

Kāinga Ora-Homes and Communities – Draft Auckland Council Submission

Introduction

Auckland Council has previously submitted that it supports, in principle, the establishment of urban development authorities. We have further submitted that we support urban development that provides for local aspirations and aligns with current and future, plans and takes a collaborative approach to urban regeneration (17 May 2017 Auckland Council response to MBIE “Urban Development Authorities: Discussion Document”, February 2017).

We recognise that the Kāinga Ora-Homes and Communities Bill establishes a new entity and prescribes its objectives, functions and operating principles, but does not address its powers. While our previous submission raised some concerns about the potential powers of the new entity, we understand that these will be the subject of a second Bill. We would be very happy to assist with the preparation of that Bill including the provisions relating to Māori interests if that would be useful. We note the specialised nature of Māori land interests and activities and the need for a deep understanding of these matters in order to ensure that the protection the Bill seeks is achieved.

We agree with the intent of this Bill to consolidate the government’s housing and urban development initiatives, currently spread across multiple agencies, into a ‘one-stop-shop’. This will avoid duplication and create efficiencies in collaboration, coordination and expertise.

While we support many aspects of the Bill, our primary concern is to ensure that the establishment legislation recognises the significant overlap in functions between local government and the functions of the new entity as specified in clause 13. This means that the decisions of Kāinga Ora-Homes and Communities, have significant implications for Auckland Council and other local authorities. For example:

- Auckland Council’s urban development agency, Panuku, has an advanced delivery programme for urban regeneration across agreed and prioritised locations in Auckland. We would like to ensure that Panuku can continue to deliver Auckland’s regeneration programme at scale and pace without unnecessary relitigation, duplication of effort and delay.
- Provision or enabling of infrastructure and amenities by the new entity will have implications for wider infrastructure networks outside the development project area - for example water treatment plants and public transport services. This could have significant operational and financial implications for local authorities and their CCOs.
- Councils and their CCOs will be responsible for managing and maintaining much of the infrastructure and amenities enabled by the new entity, after it exits a development project
- Local authorities undertake strategic planning through tools such as spatial plans, development strategies and infrastructure strategies adopted after consultation with local communities. For example, Auckland Council has the Auckland Plan 2050 which includes the Auckland Development Strategy. These plans provide certainty to developers and communities about the location and sequencing of urban development.

Our view is that these significant overlaps need to be recognised and better provided for in the establishment legislation by:

- including operating principles that recognise the overlapping functions
- including explicit requirements for Kāinga Ora-Homes and Communities to engage with local government

- clarifying how the GPS on housing and urban development will apply to local government
- including explicit requirements for Ministers to engage with local government in the preparation of the GPS on housing and urban development.

Māori interests (clause 4)

As summarised in clause 4 of the Bill, there are a number of provisions in the Act that seek to recognise and respect the Crown's responsibility to consider and provide for Māori interests. Our view is that this clause 4 should explicitly reference the Crown's obligations with respect to the Treaty of Waitangi in addition to Māori interests. As currently drafted the Bill requires the board to have systems and processes and the capability and capacity to uphold the Treaty of Waitangi and its principles but does not explicitly require it to do so. Our strong preference would be for the legislation to include a provision similar to that of section 4 of Conservation Act 1987, "This Act shall so be administered and interpreted to give effect to the principles of the Treaty of Waitangi."

We make further comments on the provisions summarised in clause 4 under the relevant clause below.

Interpretation (clause 5)

Auckland council requests that "agencies" referred to in clause 24(1)(d) are defined as meaning Crown entities and that the definition clarifies that it does not include local government or other third parties, such as developers, with an interest in urban development.

Membership of Board of Kāinga Ora – Homes and Communities (clause 10)

It is important to ensure that the board reflects a wide variety of perspectives including those of Māori, local government, and developers/industry, and has experience of New Zealand's housing and urban development systems. Auckland Council supports the skills that will be sought in appointing board members and agrees that they broadly reflect the experience and capabilities required for an effective board.

We acknowledge the recognition of the need for expertise in Māori perspectives, Te Tiriti o Waitangi and its principles and Te Ture Whenua Māori Act, however, we request the addition of expertise in Treaty settlements. We note that Māori capability will need to be well represented at the Board level to satisfy these requirements.

