

Regulatory Impact Statement

Agency Disclosure Statement

1. This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Business, Innovation and Employment (MBIE).
2. It provides an analysis of options included in the Housing Legislation Amendment Bill 2016 (Amendment Bill). The Amendment Bill proposes to amend the Housing Accords and Special Housing Areas Act 2013 (HASHAA). The specific components of the Amendment Bill that are subject to RIS requirements are:
 - a. extend the date by which Special Housing Areas (SHAs) can be established by three years to 16 September 2019; and extend the date of repeal of the entire Act by three years to 16 September 2021,
 - b. set a 12 month time limit for lodging consents within SHAs, and
 - c. provide ministerial discretion to extend the 12 month time limit on a case by case basis.
3. The particular problems that this RIS seeks to address are associated with developers of SHAs who have not had sufficient time to lodge relevant consents and councils who have not recommended new SHAs be established because of the HASHAA partially repealing on 16 September 2016. Other Government initiatives to address housing supply have also not progressed as quickly as expected.

Limitations of the analysis of the Amendment Bill

4. The Amendment Bill is limited to analysing two options including one option to allow the HASHAA to partially repeal on 16 September 2016 and fully repeal two year later and the other option to amend and extend the HASHAA.
5. Options have been assessed in terms of their expected impact on increasing the supply of land for housing including reducing land banking, motivating developers to free up land and collaborating with councils of districts that require additional housing supply and development.
6. This analysis does not consider the additional changes to be made to the HASHAA or the Housing Act 1955 by the Amendment Bill, as these components do not require a RIS. It does not consider any other non-legislative changes to address housing supply and affordability as the Government is currently considering additional initiatives for the housing programme to address supply and affordability.

7. The nature and scale of council or developer behaviour in response to the two options is likely to be varied, ranging from a significant uptake of new opportunities of the HASHAA extension, through to limited interest. This analysis was restricted by MBIE's limited consultation with accord territorial authorities and developers so we have been unable to test the likely response with relevant stakeholders.

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Status quo and problem definition

Housing Accords and Special Housing Areas Act 2013 (HASHAA)

8. The HASHAA came into force on 13 September 2013 as a short term measure to streamline and fast track housing development and associated infrastructure through the Resource Management Act (RMA). The HASHAA allows councils to exercise more flexible resource consenting powers which results in additional residential developments being consented more quickly than would otherwise happen under existing plans and consent processes. The HASHAA is consistent with a collaborative whole-of-government approach to address housing supply and affordability issues.
9. The expedited and more permissive consenting and plan provisions of the HASHAA enable faster development and incentivise the development of land. This works to alleviate price pressures on homes. The greater weight on housing in the decision making criteria and faster consenting processes enabled in the HASHAA reduces holding costs and enhances the attractiveness of previously marginal development opportunities, resulting in new supply that may not have occurred without the Act.

HASHAA progress to date

10. SHAs have accelerated the supply of greenfield land to enable residential development. Since the enactment of HASHAA in 2013, the Government has signed housing accords with nine territorial authorities and established 213 SHAs with an expected yield of over 70,000 homes. Three quarters (156) of these SHAs require around 10 per cent of homes within the development to be affordable.
11. In Auckland, 154 SHAs are delivering a substantial land supply pipeline of approximately 62,000 dwellings. Auckland SHAs with a potential yield of approximately 23,000 dwellings have been established in the Future Urban Zone in the Auckland Unitary Plan (AUP) have benefited from up zoning in plan variations.
12. Housing targets set within housing accords have also facilitated the increase in land use and building consents within and outside of SHAs. For example, the Queenstown-Lakes District Housing Accord has recently amended targets to account for the 200 consents received above current targets. In Auckland over the next 14 years, over 98,000 new greenfield and brownfield dwellings and sections are known to be in the development pipeline of which 50 per cent will be in already established SHAs.

13. The expedited consenting and plan change process the HASHAA allows has significantly sped up housing development. A SHA in Auckland with an expected yield of 1300 homes has recently been rezoned for housing development in 22 working days – believed to be one of the quickest plan changes ever in New Zealand.

