



DOIA20/21020529

s 9(2)(a)

Dear s 9(2)(a)

Thank you for your requests made under the Official Information Act 1982 (the Act) to Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (the Ministry) on 17 February 2021 for:

1. *How many special housing areas remain under management of HUD?*
2. *How many dwellings are likely to come onto the market from the special housing areas currently being managed by HUD?*
3. *How many dwellings were completed in total under special housing accords or in special housing areas?*
4. *Could I also request the most recent briefing, if there has been one, provided to the Minister of Housing and Urban Development on Special Housing Areas prior to the announcement that the Government will not be extending the former government's Housing Accords and Special Housing Areas legislation on 12 March 2019 (<https://www.beehive.govt.nz/release/costs-outweigh-benefits-special-housing-area-extension>).*

Special Housing Areas (SHA) were never under the management of the Ministry. Under the Housing Accords and Special Housing Areas Act (HASHAA), an Accord Council could recommend to the relevant Minister that one or more areas within the district be established as SHAs. The Minister would then recommend (or not recommend) that an Order in Council be made, which declares a SHA. HASHAA then provided a permissive resource consent process (for qualifying developments within approved SHAs).

All SHAs were disestablished when sections 16 and 17 of the HASHAA expired on 16 September 2019. The rest of HASHAA will be repealed on 16 September 2021, to allow time for any remaining resource consent applications lodged before 16 September 2019 to be processed.

The Ministry does not hold data on how many dwellings were or will be completed under HASHAA legislation. This information may be held by individual councils. However, the Ministry is aware of some studies that have been undertaken:

- This publication records the amount of SHA dwellings completed between 2013-2016 in Auckland: www.buildingbetter.nz/publications/homes_spaces/adm/posters/Murphy-SHA%20poster1.pdf.
- This November 2018 study notes the number of SHAs established in Auckland and their estimated dwelling capacity, and notes that 3,100 dwellings were completed within them as of the start of 2017: www.tandfonline.com/doi/abs/10.1080/00779954.2019.1588916.

- This June 2017 study notes the number of SHAs established in Tauranga and Western Bay of Plenty, and notes that 0 completed dwellings were reported in either council as of August 2016: www.buildingbetter.nz/publications/homes_spaces/James_2018_special_housing_areas_practical_pathway_chapter.pdf.
- This December 2017 study notes the completion of 31 dwellings in one SHA in Western Bay of Plenty, and 'some' dwellings completed in another Western Bay of Plenty SHA: www.buildingbetter.nz/publications/homes_spaces/adm/James_2017_getting_the_housing.pdf.
- This 2018 publication notes the number of SHAs established in Tauranga and their estimated dwelling capacity, and notes that 352 dwellings were completed within them as of 2017: www.buildingbetter.nz/publications/homes_spaces/adm/posters/SHA-Tauranga_WBoP-poster.pdf.

The New Zealand Gazette, and the New Zealand Legislation website, also hold records of all approved Special Housing Areas.

Lastly, the most recent briefing that was provided to the Minister of Housing and Urban Development before the announcement on 12 March 2019, was provided on 7 December 2018. This paper, titled "Housing Accords and Special Housing Areas Amendment Bill", provided Hon Phil Twyford with talking points for an upcoming Cabinet Committee meeting. The Ministry understands the Cabinet paper it refers to was deferred at Cabinet and never re-submitted.

For context to this aide-memoire, the Ministry is also releasing to you a briefing titled "Extending HASHAA and introducing affordability requirements". This paper was provided to Hon Phil Twyford on 6 August 2018.

Some information is withheld in each of these papers under the following sections of the Act:

Section of Act	Reason to withhold
9(2)(a)	To protect the privacy of natural persons.
9(2)(h)	To maintain legal professional privilege.

The above information is summarised in the attached document schedule.

In terms of section 9(1) of the Act, I am satisfied that, in the circumstances, the decision to withhold information under section 9 of the Act is not outweighed by other considerations that render it desirable to make the information available in the public interest.

You have the right to seek an investigation and review of my response by the Ombudsman, in accordance with section 28(3) of the Act. The relevant details can be found on the Ombudsman's website www.ombudsman.parliament.nz.

As part of our ongoing commitment to openness and transparency, the Ministry proactively releases information and documents that may be of interest to the public. As such, this response, with your personal details removed, may be published on our website.

Yours sincerely



Rebecca Maplesden
Manager Places and Partnerships

Document schedule

Date	Title	Section of the Act applied
6 August 2018	Extending HASHAA and introducing affordability requirements 3005 17-18	9(2)(a) 9(2)(h)
7 December 2018	Housing Accords and Special Housing Areas Amendment Bill AMI18/19110038	9(2)(a)



BRIEFING

Extending HASHAA and introducing affordability requirements

Date:	6 August 2018	Priority:	Medium
Security classification:	In Confidence	Tracking number:	3005 17-18

Action sought		
	Action sought	Deadline
Hon Phil Twyford Minister of Housing and Urban Development	Agree to extend HASHAA (approximately five-seven years) until key reforms under the UGA are in place, and include minor amendments to improve implementation. Agree to discuss the affordability options for HASHAA with officials.	20 August 2018
Hon Jenny Salesa Associate Minister of Housing and Urban Development	As Minister responsible for operational issues you may wish to seek a meeting with Minister Twyford to discuss.	N/A

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Tracy Mears	Manager Infrastructure, Places and Partnerships, MBIE	04 901 8438	s 9(2)(a)	✓
Nicole van Heijst	Senior Policy Advisor	09 928 2897		

The following departments/agencies have been consulted
Ministry for the Environment, Department of Internal Affairs, Ministry of Education, New Zealand Transport Agency and Te Puni Kokiri were consulted. The Department of Prime Minister and Cabinet were informed.

Minister's office to complete:

☐ Approved

☐ Declined

☐ Noted

☐ Needs change

☐ Seen

☐ Overtaken by Events

☐ See Minister's Notes

☐ Withdrawn

Comments



BRIEFING

Extending HASHAA and introducing affordability requirements

Date:	6 August 2018	Priority:	Medium
Security classification:	In Confidence	Tracking number:	3005 17-18

Purpose

The purpose of this briefing is to:

- provide a brief background of the Housing Accords and Special Housing Areas Act 2013 (HASHAA)
- advise on whether HASHAA should be extended beyond its expiry in 2019
- advise on whether any extension should include mandatory affordability criteria.

Executive summary

The Housing Accords and Special Housing Areas Act 2013 (HASHAA) will partially expire in 2019, with full legislation expiring in 2021. HASHAA aims to facilitate affordable housing by increasing housing supply through a more permissive resource consenting environment than the consenting process under the Resource Management Act 1991 (RMA).

HASHAA provides an expedited process over and above the RMA and responds to the RMA not giving priority to housing and urban outcomes in making planning decisions. It was created as a short term initiative while more fundamental change could be made. The recent amendments to the RMA (through the Resource Legislation Amendment Act 2017) mirrored parts of HASHAA. The Minister for the Environment, however, is looking to unwind some of the provisions that mirror HASHAA.

Broader system review is underway through the Urban Growth Agenda (UGA) and the development of the Urban Development Agency (UDA). Until the UGA is implemented, the expiry of HASHAA would mean there was no alternative to the RMA for small to medium sized developments that fall outside the UDA criteria.

HASHAA is actively used by approximately eight of the fifteen territorial authorities that are covered by the Act. Current application is relatively limited and it is not currently used in Auckland.

While comprehensive studies of the effects of HASHAA have not been done, monitoring reports and conversations with councils suggest it has been effective in bringing forward housing development.

Extending HASHAA has both financial and broader costs. Extending HASHAA would have financial implications for the Crown. HASHAA can have high transaction costs to the Crown that can be disproportionate to the outcome.

HASHAA reduces public notification and limits appeal rights. The loss of public participation in decision-making is weighed up against increased and accelerated housing supply. Some territorial authorities have used the more permissive consenting to negotiate with developers for contributions for infrastructure and / or affordable housing. In this way, territorial authorities are balancing the removal of rights with the benefits of faster housing supply for a future community.

HASHAA allows territorial authorities to give more weight to improving housing affordability than matters in Part 2 of the RMA. While this is the mechanism that enables housing to be brought forward, concerns have been raised about the implication for the relative consideration for those other factors. This was specifically raised by the Climate Change Adaptation Technical Working Group in relation to natural hazards.

MBIE considers that the UGA, which will consider reforms of the RMA, the Land Transport Management Act and the Local Government Act, provides the best opportunity to ensure the urban planning environment operates effectively. Until that programme is developed, the expiry of HASHAA will reduce options for high-growth councils wanting to speed up housing supply. Although there are costs associated with HASHAA, on balance, we consider that it is worth extending until key reforms under the UGA and comprehensive resource management reforms are in place. This is estimated to be an extension of five – seven years.

HASHAA may be comprehensively reviewed to potentially reduce the costs or enhance the benefits but given its use by a limited number of territorial authorities, and the time needed to develop and implement any amendments, we recommend that HASHAA is not comprehensively reviewed but rather extended with minor amendments.

We considered whether mandatory affordability criteria should be included as part of an extension.

