



## **Kāinga Ora and the Urban Development Bill – Supporting Māori Interests and Aspirations in Urban Development**

Kāinga Ora–Homes and Communities (Kāinga Ora) was established on 1 October 2019 as a new Crown agency to transform housing and urban development throughout New Zealand. Kāinga Ora has two key roles – continuing to be a public housing landlord, and a new role to work in partnership to enable, facilitate, and deliver urban development projects.

The new agency is being established through two separate pieces of legislation:

- The Kāinga Ora–Homes and Communities Act 2019 (the Kāinga Ora Act), which came into force on 1 October and established Kāinga Ora as a Crown agent.
- The Urban Development Bill which was introduced to Parliament on 5 December 2019, which will give Kāinga Ora the ability to undertake a new type of complex transformational urban development and access to a toolkit of development powers.

This legislative framework recognises the aspirations that Māori have in urban development, as potential development partners, as people significantly impacted by historic and current pressures in housing, and through their connections with the land and other natural resources.

Together, the Kāinga Ora Act and the Urban Development Bill are designed to ensure:

- meaningful and early engagement with Māori on urban development
- active identification and protection of Māori interests, particularly in land
- opportunities are provided for Māori to partner and participate in urban development projects
- the Treaty of Waitangi and Te Ture Whenua Maori Act 1993 are upheld.

To ensure expectations are met, Kāinga Ora and the Ministry of Housing and Urban Development will need to develop and sustain a close working relationship with iwi and Māori groups.

### **Kāinga Ora places whānau and families at the centre of its work**

Kāinga Ora has a strong social mandate, with an overarching focus on promoting the wellbeing of current and future generations.

The Kāinga Ora Act places clear expectations on Kāinga Ora to be a fair and reasonable public housing landlord and to provide good quality, warm, dry, and healthy rental housing. This includes supporting its tenants to sustain tenancies, be well connected to their communities, and live with the greatest degree of independence possible.

### **Kāinga Ora and the Ministry of Housing and Urban Development have different but complementary roles**

Both Kāinga Ora and the Ministry of Housing and Urban Development are committed to contributing to sustainable, inclusive, and thriving communities. They have different but complementary roles:



- The Ministry is responsible for leadership in the housing and urban system, advising the Government on strategic direction for the system and for Kāinga Ora, policy advice, and monitoring the system including Kāinga Ora, purchasing public housing places and regulatory oversight.
- Kāinga Ora is the Government's primary housing and urban development delivery arm, focused on providing public housing principally for those most in need, and initiating or undertaking urban development.

The two organisations must work in close partnership to ensure they are successful.

### **The Kāinga Ora Act provides the overarching framework for how Kāinga Ora will support Māori aspirations**

The Kāinga Ora Act provides the overarching operating framework for Kāinga Ora, including its objective, functions, and operating principles, and requirements for the Board. This includes:

- a function to understand, support, and enable the aspirations of Māori in relation to urban development
- an operating principle to identify and protect Māori interests in land and to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga
- an operating principle to provide for partnering and having early and meaningful engagement with Māori.
- a requirement that the Board must, for the purposes of carrying out its urban development functions, have processes in place to ensure Kāinga Ora has the capability and capacity to:
  - uphold the Treaty of Waitangi (Te Tiriti o Waitangi) and its principles
  - apply Te Ture Whenua Maori Act 1993
  - engage with Māori and understand Māori perspectives.

Together, these provisions provide a framework for ensuring Māori are at the heart of the urban development undertaken by Kāinga Ora, as landowners, investors, developers, and partners.

Additionally, the Land for Housing Programme administered by the Ministry of Housing and Urban Development was not transferred to Kāinga Ora at this time. This is because further engagement will be undertaken with iwi on whether the programme can be transferred to Kāinga Ora, given the Crown's Treaty settlement obligations.

### **No transfer of Housing New Zealand's Rights of First Refusal (RFR) exemption**

Certain settlement Acts provide Housing New Zealand with an exemption to Rights of First Refusal (RFR) that would otherwise apply to land it owns if it were to dispose of that land to give effect to the Crown's social objectives in relation to housing or services related to housing.

The Kāinga Ora Act did not transfer Housing New Zealand's exemptions to Kāinga Ora, which means that its RFR land cannot be disposed of without triggering the RFR. This was done because of Kāinga Ora's expanded role in relation to urban development.



