



Independent Māori
Statutory Board

10 July 2019

Hon Phil Twyford

Tēnā koe Minister Twyford

Independent Māori Statutory Board Submission on the **Kāinga Ora-Homes and Communities Bill**

Te Atua tōku piringa ka puta ka ora
Maumaharatanga ki ngā tini aitua o te motu haere koutou
Honohono tātou te hunga ora ki a tātou, pai marire
Panga atu te reo karanga ki ngā whā topito o Tāmaki nui tonu
Karanga atu rā

1. Introduction

1.1. The Independent Māori Statutory Board welcomes the opportunity to submit on the **Kāinga Ora-Homes and Communities Bill** (Kāinga Ora Bill) and would welcome the opportunity to present and discuss this with the Select Committee.

1.2. The purpose of the Independent Māori Statutory Board is to assist Auckland Council to make decisions, perform functions, and exercise powers by promoting cultural, economic, environmental, and social issues of significance for Mana Whenua groups and Mataawaka of Tāmaki Makaurau, and ensuring that the Council acts in accordance with statutory provisions referring to the Treaty of Waitangi.

1.3. Housing is a critical issue for Māori in Tāmaki Makaurau especially in regard to *kāinga* outcomes. The Independent Māori Statutory Board recognises the important role an Urban Development Authority will play in addressing those issues, and therefore the significance of this bill.



1.4. The Urban Development Authority has promise and potential to respond to Māori outcomes in housing highlighted in the 'housing stocktake' report commissioned by the Minister of Housing and Urban Development in 2017¹:

“We must acknowledge the harsh effects the housing crisis has had on Māori. They have borne the brunt of rapidly rising house prices and skyrocketing rents. A crucial part of Government policy must help more Māori into their own homes, and there are great opportunities to partner with Māori organisations to do this”

HON PHIL TWYFORD Minister of Housing and Urban Development February 2018 (p2).

“Recent housing policies have failed to address the housing problems of Māori and Pacific peoples. Rising housing costs have contributed to declining home ownership rates, greater housing instability, and Māori and Pacific peoples living in poor quality housing. By 2013, Māori and Pacific homeownership rates had declined relatively rapidly to 28% for Māori and 19% for Pacific peoples, compared with 57% for Europeans” (p5).

1.5. The Independent Māori Statutory Board has undertaken significant advocacy on *kāinga* and housing over the last two years including convening two Auckland Māori Housing Summits and developing the Kāinga Strategic Action Plan with strong elements of government support and alignment².

1.6. This submission highlights areas where the Kāinga Ora Bill could be strengthened to ensure the ultimate delivery of improved housing outcomes including with and for Māori.

2. The position of the Independent Māori Statutory Board

2.1. The Independent Māori Statutory Board strongly supports the progress toward the establishment of an Urban Development Authority (UDA) represented by the Kāinga Ora Bill. The Board believes the Kāinga Ora UDA is an opportunity to deliver increased and improved housing and urban outcomes, as well as express and embed the Treaty of Waitangi and its principles, and kaupapa Māori and Māori values in approaches to housing.

¹ Refer: A Stocktake of New Zealand's Housing — February 2018. Prepared by Shamubeel Eaqub, Alan Johnson, and Philippa Howden-Chapman.

² Kāinga Strategic Action Plan can be sourced from: <https://www.imsb.maori.nz/publications/kainga-strategic-action-plan/>



2.2. The Independent Māori Statutory Board's aspirations for an Urban Development Authority as discussed with various government agencies are that the UDA and its structure should:

- I. Enable and ensure secure future partnership opportunities for Māori in public sector housing development
- II. Achieve a meaningful aggregation of government housing functions
- III. Demonstrate public sector innovation/leadership on reflecting and implementing the Treaty of Waitangi;
 - a. Implement co-governance to ensure Māori/Crown partnership in decision-making
 - b. Ensure senior leadership have obligations to deliver Māori outcomes
- IV. Drive significantly improved housing outcomes for Māori through:
 - a. A clear and direct statement of the UDA operating as the primary near-future tool for achieving compliance with human rights obligations
 - b. Sector and systemic change
 - c. Enhanced commitment to Māori outcomes including through targeted programmes and through improvements to mainstream programmes
 - d. Recognition of the critical nature of housing as a central element in emotional wellbeing and in cultural experiences of home, *kāinga*, *whānau*, and a window through which the world is experienced.

