

Briefing

Briefing 1: Applying a minimum density residential zone – design			
Date:	9 April 2021	Security level:	In Confidence
Priority:	Medium	Report number:	BRF20/21030900 (HUD) 2021-B-07777 (MfE)

Action sought		
	Action sought	Deadline
Hon Dr Megan Woods Minister of Housing	Agree to establish a minimum density residential zone as proposed	13 April 2021
Hon David Parker Minister for the Environment	Note these decisions are required to enable officials to draft further briefings, prior to a draft Cabinet paper being produced.	
Hon Nanaia Mahuta Minister of Local Government		
Hon Phil Twyford Associate Minister for the Environment		

Contact for discussion			
Name	Position	Telephone	1 st contact
Lesley Baddon	Director, Ministry for the Environment	0211738357	✓
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Jessica Ranger	Manager, Ministry of Housing and Urban Development	s 9(2)(a)	✓

Other agencies consulted
Treasury, Department of Internal Affairs

Minister's office to complete

<ul style="list-style-type: none"> a. Noted b. Seen c. Approved d. Needs change e. Not seen by Minister f. Overtaken by events g. Declined h. Referred to (specify) 	<p>Comments</p>
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Date returned to HUD:

7. We consider this process could create workable plans significantly increasing development capacity. Although in the timeframes allowed to provide this advice, we cannot provide a firm estimate on the amount of feasible development capacity the proposal would produce.
8. Following the decisions in this paper, officials will prepare a further briefing on this preferred approach covering the exemptions process and the nature of the panel's decision-making.

Recommended actions

9. It is recommended that you:
 - a. **Agree** Ministers seek Cabinet approval via DEV Cabinet committee (17 May) to amend the RMA to provide for the establishment of a default minimum residential density zone in tier 1 urban environments (Auckland, Hamilton, Tauranga, Wellington and Christchurch) *Agree / Disagree*
 - b. **Note** officials do not recommend the Auckland Unitary Plan mixed housing urban zone (AUP MHU zone) be incorporated directly into other plans as it is currently written, as this would be insufficiently enabling and unworkable in diverse plan structures *Noted*
 - c. **Agree** the content of the required zone be outlined in statutory criteria, and it reflect the enabling components of the AUP MHU Zone, with changes made to improve outcomes and plan structure requirements *Agree / Disagree*
 - d. **Agree** a new process for establishing a default minimum density zone be established, including steps for councils to prepare their zone chapter, before an independent decision-making panel *Agree / Disagree*
 - e. **Agree** new independent decision-making panels be established along with a process setting out how they would consider and decide on the substance and spatial application of a minimum density residential zone *Agree / Disagree*
 - f. **Agree** councils be provided some discretion over plan format and some substantive matters to allow more enabling outcomes or provide for unique circumstances *Agree / Disagree*
 - g. **Agree** the requirements apply to all existing residential zones, unless zones are already more enabling, or specified exemptions apply (noting that a future briefing will address the process and use of exemptions) *Agree / Disagree*
 - h. **Agree** the legislation provide the option of expanding the requirement to some or all tier 2 urban environments. *Agree / Disagree*
 - i. **Note** officials plan to provide two further briefings containing the decisions necessary to draft a Cabinet paper. *Noted*
 - j. **Note** officials have not yet tested the proposal to the extent needed to provide more than initial advice about the potential of the proposal to deliver the intended outcomes sought. *Noted*

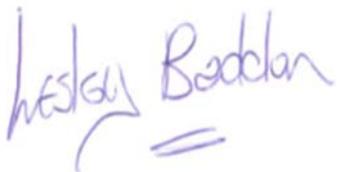


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Hon Dr Megan Woods
Minister of Housing

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Hon David Parker
Minister for the Environment

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Hon Nanaia Mahuta
Minister of Local Government

..... / /

Hon Phil Twyford
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Background

10. In February 2021, Ministers Woods, Parker, Mahuta and Twyford asked officials to consider several options for upzoning land for housing. HUD and MfE officials provided a briefing [BRF20/21030895 (HUD) 2021-B-07699 (MfE)] addressing these issues on 12 March.
11. Ministers met on 17 March to discuss the paper and agreed to progress:
 - a. Applying a minimum density residential zone in tier 1 urban environments (Auckland, Wellington, Tauranga, Hamilton and Christchurch)
 - b. Amending the Streamlined Planning Process (SPP) to bring forward implementation of the National Policy Statement on Urban Development (NPS-UD)
 - c. Enabling a targeted form of hyperlocalism (an aide memoire was provided on hyperlocalism [BRF20/21030903 (HUD) 2021-B-07804 (MfE)] on 29 March.
12. This is the first of a series of briefings providing analysis and options on the design of legislation for these initiatives. Diagram 1 below shows where this briefing sits in the timeline for this work.

