

Departmental Disclosure Statement

Housing Legislation Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry for Business, Innovation and Employment.

The Ministry for Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

18 August 2016.

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Part One: General Policy Statement

The Housing Legislation Amendment Bill (the Bill) is an omnibus Bill, introduced in accordance with Standing Order 263(a), whose amendments deal with an inter-related topic that can be regarded as implementing a single broad policy. The Bill amends two Acts that relate to increasing the supply and affordability of housing.

The Bill will:

- Amend the Housing Accords and Special Housing Areas Act 2013 (HASHAA) to:
 - Extend the date by which Special Housing Areas (SHAs) can be established by three years to 16 September 2019; and extend the date of repeal of the entire Act by three years to 16 September 2021.
 - Set time limits for lodging resource consents and plan variation applications, and provide ministerial discretion on revoking Special Housing Area (SHA) status.
 - Allow plan variation applications begun but not completed under HASHAA to continue when the proposed District Plans become operative.
 - Clarify the relevant planning document that local authorities use to assess resource consent and plan variation applications under HASHAA.
- Amend the Housing Act 1955 to confirm that the offer-back obligations to former owners under the Public Works Act 1981 do not apply (and to avoid doubt never have applied) to the disposal of “State housing” land where the disposal is necessary to achieve the Crown’s housing objectives.

The purpose of the Bill is to increase the supply and affordability of housing. The Government is very strongly focused on housing supply and house prices for three main reasons:

a. A housing market that is not properly functioning can have a significant effect on the macro-economy, and on the performance of a city. It impacts on labour mobility, interest rates, the balance of tradable and non-tradable growth, and on choices about the allocation of capital.

b. High house prices are a significant driver of social and economic inequality, including, but not limited to, the health-related problems associated with overcrowding.

c. There are direct costs to Government from housing: the Government spends \$2 billion a year on accommodation subsidies, and subsidises 60 per cent of all rentals in New Zealand. So when house prices rise, it impacts all taxpayers directly. In addition, the Government sees the optimisation and more efficient use of Housing New Zealand Corporation’s landholdings as a key way to deliver value for the country.

House prices nationwide continue to rise. In July 2016 the average property value in New Zealand was \$602,000 a 33% increase from September 2013 (\$452,000). This situation is particularly acute in Auckland where the housing market urgently requires

new supply. Despite Auckland currently consenting dwellings at above the long-term average, demand continues to exceed supply.

Components of the Bill

1. Housing Accords and Special Housing Areas Act 2013 amendment

The HASHAA enhances housing affordability by facilitating an increase in land and housing supply in certain regions or districts identified as having housing supply and affordability issues. These regions and districts are listed in Schedule 1 of the Act.

The HASHAA allows the establishment of SHAs which are defined locations where residential developers have access to more permissive and faster resource consent and planning processes. SHAs are created by Order in Council under the Act on the recommendation of the Minister of Building and Housing. Development is incentivised by reducing costs, including time costs, in these areas, which in turn results in faster development and increase in overall supply as well as increased affordability.

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

Extending the SHA establishment date and the repeal date of the Act by three years will allow for the establishment of additional SHAs across the country. This means more areas will benefit from faster housing development and increased housing supply, to help increase housing affordability.

b) Set time limits for lodging resource consents and plan variation applications, and provide ministerial discretion on revoking Special Housing Area (SHA) status.

This amendment will ensure progression is maintained in SHA developments by setting a time limit on SHA status. Stipulating a time limit (12 months) by which SHAs must lodge their applicable resource consents will ensure that SHA developers are incentivised to maintain progression in their developments or they may lose access to the benefits of HASHAA. These provisions will reduce the potential for SHA developers to landbank their properties.

c) Allow plan variation applications begun but not completed under HASHAA to continue when a District Plan becomes operative

Section 75 of HASHAA states that when a proposed District Plan becomes operative any SHA that has not completed a plan variation process will be considered as withdrawn and be required to start the plan variation process again under Schedule 1 of the Resource Management Act 1991 (**RMA**) if the matter in the application is–

- a) considered and determined by the AUP process; or
- b) inconsistent with the decision made by the AUP process.

This may result in processing, holding and other costs that would be borne by SHA developers. Additionally it is likely that SHAs would need to be fully notified under the

RMA process rather than limited notified under the HASHAA process, which may delay development further.

The Bill will allow SHA plan variation applications that are lodged but not completed when a relevant proposed District Plan becomes operative to continue under HASHAA. They will not be trumped by the new District Plan.

In Auckland this will mean that the five plan variations that are still pending on 16 September 2016 (when the AUP is expected to become operative) will be able to continue under HASHAA and not have to start the process again under the Resource Management Act 1991. Without this amendment the expected yield of over 3000 homes in these five applications would be jeopardised.

d) Clarify the relevant planning document that Auckland Council uses to assess resource consent and plan variation applications under the Act

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

Without this amendment local authorities will be forced to reassess all outstanding HASHAA resource consent and plan variation applications against the new “relevant planning document” or risk review of those decisions.

A reassessment of outstanding applications will increase the workload of local authorities and developers and may delay development and the construction of homes. Changing the relevant planning document part way through the process will increase the uncertainty for developers and reduce continuity.

2. Amend the Housing Act 1955 to include an avoidance of doubt provision clarifying that the offer back provisions under section 40 of the Public Works Act are not, and never have been, triggered when the Crown disposes of “State housing land” for “State housing purposes”.

While some consequential amendments were made to the Housing Act when the Public Works Act 1981 was enacted, the interaction between disposals of State housing land and the offer back obligations to former owners under section 40 of the Public Works Act was never clarified. To provide certainty, the Bill will amend the Housing Act to confirm that the offer-back obligations under the Public Works Act do not apply (and to avoid doubt never have applied) to the disposal of “State housing land” where the disposal is necessary to achieve the Crown’s housing objectives.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>Productivity Commission of New Zealand reports:</p> <ul style="list-style-type: none">• Housing Affordability, 2012;• Using land for housing, 2015;• Better urban planning 2016 (draft report). <p>Reports available at http://www.productivity.govt.nz/</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p><i>Housing Legislation Amendment Bill: Regulatory Impact Analysis. Ministry of Business, Innovation and Employment, August 2016.</i></p> <p><i>Creating Special Housing Areas Regulatory Impact Statement, April 2013. Available at: http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-mbie-cspa-may13.pdf</i></p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<i>Housing Legislation Amendment Bill: Regulatory Impact Analysis. Ministry of Business, Innovation and Employment, August 2016.</i>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

No steps have been taken to determine whether the policy to be given effect by the Bill is consistent with New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Consultation with policy advisers with expertise in the Crown's Treaty of Waitangi obligations, including advisers within Te Puni Kōiri, the Office of Treaty Settlements, and the Post Settlement Commitments Unit.

Discussions with and review by the Ministry of Business, Innovation and Employment's legal team regarding judicial decisions about the principles of the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<i>Discussion and consultation with Auckland Council in relation to the relevant planning document that local authorities use to assess resource consent and plan variation applications under the Housing Accords and Special Housing Areas Act 2013.</i>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<i>Special housing areas are established by Orders in Council under section 16 of the Act. This Bill enables Orders in Council to be made revoking a SHA or reducing its size if applications for plan changes or resource consents have not been made within 12 months of the SHA being established. The Bill also includes a provision to make information about SHAs more readily accessible to the public and provides for maps and plans to be incorporated by reference.</i>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO