



Cabinet

Minute of Decision

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Housing and Urban Development Legislation: Outstanding Policy Matters Relating to the Housing and Urban Development Authority

Portfolio **Housing and Urban Development**

On 15 April 2019, following reference from the Cabinet Economic Development Committee, Cabinet:

Background

- 1 **noted** that Cabinet has previously agreed to:
 - 1.1 legislation to empower complex urban development projects [CBC-17-MIN-0051];
 - 1.2 the fundamental framework of the new legislation [CAB-18-MIN-0243];
 - 1.3 the powers related to land assembly, reserves, infrastructure and funding [CAB-18-MIN-0399.01];
 - 1.4 the powers related to resource management planning and consenting [DEV-18-MIN-0170];
 - 1.5 measures to protect Māori interests and realise Māori aspirations in housing and development [CAB-18-MIN-0563];
- 2 **noted** that Cabinet has also agreed to establish the Housing and Urban Development Authority (the Authority) as a Crown agent [DEV-18-MIN-0265];
- 3 **noted** that the Minister of Housing and Urban Development intends 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 the Minister proposes to introduce in May 2019 so that the Authority can be established on 1 October 2019;
 - 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, s 9(2)(f)(iv)
- 4 **noted** that the first Bill will include:
 - 4.1 a clause that reflects the Crown's responsibility to take account of measures to protect Māori interests and realise Māori aspirations in housing and development, 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];

5 **noted** that the Minister for Māori Crown Relations: Te Arawhiti and the Minister for Housing and Urban Development 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 **noted** that, prior to the establishment of the Authority, the Minister for Housing and Urban Development 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];

Objectives, functions and operating principles

7 **agreed** 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 **agreed** 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 **noted** that Cabinet has previously agreed to put Housing New Zealand's functions into the Authority [DEV-18-MIN-0265];

10 **noted** 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];

11 **agreed** 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 **agreed** that the Authority's operating principles should cover:
- 12.1 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';
 - 12.2 partnering and engaging meaningfully with others;
 - 12.3 partnering and having early and meaningful engagement with Māori, and offering Māori opportunities to participate in urban development;
 - 12.4 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;
 - 12.5 having regard to the importance of environmental, cultural and heritage values, and the way its operations impact on these values;
 - 12.6 seeking to influence, lead and shape the market for good urban design, quality, accessible housing, and construction innovation;
 - 12.7 seeking to maximise alignment and synergies through the Authority's multiple functions in order to support to support inclusive, integrated urban development;

Strategic direction

- 13 **agreed** 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;
- 14 **agreed** 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;
- 15 **agreed** that the GPS must at a minimum:
- 15.1 set out the overall direction for the housing and urban development system;
 - 15.2 outline the government's priorities for housing and urban development;
 - 15.3 establish how the government expects the Authority to manage and deliver its objective and functions;
 - 15.4 set out how the government expects other agencies to support the government's vision and the role of the Authority;
 - 15.5 include the government's expectations in relation to Māori interests, partnering with Māori and protections for Māori interests;
- 16 **agreed** that the Authority must give effect to the GPS;
- 17 **noted** that the proposal in paragraph 16 above does not replace the general power, under the Crown Entities Act 2004, for the Minister to provide other policy directions to the Authority;

- 18 **noted** that the Minister for Housing and Urban Development is 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;
- 19 **noted** 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, as outlined in the paper under DEV-19-SUB-0074;

Financial provisions in the new legislation

- 20 **noted** 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;
- 21 **agreed** 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;
- 22 **agreed** that Housing New Zealand Corporation's current set of financial powers be available to the Authority as they relate to the Corporation's current functions;
- 23 **noted** 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;
- 24 **agreed** that the Authority will retain its surplus unless otherwise directed by the Minister of Finance;
- 25 **agreed** 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;
- 26 **noted** that the Minister for Housing and Urban Development is seeking advice from officials on the tax status of the Authority;
- 27 **agreed** to repeal part 5A of the Housing Corporation Act 1974 (relating to social housing transactions), and **noted** that this power will not be replicated in the new legislation;

Transitioning existing large-scale projects

- 28 **agreed** 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;
- 29 **noted** 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;
- 30 **agreed** that the measures previously agreed by Cabinet that recognise the Crown's responsibility to take account of measures to protect Māori interests (relating to early engagement with Māori, seeking to partner with Māori and recognising Māori aspirations in housing and 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

- 31 **noted** 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

- 32 **agreed** 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;
- 33 **agreed** that the Authority may, at its sole discretion, decide whether to delegate the servicing function to:
- 33.1 a relevant local authority (district council, regional council, or unitary authority); or
 - 33.2 the Environmental Protection Authority (EPA);
- 34 **agreed** that a local authority or the EPA may choose whether it will accept the delegation to undertake the servicing of an IHP;
- 35 **noted** that the Environmental Protection Authority Act 2011 may need to be amended to allow the EPA to perform this role;
- 36 **agreed** that any party to whom the Authority delegates the servicing function must have the capability to engage appropriately with Māori;
- 37 **agreed** 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

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

- 39.5 the timeline for infrastructure works;
- 39.6 arrangements for vesting and transferring assets, including debt management;
- 39.7 required service levels and performance measures to assess compliance;
- 39.8 a dispute resolution process;
- 39.9 penalties and actions for non-performance or parties breaking the contract;

Disputes resolution will be managed through existing processes and contracts

- 40 **noted** 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

- 41 **agreed** 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;
- 42 **agreed** 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;
- 43 **agreed** that the targeted rate be set annually through a disallowable instrument made by the Authority;

Designations and heritage orders

- 44 **agreed** 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

- 45 **rescinded** the previous Cabinet 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) [CAB-18-MIN-0563, paragraph 19.2];
- 46 **rescinded** the previous Cabinet 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 [CAB-18-MIN-0563, paragraph 22]; and instead
- 47 **agreed** 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;
- 48 **noted** that these proposals 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 [CAB-18-MIN-0563, paragraph 19.3];

- 49 **agreed** 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

- 50 **authorised** 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

- 51 **noted** the report back on the implication of the National Policy Statement for Highly Productive Land for the Authority, as outlined in the paper under DEV-19-SUB-0074;
- 52 **authorised** the Minister of Housing and Urban Development to make any further decisions required consistent with Cabinet's decisions relating to the paper under DEV-19-SUB-0074];
- 53 **authorised** the Ministry of Housing and Urban Development to work with the Parliamentary Counsel Office to develop any further provisions consistent with Cabinet's decisions relating to the paper under DEV-19-SUB-0074;
- 54 **authorised** the Ministers who were given authorisation under previous Cabinet papers relating to the Authority (the Ministers of Housing and Urban Development, Finance, Environment, Māori Crown Relations: Te Arawhiti and Local Government), as well as those given delegated authority as outlined above, to approve changes to the detailed recommendations agreed in those papers where the drafting process or further detailed policy work identifies:
- 54.1 that there are errors, duplications or omissions in the agreed interface between this legislation and existing statutes;
- 54.2 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;
- 54.3 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;
- 55 **noted** that Ministers will report back to DEV if more substantive matters are raised through the process described in paragraph 54 above.

Michael Webster
Secretary of the Cabinet

Secretary's Note: This minute replaces DEV-19-MIN-0074. Cabinet deleted paragraph 12 from the DEV minute and agreed to the recommendations in paragraphs 45 and 46, to rescind earlier decisions.

Hard-copy distribution:

Prime Minister
Deputy Prime Minister
Minister of Housing and Urban Development