

In Confidence

Office of the Minister of Housing and Urban Development

Chair, Economic Development Committee

Housing and urban development legislation: Outstanding policy matters relating to the Housing and Urban Development Authority

Proposal

1. This paper seeks agreement to outstanding matters needed to progress drafting of the legislation to establish the Housing and Urban Development Authority (the Authority) and to enable specified development projects.
2. The proposals concern five main areas:
 - 2.1. the staging of introducing and passing the new legislation, including implications for Māori interests
 - 2.2. the proposed objective, functions and operating principles for the Authority, and how to provide it with strategic direction
 - 2.3. financial powers for the Authority
 - 2.4. further decisions relating to the specified development project process
 - 2.5. right of first and second refusals waivers.
3. This paper also reports back on the implications for the Authority of the National Policy Statement for Highly Productive Land.

Executive summary

4. Cabinet has agreed to establish the Housing and Urban Development Authority (“the Authority”). The Authority will contribute to delivering on the Government’s priorities for housing and urban development, leading large-scale urban development projects and acting as our public housing landlord.
5. I have identified an opportunity to accelerate the establishment of the Authority, while providing additional time to refine the more complex provisions relating to specified development projects. To achieve this, I intend to split the new legislation into two Bills to be passed separately:
 - 5.1. The first Bill would establish the Authority as an entity, and could be introduced in May this year and passed significantly earlier than planned, enabling the Authority to be in place on 1 October. It will also recognise the Crown’s obligations to Māori under the Treaty of Waitangi and Te Ture Whenua Māori Act 1993.
 - 5.2. The second Bill would provide the processes for specified development projects and the more enabling development powers, as well as the more detailed provisions relating to Māori interests agreed to by Cabinet [CAB-18-MIN-0563 refers]. It could be introduced in August and passed in mid-2020.

6. In June, I intend to complete my report back to Cabinet, with the Minister for Māori Crown Relations: Te Arawhiti, on a detailed approach for protecting Māori interests through the transition and establishment of the Authority.
7. We have already made the substantive decisions to establish the Authority as a Crown agent, and for the process for the Authority to establish and carry out specified development projects. In this paper, I seek your agreement to outstanding matters that are needed to progress drafting the two Bills.
8. To ensure the Authority focuses on what matters most, it will be important that it has a clear purpose and understanding of the Government's expectations. As such, I propose:
 - 8.1. setting an objective, functions and operating principles for the Authority that will provide a clear long-term institutional purpose
 - 8.2. requiring government to publish a Government Policy Statement on Housing and Urban Development, which would provide explicit strategic direction to the Authority and broader guidance to the sector.
9. The Authority will have two core roles, as both a developer and a public housing landlord. It will need to perform both roles well, and maximise the synergies between them, to achieve its overall objective. The Authority will require appropriate financial provisions to be able to carry out these roles and effectively balance risk and flexibility with accountability and transparency.
10. To enable this, I propose:
 - 10.1. an approach to enable the Authority to undertake any financial activities restricted by the Crown Entities Act 2004 framework, while ensuring targeted risk management and strong financial accountability
 - 10.2. that the same financial powers applying to Housing New Zealand will be available to the Authority
 - 10.3. repealing part 5A of the Housing Corporation Act 1974 (which gave Ministers additional powers to override board accountability and transfer Housing New Zealand stock to third parties).
11. Some of the development projects delivered by the Authority will be "specified development projects". These will be large, complex, city-shaping projects with access to more enabling development powers under the proposed legislation.
12. I expect that provisions related to the specified development projects would progress through the second Bill I have proposed. However, it will be important to maintain the pace of this work and ensure that the policy is well-designed to progress to legislation later this year. As such, I seek further decisions to refine and provide greater clarity on aspects of the specified development project process. This will strengthen checks and balances while eliminating delays, duplication and unnecessary costs. The measures are to:
 - 12.1. allow existing large-scale projects to transition into the new legislative regime with appropriate checks and balances
 - 12.2. strengthen opportunities for public participation in the proposed Independent Hearings Panel process, and provide for servicing of the Panel
 - 12.3. clarify and expand the scope of the infrastructure and cost-sharing mechanisms
 - 12.4. enable any disputes between parties to be managed through existing processes and contracts

- 12.5. provide for democratic accountability when the Authority exercises its rating powers
- 12.6. outline the Authority's decision-making framework concerning designation and heritage protection.
13. The paper clarifies an aspect of Cabinet's previous decisions on rights of first or second refusal (RFRs) over land. It also delegates authority to Ministers to resolve a matter relating to Housing New Zealand's RFR waivers in certain Treaty of Waitangi settlements.
14. Finally, this paper fulfils my report-back undertaking to this Committee on the implications of the National Policy Statement for Highly Productive Land.

Background

15. This Government is taking a hands-on approach to tackling homelessness and unaffordable housing. We want to ensure much-needed urban development, housing and infrastructure is delivered speedily and strategically, especially in areas most experiencing challenges.
16. Cabinet has previously agreed to establish the Housing and Urban Development Authority ("the Authority") to lead large-scale urban development and drive the delivery of the 100,000 affordable homes planned for KiwiBuild [CBC-17-MIN-0051 refers]. In addition, the Authority will act as our public housing landlord [CAB-18-MIN-0562 refers].
17. The Authority will consolidate three essential centres of capability – Housing New Zealand, its subsidiary HLC, and the KiwiBuild Unit – within a single new entity. This will enable it to be an integrated public housing landlord and development delivery entity that works across the entire housing spectrum to build complete, diverse, and thriving communities.
18. The Authority will play a key role in coordinating and driving developments across New Zealand. In doing so, it will lead a range of development projects, including small, medium and large-scale projects. Some of these projects will be particularly large and complex, with multiple landowners and different types of works being constructed. It is often difficult to progress these projects under the current development system.
19. To address such challenges, the new legislation will enable the establishment of "specified development projects", with access to more enabling development powers to streamline and accelerate these large, complex projects. The powers relate to infrastructure, funding, reserves, and resource management planning and consenting, and will be complemented by appropriate safeguards. [CAB-18-MIN-0399 and CAB-18-MIN-0399.01 refer]. The legislation will also provide for land assembly powers, which will be available to all projects undertaken by the Authority.
20. To give effect to Cabinet's decisions on the Authority, I intend to introduce legislation to the House that will:
 - 20.1. establish the Authority as a Crown agent
 - 20.2. provide the processes and powers relating to specified development projects

- 20.3. safeguard Māori interests and recognise Māori aspirations to participate in urban development, as well as to fulfil the Crown's obligations under the Treaty of Waitangi and relevant legislation.
21. Cabinet has already made most of the substantive decisions relating to the Authority's entity form, as well as the core concepts, decision-making framework and statutory process for specified development projects. This paper seeks your agreement to a number of outstanding matters that are needed to progress drafting of the legislation.