Repeal of HASHAA on 16 September 2016 (status quo)

14. The HASHAA allows for SHAs to be recommended by relevant local authorities (of those regions and districts listed in Schedule 1) to the Minister for Building and Housing. SHAs can be created by gazettal until 16 September 2016 when all 213 SHAs created to date will be disestablished. Only consents lodged with the relevant territorial authority before this date have access to the permissive HASHAA provisions. In addition, no further SHAs can be established.

15. Developers then have two years to utilise the HASHAA consents and plan changes until 16 September 2018 when the HASHAA fully repeals and all consents and plan changes under the HASHAA become inoperative and must instead be pursued under the RMA.

Problem

Extend the date by which Special Housing Areas (SHAs) can be established by three years to 16 September 2019; and extend the date of repeal of the entire Act by three years to 16 September 2021

16. The principal issue discussed in this RIS is whether to amend HASHAA to extend the timeframe to allow further SHAs to be established, and to create new provisions in the HASHAA for a 12 month time limit to lodge consents within SHAs, and ministerial discretion to extend this time limit.

17. Without the amendment, the HASHAA will partially repeal on 16 September 2016 and the 213 SHAs will be disestablished. MBIE is aware of 74 SHAs¹ that have been established for less than one year that are yet to lodge consents. These SHAs will miss out on utilising the HASHAA provisions to progress approximately 6100 dwellings.

18. As identified in paragraph 31, the enactment of HASHAA in September 2013 was considered an interim measure while the Resource Legislation Amendment Bill (RLAB) and AUP were being considered. The Amendment to the resource management system is still being considered by the Select Committee and leaves a gap when the HASHAA partially repeals on 16 September 2016.

19. Five of the nine Accord authorities and around ten developers have indicated that some proposals for SHAs have not been considered or pursued further by councils and developers as there is insufficient time to progress SHA applications before the partial repeal of the Act on 16 September 2016.

Set a 12 month time limit for lodging consents within SHAs, and provide ministerial discretion to extend the 12 month time limit on a case by case basis

20. MBIE is aware of some SHA developers who have obtained SHA status over land and have not made progress to develop housing. The new provision in the Amendment Bill will address and motivate developers of 74 existing SHAs, as well as any new SHAs established, to progress development. The 12 month time limit on SHAs ensures more

¹ This is an approximate number supplied by relevant councils on 12 August 2016. It is indicative only as MBIE is aware a number of SHAs are in various stages of pre-application discussions with councils and may lodge consents in the remaining four weeks leading to the deadline of 16 September.

work on the pre-application stage is progressed and makes it more likely development within SHAs is advanced. Twelve months is considered reasonable to allow sufficient time to plan and prepare development while also challenging to ensure developers are motivated to develop at pace. We also recognise that there are some circumstances beyond the control of developers which may require discretion in applying the 12 month 'use it or lose it' time limit on SHAs.

Objectives

21. The over-arching objective of this initiative is to increase the volume and pace of supply of land for housing and reduce upward pressure on the cost of homes particularly in high growth districts. The aim is to introduce a Bill that incentivises and facilitates further supply of land for housing developments over the short term including affordable homes and ensures developments can be progressed at pace.
22. A further objective of the Amendment Bill is to collaborate with territorial authorities of areas and districts that have supply and affordability issues and to ensure developers within SHAs are motivated to progress development on the sites and ensure landbanking of SHA land is minimised. In addition, allowing flexibility of timeframes to lodge consents if best endeavours have been made to progress development.

Options and impact analysis

23. There are two options available:

- Option 1 (status quo): no legislative change to the HASHAA so the Act partially repeals on 16 September 2016 and fully repeals on 16 September 2018.
- Option 2 (preferred): legislative amendment to the HASHAA to extend the partial repeal date by three years to 16 September 2019 and the full repeal date to 16 September 2021, and add provision for a 12 month time limit for developers to lodge consents and ministerial discretion to extend this time limit.

