

Departmental Disclosure Statement

Kāinga Ora – Homes and Communities Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Housing and Urban Development.

The Ministry of Housing and Urban Development certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

28 May 2019

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Part One: General Policy Statement

New Zealand's urban areas are facing unprecedented pressure from strong population growth, changing preferences, and an aging population. There is a shortage in the kinds of homes people need and can afford. The traditional model of turning rural land into suburban homes is insufficient. It is not generally delivering diverse, thriving communities that provide choices about dwelling size, tenure and typology, and allow people in all life situations to co-exist and interact.

This Bill establishes Kāinga Ora - Homes and Communities as a Crown entity to address these challenges. Kāinga Ora - Homes and Communities will focus on contributing to sustainable, inclusive and thriving communities that:

- provide people with good quality, affordable housing choices that meet diverse needs
- support good access to jobs, amenities and services
- sustain or enhance the overall economic, social, environmental and cultural wellbeing of current and future generations.

Kāinga Ora - Homes and Communities will have two key roles – being a public housing landlord, and leading and coordinating urban development projects. To enable Kāinga Ora - Homes and Communities to do this effectively, the Bill consolidates central government housing and urban development delivery capability by:

- disestablishing Housing New Zealand Corporation (Housing New Zealand) and its development subsidiary HLC (2017) Ltd (HLC)
- putting Housing New Zealand and HLC's functions and assets into Kāinga Ora - Homes and Communities, including Housing New Zealand's shares in the subsidiaries Housing New Zealand Ltd and Housing New Zealand Build Ltd
- repealing the Housing Corporation Act 1974
- putting some of the functions and assets related to KiwiBuild that currently sit in the Ministry of Housing and Urban Development into Kāinga Ora - Homes and Communities.

The Bill will not transfer the Land for Housing Programme to Kāinga Ora - 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.

Recognising Māori interests

The Bill respects the Crown's responsibility to consider and provide for Māori interests by:

- giving the board a collective duty to ensure Kāinga Ora - 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 be able to engage with Māori and understand Māori perspectives
- giving Kāinga Ora - Homes and Communities a function to understand, support and enable, the aspirations of Māori relating to urban development
- requiring Kāinga Ora - Homes and Communities to identify and protect Māori interests, partner and have early and meaningful engagement with Māori, and offer Māori opportunities to participate in urban development
- preventing Kāinga Ora - Homes and Communities from using Housing New Zealand's exemptions in Treaty settlement legislation to override Rights of First Refusal (RFR).

Changes to the Housing Restructuring and Tenancy Matters Act 1992

The Bill makes several changes to the Housing Restructuring and Tenancy Matters Act 1992, which is the principal legislation under which Housing New Zealand delivers public housing assistance. This includes repealing restructuring provisions and transferring provisions relating to financial assistance for home ownership to the Bill.

These changes will result in the Housing Restructuring and Tenancy Matters Act 1992 only dealing with matters relating to Kāinga Ora - Homes and Communities' public housing functions and community housing providers. Therefore, the Bill also changes the name of this Act to the Public Housing Management Act 1992.

Government Policy Statement on Housing and Urban Development

The Bill also introduces a Government Policy Statement on Housing and Urban Development (the GPS) to promote a housing and urban development system that contributes to the current or future wellbeing of New Zealanders.

The GPS will set out:

- the Government's overall direction and priorities for housing and urban development
- how the Government expects Kāinga Ora - Homes and Communities to manage its functions and operations to meet the Government's direction and priorities
- how the Government expects other agencies to support that direction and priorities
- the Government's expectations relating to Māori interests, partnering with Māori, and protections for Māori interests.

The Bill requires Kāinga Ora - Homes and Communities to give effect to the GPS when performing its functions. This will help to clarify the Government's expectations for Kāinga Ora - Homes and Communities. It will enable Kāinga Ora - Homes and Communities to plan its future activities in the context of the broader housing and urban development system.

The GPS will have a long-term outlook and must be reviewed at least every three years. It will be developed through a process that involves consultation with people with an interest in housing and urban development in New Zealand. The responsible Ministers are required to issue a GPS within one year of the Bill's commencement date.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>The proposal to establish a new entity to drive transformational urban development is informed by a series of Productivity Commission reports, beginning with the <i>Housing Affordability Inquiry</i> (2012), <i>Using Land for Housing</i> (2015), and <i>Better Urban Planning</i> (2017). The <i>Housing Affordability Inquiry</i> focused on New Zealand’s experience with collaboration and the experiences of urban development authorities in Melbourne and Queenstown.¹ The <i>Using Land for Housing</i> concluded that urban development authorities can play an important role in de-risking development and bringing land to market.² This advice was carried through to the <i>Better Urban Planning</i> report.³</p> <p>The proposal was also informed by a 2017 discussion document, the <i>Urban Development Authorities discussion document</i>.⁴</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>“Supporting Complex Urban Development Projects with Dedicated Legislation”, Ministry of Housing and Urban Development, 30 November 2018. This is accessible at https://treasury.govt.nz/publications/risa/regulatory-impact-assessment-supporting-complex-urban-development-projects-dedicated-legislation</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>The RIA was provided alongside the 2018 November Cabinet paper <i>Establishing the national urban development authority</i> [CAB-18-SUB-0265] and Treasury Regulatory Quality Team (RQT) advised that:</p>	

¹ New Zealand Productivity Commission (2012). *Affordable Housing Inquiry*. Available from <http://www.productivity.govt.nz/inquiry-content/1509?stage=4>

² New Zealand Productivity Commission (2015). *Using land for housing*. Available from <http://www.productivity.govt.nz/inquiry-content/2060?stage=4>, R12.1

³ New Zealand Productivity Commission (2017). *Better Urban Planning*. Available from <http://www.productivity.govt.nz/inquiry-content/2682?stage=4>, R12.2.