Passing the legislation as two separate Bills

22. I now intend to introduce and pass the new legislation as two separate Bills, instead of one single Bill as was previously planned. This new approach would enable aspects of the legislation to be passed sooner than planned, and mean that the Authority can be established as an entity at an earlier date.
23. I intend to split the legislation as following:
- 23.1. The first Bill would provide for the establishment of the Authority as an entity, and for associated functions and processes. This Bill could be introduced in May, and passed significantly faster than the current timeframe, which would otherwise have these provisions passed by the end of the year. As a result, the Authority will be established as an entity sooner – on 1 October – and be able to commence its critical work leading urban development and acting as our public housing landlord.
- 23.2. The second Bill would provide for specified development projects, the more enabling development powers, and the more detailed provisions relating to protecting Māori interests as agreed to by Cabinet in November 2018. This second Bill could be introduced in August and passed by mid-2020. I do not consider that the later date for this Bill would result in any appreciable delay in the pace of delivery for housing and urban development projects.
24. Splitting the legislation into two Bills will enable us to accelerate the establishment of the Authority as an entity, while providing additional time to prepare the more complex second Bill. This approach would provide for the best result in terms of quality of legislation and would ensure that the Authority is well set-up to deliver on its objective.
25. The proposed timeframe would allow the second Bill to be fully considered by Select Committee. I will ensure that, in this split, any more substantive proposals that would benefit from a full Select Committee process are included in the second Bill. In particular, I intend to include the provisions relating to land assembly and Māori interests in the second Bill.
26. To ensure Māori interests are provided for appropriately in this staged legislative approach, the first Bill will include a clause which recognises the Crown's responsibility to take account of measures to protect Māori interests and realise Māori aspirations in housing and development [CAB-18-MIN-0563], and sets out the ways in which the legislation supports this.
27. Other tools for Ministerial direction setting, such as the letter of expectation and briefings to incoming board members, will then be used to reinforce this Government's expectation that the Authority will protect Māori interests, and support Māori aspirations for urban development.

28. The first Bill will also reflect Cabinet’s agreement that the Authority must have the capability and capacity to:
 - 28.1. uphold the Treaty of Waitangi and its principles
 - 28.2. understand and apply Te Ture Whenua Māori Act 1993
 - 28.3. be able to engage with Māori and to understand Māori perspectives [CAB-18-MIN-0563 refers].
29. However, there are risks associated with splitting the legislation. In particular, the Authority will be in operation for up to six months before the full suite of provisions relating to Māori interests comes into effect. Through this period, it will need to operate in a manner that is consistent with the provisions in the second Bill to ensure the Māori – Crown relationship is not impacted.
30. Cabinet previously noted my intention to seek direction on measures for protecting Māori interests during the transition period [CAB-18-MIN-0563 refers] and subsequently invited me to do so [CAB-18-MIN-0562 refers]. I will now do so in June, when the Minister for Māori Crown Relations: Te Arawhiti and I will report back on a detailed approach for protecting Māori interests through the transition and establishment of the Authority.
31. Until this report back, it will be important that the entities that will be put into the Authority act in a manner that is consistent with the measures Cabinet has agreed on Māori interests. To achieve this, I propose using the available Ministerial direction-setting tools to give effect, to the extent possible under existing legal frameworks, to these measures.

Part I: Providing an objective, functions, operating principles and strategic direction for the Authority

32. Following Cabinet’s decision on the entity form for the Authority, we can now consider further its entity design. The proposals in this section will be incorporated into the first Bill, which will establish the Authority.
33. It is critical that the Authority as a new entity has a strong and sustained focus on both its public housing and urban development roles, and on the contribution that these complementary roles make towards our overarching objective of thriving communities where everyone has a place to call home. In my view, the new legislation will help to provide this focus. A solid legislative underpinning will also help the Authority’s Board to understand what it and the Authority are charged with doing, and how each is enabled to carry out its functions and exercise its powers.
34. I consider the most effective way to provide this focus is through an operating framework (outlined in the following sections) that involves an overarching objective, functions necessary to give effect to the overarching objective, operating principles that guide how these functions are performed, and a system-level Government Policy Statement. Sitting beneath this framework will be the existing tools for providing strategic direction to Crown agents (such as letters of expectation and statements of intent).
35. This is a similar approach to that taken with the legislation governing other Crown entities such as the New Zealand Transport Agency, and Fire and Emergency New Zealand.
36. The new operating framework for the Authority will replace Housing New Zealand’s current one, which is set out in the Housing Corporation Act 1974. It will

incorporate the eight social objectives which Cabinet agreed in September 2018 to strengthen Housing New Zealand's social mandate [CAB-18-MIN-0243 refers]. The social objectives are a mix of objectives, functions and operating principles, and I propose integrating each into the appropriate part of the new framework.

37. The final wording for the objective, functions and operating principles will be approved by Cabinet Legislation committee and refined through the legislative drafting process.

Setting an overarching objective and functions for the Authority

38. The Authority will be a powerful new Crown agent with two key roles – being a world-class public landlord, and leading small, medium and large-scale urban development projects. It will also have multiple smaller roles. The overarching objective for the Authority should be a short, clear and aspirational statement that captures the broad scope of what its multiple roles are expected to deliver for New Zealand.

39. I propose that the Authority's overarching objective should be drafted consistent with the following statement:

The objective of the Authority is to contribute to the development of sustainable, inclusive and thriving communities that provide people with good quality, affordable housing choices that meet diverse needs; support good access to jobs, amenities and services; and improve the total economic, social, environmental and cultural wellbeing of current and future generations.

40. The new legislation will include a noting provision that will help to manage the relationship between the Authority's legislation and other legislation. This provision will make it clear that when the Authority is doing functions under other legislation, it must act in accordance with any relevant objectives or purposes in that legislation.

41. In terms of functions, the Authority will have both Housing New Zealand's existing functions and new urban development functions. Providing for this in legislation can be achieved by:

- 41.1. carrying over the functions in section 18(2) of the Housing Corporation Act 1974, which sets out Housing New Zealand's functions

- 41.2. embedding the four previously-agreed urban development functions – initiating and commissioning development projects, delivering development projects, exercising the more enabling development powers, and delivering programmes such as KiwiBuild [CAB-18-MIN-0562 refers]

- 41.3. adding functions from the social objectives for Housing New Zealand that we had previously agreed to embed in legislation [CAB-18-MIN-0243 refers]

- 41.4. including a small number of additional functions that will help to reinforce the expected behaviours set out in the operating principles, including:

- 41.4.1. supporting innovation, capability, and scale within the wider housing, urban development and construction sectors

- 41.4.2. leading and promoting good urban design and sustainable, efficient, integrated, mixed-use development

- 41.4.3. understanding, supporting and enabling the wellbeing aspirations of communities

41.4.4. supporting Māori aspirations for urban development

41.5. reconciling all of the above to remove any duplication or overlap.

42. To future-proof the Authority, I also propose including a provision that enables the responsible Minister to direct it to perform any additional function relating to housing and urban development. Such a direction must be consulted on with the Authority, and then published in the *Gazette* and presented to the House. This is not an uncommon provision for Crown entities.