- *Option A) - status quo* continue to encourage territorial authorities to include affordability criteria, but not be able to decline a Special Housing Area application if they do not do so.
- *Option B) - renegotiate Housing Accords* to set an expectation that affordable housing be included in SHAs and territorial authorities are given the flexibility to facilitate affordable housing in a way that meets their capability and resource constraints. Such expectations are difficult to enforce. This requires additional upfront resource to negotiate with territorial authorities and not all territorial authorities may be interested in amending their accords.
- *Option C) - Amendment to HASHAA* that requires that the Minister be satisfied that the proposed SHA enhances housing affordability. Territorial authorities would consider affordability in proposing a SHA, but does not prescribe how this provision needs to be met. The Crown is able to decline a SHA application if evidence the SHA will enhance affordability is inadequate.
- *Option D) - Make affordability criteria mandatory* and prescribe the criteria to be used. Mandatory affordability criteria can be complex to implement and resource-intensive to administer and may reduce territorial authorities' and/or developers' interest in using SHAs.

MBIE recommends that affordability criteria not be made mandatory. Our preferred option is Option A. Territorial authorities with the resources and ability to develop and implement criteria can continue to do so. We can discuss these options with you.

If HASHAA is to be extended, MBIE will be seeking new funding to resource the administration of HASHAA which is estimated to be \$180,000 to \$290,000 per year until its repeal. If the option to renegotiate Housing Accords is agreed, this will incur additional costs and will likely be at the higher end of the range provided.

Next steps

If you agree with the recommendations to extend HASHAA we will report back to you on details of an extension, including repeal dates, as well as any recommendations for minor amendments that improve the administration of HASHAA. We will also report on detailed financial implications for administering HASHAA, and seek your agreement to seek funding in 2019 budget.

If you want to renegotiate the Housing Accords, we will include costs and process for the negotiation.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Note** that the Housing Accords and Special Housing Areas Act 2013 (HASHAA) will be partially repealed on 16 September 2019, when no new Special Housing Areas can be established and new consents lodged, and the remainder of the Act will be repealed on 16 September 2021
Noted
- b **Note** that once HASHAA is repealed there will be a gap in tools that support affordable housing in smaller and medium sized developments before the key reforms under the UGA and comprehensive resource management reforms are in place
Noted
- c **Note** that some territorial authorities have expressed support for HASHAA and see value in its extension, but such an extension will have financial implications for government and impact on the government's legislative programme
Noted
- d **Note** that HASHAA also has broader costs/risks, including reduced public participation in decision-making and a shift in the relative weight of natural hazards assessment. This later risk was identified by the Climate Change Adaptation Technical Working Group.
Noted
- e **Agree** to extend HASHAA by approximately five-seven years, when key reforms under the UGA and comprehensive resource management reforms are in place, and include minor amendments to improve implementation
Agree / Disagree
- f **Note** that HASHAA does not require affordability criteria to be included in recommendations for special housing areas, and that only territorial authorities can recommend that such criteria be applied in a Special Housing Area
Noted
- g **Note** that MBIE's view is that mandatory affordability criteria should not be required
Noted
- h **Note** there are some options available if you wanted to be more prescriptive about affordability criteria if HASHAA is to be extended:
- I. Housing Accords are renegotiated with territorial authorities to give greater weight to the importance of delivering affordable housing signalling an expectation that affordable housing be considered in SHAs
 - II. to amend HASHAA so that the Minister be satisfied that the SHA enhances housing affordability, which leads territorial authorities to consider how the SHA will facilitate housing affordability as part of a SHA application
 - III. to make affordability criteria mandatory and prescribe the criteria to be used, recognising that mandatory affordability criteria can be complex to implement and resource intensive to administer and may reduce territorial authorities' interest in using SHAs
- Noted*
- i **Agree** to discuss the affordability options for HASHAA with officials
Agree / Disagree

- j **Agree** that if HASHAA is to be extended, officials will report back to you with advice in October 2018 on:
- I. repeal dates that are in line with the intended legislative reform under the Urban Growth Agenda and any comprehensive reform of the Resource Management Act, anticipated to be five to seven years
 - II. any minor amendments that support the implementation of HASHAA
 - III. funding implications to the Crown for the implementation of HASHAA

Agree / Disagree

- k **Agree** to forward a copy of the paper to Hon David Parker – Minister for the Environment.

Agree / Disagree

- l **Agree** to forward a copy of the paper to Hon James Shaw – Minister for Climate Change.

Agree / Disagree



Tracy Mears
Manager, Infrastructure, Places and Partnerships
Housing and Urban Branch, MBIE

6 / 8 / 2018

Hon Phil Twyford
Minister of Housing and Urban Development

..... / /

Background

1. The Housing Accord and Special Housing Areas Act 2013 (HASHAA) will partially expire in 2019, with full provisions to be repealed by 2021.
2. Feedback you have received from territorial authorities is that they value Housing Accords, and that they find the Special Housing Areas approval process useful in facilitating housing supply.
3. You have also noted to officials that developing an approach to affordability is crucial for on-going cross-party support for HASHAA.
4. You subsequently sought advice as to whether there is a place for HASHAA longer term, and whether mandatory affordability criteria should be included in such an extension.
5. If HASHAA is to be extended, policy work to prepare for legislative amendments needs to be considered now in time for legislation to be prepared and passed by September 2019 when the special housing area provisions of HASHAA expire.

The Housing Accords and Special Housing Areas Act 2013

Background to HASHAA

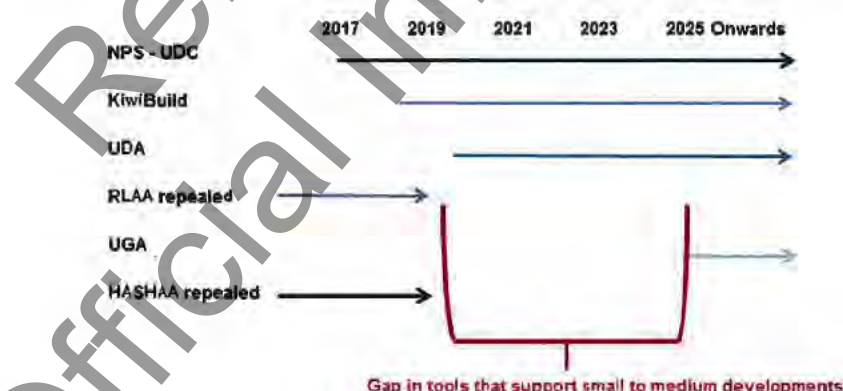
6. HASHAA was introduced in 2013 to enhance housing affordability by facilitating an increase in land and housing supply in certain regions or districts with significant housing supply and affordability issues.
7. HASHAA aims to enhance housing affordability by freeing up land for residential development and expediting development processes by streamlining land use and subdivision consenting. The Special Housing Areas (SHA) process limits notification of the application and for appeal to the Environment Court, which can add costs and time to potential developments. HASHAA thereby provides greater certainty to developers entering a development process.
8. HASHAA was intended as an interim measure to ensure new housing supply in Auckland continued while the Proposed Auckland Unitary Plan was developed. HASHAA was amended to be used by other territorial authorities, and to include affordability requirements as one of the criteria that accord authorities could meet. It was extended in 2016 for a further three years.
9. HASHAA will expire on 16 September 2019, when no new SHAs will be able to be established, all existing SHAs will be disestablished, and no more resource consents under HASHAA can be lodged. However, existing applications (lodged before 16 September 2019) can continue to be processed until 16 September 2021.
10. Fifteen territorial authorities are included in Schedule 1 of HASHAA and can therefore seek to enter a Housing Accord with the Government. Eight of these territorial authorities have an active Housing Accord, with 61 active SHAs in total. The eight territorial authorities using HASHAA continue to see value in HASHAA's ability to accelerate and increase housing supply and request that new SHAs continue to be established. Refer Annex A for further background and analysis of HASHAA. These include high growth councils such as Tauranga City Council, Queenstown Lakes District Council and Hamilton City Council.

Should HASHAA be extended?

Once HASHAA expires, there will be no way to elevate housing supply objectives within a standard RMA process for smaller and medium sized developments

11. HASHAA establishes a two-track planning process that responds to some of the limitations of the RMA with respect to urban development. The decision making criteria under HASHAA allows territorial authorities to give more weight to improving housing affordability than matters in Part 2 of the RMA. This provides territorial authorities with wider criteria to review any planning and consent decisions. Note this feature was raised as an issue by the Climate Change Adaption Technical Working Group in its final report. This is discussed further in paragraphs 44-45.
12. Decision-makers are often required to consider competing values through RMA processes. The National Policy Statement – Urban Development Capacity (NPS – UDC) has put more emphasis on planning for urban development capacity, however this is taking time to embed into practice. Ideally RMA practice would enable planning that is more responsive to growth and enables developments to be delivered where and when required.
13. The Urban Growth Agenda (UGA) aims to address the fundamentals of land supply, development capacity, and infrastructure provision. The UGA will deliver medium to long-term changes to system settings needed to create the conditions for the market to respond to growth and bring down the high cost of urban land. The Urban Planning pillar of the UGA addresses planning regulation, methods and practice that act as roadblocks to the delivery of both brownfield and greenfield housing.
14. In addition to the UGA, government is working on other reforms to the housing system that will improve affordability, such as the Urban Development Authority (UDA), KiwiBuild and NPS - UDC. On review of the reforms (see Annex B) we found that once HASHAA expires, there will be a period of time before the UGA changes takes effect, where there is no alternative to the current RMA process for medium-sized housing developments in high-growth areas.
15. For the majority of small developments the standard RMA process is an effective mechanism. But for medium sized developments, the emphasis that HASHAA provides on housing affordability, enables housing supply to be brought on stream faster and with greater certainty than the standard RMA process.

