



Cabinet Business Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Establishing the Housing Commission and Legislating to Empower Complex Urban Development Projects

Portfolio Housing and Urban Development

On 20 December 2017, the Cabinet Business Committee:

Background

- 1 **noted** that:
 - 1.1 in its 2015 report, *Using Land for Housing*, the Productivity Commission recommended that the government enable particular development projects to operate with different powers and land use rules;
 - 1.2 the previous Labour-led government had commenced working towards that type of legislation in 2006, culminating in a 2008 discussion document, *Building Sustainable Urban Communities* [CAB Min (08) 30/3E];
 - 1.3 in February 2017, the previous government published a discussion document, *Urban Development Authorities*, which set out detailed proposals towards establishing and empowering such authorities in the context of particular development projects [CAB-16-MIN-0686];
- 2 **noted** that the key aims of a project-based approach to urban development are to:
 - 2.1 assemble public and private landholdings to allow development on the required scale;
 - 2.2 coordinate and integrate the delivery of infrastructure;
 - 2.3 spatially masterplan development projects;
 - 2.4 partner with public sector organisations, private sector developers and iwi authorities to deliver those projects;
 - 2.5 operate under streamlined planning and consenting processes;
- 3 **noted** that urban development authorities and more enabling development powers for significant projects are a common method used overseas to deliver the aims described above;

- 4 **noted** that the benefits of new legislation can be expected to be:
- 4.1 faster economic transformation through more effective, large-scale urban development;
 - 4.2 better integration between land use and transport systems;
 - 4.3 more control over the location, timing and quality of urban development;
 - 4.4 improved social, cultural and natural environment outcomes within urban environments;
 - 4.5 increased resilience of communities and infrastructure to natural hazards;
 - 4.6 incorporation of Māori aspirations and priorities for urban development;
 - 4.7 increased planning certainty and incentives for developers to participate in large-scale urban development;
 - 4.8 increased access to private sector investment in urban development through joint ventures and partnership arrangements between the public and private sectors, including iwi authorities;
 - 4.9 better return on public sector infrastructure investment;
 - 4.10 maintaining a construction pipeline to support industry capacity and capability;
- 5 **noted** that the government's priorities in its first 100 days in office include commencing work to establish the Housing Commission, an urban development authority with cut through planning powers, which will be responsible for driving the delivery of the KiwiBuild Programme and undertaking major greenfield and brownfield regeneration projects in partnership with Councils, private developers and iwi/Māori;

Proposed legislation

- 6 **agreed** that legislation be developed that enables selected urban development projects to operate with more enabling development powers and land use rules;
- 7 **agreed** in principle, subject to the further report referred to in paragraph 18 below, to the establishment of the Housing Commission as a national urban development authority that has responsibility for exercising the development powers in the new legislation (among other potential functions);
- 8 **agreed** that the new legislation enact a framework, process and development powers that:
- 8.1 support high quality urban development;
 - 8.2 provide greater coordination, certainty and speed;
 - 8.3 are capable of supporting a wide range of development projects;
- 9 **agreed** that, as eligible development projects arise, the new legislation give the government the power to:
- 9.1 identify the development project;
 - 9.2 set objectives specific to the development project;

- 9.3 approve the scope and application of more enabling development powers to the development project;
- 10 **agreed** that the new legislation:
- 10.1 restrict the exercise of any development powers to selected development projects that are formally established under the legislation, including the infrastructure required to support them;
 - 10.2 prevent the legislation from applying to a whole city or town, or a small residential land parcel;
 - 10.3 only apply to the discrete geographic area(s) in which a single development project is located;
 - 10.4 be an enduring legislative tool-kit that enables the government to support development projects anywhere in New Zealand, subject to those projects meeting any thresholds or criteria included in the legislation;
 - 10.5 provide for access to the development powers to expire when the development project has achieved its objectives;
 - 10.6 provide that development powers are available to development projects in any urban area, including greenfield areas adjacent to an urban area;
 - 10.7 provide that private sector developers can access the benefit of development powers (though not the power to exercise them) in the context of their own development projects, where appropriate and subject to suitable protections;
 - 10.8 enable development powers to be available to support any type of urban development project, whether or not it includes a housing component, subject to those projects meeting any thresholds or criteria included in the legislation;
 - 10.9 allows adequate opportunities for public participation;
- 11 **agreed** in principle, subject to the further report referred to in paragraph 18 below, to include the following development powers in the new legislation:
- 11.1 changing land and resource use regulations;
 - 11.2 overriding development controls;
 - 11.3 streamlining the resource consent process;
 - 11.4 compulsory land acquisition;
 - 11.5 amalgamating and re-shaping land parcels;
 - 11.6 removing legal encumbrances from the land;
 - 11.7 exchanging or revoking suitable types of reserve land;
 - 11.8 stopping, re-aligning, designating and creating roads and other transport routes;
 - 11.9 re-aligning and acquiring access-ways for network infrastructure;
 - 11.10 designating, providing and constructing infrastructure;