Setting operating principles to guide the Authority

43. The Authority's ability to successfully meet its objective and perform its functions will depend on how it carries out its public housing and urban development activities, and how it interacts with Māori, communities, tenants, development partners and local authorities. Operating principles in the housing and urban development legislation are a way to guide the Authority on how it is expected to behave when doing this.
44. I propose that the Authority's operating principles should cover:
- 44.1. all agreed social objectives for Housing New Zealand that are not otherwise incorporated into the functions section – for example, “being a fair and reasonable landlord, treating tenants and their neighbours with respect, honesty and integrity”
 - 44.2. partnering and engaging meaningfully with others, including the communities it operates in
 - 44.3. partnering and having early and meaningful engagement with Māori, and offering Māori opportunities to participate in urban development
 - 44.4. identifying and protecting Māori interests in land, and recognising and providing for the relationship of Māori and their culture and traditions with their ancestral lands, water, wāhi tapu and other taonga
 - 44.5. having regard to the importance of environmental, cultural and heritage values, and the way its operations impact on these values
 - 44.6. seeking to influence, lead and shape the market for good urban design, quality, accessible housing, and construction innovation
 - 44.7. seeking to maximise alignment and synergies through the Authority's multiple functions in order to support inclusive, integrated urban development.

Providing strategic direction to the Authority and ensuring it stays on track

45. Managing the Authority's performance and ensuring accountability is critical given the breadth of its work programme as the Government's public housing landlord and lead developer for public housing, KiwiBuild and large-scale urban development projects. It is important that no particular role dominates to the detriment of others, synergies between the roles are optimised, and that the Authority delivers effectively.
46. As a Crown agent, the Authority will be subject to the Crown Entities Act 2004 and need to respond to the usual tools of Ministerial direction. However, given the Authority's broad scope and the change needed across the housing and urban

development system, these tools will be insufficient to ensure the outcomes that New Zealanders need.

47. As a result, we previously agreed that I would report back on how the Ministry of Housing and Urban Development will provide strategic direction to the Authority [DEV-18-MIN-0265 refers].
48. Having considered the options for providing strategic direction, I consider that this will be best achieved through the Government producing, consulting on and publishing a Government Policy Statement on Housing and Urban Development (the GPS), discussed below.
49. I also agreed to report back to this Committee [CAB-18-MIN-0241 refers] on a framework to ensure that the Authority's projects meet public good outcomes, including requirements for public and KiwiBuild homes in developments.
50. In response, the Ministry of Housing and Urban Development has developed an interim outcomes framework (attached as annex 1) which describes a range of public good outcomes that relate to the Authority's role as both the Government's lead developer and as a public landlord. This framework was developed with input from other agencies and will be a useful tool in informing the development of the GPS.
51. The interim outcomes framework articulates the early thinking on how the Authority will achieve the range of outcomes required to enable thriving and connected communities where people want to live. This provides a foundation on which officials will further design the new organisation for establishment on 1 October this year.

A Government Policy Statement on Housing and Urban Development

52. The proposed GPS will establish the Government's enduring vision for the system, and take a long-term perspective, with a multi-decade outlook. It will also include more targeted direction on actions over the short to medium term (3-10 years).
53. There are a number of reasons why the production of a GPS will be valuable, including that it will:
 - 53.1. help to influence how the Authority balances its key functions in a complex system
 - 53.2. clarify government's expectations for the new organisation and how it will contribute to realising the long-term vision, and support the Authority to be aligned and ready to deliver
 - 53.3. be an opportunity to provide clear information on how New Zealand's cities and regions are likely to grow and develop, and to ensure this informs the investment activity of the Authority and other relevant agencies (e.g. supply planning, including funding and financing)
 - 53.4. be an important tool for guiding the activities of other government agencies, and for communicating with external stakeholders — the GPS would provide transparency for customers of the Authority; signal to likely partners about the key priorities they will need to work towards; and ensure that the voices of all relevant stakeholders are taken into account and that there is buy-in to the Government's aims and objectives.
54. Maintaining a broad focus for the GPS will be important. Although much of its specific content will be directed towards the new agency, a number of other central government agencies play important roles in delivering the infrastructure

and services that communities need to thrive, and will be critical to the Government achieving its urban development aims. This includes the delivery of health, education and transport infrastructure.

55. By articulating a clear vision, the GPS will enable agencies to plan their future activities in the context of the broader system, thus supporting greater alignment and coherence in planning. This will be supported by future-focussed information in the GPS, which agencies can use to plan their activities.
56. The GPS will also reflect the Government's wider priorities. This will include climate change and community resilience.
57. Such an approach – a strategic document targeted at specific agencies but encompassing the wider sector – aligns with similar strategies such as the Health and Safety at Work Strategy and the Tertiary Education Strategy.
58. My expectation is that the GPS will:
 - 58.1. establish the Government's medium to long-term vision for the housing and urban development system
 - 58.2. provide strategic direction to the Authority, including further detail on how the Government expects its statutory objective and functions to be met (e.g. how it should balance its multiple roles, the geographic areas in which it should be focusing its activities, and how it should be partnering with others)
 - 58.3. provide guidance and information to the wider sector, including to other government agencies that are critical to delivering our housing and urban development objectives
 - 58.4. highlight focus areas, including by providing information on how regions are likely to grow and change over time.
59. Unlike the Government Policy Statement on Land Transport, the GPS on Housing and Urban Development would not cover the allocation of funding across the wider system. Instead, it would focus more on desired outcomes and how these could be achieved.
60. The Ministry of Housing and Urban Development would be responsible for leading the preparation of, and consultation, on the GPS.

Legislation design

61. Although a GPS could be implemented through non-legislative means, I propose that the legislation specifically requires that it be developed and published. There will be an enduring need for government to provide this type of leadership, and an established name and legislative requirement is likely to generate an ongoing level of public engagement in the GPS.
62. I propose that the legislation specify that:
 - 62.1. The responsible Minister should be required to publish the GPS
 - 62.2. At a minimum, its contents must include:
 - 62.2.1. the overall direction for the housing and urban development system
 - 62.2.2. the Government's priorities for housing and urban development
 - 62.2.3. how the Government expects the Authority to manage and deliver its objective and functions

- 62.2.4. how the Government expects other agencies to support the Government's vision and the role of the Authority
 - 62.2.5. include the Government's expectations in relation to Māori interests, partnering with Māori and protections for Māori interests.
 - 62.3. The first GPS must be published within one year of enactment of the legislation
 - 62.4. It must be reviewed every three years, or at the discretion of Cabinet
 - 62.5. It must be developed by a process that involves consultation with people and organisations with an interest in housing and urban development in New Zealand.
63. It is important that the GPS be given an appropriate weight in legislation to ensure that it is considered by the Authority, and implemented to the extent feasible. At the same time, it cannot require the Authority to perform, or not perform, a particular act, and the Authority will not have sole responsibility to deliver on the vision outlined in the GPS. To meet these competing needs, I propose that legislation specify that the Authority must give effect to the GPS.
64. A further question is the circumstances in which other government departments and Crown agencies should take the GPS into account. In this regard, I plan to test further how departments and relevant Crown agents can be incentivised to incorporate relevant aspects of the GPS into their strategic and sector planning, to ensure alignment across Government service delivery.