Figure 1: Repeal of HASHAA in context of housing and urban development reforms



16. If housing supply is considered to be a priority, we recommend the extension of HASHAA to ensure that medium sized developments in fast-growing regions can use its provision to maintain the pace of housing supply.

17. However, we note the potential inconsistency between an extension of HASHAA at the same time as considering the recently proposed repeal of those parts of the RMA that mirror HASHAA (limited notification and appeal rights).
18. We recommend you forward this briefing paper to the Minister for the Environment and discuss the intersection between an extension of HASHAA and proposed RMA reforms.

Is HASHAA the best tool to fill the gap?

19. HASHAA is an enabling Act that has been implemented differently by territorial authorities, and practice has evolved over time. Little robust analysis has been undertaken on the effectiveness of HASHAA, however some lessons can be drawn from its implementation.

HASHAA provides benefits to territorial authorities and developers...

Accelerated and increased housing supply and encouraged greater range of typologies

20. HASHAA has accelerated the supply of housing, bringing more houses to market sooner compared to regular RMA processes. HASHAA has also contributed to additional supply, in particular, in those situations where residential housing was consented in SHAs which had an underlying zone that was not residential. For example in Tauranga City Council area, a number of SHAs were approved for Papamoa East with a potential yield of 2,500 dwellings. Some of these SHAs were on land with an underlying zone of light industrial. In other situations, HASHAA provisions are used to consent a higher-density development than might have ordinarily occurred.¹
21. HASHAA also encouraged developers to be innovative and to build some smaller dwellings to meet the affordability criteria required by some territorial authorities. This led to developers recognising the market appetite for smaller units and providing smaller units voluntarily. This increased housing choice.²

HASHAA provided territorial authorities with greater leverage to negotiate with developers

22. HASHAA provided territorial authorities with greater ability to negotiate with developers. The decision-making criteria under the Act favour improving housing affordability and this gives territorial authorities greater ability to make exceptions to district plan rules such as density, site coverage and shadowing constraints.³
23. HASHAA is a voluntary process. In most accord areas, territorial authorities seek expressions of interest from developers to recommend a SHA is developed. Developers choose to request the SHA process when the benefits offset the costs, including the costs of any requirements that are outlined in the SHA policy.
24. Developers have identified HASHAA's non-notification period as valuable. Consenting under HASHAA hasn't necessarily been faster; however HASHAA removed the right of appeal, which provides certainty to the process. Note that precluding such rights is at the expense of the surrounding community who are prevented from having a say in the process.
25. By removing the notification and appeal rights, HASHAA creates value for developers. Some territorial authorities have negotiated with developers for a share of this value by seeking contributions from developers for infrastructure and / or affordable housing. In this way, territorial authorities are balancing the removal of rights with the benefits of new and affordable housing for a future community.

¹ For example, a SHA in Tauranga provided an additional 300 dwellings than what the district plan would allow. The SHA process sped up the development.

² *Outside the RMA comfort zone – learning from implementing the Housing Accords and Special Housing Areas Act 2013*, Auckland Council.

³ See S34(1) of the Act, which affords affordable housing greater priority or weighting than part 2 of the RMA.

26. Territorial authorities have also used HASHAA to seek contributions from developers as a condition for a SHA - especially infrastructure contributions where adequate infrastructure does not exist or is not within territorial authorities' plans. For territorial authorities facing infrastructure, financing and funding constraints this has been a significant factor in making developments viable and thereby accelerating or adding housing supply.
27. For example, Nelson City Council recently negotiated for developers to provide the necessary three waters connections for the Stoke SHA, as a condition for approval. The area had been identified previously as a potential site for expansion, with developers contributing to infrastructure accelerated development and housing supply, as infrastructure provision was not within the council's Long Term Plan and therefore not able to be within the Development Contributions policy.
28. Queenstown Lakes District Council SHA guidelines include criteria that if existing infrastructure does not exist, then any required infrastructure updates be 'provided and funded by the private sector at no additional cost to the Council'.⁴
29. HASHAA allows for housing consents to be issued for areas that are not zoned residential, such as industrial land. Consenting for residential housing or for greater density than the underlying zoning allows, effectively 'upzones' the SHA and changes the development economics. Queenstown Lakes District Council has used this process to capture some of the value added through the consenting process and require developers to contribute 10 percent (market value or land area) to an affordable housing trust. The developer is also required to promote other affordability incentives that are secured through a deed. For example, a set amount of dwellings or sections to be below market rates and a set amount of sections to be of a smaller size.

...but HASHAA also presents constraints

HASHAA also reduces opportunity for public participation and precludes appeal rights

30. HASHAA provides greater certainty to developers about the time taken to get consent, but this is at the expense of public participation in the planning process.
31. HASHAA does not require statutory consultation to establish a SHA. Public participation rights are also reduced for consent applications for qualifying developments in SHAs. Applications cannot be publicly notified under HASHAA, although where limited notification to adjoining property owners and occupiers is possible the Council's decision on the application cannot be appealed to the Environment Court.
32. Some territorial authorities have run non-statutory consultation in relation to a proposed SHA. Tauranga City Council and Western Bay of Plenty District consulted on the SHA proposals, and found across all SHAs established in the area, two-thirds of submissions were opposed to the proposal.⁵

HASHAA has high transaction costs at times disproportionate to the outcomes

33. HASHAA incurs high transaction costs that can be disproportionate to the outcome. For a SHA to be established, it requires resources from developers, council and government officials, Cabinet agreement and Parliamentary Counsel Office resources.
34. These costs can be significant. Developers have estimated that the average cost of preparing a SHA is \$300,000, however in the right circumstances the benefits of HASHAA outweigh these costs, as developers continue to request SHAs be established. For territorial authorities, the administration of SHAs was not considered burdensome.

⁴ Queenstown Lakes District Council, Housing Accords and Special Housing Areas Act Implementation Policy, <https://www.qldc.govt.nz/assets/Uploads/Planning/SHA/Council-Lead-Policy-26-October-2017.pdf>

⁵ James, Bev, *Building Better Homes Towns and Cities, SRA – The Architecture of Decision-Making – Life as Lived Component*, 2017.

35. The HASHAA process was set up to provide checks and balances and to provide national consistency and oversight of decisions. HASHAA was originally designed to be used for larger developments, which justify the administration costs. However, in practice HASHAA has been used for some very small developments (eg under 10 dwellings).

HASHAA is only used by some high growth territorial authorities

36. Only eight of the fifteen accord territorial authorities have active SHAs. Some of the easier SHAs have been developed, with the remaining SHA opportunities being in more difficult sites where the development economics are more challenging. Tauranga City Council, Queenstown Lakes District Council and Hamilton City Council would support an extension and are likely to continue to use HASHAA.
37. The SHAs in Auckland Council have expired. To date Auckland Council has not indicated any interest in establishing a new Housing Accord with government.

Options for the future of HASHAA

38. MBIE considers that there are three options for the future of HASHAA, as outlined in Table 1 below.
39. The next section discusses whether mandatory affordability requirements be included if HASHAA is extended.

Table 1: Options to extend HASHAA

	Benefits	Costs / Risks
Option 1: Status quo		
Status quo, with HASHAA to partially repeal on 16 September 2019 and be completely repealed by 16 September 2021.	<ul style="list-style-type: none"> Retain ability to use HASHAA for the next year. Focus efforts on wider programme of reforms. 	<ul style="list-style-type: none"> Gap in tools to facilitate small to medium sized developments, which will not be undertaken by the UDA. Gap in the medium to long term until the UGA reforms are in place (approximately 5-7 years). It is unclear at this stage what those reforms will look like.
Option 2: extend HASHAA over the medium to long term (recommended option)		
Extend HASHAA in its current form (but with potential minor amendments) until reforms under the UGA are expected to be implemented (approximately 5-7 years).	<ul style="list-style-type: none"> Provides a regulatory tool to facilitate affordable housing within small to medium sized developments that will not be within scope of the UDA. Provides territorial authorities with leverage to seek additional benefits and outcomes in new developments, such as contributions to new infrastructure, which overcomes council financing constraints and increases housing supply. Continues to provide 	<ul style="list-style-type: none"> Has high transaction costs for central government that can be disproportionate to the size of the development. HASHAA was intended for large developments, but will be used for smaller and medium sized developments. Streamlining of the process would require significant policy work that is not in line with its intended use. Has financial implications, as MBIE will seek new funding to cover the cost of implementation of HASHAA over approximately 5-7 years. To date, these costs have been absorbed by the policy budget. Establishes a two track system of consenting, if HASHAA is solving a problem with planning system being unresponsive to

	Benefits	Costs / Risks
	enabling tools for territorial authorities to accelerate land supply through expedited consenting. Particularly if changes brought in by RLAA are repealed.	land supply and housing needs, wider systemic response is more appropriate. <ul style="list-style-type: none"> Continues to remove notification and appeal rights to communities for those developments progressed under SHAs. Legislative fix will take 12 – 18 months to pass, unless Government seeks urgency. Considered alongside Government's legislative programme, as legislation will need to be passed by September 2019 to maintain momentum.
Option 3: Comprehensively amend and extend HASHAA over the medium to long term		
Extend HASHAA until the Urban Planning Pillar of the UGA is in place. Comprehensively amend HASHAA to respond to constraints (and mandatory affordability criteria if that was included).	<ul style="list-style-type: none"> Provides a regulatory tool to facilitate affordable housing within small to medium sized developments that are not within scope of the UDA. Deals with some of the constraints of HASHAA, particularly the high transaction costs. Potential to repurpose legislation in line with other reforms, such as UDA – NPS, KiwiBuild and UGA. 	<ul style="list-style-type: none"> Legislative fix takes 12 – 18 months to pass, unless government seeks urgency. Establishes a two track system of consenting, if HASHAA is solving a problem with a planning system being unresponsive to land supply and housing needs, wider systemic response is more appropriate. Requires significant policy work to repurpose legislation, HASHAA is likely to be used by few territorial authorities which may not justify this work.

