

Consents

MDH requires a building consent and may require a resource consent under the Resource Management Act (RMA), which can affect both construction time and costs.

URBAN GROWTH and demand for housing has placed many New Zealand regions under pressure to promote more urban development.

Medium-density housing (MDH) is considered an attractive solution for national and local planners. It increases the supply of housing, especially in more affordable markets, and the number of houses built on a given land area.

Many larger councils in New Zealand have provisions for developing more MDH in their districts. However, MDH construction, as with all new builds, needs to be consented before construction can begin. Under the Resource Management Act (RMA), MDH requires a building consent and may require a resource consent. Both processes can impact on construction time and costs for developers.

MDH resource consents

Resource consents are permits that allow an individual or organisation to use or take water, land (including subdivision) or coastal resources. They also allow the discharge of water or wastes into air or water or on to land. A land use consent may be needed for particular activities, such as extending or constructing a new building. A subdivision consent is needed to legally divide land or buildings for separate ownership – for example, into new lots or sections, or as a unit title or cross lease.

Class of activity

Whether a resource consent is required, and what type of consent is required, depends on the type of activity and how it is classified in the local district or regional plan. District plans classify activities that require a resource consent as either:

- controlled
- restricted discretionary
- discretionary
- non-complying.



The council must grant a resource consent for a controlled activity (with a couple of exceptions) but can refuse to grant a resource consent for other activities depending on the circumstances.

Timing

The time taken to complete the planning and resource consent process can vary considerably, depending on the number of planning and resource management steps involved. Several key factors influence the amount of

time these steps take including:

- size of the development
- scope of changes during the process
- current planning rules
- existing land use and style of surrounding housing
- quality of information provided in the application
- planners' opinions
- degree of earthworks required
- availability of infrastructure.



Growth pressure in the main centres has contributed to urban intensification for several decades.

Local controls

District plans made under the RMA for the main urban centres typically include zones for activities and manage the bulk, location and type of development taking place. Relevant territorial rules and resource consent requirements stipulate site coverage, building height and other bulk and location requirements.

Current land-use zoning in the main centres typically has intensive and medium to high-rise housing centred around the CBD, CBD fringes and metro-centres. MDH may also be permitted in the inner suburbs or further out from the CBD.

Each council follows its own process when developing and reviewing district plans.

Auckland

In 2016, the Auckland Unitary Plan replaced the former Regional Policy Statement and 13 district and regional plans. The partially operative plan represents a significant change in the rules that govern how Auckland City Council controls the use of land and resources. It also affects what applicants need to consider when seeking resource consent for MDH projects.

Once fully operative, the Unitary Plan will allow more MDH to be built as of right in many parts of the inner suburbs, including:

- up to 4-storey apartments in the Terraced House and Apartment Building Zone
- up to 3-storey terraces in the Mixed Housing Urban Zone
- up to 2-storey terraces in the Mixed Housing Suburban Zone.

Until then, the rules governing what activities may or may not need a resource consent are provided in the Proposed Auckland Unitary Plan.

Wellington

The Wellington City District Plan sets goals for housing intensification and encourages residential development within the existing footprint of the city's urban area.

The plan describes medium-density residential areas – tightly defined areas where high-quality MDH will be actively encouraged. The provisions of the plan allow for medium-density residential development that is 2–3 storeys high.

It also makes special provision for “new multi-unit developments” within Wellington's Inner and Outer Residential Areas and Coastal Edge. Because of the emphasis on maintaining existing character and amenity in these areas, it states that Council will encourage new multi-unit developments on windfall sites and undeveloped residential-zone properties. Windfall sites are loosely defined as relatively large properties located within an established residential area but have never been developed for residential purposes.

Christchurch

The 2010/11 earthquakes prompted change to many local government processes in Christchurch. A current review of the Christchurch City Plan and the Banks Peninsula District Plan is scheduled to be completed in late 2017.

Property zones are affected by the review, and the Proposed Replacement District Plan contains information on new zones and the corresponding rules. The final plan will probably identify new areas suitable for intensification.

In the meantime, MDH developments are already encouraged in Christchurch's inner suburbs through a package of residential intensification rules introduced into the current Christchurch City Plan in December 2013.

These rules mandate land-use policies to help communities (including housing and businesses) rebuild and recover following the earthquakes. The rules promote infill housing and intensification as a way of quickly increasing the availability of accommodation without changing the overall character of residential areas.

Challenges

There is a view in the building industry that the consent process is a barrier to overcome or cost to carry and some believe consent processes have a significant negative impact on their ability to deliver MDH.

BRANZ research indicates that these perceived problems with MDH consents fall into one of three categories:

- The legal framework (including timing).
- How industry understands and implements the legal requirements.
- How competent government and industry are to comply with the legal requirements.

Notification

When coming to a decision on a resource consent application, the consent authority may decide to notify the application based on the level of non-compliance with the district plan. Notification may include drafting an officer's report and a recommendation as to whether or not a hearing is required. It may decide on no notification, limited notification or public notification. If the resource consent is granted, the authority may set consent conditions.