In the Waikato-Tainui settlement, Housing New Zealand had a slightly different exemption that allowed the sale of RFR land to its tenants. The intention is that the Bill will ensure that this exemption does not apply to Kāinga Ora.

### **The Urban Development Bill does three key things**

The Urban Development Bill complements the Kāinga Ora Act by providing more detail about how it performs its urban development functions. It does this in three key ways:

- It provides Kāinga Ora with access to land acquisition powers when undertaking urban development.
- It gives Kāinga Ora the ability to enable, lead or facilitate a special type of complex development – called a specified development project (SDP).
- It gives Kāinga Ora access to a tool-kit of existing development and funding powers when undertaking SDPs.

The Ministry of Housing and Urban Development has worked closely with Te Arawhiti and Te Puni Kōkiri to ensure Māori interests are recognised and provided for in the Bill.

The current content of the Bill reflects the policy decisions that were made by the Government between May 2018 and April 2019. The key decisions on Māori interests can be found in the November 2018 and April 2019 Cabinet papers on the Ministry of Housing and Urban Development's website. A summary of the key decisions is given below.

### **The Bill will not override settlement obligations or Te Ture Whenua Maori Act 1993**

Kāinga Ora will have a much larger mandate around urban development than any of Housing New Zealand, HLC or the KiwiBuild Unit. This is likely to increase the ways in which it intersects with Māori interests and rights in land and other natural resources. It is intended to provide more opportunities for Māori to partner with Kāinga Ora on urban development projects that take into account local knowledge, aspirations and concerns.

To ensure that Māori interests are appropriately recognised and provided for when undertaking urban development:

- All persons making decisions under the Urban Development Bill must take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)
- Kāinga Ora is required to act in accordance with all Treaty settlements and participation arrangements.
- If any provision of the Urban Development Bill is inconsistent with the Te Ture Whenua Māori Act 1993, the Te Ture Whenua Māori Act 1993 prevails.



**Māori land and other land with Māori interests are protected from compulsory acquisition and development**

Kāinga Ora will have a general set of land acquisition powers, similar to those under the Public Works Act 1981 (PWA), that will enable it to acquire land for urban development purposes. These powers are needed because it can be difficult to aggregate multiple parcels of land.

These powers will enable Kāinga Ora to acquire land for specified works, including housing and commercial and industrial works associated with housing and in some cases transfer this land to private developers or to other buyers without engaging the requirements under the PWA to first offer back the land to its former owners.

However, the Bill recognises that land is a taonga for Māori and must be protected. Therefore, protections for various types of land in which Māori have interests have been built into the land acquisition and other provisions of the Bill

There are two categories of protections for this land – for category 1 land, no powers under the Act can be used (i.e. it cannot be compulsorily acquired, and no development powers can be used in relation to it). This land includes –

- Māori customary land
- Māori reserves
- Māori reservations
- land in which customary marine title or protected customary rights have been recognised
- land that has its own legal status under a settlement Act (including Te Urewera land under Te Urewera Act 2014), and
- the maunga listed in the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014

The second category of land cannot be compulsorily acquired but can be developed by agreement. This land includes -

- Māori freehold land
- general land owned by Māori that ceased to be Māori freehold land in accordance with an order of the Māori Land Court after 1 July 1993 or under Part 1 of the Māori Affairs Amendment Act 1967
- land held by a post-settlement governance entity that was acquired as redress or by the exercise of rights under a Treaty settlement, and
- land transferred to an iwi or hapū with the intention of returning the land to the holders of mana whenua over that land.

These protections have been included because of the fundamental importance of this land to its owners' identity and their cultural, social and economic well-being, and to ensure Treaty settlements are upheld.

Additionally, land within an SDP project area that is potentially needed for future settlement of historical Treaty claims cannot be developed or disposed of without prior consultation with the Minister for Treaty of Waitangi Negotiations.



### **Kāinga Ora will take a new approach to RFR land and former Māori land**

The Bill sets out a new approach to land subject to Rights of First Refusal (RFR), designed to support Māori aspirations in urban development and enable them to participate in development opportunities on the land.