2.3. The Independent Māori Statutory Board supports the Auckland Council submission on the Kāinga Ora Bill and acknowledges the inclusion of issues relevant to Māori in that submission.

3. Kāinga Ora-Homes and Communities Bill: assessment and analysis

3.1. This section provides commentary on each of the points raised in paragraph 2.2. above comprised of an assessment of the terms of the bill in regard to those aspirations.

3.2. Kāinga Ora-Homes Communities should: *Enable and ensure secure future partnership opportunities for Māori in public sector housing development*

3.2.1. **Clause 13(1)** provides that the functions of Kāinga Ora–Homes and Communities includes the need for Kāinga Ora–Homes and Communities 'to understand, support, and enable the aspirations of Māori in relation to urban development.'

3.2.2. **Clause 14(1)(k)** provides for collaboration and states that the Kāinga Ora entity must contribute to the social, economic, environmental, and cultural well-being of current and future generations by 'partnering ... with Māori and offering Māori opportunities to participate in urban development.'



3.2.3. The Independent Māori Statutory Board acknowledges these provisions among others as setting a strong basis for on-going and increasing development partnership between the Crown and Māori entities in the development of housing and urban space.

3.2.4. However, the Independent Māori Statutory Board also notes that partnership in development is generally a partnership of a commercial nature dominated by financial priorities and the management of development risk, as well as being characterised as operating in a competitive environment.

3.2.5. As such the Board differentiates this class of partnership from partnership in accordance with the Treaty of Waitangi which at times requires of the parties something more than financial investment and carries burdens and opportunities greater than financial risk or windfall.

3.2.6. Partnership under the Treaty of Waitangi remains an under-developed area in housing and urban development from development economics down to design implementation and notions of accessibility and understandings of place.

3.2.7. Co-governance is a means and model of decision-making partnership that will only thrive through legislative direction. The bill falls short of utilising this relatively recent governance innovation which is unique to New Zealand.

3.3. Kāinga Ora-Homes Communities should: *Achieve a meaningful aggregation of government housing functions*

3.3.1. The bill sets out the aggregation of government functions in a way that suggests there will continue to be improvements in coordination and efficiency which have already occurred to varying degrees through the establishment of the Ministry of Housing and Urban Development.

3.3.2. The Independent Māori Statutory Board acknowledges that between June and December 2018 the Board experienced firsthand a positive change in the dynamic of engaging with and being engaged by the government in regard to housing advocacy – and more is yet to be done.

3.3.3. The Independent Māori Statutory Board also identifies that there is a risk in combining certain functions in any organisation that places those functions in conflict with one another.

3.3.4. This bill combines in the Kāinga Ora-Homes Communities the functions of housing developer and tenancy manager which is a recognised risk in the housing sector, placing the functions into competition for resources in the pursuit of very different outcomes.



3.3.5. One potential unfavourable outcome of this approach is that messaging and clarity around any shortfall in housing places being experienced firsthand by the tenancy management function may be lost or diminished alongside the high cost, time intensive housing development function.

3.3.6. The implication of this is that Kāinga Ora-Homes Communities may not be in a position to openly, clearly and accurately state a deficit in housing stock as it is itself responsible for delivering that stock.

3.3.7. In order for New Zealand to have transparent insight into any public housing deficit at any time, in order – inter alia – to understand New Zealand’s compliance with the Treaty of Waitangi and human rights obligations, it will be necessary for New Zealand’s public housing tenancy manager along with others to be able to assess and report on that deficit.

3.3.8. Existing statistics indicate Māori are and will be in the future a large proportion of those facing waits due to an under-supply of public housing at any time in the future.

3.3.9. Transparency in this area is therefore critical in meeting demands for Māori outcomes expressed by communities as well as in cabinet papers, delegations such as those of Associate Minister Mahuta, and strategic documents such as the strategic intentions of the Ministry of Housing and Urban Development.

3.4. Kāinga Ora-Homes Communities should: *Demonstrate public sector innovation/leadership on reflecting and implementing the Treaty of Waitangi*

Implement co-governance to ensure Māori/Crown partnership in decision-making

3.4.1. As anticipated the Urban Development Authority is designed to be governed by an appointed board.

3.4.2. Co-governance has been successfully implemented as an expression and implementation of the Treaty of Waitangi in modern public sector business, including through the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014 (Part 3 ss 106 – 116). These provisions bring together Mana Whenua and, in this case, Auckland Council, in a co-governance entity governed by an appointed board, *ensuring* Mana Whenua participation in decision-making directly through legislation.

