

Briefing

SETTING KĀINGA ORA EXPECTATIONS ON DISRUPTIVE TENANTS AND COMMUNITY ENGAGEMENT			
Date	30 January 2024	Priority	Medium
Tracking number	HUD2024-003569		
ACTION SOUGHT FROM MINISTER(S)			
Minister	Action sought	Deadline	
Hon Chris Bishop Minister of Housing	<p>agree to use the letter of expectations process to convey expectations to Kāinga Ora [HUD preferred option]</p> <p>AND/OR</p> <p>direct HUD to provide further advice to responsible Ministers about issuing a direction under section 103 of the Crown Entities Act 2004</p>	None	
CONTACT FOR DISCUSSION			
Name	Position	Telephone	1st contact
Carla Wellington	Manager, Crown Entity Monitoring	s 9(2)(a)	
Murray Costello	Principal Advisor, Crown Entity Monitoring	s 9(2)(a)	✓
OTHER AGENCIES CONSULTED			
The Treasury Kāinga Ora – Homes and Communities			
Date returned to HUD:			

Briefing

SETTING KĀINGA ORA EXPECTATIONS ON DISRUPTIVE TENANTS AND COMMUNITY ENGAGEMENT			
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Executive summary

1. This briefing responds to your request for information about Kāinga Ora's approach to managing disruptive tenants, removing the Sustaining Tenancies Framework, strengthening community engagement and a previous expectation about specifying and incentivising performance levels for various aspects of Kāinga Ora's work in a contract with the Ministry of Social Development (MSD).

The Sustaining Tenancies Framework can be removed without legislative change

2. Ministers can require Kāinga Ora to remove its Sustaining Tenancies Framework and to change its approach to community engagement. These would not require any changes to the Kāinga Ora – Homes and Communities Act 2019.
3. The Sustaining Tenancies Framework would need to be replaced with other guidance to staff.

Board already working on strengthening management of disruptive tenants and community engagement

4. The Kāinga Ora Board has already started considering options for strengthening its management of disruptive tenants (at its December 2023 Board meeting) and its community engagement (a new approach was adopted in October 2023).
5. Recommendations about managing disruptive tenants could also come from the Kāinga Ora Review.

Your options to strengthen management of disruptive tenants and community engagement

6. You have the options of:
 - waiting to see how the Board's recent moves might improve outcomes in the areas of managing disruptive tenants and community engagement, before directing any changes; and/or
 - issuing expectations or directions to them now.
7. Expectations or directions issued now could include a deadline for implementation (e.g. following the Review recommendations and no later than a specified date).
8. You can issue these in a number of ways, including:
 - discussions with the Chair and Board, and/or

- specifying expectations in a Letter of Expectations (LOE), and/or
- requiring that performance measures are included in the next Statement of Performance Expectations (SPE), and/or
- issuing a formal direction to Kāinga Ora under section 103 of the Crown Entities Act 2004 (CEA).

9. We recommend using the LOE process in the first instance to convey your expectations in these areas to Kāinga Ora rather than a section 103 CEA direction. Generally discussions with the Chair form part of the process of developing an LOE. You can issue an interim LOE and update it later following the Review.

2017/18 Letter of Expectations – contract to incentivise performance levels

10. The expectation in the 2017/18 LOE regarding development of a contract between Housing New Zealand and MSD to incentivise performance levels was not implemented due to structural changes in the housing agencies. HUD considers the four-year Statement of Intent (SOI) and annual SPE processes are the appropriate vehicles for imposing performance levels, rather than using a contract. The current SOI is due to be replaced in 2025 but Ministers can ask for a new SOI at any time.

