

Office of the Minister of Housing

Cabinet Legislation Committee

Housing Accords and Special Housing Areas Bill: Approval for Introduction

Proposal

- 1 This paper seeks the Cabinet Legislation Committee's agreement to the introduction and first reading of the Housing Accords and Special Housing Areas Bill (HASHA Bill) on 16 May 2013.
- 2 The purpose of the HASHA Bill is to enhance housing affordability by facilitating an increase in land and housing supply in regions or districts with housing supply and affordability issues.

Policy

- 3 On 15 April 2013, Cabinet agreed to address the Government's concerns about housing affordability by working collaboratively with local councils in regions or districts where significant housing supply and affordability issues have been identified [CAB Min (13) 12/14]. Cabinet also authorised me to make minor policy changes and further decisions consistent with the policy we agreed at that time.
- 4 The proposal we agreed on 15 April had five main components: scheduled regions or districts, housing accords, special housing areas, qualifying developments, and more permissive resource consenting powers. Each of these components is summarised below, along with an outline of key changes that I have agreed to under my delegated authority.
- 5 At Cabinet on 22 April we also discussed adding a plan change component to the proposal. Since this policy change is more than minor, I seek Cabinet's formal agreement to this aspect of the proposal in this paper.

Scheduled regions or districts

- 6 We agreed that the Government will identify regions or districts with significant housing supply and affordability issues in a schedule to the HASHA Act, and that Auckland will be identified in the Bill as a scheduled region. We also agreed that other regions or districts could be added to the schedule by Order in Council on the recommendation of the Minister of Housing, if they met either of the following criteria:
 - the percentage of individual take-home pay as mortgage payment exceeds 50 per cent according to the Roost Affordability Index; or
 - they are defined in the annual Demographia International Housing Affordability survey as 'Seriously Unaffordable' (median multiple of 5.1 or over).

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- 7 Since Cabinet, I have decided that it would be preferable not to refer to company names in legislation, since government has no control over whether these entities continue to exist or whether they continue to produce the same data. As such, I have decided to keep the same measures in legislation, but remove reference to these specific companies [section 8(3)(a)]. In the immediate future I still intend to rely on data from Roost and Demographia in making my decisions about whether to include a region or district in the schedule to the HASHA Act.

Housing accords

- 8 A housing accord is an agreement between a local council and the Government to work collaboratively to address housing supply and affordability in a scheduled region or district. However, there will be no obligation on the Government to enter into a housing accord in every scheduled region or district.

- 9 WITHHELD TO PROTECT THE CONFIDENTIALITY OF ADVICE
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Special housing areas

- 11 Special housing areas are defined geographic areas within a scheduled region or district that have the potential to deliver increased land and housing supply, and will be established by Order in Council on the recommendation of the Minister. However, where a housing accord is in place, the Minister will only recommend the establishment of a special housing area on the recommendation of the accord territorial authority.

- 12 I have not made any changes to this aspect of the proposal since Cabinet on 15 April 2013.

Qualifying developments

- 13 The criteria for qualifying developments establish the types of developments to which the more permissive resource consenting powers may apply. Where a housing accord is not in place, we agreed that qualifying developments will be:

- (i) predominantly residential;
- (ii) low-rise (up to 5 storeys); and
- (iii) with capacity for more than 30 dwellings to be built.

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- 14 Where a housing accord is in place, we agreed these criteria will apply, but that an Accord Territorial Authority can recommend a variation to criterion (iii). This variation to criterion (iii) will be made by Order in Council on the recommendation of the Minister of Housing.
- 15 I have since decided that territorial authorities should have the ability to vary criterion (ii) to reflect height restrictions in any existing or proposed plan. As above, this variation will be made by Order in Council on the recommendation of the Minister of Housing.
- More permissive resource consenting powers*
- 16 We agreed that, where a qualifying development (or any of its components) in a special housing area is identified in the relevant plan as a 'prohibited' activity, that activity should be treated as a non-complying activity for the purpose of assessment under the HASHA Act. This means that an application for this activity will be able to be considered by an authorised agency, since the RMA states that a person cannot apply for a consent for a prohibited activity.
- 17 In considering resource consent applications, we agreed that authorised agencies (either the local council or MBIE) would be required to give weight to the considerations below in the order listed:
- (i) give effect to the purpose of the HASHA Act;
 - (ii) be satisfied that sufficient and appropriate infrastructure will be provided to support this development;
 - (iii) comply with Part 2 of the RMA;
 - (iv) take into account the provisions of any draft plan prepared by that council in that area;
 - (v) take into account the factors outlined in section 104-104E of the RMA;
 - (vi) take into account the key urban design qualities expressed in the New Zealand Urban Design Protocol 2005 and any subsequent editions.
- 18 We also agreed that, in the case of any inconsistencies or conflicts, the purpose of the HASHA Act will override other considerations.
- 19 I have since decided to alter the way in which these criteria are to give greater clarity as to the process that an authorised agency should follow [section 25].
- 20 We also agreed that consent applications processed by an authorised agency under the HASHA Act would not be notified, and that, subject to the requisite information being provided, consent applications will be required to be processed by the authorised agency within 60 working days (except for excluded time periods as defined in section 88C of the RMA).
- 21 I have since decided that resource consent applications processed under the HASHA Act may go through a limited notification process if the authorised agency identifies a party for whom the effect of the proposed activity would be more than minor. The time limit of 60 working days will still apply. However, where a plan change or variation is

