

Practice and Guidance note

Residential Development in Mixed Housing Zones

Council's approach to the rules regarding new dwellings in residential zones (excluding the Single House and Terraced Housing and Apartment Buildings Zones):

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1 Background and Introduction

The [Auckland Unitary Plan \(Operative in Part\)](#) (AUP(OP)) contains a number of residential zones across Auckland that promote medium or high-density residential development.

This serves several important purposes:

- enables the supply of housing to respond to strong population growth and high housing demand
- provides a range of housing types across a range of locations
- helps support public transport, walking and cycling
- helps minimise the extent to which Auckland's urban area expands.

Alongside enabling higher densities, the AUP(OP) sets out clear expectations around achieving a quality-built environment.

The way that the rules and standards are set out is different in the Residential zones to other zones in the AUP(OP). This Practice and Guidance Note sets out how the residential provisions in the AUP(OP) are structured and how they are applied. It also provides guidance as to how the residential provisions should be approached when assessing the merits of a proposed development against the AUP(OP)'s objectives, policies, standards and assessment matters.

2 The Big Picture - What is the AUP(OP) trying to achieve in residential zones?

A key shift with the AUP(OP) is the emphasis in most of the residential zones on future outcomes. This is expressed through the reference to 'Planned Built Character' in the objectives and policies of the [Mixed Housing Suburban](#) (MHS), [Mixed Housing Urban](#) (MHU) and [Terrace Housing and Apartment Building](#) (THAB) zones. For example, Objective 2 of the MHS zone states:

Development is in keeping with the neighbourhood's planned suburban built character of predominantly two storey buildings, in a variety of forms (attached and detached).

This is a big change from previous plans in Auckland where there was generally a heavy focus on maintaining and enhancing the amenity values of existing residential areas. By contrast, the AUP(OP) anticipates and even expects change in residential areas, with that change being greater in the THAB and MHU zones than in the MHS zone.

The one exception to this rule is the [Single House Zone](#) (SH), which places stronger restrictions on subdivision and development in order to manage effects on existing character and amenity.

While the residential zones (except for the SH zone) anticipate significant change in residential character and amenity, the AUP(OP) seeks to manage that change and the potential adverse effects that might result. The AUP(OP) does this largely by applying standards, and also through assessment matters.

In terms of residential standards, the AUP(OP) applies standards in two different ways. There are *standards to be complied with*, and other standards:

- The standards to be complied with are those listed in the third column of the activity tables. The standards to be complied with determine activity status.
- The 'other standards' are those listed in the chapter as a standard but are not included in the third column of the activity tables. These 'other standards' are relevant matters for consideration as part of a substantive assessment.

This approach to standards is fundamental to the operation of the residential provisions. It dictates some of the structure of the residential chapters, including how the activity tables are presented.

3 How is the structure of the Residential chapters different from other chapters?

The activity tables in the residential zones are quite different to the activity tables in other zones. In other zones, activity tables have two columns – one which describes the activity and the other which shows the activity status.

The residential activity tables are different and contain three columns (see the Mixed Housing Suburban Activity table H4.4.1 below). The tables are structured as follows:

- The **first column** describes the activity. Most activities have descriptions in the definitions chapter to explain what the activity is. These are always to be read together with the parent heading.
- The second column states the ‘initial’ status of the activity.
- The third column shows the standards to be complied with in order to maintain the initial activity status.

Table H4.4.1 Activity table

		Activity status	Standards to be complied with
Use			
(A1)	Activities not provided for	NC	
Residential			
(A2)	Camping grounds	D	
(A3)	Up to three dwellings per site	P	Standard H4.6.4 Building height; Standard H4.6.5 Height in relation to boundary; Standard H4.6.7 Yards; Standard H4.6.8 Maximum impervious areas; Standard H4.6.9 Building coverage; Standard H4.6.10 Landscaped area; Standard H4.6.11 Outlook space; Standard H4.6.12 Daylight; Standard H4.6.13 Outdoor living space; Standard H4.6.14 Front, side and rear fences and walls
(A4)	Four or more dwellings per site	RD	Standard H4.6.4 Building height; Standard H4.6.5 Height in relation to boundary; Standard H4.6.6 Alternative height in relation to boundary; Standard H4.6.7 Yards

Table 1: Snapshot showing parts of Table H4.4.1 Activity table

If any of the standards listed in the third column are infringed, then resource consent approval for any infringement will be required.

