30 May 2013

Committee Secretariat
Social Services Committee
Parliament Buildings
WELLINGTON 6011

Dear Sir/Madam,

SUBMISSION ON THE HOUSING ACCORDS AND SPECIAL HOUSING AREAS BILL

1. Please find **attached** a submission from the Environmental Defence Society on the Housing Accords and Special Housing Areas Bill.

2. EDS wishes to be heard in relation to this submission.

Yours sincerely

Nicola de Wit
Legal Advisor
Environmental Defence Society

SUBMISSION ON THE HOUSING ACCORDS AND SPECIAL HOUSING AREAS BILL
ENVIRONMENTAL DEFENCE SOCIETY

Introduction

1. The Environmental Defence Society ("EDS") welcomes the opportunity to comment on the Housing Accords and Special Housing Areas Bill.

2. EDS is a public interest environmental law group, formed in 1971. It has a membership that consists largely of resource management professionals. The focus of EDS's work is on achieving good environmental outcomes through improving the quality of New Zealand's legal and policy frameworks and statutory decision-making processes.

Intention of the Bill

3. EDS recognises that New Zealand has a housing affordability crisis and that this is particularly acute in Auckland.

4. EDS accepts that increasing housing supply will have some small impact on housing affordability. However, EDS rejects the contention that housing affordability can be addressed solely by weakening resource management processes to facilitate subdivision. Housing costs in New Zealand are high because of a range of factors other than raw (undeveloped) land price: those factors include high building materials and labour costs; the costs of providing infrastructure; and cost of development levies.

5. EDS submits that the Bill will not in fact reduce house prices.

EDS's concerns

6. EDS has a number of concerns regarding this Bill.

The purpose

7. The purpose of the Bill is *to enhance housing affordability by facilitating an increase in land and housing supply in certain regionals or districts … identified as having housing supply and affordability issues.* While this recognizes the drivers for introducing this Bill it is essential that increases in land and housing supply are achieved in an environmentally sustainable manner. The public will not be served if gains (in housing affordability) are outweighed by costs (environmental, cultural, other economic, other social).

Identifying Special Housing Areas

8. EDS is concerned that there are few requirements relating to the identification of a Special Housing Area. The Bill provides only for consideration of whether the Special Housing Area will be easily identifiable, whether the proposed Special Housing Area could, with appropriate infrastructure, be used for qualifying development, and whether there is demand to create and purchase residential housing in the Special Housing Area: clause 16.

9. The Bill does not provide for consideration of planning or environmental matters when proposed Special Housing Areas are considered. This is of considerable concern. Once a Special Housing Area is identified there is likely to be a degree of expectation that development will be allowed. It is essential that there is a careful assessment of any proposed Special Housing Area.

10. *EDS suggests that additional criteria be inserted requiring effect to be given to the Resource Management Act 1991 - Part 2 and Sections 30, 31 and 32 and particular regard to be had to the objectives and policies of the operative plan and any proposed plan.*

Qualifying developments

11. The Bill restricts qualifying developments to those under 6 storeys. The basis for this is unclear. EDS considers that where higher rise development is appropriate in a particular location this should be able to be favoured as gains in housing supply can be achieved in a more sustainable manner. EDS submits that height limits should be considered when Special Housing Areas are identified - as part of a more thorough investigation of the appropriateness of proposed Special Housing Areas (see paragraph 10 above).

Decision-maker

12. The Bill allows the Government to act as consent authority for Special Housing Areas where a Housing Accord has not been reached with a territorial authority (or has been terminated by either party). EDS is strongly opposed to this proposal.

13. This is another example of the Government overriding local democracy and it is constitutionally obnoxious. It is inconsistent with the part of the Bill promoting collaboration between central and local government through a Housing Accord. Moreover, we fail to see how it can do anything other than engender strong local reaction to “Big Brother” central government stepping in to override local processes.

Activity Status

14. The Bill proposes that where an operative plan classifies an activity as prohibited and a proposed plan classifies an activity as controlled, restricted discretionary, discretionary, or non-complying the activity status in the proposed plan will apply. *EDS considers that this should not apply where a proposed plan classifies an activity as controlled (and hence resource consent must be granted) as controlled activity status is a considerable step from an existing prohibited classification.*

15. The Bill proposes that where an operative and a proposed plan classify an activity as prohibited, it will be treated as a discretionary activity (contrast this to s87B RMA which applies only where the *proposed* plan classifies the activity as prohibited). EDS submits that this is entirely inappropriate. There is a need for planning documents to be able to identify areas which are inappropriate for development. This is particularly inappropriate given the lack of any robust requirements for consideration of proposed Special Housing Areas (see paragraphs 7 and 8 above). This is also inconsistent with the Auckland Housing Accord which (at paragraph 19) requires Qualifying Developments to meet all the relevant provisions of the notified Unitary Plan.