Objective of Kāinga Ora – Homes and Communities (clause 12)

Auckland Council supports the purpose of the legislation and the overarching objective of Kāinga Ora – Homes and Communities "to contribute to sustainable, inclusive and thriving communities" as set out in section 12(1) and the subpoints (a) through (c).

This objective aligns well with the purpose of local government under section 10(1)(b) of the Local Government Act 2002 "to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future" It also aligns with the council's strategic outcomes and objectives for Auckland as set out in the Auckland Plan and other core council strategies and plans. Council particularly supports the broad focus of this objective on the factors that contribute to well-functioning communities. We would be concerned about targets to deliver specific numbers of houses without this wider focus.

We note that the Bill does not include a purpose and suggest that the addition of a purpose for the Act could assist with interpretation.

Functions of Kāinga Ora – Homes and Communities (clause 13)

Urban development function

As noted in the introduction, the council is concerned that there is no specific mention or consideration in the Bill of local government and how the new entity will work with them in achieving its objectives and functions, given that many of the proposed functions of Kāinga Ora – Homes and Communities are similar to the role and function of local government, e.g. (f),(i), (ii) and (iii) and (g).

We are also concerned that 13(1)(f) provides a broad mandate for the entity to initiate or undertake any type of urban development in any location. In our view 13(1)(f) should be limited to situations where the market and current players cannot deliver and where Kāinga Ora – Homes and Communities can add value. International experience indicates this will create a focus on complex urban development projects such as contaminated brownfields or where there is a recognised market failure, a desire to trial new methods/innovations; or a lack of commercial feasibility for regeneration, despite clear public/strategic benefit.

The council supports 13(1)(g) to provide a leadership or co-ordination role in relation supporting innovation within the sector and leading and promoting good urban design. We consider that 13(g)(i) should include “capacity” as well as “capability” as this would provide the entity with a clear mandate to invest in training and development to ensure that the sector has sufficient numbers of workers with the required skills.

The council suggests that 13(1)(g)(ii) could be strengthened by making a specific reference to ‘*universal design*’ – which will be essential to delivering a quality urban environment and inclusive communities.

We support operating principle 13(1)(h) and suggest the addition of “including the aspirations reflected in any adopted spatial plan or development strategy that the community has been consulted on” after the words “urban development.”

We support operating principle 13(1)(i) and highlight the importance of ensuring that there is sufficient capacity at the board and operational level to give meaningful effect to this clause.

Operating Principles (clause 14)

‘Public housing solutions that contribute positively to well-being’ and ‘Housing supply meets needs’

The council supports 14(1)(a)-(f) and the broad focus on quality housing, tenant wellbeing, and community connections. We believe this provides stronger direction than provisions of the Housing Corporation Act which requires HNZA to exhibit a sense of social responsibility by having to regard to the interests of the community (in which it operates) while acting in a business-like manner.

Well-functioning urban environments (14(1)(g) and (h))

The council suggests that (g) should include reference to ‘value for money’. While it is important to deliver quality infrastructure that meets community needs this should be balanced with making prudent investment decisions for current and future infrastructure needs.

We consider employment opportunities to be critical to well-functioning urban environments and suggest a new operating principle “ensuring that communities have access to employment opportunities.”

Consistent with our previous comments, we would support the inclusion of an additional operating principle in this section about universal design.

Stewardship and sustainability (14(1)(i) and (j))

We strongly support principle (i). We also support (j) however, we recommend that sustainability should include reference to financial and economic sustainability. It is essential that investment by the new entity in housing, community amenities and infrastructure (e.g. parks and open space and community facilities) factors in the “whole of life cost” of any new assets. These include the ongoing capital and operational costs to operate, programme and maintain the assets. This will be particularly important if there is any intention to hand these assets to local government to manage in the future.

Collaborative and effective partnerships (14(1)(k)-(m))

Clause (14)(1)(k) requires the entity to partner and have early and meaningful engagement with Māori and offering Māori opportunities to participate in urban development. While we support the intent, we note that in urban environments this needs to acknowledge both maatawaka and mana whenua, while recognising the significance of ancestral areas/rohe to mana whenua. We note that Auckland Council has 19 mana whenua groups.