⁴ Ministry of Business, Innovation and Employment (2017). *Urban Development Authorities discussion document*. Available from <https://www.mbie.govt.nz/dmsdocument/4598-urban-development-authorities-discussion-document>

The RIA is largely the same as the one considered by Cabinet in May 2018 [CAB-18-SUB-0243]. The main areas of change concern:

- inclusion of options for the legal form of the Urban Development Authority (UDA);
- clarification on the development plan process and disputes resolution;
- clarification on the Treaty of Waitangi and implementation, including the exemption of sensitive Maori land for compulsory acquisition;
- clarification of offer back obligations.

RQT re-confirms its earlier assessment that the information and analysis summarised in the Regulatory Impact Assessment meets the Quality Assurance criteria.

The RIA has a clear structure, and exhibits clear thinking on the nature of the problem and the available options for each issue. The analysis also identifies that there are adverse potential impacts for current residents and property owners.

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?

NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

No relevant international obligations were identified.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Te Arawhiti and Te Puni Kōkiri were consulted throughout the process of developing the policy proposals and the Bill. The Bill includes provisions to give effect to the Crown's responsibility to consider and provide for Māori interests:

- The board will be required to ensure that Kāinga Ora - Homes and Communities maintains systems and processes that ensure Kāinga Ora - Homes and Communities has capability and capacity to uphold the Treaty of Waitangi and its principles when carrying out its urban development functions.
- It is a function of Kāinga Ora - Homes and Communities to support the aspirations of Māori in relation to urban development.
- Kāinga Ora - Homes and Communities' operating principles include identifying and protecting Māori interests in land, recognising and providing for the relationships of Māori with their ancestral taonga, and partnership and early engagement with Māori.
- The Government Policy Statement on Housing and Urban Development must include the Government's expectations in relation to Māori interests, partnering with Māori, and protections for Māori interests.

Housing New Zealand has an exemption to the Rights of First Refusal (RFR) over land in some Treaty settlements. This exemption is inconsistent with Kāinga Ora - Homes and Communities' approach to RFRs agreed to by Cabinet, and the Bill provides that Kāinga Ora - Homes and Communities will not be able to use it. The Ministry of Housing and Urban Development is working with Te Arawhiti to engage with affected iwi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by the Ministry of Justice is generally expected to be available on the Ministry of Justice's website at introduction of a bill, and can be accessed at <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The establishment of an urban development authority was consulted on as part of the Productivity Commission reports in <i>Housing Affordability Inquiry</i> (2012)⁵, <i>Using Land for Housing</i> (2015)⁶, and <i>Better Urban Planning</i> (2017)⁷. This consultation was incorporated into the final reports.</p> <p>The 2017 <i>Urban Development Authority discussion document</i> issued by the then Government sought feedback on the specifics of establishing an urban development authority. A full summary of submissions can be found here: https://www.hud.govt.nz/assets/Urban-Development/Urban-Development-Authority-Legislation/Summary-of-submissions-UDA.pdf</p> <p>In early 2018, additional consultation on the likely form of an urban development authority was undertaken with a select group of high-growth territorial authorities and private network utility providers. A summary of this consultation can be found here: https://www.hud.govt.nz/urban-development/housing-and-urban-development-authority/huda-related-documents/</p> <p>Housing New Zealand and the New Zealand Transport Agency were part of an interagency officials' group that looked at options for entity form. Following Cabinet's decision to disestablish Housing New Zealand and put its functions into Kāinga Ora - Homes and Communities, officials from the Ministry of Housing and Urban Development have been working closely with Housing New Zealand on entity and legislation design.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>We have tested the workability of the policy details to be given effect by this Bill with Housing New Zealand and its development subsidiary HLC.</p>	

⁵ New Zealand Productivity Commission (2012). *Affordable Housing Inquiry*. Available from <http://www.productivity.govt.nz/inquiry-content/1509?stage=4>

⁶ New Zealand Productivity Commission (2015). *Using land for housing*. Available from <http://www.productivity.govt.nz/inquiry-content/2060?stage=4>, R12.1.

⁷ New Zealand Productivity Commission (2017). *Better Urban Planning*. Available from <http://www.productivity.govt.nz/inquiry-content/2682?stage=4>, R12.2.

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
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This Bill makes changes to the Housing Restructuring and Tenancy Matters Act 1992, including repealing restructuring provisions and transferring provisions relating to investigations of applications for financial assistance for home ownerships to the Bill. It changes the name of this Act to the Public Housing Management Act 1992. The Bill also repeals the Home Ownership Savings Act 1974.