Where Kāinga Ora holds or controls land subject to an RFR, Kāinga Ora will be required to engage with the RFR holder in relation to any Specified Development Project (see below) or mixed housing development. Kāinga Ora must offer the RFR holder the opportunity to undertake the development on specified terms. The development may not proceed unless the RFR holder agrees to participate in the development on those or other terms or to the development going ahead without its involvement. In such case, the RFR will continue to apply, meaning the RFR holder would (subject to any offer back requirements) be offered the first opportunity to purchase the land and improvements if they were sold.

The Crown obligations on the development of certain RFR land in Auckland which apply under the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Deed are not affected by this Bill.

Special rules also apply to land that –

- is held for a public or specified work
- may pass out of public ownership following its development, and
- before it was acquired was Māori land or general land that ceased to be Māori land under Part 1 of the Māori Affairs Amendment Act 1967.

Before undertaking any development on this land, Kāinga Ora must engage with the relevant hapū and former owners associated with the land to determine their aspirations for the land, and must offer the land back to the former owners or their descendants under the PWA.

### **The Specified Development Process is designed to enable early and meaningful engagement with Māori**

The Specified Development Project (SDP) process set out in the Bill is a key mechanism to help enable complex developments with greater certainty, coordination and speed. Kāinga Ora will be able to enable, lead or facilitate SDPs.

SDPs are the types of projects that would struggle in the current environment because of limited coordination and fragmented decision-making. The value of becoming an SDP is that planning, infrastructure and funding can come together in a way that allows for more streamlined delivery of housing, infrastructure, commercial buildings, community facilities and green spaces. Each SDP will be guided by a set of objectives, designed to reflect the development outcomes sought for the project area.

A detailed diagram of the process to approve an SDP is [attached](#).



Kāinga Ora will need to work with others if it wants to successfully enable, facilitate and deliver SDPs. Therefore, the process for becoming an SDP has been designed to enable Māori to be engaged throughout the process and to propose, lead, facilitate or partner in SDPs.

Key aspects of the process for Māori include:

- Kāinga Ora must engage with Māori (including iwi and hapū, owners of Māori land trusts and incorporations, urban Māori authorities, and post-settlement governance entities) when assessing a proposal for an SDP. This includes seeking expressions of interest from these groups to develop any land within the project area that they own. It also provides an opportunity for Māori to influence the project area and objectives sought from the SDP.
- Kāinga Ora must allow adequate time when undertaking this engagement. This means considering obligations under other legislation, trust deeds and governance documents, as well as tikanga Māori.
- When advising the Ministers of Finance and Housing on whether to establish an SDP, Kāinga Ora must present the views of the Māori entities engaged with as part of its assessment report.
- Before an SDP can get its final approval, its development plan must be considered by an independent hearings panel. The development plan is critical as it sets out how the project will be undertaken and how the development powers will be used. The independent hearings panel will receive public submissions on the development plan, and it will be required to have knowledge of the various communities in the project area, including mana whenua groups, and of tikanga Māori as it applies in the project area.
- Development plans will also have to be signed off by the Minister for Māori Crown Relations (and Minister for Māori Development if any Māori land is in a project area).

### **Kāinga Ora will have a toolkit of powers to help enable development**

When undertaking SDPs, Kāinga Ora will have access to a toolkit of development powers that will help it to enable development at greater speed and scale.

Each power is designed to address a specific barrier to development, such as planning constraints, old and aging infrastructure, and limited funding for development activities. Used together, they enable multiple aspects of the urban environment to be changed with greater certainty, integration and speed. These powers include:

- access to coordinated planning and streamlined consenting processes
- the ability to create, reconfigure and reclassify reserves
- the ability to build, change, and move infrastructure
- the ability to fund infrastructure and development activities, including through targeted rates.



These powers are largely available in the current environment, but each with their own process with its own engagement requirements and decision-making. One of the challenges when undertaking urban development is aligning these different processes. Often, they end up being done separately rather than concurrently, resulting in delays and duplication.

**The GPS will provide strategic direction**

The Kāinga Ora Act also introduces a Government Policy Statement for Housing and Urban Development (the GPS). This document is intended to provide strategic direction across the housing and urban development system, and Kāinga Ora is required to give effect to it. The GPS will include the Government's expectations in relation to Māori interests, partnering with Māori and protection of Māori interests. Māori will have an opportunity to engage in the development of the GPS. The first GPS must be issued by Ministers no later than 1 October 2021