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being sought alongside a resource consent, this timeframe may be extended to six months.

Planning powers

- 22 Dealing with underlying zoning of land where resource consents granted under the more permissive resource consenting powers included in the HASHA Bill has been the subject of on-going discussion, including at Cabinet on 22 April.
- 23 Auckland Council has raised the issue of underlying zoning in relation to greenfield areas that will be designated as 'future urban zones' in the proposed Unitary Plan. When the Unitary Plan is notified, these areas will not contain any proposed rules that define what types of urban development can occur within them. The Council considers that this will cause unnecessary uncertainty for developers and may affect the ability of developers to secure finance and to on-sell sections within the development.
- 24 On 15 April 2013 Cabinet decided to give the Hearings Panel, which will hear the submissions to the AUP, the authority to consider variations to the plan under certain circumstances and then direct the council to initiate a plan change [Cab Min (13) 12/15]. This would allow the issue of underlying zoning to be changed but it would not address the commercial imperative to have the zoning done earlier.
- 25 The Council's proposal to deal with this is for central government to allow it to initiate a limited notification process to determine the plan change or variation. This process involves establishing a hearing panel, allowing 20 day submission period in which only adjoining landowners and NZTA could participate and having no appeal rights. The Council proposes that such a plan change or variation would become operative on the decision of the hearing panel and would not be subject to a further consultation process through the established Unitary Plan process.
- 26 The key issue with the Council's proposal is how the limited notification process will interact with any processes already underway as part of consultation on the Unitary Plan, which will involve wider public consultation. The Bill resolves this by saying that where two processes are underway in relation to a particular area, the first statutory process to make a plan operative shall cause the other process to cease and rights of standing will be automatically extinguished.
- 27 This potentially raises natural justice issues, as people who have made submissions under the Unitary Plan process may then find that their consultation rights are then removed by the HASHA process. However, given the significant housing affordability problems that have been identified, we need to see a shift in the speed with which land is made available for new housing. As such, I recommend that Cabinet agrees to Auckland Council's proposal.
- 28 In order to permit greater development in brownfield areas, the Bill also states that where operative plan states that an activity is prohibited, but a proposed plan classifies it as controlled, restricted discretionary, or non-complying, then the proposed plan will apply. I also seek Cabinet's agreement to this aspect of the proposal.

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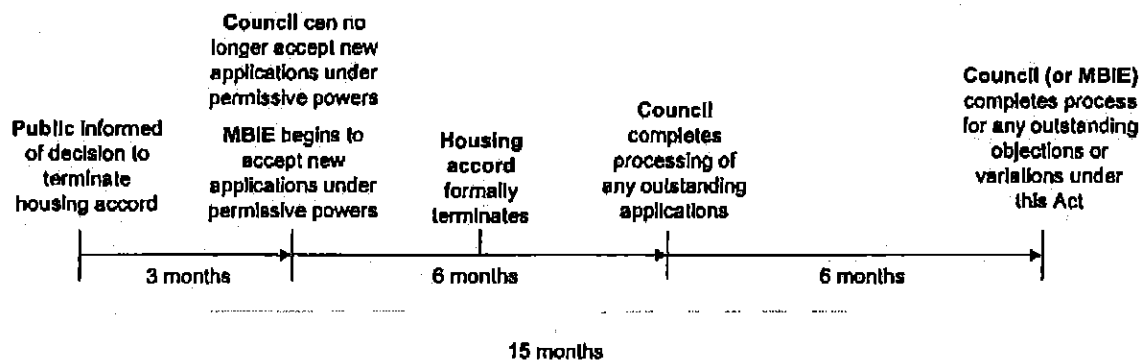
Transitional arrangements

