



## Briefing

### Briefing 2: Bringing forward the National Policy Statement on Urban Development intensification outcomes – Streamlined Planning Processes

<b>Date:</b>	13 April 2021	<b>Security level:</b>	In Confidence
<b>Priority:</b>	Medium	<b>Report number:</b>	BRF20/21030902 (HUD) 2021-B-07819 (MfE)

Action sought		
	Action sought	Deadline
Hon Dr Megan Woods <b>Minister of Housing</b>	<b>Agree</b> to establish a predetermined streamlined planning process for all tier 1 councils to use for intensification plan changes, required to implement the National Policy Statement on Urban Development  <b>Note</b> these decisions are required to enable officials to draft further briefings, prior to a draft Cabinet paper being produced	16 April 2021
Hon David Parker <b>Minister for the Environment</b>		
Hon Nanaia Mahuta <b>Minister of Local Government</b>		
Hon Phil Twyford <b>Associate Minister for the Environment</b>		

Contact for discussion			
Name	Position	Telephone	1 <sup>st</sup> contact
Lesley Baddon	Director, Ministry for the Environment	021 173 8357	✓
Rebecca Lloyd	Manager, Ministry for the Environment	022 013 6139	
Brad Ward	Deputy Chief Executive, Ministry of Housing and Urban Development	s 9(2)(a)	
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

<input type="checkbox"/> Noted <input type="checkbox"/> Seen <input type="checkbox"/> Approved <input type="checkbox"/> Needs change <input type="checkbox"/> Not seen by Minister <input type="checkbox"/> Overtaken by events <input type="checkbox"/> Declined <input type="checkbox"/> Referred to (specify)  <hr/>
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<b>Comments</b>    
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Date returned to HUD:

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# Briefing

## Briefing 2: Bringing forward the National Policy Statement on Urban Development intensification outcomes – Streamlined Planning Processes

**For:** Hon Dr Megan Woods, Minister of Housing  
Hon David Parker, Minister for the Environment  
Hon Nanaia Mahuta, Minister of Local Government  
Hon Phil Twyford, Associate Minister for the Environment

**Date:** 13 April 2021

**Security level:** In Confidence

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**Report number:** BRF20/21030902 (HUD)  
2021-B-07819 (MfE)

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### Executive summary

1. This paper recommends that councils are required to use a new Streamlined Planning Process (SPP) for plan changes to give effect to intensification policies in the National Policy Statement on Urban Development (NPS-UD). It also sets out why we do not recommend progressing changes to the legal effect of rules.
2. Our advice on 12 March 2021 proposed a package of emergency changes to the Resource Management Act 1991 (RMA) to accelerate intensification in urban environments (BRF20/21030895 (HUD) 2021-B-07699 (MfE)). As part of this package, there was a proposal to allow Ministers to initiate the SPP for intensification plan changes. You asked us to look into this option and asked for further advice on how the legal effects of rules provisions could be amended.
3. The SPP is a plan making process that can be tailored to the specific issues and circumstances of a plan change. It was designed to enable a faster planning process for urgent issues, or where there is a community need, as well as faster implementation of national direction. It enables expedient processes and limits appeal rights, meaning plan changes have effect sooner than the standard plan change process under the RMA.
4. The NPS-UD requires tier 1 councils to notify plan changes relating to intensification policies<sup>1</sup> by August 2022. If the policy decisions sought through this briefing are agreed to, these high growth councils will be required to use the new SPP for plan changes that give effect to these policies.

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<sup>1</sup> Policies 3 and 4 of the NPS-UD

## Recommended actions

5. It is recommended that you:
- a. **Note** on 17 March, Ministers Woods, Parker, Mahuta and Twyford agreed to progress policy work to accelerate intensification plan changes required by the National Policy Statement on Urban Development (NPS-UD) through a Streamlined Planning Process (BRF20/21030895 (HUD) 2021-B-07699 (MfE)) Noted
  - b. **Note** the NPS-UD requires intensification plan changes for tier 1 councils to be notified by August 2022 to enable minimum intensification levels around city and metropolitan centres and rapid transit stops Noted
  - c. **Agree** to instruct officials to develop a new process that tier 1 councils must follow for intensification plan changes. Agree/Disagree
  - d. **Note** the new process will meet the existing minimum Streamlined Planning Process (SPP) requirements including public notification, submissions and pre-notification consultation with Iwi, Ministers, and neighbouring councils Noted
  - e. **Agree** the current application process for councils to utilise the existing SPP process would be removed for the new process. Agree/Disagree



