

In Confidence

Office of the Minister of Housing and Urban Development

Chair, Cabinet Legislation Committee

Homes and Communities Bill: Approval for Introduction

Proposal

1. This paper seeks approval to introduce the Homes and Communities Bill (the Bill) that will set up Homes and Communities¹ as an entity.

Policy

We need a new approach to housing and urban development in New Zealand

2. The Government is taking a hands-on approach to tackling homelessness and unaffordable housing. We want to ensure much-needed urban development, housing and infrastructure are delivered at scale and pace, especially in areas most experiencing challenges.
3. However, we need a new approach to deliver the broad range of housing and urban development outcomes we are seeking. Critical roles and functions are currently split or duplicated across multiple entities, resulting in limited coordination and fragmented decision-making. New Zealand is a small country with a limited pool of expertise. It is inefficient and ineffective for this expertise to be spread across too many entities.

Homes and Communities will be an integrated delivery entity

4. In response, in November 2018, Cabinet agreed to establish Homes and Communities as a Crown agent with two core roles – being a public housing landlord, and leading and coordinating urban development projects. It will be a powerful delivery entity capable of integrated urban development that provides a mix of public, affordable and open market housing. [CAB-18-MIN-0562]
5. Homes and Communities will consolidate three essential centres of housing and urban development capability – Housing New Zealand, its subsidiary HLC, and the KiwiBuild Unit – within a single new entity. This will enable it to work across the entire housing spectrum to build complete, diverse communities that enable people from all walks of life to have similar access to opportunity.
6. In April 2019, Cabinet made further decisions on Homes and Communities' operating framework, including its overarching objective, functions and operating principles, and its financial provisions. [CAB-19-MIN-0168.01]

¹ The working title for Homes and Communities was the Housing and Urban Development Authority. A process is underway to determine a meaningful name in te reo Māori. This Bill establishes 'Homes and Communities' as the legal name of the entity. The entity may use a different trading name and sub-brands (e.g. the Housing New Zealand brand may be retained for tenancy management functions).

Homes and Communities will be required to deliver on the Government's priorities through a planned Government Policy Statement on Housing and Urban Development

7. As a Crown agent, Homes and Communities will be subject to the Crown Entities Act 2004 and need to respond to the usual tools of Ministerial direction. However, given Homes and Communities' broad scope and the change needed across the housing and urban development system, these tools will be insufficient to ensure the outcomes that New Zealanders need.
8. As a result, Cabinet agreed to enable the responsible Ministers to issue a Government Policy Statement on Housing and Urban Development (the GPS). [CAB-19-MIN-0168.01] This document will establish the Government's long-term vision for the system and include more targeted direction on actions over the short to medium term. The Government's wider priorities, including climate change and community resilience, will be reflected in it.
9. The GPS will provide direction to Homes and Communities, and Homes and Communities will be required to give effect to it. The GPS will also signal the Government's expectations to the sector.
10. The GPS will be developed through a process that involves people with an interest in housing and urban development in New Zealand. The first one will be published within one year of enacting the Bill and will then be reviewed at least every three years. [CAB-19-MIN-0168.01]

There may be some concerns around the Crown's obligations to Māori

11. The Bill is not likely to be contentious. However, there may be some concerns about the way the Bill articulates the Crown's obligations to Māori. These obligations are important because Māori make up a third of all people in severe housing deprivation. They face more transience and stability pressures than average. There is strong interest from Māori to participate in housing and urban developments that may help address these issues.
12. Homes and Communities will also have a much larger mandate around urban development. This is likely to increase the ways in which it intersects with Māori interests and rights in land and other natural resources.
13. To ensure Māori interests are provided for appropriately, the Bill includes a clause that recognises and respects the Crown's responsibility to consider and provide for Māori interests. [CAB-19-MIN-0168.01] It also reflects Cabinet's agreement that, when undertaking its urban development functions, Homes and Communities must have the capability and capacity to:
 - 13.1. uphold the Treaty of Waitangi and its principles
 - 13.2. understand and apply Te Ture Whenua Māori Act 1993
 - 13.3. be able to engage with Māori and to understand Māori perspectives. [CAB-18-MIN-0563]
14. Other ways the Bill provides for Māori interests include:
 - 14.1. A function of Homes and Communities is to understand, support and enable Māori aspirations relating to urban development.