As seen in the table above, the AUP(OP) applies standards to be complied with differently depending on whether the activity is up to three dwellings per site, or four or more dwellings per site. The reason for this is that the AUP(OP) applies a wider range of standards to be complied with for developments involving less than four dwellings, that wouldn't otherwise require resource consent approval. This is to ensure minimum levels of amenity are attained for future residents and neighbours.

By comparison, a much smaller number of standards to be complied with are applied to larger developments (four or more dwellings per site). This is because resource consent approval is automatically required for four or more dwellings and effects related to amenity for both residents of the development and neighbours can be considered.

Importantly, the standards to be complied with for four or more dwellings are standards that are designed to provide a minimum level of amenity protection for neighbours. Beyond this protection, the AUP(OP) is effectively providing some flexibility for developments involving four or more dwellings to potentially depart from strict adherence to standards such as outdoor living space and outlook space.

A key distinction is that for the activity of up to three dwellings per site, a permitted activity status can be attained if the *standards to be complied with* are satisfied (don't forget to check the rest of the AUP(OP) to see if other rules trigger the need for a resource consent e.g. [E27 Transport](#) chapter).

In contrast, the activity of four or more dwellings always requires resource consent approval as a restricted discretionary activity, as a minimum.

4 How do standards and activity status influence how an application is approached and assessed for notification assessments?

Activity Status

For the activities of up to three dwellings or four or more dwellings, an infringement of one or more of the standards to be complied with results in a restricted discretionary activity status ([C1.9](#) Infringements of Standards in Chapter 3 of the AUP(OP)).

This status has significant implications in terms of how council officers undertake their notification assessment.

The Notification Question

In terms of the notification assessment of an application for a residential activity there are two key items that need to be considered:

- The requirements of the Resource Management Act 1991 (RMA) in relation to public notification and limited notification: [Sections 95A](#) and [95B](#)
- The Notification sections of each of the residential chapters.

Other than in rare situations (such as where special circumstances apply to an application), resource consent applications for residential activities which have a restricted discretionary or discretionary status will not be publicly notified. This is prescribed by [Section 95A\(5\)\(b\)](#) of the RMA.

The RMA is less prescriptive with regards to the question of limited notification for residential activities. Consideration needs to be given to whether any persons are adversely affected when standards, such as maximum building height, are infringed. [Section 95E\(2\)\(b\)](#) specifies that an adverse effect on any person must be disregarded if the effects do not relate to a matter for which a rule restricts its discretion.

However, in the context of potentially disregarding an effect under Section 95E(2)(b), it is important to note that in terms of the matters over which discretion is restricted in the AUP(OP) in relation to standards, the matters are quite broad, and critically much broader than the purpose of the standard as specified in the AUP(OP).

Scenario

Let us look at the scenario where the height in relation to boundary standard is infringed in the Mixed Housing Suburban zone, and the alternative height in relation to boundary control cannot be utilised (because the proposed building is beyond the front 20m of the site). In the diagram below, the proposed house on Site A infringes the height in relation to boundary standard. Site A is located directly to the south of Site B, so will generate minimal or no shading onto Site B.

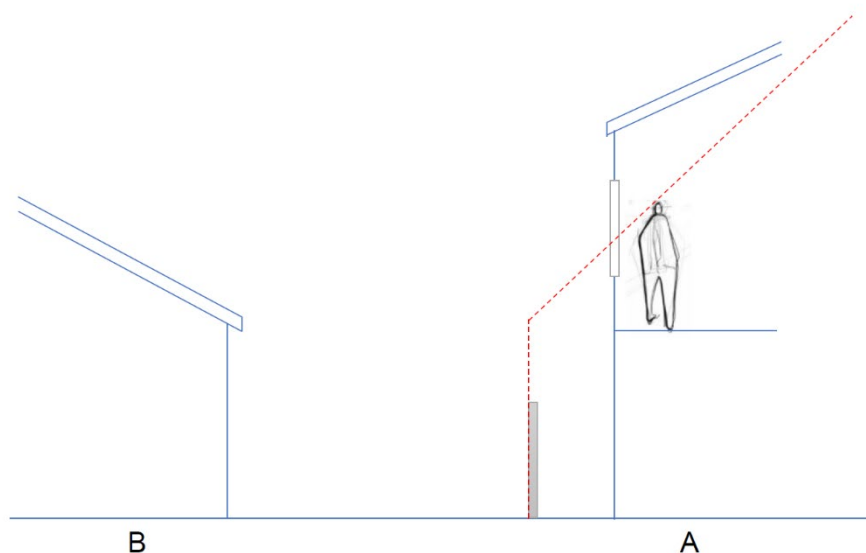


Figure 1: Height in Relation to Boundary infringement scenario

The purpose of the height in relation to boundary standard in this zone relates to shading and dominance effects. Shading is not an issue in this scenario as the proposed house on Site A is located to the south of Site B, however there might be some dominance effects.

