance with the purpose of the RMA. Removing the ability to regulate balconies and minimum floor area (and rules like them) poses a challenge to the intent of the RMA. This is because the purpose of the Act (sustainable management) requires that councils be able to set limits that avoid, remedy or mitigate adverse effects. There needs to be a clear sustainable management objective and evidence to any action under the RMA. In addition to the requirement to manage adverse effects, there is the risk

that a strong legal argument could be made that this type of national direction could be invalid on the grounds of inconsistency with the purpose of the RMA.

28. No other agencies have not been consulted on this this proposal.

Next Steps

29. If you agree to include in the Cabinet paper a proposal to amend the RMA to remove minimum floor area and balcony requirements from district plans, officials will include the draft text in the Cabinet paper. Officials will also make other minor amendments for consistency throughout the paper.

30. This paper is being lodged with the Cabinet Office on 14 May 2021. The intention is that this paper will be considered by the Cabinet Economic Development Committee on 19 May 2021.

Recommendations

31. We recommend that you:

a. **Either agree** to include in the Cabinet paper: *Bringing forward upzoning of land for housing* a proposal to amend the Resource Management Act 1991 to remove

i. minimum floor area requirements from district plans

Yes/No

ii. minimum balcony requirements from district plans

Yes/No

b. **Or agree** to indicate to Cabinet that you would like to remove minimum floor area and balcony requirements from district plans and seek delegated authority to make this decision

Yes/No

Signature



Jessica Ranger
Manager, Urban Development
Regulatory Tools, Te Tūāpapa
Kura Kāinga
**Ministry for Housing and
Urban Development**



Lesley Baddon
Director, Urban and
Infrastructure
Ministry for the Environment

Hon Dr Megan Woods
Minister of Housing

Date

Hon David Parker
Minister for the Environment

Date

Hon Nanaia Mahuta
Minister for Local Government

Date

Hon Phil Twyford
Associate Minister for the Environment

Date