Jessica Ranger  
Manager, Te Tūāpapa Kura Kāinga –  
Ministry of Housing and Urban  
Development

13.1.4.12



Lesley Baddon  
Director, Urban and Infrastructure, Ministry  
for the Environment

13 / 04 / 2021

Hon Dr Megan Woods  
Minister of Housing

..... / ..... / .....

Hon David Parker  
Minister for the Environment

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Hon Nanaia Mahuta  
Minister of Local Government

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Hon Phil Twyford  
Associate Minister for the Environment

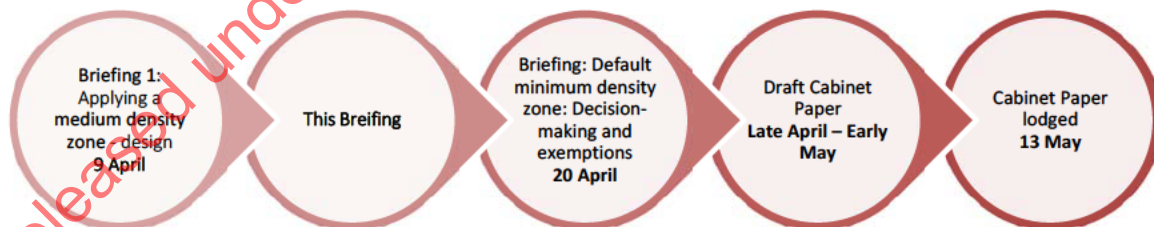
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## Background

### Ministers agreed to progress work to bring forward the implementation of the National Policy Statement on Urban Development (NPS-UD)

6. In February 2021, Ministers Woods, Parker, Mahuta and Twyford asked officials to consider several options for upzoning land for housing. Te Tūāpapa Kura Kāinga – the Ministry of Housing and Urban Development (HUD) and the Ministry for the Environment (MfE) provided a briefing (BRF20/21030895 (HUD) 2021-B-07699 (MfE)) addressing these issues on 12 March.
7. Ministers met on 17 March and agreed to progress:
  - a. applying a default minimum enabled 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).
8. This is the second briefing of series of three. It provides advice on the option to amend the SPP to bring forward implementation of the NPS-UD. It also provides further information on a proposal to change the legal effect of rules as requested by Ministers.
9. We consider that the benefits of policy proposals in this briefing could be significant. They will require councils to speed up plan change processes and enable plan changes to have an impact much sooner than through standard plan making processes. Increased development would be enabled faster in areas of high demand.
10. HUD and MfE officials provided the first briefing of this series on 9 April, and the third briefing will provide information for the remaining decisions for a Cabinet paper (expected to be lodged on 13 May). Diagram one below provides the timeline for policy development.

Diagram 1: Timeline of policy development



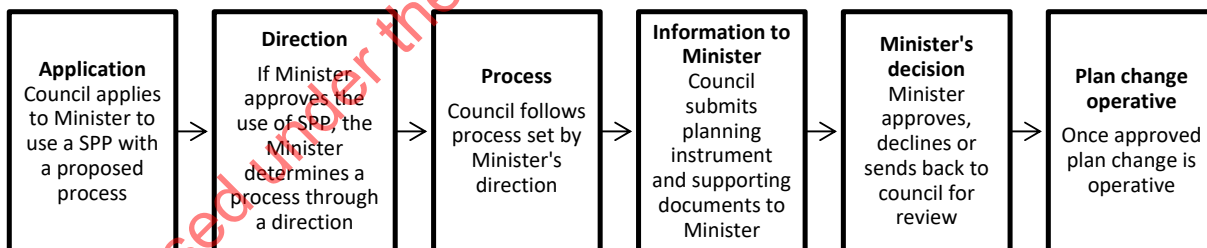
## The NPS-UD requires intensification plan changes

11. The NPS-UD requires tier 1 councils to publicly notify plan changes<sup>2</sup> to enable intensification in and around city centres and metropolitan centres by August 2022. The NPS-UD requires that plans enable a minimum building height of at least six storeys within a walkable catchment of rapid transit stops, the edge of city centre and metropolitan zones.
12. The NPS-UD identifies the fastest growing council areas and groups them into tiers. The tier 1 urban environments are in Auckland, Hamilton, Tauranga, Wellington, and Christchurch. These urban environments are those that are in the greatest need of urban intensification.