Option 1: Status quo

24. The status quo will disestablish the 213 SHAs and allow the reinstatement of the RMA for consenting and plan changes in the future. The following table outlines the key costs and benefits of option 1:

| Benefits | Scale | Impacts on |
|--|------------|--|
| A single consenting function for all regions of NZ enables more consistency and understanding of resource management and decision making processes. | Nationwide | Territorial authorities and consent and plan change applicants |
| Reinstatement of the RMA section 6 and 7 RMA principles ahead of the provision of housing ensures matters of national importance and the protection of natural and physical resources is prioritised | Nationwide | Territorial authorities |

| | | |
|--|--|--|
| Reinstatement of public participation in the consenting processes in the RMA ensures wider community values are considered | Nationwide | Territorial authorities, developers and public |
| Costs | Scale | Impacts on |
| SHAs will be disestablished and developers will have to revert to using the slower and less permissive provisions of the RMA. This presents a missed development opportunity and substantial sunk costs for developers who have planned development. | Approximately 74 SHAs throughout New Zealand with an expected yield of 6100 dwellings have been enacted for less than 12 months and will be disestablished on 16 September having not utilised HASHAA. | Accord authorities and developers |
| No further SHAs can be established leading to a reduced supply of housing | Districts listed in Schedule 1 of HASHAA. | Developers of existing SHAs and prospective SHAs |

Option 2: Legislative amendment

- 25. The amendment of the HASHAA will continue to enable the more efficient use of existing land and infrastructure through redevelopment at higher densities and incentivise the development of housing at pace. It is considered that reinstating the RMA provisions will result in a slower rate of development and in many cases no development at all therefore a significantly reduced supply of housing than would otherwise occur under HASHAA.
- 26. It is anticipated that the extension to HASHAA will respond to the high housing demand in areas outside of Auckland, like Queenstown, Tauranga, Hamilton, and Nelson, where the mechanism enables an ongoing supply of new residential areas and where existing plan change processes are likely to be too slow.
- 27. In Auckland, the AUP allows for more permissive zoning compared with the previous plan. However, the extended HASHAA will continue to allow qualifying developments to be consented within existing SHAs under the streamlined consenting processes and providing the opportunity for new SHAs to be established.

HASHAA extension

- 28. An extension of HASHAA by three years to allow further SHAs to be created and a number of SHAs to remain operating is the preferred date of extension. Three years provides an appropriate amount of time for developers and local authorities to work together to ensure development can occur. An extension shorter than three years would not provide an appropriate amount of time to conduct these tasks to the satisfaction of building controls.
- 29. Three years is also considered an appropriate amount of time to ensure the HASHAA remains a short term measure while also allowing sufficient time to enable other government initiatives such as the RLAB and NPS to imbed and gain familiarity. A one year extension of HASHAA would not provide sufficient time to ensure other government initiatives to address housing supply and affordability were adequately entrenched in the

resource management framework and therefore could create further uncertainty for councils and developers.

30. Under the RMA, consents are revoked if they are not utilised within five years. Depending on when a SHA is established, the three year extension of HASHAA allows less time to utilise consents than the RMA and thus encourages more rapid development.

Wider Government programme to complement an extended HASHAA

31. The introduction of HASHAA was considered as an interim measure to help ease constraints on housing supply while longer term solutions were developed particularly, the government's proposed changes to the resource management system through the introduction of the RLAB. The HASHAA was also enacted to bring forward the application of the Proposed Auckland Unitary Plan (PAUP) before it becomes operative on 16 September 2016.
32. The RLAB seeks to amend the RMA with the intention to provide better alignment and integration across the resource management system, proportional and adaptable resource management processes and robust and durable resource management decisions. With respect to HASHAA, RLAB continues the emphasis on streamlining and simplifying resource consent processes, introducing:
- consent exemptions for low impact activities,
 - ten-day fast track process for simple applications,
 - streamlined notification and hearing processes,
 - improved processes for specific types of housing related consents.
33. Plan change improvements that continue HASHAA's focus on efficient process include changes to notification requirements and the introduction of the Streamlined Planning Process to accelerate the process to vary and prepare planning instruments.
34. RLAB was introduced on 26 November 2015 and had its first reading on 3 December 2015. The Local Government and Environment Select Committee has yet to report back to the House.
35. The provisions contained in RLAB relating to streamlining and simplifying resource consent processes will provide good continuity with HASHAA. This may mean that some of the benefits of extending HASHAA may be reduced if and when RLAB comes into force. However when considering an application for a resource consent under HASHAA the local authority must have regard to several matters, of which the purpose of HASHAA is given the highest weighting, above the matters contained in Part 2 of the RMA. This gives a preference to housing; a key difference between HASHAA and the provisions contained in RLAB. The Productivity Commission has highlighted that slow consenting practise is a key factor contributing to the cost of housing (Housing Affordability inquiry, 2012).
36. We cannot guarantee if and when RLAB will come into force; therefore it is beneficial that the streamlined consenting functions provided for in HASHAA can continue while RLAB remains within the parliamentary process.
37. As part of resource management reform, the Government has recently announced a National Policy Statement on Urban Development Capacity (NPS) to ensure there is sufficient development capacity and infrastructure in high growth urban areas. The

