

Special Housing Areas Begins Auckland's Drive Towards Affordable Housing

The Housing Accords and Special Housing Areas Act 2013¹ ("the Act") came into force on 16 September 2013.

The purpose of the Act is to enhance housing affordability by facilitating an increase in land and housing supply in certain regions or districts identified as having housing supply and affordability issues. The Act allows the Government to identify regions and districts with significant housing supply and affordability issues, and include them in a schedule by way of an Order in Council². Currently, Auckland is the only region that has been identified and included.

The Act, alongside agreements between territorial authorities and the Government (known as Housing Accords), will allow for the establishment of Special Housing Areas within identified regions. Inside these Special Housing Areas, Qualifying Developments will be afforded a more streamlined consenting process, rather than having to comply with the normal timeframes set out in the Resource Management Act 1991. To be considered a Qualifying Development, the development in question must be predominantly residential and satisfy certain criteria relating to height and density. This streamlined process will allow for Qualifying Developments to be processed within 60 working days, with limited appeal rights to the Environment Court.

The first Housing Accord³ has already been agreed to between the Auckland Council and the Government. The Auckland Housing Accord is intended to increase housing supply and improve housing affordability in the Auckland region through greenfield and brownfield developments, with a target of 39,000 homes to be built in the next three years. The Accord came into effect on September 30, the date the Auckland Unitary Plan was notified, and was ratified on October 3 by the Minister of Housing, Nick Smith, and the Mayor of Auckland, Len Brown.

On 9 October the Government and the Auckland Council announced⁴ the first group of Special Housing Areas for the Auckland region. Including the previously announced Weymouth development, this will allow for up to 6000 homes to be built in 11 areas mostly in south and east Auckland. The Special Housing Areas announced were:

- Addison, Papakura – 500 homes
- Alexander Crescent, East Tamaki – 148 homes
- Anselmi Ridge, Pukekohe – 64 homes
- Flat Bush Murphys Road, East Tamaki – 275 homes
- Flat Bush School Road, East Tamaki – 300 homes
- Hobsonville (Catalina Precinct and Marine Industry Precincts) – 1000 homes
- Huapai Triangle, Kumeu – 2000 homes
- McWhirter Block, West Harbour – 166 homes
- Orakei, Auckland City – 75 homes
- Wesley College, Pukekohe – 1000 homes
- Weymouth, South Auckland – 280 homes

The Special Housing Areas will take legal effect once they have been formally approved by Order in Council, which is expected before the end of October.

Housing Accords

Housing Accords are agreements between a territorial authority in a scheduled area and the Government, to work collaboratively towards addressing housing supply and affordability⁵.

Where a Housing Accord exists it will enable territorial authorities to operate under the new regulatory powers provided by the Act, and may also include non-regulatory initiatives. An Accord will specify how the parties will work together to achieve the purpose of the Act and set agreed targets for residential developments. It may

¹ <http://www.legislation.govt.nz/act/public/2013/0072/latest/DLM5369001.html>

² Section 9

³ <http://www.aucklandcouncil.govt.nz/SiteCollectionDocuments/aboutcouncil/planspoliciespublications/aucklandhousingaccord.pdf>

⁴ <http://www.aucklandcouncil.govt.nz/EN/ratesbuildingproperty/housingsupply/Pages/specialhousingareas.aspx>

⁵ Section 10

also provide for the Minister and the territorial authority to work together across a wide range of housing issues⁶.

Special Housing Areas

Once scheduled regions and districts are identified then Special Housing Areas can be created. Where a Housing Accord is in place in a scheduled area, the Minister will only recommend the establishment of a Special Housing Area on the recommendation of the territorial authority⁷. If an agreement cannot be reached between the Council and the Government, the Act gives the Government the ability to declare an area to be a Special Housing Area⁸.

Special Housing Areas will be established by Order in Council on the recommendation of the Housing Minister⁹. Before recommending such an Order, the Minister must be satisfied that:

- There is appropriate infrastructure for the proposed Special Housing Area to support Qualifying Developments;
- There is evidence of demand to create Qualifying Developments in specific areas of the scheduled region or district; and
- There will be demand for residential housing in the proposed Special Housing Area

Under the Act, all Special Housing Areas will be disestablished by 16 September 2016¹⁰.

Qualifying Developments

Under the Act, the new consenting process will only apply to Qualifying Developments. Qualifying Developments are defined as being predominantly residential and meeting specific criteria set by the Governor General on recommendation of the Minister, in relation to the following matters¹¹:

- The maximum height that houses and other buildings forming part of the Qualifying Development may be, or the number of storeys or floors (not exceeding six) that they may have; and
- The minimum number of dwellings to be built as part of the Qualifying Development.

The criteria may be varied by an Order in Council on the recommendation of the Minister¹². Where there is a Housing Accord, the territorial authority may substitute the conditions set out above for the height or capacity prescribed in a plan applying to the Special Housing Area. No qualifying criteria may enable a development of greater than six floors.