3.4.3. In paragraph 3.2.7 above it is noted that this bill falls short of implementing a co-governance approach, in the context of an explanation of the need to understand development partnership as a separate outcome to Treaty of Waitangi partnership.

Appointment of the Kāinga Ora-Homes Communities board

3.4.4. Beyond failing to implement a co-governance arrangement to govern Kāinga Ora-Homes Communities it is necessary to consider the existing provisions for the appointment and make-up of the entity’s board.



3.4.5. Membership of the board is provided for in **clause 10(2)**, which uses a relatively common form in stating that the *‘Ministers must appoint members to the board who, collectively, have knowledge and experience of, and capability in’* a range of relevant areas.

3.4.6. This ‘skills-based’ approach provides no security for Māori participation on the Kāinga Ora-Homes Communities board at any time. Moreover, the absence of intensifiers in this clause such as ‘expert’, or ‘considerable’, this clause provides weak guidance to Ministers on the level of skill they should acquire or appoint. Put another way this gives Ministers little protection by way of reference to the bill that they should pursue a rigorous level of expertise.

3.4.7. The inclusion of Māori terminology such as ‘matauranga’ or other words would increase the onus on Ministers to appoint Māori, with relevant expertise, or at the very least individuals who have more than some knowledge, some experience, or some capability in the matters listed in clause 10(2).

Kāinga Ora-Homes Communities Treaty of Waitangi obligations

3.4.8. A great deal of legislation since 1985 in particular, includes **clear and direct obligations flowing from and relating to the Treaty of Waitangi, falling on ascertainable persons and positions of sufficient standing to ensure those obligations are met and/or liability is transparent**, within the scope of such Acts. This provides not only for Treaty of Waitangi obligations to be met, but also for Māori and the public to see clearly who is responsible for those obligations and accountable for failures to comply. See for example, section 4 of the Conservation Act (1987).

3.4.9. The Kāinga Ora-Homes Communities Bill appears to take a new and innovative approach to expressing the Treaty of Waitangi obligations envisioned for the entity. However, the bill does not include a statement of *clear and direct obligations flowing from and relating to the Treaty of Waitangi, falling on ascertainable persons and positions of sufficient standing to ensure those obligations are met*.

3.4.11. **Clause 4** of this bill draws together the features of other clauses in the bill relating to obligations to Māori and the Treaty of Waitangi, overall creating a stark contrast with the simplicity of the approach taken in legislation such as the Conservation Act.

3.4.12. Treaty of Waitangi obligations are systematised in the Kāinga Ora Bill, meaning a system for complying with Treaty of Waitangi obligations is specified. This system relies on two tiers of the organisation, with the Board – the first tier - responsible for maintaining systems and processes to ensure that the entity itself – the second tier – has the *capacity and capability* to meet Treaty of Waitangi obligations.

3.4.13. This system is however an incomplete loop, as it is plainly possible within that system for both tiers to comply with their legislative role in the system, and on that basis for the organisation to *appear* to meet



obligations relating to Te Tiriti. This arises specifically when the board is able to demonstrate maintenance of systems and processes designed to ensure the entity has the *capacity and capability* to meet certain obligations, but is not obliged to concern itself with *compliance* itself.

Ensure senior leadership have obligations to deliver Māori outcomes

3.4.14. The Independent Māori Statutory Board relies on the contents of the Kāinga Strategic Action Plan as evidence that Māori are seeking increased Treaty compliance from the government in relation to housing, and this requires transparency around roles and responsibilities.

3.4.15. The Kāinga Strategic Action Plan also specifically seeks Treaty of Waitangi performance measures for agency Chief Executives. In the system proposed by this bill such improvements seem unlikely. Acknowledging that this bill should not be seen as the one and only opportunity to implement such changes, significant shifts in practice toward improved outcomes for Māori (as signalled across cabinet papers and other guiding and strategic documents), should find their clearest and most explicit expression in the most binding and deliberate documents of government - legislation.