- 11.11 vesting infrastructure in local councils or other appropriate receiving organisations at the completion of development projects;
- 11.12 independently funding and incentivising the development by levying contributions from land owners or capturing a share of the uplift in land value, through mechanisms such as a targeted rate and development contributions;
- 12 **agreed** in principle, subject to the further report referred to in paragraph 18 below, that the new legislation:
 - 12.1 require a development project's objectives to be identified and agreed when the project is formally established;
 - 12.2 provide that no development project can be established without demonstrating that it has the realistic potential to deliver tangible public benefits;
 - 12.3 support complex or strategically important development projects that deliver a range of development outcomes, subject to further decisions on appropriate eligibility criteria and thresholds for determining which development projects can be established under the legislation;
 - 12.4 require a two-step process for each development project, both of which require public consultation:
 - 12.4.1 first, the assessment and establishment of the development project;
 - 12.4.2 secondly, the preparation and approval of a detailed development plan that identifies how the development powers will be used to realise the project's objectives;
 - 12.5 provide that the Minister responsible for the new legislation approves the development plan;

Māori interests

- 13 **noted** that the proposed powers will have implications for the Crown's relationship with Māori, with respect to Treaty settlements, rights of first refusal, and Te Ture Whenua Māori Act 1993;
- 14 **agreed** that the new legislation:
 - 14.1 ensure Māori interests are identified and protected;
 - 14.2 recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga;
 - 14.3 provide for both the Treaty of Waitangi and Te Ture Whenua Māori Act to be upheld;
 - 14.4 ensure Treaty settlements are honoured in each urban development project, including where relevant by the Housing Commission;
- 15 **invited** the Minister for Housing and Urban Development and the Minister for Māori Development to agree to scope a range of options to advance Māori housing aspirations in urban centres;

Legislative implications

16 **noted** that:

- 16.1 there are a number of critical policy issues that need to be resolved before detailed policy decisions can be made and drafting instructions can be authorised, including in respect of Māori interests;
- 16.2 the Minister of Housing and Urban Development will seek an appropriate place for a Bill on the 2018 Legislation Programme, with a view to enacting the new legislation by the end of 2018;

Further reports

17 **noted** that:

- 17.1 the Labour Party manifesto committed to putting all surplus Crown land in urban areas under the control of the Housing Commission;
- 17.2 there may be value in identifying all of the surplus urban land that the Crown owns and consolidating its management under the Housing Commission;
- 17.3 the Minister of Housing and Urban Development has asked officials for advice on the merits of this proposal, and will report back to Cabinet with any policy recommendations following discussion with the Minister for Land Information;

18 **invited** the Minister of Housing and Urban Development and Minister of Transport to consult with the Ministers of Finance, State Services, Treaty of Waitangi Negotiations, Crown-Māori Relations, Environment, Local Government, Māori Development, Infrastructure, Land Information, Conservation, and Arts, Culture and Heritage, on relevant components of the above policy proposals, and to report back to Cabinet with policy decisions capable of supporting drafting instructions by February 2018, including in particular:

- 18.1 the nature, functions and structure of the Housing Commission, including its corporate powers;
- 18.2 the appropriate thresholds and criteria for determining when a development project should be eligible under the new legislation and the extent to which these criteria should be set out in legislation;
- 18.3 how monitoring of the Housing Commission's objectives, powers and outcomes will be undertaken;
- 18.4 the process for identifying and empowering development projects;
- 18.5 the appropriate safeguards and accountability mechanisms when granting development powers;
- 18.6 how to set development objectives and the most appropriate public good outcomes;
- 18.7 how the proposed legislation should address the Crown's obligations to Māori, particularly with respect to Treaty settlements and rights of first refusal;

- 18.8 how iwi/Māori would like to be engaged in respect of any particular development proposals, and what role iwi organisations may wish to play;
- 18.9 how local government will participate and be impacted under the new legislation;
- 18.10 the circumstances in which it would be desirable for development powers to override local government decisions.

Rachel Clarke
Committee Secretary

Present:

Rt Hon Jacinda Ardern (Chair)
Rt Hon Winston Peters
Hon Kelvin Davis
Hon Grant Robertson
Hon Phil Twyford
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Carmel Sepuloni
Hon Dr David Clark
Hon David Parker
Hon Iain Lees-Galloway
Hon Jenny Salesa
Hon Damien O'Connor
Hon Tracey Martin
Hon Kris Faafoi
Hon Eugenie Sage

Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet

Hard-copy distribution:

Minister for Arts, Culture and Heritage
Minister for Crown/Maori Relations
Minister of Finance
Minister of Housing and Urban Development
Minister of Transport
Minister of State Services
Minister for Treaty of Waitangi Negotiations
Minister for the Environment
Minister for Maori Development
Minister for Local Government
Minister for Infrastructure
Minister of Conservation
Minister for Land Information