- 14.2. In performing its functions, Homes and Communities must contribute to the social, economic, environmental, and cultural well-being of current and future generations by, among other things:
- 14.2.1. 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, sites, wāhi tapu, and other taonga
 - 14.2.2. partnering and having early and meaningful engagement with Māori and offering Māori opportunities to participate in urban development.
- 14.3. The GPS must include the Government's expectations relating to Māori interests, partnering with Māori, and protections for Māori interests. [CAB18-MIN-0563]
15. Some Treaty of Waitangi settlements have Rights of First Refusal (RFR) exemptions for Housing New Zealand. Under our delegated authority, the Ministers for Māori Crown Relations: Te Arawhiti and Treaty of Waitangi Negotiations and I have decided that Homes and Communities will not be able to use these exemptions once it is established. [CAB-19-MIN-0186.01] This is because transferring these exemptions would represent an expansion beyond what was agreed in these settlements.
16. Officials from the Ministry of Housing and Urban Development and Māori Crown Relations – Te Arawhiti are working together to inform affected Post Settlement Governance Entities (PSGEs) whose RFR exemption is mentioned prior to the introduction of the Bill.
17. Cabinet has also agreed that the Minister for Māori Crown Relations – Te Arawhiti and I will report back to Cabinet in June 2019 on the protection of Māori interests through the establishment of Homes and Communities. [CAB-19-MIN-0168.01] This will be an opportunity to provide more detail around transitional arrangements and resolve any outstanding issues.

Legislative action is needed

18. Legislative action is required to give effect to these policy decisions. This is because legislation is needed to establish a new Crown entity.

Outstanding policy matters

s 9(2)(f)(iv)



Impact analysis

22. A Regulatory Impact Assessment was prepared in accordance with Cabinet requirements and was submitted to Cabinet in November 2018. [CAB-18-MIN-0562].

Compliance

23. The Bill complies with:
 - 23.1. the principles of the Treaty of Waitangi;
 - 23.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 23.3. the disclosure statement requirements;
 - 23.4. the principles and guidelines set out in the Privacy Act 1993;
 - 23.5. relevant international standards and obligations;
 - 23.6. the Legislation Guidelines (2018 edition).

Consultation

24. Treasury, State Services Commission, Housing New Zealand and its subsidiary HLC, Māori Crown Relations: Te Arawhiti, Te Puni Kōkiri, Ministry for the Environment, Ministry of Transport, New Zealand Transport Agency, Ministry of Social Development, Department of Internal Affairs, Land Information New Zealand were consulted on the policy proposals relating to establishing Homes and Communities. The Department of Prime Minister and Cabinet was informed.
25. Treasury, State Services Commission, Housing New Zealand and its subsidiary HLC, Māori Crown Relations: Te Arawhiti, Te Puni Kōkiri, Inland Revenue, Ministry for the Environment, Department of Internal Affairs, Ministry of Transport, New Zealand Transport Agency, Land Information New Zealand, Department of Conservation, New Zealand Defence Force, Heritage New Zealand Pouhere Taonga, and Ministry of Culture and Heritage were consulted on the policy proposals relating to Homes and Communities' operating framework and financial provisions. The Department of Prime Minister and Cabinet was informed.
26. The proposal to establish a new entity to drive transformational urban development is based on the Productivity Commission's recommendations in both their 2017 report, *Better Urban Planning*, and their 2015 report, *Using Land for Housing*. These were both informed by a process of open public consultation. The proposal was also informed by two government discussion documents – the 2008 discussion document, *Building Sustainable Urban Communities*, and the 2017 discussion document, *Urban Development Authorities*.
27. Consultation has been undertaken with government caucuses.