Diagram 1: Timeline of policy development



13. This paper specifically covers initial decisions relating to:
 - a. the option to incorporate the Auckland Unitary Plan Mixed Housing Urban Zone (AUP MHU Zone) directly into plans
 - b. an alternative proposal to direct councils to make changes and allow limited council discretion to respond to direction
 - c. where the zone would apply
 - d. the appropriate legislative vehicle and timing.
14. Two further papers will cover off remaining decisions for a Cabinet paper (expected to be lodged on 13 May). We expect the following matters to be covered off in subsequent papers:

Paper	Issues covered
Briefing 2: Bringing forward the Implementation of the National Policy Statement on Urban Development Intensification Policies (Streamlined Planning Process)	<ul style="list-style-type: none"> • Background information on the Streamlined Planning Process (SPP) • Core policy decisions on using the SPP to bring forward implementation of the intensification policies of the NPS-UD • Role of the Minister for the Environment • Interaction with minimum residential density zone policy
Briefing 3: Applying a Minimum Density Residential Zone – Decision-making and Exemptions.	<ul style="list-style-type: none"> • Membership and nature of decision-making of independent panel • Process and nature of exemptions • Consultation and public input • Ability (or not) of councils to protect character

15. Note Briefing 3 builds off the recommendations in this paper.

Use of a minimum density residential zone

16. The application of a minimum density residential zone has the potential to significantly increase development capacity, particularly in areas where there is a high likelihood of a supply response. Shifting to a zone with no minimum lot sizes, increasing height allowances, and putting in place more permissive rules will allow more homes to be built.
17. A rough estimate by officials found approximately 60,000 additional sites for houses would be enabled by a default minimum density residential zone in the highly desired inner-city suburbs of Auckland alone (over and above the Auckland Unitary Plan).
18. However, the minimum density residential zone needs to be well-designed. It needs to include appropriate checks and balances due to the override of existing processes, reduction in public participation, changes to private property rights and reduced local involvement in decision-making.

Designing a minimum density residential zone

19. Officials have considered how to best design a minimum density residential zone, taking into account both its potential impact and its workability. Ministers indicated the AUP MHU Zone could be used as the model for the minimum density residential zone.
20. Officials have considered two options:
 - a. incorporating the AUP MHU directly into existing plans
 - b. a modified approach allowing councils some discretion to identify the best way to comply.

Directly incorporating the AUP MHU zone

21. There are certain issues with the AUP MHU zone making it difficult to incorporate into another district's zone.
22. The main driver for applying a minimum density residential zone as default across our high growth urban areas is to increase development capacity and in turn enable greater housing supply. Officials are concerned the AUP MHU has some limitations that would impact on the ability to increase housing supply:
 - a. It is **insufficiently enabling**. In its current form the zone may limit development capacity and therefore housing supply. Although the zone has standards allowing three houses to be built up to three storeys high, other standards within the zone (such as height in relation to boundary²) mean in most cases three storeys cannot be built. **Annex C** illustrates this point. Other district plans have more enabling standards. For example, there are very few side and rear yard setback requirements in district plans in the Wellington region. As a result, overall development capacity could be reduced if the AUP MHU zone is directly incorporated.
 - b. The AUP MHU zone is **complex**, making it harder for councils and developers outside of Auckland to understand and comply with. For example, it has prescriptive sunlight, outlook, open space and minimum dwelling size standards are often not in place outside of Auckland (see **annex D** for a list of these zones). The zone also includes

² Height in relation to boundary creates an invisible envelope buildings must be contained in. It is measured vertically from ground level at the boundary (height varies between zones). From that point you must measure inwards at an incline of 45 degrees (this is termed the recession plane) to create the envelope.

non-residential provisions, which are not necessary for achieving housing supply (i.e. rules for campgrounds).