- 29 Cabinet previously noted that careful consideration would need to be given to transitional arrangements to ensure a smooth transition for consent applications that are underway when a housing accord is terminated, and authorised me to make decisions about transitional arrangements [CAB Min (13) 12/14].
- 30 The key issue here is that applicants may have invested significant resources in preparing to lodge an application on the basis of the more permissive consenting powers, and may also have established relationships with councils as part of a pre-application process. As such, potential applicants need certainty about the process that will be followed in the event that a special housing area is disestablished if or the more permissive consenting powers operating in a special housing area pass from the local council to MBIE.
- 31 I have decided on the following three-stage process to give applicants sufficient notice of the termination of a housing accord or disestablishment of a special housing area:
- i) A three-month notice period from the point at which a decision to terminate a housing accord or disestablish a special housing area is made public, to the point at which councils (or MBIE, if it is currently using the powers) can no longer accept new applications under the more permissive powers. This provides applicants with certainty in the following respects:
 - Where a decision has been made to disestablish a special housing area, the applicant still has 3 months in which to lodge an application with either the council or MBIE under the more permissive consenting powers before they cease to operate in that area. This will be particularly important for applicants who have already invested significant resources in preparing an application on the basis of the more permissive powers.
 - Where a decision has been made to terminate a housing accord, but retain the special housing area and transfer the permissive powers to central government, MBIE will need three months notice to prepare to take on the consenting function. At this point, applicants will have the choice to either submit their application to the council as they would have originally intended, or wait to submit it to MBIE.
 - ii) A further six-month processing period in which the council (or MBIE) can continue to process existing applications under the permissive powers.
 - iii) A further six-month period for objections or variations in which the council or MBIE can continue to hear objections or make variations to consents that have been granted under the more permissive powers.
- 32 The diagrams below set out this process as it would apply in two scenarios: the termination of a housing accord (scenario one) and the disestablishment of a special housing area (scenario two).
- 33 Under the first scenario, applicants will have the right to withdraw their applications and lodge them with MBIE following the three-month notice period. I have also decided that during the final six-month period, applicants should have the option for

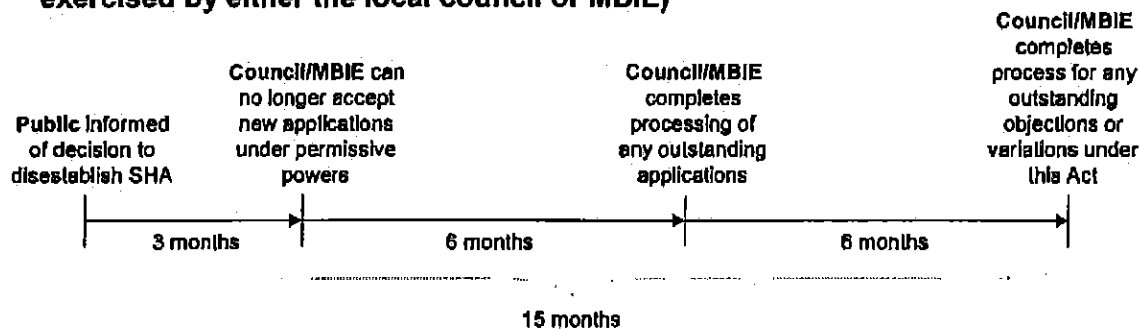
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objections or variations to be considered by MBIE, rather than the council if they choose.

Scenario One: Termination of housing accord with powers passing to MBIE



Scenario Two: Disestablishment of special housing area (where powers are being exercised by either the local council or MBIE)



Transitional arrangements following 1 July 2016

34 Cabinet also noted that transitional arrangements will need to allow for applications for resource consents that have already been lodged, and amendments or objections to consents granted in respect of a special housing area to continue to be processed beyond 1 July 2016 [CAB Min (13) 12/14].

35 I have decided that, following the 1 July 2016 cut-off for the lodging of new applications, the legislation should also include a later date to indicate when the powers in the Bill will cease to operate, and that this date should be 1 July 2017. This will provide for an additional six months in which existing consents can be processed, and a further six months for the resolution of any objections or variations.

Terminology

36 Cabinet invited me to give further consideration during the drafting process to whether housing accords should be retitled *housing supply accords* and, as a consequence, whether the Bill should be retitled *Housing Supply Accords and Special Housing Areas Bill*.

37 I consider adding the word *supply* is unnecessary and have decided to retain the titles I originally submitted to Cabinet.