Decision-making considerations – resource consents

16. The Bill requires a decision on a resource consent to give effect to the purpose of the Bill *to enhance housing affordability by facilitating an increase in land and housing supply*. This purpose is to be given "the most weight". EDS is strongly opposed to the purpose of the Bill being given greater weight than the purpose of the RMA. *As drafted, it is difficult to see how any application could be declined if this purpose is to be give "the most weight".* This fails to reflect the need for residential development to be cognizant of its environmental, social, economic and cultural effects.

17. The Bill proposes that a decision-maker only be required to *take into account* the matters in Part 2 of the RMA: which include the purpose of sustainable management, requirements to provide for the natural character of the coast and significant indigenous biodiversity, and requirements to have particular regard to amenity values. This is of considerable concern as *take into account* is a very weak direction. It leaves too much discretion to the decision-maker. A decision made under the RMA must achieve the purpose of sustainable management, provide for matters of national importance, and have particular regard to other matters. EDS considers that increased housing supply must be achieved without

comprising environmental sustainably and overriding the fundamental principles of the RMA.

Decision-making considerations – plans

18. The Bill proposes that the decision-maker, in relation to a plan change or variation request – be required to have regard to the matters in section 74 of the RMA (including higher level planning documents) only to the extent those documents are consistent with the purpose of the Bill: s61(4)(b)(ii). This provides an ability for the decision-maker to "pick and mix" whatever plan provisions happen to be most favorable for the application. It allows for the hierarchy of planning documents to be ignored. *This is a highly inappropriate approach and is likely to result in poor planning outcomes.*

Notification

19. In relation to plan changes and variations, the Bill also excludes any public notification and restricts limited notification. Public notification is excluded and limited notification is restricted. This differs considerably from the status quo where all plan changes and variations are publicly notified. *EDS considers that excluding the public from plan change and variation processes is a step too far and is moving towards planning by executive fiat rather than community engagement.*

Appeal rights

20. The Bill provides only very limited rights of appeal. The rights of appeal that are provided in the Bill are linked to the height of development. This appears to be irrational.

21. EDS considers that there must be a mechanism by which decisions can be checked on appeal to ensure they are in accordance with the law. EDS suggests that provision is made for certain parties (those listed in section 274 of the RMA) to have rights of appeal to the High Court on points of law.

Missing provisions

22. The Bill provides for the creation of Housing Accords. However these appear to have no effect, except to allow the territorial authority to utilize the powers relating to Special Housing Areas. The Bill should provide for how a Housing Accord will be given effect to.

23. The Bill seems to allow territorial authorities to grant consents required by regional planning documents. This would be highly inappropriate as territorial authorities would not have the appropriate expertise.

Conclusion

24. EDS requests the following amendments to the Bill:

a. Amend the purpose to provide for increases in land and housing supply to be achieved in an environmentally sustainable manner;

b. Add additional criteria against which proposed Special Housing Areas must be assessed to ensure appropriate areas are identified,

c. Remove the height limit for qualifying developments and determine this at the time of identification;

d. Delete the provision for the Government to act as consent authority in areas where there is no Housing Accord;

e. Remove the provision for activities which are prohibited in both an operative and a proposed plan to be considered as a discretionary activity;

f. Delete the requirement to give the purpose of the Bill "the most weight" and amend to ensure both the purpose of the Bill and the purpose of the RMA are achieved;

g. Amend the requirement for decision-makers to "take into account" Part 2 of the RMA to a requirement for decision-makers to apply Part 2 of the RMA;

h. Ensure plan changes and variations give effect to the hierarchy of planning documents;

i. Require public notification of plan changes and variations where the adverse effects are likely to be more than minor;

j. Add an appeal right for certain persons to appeal to the High Court on points of law;

k. Amend the Bill to address the missing matters.

Housing Accords and Special Housing Areas Bill

1. The Housing Accords and Special Housing Areas Bill passed its first reading on 16 May 2013, and has been sent to the Select Committee for urgent consideration. Submissions on the Bill are due by **Thursday 30 May**.