Binding on the Crown

28. The Bill will be binding on the Crown. [CAB-18-MIN-0243]

Creating new agencies or amending law relating to existing agencies

29. The Bill will establish Homes and Communities as a new Crown Agent. This will enable more responsive, commercially-focused decision-making, while maintaining suitable Ministerial accountability. As my priority is for integrating capability and operating at scale and pace nationwide, it is appropriate for Homes and Communities to be solely accountable to the Crown. [CAB-18-MIN-0265]
30. Homes and Communities will draw on existing capability from Housing New Zealand and its subsidiary HLC and the KiwiBuild Unit. [CAB-18-MIN-0562] This will involve:
 - 30.1. disestablishing Housing New Zealand Corporation and putting its functions, assets and liabilities into the new entity
 - 30.2. repealing the Housing Corporation Act 1974
 - 30.3. making changes to the Housing Restructuring and Tenancy Matters Act 1992
 - 30.4. transferring some KiwiBuild functions² and assets from the Ministry of Housing and Urban Development to Homes and Communities.
31. As well as the usual tools of Ministerial direction, Homes and Communities will have to give effect to the GPS. This includes the Government's expectations for how Homes and Communities will manage and deliver its overarching objective and functions. [CAB-19-MIN-0168.01] Homes and Communities will also need to act in accordance with the Crown Entities Act 2004.
32. Cabinet delegated authority to me and the Minister of Finance to make decisions on the detail of the governance and accountability arrangements for Homes and Communities. [CAB-18-MIN-0562]
33. We have agreed that the responsible Ministers for Homes and Communities will be the Ministers of Finance and Housing and Urban Development. This best reflects the current arrangements for Housing New Zealand and the significant size of Homes and Communities' asset base and cash flows. It also ensures the Minister of Finance has appropriate oversight of Homes and Communities' financial performance.
34. We have also agreed that Homes and Communities will have a board with between six and eight members. The Bill will have a list of special characteristics that the responsible Ministers must have regard to when making board appointments. These include:
 - 34.1. New Zealand's housing and urban development system, including public housing, urban planning and design, infrastructure, construction and regeneration
 - 34.2. perspectives of Māori
 - 34.3. the Treaty of Waitangi and its principles and Te Ture Whenua Māori Act 1993
 - 34.4. perspectives of public housing tenants
 - 34.5. perspectives of developers
 - 34.6. perspectives of local government
 - 34.7. business generally

² The Bill will not transfer the Land for Housing Programme to Homes and Communities for the time being. This is because further engagement needs to be undertaken with iwi to ensure the Crown's Treaty settlement obligations are being met both now and in the future.

- 34.8. public sector governance
- 34.9. central government processes.
- 35. As well as the usual collective duties under the Crown Entities Act 2004, the board will also have two additional collective duties to the responsible Ministers. One is to ensure Homes and Communities acts in a manner consistent with its operating principles. The other is to ensure Homes and Communities, when undertaking its urban development functions, has the capability and capacity to uphold the Treaty of Waitangi and its principles, understand and apply Te Ture Whenua Māori Act 1993, and engage with Māori and understand Māori perspectives.
- 36. The Ombudsmen Act 1975 and the Official Information Act 1982 will apply to Homes and Communities.

Allocation of decision-making powers

- 37. The Bill does not allocate decision-making powers.

Associated regulations

- 38. The Bill does not contain regulation-making powers.

Other instruments

- 39. The Bill does not include any other instruments.

Definition of Minister/department

- 40. The Bill defines the Minister of the Finance and the Minister of Housing and Urban Development as the Ministers responsible for the administration of the Act. The Bill refers to the Ministry of Housing and Urban Development as the department responsible for the administration of the Act.

Commencement of legislation

- 41. The Bill will come into force on 1 October 2019.

Parliamentary stages

- 42. The Bill should be introduced into Parliament on 27 May 2019. It is my intention to have the first reading of the Bill under urgency to enable a quick referral to Select Committee.
- 43. The Bill should be referred to the Environment Committee for consideration. To support Homes and Communities becoming operational by 1 October 2019, I propose that the Select Committee be required to report back to the House of Representatives after three months.

Proactive Release

- 44. I propose releasing this Cabinet paper proactively in whole.

Recommendations

The Minister of Housing and Urban Development recommends that the Committee:

1. **note** that the Homes and Communities Bill holds a category 2 priority on the 2019 Legislation Programme (must be passed in the year);
2. **note** that the purpose of the Bill is to establish Homes and Communities and provide for a Government Policy Statement for Housing and Urban Development (the GPS);
3. **approve** the Homes and Communities Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
4. **agree** that the Bill be introduced on 27 May 2019;
5. **agree** that the Bill has its first reading under urgency;
6. **agree** that the Government propose that the Bill be:
 - 6.1. referred to the Environment Committee for consideration;
 - 6.2. enacted by 1 October 2019.

Authorised for lodgement

Hon Phil Twyford
Minister of Housing and Urban Development