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Regulatory impact analysis

38 The Ministry for Business, Innovation and Employment prepared a Regulatory Impact Statement that was considered by Cabinet alongside the 'Addressing Housing Supply and Affordability through Housing Accords and Special Housing Areas' paper on 15 April 2013.

Compliance

39 The HASHA Bill complies with:

- The New Zealand Bill of Rights Act 1990
- the principles and guidelines set out in the Privacy Act 1993
- relevant international standards and obligations.

Principles of the Treaty of Waitangi

40 Resource management issues have Treaty of Waitangi implications. As such, when considering changes to resource management approaches, consultation with Māori is an important aspect of compliance with Treaty principles. Specifically, the proposal in this Bill for a new plan change process with reduced consultation and appeal rights may be of concern.

Legislative Advisory Committee Guidelines

41 The Legislative Advisory Committee (LAC) Guidelines on the process and content of legislation have been considered.

42 Given the timeframes in which this legislation has been prepared, the level of consultation envisaged in the LAC Guidelines has not been carried out. The relationship between this legislation and the RMA has been considered, however there is uncertainty about where current reforms to the RMA will land.

Consultation

43 The Ministry of Business, Innovation and Employment was involved in preparing the legislation. The Ministry for the Environment, the Department of Internal Affairs, the Department of Prime Minister and Cabinet and the Treasury have been informed.

44 The Ministry of Justice has been consulted in relation to Bill of Rights Act implications. Auckland Council has been consulted in relation to the Auckland Accord, but not on the draft Bill.

45 The Government's support parties in Parliament will be informed of the contents of the Bill and given an opportunity to comment prior to introduction. The Māori Party were consulted on the policy paper that sought drafting instructions for the Bill, and at that stage indicated their support.

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Binding on the Crown

46 The HASHA Act will be binding on the Crown. Cabinet Office Circular (02) 4 requires Cabinet to make an explicit decision on this matter, and agreement is sought in this paper.

Creating new agencies or amending law relating to existing agencies

47 This HASHA Bill does not create any new agencies. However, it does amend the law in relation to territorial authorities in scheduled regions or districts that have reached housing accords with central government, through the provision of more permissive resource consenting and planning powers. In the event that a housing accord is not in place for a scheduled region or district, the Bill provides more permissive resource consenting powers to the Ministry of Business, Innovation and Employment.

Allocation of decision making powers

48 The HASHA Bill proposes that new decision-making powers be granted to the Executive.

Associated regulations

49 Regulations will be established by Order in Council to establish scheduled regions and districts, special housing areas, and make variations to the criteria for qualifying developments.

Deemed regulations

50 No deemed regulations are proposed.

Definition of Minister/department

51 The definitions of 'Minister' and 'Ministry' in the Bill do not refer to specific Ministers or Ministries, except for the Prime Minister in his capacity to assign responsibility for the administration of the HASHA Act to a specific Minister and department.

Commencement of legislation

52 Clause 2 of the Bill provides that the Act will come into force on the day after the date that it receives the Royal Assent.

Parliamentary stages

53 The Bill should be introduced on 16 May 2013. **WITHHELD TO PROTECT THE CONFIDENTIALITY OF ADVICE TENDERED BY MINISTERS OF THE CROWN AND OFFICIALS**

54 It is proposed that the Bill be referred to the Social Services Committee.

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Recommendations

55 The Minister of Housing recommends that the Committee:

- 1 note that the Housing Accords and Special Housing Areas Bill holds priority 2 on the 2013 legislation programme (to be passed in 2013);
- 2 note that the purpose of the Bill is to enhance housing affordability by facilitating an increase in land and housing supply in regions or districts with housing supply and affordability issues identified in a schedule to the Housing Accords and Special Housing Areas Act;
- 3 agree that the Housing Accords and Special Housing Areas Act will bind the Crown;
- 4 note that on 15 April 2013 Cabinet authorised the Minister of Housing to make minor policy changes and further decisions that are consistent with the policy in the paper under CAB (13) 206, including any necessary transitional arrangements;