In addition to these matters that are core to the purpose of the standard, the matters over which council has restricted its discretion include '*the effects on amenity of neighbouring sites*' (H4.8.1(4)(e)). Given this, the impact of overlooking and intrusions into the privacy of Site B can also be valid considerations for limited notification assessment (and the substantive assessment). This is even though the purpose of the standard does not include considerations around overlooking and privacy.

In this case, council could request the applicant to obtain the written approval of the owners or occupiers of Site B in relation to adverse effects on privacy.

Activities precluded from Limited Notification

[Section 95B\(6\)\(a\)](#) of the RMA specifies that an application may be precluded from limited notification if the activity is subject to a rule that precludes limited notification. This is relevant in Auckland as the AUP(OP) has rules in each residential chapter that preclude limited notification. The following activities are precluded from limited notification in the MHS and MHU chapters of the AUP(OP):

- four or more dwellings per site that comply with all of the standards listed in the Activity Table
- an integrated residential development that complies with all of the standards listed in the Activity Table
- new buildings and additions to buildings which do not comply with the Height in relation to boundary standard, but comply with the Alternative height in relation to boundary standard
- development which does not comply with the front, side and rear fences and walls standards
- development which does not comply with the Minimum dwelling size standard.

While the activities listed above are precluded from limited notification, applications for these activities can potentially be refused, in the substantive assessment.

However, it is important to note that if there are other reasons for consent, then when bundled overall these exceptions for limited notification may not apply. In addition, for the activity of four or more dwellings per site, preclusion of limited notification only occurs where all standards in the activity table are complied with.

5 How do standards and activity status influence how an application is approached and assessed for the substantive (S104) assessment?

Standards that do not need to be complied with

A key difference in the substantive assessment between the activity of up to three dwellings and four or more dwellings is in the range of the standards that must be complied with. Importantly, although the number of standards that must be complied

with is much smaller for the activity of four or more dwellings, further standards that do not need to be complied with form part of the substantive assessment.

These standards, which form part of the matters over which Council has restricted its discretion are:

- Maximum Impervious areas
- Building coverage
- Landscaped area
- Outlook space
- Daylight
- Outdoor living space
- Front, side and rear fences and walls
- Minimum dwelling size

A key question arises when a development does not meet the metric requirements of one or more of these standards. Although for the activity of 4 or more dwellings this does not constitute an ‘infringement’ (as these are not standards to be complied with), a ‘departure’ from the standard could *potentially* lead to the conclusion that the purpose of a standard is not satisfied. However, it is important to underline that a departure from the standard should not automatically lead to the conclusion that the purpose of the standard has not been satisfied.

However, the varied nature of these standards means that it will be harder for the purpose of some standards to be satisfied than others when the metric requirement is not satisfied. For some of these standards, the purpose is fundamentally linked to the metric. In these cases, a significant departure from the metric that is set by the standard is often likely to raise questions in terms of whether the purpose of the standard is satisfied. An example of this is the Daylight standard.

In other cases, it may be possible to depart significantly from the metric measurement in the standard and achieve its purpose. An example of this is the maximum impervious area standard, which relates to the management of stormwater discharge. In this case, engineering solutions may be able to ensure the purpose of the standard is satisfied, even if the proposed activity exceeds the standard.

Objectives and Policies and the assessment

Importantly, the objectives and policies of the residential zones provide a key framework for your assessment. Although there is a linkage between the objectives and policies and the standards, a departure from the standards does not necessarily mean an objective or policy is contradicted.

The wording of objectives and policies can be crucial in this respect. Some policies are worded in flexible ways, while others are worded in more demanding ways.