RECOMMENDED ACTIONS	
11. It is recommended that you:	
a. agree to use the letter of expectations process to convey responsible Ministers' expectations to Kāinga Ora [HUD preferred option]	<i>Agree/disagree</i>
AND/OR	
b. direct HUD to provide further advice to responsible Ministers about issuing a direction under section 103 of the Crown Entities Act 2004.	<i>Agree/disagree</i>



Carla Wellington
**Manager, Crown Entity
 Monitoring**

Hon Chris Bishop
Minister of Housing
 / /

Purpose

12. You have asked for advice and information about:
 - a) what Kāinga Ora is doing in terms of strengthening its approach to managing disruptive tenants
 - b) how Kāinga Ora's Sustaining Tenancies Framework could be removed, and whether doing that would require change to the Kāinga Ora – Homes and Communities Act 2019 (KO Act)
 - c) how requirements for Kāinga Ora's community engagement can be strengthened through the letter of expectations (LOE), statement of performance expectations (SPE), or other mechanisms
 - d) what happened as a result of the Government's 2017/18 expectation for Housing New Zealand and the Ministry of Social Development to develop a contract that specified and incentivised performance levels.
13. This paper sets out some recent background on these issues and canvasses options for addressing them, including through the upcoming LOE and SPE processes.

Strengthening management of disruptive tenants

14. Managing disruptive tenants is undertaken by Kāinga Ora using the Residential Tenancies Act 1986 (RTA) and via an internal Kāinga Ora policy, the Sustaining Tenancies Framework.
15. While the legislative tools can be enhanced via the Government's proposed changes to the RTA, which are understood to include no cause termination notices that would allow Kāinga Ora to terminate tenancies without applying to the Tenancy Tribunal, Kāinga Ora has options to strengthen its management of disruptive tenants under current legislative settings.
16. The Kāinga Ora Board considered options for strengthening its management of disruptive tenants at its December 2023 meeting. The final form of that approach will depend on the tools available following the Government's proposed changes to the RTA. In the interim, Kāinga Ora has advised HUD that the Board is pursuing two approaches under the current legislation:
 - a) continuing to drive timely usage of existing RTA tools that prompt behaviour change, including formal warning notices under section 55A and relocations under section 53B. These tools will be used for moderate or one-off situations of disruptive behaviour; and
 - b) accelerating the process of tenancy termination for severe and persistent cases. The Board has asked for operational policy advice to support this and will reconsider the thresholds at which this intervention will apply. This advice is expected to be provided to the Board by 31 March 2024.
17. It appears that the second of these approaches signals a step change in approach, with a defined time period for implementation. We will monitor progress on that.
18. It isn't clear whether there has been any change in the first of these approaches ("continuing to drive timely usage of existing RTA tools").

19. We note that while affected neighbours may want immediate action that addresses the behaviours, immediate action is **only** enabled by tenant agreement to relocate (if Kāinga Ora has a suitable vacant property to move them into), or if neighbours or staff are placed at significant risk, justifying tenancy termination under section 55. Otherwise the RTA has 90 day periods for actions about required relocation (section 53B notices) and providing three notices (section 55A – three such notices must be issued to a tenant within a 90 day period before the Tenancy Tribunal will issue an order terminating the tenancy on the ground of anti-social behaviour).
20. Kāinga Ora data to December 2023 shows that in the past two years it had relocated 321 households for disruptive behaviour by agreement, had required six households to relocate under section 53B of the RTA and had issued 123 formal warnings (section 55A notices).

Your levers with Kāinga Ora

21. While Kāinga Ora is working to improve its approaches to managing disruptive tenants, you can consider using the following methods to strengthen that work in line with your expectations:
 - a) discussions with the Chair and the Board; and /or
 - b) specifying expectations in an LOE; and/or
 - c) requiring that performance measures are included in the next SPE; and/or
 - d) issuing a formal direction to Kāinga Ora to give effect to a government policy related to managing disruptive tenants, under section 103 of the Crown Entities Act 2004 (CEA). You would need to consult Kāinga Ora before giving the direction. Directions must be Gazetted and tabled in the House of Representatives.
22. Formal powers of direction have been used infrequently. This is because previous Ministers have tended to prefer voluntary compliance with expectations and because other tools (including annual engagement with the Board on an entity's strategic direction) generally work well in conveying Ministers' expectations.
23. Setting performance measures and targets is not always easy, and work would be required to identify and test these, and to confirm the criteria for non-acceptable behaviour that would cause tenancy termination (in line with Tenancy Tribunal standards). Potential measures discussed last year by HUD and Kāinga Ora, and the reasons they have not yet been adopted, included:
 - timeliness of resolutions – this raises questions about defining when a complaint/issue is finally resolved;
 - complainant satisfaction – many complaints are anonymous so this data would be incomplete. It could be used where complainants have identified themselves, but we would want to ensure that Kāinga Ora wouldn't prioritise those complaints over anonymous complaints to get better performance metrics. Kāinga Ora notes that some complaints relate to interpersonal conflict and it may not be clear where the fault lies; and
 - number of successful Tenancy Tribunal applications – adopting this measure could lead to Kāinga Ora avoiding applications where success isn't certain.