Policy changes agreed by the Minister of Housing under delegated authority

- 5 note that the Minister of Housing has decided not to refer to the company names Roost and Demographia in the Housing Accords and Special Housing Areas Act, but will continue to describe the same measures in the legislation in recommending scheduled regions or districts;
- 6 note that the Minister of Housing still intends to rely on data provided by Roost and Demographia in proposing scheduled regions or districts;
- 7 note that the Minister of Housing has decided to use the term 'good faith' to describe the lengths that the Government will go to in negotiating a housing accord with a local council, WITHHELD TO PROTECT THE CONFIDENTIALITY OF ADVICE TENDERED BY MINISTERS OF THE CROWN AND OFFICIALS
- 8 note that the Minister of Housing has decided that the height criterion in relation to qualifying developments may be varied in accordance with any existing or proposed plan;
- 9 note that the Minister of Housing has decided that consents processed under the Housing Accords and Special Housing Areas may go through a limited notification process if the authorised agency identifies a party for whom the effect of the proposed activity would be more than minor, but the 60 day time limit will still apply;
- 10 note that the Minister of Housing has decided that, where a plan change is being sought alongside a resource consent as part of a limited notification process, then the timeframe for processing may be extended to six months;

Planning powers

- 11 note Auckland Council's view that, because the 'future urban zones' in the proposed Unitary Plan do not contain any rules that define what types of urban

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development can occur within them, this will cause unnecessary uncertainty for developers and may affect the ability of developers to secure finance and to on-sell sections within the development;

12 **note** that on 22 April 2013 Cabinet discussed and agreed to incorporate a plan change component to the proposal to deal with this issue, and I now seek to formalise that decision;

13 **agree** that a person may request a variation to a proposed plan in relation to a qualifying development in a special housing area if:

13.1 the activity they are seeking to undertake is prohibited in the relevant operative plan; and

13.2 the proposed plan anticipates that the land to which the request applies will be available in future for a qualifying development; but

13.3 the proposed plan is silent as to the rules that shall apply to that development;

14 **agree** that a person may request a plan change in relation to a qualifying development in a special housing area if:

14.1 the activity they are seeking to undertake is prohibited in the relevant operative plan; and

14.2 the proposed plan continues to describe the activity as prohibited or there is no provision for qualifying developments in a proposed plan.

15 **agree** that a plan variation or plan change process carried out under the powers in the Housing Accords and Special Housing Areas Act shall be:

15.1 limited notified, with consultation occurring with adjoining landowners and the New Zealand Transport Agency only; and

15.2 processed within a maximum of 6 months;

16 **agree** that the planning variation and plan change powers set out in the Housing Accords and Special Housing Areas Act will only apply to accord territorial authorities, not central government;

17 **agree** that where an operative plan states that an activity is prohibited, but a proposed plan classifies it as controlled, restricted discretionary, or non-complying, then the proposed plan will apply;

Transitional arrangements

18 **note** that the Minister of Housing has agreed to the following three-stage process to ensure a smooth transition in the event that a housing accord is terminated or a special housing area is disestablished:

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- 18.1 A three-month notice period from the point at which a decision to terminate a housing accord or disestablish a special housing area is made public, to the point at which councils (or MBIE if it is currently using the powers) can no longer accept new applications under the more permissive powers.
 - 18.2 A further six-month processing period in which the council (or MBIE) can continue to process existing applications under the permissive powers.
 - 18.3 A further six-month period for objections or variations in which the council or MBIE can continue to hear objections or make variations to consents that have been granted under the more permissive powers.
- 19 **note** that the Minister of Housing has decided that, in the event that a housing accord is terminated, applicants that have had their consent granted by the council under the more permissive powers may have any objections or variations considered by MBIE rather than the council;
- 20 **note** that the Minister of Housing has decided that, following the 1 July 2016 cut-off for the lodging of new applications, all powers operating under the Act shall cease on 1 July 2017;

Terminology

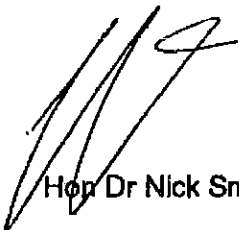
- 21 **note** that the Minister of Housing has decided to retain the original titles of *housing accord* and *Housing Accord and Special Housing Areas Bill*;

Introduction of the Housing Accords and Special Housing Areas Bill

- 22 **approve** for introduction the Housing Accords and Special Housing Areas Bill, subject to the final approval of the Government caucus;
- 23 **authorise** the Minister of Housing to make any necessary technical changes to the Housing Accords and Special Housing Areas Bill prior to introduction
- 24 **agree** that the Bill be introduced and have its first reading on 16 May 2013;
- 25 **agree** that the Government propose that the Bill be:

- 23.1 **referred** to the Social Services Committee for consideration; and

- 23.2 **WITHHELD TO PROTECT THE CONFIDENTIALITY OF ADVICE
TENDERED BY MINISTERS OF THE CROWN AND OFFICIALS**



Hon Dr Nick Smith

Minister of Housing

7 / 5 / 2013