## Standard plan change processes will take too long

13. Although councils need to publicly notify intensification plan changes next year, they will still need to complete either the standard Schedule 1 plan change process under the RMA or apply to use and complete an SPP before these changes become operative.
14. The standard Schedule 1 process can take two years. If council decisions are appealed, and they often are, this can further delay a plan change and the housing supply it enables. This may not be until 2024 or later.
15. The SPP was introduced in 2017 to provide greater flexibility in planning processes. It was designed to enable a faster planning process for urgent issues, or where there is a community need, as well as faster implementation of national direction. It allows the plan change process and the associated timeframes to be tailored to specific issues and circumstances.
16. The SPP can enable expedient plan changes and has limited appeals. Councils apply to the Minister<sup>3</sup> to use SPP and the plan change process they want to follow. If approved, they carry out the plan change using the process approved by the Minister. The final decision to approve or decline the recommended plan change sits with the Minister. Diagram 2 below provides a simplified standard SPP. A more detailed diagram is attached as Annex A.

Diagram 2: Current SPP for plan changes



17. The Minister must include a 'statement of expectations' for SPPs, which sets out their expectations of the council through the process (e.g. consultation and communication requirements, and expectations for housing yields and density/choice outcomes).

<sup>2</sup> To implement policies 3 and 4 of the NPS-UD

<sup>3</sup> Responsible Minister, as defined in section 80B of the RMA means the Minister of Conservation in the case of coastal plans, the Minister for the Environment in every other case.

18. To date, there have been six SPPs. Five involved matters relating to implementing the National Policy Statement for Urban Development Capacity (replaced by the NPS-UD). The lessons learnt from these processes have informed the development of this policy.

### **Proposed changes to the SPP to enable faster intensification plan changes**

19. To faster enable the delivery of housing, we are proposing that the SPP could be used with some amendments to enable tier 1 intensification plan changes to have effect sooner than the standard Schedule 1 plan change process or a standard SPP.
20. Councils are currently able to apply to use SPP to implement national direction, but there are some process requirements that may be reducing the uptake of this tool. This includes the time it takes for local and central government to prepare and assess applications to use the SPP, and councils relinquish their usual role as the final decision maker on plan changes to the Minister.

### **We recommend tier 1 councils are required to use a new process for intensification**

21. We propose making a change to the Resource Management Act 1991 (RMA), so tier 1 councils are required to use a new process for implementing plan changes for intensification required by policies 3 and 4 of the NPS-UD, rather than the standard Schedule 1 process.
22. This change to the RMA will ensure that tier 1 councils implement the intensification policies in the NPS-UD. Plan changes will also become operative sooner, meaning intensive housing developments could occur sooner.
23. The standard SPP will be available for all councils for other types of plan changes. We recommend that tier 2 and 3 councils continue to use the current SPP for their intensification plan changes.

### **The new process will be less administrative and standardised**

24. We propose the new process for intensification has the following changes from the current SPP:
  - a. **Removal of the application process:** The upfront application process takes a significant amount of time and resource for local and central government, and the Minister. Given the intensification policies in the NPS-UD provide a directive basis for these plan changes, there is no longer a need for an application process.
  - b. **Developing a standardised set of process steps:** The standard SPP process is tailored to the specific issues and circumstances of the council. As these plan changes are focused on intensification and are guided by the NPS-UD, officials are looking at how to standardise the process for all councils. This will provide clarity and ensure consistency across the country. Given the significance of these plan changes, key considerations for officials include enabling public participation and early consultation with Māori and ensuring appropriate checks and balances. We propose that a statement of expectations will be set in the RMA for these plan changes.