2. The purpose of the Bill is *to enhance housing affordability by facilitating an increase in land and housing supply in certain regionals or districts … identified as having housing supply and affordability issues.*

3. Under the Bill, the Government is able to identify regions and districts with significant housing supply and affordability issues, and include them in a schedule. The Bill includes Auckland in this schedule and other regions or districts may be included by way of an Order in Council.

4. The Bill provides for two mechanisms:

a. Housing Accords

b. Special Housing Areas

Housing Accords

5. A housing accord is an agreement between the Minister of Housing and a territorial authority (in a scheduled region or district) to work together to address housing supply and affordability: clause 10.

6. A housing accord will enable the territorial authority to operate under the new regulatory powers provided in the Bill and will set out agreed targets for residential development. They may be terminated by either party with not less than 3 months' notice: clause 13.

Special Housing Areas

7. Special Housing Areas will be established by Order in Council on the recommendation of the Minister of Housing: clause 16(1). However, where a Housing Accord in is in place, the Minister must act on the recommendation of the territorial authority: clause 16(4).

8. The Minister must:

a. Have regard to existing geographic boundaries, the district plan, and any proposed district plan – to ensure that the boundaries are clearly identified and easily identifiable: clause 16(2).

b. Not recommend the making of an order in Council unless he is satisfied that:

i. With the appropriate infrastructure the proposed area could be used for qualifying developments;

ii. There is evidence of demand to create qualifying development in specific areas of the scheduled region or district; and

iii. There will be demand for residential housing in the proposed special housing area: clause 16(3).

9. Within Special Housing Areas, resource consent and plan changes powers will be more permissive for 'qualifying developments'.

10. Qualifying developments must (a) be predominantly residential, (b) meet height requirements as prescribed by Order in Council - up to a maximum of 6 storeys, and (c) meet requirements for the minimum number of dwellings to be built as prescribed by Order in Council: clauses 14 and 15.

11. The criteria in (b) and (c) may be varied by an Order in Council on the recommendation of the territorial authority: clause 17.

12. Where a Housing Accord is in place, the territorial authority will be the consent authority. Where a Housing Accord cannot be reached, the Government will be the consent authority: clause 23.

13. The RMA does not apply to an application made under this Bill unless specified: clause 22.

14. The activity status of a qualifying development will depend on the plan and any proposed plan:

a. if a plan states that an activity is prohibited, but a proposed plan classifies it as controlled, restricted discretionary, discretionary, or non-complying, the proposed plan will apply: clause 25

b. if a proposed plan describes an activity as prohibited, the activity will be treated as if it were a discretionary activity: clause 26

15. When making a decision on a resource consent application the consent authority must:

a. Make a decision that is consistent with, and gives effect to, the purpose of the Bill. This must be given "the most weight";

b. Be satisfied that sufficient and appropriate infrastructure will be provided;

c. Take into account the matters in Part 2 of the RMA;

d. Take into account the matters in sections 104 to 104E of the RMA;

e. Take into account the Ministry for the Environment's *New Zealand Urban Design Protocol (2005)*

16. In general, resource consents must be processed within 60 days and will not be notified. Limited notification may apply if the effects of the activity on an adjoining landowner or the NZ Transport Agency would be more than minor: clause 29.

17. The Bill also makes provision for plan changes and variations in Special Housing Areas:

a. if the activity is prohibited in the relevant operative plan, and the proposed plan anticipates that the land to which the request applies will be available in the future for a qualifying development, but is silent as to the rules that apply to that development, an applicant may request a variation to a proposed plan: clause 61.

b. an applicant may also request a plan change if the activity the applicant is seeking to undertake is prohibited in the relevant plan, and a proposed plan continues to describe the activity as prohibited or there is no provision for qualifying developments in a proposed plan: clause 61.

18. The plan change or variation will be notified to adjoining land owners and the NZ Transport Agency, if applicable: clause 66. The time limit for consideration of a plan change or variation is 130 working days: clause 69.

19. There will be no new Special Housings Areas identified after 30 June 2016 and the Bill will be repealed on 30 June 2017: clause 3.

Appeal rights

20. There are no rights of appeal, expect that the applicant or a submitter may appeal to the Environment Court in respect of a decision relating to a qualifying development that is 4 or more storeys high: clause 76.

21. The right to apply for judicial review is not excluded: clause 77.