difficulty of some councils to provide sufficient development capacity is an important factor behind increasing land and house prices. Councils in high and medium growth areas will be required to implement the NPS by 2019. In the meantime the extension of HASHAA will allow land to be freed up for housing until SHAs are disestablished in 2019.

38. Further complementing an extension of HASHAA is the proposed introduction of the Housing Infrastructure Fund (HIF). Although not specifically targeted at SHAs under HASHAA, the HIF can assist financially constrained councils such as Auckland, Hamilton and Tauranga to advance infrastructure projects that would otherwise hold back housing developments. The advancing of projects may have several benefits including:
- removing infrastructure constraints that may also have prevented the approval of some SHAs; and
 - allowing councils to transfer funds set aside for infrastructure projects in one area to alleviate infrastructure issues in another (e.g. a SHA)
39. The Government is also considering more permanent solutions in urban development and planning regulation to help further speed up the supply of new housing. Urban Development Authorities (UDAs) being considered may have streamlined powers to override barriers to large-scale development, including potentially taking responsibility for planning and consenting, and other powers. These amendments may provide further continuity with HASHAA provisions. The key differences are that the Urban Development legislation is intended to be permanent, includes land assembly, infrastructure and funding mechanisms, intended as a central government tool to enable larger scale development, and may include purposes wider than housing. It is uncertain when legislation to enable these powers could come into force; therefore it is important to continue to provide benefits of streamlined consenting through HASHAA in the interim.

Time limit and ministerial discretion to extend time limit

40. The amendment to add a 12 month time limit on submitting consents within SHAs is considered a reasonable amount of time for developers to lodge consents with the relevant council, while also acknowledging considerations that may delay lodgement.
41. Throughout New Zealand, 40 SHAs have been provided more than 12 months from gazette date and have yet to lodge a relevant consent or plan variation applications.² As a result, these SHAs will be disestablished even with the extension of HASHAA and only consents lodged before 16 September 2016 will continue under HASHAA. In the lead up to the 16 September 2016 deadline we anticipate more developers will lodge applications.
42. Six months was considered too challenging for developers to lodge consents within SHAs and therefore a number of SHAs would not be utilised within this timeframe and present a wasted development opportunity. Moreover, a two year extension was considered too long to ensure progress is maintained within SHAs and to remove the incentive to landbank.
43. In Auckland it has taken an average of 248 days (8 months) from the SHA being established to the SHA resource consent being approved by the Council. This supports

² This is an approximate number supplied by relevant councils on 12 August 2016. It is indicative only as MBIE is aware a number of SHAs are in various stages of pre-application discussions with councils and may lodge consents in the remaining four weeks leading to the deadline of 16 September.

the option to provide 12 months to lodge resource consents as on average most will be able to be lodged within this timeframe but this will incentivise faster lodging.