- c. The AUP MHU zone allows **more neighbour input / notification** than some other zones around New Zealand. This would mean some applications would take longer to process than applications in zones requiring more limited notification.
23. There would also be issues with incorporating the zone directly into plans:
- a. The AUP MHU zone would result in **compatibility** issues when applied to district plans outside of Auckland. This would create inconsistencies between the AUP MHU zone chapter and the rest of the District Plan. This is likely to make the amended plan difficult to use for both councils and developers. In addition, many other district plans include transport, noise and subdivision rules within their residential zones which are not provided for in the AUP MHU zone and would therefore create a vacuum relating to these matters.
 - b. The AUP MHU is **inconsistent with the National Planning Standards**, as it was written prior to these standards coming into force. Some councils have already implemented the National Planning Standards and those plans will need to be written consistently with the standard when they meet the NPS-UD intensification deadline in August 2022.
24. While there has been consultation on the zone, it was only within Auckland and in the context of its proposed use at the time. It has not been tested with other affected communities.
25. For these reasons we do not propose the AUP MHU zone be directly incorporated into plans.

Proposed approach

26. A modified approach would enable more development capacity to be opened up, while still enabling legislation to be introduced on the same timeline as option one. It draws on the AUP MHU zone while addressing the issues identified above. This approach includes an independent panel, as you have proposed.
27. The approach would involve:
 - a. Central government designing the core components of the minimum density residential zone.
 - b. Requiring specified councils to replace all relevant residential zoning in their plan with a minimum density residential zone.
 - c. Specifying statutory minimum requirements for the zone via mandatory objectives, policies, rules and standards.
 - d. Councils having some discretion, and a short and specified process, to prepare a zone meeting the requirements.
 - e. An independent panel process to assess conformity with the legislation, and make final decisions, taking public feedback into account.
28. The benefits of the proposed approach compared with the AUP based zone is that it would enable local context to be taken into account, reduce the override of local democracy and decision-making and allow for zone provisions to be adapted to existing plans.
29. This process would create workable plans that could significantly increase development capacity, allowing houses to be built in desirable areas as soon as the process is complete. We also expect the process would be able to be implemented in a similar timeframe to the direct incorporation of the AUP MHU zone – as mapping the new zone to local conditions and identifying exemptions will be the most time intensive component in both scenarios.
30. Its elements are outlined in more detail below.

Government directs councils to prepare a minimum density residential zone

31. The legislation would require tier 1 councils to implement a minimum density residential zone. How each council does this would be determined by them, taking into account the layout and structure of their district plan. Councils could do this by modifying an existing zone, writing a new zone into an existing chapter in their plan, or by producing a new chapter.
32. The legislation would require development outcomes akin to the AUP MHU zone. To do this, it would set out criteria requiring a minimum density residential zone:
 - a. Allowing three-stories and three-units as of right, and
 - b. Overcoming overly restrictive rules by enabling
 - i. More permissive height in relation to boundary standards
 - ii. Smaller private outlook spaces (in comparison to the AUP MHU which requires a six-metre outlook space. This has been widely criticised by developers as being too large)
 - iii. Development closer to side boundaries by removing side yard requirements, as many inner-city sites are 10 metres wide which means 1 metre side boundary eliminates 20 per cent of the developable width
 - iv. Consents (when they are needed) to proceed on a non-notified basis (without neighbour approvals) because minor infringements of rules can significantly delay resource consents.
33. The zone would take precedence over overlays and precincts except when they are used for identified exemptions (this will be covered in briefing 3). Overlays and precincts are used in some district plans to vary a zone to provide special rules for local matters and matters of national significance. This includes natural hazards, and cultural and heritage exemptions.
34. We expect the statutory provisions defining the new zone requirements would need to include objectives, policies, activity statuses, public notification exemptions, development rules, and assessment criteria for resource consent applications. The nature of these provisions is listed in more detail in **annex A**. Some district wide objectives and policies may need to change outside the zone too.

Council prepares plan meeting requirements

35. The legislation would set out the process councils must take to develop their zone provisions and mapped locations. We expect this would involve:
 - a. The opportunity to identify exemptions, such as natural hazards. The criteria and process for identifying exemptions will be covered in our third briefing.
 - b. The need to engage with iwi authorities prior to public release of a plan change.
 - c. A short public input process.

Independent panel

36. An independent panel would work with councils to assess the extent to which the locally prepared zone conforms with the legislated requirements. This includes the written provisions and the appropriateness of exemptions applied.
37. We will cover decisions relating to the makeup of the independent panel and the nature of its decision-making discretion in our third briefing.

Where would the legislation apply?