Recommendation – Option 2: Extend HASHAA

40. On balance, MBIE considers that there is a place for HASHAA in the short to medium term to support smaller and medium sized developments until the UGA is in place. This is anticipated to be five-seven years.
41. HASHAA is likely to be used by a small number of territorial authorities, which does not justify a significant review. In addition, the HASHAA process has been in place for six years, it has been reviewed once, and the process has been embedded and used by territorial authorities that have developed systems and practices for implementation. An extension would pose the least compliance costs for territorial authorities.
42. If HASHAA is to be extended, MBIE could identify any minor amendments that can improve the uptake and implementation of HASHAA, which are in line with its intended use.
43. MBIE considers that HASHAA should not be an enduring legislation with no repeal dates. When the anticipated reforms under the UGA and comprehensive resource management reform are in place they will address planning inefficiencies in a more systemic way, replacing the need for HASHAA.
44. If HASHAA is extended with minor amendments, this provides an opportunity to consider how HASHAA could be amended to address an issue raised by the Climate Change Adaptation Technical Working Group (CCATWG). The CCATWG was comprised of independent technical experts, and was tasked with providing advice to the Minister for Climate Change on adapting the impacts of climate change. The Group was disbanded following the provision of its final report in May.

45. The final CCATWG report included a recommendation to review existing legislation and policy to integrate and align climate change adaptation considerations. Among the issues highlighted by the CCATWG is the need to address the *“current situation where the Housing Accords and Special Housing Areas Act puts priorities on housing supply ahead of natural hazard management provisions of the RMA”*.

Implications should HASHAA be extended

46. Extending HASHAA would have financial implications for the Crown.
47. The Crown currently administers the HASHAA process which is appropriate given the change that it implies to the standard processes territorial local authorities would otherwise have to go through. These costs are commensurate with the way that the Act was expected to be used, which was to create large SHAs supporting multiple developments. Over time, the use has narrowed to SHAs covering single developments. For smaller developments, these mainly fixed costs become larger, relative to the increase in housing supply achieved.
48. If HASHAA is to be extended, MBIE will be seeking new funding to resource the administration of HASHAA which is estimated to be approximately \$180,000 to \$290,000 per year until its repeal. We anticipate that at the time of extension, a significant number of new SHAs will be requested. Other costs, such as potentially facilitating more annual monitoring reports and steering group meetings will also be factored into the proposed funding request.
49. If HASHAA is to be extended, this should be signalled by March 2019, to provide certainty to developers and councils, and make sure that housing developments maintain momentum.
50. Extension of HASHAA needs to be considered alongside the legislative programme and given priority in the context of the wider work. You are responsible for the following legislation to be introduced in 2019:
- Urban Development Authority legislation
 - Residential Tenancy Act
 - Legislation on infrastructure and special purpose vehicles.

If HASHAA was to be extended, should it include mandatory affordability requirements?

51. You have also noted that developing an approach to affordability is crucial for on-going cross-party support for HASHAA.
52. HASHAA enables accord territorial authorities to recommend that dwellings in a new development be affordable, but does not make it mandatory for affordable housing to be included.

Increasing supply alone may not necessarily lead to more affordable homes

53. HASHAA intended to enhance housing affordability by facilitating an increase in land and housing supply in certain regions or districts. Monitoring reports and discussions with territorial authorities has generally found that HASHAA increased and/or accelerated the supply of land and housing.
54. Increasing supply alone does not always significantly increase the supply of affordable housing. Two studies undertaken in Auckland concluded that SHAs may have increased housing supply generally, but did not increase the supply of affordable housing. One analysis found that house prices in the Auckland SHAs were higher than in the non-SHA areas, and

that few affordable housing was created in the SHAs.⁶ The conclusion was that the certainty of consenting and perceived better design outcomes of SHAs created greater value for houses in SHA developments.

55. Without specific consideration of how affordability is to be included in the development, the increase in supply achieved within new SHAs may not result in more affordable housing options in the short term. New builds are predominantly large houses at price points in the upper quartile.⁷

But making affordability criteria by price point mandatory could stop territorial authorities using HASHAA and decrease housing supply

56. HASHAA enables territorial authorities to use affordability criteria, and territorial authorities have used this provision in different ways, such as specifying a price point at which the house must be sold, or requiring a more modest houses within new developments.
57. Setting affordability criteria at a price point can have adverse outcomes. There have been instances of a territorial authority setting a price point at which the affordable house is to be sold (eg the median market price). The price point, such as the medium market price was applied at the consent application date. In a market where both house prices and construction costs are rising, some developers struggled to meet this sale price when the house was completed.⁸
58. Other examples, such as in Queenstown and Auckland, houses were sold at below the market price. The home was consequently resold within a year for a significantly higher price,⁹ providing a windfall gain for the first home owner.
59. In 2017, Queenstown updated its SHA policy and chose not to include price points because it is difficult to retain affordability. The new policy requires developers to contribute 10 percent (of land, houses or value) to a community housing trust. The trust is responsible for setting eligibility criteria, and mechanisms to retain the house over the longer term.
60. Requiring affordable housing to be sold at a fixed price point can be complex to design and implement in a way that does not have adverse outcomes. Such policies can spread the cost of affordable housing across the development, leading to increase in the price of houses not considered 'affordable'. Mandatory affordability criteria by price point would require the following to be in place to work well:
- incentives to off-set costs to developers, such as planning or consenting concessions and value uplift
 - eligibility criteria for households
 - retention criteria to prevent windfall gains
 - skilled and dedicated staff to design and implement the policy.

⁶ Through Auckland Council's affordability criteria, 3,430 affordable dwellings were consented – but this is a small proportion of total consents (46,793) and does not off-set the rise in house prices overall. Bucaram, Santiago, Mario A. Fernandez and Sanchez E. Gonzalo, *Price Effects of a Voluntary Affordable Housing Program*, RIMU, to be published.

⁷ New build dwellings are increasingly valued in the upper quartile of all housing stock, with average floor sizes close to 200m². Productivity Commission, *Using Land for Housing*, Issues Paper 2014.

⁸ For example, Auckland Council's criteria was "in relation to 5% of the proposed dwellings, the price at which a dwelling may be sold does not exceed 75% of the Auckland region median house price for the most recent full month of September (in relation to the date that the relevant resource consent application or request to vary the proposed Auckland combined plan is made under the Act, whichever is the earlier), published by the Real Estate Institute of New Zealand".

⁹ Eg Bridesdale in Queenstown and Waimahia in Auckland. This issue is somewhat mitigated by the bright lines test.

61. Not every council has the administrative capacity, or willingness, to establish such processes to implement mandatory affordability criteria by price point. This may prevent territorial authorities from seeking a Housing Accord.
62. On the other hand some territorial authorities have taken a different approach to affordable housing, by requiring a mix of more modest housing within new developments in their housing policy. For example, Tauranga required developers to include more modest houses on smaller section sizes. Data shows that the Tauranga average sale prices of sections and dwellings is lower in SHAs than in non-SHAs (\$285,000 vs \$380,000).¹⁰
63. Facilitating more affordable houses by typology (rather than by price point) has several advantages. More modest typologies provide:
- an increase in houses that are attractive to first home buyers and are more likely to be affordable
 - houses sold at market price, so have minimal implementation costs and no ongoing enforcement
 - developers with the impetus to be innovative in building new typologies that can meet more diverse housing needs.

Options to increase affordability provisions

64. MBIE has reviewed the options for increasing affordable housing in new developments, as summarised in the table below.

Table 2: Overview of options for addressing affordability through SHAs

Option A: Status quo	Benefits	Costs
Affordable criteria is optional to territorial authorities	<ul style="list-style-type: none"> • Provides territorial authorities with the flexibility to meet the affordability mechanism in a way that is consistent with their resource constraints. • Does not require legislative change. 	<ul style="list-style-type: none"> • May miss opportunities for affordable housing options.
Option B: Encourage more affordable housing through Housing Accords		
Negotiate new Housing Accords with territorial authorities for affordability to be considered within SHAs. Similar to current provisions, territorial authorities can meet this provision by providing a mix of typologies (eg smaller more modest houses and townhouses) or retained affordable	<ul style="list-style-type: none"> • Increase in houses that are affordable. • Provides territorial authorities with the flexibility to meet the affordability mechanism in a way that is consistent with their resource constraints. • Any affordability requirements can evolve as housing needs change, and/or each territorial authority's capacity to be more exacting with requirements changes. • Does not require additional 	<ul style="list-style-type: none"> • Developers may be discouraged from developing houses when any affordability criteria are used. • Not all territorial authorities may be interested in amending their Accords to include greater importance of affordable housing. • Housing Accords identify expectations rather than requirements for affordable housing – they are difficult to enforce, and either party may terminate.