44. Any existing SHAs gazetted before 16 September 2015 are considered to have had ample time to progress consents and these will continue to be disestablished on 16 September 2016 consistent with current HASHAA provisions.
45. The Amendment Bill will also add a provision to provide ministerial discretion to allow more than 12 months to lodge consents. The Minister will establish criteria to provide guidance for what activities are considered 'best endeavours', and will rely on information from local authorities who deal with developers on a daily basis to determine whether appropriate progress is being made.
46. This will ensure that resource consent and plan variation applications are more advanced at the SHA recommendation stage, as developers will be aware that they have to lodge within 12 months. This will result in better quality SHA developments by developers who are motivated to build. Landbanking to receive capital gain following SHA designation will also be reduced.
47. The table below outlines the key costs and benefits of amending the HASHAA:

| Table 2: Cost and benefits of amending the HASHAA | | |
|---|--|---|
| Benefits | Scale | Impacts on |
| Allow the creation of further SHAs and consents within existing SHAs to use the permissive HASHAA provisions to enhance supply | Much of New Zealand - Districts included in Schedule 1 HASHAA | 15 territorial authorities listed in Schedule 1 including Auckland, Queenstown-Lakes and Tauranga City Council, and developers |
| Provide a time limit for lodging consents to incentivise a 'use it or lose it' approach to the HASHAA provisions to enhance the pace of supply | Will impact a number of developers and developments within SHAs | Developers of SHAs |
| Allows councils to add a requirement for affordable homes | 156 SHAs with an expected yield of approximately 63,000 dwellings require a proportion of dwellings within these SHAs to be affordable. Any new SHAs established may also have an affordability requirement. | Developers, purchasers including first home buyers |
| Costs | Scale | Impacts on |
| Reduce the ability for communities and existing residents to influence developments in their neighbourhoods. Values important to local communities may not receive the same level of consideration. | Developments within SHAs. | Public participation – was considered during the passage of the HASHAA. Limited notification is a requirement for plan variation applications under HASHAA. Moreover, it is mitigated by some councils who consult with their districts on SHA proposals. |

48. An additional risk to note is the HASHAA's inseparable link with the RMA and its amendment via the RLAB. Given the significance of the RLAB an expected enactment date is difficult to determine. A notable risk is the relationship the extension of HASHAA may have on the enactment of the RLAB. It is possible that inconsistencies could exist between the two pieces of legislation.

Impact analysis

49. The table below assesses the two options against the four key government objectives:

| Proposed Changes | Increases housing supply/ decreases land banking | Increases affordability | Motivates development | Collaborative approach between Government and councils |
|---------------------------------|--|--|--|--|
| Option 1 Status quo | No. Reinstatement of the less permissive RMA is likely to result in a diminished quantity and rate of development. | No. | No. | Minimal. Four of the nine housing accords expire in September 2016 |
| Option 2 Amendment Bill | | | | |
| <i>Extend HASHAA</i> | Yes. SHAs have access to the fast tracked and limited notification consenting and plan variation processes which encourages further housing supply. The balance of incentives on land owners will be in favour of short term land sale as future capital gains from landholding will be less certain. | Yes. Further supply is likely to lead to further stock and housing choice to help to make housing more affordable. Councils are permitted to prescribe affordability criteria in developments within SHAs. Currently 156 SHAs have an affordability requirement | Yes. Access to more permissive rules makes developing land more attractive for developers. | Yes. The extension of HASHAA allows housing accords to be renegotiated, new targets set and further SHAs to be created by government in council districts. |
| <i>Expiration of SHA status</i> | Yes. Decreases landbanking by revoking SHA status after 12 months if no application progress | N/A | Yes. The 12 month time limit motivates development at pace. | N/A |

| | | | | |
|--|---|-----|---|--|
| | Encourages developers to put more effort and resources into pre-application and therefore development is more likely to progress. | | | |
| <i>Ministerial discretion to extend time limit</i> | Yes. It enables further development within SHAs which would otherwise expire with no development progressed. | N/A | The Minister's discretion ensures only developers who are motivated to develop may have the possibility of an extended timeframe. | Yes. The Minister will rely on the councils assessment of the developers best endeavours to lodge consents |

50. Of the two options, the amendment of the HASHAA is most likely to incentivise housing development and address the continued lack of housing supply in districts of New Zealand experiencing housing supply and affordability issues. The HASHAA will continue to allow the ability of land to be consented that might not otherwise be consented under existing planning rules and consent processes. Further, SHAs will provide less certainty to developers of capital gains from landbanking and will incentivise the short term sale of land and diminished long term holding of land. This will work to ease pressure on land supply and is likely to slow price appreciation. The amendment to HASHAA also encourages a collaborative approach between government and councils in addressing land supply and affordability issues over the short term.