Removing or amending the Sustaining Tenancies Framework

24. Kāinga Ora's Sustaining Tenancies Framework represents the Board's response to the operating principle in section 14 of the KO Act (14(1)(b):

“supporting tenants... to sustain tenancies”
25. What would be required to give effect to that operating principle is a matter of interpretation and judgement, and could be fulfilled using other approaches.
26. Accordingly Ministers can require Kāinga Ora to stop applying the current Sustaining Tenancies Framework without changing the KO Act. This can be done through the LOE or by a section 103 CEA direction if needed.
27. We note tenancy management is being considered in the current Review of Kāinga Ora so recommended changes could emerge from that process.
28. In the meantime, HUD has been advised that the Kāinga Ora Board is already considering options to replace the Sustaining Tenancies Framework. If the Framework is removed some guidance for staff will still be needed to help them work in ways that support the section 14(1)(b) operating principle, but this does not need to take the same approach as the current Framework. HUD's view is that Kāinga Ora should be striking a different balance between the benefits to a disruptive tenant of sustaining the tenancy and the impacts of that approach on neighbours.

Strengthening community engagement about development activities

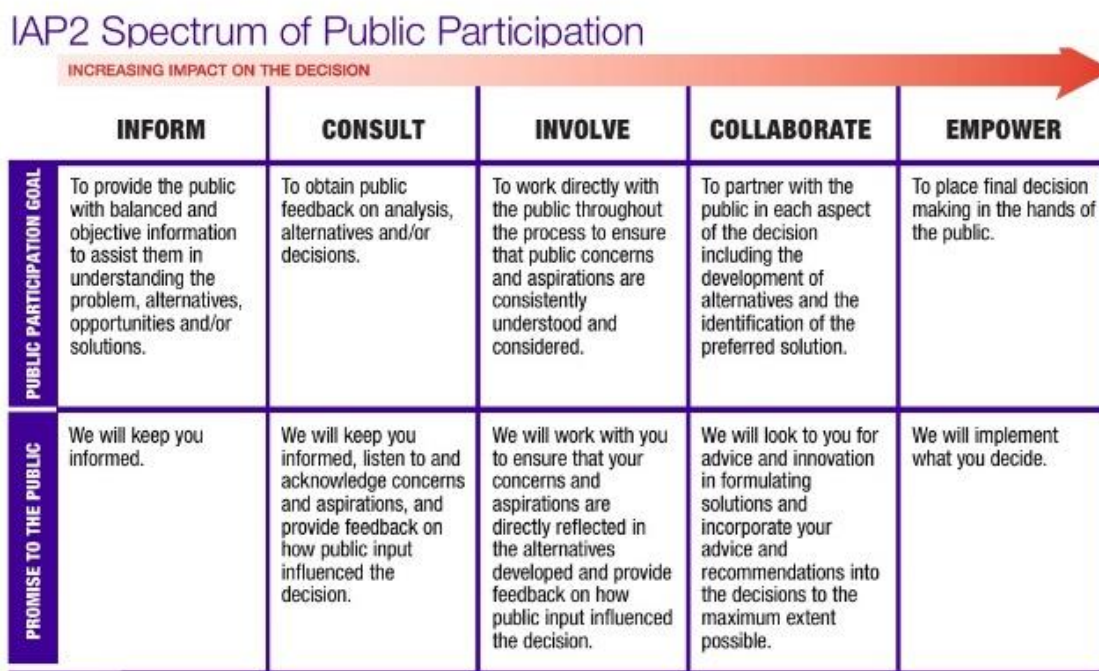
29. Having “early and meaningful engagement with communities affected, or to be affected, by urban development” (which includes housing development under the Public Housing Plan (PHP)) is one of the operating principles that the Board must ensure Kāinga Ora acts consistently with. That is a collective duty owed to the Ministers (section 11(2) of the KO Act), so one option for strengthening community engagement is for Ministers to let Kāinga Ora know what you expect from early and meaningful engagement. This could be done in the LOE and/or via your feedback on the next draft SPE.
30. Kāinga Ora notes that the PHP is not publicly consulted on, but it determines the scale of building work in different regions. Kāinga Ora has suggested that consultation on the PHP could help with engagement about developments as communities would have better information about the Government's expectations of Kāinga Ora.
31. HUD is not persuaded that more awareness of the PHP would make a difference to community responses to local developments. The kinds of concerns that have been raised in media items about community complaints over the last year have included:
 - fears of living next to unruly neighbours; and/or
 - the value of neighbouring properties falling because of nearby public housing developments; and/or
 - higher-density housing affecting the look of a neighbourhood and/or adding pressure on infrastructure, traffic and congestion, and sometimes school resources.