The minimum requirements consideration of Treaty settlement legislation, Iwi participation agreements and mana whakahono a rohe agreements will remain.
  - c. **Having the council as decision-maker:** The current SPP has the Minister as the final decision-maker on plan changes. This is appropriate for that process as the Minister approves the use of the SPP by councils. Given tier 1 councils will automatically need to use the new process for intensification plan changes, we consider it is appropriate for the council to be the decision-maker on these changes. The NPS-UD sets out the

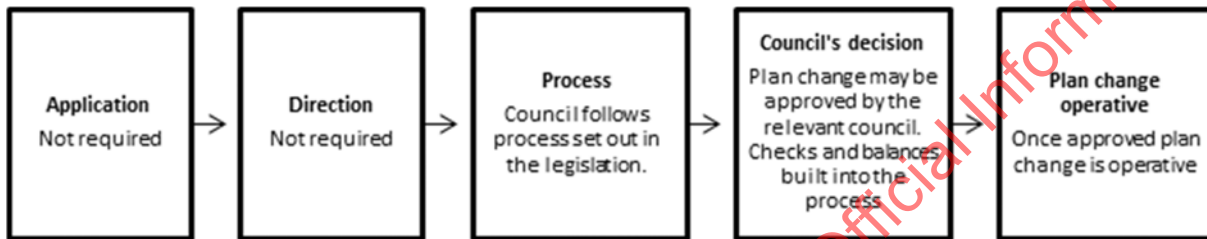
Government's expectations for intensification, so we anticipate the Minister's interests will be adequately addressed.

Officials will look at the best ways to ensure checks and balances are built into the new process, including the potential use of an independent hearings panel or independent peer review. We will also consider how they can have visibility over the plan changes and provide input into the decision-making process.

The Minister will still have existing powers<sup>4</sup> under the RMA to intervene if the plan change is inappropriate or does not meet the requirements of the NPS-UD.

25. Diagram three below shows the proposed SPP for intensification plan changes.

**Diagram 3: Proposed SPP for intensification plan changes**



### **We no longer recommend changing the immediate legal effect of rules**

26. Ministers asked for further information on potential changes to the immediate legal effect of rules. Most plan provisions do not have legal effect until the council releases its decisions on submissions and do not become fully operative until any appeals are resolved.
27. Currently, the only plan provisions that have immediate effect from public notification<sup>5</sup> relate to protecting specific resources (e.g. water, air, soil, or historic heritage). Councils can also apply to the Environment Court to make any plan provisions have effect from the time the plan change is notified.
28. We initially proposed changing the point at which plan objectives, policies and rules relating to implementing the NPS-UD have legal effect in our 12 March briefing (BRF20/21030895 (HUD) 2021-B-07699 (MfE)). We no longer recommend progressing with this change as the scope of the overall package proposed by Ministers is wider and includes a minimum enabled density residential zone. The effort needed for this change is no longer necessary, as the minimum density zone changes will have an effect before intensification plan changes are publicly notified. Therefore, housing supply will be enabled faster.

### **How this policy sits with the default minimum density residential zone**

29. Briefing one of this series ((BRF20/21030900 (HUD) 2021-B-07777 (MfE)) is seeking approval to require tier 1 councils to upzone their residential zone to a minimum enabled density residential zone. This will change the standard zone of most councils and provide new minimum density requirements.

<sup>4</sup> Existing powers to the Minister under the RMA (sections 25 and 25A) include that where a council is not exercising or performing its duties, the Minister can appoint a person(s) to carry out those duties.

<sup>5</sup> Section 86B of the RMA

30. NPS-UD intensification policies require more intensive development in key locations close to transport and employment. We consider that these two proposals complement each other.

### **Key considerations and risks**

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31. The requirement for the default minimum density zone is likely to precede intensification plan changes. This could result in some areas within tier 1 councils being upzoned twice in short succession, once to the default minimum density zone requirements and again to meet the intensification policies of the NPS-UD. This creates extra process for councils, communities, and developers.
32. As this proposal results in the mandatory removal of appeal rights across approximately 13 plan changes those who oppose this policy (and intensification in general) may pursue alternative legal avenues such as judicial review.

