



## Briefing

### Establishing HUDA: legislative and financial settings

|           |                  |                 |                |
|-----------|------------------|-----------------|----------------|
| Date:     | 28 February 2019 | Security level: | In Confidence  |
| Priority: | High             | Report number:  | BRF18/19020168 |

### Action sought

|  | Action sought   | Deadline     |
|--|---|--------------|
| Hon Phil Twyford<br>Minister of Housing and Urban Development            | Agree to the legislative framework setting out HUDA's overarching objective, functions and operating principles<br>Agree to the framework for HUDA's financial powers and controls. | 1 March 2019 |
| Hon Grant Robertson<br>Minister for Finance                              | Note the contents of this report.   | 1 March 2019 |
| Hon Nanaia Mahuta<br>Associate Minister of Housing and Urban Development |   |              |
| Hon Jenny Salesa<br>Associate Minister of Housing and Urban Development  |   |              |

### Contact for discussion

| Name           | Position                          | Telephone   |           | 1 <sup>st</sup> contact |
|----------------|-----------------------------------|-------------|-----------|-------------------------|
| Caroline Reid  | Acting Manager, Urban Development | 04 831 6066 | s 9(2)(a) | ✓                       |
| Jessica Ranger | Principal Policy Advisor          | 04 831 6076 |           |                         |
| JC Somers      | Senior Policy Advisor             | 04 896 5247 |           |                         |

### Other agencies consulted

SSC, DPMC, Te Puni Kōkiri, Treasury, Ministry for the Environment, Ministry of Transport, DoC, Department of Internal Affairs, Housing New Zealand, Inland Revenue

### Minister's office to complete

- ☐ Noted
- ☐ Seen
- ☐ Approved
- ☐ Needs change
- ☐ Not seen by Minister
- ☐ Overtaken by events
- ☐ Declined
- ☐ Referred to (specify)

### Comments

Date returned to MHUD:

# Briefing

## Establishing HUDA: legislative and financial settings

**For:** Hon Phil Twyford, Minister of Housing and Urban Development  
**Date:** 28 February 2019 **Security level:** In Confidence  
**Priority:** High **Report number:** BRF18/19020168

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### Purpose

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1. This paper seeks your agreement to:
  - a. the legislative framework setting out the overarching objective, functions and operating principles for the Housing and Urban Development Authority (HUDA)
  - b. the framework for HUDA's financial powers and controls.

### Executive summary

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2. HUDA will be a Crown Agent with two roles – being a public housing landlord, and driving urban development projects that help to shape our cities. To carry out this role, HUDA needs clear objectives, functions and operating principles, and appropriate financial powers and controls.

#### *Legislative settings*

3. Having a clear overarching objective, functions and operating principles will ensure HUDA has a strong and sustained focus on both its public housing and urban development roles. It will also guide HUDA and its Board when performing these roles.
4. We propose that the new housing and urban development legislation sets out an operating framework that will:
  - a. embed Housing New Zealand's social objectives in legislation
  - b. provide clarity around what HUDA is expected to deliver for New Zealand, and how it will carry out its activities
  - c. provide clarity around the functions HUDA is expected to perform.
5. This paper seeks your agreement to the broad concepts that could be covered by the overarching objective and operating principles.

#### *Financial settings*

6. To ensure HUDA can operate effectively, it needs a set of financial powers that remove barriers to financing large-scale urban development, while appropriately managing financial risk both to itself and to the Crown. This means balancing innovation and flexibility with transparency and accountability.
7. We propose that:
  - a. HUDA is subject to the default settings under the Crown Entities Act 2004
  - b. HUDA can seek approval, either through regulations or from joint Ministers, to do any of the financial activities restricted by the Crown Entities Act 2004 when performing its urban development role

- c. the current financial powers and joint Minister approvals held by Housing New Zealand are available to HUDA to maintain continuity of public housing operations.
8. As the monitoring agency, the Ministry of Housing and Urban Development (HUD) will have a critical role to play in ensuring that HUDA is fiscally responsible and using its financial powers appropriately. We will need to ensure that we have the appropriate capability and capacity to monitor effectively, and that robust and effective processes are in place.
9. s 9(2)(f)(iv)

## Recommended actions

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10. It is recommended that you:
  1. **agree** that the legislative framework for the Housing and Urban Development Authority (HUDA) comprises an overarching objective, functions and operating principles *Agree / Disagree*
  2. **agree** that the HUDA's overarching objective should have a clear focus on: *Agree / Disagree*
    - 2.1 shaping thriving communities with access to the amenities, open spaces, jobs and transport links they need
    - 2.2 delivering housing that meets diverse needs
    - 2.3 being a fair and reasonable landlord.
  3. **note** that the HUDA's functions will include the existing functions for Housing New Zealand in section 18(2) of the Housing Corporation Act 1974 and the four urban development functions identified in the Cabinet paper 'Establishing a national Urban Development Authority' *Noted*
  4. **agree** to include a provision in the new housing and urban development legislation that enables the responsible Minister to direct the HUDA to perform any additional function relating to housing and urban development under section 112 of the Crown Entities Act 2004 *Agree / Disagree*
  5. **agree** that the HUDA's operating framework should cover: *Agree / Disagree*

