

Office of the Minister for Building and Housing

Chair, Cabinet Legislation Committee

Housing Legislation Amendment Bill: Approval for Introduction

Proposal

- 1 I am seeking Cabinet agreement to introduce the Housing Legislation Amendment Bill (the Bill). The draft Bill is attached as Annex 1.

Policy

Extending the Housing Accords and Special Housing Areas Act 2013

- 2 The Bill will extend the Housing Accords and Special Housing Areas Act 2013 (**HASHAA**) by three years to allow for Special Housing Areas (**SHAs**) to be established in areas experiencing housing supply and affordability issues until 16 September 2019. The repeal date of HASHAA will also be extended by three years to 16 September 2021.

Ensuring progress continues within SHAs under an extended Housing Accords and Special Housing Areas Act 2013

- 3 The Bill will set time limits and provide Ministerial discretion on important steps in the process to ensure progress is maintained. The Bill will provide developers 12 months from SHA gazette date in which to lodge a relevant resource consent under HASHAA in relation to their qualifying development. If this timeframe is not achieved then SHA status over that developer's land may be revoked. To clarify, the standard revocation process as currently set out in HASHAA will apply to revocations made under this amendment.
- 4 I will also be provided discretion in my capacity as Minister for Building and Housing to extend the time provided to developers if best endeavours have been made to lodge relevant resource consents in the time provided.
- 5 To be consistent with the new policy described above, those existing SHAs gazetted after 16 September 2015 but before 16 September 2016 will be disestablished 12 months from their gazette date. SHAs gazetted before 16 September 2015 will be disestablished on 16 September 2016, as per the current legislation.

Allowing plan variation applications to continue under the Housing Accords and Special Housing Areas Act 2013

- 6 Section 75 of HASHAA states that when a proposed District Plan becomes operative any SHA that has not completed a plan variation process will be considered as withdrawn and be required to start the plan variation process again under Schedule 1 of the Resource Management Act 1991 (**RMA**) if the matter in the application is—
 - a) considered and determined by the AUP process; or
 - b) inconsistent with the decision made by the AUP process.

- 7 The Bill will allow SHA plan variation applications that are lodged but not completed when a relevant proposed District Plan becomes operative to continue under HASHAA. They will not be trumped by the new District plan. In Auckland this will mean that five plan variations that are still pending on 16 September 2016 will be able to continue under HASHAA and not have to start the process again under the Resource Management Act 1991.

Technical amendment to clarify the relevant planning document to assess resource consent and plan variation applications under the Housing Accords and Special Housing Areas Act 2013

- 8 The Bill will state that HASHAA qualifying development resource consent and plan variation applications are to be assessed against the version of relevant District Plan that was the relevant planning document at the time they applied, unless the developer chooses to be assessed against a more recent version.

Minor and technical change to defining SHA boundaries within Orders in Council

- 9 I have also included a minor and technical change to make it easier for local authorities to define the boundaries of a SHA within Orders in Council. SHAs will be able to be defined by incorporating by reference a map, plan, or similar document to avoid the need for the area to be described in the Order itself. Cabinet authorised me to make decisions on further minor policy and technical matters consistent with the policy decisions prior to reporting back to the Cabinet Legislation Committee at this time [CAB-16-MIN-0401 refers].

Clarifying offer back obligations when developing Crown land for housing

- 10 While some consequential amendments were made to the Housing Act 1955 when the Public Works Act 1981 was enacted, the interaction between disposals of *State housing land* and the offer back obligations to former owners under section 40 of the Public Works Act 1981 was never clarified. To remove uncertainty (and mitigate the risk of legal challenge), the Bill will amend the Housing Act 1955 to confirm that the offer-back obligations under the Public Works Act 1981 do not apply (and to avoid doubt never have applied) to the disposal of state housing land where the disposal is necessary to achieve the Crown's housing objectives.¹

Regulatory impact analysis

- 11 The Regulatory Impact Analysis requirements do apply to the following proposals:
- Extending the Housing Accords and Special Housing Areas Act 2013; and
 - Ensuring progress continues within SHAs under an extended Housing Accords and Special Housing Areas Act 2013.
- 12 A Regulatory Impact Statement was not submitted at the time that Cabinet approval of the policy relating to the Bill was sought due to time and resource constraints. Cabinet authorised the Ministers of Finance and Building and Housing to approve the final Regulatory Impact Statement for these proposals prior to the introduction of the Bill [CAB-16-MIN-0401 refers].
- 13 The Regulatory Impact Analysis requirements do not apply to the remaining proposals in this paper and a Regulatory Impact Statement has not been prepared.