Part II: Financial provisions and housing stock transfers

65. The Authority will be both a developer and a public housing landlord. It will need to be able to operate effectively in a commercial environment, while providing quality rental housing and services to its tenants.
66. To be successful, the Authority must be able to:
- 66.1. effectively manage the potential for conflict between its public housing and urban development roles
 - 66.2. remove barriers to financing large-scale urban development
 - 66.3. enable innovative and flexible financing solutions
 - 66.4. enable or leverage private sector investment.
67. The Authority must also be able to manage its financial risks appropriately. Urban development is inherently risky, and a major financial failure could impact the Authority's public housing role. Due to its size and scope, the Authority's financial performance will also have direct implications for the Crown's financial performance and its fiscal strategy. The right settings need to be in place to ensure financial discipline, transparency and accountability.
68. I seek your agreement on specific financial provisions for the new legislation, tailored to support the Authority's urban development role and provide continuity in its public housing role inherited from Housing New Zealand. I also seek your agreement to repeal part 5A of the Housing Corporation Act 1974.
69. The proposals in this section will be incorporated into the first Bill, which will establish the Authority.

Enabling urban development at scale and pace

70. As a Crown agent, the Authority will be subject to the default settings in the Crown Entities Act 2004. This means it will be restricted from acquiring financial products, borrowing, giving guarantees and indemnities, and using derivatives unless otherwise authorised.
71. These financial restrictions could impact on the Authority's ability to act as a developer. Therefore, I propose that if the Authority needs to do any of the financial activities restricted by the Crown Entities Act 2004, it can be authorised to do so through regulations or a joint approval from the Minister of Housing and Urban Development and the Minister of Finance.
72. This approach will enable the Crown to maintain a suitable level of oversight over the Authority's financial activities, while providing enough flexibility for it to undertake urban development at scale and pace. The approach also provides appropriate transparency, as either Cabinet (in the case of regulations) or joint Ministers will need to make the decision to authorise the Authority to do these restricted financial activities.

Maintaining continuity for Housing New Zealand's housing functions

73. Housing New Zealand has a set of financial powers that comprise the default powers under the Crown Entities Act 2004 and additional ones in the Housing Corporation Act 1974 and the Housing Act 1955. This set of powers is designed to support its current operations.
74. Given that the new legislation will carry over Housing New Zealand's functions that rely on this set of financial powers, I propose that the same powers be available to the Authority in relation to these activities. This will be done either under the Crown Entities Act 2004 or the new legislation. This approach means that the power may look different, but will be functionally the same.
75. The one exception to this approach will be the requirement for Housing New Zealand to return its profit to the Crown (under the Housing Corporation Act 1974). Cabinet has already agreed to remove this requirement for Housing New Zealand, and I propose extending this to the Authority. Given the need for reinvestment arising from the scale and timespan of urban development projects, I consider there are benefits in enabling the Authority to retain surpluses unless otherwise directed by the Minister of Finance.
76. I also propose that Housing New Zealand's current approvals from joint Ministers around borrowing continue to apply to the Authority in its housing functions. This includes Housing New Zealand's Borrowing Protocol, and the approval to borrow up to \$3.05 billion to support the regeneration of public housing. It is likely that the Borrowing Protocol will need to increase in the future to meet investment needs.
77. I am seeking further advice on the best arrangements for the tax status of the Authority. Currently all entities in the Housing New Zealand Corporation Group are taxable, with the Group paying a significant amount of income tax each year. This is the result of a longstanding decision to tax the Group as if it were a commercial operation rather than a Crown entity (which it is). The default setting for Crown entities is to be non-taxable, as they are public authorities delivering social outcomes, not commercial ones.
78. It is critical that the Authority has tax arrangements that are fit for purpose and reflect its activities. However, due to the potential fiscal and budgetary implications,

more time is needed to determine the appropriate long-term tax status for the Authority, the asset portfolio that will transfer with Housing New Zealand, and any activities that will come within the Authority such as the delivery of KiwiBuild. If a change in tax status is subsequently required, this could be made as the first Bill goes through the legislative process, as part of the second Bill, or as part of a tax Bill.

Repealing part 5A of the Housing Corporation Act 1974

79. Part 5A of the Housing Corporation Act 1974 gives the Minister of Housing and Urban Development the power to reach over the Housing New Zealand Board and enter into housing stock transfers for and on behalf of Housing New Zealand. The Minister may also enter into transitional contracts in support of those stock transfers.
80. This provision was introduced in 2016, and was used by the previous Government to transfer some public houses to Community Housing Providers.
81. The Government has committed to stopping the sale of public housing. Removing the power for the Minister to enter into public housing transfers would reduce flexibility for such transfers in future, and would help ensure that the public landlord role will remain a focus for the new entity.
82. For this reason, I propose to repeal part 5A of the Housing Corporation Act and will not seek to have equivalent provisions apply to the Authority under the new legislation.

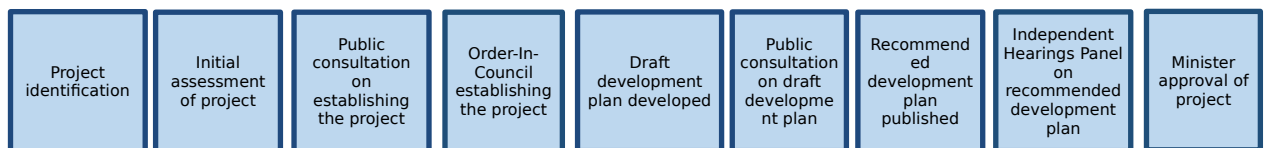
Part III: Further decisions on the specified development project process

83. The Authority will play a key role in leading and coordinating a range of development projects across New Zealand. Some of these projects will be large and complex, and would struggle to progress under the current development regime. To address this challenge, the legislation will provide for the establishment of specified development projects, which will have access to the more enabling development powers, paired with appropriate safeguards.
84. Within a specified development project area, the Authority will be able to:
 - 84.1. coordinate and integrate the delivery of infrastructure
 - 84.2. spatially masterplan significant projects
 - 84.3. partner with private sector developers to deliver those projects
 - 84.4. operate under streamlined planning and consenting processes
 - 84.5. assemble landholdings to allow development on the required scale (this last power also applies outside project areas, and does not apply to reserves).
85. Cabinet has agreed to the process for establishing each specified development project. Broadly, this involves the initial assessment and establishment of the project, followed by the preparation and approval of a detailed development plan. Each project will have specific strategic objectives, and have a comprehensive development plan, which will be publicly consulted on twice.
86. Cabinet has already made the substantive decisions on the process to establish and carry out a specified development project. I seek agreement to a number of refinements and clarifications to ensure the effectiveness of the process, and associated accountability mechanisms.

87. The proposals in this section will be incorporated into the second Bill relating to the Authority. Note that I may return to Cabinet with a subsequent paper if further detailed policy work identifies additional matters which would require Cabinet's decisions.

Transitioning existing projects into the new framework

88. Specified development projects will have to go through a nine-step process (summarised in the following figure) to be established and approved. This process is designed to reduce the complexity surrounding the approval processes and statutory powers that support development, while maintaining appropriate checks and balances.