The Auckland Housing Accord prescribes the following criteria for Qualifying Developments:

- Predominantly residential;
- Capacity for 50 or more dwellings or 50 or more vacant residential sites in new greenfield areas;
- Capacity for 5 or more dwellings or 5 or more vacant residential sites in brownfield areas; and
- A maximum of 6 storeys, or alternatively, the height provisions in accordance with the Auckland Unitary Plan, whichever is the lowest.

Permissive resource consent process

The Act provides for an alternative to the RMA resource consent process for Qualifying Developments (and infrastructure relating to those developments) within Special Housing Areas¹³. Qualifying Developments will have the option of applying for resource consents under the provisions of the Act, rather than the usual RMA process¹⁴.

The Act provides for special activity status rules in relation to a Qualifying Development. For example, where an activity that is described in a relevant operative plan as prohibited, and there is no proposed plan, that activity will be considered a discretionary activity¹⁵.

Once a resource consent application for a Qualifying Development is made, the authorised agency (the territorial authority where there is a housing accord, or the chief executive of the Ministry where there is not¹⁶)

⁶ Section 11

⁷ Section 17

⁸ Section 16

⁹ Section 16

¹⁰ Section 18

¹¹ Section 14

¹² Section 15

¹³ Section 19

¹⁴ Section 20

¹⁵ Section 25

¹⁶ Section 23

must generally process the application within 60 working days. This timeframe is broken down into the following parts:

- The authorised agency has 10 working days to decide whether to notify the application¹⁷;
- Any party notified has 20 working days to make a submission; and
- The authorised agency must commence the hearing no later than 20 working days after submissions close, and complete the hearing no later than 30 working days after the close of submissions.

The Act specifies that an authorised agency is not to notify an application for resource consent made under the Act. However, adjacent landowners, local regional or district authorities, infrastructure providers, or, if there is a designation, the requiring authority, may receive limited notification if they do not give prior written approval to the activity¹⁸. Any authorised agency must not notify an application (or hold a hearing) if the application would not have been notified under the RMA¹⁹.

In considering the application, the authorised agency must reach a decision which is consistent with and gives effect to the purpose of the Act. They must also be satisfied that sufficient and appropriate infrastructure will support the development. They must also take into account the matters set out in Part 2 and sections 104 to 104E of the Resource Management Act 1991 (RMA), any relevant proposed plan (i.e., the Proposed Auckland Unitary Plan) and the Ministry for the Environment's *New Zealand Urban Design Protocol (2005)*²⁰. The authorised agency has broad powers to impose consent conditions as it sees fit²¹.

Faster plan change process

In some cases a Qualifying Development may need a plan change as well as a resource consent. The applicant may apply for both simultaneously. Alternatively the authorised agency may require the applicant to apply for both simultaneously. In instances where a plan change is being sought alongside resource consent, the timeframe may be extended to 130 working days²².

The Act provides for a streamlined plan change processes in relation to Qualifying Developments in Special Housing Areas within the district of a territorial authority which is party to a Housing Accord²³.

A person may make an application for a change to the operative plan, or proposed plan, if it does not provide for any residential development in the Special Housing Area²⁴. The request may only relate to a change or variation necessary to facilitate the consideration of a resource consent application for a Qualifying Development. The application must contain an evaluation in accordance with section 32(3) to (5) of the RMA for any objectives, policies and rules, and a description of the anticipated environmental effects in accordance with Schedule 4 of the RMA²⁵.

The plan change request will only be notified if the applicant has not obtained prior written approval of the adjoining landowners²⁶. The accord authority must give its decision within 40 working days if adjoining landowners have given their approval²⁷, and within 130 days if approval was not given. The decision must give effect to the purpose of the Act, and have regard to Part 2 and section 74 to 77D of the RMA. However, the authority must only give effect to those parts of a Regional Policy Statement that are consistent with the purpose of the Act²⁸.

If a plan change is approved, the operative plan (or proposed plan) will be amended from the date public notification is given of the decision²⁹.

Limited rights of appeal

The Act restricts appeal rights, with no right of appeal against decisions on developments up to three storeys in height³⁰. Appeals to the Environment Court can occur on those between four and six storeys by the applicant or person who made a submission on the application. Judicial review is available only if the right of appeal to the Environment Court has already been exercised³¹. The Act also includes a right of objection, which may be

¹⁷ Section 29(4)

¹⁸ Section 29(3)

¹⁹ Section 29(5)

²⁰ Section 34

²¹ Section 37

²² Section 72

²³ Section 59

²⁴ Sections 61(1) and (2)

²⁵ Section 61(3)

²⁶ Sections 63 and 67

²⁷ Section 62(3)

²⁸ Section 61(4)

²⁹ Section 73

³⁰ Section 79

³¹ Section 80

exercised by those parties set out in the Act³². Section 357C of the RMA applies to an objection under the Act³³, but there is no right of appeal from a decision on an objection³⁴.

If you would like more information on affordable housing and special housing areas, or want to know how it may affect you, please contact [Warwick Goldsmith](#) or [Stephen Christensen](#).

³² Section 81

³³ Section 82

³⁴ Section 84