We would also like similar operating principle in relation to local government and suggest a new principle, “partnering and having early and meaningful engagement with local authorities within the areas in which Kāinga Ora – Homes and Community is operating.”

We note that the Housing Corporation currently has a function under Section 19(1A) of the Housing Corporation Act 1974 to “take any action in the performance of its functions or achievement of its objectives jointly, or in conjunction, with – (a) a local authority.” Whilst we appreciate that the second Bill will contain more detail on the powers of the new entity we note that the entity will come into being well before that Bill is enacted. Auckland council is currently working with Housing New Zealand and HLC on a number of development projects and we would be concerned if this was interrupted.

Restriction on disposal of RFR land (clause 20)

We support clause 20 “Restriction on disposal of RFR land” which prevents Kāinga Ora – Homes and Communities from using Housing New Zealand’s exemptions in Treaty settlement legislation to override Rights of First Refusal (RFR). However, we note that there are outstanding Treaty claims in Auckland and we await details of the second Bill that should ensure the new entity will not have the ability to assemble land in a manner that could frustrate treaty settlements.

GPS on housing and urban development (clauses 22-29)

We support the requirement for ministers to issue a GPS on housing and urban development to guide the focus of the new entity, however we have some questions about the wider application and purpose of the GPS.

We believe the GPS needs to set out a clear direction for Kāinga Ora – Homes and Communities and help the agency to prioritise and focus its efforts where they will have the most impact. Without this guidance there is a risk that the agency will be spread too thinly across multiple locations which will hamper its ability to implement programmes efficiently and effectively. The GPS therefore has an important role to play in setting clear expectations and priorities for the new entity across the complex urban and housing system. This will also help provide certainty to developers, communities and local government. We suggest that

interim guidance may be required for Kāinga Ora – Homes and Communities as the GPS may not be available for the first year of its operation.

We would like to see some clarity in the legislation on the wider implications of the GPS for local government. For example, we are unsure about the role of the GPS relative to the forthcoming NPS on Urban Development which we understand is likely to replace the NPS on Urban Development Capacity and provide stronger direction to local government on spatial planning.

We are also unclear about how the GPS would align to other planning instruments such as the GPS on Land Transport. It is critical for Auckland Council and Auckland Transport that the GPS on Land Transport and GPS on Housing and Urban Development are fully aligned. The GPS on Land Transport drives funding for Auckland Transport and to achieve our mode shift objectives we need to create urban form that supports this. As noted earlier in our submission in relation to clause 5, we seek clarity that clause 24(1)(d) does not apply to local government. We note that the GPS on housing and urban development is different in nature from the GPS on Land Transport as the latter guides funding decisions for local government. In our view it is not appropriate for the GPS on urban development to override requirements for local government to consult with communities on strategic direction, set urban development and housing policy, and determine funding priorities.

We would also like to see specific reference to a requirement to consult with local government when preparing a GPS in clause 23(b).

With respect to clause 29, while we acknowledge the need for flexibility with respect to providing direction to Kāinga Ora – Homes and Communities, we are concerned about the potential for ad hoc changes in Government's direction and priorities for urban growth and housing and the impact of the lack of certainty this provides. Utility/infrastructure providers, developers, community sector providers and our Treaty Partners require certainty in order to make long-term investments and we are concerned that the ability to amend the GPS at any time removes this. Again, this points to the need for the legislation to provide clarity about the role of the GPS and its wider application beyond providing direction to the new entity.

Other matters – Development Contributions

We request a provision establishing that any development undertaken by, or on behalf of Kāinga Ora – Homes and Communities is liable for development contributions assessed under section 198 of the Local Government Act 2002. We note that Local Government Act 2002 exempts the Crown from paying development contributions but that this privilege does not extend to Housing New Zealand Limited (HNZL). Without an explicit provision we are concerned that there is ambiguity about the status of the new entity with respect to development contributions. Given that the new entity is expected to deliver a large proportion of the total new dwellings in Auckland in the future, this would represent a substantial loss of revenue for the council if the new entity was found to share the Crown's exemption from paying development contributions.