¹⁰ The Tauranga policy requires 10 per cent of the dwellings within the development to be less than the city average, and to be on smaller section sizes.

that are sold at price point, or any other mechanism territorial authorities find appropriate.	legislative change.	<ul style="list-style-type: none"> Requires additional government resource to negotiate housing accords with territorial authorities.
Option C: Require the Minister to be satisfied that the SHA will enhance affordability		
Amend the Act so the Minister must be satisfied that the proposed SHA enhances housing affordability, this leads territorial authorities to consider and make a case for how the SHA will improve housing affordability, but does not prescribe how this provision needs to be met.	<ul style="list-style-type: none"> Provides territorial authorities with the flexibility to meet the affordability mechanism in a way that is consistent with their resource constraints. Provides a mechanism for government to decline a SHA if evidence the SHA will enhance affordability is inadequate. Any affordability requirements can evolve as housing needs change, and/or each territorial authority's capacity to be more exacting with requirements changes. 	<ul style="list-style-type: none"> Some affordability criteria in proposed SHAs may not be rigorously considered and may be difficult to make work. Territorial authorities require greater support from officials to draft any affordability requirements. Lack of national consistency, which increases compliance for developers working across territorial authorities. Requires legislative change.
Option D: make affordability criteria mandatory		
Make affordability criteria mandatory by stipulating a price point at which dwellings must be sold (eg reference to house price/ incomes / median multiple)	<ul style="list-style-type: none"> Some houses are sold at lower prices than they otherwise would have on the open market. 	<ul style="list-style-type: none"> Some territorial authorities will not use SHAs because of the administrative costs to do so. Takes discretion to prescribe SHA requirements away from territorial authorities and may reduce their interest in entering accords Without retention mechanisms, houses sold below market rate can be on-sold for windfall gain. Setting targets nationally is not responsive to local market conditions and will risk developments not going ahead. Requires legislative change and significant policy work to support appropriate range of policy settings that will minimise adverse impact on market.

Recommendation 2A – Extending HASHAA with no affordability criteria (status quo)

65. We recommend that Option A is pursued, and affordability criteria remain voluntary in any extension of HASHAA.
66. Queenstown Lakes District Council and Hamilton City Council have affordability criteria as part of the SHA policies. On receiving your letter outlining an expectation that SHA

applications consider housing affordability, other territorial authorities (such as Tauranga City Council) are reviewing how affordability can be included in future SHA applications.

67. The current provision provides territorial authorities with the flexibility to choose and develop affordability criteria consistent with their resource constraints.
68. The Crown cannot decline to consider a SHA application on the basis that it does not include housing affordability. However, you have no obligation under the Act to recommend the making of an Order in Council establishing a SHA even if all criteria for making a recommendation are met. Any decision not to recommend a SHA for approval can be judicially reviewed.

Options B and C are more directive options for affordable housing to be considered in any SHA application

69. If you want to be more directive in your expectations that affordable housing be included in new developments there are two further options.
 - Option B - Housing accords can be renegotiated to highlight the importance of using the Act to deliver affordable housing.
 - Option C - HASHAA can be amended to expressly require the Minister be satisfied the SHA will enhance affordability. This will encourage territorial authorities to carefully consider how the SHA facilitates housing affordability before recommending to you the establishment of a SHA.
70. **The Housing Accord** (Option B above) is an agreement between the territorial authority and the Crown to work together to address housing supply and affordability. The Accord sets out how the parties will work together to achieve the purpose of the Act.
71. This provides a mechanism for you to agree with the territorial authority a clear expectation that affordability be considered as part of a SHA request. Territorial authorities will continue to have the flexibility to design and implement affordable housing policy that meets their housing needs and resource capabilities. For example, territorial authorities can choose to (but are not limited to) require more modest houses to be included, or houses to be sold at a specific price point, or any other method that territorial authority finds appropriate.
72. s 9(2)(h)
73. Renegotiating Housing Accords will incur resource constraints as officials will approach the eight territorial authorities with active SHAs to amend agreements. Some territorial authorities may not be interested in amending their Accords.
74. Another option is to **amend HASHAA so that the Minister must be satisfied the proposed SHA will enhance housing affordability** before recommending it to the Governor-General (Option C above).
75. This option signals a clear intention that territorial authorities should consider housing affordability before recommending any SHA request to the Minister, but territorial authorities can decide how to meet this condition.
76. Amending legislation provides government the ability to require that affordable housing is considered, declining an SHA request if the Minister is not satisfied the declaration of the

s 9(2)(h)

SHA will enhance housing affordability. It is therefore more instructive than the Housing Accord.

77. Amending HASHAA in this way continues to provide territorial authorities with discretion to develop affordability criteria that is flexible and can meet the needs of their local housing market and their internal resource constraints.

Option D - mandatory affordability criteria by reference to price point - not recommended

78. If HASHAA is extended, MBIE does not recommend making affordability criteria mandatory for SHAs (Option D). Setting such a mandatory provision would be too prescriptive for territorial authorities and in some circumstances may discourage territorial authorities from establishing SHAs or be a disincentive for developers. The impact may be to reduce the pace at which housing is brought to market as developers choose to use standard RMA processes rather than SHA processes to avoid affordability conditions. Anecdotal evidence suggests this happened with some Auckland developments in SHAs.

Is inclusionary zoning another option to ensure more affordable housing as part of new developments?

79. Inclusionary zoning is a rule that requires affordable housing be provided in all developments above a threshold (such as 10 dwellings). Inclusionary zoning is integrated into the planning instruments so applies to all developments in the district where it applies.
80. Inclusionary zoning, which is used in other jurisdictions such as South Australia to increase the supply of affordable housing, was considered as an alternative to HASHAA.
81. International evidence on the effectiveness of inclusionary zoning to provide for affordable housing is mixed. While inclusionary zoning can increase the supply of affordable housing, it is complex to design and implement to avoid adverse outcomes (See Annex D for detail about inclusionary zoning, international practice and use in New Zealand).
82. Two territorial authorities have attempted to include inclusionary zoning provisions within their district plans. Both times, inclusionary zoning provisions were challenged as not being within scope of the RMA.¹¹ While inclusionary zoning for affordable housing has been found to be within the scope of the RMA in one instance, there is still a high risk of litigation for any territorial authority attempting an inclusionary zoning policy, and it is unclear what the extent of the policy could be.
83. Given the complexity of inclusionary zoning, and potential legislative or regulatory barriers, if you wanted to consider inclusionary zoning as an option we recommend it is considered alongside the UGA to make sure of its alignment with the proposed wider systemic changes.

Next steps

84. If you agree with the option to extend HASHAA, but not make affordability criteria mandatory, we will report back to you by September 2018 on:
- repeal dates that are in line with the intended legislative reform under the Urban Growth Agenda and any comprehensive reform of the Resource Management Act are in place approximately five-seven years
 - any minor amendments that support the implementation of HASHAA
 - funding implications for the administration of HASHAA.
85. If you want to be more directive with territorial authorities in that you expect affordable housing to be considered as part of each SHA, there are three options:

¹¹ Queenstown Lakes District Council was unsuccessfully challenged in the High Court and Auckland Council by the Independent Hearings Panel.

- the Housing Accord can provide you with a mechanism to set an expectation
- HASHAA can be amended to include a requirement that territorial authorities consider how the requested SHA will improve housing affordability
- include a mandatory affordability criteria with reference to price point (not recommended).

86. If you want to discuss these options further, please signal this intent with officials.

Released under the
Official Information Act 1982

Annex A: Background to Housing Accords and Special Housing Areas Act and its current use

HASHAA was introduced in 2013 to enhance housing affordability by facilitating an increase in land and housing supply in certain regions or districts with significant housing supply and affordability issues.

HASHAA was intended as an interim measure to ensure new housing supply in Auckland continued (and increased) while the Proposed Auckland Unitary Plan (PAUP) went through its three-year establishment process, and in advance of the more enduring changes to the Resource Management Act 1991 that were planned. In particular, the plan change process included in HASHAA was drafted specifically to enable the new future urban zones in the PAUP to be 'live-zoned' in parallel with the ongoing PAUP independent hearings process. Without HASHAA, there was a concern that the uncertainty of the PAUP process would dampen new residential development in Auckland at a time when demand was increasing.

Early in the policy development and drafting process, HASHAA was expanded to be used in areas outside of Auckland. Later in the legislative process (via Supplementary Order Paper) provision was made for affordability requirements to be one of the criteria that Accord authorities could choose to apply in SHAs. This addition was largely on request of the Auckland Council, which was negotiating the first Housing Accord with the Minister of Building and Construction at that time.

HASHAA was extended in September 2016 for a further three years (but the effect of this was largely outside of Auckland, as the Auckland Housing Accord was only extended until May 2017). In addition, the Resource Legislation Amendment Act 2017 (RLAA) included changes that mirrored provisions in HASHAA, including streamlining of consenting processes, limiting notification of consent applications, and restricting appeal rights. The benefits of HASHAA were considered to be largely superseded by the changes in the RMA. The Minister for the Environment is looking to unwind some parts of the RLAA that mirror HASHAA.

There are eight territorial authorities with active Housing Accords and active SHAs (see table 1 below).

Table 1: Active Special Housing Areas, as of June 2018

	Number of Active SHAs	Projected Yield	Number of building consents issued for dwellings within active SHAs*	Completed dwellings in active SHAs
Wellington	9	1,750-1,925	910	420
Tauranga	11	3,314	771	523
Nelson	22	790	384*	17
Queenstown	7	1,037	189	10
Western BOP	1	230	12	0
Tasman	8	1,281	26*	0
Hamilton	1	80	0	0
Rotorua	0	0	0	0
Total	61	9,861-10,036	2,534	1,050

* Nelson and Tasman numbers reflect resource consents, not building consents.

