

Housing Legislation Amendment Bill

Government Bill

Explanatory note

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 interrelated topic that can be regarded as implementing a single broad policy. The Bill amends 2 Acts that relate to increasing the supply and affordability of housing.

The Bill will—

- amend the Housing Accords and Special Housing Areas Act 2013 (the **HASHA Act**) to—
 - extend the date by which special housing areas (**SHAs**) can be established by 3 years to 16 September 2019 and extend the date of repeal of the entire Act by 3 years to 16 September 2021;
 - set time limits for lodging applications for resource consents (**consent applications**) and requests for plan changes or variations of a proposed plan (**plan change requests**), and provide ministerial discretion on revoking SHA status;
 - allow plan change requests made but not completed under the HASHA Act to continue when proposed district plans become operative;
 - clarify the relevant planning document that local authorities use to assess consent applications and plan change requests under the HASHA Act;
- 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, have never 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 support the wider Government programme of work to increase the supply and affordability of housing, and to maintain the momentum of strong growth in new home construction.

The number of homes being constructed each year in areas with housing accords has grown 76% from 10 599 in the year to June 2013 to 18 693 in the year to June 2016. The HASHA Act was particularly focused on Auckland, where 154 SHAs have been declared. Within those 154 SHAs, 1 300 homes have been completed, 2 200 building consents issued, 2 458 new sections created, and resource consents approved for 7 170 sections. These figures include those consented under the HASHA Act and the Resource Management Act 1991.

The first proposal is extending the HASHA Act by 3 years. The HASHA Act was introduced as a short-term mechanism particularly focused on Auckland to enable new housing areas to be opened up while the new Auckland Unitary Plan was being completed. This extension is needed in response to the high housing demand in areas outside of Auckland, like Queenstown, Tauranga, Hamilton, and Nelson, where the mechanism enables an ongoing supply of new residential areas and where existing plan change processes are likely to be too slow. The extension will enable this interim tool to continue to be used until the National Policy Statement on Urban Development Capacity is implemented, the Resource Management Act 1991 reforms are progressed, and the new urban development authority mechanism is available.

The second proposal tightens the time limits for consent applications and plan change requests in SHAs. It enables SHAs to remain live for 12 months from the date of gazettal, but then enables the Minister to disestablish the SHA if no consent application or plan change request has been made.

The third proposal deals with transition issues relating to new district plans becoming operative. This proposal will allow plan change requests that are lodged but not completed when a new district plan becomes operative to continue under the HASHA Act and not be trumped by the new district plan. In Auckland, the Auckland Unitary Plan is expected to become operative on 16 September 2016. There are 5 SHAs with a capacity of approximately 3 180 homes that have not been zoned residential in the Auckland Unitary Plan where plan change requests have been lodged but will not be completed by 16 September 2016. Without legislative intervention, these plan change requests will lapse and the developer will need to start the plan change process all over again. The Bill enables plan change requests in the Auckland SHAs lodged prior to 16 September 2016 but not completed to continue to be processed under the HASHA Act.

The fourth proposal is that consent applications and plan change requests in SHAs are to be assessed against the version of the proposed district plan that was relevant at the time the application or request was lodged, or against the new district plan if the applicant wishes.

The Housing Act 1955 explicitly provides that State housing purposes include the building and development of houses for sale, lease, or tenancy, and includes acquisition by the Crown of land for houses and ancillary commercial buildings, schemes of

development and subdivision, and the necessary roads, reserves, and infrastructure. If land acquired for most kinds of public works, such as roads, schools, defence, or hospitals, is no longer required for any public work, the land is offered back to the previous owners. However, although State housing purposes includes the sale of houses to achieve the Crown's housing objectives, the relationship between the sale of State housing land for development as part of the Crown's housing objectives (and therefore the continuance of State housing purposes) and the consequential exclusion of offer-back obligations is not explicit. The Bill confirms that the offer-back obligations do not apply to the sale of land as part of the Crown's housing objectives.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2016&no=167>

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 29 August 2016 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.mbie.govt.nz/info-services/housing-property/housing-affordability/document-image-library/signed-housing-accords/ris-amending-the-housing-accords-and-special-housing-areas-act-2013.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. It provides for the Act to come into force on 15 September 2016.

Part 1

Amendments to Housing Accords and Special Housing Areas Act 2013

Clause 3 states that *Part 1* amends the Housing Accords and Special Housing Areas Act 2013 (the **HASHA Act**).