Tier 1 urban environments or not

38. You have previously indicated the requirement to implement the new zone should apply to tier 1 urban environments (Auckland, Hamilton Tauranga, Wellington, and Christchurch). We support this policy as these urban areas are seeing some of the greatest growth pressures and would see the greatest supply response.
39. There is a strong case to having the option to apply the process to tier 2 urban environments.³ Many of these cities have serious housing pressures and limited greenfield land available to develop.
40. We do not, however, propose all tier 2 areas be required to implement a minimum density residential zone when legislation passes. There is a limited pool of appropriate people who can sit on the independent panel(s) and this is likely to be intensive work. Some areas may also have a more limited supply response.
41. Instead, we recommend the legislation provide the option to initiate the process for smaller cities. This could be achieved through a regulation making power. We expect the likelihood of a supply response would be the key criterion when considering whether to initiate the process for a given tier 2 urban environment.

Within urban areas

42. This policy will be most effective if it applies to all existing residential zones, unless zoning is already more enabling, or a specified exemption is identified. This would include land at the edges of urban areas as well as in newly zoned greenfield residential areas. The zone should also apply to future residential zones.
43. A process for identifying exemptions will be required. It will continue to safeguard matters of national importance (section 6 of the Resource Management Act 1991). Limits will need to be placed around the ability to identify exemptions, such as existing special character areas which often prevent new housing in inner suburbs. This will be addressed in the third briefing.

Timeframes and legislative vehicle

Legislative vehicle

44. Officials consider these changes should be progressed through an amendment to the RMA. An RMA amendment bill would be faster and more straight forward to draft than a stand-alone Bill. This is because a separate purpose and Treaty clause would not be required.
45. Officials are in the process of considering whether some of the statutory provisions would better suit regulations (e.g. the detailed requirements of the zone). Regulations could be developed while the legislation is being developed and be ready to be made once the amendment bill passes.

Implementation Considerations and Risks

46. To date, this proposal has been developed in a short timeframe and without in-depth analysis, testing or consultation. As with any significant intervention into a complex system, this proposal could lead to unintended consequences, and will have significant impacts on private property rights. It will be important to ensure the proposals do not distract resources

³ As identified in the National Policy Statement on Urban Development – Whangārei, Rotorua, New Plymouth, Napier Hastings, Palmerston North, Nelson Tasman, Queenstown and Dunedin.

and attention from the RM reform programme and outcomes sought from NPS-UD implementation.

47. This can be mitigated to some extent by continuing to test the proposals at pace as they are developed, and in particular through technical testing and modelling.
48. There is a risk that, if not joined up with other initiatives aimed at achieving the same or similar outcomes, this proposal will be 'stranded'. This can be mitigated by ensuring that the proposal is well connected to and supported by other initiatives currently underway.

Consultation

49. A draft of this paper was shared with the Treasury and the Department of Internal Affairs.

Annexes

Annex A: Indicative provisions of the minimum density residential zone chapter

Annex B: Draft process steps for preferred option

Annex C: Height in relation to boundary - restrictions on achieving the maximum allowed height

Annex D: Core planning controls in district plans within tier 1 urban environments

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Annex A:

Indicative provisions of the minimum density residential zone chapter

Councils would develop the style and format of the new zone and would insert the mandatory provisions stipulated by central government. Five key sections which are standard for any zone chapter would be as listed below.

- a. **Objectives and policies** directly inserted as stipulated supporting the envisaged zone. Conflicting objectives and policies would be removed.
- b. **No need for resource consent:** Ensuring the activity status permits at least three units, and four or more (or more if a council chooses) would be subject to resource consent with discretion restricted to stipulated assessment criteria (see below). Other non-residential activities not affected – i.e. childcare, dairies etc – remain as specified by the current council plans, given they have no bearing on the amount of housing enabled.
- c. **Notification / public or neighbour input** would not be required when either
 - a. resource consent applications are needed for four or more dwellings where they generally comply with specified rules (building heights, height in relation to boundary)
 - b. Where certain rules are infringed (private outdoor courtyard / decks, unit sizes, fences, yards infringements)
- d. **Rules which allow for development:** Directly inserted or replacing numerical rule (height, building coverage, sunlight etc). Councils may choose more permissive rules, such as where the existing zone has a rule which is more enabling.
- e. **Assessment criteria** – insert specified assessment criteria into plans. To ensure intensive development is well-designed on a case-by-case basis, these may link back to the policies describe above.