For example, Policy H4.3(6) in the MHU zone states:

*(6) **Encourage** accommodation to have useable and accessible outdoor living space.*

A key word in this policy is 'encourage'. This word is intentionally used rather than a stronger word such as 'require'. In fact, the Proposed Auckland Unitary Plan used the word 'require', and this was intentionally changed to the word 'encourage' through the submissions and hearing process.

By contrast, Policy H4.3(5) in the MHS zone states:

*(5) **Require** accommodation to be designed to meet the day to day needs of residents by:*

(a) providing privacy and outlook; and

(b) providing access to daylight and sunlight and providing the amenities necessary for those residents.

Similarly, Policy H4.3(4) in the MHS zone states:

*(4) **Require** the height, bulk and location of development to maintain a reasonable standard of sunlight access and privacy and to minimise visual dominance effects to adjoining sites.*

What does the use of such different language mean for assessments? In the case of the MHU zone, it should mean that a proposal which involves significant infringements of the outlook space, daylight and height in relation to boundary standards should generally be questioned more strongly than a significant infringement to the outdoor living space standard. The basis for this is that in terms of amenity the plan-makers have considered that outlook, privacy and access to daylight and sunlight is more critical than access to useable and accessible outdoor living space.

However, this does not mean, in this example, that useable and accessible outdoor living space is unimportant. It clearly is of some importance, otherwise the AUP(OP) would not have a standard and assessment matter relating to it. However, the wording of the policy suggests that a more flexible approach may be taken to the

way in which you assess a proposal which provides less outdoor space than the standard specifies.

Another important consideration when assessing applications in terms of standards is the potential cumulative impact that multiple infringements may generate. Every application needs to be assessed on its merits. However, where there are multiple infringements to standards this is potentially indicative of 'over-development' and may result in an overall design outcome that does not provide sufficient amenity for future residents in the development.

Given the strong structural linkages that exist in the AUP(OP) between standards and policies, multiple infringements to standards are also likely to result in questions as to whether the proposal is consistent with the objectives and policies as a whole.

Standards that need to be complied with

The standards that need to be complied with in the residential zones differ in several key ways from the standards that do not need to be complied with:

1. In the case of the maximum building height standard, they are fundamentally connected to the purpose of the zone that they apply to.
2. They have a more fundamental role in managing the adverse effects of development on neighbouring properties.
3. An infringement of these standards triggers a reason for consent.

Because the AUP(OP) does not have rules that control density, the maximum building height rules have become a key rule that differentiates the planned built character of the various residential zones.

For example, the MHS zone's maximum building height standard is 8 metres, providing for two storeys. This aligns with the planned built character for the zone of 'predominantly two storey buildings', which is expressed both in the objectives and policies for the zone.

By comparison the equivalent objectives and policies in the MHU zone outline a planned built character of "predominantly three storey buildings". While the objective and policies in the THAB zone outline a planned built character of 'predominantly five, six and seven storey buildings'.

While buildings that exceed the maximum building height limits in these zones have a restricted discretionary status, and must be assessed on their merits, infringements of the building height standard should be assessed very carefully because of the fundamental link to the purpose of the zones and objectives and policies.

Along with the maximum building height standard, the following standards are ones that need to be complied with for the activity of four or more dwellings in the MHS and MHU zones:

- Height in relation to boundary
- Alternative height in relation to boundary
- Yards.

These standards are particularly important in terms of managing the impact of development on the amenity of neighbouring properties. Where they are infringed, the adverse effects resulting from the infringement should be carefully considered in the substantive assessment, keeping in mind the following objective and policy in addition to the purpose of the standards:

Objective H4.2(3) / H5.2(3):

Development provides quality on-site residential amenity for residents and adjoining sites and the street.

Policy H4.3(4) / H5.3.(4):

Require the height, bulk and location of development to maintain a reasonable standard of sunlight access and privacy and to minimise visual dominance effects to neighbouring properties.

A key word in Policy H4.3(4) is 'reasonable'. This indicates that some loss of sunlight access or privacy can be potentially acceptable where there is an infringement of the height in relation to boundary standard. It is a matter of degree and needs to be considered on a case by case basis.

Similarly, the word 'minimise' in relation to visual dominance effects suggests some limited tolerance can potentially be given to a minimal level of dominance arising from an infringement of the height in relation to boundary standard. On these matters, it is generally a useful practice to compare the adverse effects arising from an infringement of the height in relation to boundary standard to a complying design.