*Public housing*

    - 5.1 treating tenants and their neighbours with respect, integrity and honesty, and being responsive to their needs
    - 5.2 providing good quality, warm, dry and healthy rental housing for those who need it most
    - 5.3 supporting tenants to be well-connected to their communities, and to lead lives with dignity and the greatest degree of independence possible
    - 5.4 working with community providers to ensure those most in need are supported and housed

*Urban development*

    - 5.5 undertaking transformational urban development that enhances the social, economic, environmental, and cultural wellbeing of current and future generations
    - 5.6 delivering quality infrastructure and amenities that integrate with

- and support communities' diverse needs and aspirations
- 5.7 having regard to the importance of environmental, cultural and heritage assets, and the way its operations impact on these assets
- 5.8 the desirability of partnership and the involvement of local government and Māori in urban development projects, and the need to consider delegating functions and powers to project governance entities
- 5.9 supporting Māori aspirations for urban development, and their relationship to land as taonga, and ensuring Māori are able to participate in development opportunities without undue risk to their rights and interests.
6. **note** that HUDA is 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 by regulations, an approval given by joint Ministers, its Act or an exemption granted in Schedules 1 or 2 of the Crown Entities Act 2004 *Noted*
7. **agree** that if HUDA needs to do any of these restricted activities to support its urban development role, it can seek approval through regulations or from the Ministers of Housing and Urban Development and Finance *Agree / Disagree*
8. **agree** that Housing New Zealand's current set of financial powers and approvals from joint Ministers will be available to HUDA when performing its public housing role *Agree / Disagree*
9. **note** that the Ministry of Housing and Urban Development (HUD) will need to ensure appropriate capability, capacity and processes are in place to monitor HUDA effectively *Noted*
10. s 9(2)(f)(iv) *Noted*
11. *Noted*
12. **note** that your decisions will be incorporated into the March Cabinet paper on outstanding issues related to the HUDA *Noted*
13. **forward** this briefing to the Minister of Finance. *Forward*

  
 Caroline Reid  
 Acting Manager, Urban Development  
 28/2/19

Hon Phil Twyford  
 Minister of Housing and Urban Development  
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## Legislative settings

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11. It is critical that HUDA has a robust legislative underpinning to ensure a strong and sustained focus on both its public housing and urban development roles. It will also help the HUDA Board to understand what it and HUDA are charged with doing, and how each is enabled to carry out its functions and exercises its powers.
12. We consider the most effective way to do this in the housing and urban development legislation is through an operating framework (outlined in the following sections) that involves an overarching objective, functions necessary to give effect to the overarching objective, and operating principles that guide how these functions are performed.
13. 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.
14. Sitting beneath this framework will be the existing tools for providing strategic direction to Crown agents, as well as the proposed Government Policy Statement for Housing and Urban Development.

### *Housing New Zealand's social objectives will be integrated into this new framework*

15. This new operating framework will replace Housing New Zealand's current one, which is set out in the Housing Corporation Act 1974. The current framework is not fit for purpose as it predates the Crown Entities Act 2004 and is not consistent with modern drafting practice.
16. At present, Housing New Zealand has a set of overarching objectives, with supporting social objectives set on an annual basis through a letter from the Minister of Housing and Urban Development.
17. In September 2018, Cabinet agreed to strengthen Housing New Zealand's social mandate by embedding eight social objectives in legislation, with a ninth enabling additional matters to be addressed. These objectives were based on the social objectives you issued to Housing New Zealand for the 2018/2019 year. Cabinet subsequently agreed to apply these social objectives to HUDA.
18. We have been looking at ways to embed the eight social objectives into the new housing and urban development legislation. As they are a mix of objectives, functions and operating principles, we propose integrating each one into the appropriate part of the new framework.

### *The overarching objective should set out what HUDA is expected to achieve for New Zealand*

19. The HUDA will be a powerful new Crown agency with two key roles – being a world-class public landlord, and leading small, medium and large-scale urban development projects. Its overarching objective should be aspirational, and capture the broad scope of what HUDA is expected to deliver for New Zealand.
20. We propose that the HUDA's overarching objective should provide a clear focus on:
  - a. shaping thriving communities with access to the amenities, services, open spaces, jobs and transport links they need
  - b. delivering housing that meets diverse needs
  - c. being a fair and reasonable landlord.

### *We have identified the broad scope of HUDA's functions*

21. HUDA is to have both Housing New Zealand's existing functions and new urban development functions. This can be achieved in the new legislation by:
  - a. carrying over the functions in section 18(2) of the Housing Corporation Act 1974, which sets out Housing New Zealand's functions
  - b. embedding the 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].

22. To future-proof HUDA, we also propose including a provision that enables the responsible Minister to direct it to perform any additional function relating to housing and urban development under section 112 of the Crown Entities Act 2004. Such a direction must be consulted on with the entity, and then published in the *Gazette* and presented to the House. This is not an uncommon provision for Crown entities.