Clause 4 amends section 3 of the HASHA Act, which provides for the repeal of sections 16 and 17 (which provide for the establishment of special housing areas) on

16 September 2016 and of the rest of the Act on 16 September 2018. *Clause 4* extends the life of the HASHA Act by 3 years by amending those repeal dates to 16 September 2019 and 16 September 2021 respectively.

Clause 5 amends section 16 of the HASHA Act, which provides for the establishment of special housing areas (**SHAs**) by Order in Council. *New section 16(4A)* allows an Order in Council to define the boundaries of a SHA by incorporating by reference a map, plan, or similar document. This avoids the need for the area to be described in the order itself. Sections 52 to 55 of the Legislation Act 2012 (which relate to access to and proof of incorporated material, the effect of amendments of incorporated material, and disallowance) apply to any incorporated documents.

Clause 6 replaces section 18 of the HASHA Act, which currently provides that all SHAs will be disestablished on 16 September 2016 (to coincide with the repeal of section 16). Under *new section 18(1)*, a SHA will be disestablished,—

- if it was notified on or before 15 September 2015, on 16 September 2016 (as is the case now):
- if it was notified after 15 September 2015 and before 16 September 2016, on the expiry of 12 months from when it was notified:
- if it is notified after this Bill comes into force, on 16 September 2019 (in line with the amended repeal date for section 16).

Section 18(3) currently provides for the early disestablishment of a SHA in limited circumstances. This remains the case under *new section 18(3)*. To provide an incentive for developers to make timely progress in developing SHAs, *new sections 18(4) and 18A* enable the Minister to disestablish a SHA early or excise land from a SHA if, after 12 months, no application for a resource consent or request for a plan change or variation of a proposed plan has been made.

Clause 1 of Schedule 3 of the HASHA Act applies if a SHA is disestablished.

Clause 7 amends section 75 of the HASHA Act, which sets out what happens if a request for a plan change or variation to a proposed plan under the HASHA Act (**process A**) coincides with a new plan, plan change, or proposed plan variation process under the Resource Management Act 1991 or Local Government (Auckland Transitional Provisions) Act 2010 (**process B**). Stated very simply, section 75 provides that when one of those processes is completed (whichever occurs first), to the extent of any overlap the other process is taken to be withdrawn.

The intent of section 75 is that if 2 planning processes relating to the same matter are on foot at the same time, when the matter has been considered and decided once, that decision should stand and the matter should not be raised again as part of the second process.

However, the effect of this in relation to the development of a new district plan (such as the Auckland Unitary Plan) will be that when that new district plan becomes operative, at least some (and possibly all) of the pending HASHA Act plan changes requests (for example, for rezoning) will be taken to be withdrawn. If the developer wants to proceed with the request, they would have to make a fresh request and start

the process again. *New section 75(1A)* will exclude these circumstances from section 75 so that those HASHA Act requests remain on foot and will be dealt with under *new section 75B*.

Clause 8 inserts *new sections 75A to 75C* into the HASHA Act to set out how applications for resource consents and requests for plan changes or variations of proposed plans that are made during the development of a new plan are to be dealt with.

When a local authority decides a request for a plan change or variation of a proposed plan or an application for a resource consent, it must have regard to the then current version of the plan. That may not be the same version of the plan that existed when the request or application was made, or when local authority staff assessed it. If the local authority were to rely on a planning assessment carried out in relation to an earlier version of the proposed plan, its decision could be susceptible to judicial review for having had regard to irrelevant matters (ie, the old version of the plan) and failing to have regard to relevant matters (ie, the latest version of the proposed plan).

New sections 75B and 75C provide that requests for plan changes or variations of proposed plans and applications for resource consents made after the initial version of the proposed new plan has been notified will be assessed and decided by reference to the version of that plan as it existed at the time the request or application was made. As the latest version of the new plan may be more beneficial to the applicant, both new sections allow the applicant to choose for the section not to apply, and thus have the application assessed against the latest version of the plan.

Part 2

Amendment to Housing Act 1955

Clause 9 states that *Part 2* amends the Housing Act 1955.

Clause 10 amends section 15 of the Housing Act 1955 to clarify that sections 40 to 42 of the Public Works Act 1981 (which relate to the disposal of land no longer required for public work) do not apply to the disposal of State housing land in the circumstances described in *new section 15(2)*. Those circumstances mirror the circumstances described in the definition of State housing purposes in section 2 of the Housing Act 1955.