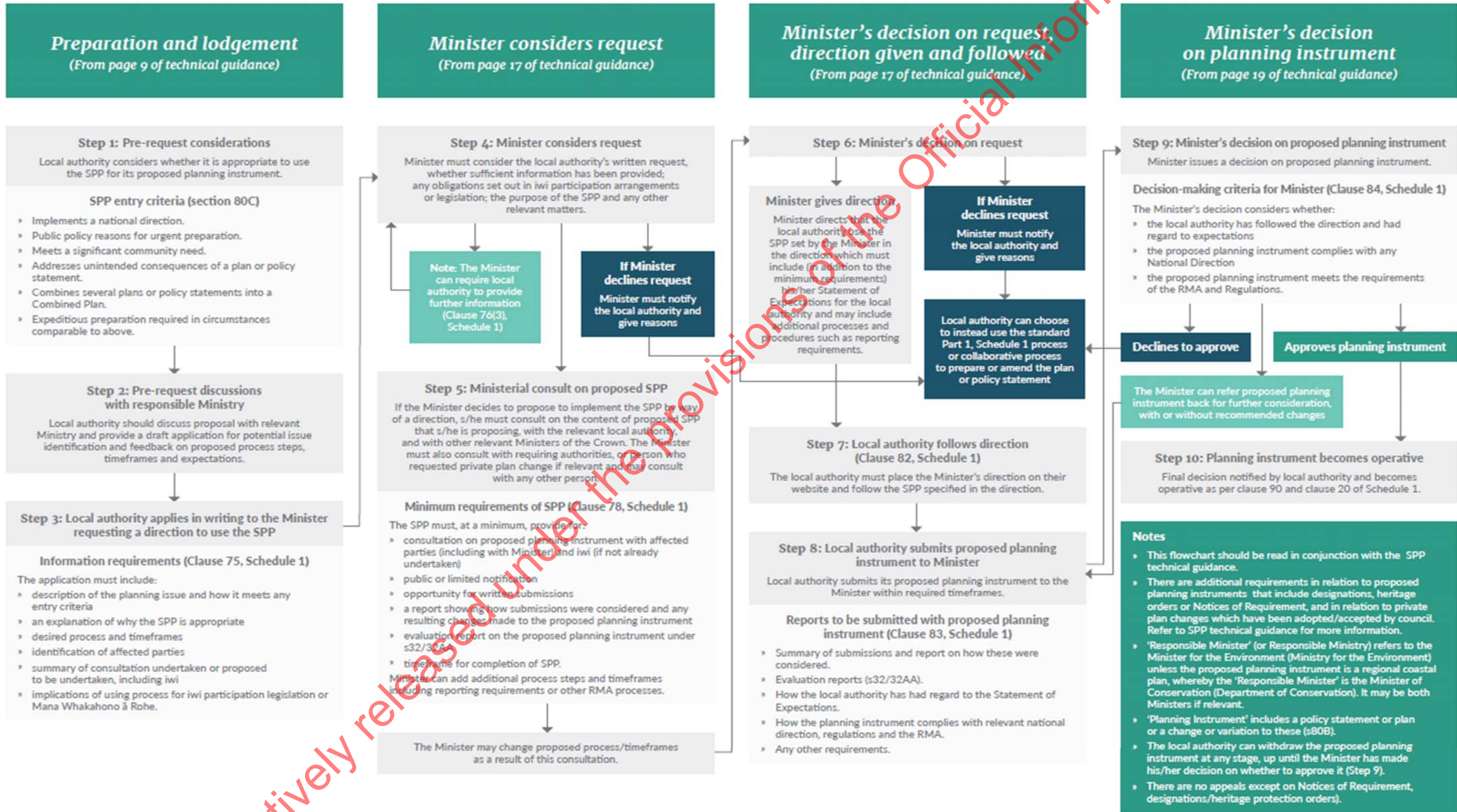
### **Annexes**

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Annex A: Streamlined planning process flowchart

Proactively released under the provisions of the Official Information Act 1982

# SPP Flowchart



Proactively released under the provisions of the Official Information Act 1982