89. Cabinet has previously agreed that a specified development project must progress through all nine steps of this statutory process. This means there is no way for existing large-scale projects to transition into specified development projects. Requiring existing projects to go through the whole statutory process could result in costly duplications and delays in unlocking the benefits of the more enabling development powers.
90. To address this, I propose that the new legislation includes a mechanism to enable existing large-scale projects to transition into specified development projects. Note that, while this mechanism will be useful in some cases, it is unlikely that many projects will transition, as they will have been established and planned on the basis of the existing system.
91. The transition process would be achieved via an Order-in-Council which would allow an existing project to jump to the appropriate step of the specified development project process, provided that previous work, public consultation, and documentation substantially meet the statutory requirements to that point of the process.
92. This approach would provide the necessary flexibility to accommodate the circumstances of an existing project. It would also ensure the existing project meets the eligibility criteria for specified development projects, including having the realistic potential to deliver tangible net public benefits, and delivering more than one development outcome.
93. While flexibility is important, there are some requirements under the new legislation which provide important safeguards for Māori. Specifically, there are four measures Cabinet has agreed to support and protect Māori interests which I consider must be met in full for an existing large-scale project to transition to a specified development project:
- 93.1. early engagement with Māori to allow for meaningful discussions and decisions
 - 93.2. seeking to partner with Māori and recognising Māori aspirations to participate in urban development

- 93.3. preserving 'offer back obligations' on former Māori land
- 93.4. preventing the Authority from compulsorily acquiring sensitive Māori land under the Public Works Act 1981.

Supporting the Independent Hearing Panel

Public participation

- 94. As part of the preparation of a development plan for a specified development project, the public may submit on the content of the plan. An Independent Hearing Panel (IHP) will then consider and make recommendations on the public submissions.
- 95. I was invited to report back to this Committee [DEV-18-MIN-170 refers] on the mechanisms to ensure that the public can participate in this proposed IHP process.
- 96. To ensure meaningful public participation, the Minister for the Environment and I consider that, in addition to previous decisions, the legislation will also enable the following mechanisms:
 - 96.1. hearings of submissions to be scheduled to allow submitters working full-time to attend
 - 96.2. hearings may be held at a marae
 - 96.3. hearings may be held in concurrent sessions if there is a large volume of submissions
 - 96.4. mediators, facilitators and other dispute resolution practitioners may be engaged by the IHP
 - 96.5. submitters may bring support persons to the hearing
 - 96.6. hearings may adopt innovative or new participation methods reflecting current best practice.
- 97. The legislation will provide flexibility around the IHP processes and enable a mixture of formal and informal mechanisms so that the process can be designed to enable meaningful public participation, including by reducing the cost of participation.
- 98. In addition, Cabinet has previously agreed that the IHP must establish a procedure for hearing sessions that recognises tikanga Māori, and receive evidence in te reo Māori [CAB-18-MIN-0243 refers].

Servicing for the IHPs

- 99. To be effective, the IHPs need good administrative support, including professional and secretarial services. While such services are important, requiring the IHPs to engage these services independently from the Authority and other agencies is inefficient and unnecessary.
- 100. The Minister for the Environment and I recommend that the legislation enables the Authority to undertake the servicing function itself or to contract it out to a private provider. Alternatively, as appropriate, the Authority may delegate the servicing function to a relevant local authority or to the Environmental Protection Authority.
- 101. If the Authority does delegate the servicing function to another party, that party must have the capability to engage appropriately with Māori.

102. We consider that it is appropriate for the costs of such servicing to be borne by the Authority, including when it delegates the servicing function to other providers. We also recommend that local authorities and the Environmental Protection Authority can decline a delegation of a service function. Where the project is in partnership with another organisation (public or private), such costs can be recovered from the other party in accordance with the cost sharing arrangements in the development partnership or funding agreement.

Clarifying and expanding the application and scope of the infrastructure and cost-sharing agreement

103. For a specified development project, the Authority will be required to work closely with other parties, including territorial authorities, government agencies and private utility operators, to plan, construct and fund necessary infrastructure.
104. The mechanism agreed by Cabinet to make such collaborations work is a binding infrastructure and cost-sharing agreement [CAB-18-MIN-0399.01 refers]. Specifically, this agreement is designed to:
- 104.1. safeguard against changes in circumstances that could compromise parties' commitments to the development project
 - 104.2. provide certainty for all parties as to what is expected of them, the roles they will play, and the financial commitment they are responsible for.
105. Subsequent policy work has identified ways to make this agreement more robust by expanding its scope and application. Reflecting this additional policy work, I propose that this agreement:
- 105.1. includes infrastructure both inside and outside the project area (previously the emphasis was on outside)
 - 105.2. includes as signatories:
 - 105.2.1. both territorial authorities (including council-controlled organisations) that support and do not support the development project (previously only supportive territorial authorities were identified)
 - 105.2.2. other infrastructure-related parties (e.g. private utility operators)
 - 105.2.3. any other relevant parties in a specified development project
 - 105.3. is an integral component of all development plans for specified development projects.
106. To ensure this agreement is effective in realising the Authority's strategic objectives, it must include the following:
- 106.1. what infrastructure is required (inside and outside the project area)
 - 106.2. who is responsible for constructing and paying for infrastructure
 - 106.3. infrastructure specifications and design standards
 - 106.4. who will control existing infrastructure assets inside the project area
 - 106.5. a timeline for infrastructure works
 - 106.6. arrangements for vesting and transferring assets, including debt management
 - 106.7. required service levels and performance measures to assess compliance

- 106.8. a dispute resolution process
- 106.9. penalties and actions for non-performance or parties breaking the contract.
- 107. Note, some components of this agreement (e.g. infrastructure specifications and design standards) may be incorporated later in the development process if certain details are not known with certainty at the time of signing.
- 108. Additionally, Cabinet required further detail about disputes resolution between the Authority and territorial authorities about the cost and timing of the infrastructure [CAB-18-MIN-0399.01 refers]. I believe that disputes of this nature, including with other stakeholders, can be managed effectively, or prevented through provisions and commitments in the infrastructure and cost-sharing agreement.

Disputes resolution will be managed through existing processes and contracts

- 109. Throughout the lifecycle of a specified development project, disputes may arise between involved parties. Rather than establish a bespoke dispute resolution process, I consider that disputes can be managed through existing or previously agreed mechanisms, including:
 - 109.1. the Independent Hearings Panel (during the development plan process)
 - 109.2. existing arbitration and litigation processes (e.g. Land Valuation Tribunal)
 - 109.3. contracts between parties in the development process (e.g. the infrastructure and cost-sharing agreement).
- 110. As a general principle, if disputes cannot be resolved informally, the Authority will encourage disputes be resolved via third-party mediation before litigation is considered.
- 111. While I consider this approach is satisfactory, the unpredictable nature of urban development and potential for unforeseen issues to emerge in the future mean that a bespoke dispute resolution approach may need to be revisited later.