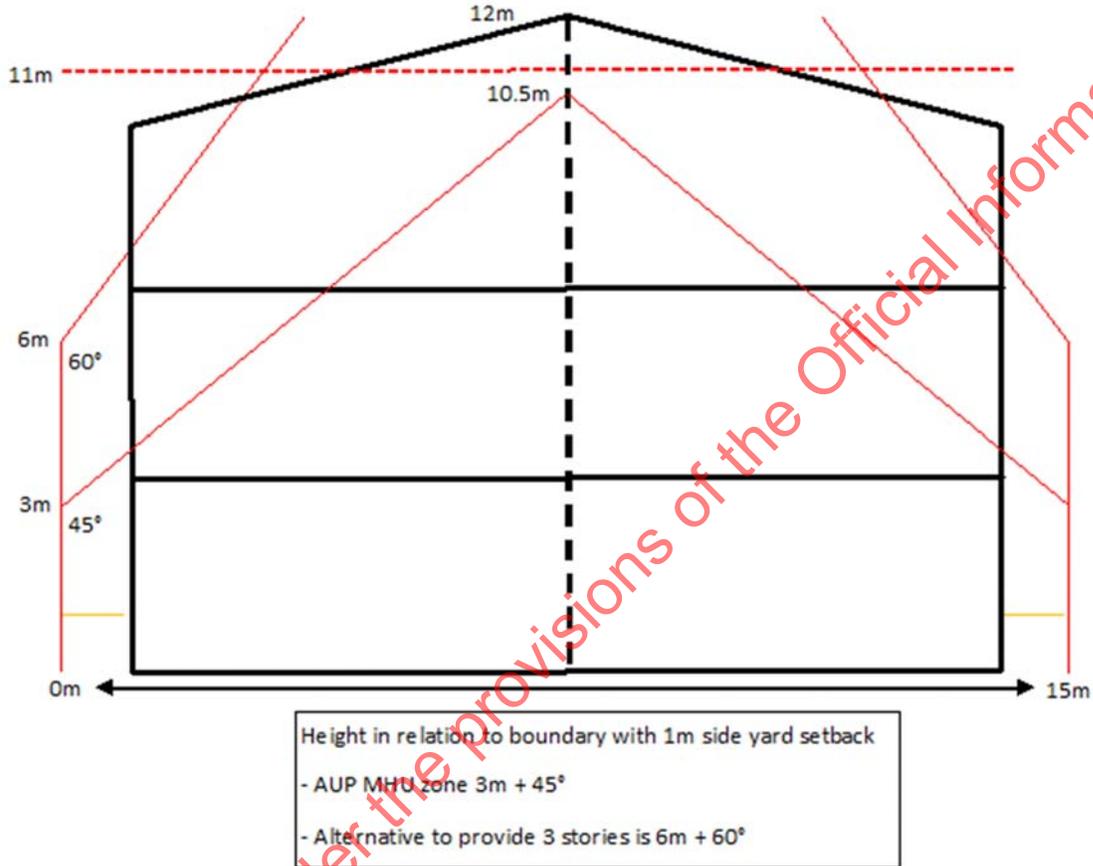
Annex B:**Draft process steps for preferred option**

Four months from passing of act to live zones		
Step	Description	Timeframe
List of mandatory provisions	Central government provides a list of provisions that must be incorporated into a minimum density residential zone	Available at Assent of act
Harmonisation within local plans	Local council incorporates provisions into the nearest equivalent zone from its district plan, or develops a new zone	Four weeks
Local iwi consultation	Local council consults with local iwi	Three to four weeks
Public input	Short public input – limited to how well it conforms with the intended provisions. Input must be in a short form.	Two weeks
Summary of input	Local council summaries input for panel	Two weeks
Hearing	Short hearing to hear from the council and submitters. Hearing could be limited to brief oral items within the points of the written input	Two to three weeks
Panel assessment	Independent panel assesses zone to ensure compatibility with stipulated provisions, taking public input into account	Two weeks
Decision	Panel notifies final decision which takes full effect (no appeals)	Five days subsequent

Annex C:

Height in relation to boundary - restrictions on achieving the maximum allowed height

The diagram below shows the effect the height in relation to boundary control has on overall height. In the AUP MHU zone, the control creates a 'tent' with a recession plan measured three-metres above the ground with 45-degree recession plane projected inward. This means, on a typical 15-metre-wide site as shown below, the third storey would not be possible, despite the zone allowing for three storeys as a permitted activity. As a comparison a six-metre plus 60-degree plane is also shown to demonstrate what is needed to effectively provide for the third level.