Consultation

51. In order to progress the Amendment Bill before the partial repeal of HASHAA on 16 September 2016, the Bill has progressed through all stages in the House under urgency. In the time available, MBIE has been unable to undertake significant consultation with Accord authorities and developers regarding the Amendment Bill to amend HASHAA.

52. However, MBIE has conducted limited, informal consultation with accord authorities on improvements to the HASHAA, including the need to extend the Act and to ensure developers maintain momentum in progressing applications. During this consultation a number of these authorities and developers requested an extension to the HASHAA timeframes. Consultation has also been limited due to the timing and interaction with the planning and political process to determine the Auckland Unitary Plan. In order not to undermine that process the proposals contained in this paper have not been consulted on formally.

53. It should be noted that MBIE received four SHA recommendations from councils in July 2016 in the lead up to the partial repeal of HASHAA. Seven of the nine accords were signed in the last two years and one third of all SHAs were created in 2016. This shows that accord authorities and developers are becoming conversant with and realising the benefits of the HASHAA and would consider an extension valuable.

Conclusions and recommendations

54. The overall conclusion is that of the two options available, the Amendment Bill will add to the supply of additional and accelerated housing supply. The extension of HASHAA will continue to allow developers access to the streamlined and permissive consenting provisions thereby allowing housing development to continue at pace in areas with housing and affordability issues.
55. A number of stakeholders have sent a strong message that the extension of the HASHAA timeframe would allow further SHAs to be created and enable additional dwellings. The Amendment Bill will continue to allow SHAs the opportunity to lodge consents and realise the dwelling potential. The Amendment will also provide a transitional resource management framework to help ease the housing supply pressures, while longer term solutions such as the RLAB, NPS and the Infrastructure Fund are implemented and urban development initiatives are considered further.
56. Setting a time limit and providing ministerial discretion on lodging resource consents and plan variations under HASHAA will improve housing supply as developers and territorial authorities are likely to conduct more work on the pre-application stage.
57. This is less likely to result in landbanking as developers will be more motivated to build as they will have to commit significant time and finances to progress their applications to that point. Speculating by on-selling SHA properties quickly will also be reduced as the SHA status will be revoked if a relevant consent is not lodged within 12 months of gazette date.

Implementation Plan

58. If Cabinet agrees to include in the Amendment Bill the amendment to HASHAA, the implementation steps will involve:
 - The Minister of Building and Housing (Minister) and councils of districts listed in Schedule 1, will renegotiate and implement housing accords and targets,
 - The responsibility of successful implementation of SHAs rests with the councils to use the provisions in the HASHAA, and developers to request SHA status on their land and to apply for resource consents and plan variations under HASHAA within 12 months,
 - Councils and the Minister consider SHA proposals using the HASHAA provisions and establish new SHAs via an Order in Council,
 - The Minister will use his discretion to extend this timeframe on a case by case basis.
59. The resourcing and administration costs involved in renegotiating housing accords and assessing and implementing SHAs has been considered. MBIE has asked Cabinet for continued funding to cover costs associated with policy advice for HASHAA implementation and provision for resource consenting processes in SHAs declared outside of a housing accord.

Monitoring and review

60. The Amendment Bill to extend the HASHAA will allow the renegotiation of housing accords. Housing accords are governed by two joint committees tasked with monitoring and reviewing SHAs to ensure that are delivering increase supply in the constrained local housing market. These committees are:
- Joint Housing Steering Group Committee
 - Officials Working Group
61. The Officials Working Group is responsible for the creation and publication of regular monitoring reports which provide comprehensive data on building consents and the creation of SHAs against accord targets. Information gathered from these reports have been included in this RIS.
62. The Steering Group discusses housing issues in the district including land supply, infrastructure provision and Council consenting processes. It also discusses the establishment and implementation of SHAs.

Evaluation

63. SHAs and housing accords are only a range of measures implemented by the Government to improve housing affordability. Due to the interlinkages between these measures, as well as external factors, housings accords are evaluated as a key part of the Government's response to housing supply and affordability.