Ensuring democratic accountability when the Authority exercises its rating powers

- 112. For specified development projects, the Authority will have a selection of funding mechanisms available to pay for works and activities (including the provision of infrastructure). One of the key funding mechanisms is a targeted rate, which can be levied within a specified development project area.
- 113. Previous Cabinet decisions did not cover decision-making to determine the level of the rate. I seek your agreement to the following approach that will ensure democratic accountability when the Authority exercises its rating powers:
 - 113.1. The fundamentals of a targeted rating system for a given development project are established as part of its development plan process, which incorporates public consultation.
 - 113.2. The amount of funds that may be raised by a targeted rate in any given year is subject to a maximum amount set by Order-in-Council.
 - 113.3. The annual decision to set a targeted rate is made by the relevant project governance entity.
 - 113.4. This decision (in writing) will be a 'disallowable instrument', which means it can be reviewed by Parliament's Regulations Review Committee if public

interest requires it. The Committee will have the option to refer the decision to Parliament for debate should it deem it necessary.

Decision-making framework regarding designations and heritage orders

114. Cabinet has already agreed most of the decision-making framework for specified development projects. This includes that:
 - 114.1. decision-makers must comply with the purpose and principles of the new legislation [CAB-18-MIN-0243 refers]
 - 114.2. for resource consents, the decision-making considerations in sections 104-108A of the Resource Management Act 1991 (RMA) will continue to apply [CAB-18-MIN-0170 refers]. The exception to this will be references to the purposes and principles set out in Part 2 of the RMA, which will be substituted by a reference to the purposes and principles of the new legislation.
115. However, Cabinet has not yet specified the particular decision-making considerations for designations (provisions in a district plan to give effect to a requirement from a Minister, local authority or network utility operator) and heritage orders (provisions in a district plan to give effect to requirements from a heritage protection authority).
116. Decision-making on designations and heritage orders in a specified development project area should also be consistent with the purpose and principles of the new legislation. In addition, it should take into account existing decision-making requirements in the RMA.
117. I recommend the legislation clarify that within a specified development project area, decision-making considerations under sections 171 and 191 of the RMA will continue to apply to decisions on designations and heritage orders respectively, with any reference to 'Part 2' of the RMA being a reference to the purposes and principles of the new legislation.

Part IV: Right of first and second refusals waiver

118. Some Crown-owned land in a development project area may be subject to a right of first or second refusal (RFR). RFRs are provided for in Treaty settlements and require agencies to offer iwi or hāpu the opportunity to purchase surplus land before it can leave Crown ownership.
119. Cabinet has previously agreed that:
 - 119.1. the Authority must give any post-settlement governance entities (that hold RFRs over any land in a project area) the opportunity to be the developer of that land on specified terms and conditions
 - 119.2. a post-settlement governance entity must agree to waive its RFR if it wishes to accept a proposal from the Authority to develop the land [CAB-18-MIN-0563 refers].
120. I consider that this waiver requirement places an undue limit on the ability of the Authority and post-settlement governance entities to negotiate. For instance, the Authority and a post-settlement governance entity may wish to agree that the RFR can remain in place while the Authority develops the land, with the post-settlement governance entity completing the houses in later stages.

121. I would prefer that the Authority take the approach that KiwiBuild currently uses, where the RFR waiver is generally a component of the agreement with the post-settlement governance entity, rather than a prerequisite to such an agreement.
122. Therefore I recommend that the Cabinet decision on the requirement for an RFR waiver be rescinded, with consequential revisions to related Cabinet decisions.
123. I plan to retain the protection that the Minister for Māori Crown Relations: Te Arawhiti and I must agree to the development of any RFR land if no formal agreement on the land has been reached between the Authority and the relevant post-settlement governance entity.

Delegation to resolve issue with Housing New Zealand RFR waiver

124. In certain Treaty settlements, Housing New Zealand has negotiated an exemption to RFRs that would otherwise apply to land it owns (if it were to dispose of that land). Before the Authority becomes responsible for this land, it is important to resolve how these RFRs will be addressed.
125. I seek delegated authority for Ministers for Māori Crown Relations: Te Arawhiti, Housing and Urban Development, and Treaty of Waitangi Negotiations to resolve this issue consistent with Cabinet's decisions in November 2018 on how the Authority would approach RFRs [CAB-18-MIN-0563 refers].

Part V: National Policy Statement for Highly Productive Land

126. I was invited to report back to this Committee [DEV-18-MIN-170 refers] on the timeline for progressing the proposed National Policy Statement for Highly Productive Land (the NPS) and the implications for the Authority of this NPS.
127. The intention is for the NPS to be gazetted in late November 2019 and come into effect 28 days after the gazettal.
128. Cabinet has agreed that development plan provisions for a specified development project area cannot be inconsistent with the NPS. This means that the NPS will apply to all specified development projects. If the NPS requires land to be protected for food production or similar purposes, then this will mean that the land cannot be used by the Authority for urban development.

Delegated authority for minor matters

129. Cabinet has previously authorised specific Ministers to make subsequent policy decisions on details consistent with the Authority policy proposals in earlier Cabinet papers. These Ministers are the Ministers of Housing and Urban Development, Finance, Environment, Māori Crown Relations: Te Arawhiti, and Local Government.
130. As legislative drafting progresses and policy work on the specified development project process continues, it is possible that this work may:
 - 130.1. identify duplications or omissions in the interface between the new legislation and existing statutes
 - 130.2. determine that some of the more detailed or technical matters proposed for primary legislation would be better provided for in regulations or other instruments

130.3. identify opportunities to simplify aspects of the policy to enhance the functioning of the Authority or enable smoother processes relating to specified development projects, with appropriate safeguards.

131. I seek your agreement for existing delegations, as well as those in this paper, to be extended to cover the possibilities outlined above. If any more substantive matters are raised through this process, I will report back to this Committee and seek your agreement to any changes proposed.

Financial implications

132. There are no immediate financial implications from developing or enacting the parts of the new Bill described in this paper.

Consultation

133. The Treasury, Ministry for the Environment, Department of Internal Affairs, Land Information New Zealand, Department of Conservation, Ministry of Transport, New Zealand Transport Agency, Te Puni Kōkiri, Māori Crown Relations: Te Arawhiti, State Services Commission, Inland Revenue, New Zealand Defence Force, Heritage New Zealand Pouhere Taonga, Ministry of Culture and Heritage, Housing New Zealand Corporation and Parliamentary Counsel Office were consulted on these proposals. The Department of Prime Minister and Cabinet was informed.

Legislative implications

134. The proposals in this paper will be part of the new legislation and I seek Cabinet's authority to instruct the Parliamentary Counsel Office accordingly. Some consequential amendments to other Acts may also be required. For example, an amendment to the Environmental Protection Agency Act 1992 may be required to enable the EPA to service an IHP.

Impact analysis

135. The Treasury Regulatory Quality Team (RQT) has reviewed the revised Regulatory Impact Assessment (RIA) *Supporting Complex Urban Development Projects with Dedicated Legislation* prepared by the Ministry of Housing and Urban Development.

136. The RIA is largely the same as the one considered by Cabinet in May 2018 (CAB-18-SUB-0243). The main areas of change concern:

136.1. inclusion of options for the legal form of the entity

136.2. clarification on the development plan process and disputes resolution

136.3. clarification on the Treaty of Waitangi and implementation, including the exemption of sensitive Māori land for compulsory acquisition

136.4. clarification of offer back obligations.

137. RQT re-confirms its earlier assessment that the information and analysis summarised in the RIA meets the Quality Assurance criteria.