¹ As determined by the Minister of Housing under section 3 of the Housing Act 1955

14 These proposals have no, or only minor, impacts on businesses, individuals or not-for-profit entities:

- *Allowing plan variation applications pending at the time of the Auckland Unitary Plan or District Plan becoming operative to continue under the Housing Accords and Special Housing Areas Act 2013:* The proposed amendment would confer only benefits to a small number of SHA developers that are affected by this issue. The benefits are the reduced costs of not having to begin the plan variation process again under the RMA. These costs include the administrative processing fees required by local authorities, costs associated with holding land for additional time, and operational costs of progressing the applications.
- *Technical amendment to state the relevant planning document to assess resource consent and plan variation applications under the Housing Accords and Special Housing Areas Act 2013:* The technical amendment stipulates the relevant planning document local authorities must use when assessing resource consent and plan variation applications under HASHAA.
- *Clarifying offer back obligations when developing Crown land for housing:* The proposed amendment to the Housing Act 1955 clarifies that the offer back provisions under the Public Works Act 1981 do not apply (and have never applied) to any disposal of State housing land. As this is simply a clarification of existing legislative intent, it does not require a Regulatory Impact Statement.

Compliance

15 The Bill complies with:

- a) the principles of the Treaty of Waitangi;
- b) the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- c) the disclosure statement requirements;
- d) the principles and guidelines set out in the Privacy Act 1993;
- e) relevant international standards and obligations;
- f) the LAC Guidelines on the Process and Content of Legislation (2014 edition).

Consultation

- 16 In preparing this paper the Ministry of Business, Innovation and Employment has consulted the following Ministries/Agencies: Treasury; Te Puni Kōkiri; Ministry for the Environment; Ministry of Transport; Department of Conservation; Department of Internal Affairs; and Ministry of Education.
- 17 The Department of the Prime Minister and Cabinet, Land Information New Zealand, Housing New Zealand Corporation, Office of Treaty Settlements, Post-Settlement Commitments Unit, Crown Law and Parliamentary Counsel Office were also informed.
- 18 The Office of the Clerk was also informed and provided with a draft version of the Bill. The Office of the Clerk has confirmed that the matters contained in the Bill are sufficiently interrelated to be considered by the House in an Omnibus Bill, complying with Standing Order 263(a).

Binding on the Crown

- 19 The Bill will make amendments to the Housing Accords and Special Housing Areas Act 2013 and the Housing Act 1955 (the principal Acts), and these amendments will bind the Crown to the same extent as the principal Acts.

Creating new agencies or amending law relating to existing agencies

- 20 The Bill does not create any new agencies or amend the law on existing agencies.

Allocation of decision making powers

- 21 The Bill does not change the allocation of decision making powers between the Executive and the Courts.

Associated regulations

- 22 No regulations are needed to bring the Bill into operation. The Bill does include an amendment to a provision empowering the making of Orders in Council.
- 23 Special housing areas are established by Orders in Council under section 16 of HASHAA. This Bill enables Orders in Council to be made revoking a SHA or reducing its size if applications for plan changes or resource consents have not been made within 12 months of the SHA being established. The Bill also includes a provision to make information about SHAs more readily accessible to the public and provides for maps and plans to be incorporated by reference. The explanatory note for the Bill outlines these reasons.

Other instruments

- 24 The Bill does not include an amendment to a provision empowering the making of other instruments, other than the associated regulations described above.

Definition of Minister/department

- 25 The Bill does not create or amend definitions of Minister or government department.

Commencement of legislation

- 26 The Bill will come into force on 15 September 2016.

Parliamentary stages

- 27 I intend to introduce the Housing Legislation Amendment Bill to the House on 6 September 2016. The Bill is currently Category 2 (must be passed in the year) in the 2016 legislative programme. The Bill is required to be passed by 13 September 2016.
- 28 The Bill is required to be passed under urgency through all stages and will not be referred to a select committee.

Recommendations

The Minister for Building and Housing recommends that the Committee:

- 1 **note** that the Housing Legislation Amendment Bill holds a category 2 priority (must be passed this year) on the 2016 Legislation Programme;
- 1 **note** that the Bill is focused on facilitating an increase in land and housing supply;
- 2 **note** that the Office of the Clerk has confirmed that the matters contained in the Housing Legislation Amendment Bill are sufficiently interrelated to be considered by the House in an Omnibus Bill, complying with Standing Order 263(a);
- 3 **Authorise** the Minister for Building and Housing to issue further drafting instructions to Parliamentary Counsel Office, prior to introduction of the Bill, on further minor and technical matters consistent with the policy decisions;
- 4 **approve** the Housing Legislation Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 5 **agree** that the Bill be introduced by 6 September 2016;
- 6 **agree** that the Minister for Building and Housing move a motion to accord urgency to the Housing Legislation Amendment Bill allowing progress through all stages of the House under urgency and consequently not be referred to a select committee for consideration;
- 7 **agree** that the government propose that the Housing Legislation Amendment Bill be enacted by 13 September 2016.

Authorised for lodgement

Hon Dr Nick Smith
Minister for Building and Housing

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