Hamilton City and Rotorua District Councils have recently established their SHAs, and no consents have been issued as yet.

The SHA process is still being actively used. For example:

- Hamilton City Council recently agreed to recommend the establishment of two new SHAs, one with an expected yield of 1,450 dwellings, and another with an expected yield of 1,000 dwellings

- Rotorua has recommended their first SHA, Ngongotaha SHA, which is expected to provide 190 dwellings in a traditionally affordable location
- We are aware that Tauranga City Council, Queenstown Lakes District Council, and Hamilton City Council are preparing to request further SHAs.

The proportion of SHAs contribution to overall development varies by territorial authority. For example, in Tauranga 1,733 dwelling consents were issued in the year to 31 August 2017. 514 (30%) were in SHAs.

Released under the
Official Information Act 1982

Annex B: How HASHAA fits with wider housing and urban development work programme

Wider housing and urban development reforms	How reforms are similar to HASHAA	Following reforms, will there continue to be a need for HASHAA?
<p>Amendments to the Resource Management Act (RMA), enacted through the Resource Legislation Amendment Act 2017 (RLAA).</p> <p>Purpose of the consenting changes was to introduce proportionality into the consenting system, speeding up consent processes and providing greater certainty of decision-making.</p>	<p>RLAA streamlined the consenting processes:</p> <ul style="list-style-type: none"> • limiting notification of consent applications for residential and sub-division activity • removing appeal rights for boundary activities, sub-division consents and residential activities. 	<p>RLAA provisions are similar to, but did not go as far as limiting the notification period as HASHAA. RLAA ensured that neighbouring property owners potentially adversely affected by development could still participate in the process and appeal rights remained in some limited circumstances.</p> <p>While the provisions in the RLAA still allowed for notification, the benefit of such reforms is that it is a systemic approach to faster consenting than HASHAA, which only applies to special areas.</p> <p>Minister Parker is seeking to repeal the preclusions on public notification and appeal rights as provided for in the RLAA.</p>
<p>National Policy Statement – Urban Development Capacity (NPS – UDC).</p> <p>Ensure there is sufficient land capacity for growth</p> <p>Came into force December 2016.</p>	<p>NPS - UDC aims to ensure there is sufficient development capacity for urban growth.</p>	<p>The NPS-UDC was introduced in late 2016, and has required high growth councils to undertake housing capacity assessments to determine how much commercially feasible housing capacity their resource management plans provide.</p> <p>Following these assessments, councils need to undertake planning responses to address any deficiencies in housing capacity.</p> <p>Planning responses could include plan changes to provide more zoned land for residential development. However, if this is necessary the process initiating, preparing and finalising a plan change could take more than 2-3 years.</p> <p>This means that in some locations HASHAA could remain a useful tool to address any pressing short term deficiencies in housing and land supply.</p>
<p>Urban Development Authority</p> <p>Range of powers for large scale complex projects including land assembly, land use planning and consenting, infrastructure and funding.</p>	<p>Supports the fast tracked delivery of large-scale developments.</p> <p>UDA to be in place from mid-late 2019.</p>	<p>UDA will be used for large or complex projects.</p> <p>While SHAs were also intended to provide for larger scale developments, in practice HASHAA has been used for smaller developments.</p>
<p>Urban Growth Agenda</p> <p>The Urban Growth Agenda (UGA) aims to address the fundamentals of land supply, development capacity, and infrastructure provision. The UGA will deliver medium to long-term changes needed to system</p>	<p>The UGA urban planning pillar is aligned with the objectives that are intended to be achieved by HASHAA.</p> <p>The full scope of the pillar is yet to be determined.</p>	<p>The Urban Planning Pillar will develop a national direction instrument under that RMA which is a more systemic and integrated system of reforms than HASHAA and is likely to supersede the benefits of HASHAA.</p> <p>The development of such an instrument will take time, and will need to be embedded into the planning by territorial authorities, approximately five-seven years.</p>

Wider housing and urban development reforms	How reforms are similar to HASHAA	Following reforms, will there continue to be a need for HASHAA?
<p>settings to create the conditions for the market to respond to growth and bring down the high cost of urban land. The Urban Planning pillar of the UGA addresses planning regulation, methods and practice that act as roadblocks to the delivery of both brownfield and greenfield housing.</p>		
<p>KiwiBuild Build 100,000 affordable homes over ten years. KiwiBuild tools, such as buying off the plans are helping to de-risk some developments, increasing the range of affordable typologies in new developments.</p>	<p>KiwiBuild will bring more affordable housing and diverse housing typologies to market, at specific price points.</p>	<p>Opportunity for HASHAA to be a planning response that supports KiwiBuild in small and medium developments by making development feasible and bringing land to market more quickly.</p>

Annex C: Options analysis – extend HASHAA and include affordability criteria

Benefits		Risks and costs	Add affordability criteria to options			
Option 1: Status quo			Option A: Status quo	Option B: Encourage more affordable housing through Housing Accords	Option C: Require the Minister to be satisfied that the SHA will enhance affordability	Option D: Make affordability criteria mandatory at price points.
Status quo, with HASHAA to partially repeal on 16 September 2019 and be completely repealed by 16 September 2021.	<ul style="list-style-type: none"> Retain ability to use HASHAA for the next year. Focus efforts on wider programme of reforms. 	<ul style="list-style-type: none"> Gap in tools to facilitate small to medium sized developments, which will not be undertaken by the UDA. Gap until the medium to long term when the UGA reforms will be in place. It is unclear at this stage what those reforms will look like. 	<p>Affordable criteria is optional to territorial authorities.</p> <ul style="list-style-type: none"> Council can adapt the requirement to reflect the circumstances of the developments and the needs of the area. Does not require legislative change. <p>BUT</p> <ul style="list-style-type: none"> May miss opportunities for affordable housing options. 	<p>Negotiate new Housing Accords with territorial authorities for affordability to be considered within SHAs. Territorial authorities can meet this provision by providing a mix of typologies or retained affordable that are sold at price point, or any other mechanism territorial authorities find appropriate.</p> <ul style="list-style-type: none"> Increase in houses that are affordable, by being modest or sold at affordable price point. Provides flexibility for territorial authorities to meet requirements. Does not require legislative change and could be pursued immediately. <p>BUT</p> <ul style="list-style-type: none"> Developers may be discouraged from developing houses when any affordability criteria is used. Territorial authorities may not be interested in amending Accords to include greater importance of affordable housing. Housing Accords are non-binding and can only identify an expectation rather than a requirement for affordable housing to be included. No mechanism to enforce. 	<p>Amend the Act so the Minister must be satisfied that the proposed SHA enhances housing affordability, this leads territorial authorities to consider and make a case for how the SHA will improve housing affordability, but does not prescribe how this provision needs to be met.</p> <ul style="list-style-type: none"> Provides territorial authorities with the flexibility to meet the affordability mechanism in a way that is consistent with their resource constraints. Provides a mechanism for government to decline a SHA if evidence the SHA will enhance affordability is inadequate. Any affordability requirements can evolve as housing needs change, and/or each territorial authority's capacity to be more exacting with requirements changes. <p>BUT</p> <ul style="list-style-type: none"> Some proposed affordability criteria in proposed SHAs may not be rigorously considered and may be difficult to make work. Territorial authorities require greater support from officials to draft any affordability requirements. Lack of national consistency, which increases compliance for developers working across territorial authorities. 	<p>Make affordability criteria mandatory by stipulating a price point at which dwellings must be sold</p> <ul style="list-style-type: none"> Some houses are sold at lower prices than they otherwise would have on the open market. Setting national levels of targets removes risks from territorial authorities, where this may be challenged. <p>BUT</p> <ul style="list-style-type: none"> Some territorial authorities will not use SHAs because of the administrative costs to do so. Without retention mechanisms, houses sold below market rate can be on-sold for windfall gain. Setting targets nationally is not responsive to local market conditions and will risk developments not going ahead. Requires legislative change and significant policy work to support appropriate range of policy settings that will minimise adverse impact on market.
Option 2: extend HASHAA over the medium to long term (recommended option)						
Extend HASHAA in its current form (but with potential minor amendments) until reforms under the UGA are expected to be implemented (5-7 years).	<ul style="list-style-type: none"> Provides a regulatory tool to facilitate affordable housing within small to medium sized developments that will not be within scope of the UDA. Provides territorial authorities with leverage to seek additional benefits and outcomes in new developments, such as contributions to new infrastructure, which overcomes council financing constraints and increases housing supply. Continues to provide enabling tools for territorial authorities to accelerate land supply through expedited consenting. Particularly if changes brought in by RLAA are repealed. 	<ul style="list-style-type: none"> Has high transaction costs for central government that can be disproportionate to the size of the development. Has financial implications, as MBIE will seek new funding to cover the cost of implementation of HASHAA over approximately five – seven years. To date, these costs have been absorbed by the policy budget. Establishes a two track system of consenting, if HASHAA is solving a problem with planning system being unresponsive to land supply and housing needs, wider systemic response is more appropriate. Continues to remove notification and appeal rights to communities for those developments progressed under SHAs. Legislative fix takes 12 – 18 months to pass, unless government seeks urgency. 				
Option 3: Comprehensive review and extend over the medium to long term						
Extend HASHAA until the Urban Planning Pillar of the UGA is in place. Comprehensively amend HASHAA to respond to constraints	<ul style="list-style-type: none"> Provides a regulatory tool to facilitate affordable housing within small to medium sized developments that are not within scope of the UDA. Deals with some of the constraints of HASHAA, particularly the high transaction costs Potential to repurpose legislation in line with other reforms, such as UDA – NPS, KiwiBuild and UGA. 	<ul style="list-style-type: none"> Legislative fix takes 12 – 18 months to pass, unless government seeks urgency. Establishes a two track system of consenting, if HASHAA is solving a problem with a planning system being unresponsive to land supply and housing needs, wider systemic response is more appropriate. Requires significant policy work to repurpose legislation, HASHAA is likely to be used by few territorial authorities which may not justify this work. 				