32. These factors are more likely to be affected by Kāinga Ora having a reputation for taking effective action to manage disruptive tenants and working with other planners to reduce impacts on traffic, parking, and schools.
33. That could be further supported by having more community meetings, seeking submissions while projects are in the planning stage, and/or publicly notifying proposed developments even where this is not required under the RMA.
34. There is a risk that increasing consultation at the front end of projects could cause delays and increase costs. However, this may be balanced by the risk that insufficient upfront consultation will create more delays and costs further into the process.

New Kāinga Ora approach to community engagement

35. Kāinga Ora adopted a new approach to community engagement in October 2023 (your office was advised about this in Kāinga Ora briefing AH 23 095 dated 13 December 2023). This approach includes Kāinga Ora engaging with a community earlier and covers the range of development activities occurring in the community. It seeks to build and maintain relationships with key community leaders, and includes a set of principles for engagement, based on the scale of the development being considered.
36. For large-scale, greenfield, and complex projects Kāinga Ora will inform, consult, and involve.
37. For individual site developments, Kāinga Ora will inform communities, with a more intensive inform approach if a significance test is met.
38. These approaches go beyond the existing central and local government legal requirements and are more proactive approaches than private sector developers take. Kāinga Ora has advised it will report to the Board on implementation of the new approach, including when, where, and how often and in what situations the significance test is being applied.
39. If Ministers want to intervene to further strengthen the level of public participation, that would require clarity about whether Ministers want to see that communities:
 - are better informed about developments
 - are consulted with and involved in more individual site developments
 - agree with and support social housing developments.

40. This requires a decision about how far Kāinga Ora should increase public participation. Kainga Ora frames the choices about public participation as existing along a spectrum, as shown below:



41. Kāinga Ora has not proposed to move as far as ‘Collaborate’ or ‘Empower’ because once the Government has set out its build intentions and local council requirements are met Kāinga Ora considers it is not required to seek permission to build or redevelop public housing.
42. Kāinga Ora notes that some community resistance is based on a fundamental opposition to any form of social housing and would not be able to be satisfied by anything less than the cancellation of all proposals to develop social housing in those communities.

Tools to support engagement in line with Ministerial expectations

43. Once decisions are made about the desired approach to community engagement, you can apply one or more of the same processes you can use to change the tenancy management settings i.e. discussions, LOEs, SPEs, and/or a formal direction.
44. Performance measures could relate to:
- a) compliance with the approved engagement policy e.g. all engagement processes have been consistent with the approaches set out in Kāinga Ora’s policy; and/or
 - b) results achieved by the engagement e.g. surveys/feedback show that Kāinga Ora’s engagement work increased community awareness and/or support for proposed projects.

More information is needed to ensure new expectations will have the intended impacts

45. As noted above, Kāinga Ora is increasing its community engagement for larger projects, and also increasing the information it provides about individual site developments. An appropriate amount of time should be allowed for these new approaches to be run to test how they address community awareness concerns.

