



Briefing

Housing and urban development legislation – outstanding offences and penalties

Date:	04 April 2019	Security level:	In Confidence
Priority:	Medium	Report number:	BRF18/19020148

Action sought

	Action sought	Deadline
Hon Phil Twyford Minister of Housing and Urban Development	Agree to rescind the selected offences and penalties	12/04/19
Hon Andrew Little Minister of Justice	For your information	
Hon Nanaia Mahuta Minister for Local Government		
Hon Jenny Salesa Associate Minister of Housing and Urban Development		

Contact for discussion

Name	Position	Telephone	1 st contact
Jessica Ranger	Acting Manager, Urban Development	(04) 831 6076 s 9(2)(a)	✓
Edward Dolan	Policy Advisor		

Other agencies consulted

Ministry of Justice, Department of Internal Affairs

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

Urban development legislation – outstanding offences and penalties

For: Hon Phil Twyford, Housing and Urban Development
Date: 04/04/2019
Priority: Medium
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Report number: BRF18/19020148

Purpose

1. This briefing seeks your agreement to rescind four recommendations relating to offences and penalties under the housing and urban development legislation from the Cabinet paper, *'Legislating to empower complex urban development projects: Powers relating to land assembly, reserves, infrastructure and funding'* [CAB-18-MIN-0399.01].

Recommended actions

2. It is recommended that you:
 1. **note** that Cabinet agreed that it will be an offence to act contrary to, or fail to comply with, a direction or prohibition under the new housing and urban development legislation, and gave you delegated authority to decide an appropriate penalty Noted
 2. **note** that following consultation with the Ministry of Justice, we no longer consider that this should be an offence in the new housing and urban development legislation Noted
 3. **agree** to rescind recommendations 153 and 154 of the Cabinet paper, *'Legislating to empower complex urban development projects: Powers relating to land assembly, reserves, infrastructure and funding'* [CAB-18-MIN-0399.01] Agree / Disagree
 4. **agree** to rescind recommendations 146 and 148 of the of the Cabinet paper, *'Legislating to empower complex urban development projects: Powers relating to land assembly, reserves, infrastructure and funding'* [CAB-18-MIN-0399.01] as they will result in unnecessary duplication. Agree / Disagree


Jessica Ranger
Acting Manager, Urban Development


Hon Phil Twyford
Minister of Housing and Urban Development

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Background

3. The Housing and Urban Development Authority (HUDA) will be undertaking a range of small, medium and large-scale developments. This includes the specified development projects with access to the more enabling development powers.
4. Over the course of these projects, HUDA will undertake various works and activities (e.g. infrastructure provision and funding). However, there may be instances where the actions of a person or a group compromises HUDA works or activities, whether deliberately or through negligence. This could include damage to HUDA assets or obstruction of HUDA staff.
5. To deal with such instances, Cabinet agreed to a range of offences and penalties that replicate existing provisions in Local Government Acts (LGA) 1974 and 2002. It also agreed to the new offence of acting contrary to or failing to comply with a HUDA direction or prohibition.
6. Subsequently, you were given delegated authority to decide, in consultation with the Minister of Justice, an appropriate penalty for this offence.

No need for an offence around acting contrary to or failing to comply with a HUDA direction or prohibition

7. Following conversations with the Ministry of Justice, we do not consider that this offence of acting contrary to or failing to comply with a HUDA direction or prohibition needs to be specified in the new legislation. This is because failure to comply with any legislation is already an offence.
8. We also consider that provisions in existing acts (e.g. the Resource Management Act 1991 and Local Government Acts 1974 and 2002) are sufficient to deal with offences related to HUDA works and activities.
9. In addition, HUDA and local authorities will be able to enforce any applicable bylaws within their jurisdictions, including any penalties prescribed in them.
10. The legislation will introduce a new framework for collaboration and partnership with other development partners. HUDA's interactions with these partners are best managed through contractual arrangements. Subsequently, we do not consider adopting an overly legalistic and potentially punitive approach is conducive to collaboration and partnership.
11. We have also considered the merit of having a catch-all provision to manage any unforeseen risks that are not addressed in other legislation. This is not good practice and therefore not recommended.
12. Given the above we seek your agreement to remove this offence and the corresponding penalty requirement as set out in the following table.

Recommendation	Reason for rescindment
153 agreed that it be an offence to act contrary to, or fail to comply with, a direction or prohibition given under the new legislation, or under an authority given to the UDA or its delegates;	This offence is unnecessary as the intent behind it is captured through existing legislation, mechanisms and processes.
154 agreed that the Minister of Housing and Urban Development be given delegated authority to decide, in consultation with the Minister of Justice, appropriate penalties for failures to comply with directions and prohibitions from the UDA or its delegates;	This is unnecessary if recommendation 153 (above) is rescinded.

Reducing unnecessary duplication

13. Upon further analysis, we also consider the recommendations below to be unnecessary and so we suggest they also be rescinded. Doing this will help simplify the new legislation and avoid unnecessary duplications.

Recommendation	Reason for rescindment
<p>146 agreed that except as otherwise provided in paragraph 147 below¹, a person who commits an offence as described above is liable for, as the case may be:</p> <p>146.1 the amount of the destruction or damage;</p> <p>146.2 the cost incurred by the relevant entity in removing the stoppage or obstruction; or</p> <p>146.3 any loss or expenses incurred by the entity because of the stoppage, obstruction, or interference;</p>	<p>HUDA will be able to pursue civil action against an offender to recover costs/losses that are not covered by reparations payments related to a criminal offence.</p> <p>HUDA will also have the ability to pursue a civil action against someone who does not commit a criminal offence but who nonetheless causes HUDA a loss.</p> <p>These abilities to bring civil actions exist as a matter of the general law so we don't need to address them specifically in the legislation.</p>
<p>148 agreed that it be an offence to incite any other person to commit an offence as described above²</p>	<p>This recommendation is unnecessary as this is already an offence in section 66 of the Crimes Act 1961.</p>

¹ & ² **147 agreed** that it be an offence, that is liable for conviction, if a person intentionally prevents, obstructs or impedes an enforcement officer or other person authorised by HUDA, from carrying out their functions or duties;