Hon Dr Nick Smith

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Part 2
Amendment to Housing Act 1955

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Housing Legislation Amendment Act **2016**.
- 2 Commencement**
This Act comes into force on **15 September 2016**. 5

Part 1
Amendments to Housing Accords and Special Housing Areas Act 2013

- 3 Principal Act**
This Part amends the Housing Accords and Special Housing Areas Act 2013 (the **principal Act**). 10
- 4 Section 3 amended (Repeal)**
- (1) In section 3(1), replace “2016” with “2019”.
- (2) In section 3(2), replace “2018” with “2021”.
- 5 Section 16 amended (Process for establishing special housing areas)** 15
After section 16(4), insert:
- (4A) For the purpose of defining the boundaries of a special housing area, an Order in Council under this section may incorporate a map, plan, or similar document prepared or issued by any person or body.
- (4B) Sections 52 to 55 of the Legislation Act 2012 apply in relation to material incorporated under **subsection (4A)** as if it were incorporated under section 49 of that Act. 20
- 6 Section 18 replaced (Disestablishing special housing areas)**
Replace section 18 with:
- 18 Disestablishing special housing areas** 25
- (1) A special housing area is disestablished,—
- (a) if the Order in Council establishing it was notified in the *Gazette* on or before 15 September 2015, on 16 September 2016; or

- (b) if the Order in Council establishing it was notified in the *Gazette* after 15 September 2015 but before 16 September 2016, on the expiry of 12 months from the date on which that Order was notified; or
- (c) if the Order in Council establishing it is notified in the *Gazette* on or after 16 September 2016, on 16 September 2019. 5
- (2) However, the Governor-General may, by Order in Council made on the recommendation of the Minister (a **disestablishment order**), disestablish a special housing area before it is disestablished by **subsection (1)**.
- (3) The Minister must recommend the making of a disestablishment order for a special housing area if— 10
- (a) the region or district that the area is in ceases to be a scheduled region or district; or
- (b) the Minister is satisfied that the area no longer meets the criteria in section 16(3).
- (4) The Minister may recommend the making of a disestablishment order for a special housing area if— 15
- (a) 12 months have expired from the date on which the Order in Council establishing the area was notified in the *Gazette*; and
- (b) no application has been made under Part 2 for a resource consent, plan change, or variation of a proposed plan in relation to the special housing area; and 20
- (c) the Minister is satisfied that it is appropriate to do so having regard to the purpose of this Act.
- (5) Before recommending the making of a disestablishment order, the Minister must give public notice of the intention to disestablish the special housing area. 25
- (6) The notice must be given not less than 3 months before the date on which the disestablishment is proposed to occur.
- (7) The Minister must not recommend the making of a disestablishment order except under **subsection (3) or (4)**.
- 18A Amending special housing areas to excise land if no development progress** 30
- (1) This section applies in relation to a special housing area if—
- (a) the Order in Council establishing the area is notified in the *Gazette* on or after 16 September 2016; and
- (b) 12 months have expired from the date on which that order was notified; and 35
- (c) in relation to some or all of the land in the special housing area, no application has been made under Part 2 for a resource consent, plan change, or variation of a proposed plan.

- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister (an **area reduction order**), amend the Order in Council that established the special housing area to change the boundaries of the area so that some or all of the land referred to in **subsection (1)(c)** is excised from the special housing area. 5
- (3) The Minister may recommend the making of an area reduction order only if the Minister is satisfied that it is appropriate to do so having regard to the purpose of this Act.
- (4) Section 16(2), (3), and **(4A)** to (6) applies to an area reduction order as if the references in those subsections to the proposed special housing area were references to the area that will remain in the special housing area after the area reduction order is made. 10
- (5) Section 16(4) does not apply to an area reduction order.

7 Section 75 amended (Interface between concurrent plan change or variation processes under this Act and Resource Management Act 1991) 15

After section 75(1), insert:

- (1A) However, this section does not apply if—
- (a) process B is a proposed plan process—
- (i) under Schedule 1 of the Resource Management Act 1991 that was commenced under clause 2 of that Schedule; or 20
- (ii) under Part 4 of the Local Government (Auckland Transitional Provisions) Act 2010; and
- (b) process B results in the proposed plan becoming operative in relation to the area before process A is completed.