46. If community endorsement for more projects is being sought, HUD suggests that Ministers set out an expectation that Kāinga Ora will trial one or more different approaches to see if they lead to the desired results.

Government’s 2017/18 expectation about specified and incentivised performance levels

47. The 2017/18 LOE included the expectation that “HNZC and MSD ... develop a contract which specifies and incentivises performance levels around issues such as asset utilisation, better matches between tenants and properties, and property quality.
48. It is not clear that this expectation was ever fully implemented. An Open Term Services Agreement was agreed between HNZ and HUD (after the relevant MSD functions moved to HUD). This is a contract for HUD to pay Income Related Rent Subsidy (IRRS) for eligible tenants for the duration of the tenants’ need. The Agreement did not specify required service levels or incentives.
49. Performance measurement work under that Agreement was superseded by the establishment of Kāinga Ora with measures in an SOI and SPE to drive performance. Relevant performance indicators for the work areas noted in the 2017/18 LOE are provided in the 2023/24 SPE and SOI for 2022-2026 as shown in Table 1:

Table 1: Relevant performance measures

WORK AREA	LOCATION	MEASURE AND TARGET
Asset utilisation	SPE 2.9	Percentage of public homes that are let (occupied days): 96% for 2023/24
	SPE 2.10	Average number of days from a public home becoming vacant to being ready to let: <23 days for 2023/24
Better matches between tenants and properties	SOI 2.2	Percentage of public housing customers who are satisfied with their Kāinga Ora home: 85% by 2025/26 (this was 80% at 2022/23)
Property quality	SPE 2.3	Percentage of new public and supported homes built to the 6 Homestar v 4.1 standard and the Kāinga Ora 6 Homestar v5 Transition standard or higher: >90% for 2023/24
	SOI 2.3	Percentage of public lettable properties that meet or exceed the asset condition scale baseline quality standard: 95% by 2025/26 (this was 93.9% at 2022/23)
	SOI 3.2	Average proportion of our public housing stock renewed per annum over the four-year period: >2.5% per annum (this was 2.3% at 2022/23)

50. HUD's view is that the SOI and SPE processes are the appropriate vehicles for imposing performance levels, rather than using a contract between Kāinga Ora and the Ministry. The current SOI is due to be replaced in 2025 but Ministers can ask for a new SOI at any time.

Your options

51. You have the options of:
- waiting to see how the Board's recent moves might improve outcomes in the areas of managing disruptive tenants and community engagement, before directing any changes; and/or
 - issuing expectations or directions to them now.
52. Expectations or directions issued now could include a deadline for implementation (e.g. following the Review recommendations and no later than a specified date).
53. We recommend using the LOE process in the first instance to convey your expectations in these areas to Kāinga Ora rather than a section 103 CEA direction. Generally discussions with the Chair form part of the process of developing an LOE. You can issue an interim LOE and update it later following the Review.

Consultation

54. The Treasury and Kāinga Ora were consulted about the contents of this briefing.

Next steps

55. If Responsible Ministers wish to use upcoming LOE or SPE processes to set expectations for Kāinga Ora regarding disruptive tenants and community engagement it would be prudent to start this work as soon as practicable.
56. While LOEs are a convention rather than a legislative requirement and therefore have no prescribed timing, they are used by Crown entities to inform SPE development, which is subject to a prescribed legislative timetable where the draft SPE must be provided to Ministers by 1 May each year (see indicative timetable at Table 2 below).
57. If Ministers wish to issue a formal section 103 direction under the CEA, you are asked to direct HUD to provide further advice to responsible Ministers.

58. A typical timetable for Crown entity planning processes is:

Table 2: Crown entity accountability timetable

TIMING	ACTIVITY
December-February	LOE issued
March-April	Entity provides draft SPE (and SOI if required) to Ministry
By 1 May	Board submits the draft SPE and draft SOI (if applicable) to responsible Ministers and Ministry
Not later than 15 working days after receiving the draft SPE or SOI (if applicable), usually around 20 May	Responsible Ministers provide their comments on the draft SPE and draft SOI (if applicable)
On or before 1 July	Boards delivers the final SPE and SOI (if applicable) to responsible Ministers