Appendix D: Inclusionary zoning practice in New Zealand and overseas

Inclusionary zoning has been used in other jurisdictions, including most recently in Australia, to support affordable housing in new developments, including small to medium sized developments (eg over 10 dwellings). Inclusionary zoning was considered as an alternative to extending HASHAA.

International research on the effectiveness of inclusionary zoning to increase the supply of affordable housing is mixed. Inclusionary zoning generally produces a small number of affordable houses overall. The cumulative impact of inclusionary zoning can be positive, particularly as one of the benefits of inclusionary zoning is to provide a mix of housing across a development. Inclusionary zoning is best used in combination with other measures to tackle housing affordability.

There are risks that inclusionary zoning policies increase the price of non-affordable houses in the development – although this is less likely in a rising market where prices are set at what the market will bear. Another risk is that the costs of the inclusionary zoning requirements make the developments unfeasible, thereby reducing housing supply overall.

Experience from overseas found that the mix of policy settings helps determine who carries the cost of an inclusionary zoning requirement. These policy settings include:

- incentives that help offset the affordability contribution, such as density bonuses, fast tracking of consents, value uplift/planning gain
- requirements that are known in advance, and levied in a consistent way that can be calculated into development economics
- some flexibility to provide in-lieu payments, or reduce contributions to make developments feasible
- eligibility criteria to assess and ration the affordable housing
- retention mechanisms to preserve the affordability of the house created and to prevent windfall gains.

When affordable houses are created by being more modest or on a smaller portion of land, such policy settings are not required as the houses are sold at market rates.

Mandatory inclusionary zoning is more effective in delivering numbers of affordable housing than voluntary schemes. For example, South Australia's mandatory policy produced significantly more affordable dwellings than New South Wales' voluntary policy (refer table below).

However, mandatory policies place a greater burden on the developer. Mandatory provisions may decrease the supply of housing overall, as developers decide to not develop at all because the economics don't stack up, or choose to develop under the given threshold to avoid the affordable housing obligation.

Mandatory inclusionary zoning has been attempted with limited success in New Zealand

No council currently includes mandatory inclusionary zoning within its district plan.¹² It is not clear to what extent inclusionary zoning is within the RMA's scope. If territorial authorities vary a district plan to include inclusionary zoning provisions, it is likely that the provisions would be appealed, creating risk and cost to the territorial authority.

¹² Note that Queenstown Lakes District Council has some provisions to voluntarily negotiate affordable housing contributions with developers when going through a plan variation.

Queenstown Lakes District Council attempted mandatory inclusionary zoning

In 2008, Queenstown Lakes District Council (QLDC) attempted mandatory inclusionary zoning through their District Plan. The proposed provision in Plan Change 24 linked the effects of a proposed subdivision on the supply of affordable housing, whereby a developer could be required to pay a financial contribution for the provision of affordable housing if the development would have an effect on affordable housing supply. This effects argument is specific to the Queenstown area, where housing affordability is significantly affected by QLDC's policy of urban containment to protect its outstanding natural landscapes.

Plan Change 24 was appealed to the High Court, where developers argued that the requirement to pay financial contributions for affordable housing was outside the scope of the RMA. The High Court held that a requirement for a developer to provide financial contributions for affordable housing is within scope of the RMA.¹³ Despite this ruling, it is still unclear to what extent inclusionary zoning can be required through district plans. In most territories, it will be difficult to demonstrate the effect that a subdivision would have on affordable housing supply – and these effects were essential to the High Court decision.

Legal action on Plan Change 24 continued to debate its merits through hearings and negotiations. The result was a voluntary inclusionary zoning provision that is targeted at greenfields. The provision enables QLDC to voluntarily negotiate affordable housing contributions with developers when going through a plan variation.

Queenstown Lakes District Council is working on new inclusionary zoning provisions to be included in an updated District Plan.

Auckland Council attempted inclusionary zoning through the Unitary Plan process

Auckland Council included inclusionary zoning requirements within the Proposed Auckland Unitary Plan process. This provision was removed following the Auckland Unitary Plan Independent Hearings Panel recommendations that proposed provisions would likely reduce the efficiency of the housing market due to effectively being a tax on the supply of dwellings and being re-distributional in their effect, and that this is not an appropriate method under the RMA.¹⁴

Note that MBIE and the Treasury provided evidence at the Unitary Plan Hearings against Auckland Council's specific inclusionary zoning proposal within the Proposed Auckland Unitary Plan. The concerns related to the 'knock-on' effect on housing affordability as costs were considered to be spread across other housing in the development, particularly as the proposal did not provide incentives to off-set the cost of affordable housing. Another argument against Auckland Council's specific use of inclusionary zoning was the focus on home ownership, and the focus on price controls that were proposed.

Territorial authorities pursue inclusionary zoning at potential risk and cost. This process could be de-risked through the development of a National Policy Statement (NPS) or changes to the RMA that would clearly articulate how affordable housing is within its scope.

The benefit of such a provision as opposed to HASHAA is that it would apply to a greater area and be integrated into the planning process and decision-making across the territorial authority's region, rather than spot developments currently provided for under HASHAA.

¹³ *Infinity Investment Group Holdings Ltd v Queenstown Lakes District Council* [2011] NZRMA 321.

¹⁴ Auckland Development Committee, Agenda 10 August 2016.

International practice in inclusionary zoning

Jurisdiction	Date	Scheme	Mandatory vs voluntary	Incentive provided	Yield	Target occupier
South Australia	2005	Requires 15 per cent of all housing in significant residential developments with 20 dwellings or more – applied on rezoning (including urban renewal and greenfields)	Mandatory	Rezoning Majority on government land (land management agreements). 101 voluntary (incentivised) affordable homes	5,485 (completed or committed) affordable houses or 17% of city supply 2005-2015 Affordable home ownership - 47% Affordable rental - 22% Social rental – 31%	Low-cost home ownership. Offered to eligible purchasers for 30 days before being released on the open market. Home buyers are able to access finance via the SA Government's HomeStart which includes low deposit products for eligible purchasers. Developers meet target by reducing lot and dwelling size, and design modifications. Additional subsidy is required to cover the purchase cost of affordable rental and social rental dwellings delivered.
New South Wales	2005	Voluntary planning agreements entered into by a planning authority and a developer under which the developer is required to make a land or monetary contribution for a public purpose or provide a material public benefit.	Voluntary	Rezoning or variations to development standards resulting in a higher development yield. (value uplift to be shared by developer and public). Density bonus if 20% of gross floor area is for affordable rental housing. Reduced car parking provisions	0.5 - 1% of city supply between 2009-2017	Encourage affordable rental housing, either housing with rents do not exceed 30% of gross households income for households earning less than 120% of the gross median for Sydney metropolitan area OR rented at below 20% of market rent to eligible low and moderate-income households.) OR Housing with reduced size or amenity.
United Kingdom Section 106 agreements	1990s	20-40% of new housing developments to be affordable. Governed by national legislation, but agreements are locally negotiated. Each Local Planning Authority has its own Affordable Housing Threshold. Planning guidance state that affordable housing should not be sought below a 10 unit threshold. ¹⁵ Affordable houses mostly vested to Housing associations. Main benefits of s106 agreements (over state funding for housing associations) are that new affordable housing is integrated into developments, rather than mono-tenure estates.	Mandatory	Density bonus, capture planning gain by granting planning permission	6,390 in 2005-06 14,370 in 2014-15 9,640 in 2015-16 S106 provides for mixed public housing supply in communities.	Affordable (discount) renters, affordable and shared ownership and social housing. ¹⁶ Recent and significant change to tenure of affordable housing secured through s106 towards affordable rental.
San Francisco (US has 512 inclusionary housing programmes across 27 states)	First programme 1971	Mandatory for private housing developments with 10 or more housing units to either: <ul style="list-style-type: none"> Pay an in-lieu fee (similar to impact fee or development contribution) On-site provision of 12% of total units Off-site provision at a rate of 20% 	Mandatory	Density bonuses, used at plan-making stage and rezoning to capture value uplift.	150-250 affordable houses per year or about 12% of annual new housing supply. ¹⁷ 3,821 affordable units since 1999.	Affordable rent or purchase to eligible householders (households earning between 55-120% of area median incomes).

¹⁵ <http://www.s106management.co.uk/faqs>

¹⁶ Gurran, N., Gilber, C., Gibb, K., van den Nouwelant, R., James, A. and Phibbs, P. (2018) *Supporting affordable housing supply: inclusionary planning in new and renewing communities*, AHURI Final Report No. 297.

¹⁷ Over 500 cities in the United States have inclusionary zoning. Locally applied.

¹⁸ Gurran et al.