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Annex D: Core planning controls in district plans within tier 1 urban environments

Comparison of the medium density provisions in tier 1 council plans

Provisions	Councils												
	Auckland	Hamilton			Christchurch			Wellington				Tauranga	
	Auckland Unitary Plan - Mixed Housing Urban Zone	Hamilton District Plan – Residential Intensity	Waikato District Plan (Proposed) - Residential Zone	Waipa District Plan - Residential Zone	Christchurch District Plan - Residential Medium Density	Selwyn District Plan (Proposed) – General Residential Zone	Waimakariri District Plan – Residential 1 Zone	Wellington City District Plan – Medium Density Residential	Porirua District Plan - Medium Density Residential	Hutt City District Plan – Plan Change 43, Residential and Suburban Mixed Use	Kapiti Coast District Plan - Medium Density	Tauranga District Plan - City Living Zone	Western Bay of Plenty District Plan - Medium Density Zone
Dwellings permitted	3	All require consent	1	1 principal and 1 secondary dwelling	2	1	1	1	2	2	1	2	1
Building Height	11m	12.5m	7.5m	9m	11m	8m	8m	10m - Kilbirnie 8m - Johnsonville	11m	8m	8m	9m	9m 12m Waihi
HIRB	3m + 45°	Only applies to boundaries adjoining special character	2.5 + 37°	2.7m + 45° (North) 2.7m + 28° (South)	2.3m + 55°	2.5m + 55°	2.5m + 44°	2.5m + 45°	3m + 55° (north) 3m + 45° (east, west, south)	2.5m + 45°	2.1m + 45°	2.7m + 55° (north) 2.7m + 45° (south)	2m + 45°
Setbacks	Front – 2.5m Side/Rear – 1m	Between 3m – 8m depending on road Side/rear – 1.5m	Front – 3m Indicative road – 13m Side/rear – 1.5m	Front – 4m Side/rear – 2m	Front – 2m garage setback 4.5m – 8m Internal boundary – 1m	Front – 4m Side/rear – 2m	Front – 2m	Front – 3m Side/rear – 0	Front – 2m Side/rear – 1m	Front – 3m Side/rear – 1m	Front – 4.5m Rear – 3m 1 side – 3m All other – 1m	Front – 3m Side/rear – 1.5m	Front – 3m Side/rear – 1.5m
Building Coverage	45%	50% Hamilton East – 45%	40%	40%	50%	40%	50%	50%	45%	30%	40%	Up to 500m ² – 55% Over 500m ² – 45%	40%
Landscaped area/permeable surface	35%	Front, corner, through – 40% Entire site – 20%	-	40%	20%	-	-	-	40%	30%	30%	-	20%
Impervious coverage	60%	-	-	-	-	-	-	-	-	-	-	70%	-
Outdoor living space <i>(d) – dimension</i> <i>(GF) – ground floor</i> <i>(UF) upper floor</i>	20m ² + 4m (d) (GF) 5-8m ² + 1.8m (d) (UF)	35m ² (varies with typology)	80m ² + 4m (d) (GF) 15m ² + 2m (d) (UF)	60m ² + 5m (d)(GF) upper floor includes 8m ² + 2m (d)	(Studio, 1 bed) 16m ² – (2+ bed) 30m ² + 4m (d) (GF) 16m ² + 1.5m (d) (UF)	-	-	20m ² + 3m (d)	20m ² + 4m (d) (GF) 5m ² + 1.8m (d) (UF)	50m ² + 4m (d) (GF) 10m ² + 2m (d)	30m ² + 2.5m (d)	50m ² + 4x3m (d) (GF) 12m ² (UF)	25m ² + 4m (d)
Fencing and walls	Front – 1.4m Rear/side – 2m	1.8m	1.2m 1.8m if permeable	-	1.8m – 50% permeable 1m – not 50%	Front – 1m Rear/side – 1.8m	1.5m	2m	Front – 1.2m Side/rear – 2m	-	Front 1.8m Side/rear – 2m	-	Front 1.2m

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<i>Minimum dwelling size</i>	Studio – 30m ² 1+ bed – 45m ²	Studio – 35m ² 1 bed – 45m ² 2 bed – 55m ² 3+ bed - 90m ²	-	-	Studio - 35m ² 1 bed - 45m ² 2 bed - 60m ² 3+ bed - 90m ²	-	-	-	-	-	-	-	1 bed – 40m ² 2 bed – 60m ² 3 bed – 80m ² 4+ bed – 95m ²
<i>Outlook space</i>	Principal living - 6m x 4m Principal bed -3m x 3m All other room - 1m x 1m	3m internal separation	-	-	-	-	-	-	-	-	-	-	-

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