The requirement for some developments to be notified is an important consideration for developers when it comes to planning and designing MDH. It can significantly impact on the time it takes to issue a consent.

Poor applications

The RMA requires councils to act in certain ways, particularly when it comes to the more complex nature of MDH projects. However, councils do not believe developers (or their agents) always give sufficient regard to the consent application process.

Councils say that delays in processing resource consents for MDH are often a result of developers not properly demonstrating that they were aware of the information

requirements and had fully met them. When additional information is required, this extends the total time taken for a consent to be processed. Given the complexity and scale of most MDH applications, an extended processing time is, according to a number of developers, the most common scenario.

Councils consider more effort should be put into the pre-application process, including clarifying aspects of the development at pre-application meetings.

Design uncertainty

Conversely, some industry stakeholders believe councils have too much discretion with the consent process, resulting in confusing and uncertain design requirements, notifications and conditions. A lack of clarity and uncertainty about the time it will take to receive a consent can have significant cost implications for the industry.

Some developers and their agents stated that they are often uncertain how many requests for further information or design changes they will receive. Each further request increases the length of time required to gain consent.

MDH building consents

The New Zealand Building Code is the primary driver of the building consent process. It prescribes functional requirements for buildings and the performance criteria that buildings must achieve in relation to their intended use.

Nationally, building consents for MDH developments have risen considerably since 2011. In December 2016, Statistics New Zealand published data for MDH building consents over the previous 12-month period. It shows:

- 20.0% increase in townhouses, flats and units
- 2.8% increase in retirement village units
- 9.1% decrease in apartments.

Performance requirements

Compliance with the performance requirements of the Building Code can be achieved in one of three ways:

- Acceptable Solution – a prescriptive set of design and construction options that, if followed, will result in a building that meets the performance requirements of the Building Code.

- Verification Method – a suite of tests or calculations that a design must be shown to comply with in order to meet the performance requirements of the Building Code.
- Alternative Solution – requires a designer to prove that their alternative method will meet the performance requirements of the Building Code. (Once accepted by the building consent authority and consented, it becomes an Alternative Solution.)

Building consent authorities

A building consent must be issued by a building consent authority (BCA) where the design and detailing follows a deemed-to-comply solution or where a BCA is satisfied that the proposed construction will be Code-compliant.

Granting of a building consent confirms that an MDH development, if built according to the information provided in the consent application documentation, will comply with the performance requirements of the Building Code. If a building is constructed in accordance with the consented documents, a BCA must issue a Code Compliance Certificate.

A BCA must process building consent applications within 20 working days. It can, however, request further information where insufficient information has been supplied. This pauses the countdown until the BCA receives the relevant information.

Restricted building work

Restricted building work is design and building work that is crucial to the integrity of the building, such as the primary structure, external moisture management and fire design.

Restricted building work applies to any building that:

- contains two or more residential units (apartments) or residential facilities (foyer, laundry, garage and so on)
- does not contain commercial units or facilities
- is below 10 m high (typically 3 storeys).

Restricted building work on houses and small-to-medium apartment buildings can only be carried out or supervised by a licensed building practitioner.

Challenges

Building consent processes for MDH can create challenges for councils, designers and developers because of uncertainty around design requirements and the way the consent process is implemented.

Building Code uncertainty

Many believe that Code-related challenges stem from the fact that the Acceptable Solutions were not necessarily designed with the current range of MDH in mind. The issues mostly relate to the Acceptable Solutions for:

- clauses C *Protection from fire* – Acceptable Solutions C1–C7 are considered overly complex, confusing and expensive to comply with
- clause E2 *External moisture* – E2/AS1 does not apply to mid-rise MDH buildings over 10 m
- clause G6 *Airborne and impact sound* – G6/AS1 is considered out of date and does not go far enough to protect consumers.

The lack of clarity about how to apply the Building Code, Acceptable Solutions and Verification Methods often leads architects and designers towards alternative methods. Any alternative method must be supported by documentation (to support the compliance of the proposed solution) following one of the defined compliance paths such as expert opinion. This can be a costly exercise, and councils are often unwilling to approve applications for consent due to uncertainty about the potential risks.

Process problems

In its 2012 Housing Affordability report, the Productivity Commission identified a number of problems with the building regulatory framework. Several relate to the MDH building consent process, including:

- slow and uncertain building regulations and inspection services
- no clear pathway for Alternative Solutions to become Acceptable Solutions
- difficult to retain sufficient capability within BCAs
- poorly applied charges for infrastructure.

BRANZ studies indicate that some of these issues continue to hamper the development of MDH in New Zealand.

Disclaimer: The information contained within this publication is of a general nature only. BRANZ does not accept any responsibility or liability for any direct, indirect, incidental, consequential, special, exemplary or punitive damage, or for any loss of profit, income or any intangible losses, or any claims, costs, expenses, or damage, whether in contract, tort (including negligence), equality or otherwise, arising directly or indirectly from or connected with your use of this publication, or your reliance on information contained in this publication.

ISSN 2463-672X

Copyright © BRANZ 2017. No part of this publication may be photocopied or otherwise reproduced without the prior permission in writing from BRANZ.