Aide-memoire

Housing Accords and Special Housing Areas Amendment Bill			
Date:	7 December 2018	Security level:	In Confidence
Priority:	Medium	Report number:	AMI18/19110038

Information for Minister(s)	
Hon Phil Twyford Minister of Housing and Urban Development	
Hon Jenny Salesa Associate Minister of Housing and Urban Development	For information

Contact for discussion				
Name	Position	Telephone		1 st contact
Rebecca Maplesden	Manager, Infrastructure, Places and Partnerships	09 897 5237	s 9(2)(a)	✓
Nicole van Heijst	Senior Policy Advisor	09 928 2897		

Other agencies consulted
N/A

Minister's office to complete

<input type="checkbox"/> Noted <input type="checkbox"/> Seen <input type="checkbox"/> See Minister's notes <input type="checkbox"/> Needs change <input type="checkbox"/> Overtaken by events <input type="checkbox"/> Declined <input type="checkbox"/> Referred to (specify) _____	Comments
---	----------

Date returned to MHUD:



Aide-memoire

Housing Accords and Special Housing Areas Amendment Bill

For: Hon Phil Twyford, Minister of Housing and Urban Development
Date: 7 December 2018
Priority: Medium

Security level: In Confidence
Report number: AMI18/ 9110038

Purpose

1. This aide memoire provides you with talking points for the Housing Accords and Special Housing Areas Amendment Bill cabinet paper.

Rebecca Maplesden
Manager, Infrastructure, Places and Partnerships

7 / 12 / 2018

Background

2. At Cabinet Economic Development Committee (DEV) on 12 December 2018, you will be seeking Cabinet agreement to the Housing Accords and Special Housing Areas Amendment Bill.

Overview of Paper

3. The Housing Accords and Special Housing Areas Act 2013 (HASHAA) will repeal on 16 September 2019.
4. The HASHA Amendment Bill seeks the following changes.
 - extend the HASHAA to 2024
 - require affordability requirements within SHA recommendations
 - require territorial authorities to consider natural hazard risks within the SHA recommendations
 - require territorial authorities to demonstrate how the SHA recommendation contributes to public transport and quality urban environment outcomes
 - provides greater discretion for the responsible Minister to decline a SHA

Next steps

5. The following officials will be available to support you at DEV:
 - Nicole van Heijst, Senior Policy Advisor
 - Sam Anderson, Senior Solicitor

Annexes

- Annex A: Talking Points
- Annex B: Questions and Answers

Annex A: Talking points

Housing Accords and Special Housing Areas Act 2013 will expire next year

1. HASHAA provides a more streamlined and certain process for housing development than the Resource Management Act.
2. Currently, there are fifty-five active SHAs across eight territorial authorities. Within these active SHAs, there is an estimated yield of close to 7,000 houses.
3. When HASHAA repeals on 16 September 2019, it will leave a gap in tools to facilitate small and medium sized developments.
4. Developers and territorial authorities have expressed interest in continuing to use HASHAA. Five territorial authorities and ten developers have indicated that some proposals for SHAs have not been considered because there is insufficient time to progress before the Act repeals.
5. I propose that HASHAA be extended so medium sized developments in fast growing regions can use the provisions to maintain pace of housing supply.
6. I propose that the extension is for five years – to 2024 – when the changes from the Urban Growth Agenda will begin to take effect.

Requiring affordable housing in SHAs

7. To date, HASHAA has focussed on increasing supply. Focussing on supply alone doesn't necessarily provide for more affordable houses.
8. I propose that with the extension of HASHAA territorial authorities are required to consider how the SHA will include affordable houses. The Act will provide for a broader definition of affordable housing, with options for territorial authorities to meet this requirement. Officials will work with territorial authorities to develop the affordability options, which are likely to be contained in regulations.
9. Including affordability options in regulations provides guidance and flexibility for territorial authorities to use an affordability requirement that aligns with their capacity constraints and local housing market conditions.
10. When territorial authorities have used affordability criteria defined by a specific price point, some developers have struggled to deliver affordable housing under the definition, because house prices have risen between when the price was set and when the house is sold. The Act currently requires that the date at which the price point is determined is at the resource consent stage.
11. Officials will consult with territorial authorities, and undertake further analysis on the value of setting the affordable housing price point to a later date.
12. I propose that regulations allow a price point to be set at a later date, if it is found that this would assist in delivering affordable houses through SHAs.

Minimum dwelling size

13. The Bill proposes that minimum dwelling thresholds be set in regulations to make sure that the housing outcome is proportionate to administrative costs.

Better information for decision-making and reducing risk

14. The Bill proposes the following improvements to support robust decision-making and reduce risk with SHA recommendations:
 - territorial authorities must consider natural hazard risks within SHA recommendations
 - territorial authorities must demonstrate how the proposed SHA will be integrated with public transport and quality urban environments. I also seek delegated authority to decide on whether this includes express alignment with urban national direction
 - the responsible Minister has greater discretion to decline a SHA.

Consultation

15. Given the timelines extensive consultation has not been undertaken on the specific components of the Bill. Territorial authorities were consulted in early policy development, and will be consulted on the development of regulations. The proposed affordability criteria and the minimum dwelling threshold are likely to have the greatest impact on territorial authorities.
16. Some regional councils have been consulted on the proposed consideration of natural hazard risks.
17. The Ministry for the Environment, Te Puni Kokiri, The Treasury, The Ministry of Education and The Department of Internal Affairs have been consulted.

Legislative Process

18. I intend to issue drafting instructions to The Parliamentary Counsel Office in January 2019, and I anticipate that the Bill will be introduced into the House in April 2019.
19. For the Bill to be passed by 16 September 2019, a truncated legislative process will be required.
20. I will instruct officials to prepare regulations to support the HASHA amendment bill, to be considered in March 2019.

Released under the
Official Information Act 1982

Annex B: Questions and answers

Question	Suggested response
How will existing SHAs be affected by the HASHAA extension?	<p>On 16 September 2019 all existing SHAs will be disestablished. Any applications for resource consents made before this date can continue until 16 September 2021.</p> <p>SHAs without a granted resource consent or pending resource consent application will need to be reconsidered under the new provisions.</p> <p>These recommendations will need to include affordable housing natural hazard information and public transport and quality urban environment outcomes. They will also need to be above the proposed minimum threshold.</p> <p>Allowing the SHAs to be disestablished ensures that the new provisions take effect as soon as possible.</p> <p>Given the small number of new orders, and the expected repeal of HASHAA, we do not anticipate that there will be a significant number of SHAs re-recommended. Estimates are 3-6 SHAs.</p> <p>From the date that the HASHAA Amendment Bill is introduced (anticipated to be April 2019), territorial authorities will know what is required to be contained in new SHA recommendations, and can prepare recommendations accordingly.</p>
What happens to the Housing Accords?	<p>The Housing Accords will continue unencumbered.</p> <p>HUD will proactively work with territorial authorities to renegotiate the Housing Accords to be aligned with the changed requirements in the Act. HUD will start with those territorial authorities that most actively use HASHAA, and renegotiate as resources permit.</p> <p>HUD is seeking additional funding as part of Budget 2019 to support this process.</p>
What is the intention of HASHAA potentially being aligned with the urban national direction?	<p>Despite a requirement for SHA recommendations to have regard to relevant local planning documents, strategies and policies, in some places SHAs were established in an ad hoc manner and divorced from relevant growth management strategies.</p> <p>The proposed amendments to HASHAA include a requirement for territorial authorities to demonstrate how the SHA supports public transport and quality urban environments.</p> <p>MfE and HUD are undertaking work to develop national direction under the RMA to support better urban outcomes. I will instruct HUD officials to undertake further work on possible alignment between HASHAA and the national direction. This provides opportunities for HASHAA to align across the system, however the risk of linking this provision to HASHAA criteria will need to be further analysed.</p> <p>I seek to be delegated authority to make decisions of whether the national direction is to be expressly linked within HASHAA once this work is completed.</p>
Why is the funding to exercise the HASHAA override function coming from	<p>The funding is to cover the costs of HUD being a consenting authority in special housing areas that do not have a Housing Accord.</p>

Question	Suggested response
revenue other?	<p>The funding of \$3million will cover HUD's up-front consenting costs, with these costs being recouped from territorial authorities.</p> <p>This is a continuation of the current funding source.</p> <p>To date, this provision has not been used.</p>
What are the likely thresholds for SHA recommendations?	<p>HUD officials will consult with territorial authorities on the proposed minimum dwelling threshold.</p> <p>The majority of SHA recommendations from territorial authorities have been for SHAs with more than 20 dwellings. A threshold around this number would strike a good balance between enabling medium sized developments and reducing costs to government.</p> <p>Developments with fewer than 20 dwellings are likely to be viable under the Resource Management Act 1991 process.</p> <p>However, this will be tested with territorial authorities</p>
Why does the legislation include a natural hazard component?	<p>Some regional authorities and the Climate Change Adaptation Working Group have signalled a concern that natural hazard risks aren't appropriately considered in SHA recommendations.</p> <p>The level of information on natural hazard risks contained in SHA recommendations relies on territorial authority relationship with the regional council.</p> <p>The proposed amendments require express consideration of natural hazards, which will provide a trigger for discussions with the regional council.</p> <p>The MfE noted that the proposed changes to the Act will not change the relative importance given to natural hazard considerations as compared to the provision of housing. However, MfE supports the explicit consideration as a mechanism to avoid development occurring in inappropriate areas.</p>
How will the Minister's discretion be different from the provision in the current Act?	<p>The responsible Minister currently has no obligation to recommend a SHA, even if the Minister is satisfied that all the criteria are met.</p> <p>The strengthened wording to 'absolute discretion' is likely to limit the ground available for judicial review (thus strengthening the position against legal challenge) but this is unknown unless tested in court.</p>