138. The RIA has a clear structure and exhibits clear thinking on the nature of the problem and the available options for each issue. The analysis also identifies that there are adverse potential impacts for current residents and property owners.

Human rights, gender implications and disability perspective

139. There are no human rights, gender or disability implications associated with this paper.

Publicity and engagement

140. The Minister of Housing and Urban Development will proactively release this Cabinet paper to the public within 30 days of Cabinet's agreement. The other Cabinet papers relating to the establishment of the Authority have already been publicly released on the Ministry of Housing and Urban Development website.

Recommendations

I recommend that the Cabinet Economic Development Committee:

1. **note** that Cabinet has previously agreed to:
 - 1.1. legislation to empower complex urban development projects [CAB-17-MIN-0051 refers];
 - 1.2. the fundamental framework of the new legislation [CAB-18-MIN-0243 refers];
 - 1.3. the powers related to land assembly, reserves, infrastructure and funding [CAB-18-MIN-0399.01 refers];
 - 1.4. the powers related to resource management planning and consenting [CAB-18-MIN-0399 refers];
 - 1.5. measures to protect Māori interests and realise Māori aspirations in housing and development [CAB-18-MIN-0563 refers];
2. **note** that Cabinet agreed to establish the Housing and Urban Development Authority ("the Authority") as a Crown agent [CAB-18-MIN-0562 refers];
3. **note** that I intend to accelerate the establishment of the Authority by splitting the legislation into two parts:
 - 3.1. firstly, a Bill to establish the Authority as an entity, which I propose to introduce in May this year so that the Authority can be established on 1 October;
 - 3.2. secondly, a Bill to provide the processes for specified development projects and the more enabling development powers, as well as the more detailed provisions relating to Māori interests, to be introduced in August and passed in mid-2020;
4. **note** that the first Bill will include:
 - 4.1. a Treaty of Waitangi-related clause which recognises the Crown's responsibility to take account of the principles of the Treaty of Waitangi and sets out the ways in which the new legislation supports this;
 - 4.2. provisions agreed by Cabinet requiring the Authority to ensure it has the capability and capacity to uphold the Treaty of Waitangi and its principles, understand and apply Te Ture Whenua Māori Act 1993, and be able to

engage with Māori and understand Māori perspectives [CAB-18-MIN-0563 refers];

5. **note** that the Minister for Māori Crown Relations: Te Arawhiti and I will report back to Cabinet in June 2019 on a detailed approach for protecting Māori interests through the transition and establishment of the Authority;
6. **note** that, prior to the establishment of the Authority, I will use available direction-setting tools to ensure that the entities that will be put into the Authority act in a manner that is consistent with the measures Cabinet has agreed on Māori interests to the extent possible under existing legal frameworks [CAB-18-MIN-0563 refers];

Objectives, functions and operating principles

7. **agree** that the new legislation will specify the objective, functions and operating principles to guide the Authority in performing its dual roles in public housing and urban development;
8. **agree** that the Authority's overarching objective should be drafted consistent with the following statement:
 - 8.1. The objective of the Authority is to contribute to the development of sustainable, inclusive and thriving communities that provide people with good quality, affordable housing choices that meet diverse needs; support good access to jobs, amenities and services; and improve the total economic, social, environmental and cultural wellbeing of current and future generations;
9. **note** that Cabinet has previously agreed to put Housing New Zealand's functions into the Authority [CAB-18-MIN-0562 refers];
10. **note** that Cabinet has previously agreed that the Authority will have four urban development functions – initiating and commissioning development projects, delivering development projects, exercising the more enabling development powers, and delivering programmes [CAB-18-MIN-0562 refers];
11. **agree** that the legislation should include additional functions to reinforce the Authority's proposed operating principles, including:
 - 11.1. supporting innovation, capability, and scale within the wider housing, urban development and construction sectors;
 - 11.2. leading and promoting good urban design and sustainable, efficient, integrated, mixed-use development;
 - 11.3. understanding, supporting and enabling the aspirations of communities;
 - 11.4. supporting Māori aspirations for urban development;
12. **agree** that the new legislation include a provision that enables the responsible Minister to direct the Authority (under section 112 of the Crown Entities Act 2004) to perform any additional function relating to housing and urban development which is not specified in the new legislation;
13. **agree** that the Authority's operating principles should cover:
 - 13.1. all agreed social objectives for Housing New Zealand that are not otherwise incorporated into the functions for the Authority – for example,

- “being a fair and reasonable landlord, treating tenants and their neighbours with respect, honesty and integrity”;
- 13.2. partnering and engaging meaningfully with others;
 - 13.3. partnering and having early and meaningful engagement with Māori, and offering Māori opportunities to participate in urban development;
 - 13.4. identifying and protecting Māori interests in land, and recognising and providing for the relationship of Māori and their culture and traditions with their ancestral lands, water, wāhi tapu and other taonga;
 - 13.5. having regard to the importance of environmental, cultural and heritage values, and the way its operations impact on these values;
 - 13.6. seeking to influence, lead and shape the market for good urban design, quality, accessible housing, and construction innovation;
 - 13.7. seeking to maximise alignment and synergies through the Authority’s multiple functions in order to support to support inclusive, integrated urban development;

Strategic direction

14. **agree** that the legislation require a Government Policy Statement on Housing and Urban Development (“the GPS”) to be published by the responsible Minister within the first year of enactment, and reviewed every three years thereafter, or at the discretion of Cabinet;
15. **agree** that the GPS be developed by a process that involves consultation with people who have an interest in housing and urban development in New Zealand, including organisations representing those persons;
16. **agree** that the GPS must at a minimum:
 - 16.1. set out the overall direction for the housing and urban development system;
 - 16.2. outline the Government’s priorities for housing and urban development;
 - 16.3. establish how the Government expects the Authority to manage and deliver its objective and functions;
 - 16.4. set out how the Government expects other agencies to support the Government’s vision and the role of the Authority;
 - 16.5. include the Government’s expectations in relation to Māori interests, partnering with Māori and protections for Māori interests;
17. **agree** that the Authority must give effect to the GPS;
18. **note** that the preceding recommendation does not replace the general power, under the Crown Entities Act 2004, for the Minister to provide other policy directions to the Authority;
19. **note** that I am testing how departments and Crown agents can be incentivised to incorporate relevant aspects of the GPS into their strategic and sector planning, to ensure alignment across government service delivery;

20. **note** the report back on a framework to ensure that the Authority's projects meet public good outcomes, including requirements for the inclusion of public and KiwiBuild homes in developments;

Financial provisions in the new legislation

21. **note** that the Authority will be subject to the Crown Entities Act 2004, and is therefore restricted from acquiring financial products, borrowing, giving guarantees and indemnities, and using derivatives unless otherwise authorised;
22. **agree** that if the Authority seeks to do any of these restricted activities, it can seek approval through regulations or from the Ministers of Housing and Urban Development and Finance;
23. **agree** that Housing New Zealand Corporation's current set of financial powers be available to the Authority as they relate to Housing New Zealand Corporation's current functions;
24. **note** that Cabinet has previously agreed to remove the requirement for Housing New Zealand to return its surplus to the Crown, in line with standard arrangements for Crown entities;
25. **agree** that the Authority will retain its surplus unless otherwise directed by the Minister of Finance;
26. **agree** that Housing New Zealand's current approvals from joint Ministers around borrowing, including Housing New Zealand's Borrowing Protocol, continue to apply to the Authority in its housing functions;
27. **note** that I am seeking advice from officials on the tax status of the Authority;
28. **agree** to repeal part 5A of the Housing Corporation Act 1974, and note that this power will not be replicated in the new legislation;