*Operating principles will help to guide HUDA on how to behave*

23. HUDA'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 tenants, partners and members of the public. Operating principles in the housing and urban development legislation are a way to guide HUDA on how it is expected to behave when doing this.
24. We propose that HUDA's operating principles should cover:

*Public housing*

- a. treating tenants and their neighbours with respect, integrity and honesty, and being responsive to their needs
- b. providing good quality, warm, dry and healthy rental housing for those who need it most
- c. supporting tenants to be well-connected to their communities, and to lead lives with dignity and the greatest degree of independence possible
- d. working with community providers to ensure those most in need are supported and housed

*Urban development*

- e. undertaking transformational urban development that enhances the social, economic, environmental, and cultural wellbeing of current and future generations
- f. delivering quality infrastructure and amenities that integrate with and support communities' diverse needs and aspirations
- g. having regard to the importance of environmental, cultural and heritage assets, and the way its operations impact on these assets
- h. the desirability of partnership and the involvement of local government and Māori in urban development projects, and the need to consider delegating functions and powers to project governance entities
- i. supporting Māori aspirations for urban development, and their relationship to land as taonga, and ensuring Māori are able to participate in development opportunities without undue risk to their rights and interests.

*Final wording will be refined during drafting*

25. The final wording for the objectives, functions and operating principles will be refined through the drafting process.

## **Financial settings**

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*Flexibility and responsiveness need to be balanced with accountability and transparency*

26. HUDA 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.
27. To be successful, HUDA must be able to:
- a. effectively manage the potential for conflict between its public housing and urban development roles
  - b. remove barriers to financing large-scale urban development
  - c. enable innovative and flexible financing solutions
  - d. enable or leverage private sector investment.

28. HUDA must also be able to manage its financial risks appropriately. Urban development is inherently risky, and a major financial failure could impact HUDA's public housing role. Due to its size and scope, HUDA'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.

#### *Enabling urban development*

29. As a Crown agent, HUDA 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 by:
- regulations
  - an approval given jointly by the responsible Minister and the Minister of Finance
  - the entity's Act
  - an exemption granted in Schedule 1 or Schedule 2 of the Crown Entities Act 2004.
30. However, these restrictions could impact on HUDA's ability to act as a developer. Therefore, we propose that if HUDA needs to do any of the financial activities restricted by the Crown Entities Act 2004 to support its urban development role, it can be authorised to do so through regulations or a joint approval by the Minister of Housing and Urban Development and the Minister of Finance.
31. This approach will enable the Crown to maintain a suitable level of oversight over HUDA's financial activities, while providing enough flexibility for HUDA 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 HUDA to do these restricted financial activities.
32. We also considered the two other options – granting exemptions, or creating bespoke provisions in the new legislation. While bespoke provisions would be too prescriptive, exemptions would not provide enough controls. We looked at whether there was a need for an additional document to support HUDA to manage its financial activities (eg a financial policy statement). However, this could result in more operational control and more constraints than the status quo.

#### *Maintaining continuity for public housing*

33. Housing New Zealand has a set of financial powers that comprise the default ones under the Crown Entities Act 2004 and additional ones scattered through several pieces of legislation<sup>1</sup>. This set of powers is designed to support its current public housing operations.
34. Given the new legislation will carry over Housing New Zealand's public housing functions that rely on this set of financial powers, we propose that the same set be available to HUDA when performing its public housing role. This will be done either under the Crown Entities Act 2004 or the new housing and urban development legislation. This approach means that the power will look different, but will be functionally the same.
35. The one exception to having the same provisions apply is the requirement for Housing New Zealand to return its profit to the Crown under section 41 of the Housing Corporation Act 1974. Cabinet has already agreed to remove this requirement for Housing New Zealand, and we propose extending this to HUDA. Given the need for reinvestment arising from the scale and time span of urban development projects, we consider there are benefits in enabling HUDA to retain its surplus unless otherwise directed by the Minister of Finance.

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<sup>1</sup> This includes the Housing Corporation Act 1974, the Māori Housing Act 1935 and the Housing Act 1955.

36. We also propose that Housing New Zealand's current approvals from joint Ministers around borrowing will continue to apply to HUDA in its public housing role. This includes Housing New Zealand's Borrowing Protocol, and the approval to borrow up to \$3 billion to support the regeneration of public housing.

37.

s 9(2)(f)(iv)

#### *Monitoring*

38. Along with Treasury, HUD will have a critical role to play in monitoring HUDA and ensuring compliance with the approvals. We will need to ensure that we have the appropriate capability and capacity to monitor effectively, and that robust and effective processes are in place.

#### **Next steps**

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39. We will work with Treasury, Housing New Zealand and the HUDA establishment team to identify the approvals HUDA will need at establishment, and to put them in place. We will also look at whether some more enduring financial powers might be better set in regulations.

40.

s 9(2)(f)(iv)