8 New subpart 3A of Part 2 inserted 25

After section 75, insert:

Subpart 3A—Applications and requests made during development of new plan

75A Interpretation

- (1) In this subpart, unless the context otherwise requires,— 30
- finally decided** has the meaning given in **subsection (2)**
- originally notified version** of a proposed new plan, means the version of the proposed new plan that was notified under clause 5 of Schedule 1 of the Resource Management Act 1991, or under that clause 5 as applied by section 123 of the Local Government (Auckland Transitional Provisions) Act 2010 35
- proposed new plan** means—
- (a) the proposed Auckland combined plan; or

(b)	any other new plan proposed by an authorised agency and notified under clause 5 of Schedule 1 of the Resource Management Act 1991 (and does not include a proposed change to an existing plan)	
	time-of-application version of a proposed new plan, in relation to an application for a resource consent, means the originally notified version of the proposed new plan as amended by any amendment made to it before the application was made	5
	time-of-request version of a proposed new plan, in relation to a request for a plan change or variation of a proposed plan, means the originally notified version of the proposed new plan as amended by any amendment made to it before the request was made.	10
(2)	In this subpart, an application or request is finally decided if the authorised agency has decided the application or request and one of the following applies:	
(a)	there is no right of appeal or objection against the decision:	
(b)	there is a right of appeal or objection against the decision but no appeal or objection is lodged within the time allowed for doing so:	15
(c)	if 1 or more appeals or objections are lodged against the decision, all of them (and any subsequent appeals) have been withdrawn or decided.	
75B	Requests for plan changes and variation of proposed plan and concurrent applications	20
(1)	This section applies if—	
(a)	an authorised agency has notified a proposed new plan; and	
(b)	after the proposed new plan was notified, a request was made under section 61 for—	
(i)	a change to a plan that will be replaced by the new plan (if the new plan becomes operative); or	25
(ii)	a variation of the proposed new plan; and	
(c)	the proposed new plan (or the part of it that is relevant to the request) becomes operative; and	
(d)	when it becomes operative, the request has not been finally decided.	30
(2)	However, this section does not apply if the person who made the request notifies the authorised agency in writing that the person does not want this section to apply.	
(3)	The request and all concurrent applications for resource consents (and any subsequent appeals or objections) must be dealt with and decided as if—	35
(a)	the request were a request for a change to an operative plan; and	
(b)	the applications were applications relating to an operative plan; and	
(c)	the time-of-request version of the proposed new plan were the relevant operative plan.	

- (4) However, if the authorised agency’s decision is to approve the request, the references in section 73 to the plan or the proposed plan are taken to be references to the plan that is in fact the operative plan at the time the requested plan change or variation becomes operative.
- 75C Applications for resource consents (other than concurrent applications)** 5
- (1) This section applies if—
- (a) an authorised agency has notified a proposed new plan; and
 - (b) after the proposed new plan was notified, an application for a resource consent was made under section 25; and
 - (c) the application is not a concurrent application made in conjunction with a request to which **section 75B** applies; and 10
 - (d) the proposed new plan (or the part of it that is relevant to the application) becomes operative; and
 - (e) when it becomes operative, the application has not been finally decided.
- (2) However, this section does not apply if the applicant for the resource consent notifies the authorised agency in writing that the applicant does not want this section to apply. 15
- (3) The application (and any subsequent appeals or objections) must be dealt with and determined as if the time-of-application version of the proposed new plan were the relevant operative plan. 20

Part 2

Amendment to Housing Act 1955

9 Principal Act

This Part amends the Housing Act 1955 (the **principal Act**).

10 Section 15 amended (Disposal of State housing land by sale or lease) 25

In section 15, insert as subsections (2) and (3):

- (2) To avoid doubt, sections 40 to 42 of the Public Works Act 1981 do not apply (and have never applied) to the disposal of State housing land if the land is disposed of as 1 or more of the following:
- (a) land with dwellings and ancillary commercial buildings erected on it: 30
 - (b) land as sites for dwellings and ancillary commercial buildings:
 - (c) land for schemes of development and subdivision into sites for dwellings and ancillary commercial buildings:
 - (d) land for motorways, roads, streets, access ways, service lanes, reserves, pumping stations, drainage and water works, river and flood protection works, and other works that are either or both of the following: 35

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- (i) for the benefit of State housing land or occupiers of that land:
- (ii) on, or for the benefit of, land referred to in **paragraphs (a) to (c)** or occupiers of that land.
- (3) **Subsection (2)** does not affect any right of first refusal that a person or group of persons has in relation to the land under any Treaty of Waitangi claims settlement or collective redress Act or deed. 5