Transitioning existing large-scale projects

29. **agree** that the new legislation include an Order-in-Council mechanism to enable existing large-scale projects to transition to the appropriate step of the statutory process for establishing specified development projects, provided the project has substantially met the requirements of all preceding steps, including eligibility criteria;
30. **note** that, once transitioned, a project will be subject to the checks and balances in the remaining steps of the standard process for specified development projects, including joint ministerial approvals;
31. **agree** that the measures agreed by Cabinet to protect Māori interests (relating to early engagement with Māori, seeking to partner with Māori and recognising Māori aspirations to participate in urban development, preserving 'offer back obligations' on former Māori land, and preventing the Authority from compulsorily acquiring sensitive Māori land) must be fully met for an existing large-scale project to transition to any of the statutory steps for a specified development project;

Independent Hearings Panel

- 32. note** that, to ensure meaningful public participation, the legislation will enable a mixture of formal and informal mechanisms that the Independent Hearings Panel (IHP) may use in its hearings;

Servicing an IHP

- 33. agree** that the Authority staff or a private contractor can provide secretariat and professional services to the IHP, provided that these staff are not involved in the preparation of the relevant draft development plan;
- 34. agree** that the Authority may, at its sole discretion, decide whether to delegate the servicing function to:
- 34.1. a relevant local authority (district council, regional council, or unitary authority); or
 - 34.2. the Environmental Protection Authority (EPA);
- 35. agree** a local authority or the EPA may choose whether it will accept the delegation to undertake the servicing of an IHP;
- 36. note** that the Environmental Protection Authority Act 2011 may need to be amended to allow the EPA to perform this role;
- 37. agree** that any party to whom the Authority delegates the servicing function must have the capability to engage appropriately with Māori;
- 38. agree** that all costs associated with the IHP process be borne by the Authority, including when it delegates its servicing functions, and that these costs can be recovered from project partners in accordance with any development partnership or funding agreement;

Clarifying and expanding the application and scope of the infrastructure and cost-sharing agreement

- 39. agree** that the binding infrastructure and cost-sharing agreement:
- 39.1. incorporate the provision and funding of infrastructure both inside and outside a specified development project area;
 - 39.2. include relevant territorial authorities as signatories, whether or not they support the specified development project;
 - 39.3. if applicable, include other infrastructure-related parties (e.g. private utility operators) if applicable; and
 - 39.4. be a component of all development plans of specified development projects;
- 40. agree** that a binding infrastructure and cost-sharing agreement include the following:
- 40.1. what infrastructure is required (inside and outside the project area);
 - 40.2. who is responsible for constructing and paying for infrastructure;

- 40.3. infrastructure specifications and design standards;
- 40.4. who will control existing infrastructure assets inside the project area;
- 40.5. the timeline for infrastructure works;
- 40.6. arrangements for vesting and transferring assets, including debt management;
- 40.7. required service levels and performance measures to assess compliance;
- 40.8. a dispute resolution process; and
- 40.9. penalties and actions for non-performance or parties breaking the contract;

Disputes resolution will be managed through existing processes and contracts

- 41. **note** that there is no need for a bespoke dispute resolution process for the Authority because disputes can be managed through the IHP, existing arbitration and litigation processes, and contracts between development parties;

Ensuring democratic accountability when the Authority exercises its rating powers

- 42. **agree** that the high-level design of a targeted rate for a given development project be established as part of the development plan process for that project;
- 43. **agree** that details about how the targeted rate will be applied, including the maximum amount of funding that may be raised annually, will be set by Order-in-Council;
- 44. **agree** that the targeted rate be set annually through a disallowable instrument made by the Authority;

Designations and heritage orders

- 45. **agree** that the legislation clarify the arrangements for decision-making on designations and heritage orders for a specified development project by applying sections 171 and 191 of the Resource Management Act 1991 (RMA) respectively to the decision-making framework, with any reference to 'Part 2' of the RMA being a reference to the purposes and principles of the new legislation;

Rights of first and second refusal

- 46. **rescind** Cabinet's decision that it be a condition of the relevant post-settlement governance entity agreeing to the Authority's development proposal that the post-settlement governance entity must waive its right of first or second refusal (RFR);
- 47. **rescind** Cabinet's decision that the Authority cannot develop RFR land without the prior agreement of the Minister for Māori Crown Relations: Te Arawhiti and the Minister of Housing and Urban Development unless the relevant post-settlement governance entity has waived its RFR;
- 48. **agree** that that the Authority cannot develop RFR land without the prior agreement of the Minister for Māori Crown Relations: Te Arawhiti and the Minister of Housing and Urban Development unless the relevant post-settlement governance entity has reached a formal agreement with the Authority in respect of that land;

- 49. **note** these recommendations do not change Cabinet’s decision that the post-settlement governance entity is free to choose whether or not to reach agreements with the Authority in respect of its RFR;
- 50. **agree** that the Authority will remain bound by RFRs, including as they may be modified by any formal agreements between the Authority and the post-settlement governance entity;

Housing New Zealand exemption to rights of first refusal

- 51. **agree** to delegate authority to the Ministers for Māori Crown Relations: Te Arawhiti, Housing and Urban Development and Treaty of Waitangi Negotiations to resolve issues associated with Housing New Zealand’s current exemptions to RFRs;

General

- 52. **note** the report back on the implication of the National Policy Statement for Highly Productive Land for the Authority;
- 53. **authorise** the Minister of Housing and Urban Development to make any further decisions required consistent with the agreements sought in this paper;
- 54. **authorise** the Ministry of Housing and Urban Development to work with the Parliamentary Counsel Office to develop any further provisions consistent with Cabinet agreements in this paper;
- 55. **authorise** the Ministers who were given authorisation under previous Cabinet papers relating to the Authority, as well as those given delegated authority in this paper, to approve changes to the detailed recommendations agreed in those papers where the drafting process or further detailed policy work identifies:
 - 55.1. that there are errors, duplications or omissions in the agreed interface between this legislation and existing statutes;
 - 55.2. that detailed or technical matters proposed for primary legislation would be better provided for in regulations or other instruments in accordance with the Legislation Guidelines issued by the Legislation Design and Advisory Committee;
 - 55.3. aspects of the policy that may be simplified to enhance the functioning of the Authority or enable smoother processes relating to specified development projects, provided that appropriate safeguards are in place;
- 56. **note** that Ministers will report back to this Committee if more substantive matters are raised through the process described in recommendation 55.

Authorised for lodgement

.....
 Hon Phil Twyford
**Minister of Housing and Urban
 Development**

Annex 1: Interim outcomes framework for the Housing and Urban Development Authority