3.5. Kāinga Ora-Homes Communities should: *drive significantly improved housing outcomes for Māori*

A clear and direct statement of the UDA operating as the primary near-future tool for achieving compliance with human rights obligations

3.5.1. Human rights like other artefacts of international law including international treaties generally and the Treaty of Waitangi, require expression in domestic law in order to have binding effect and impact.

3.5.2. The Treaty of Waitangi was declared a legal nullity precisely because it could not (at that time) be legitimately considered by the courts in New Zealand without first being introduced into domestic legislation. While a series of Acts since 1975 have transformed the court's ability to legitimately consider the Treaty of Waitangi and put it into action, the universal human right to adequate housing remains in the legal sense null and void; not yet enshrined or adequately acknowledged in legislation.

3.5.3. Specifically, while there is an air of human rights about New Zealand's legal order, in practice each human right must find its own operational home in legislation impacting on matters with which the right itself is concerned or aligned.

3.5.4. The Kāinga Ora-Homes Communities Bill is such a home for the universal human right to adequate housing, and an expression of what this right means in New Zealand. This bill is concerned with the



structure and functions of the Kāinga Ora entity and the structure must reflect a drive to meet New Zealand’s human rights obligations, and a high priority among its functions must be securing and maintaining the compliance of the New Zealand state with this critical and agreed obligation.

3.5.5. The Independent Māori Statutory Board acknowledges that **clause 14(1)(c)** provides under the title “Housing supply meets needs” that the entity must manage its stock prudently. Assuming the needs referred to are the needs of vulnerable New Zealanders for housing, managing stock prudently reaffirms the need to meet identified need (not limited for example, by false or political financial constraints). This in turn suggests a universal right to adequate housing could result, but only through an interpretive exercise.

Sector and systemic change

3.5.6. New Zealand needs a high functioning, flourishing housing sector, in order to move toward compliance with Treaty of Waitangi obligations, human rights obligations, and to simply ensure adequate housing for a higher number and proportion of New Zealand’s vulnerable populations.

3.5.7. The Independent Māori Statutory board acknowledges that the Ministry of Housing and Urban Development is consolidating a range of housing activities that have recently increased responsiveness to local community voice and the government’s capacity to operate in a responsive and place-based way.

3.5.8. Systems thinking in relation to the housing system quickly identifies that there remain systemic failings in the area of the system in which the population is at risk of homelessness. Investment in Housing First primarily targets rough sleepers, but from a system perspective investment is required to secure vulnerable tenures and tenancies to halt the flow of individuals and whānau into shelterlessness. From a system perspective, one without the other fails.

3.5.9. Systems thinking also quickly highlights the ‘missing middle’ as a critical area for urgent focus. In this group, whānau may have multiple workers and earn up to \$100,000 or more as a household, and yet remain locked out of home ownership and fall short of, or simply miss out on, KiwiBuild.

3.5.10. The lived context is critically important to highlight. Despite strong household incomes, in Auckland such a family is likely to be spending more than 35% of their income on rent, in order to live in poor-quality housing. Despite good earning, these circumstances create high risk of housing hardship, as well as poor housing and health outcomes. As one New Zealand researcher has suggested, in New Zealand the obsession with home ownership might be driven as much by the poor-quality alternatives as by investment or stability.

3.5.11. These elements of New Zealand’s housing system must be better understood and acted upon. The Kāinga Ora Bill indicates the entity will concern itself with community building and community development, but the bill does not adequately describe or provide for these activities.



3.5.12. For Māori the concern is simple. There is a legacy of the government failing to deliver equitable, let alone good, outcomes. With the Māori population, as a result, lingering below the average income of the population at large, the successful commitment to and implementation of systems thinking across the housing sector would be one way to help the government target the Māori outcomes described in cabinet papers and in this bill.

Enhanced commitment to Māori outcomes including through more responsive mainstream programmes and through targeted programmes for Māori

3.5.13. Cabinet papers have expressed the government's desire to achieve improved housing outcomes for Māori through mainstream programmes being more responsive to Māori, and through targeted interventions for Māori.

3.5.14. The Kāinga Ora entity is a mainstream programme and as such it will be expected to deliver improved housing outcomes for Māori through an increased capacity to understand what those outcomes are, their inter-relationships, and how to achieve them.

3.5.15. It is important to recognise however that these Māori outcomes are not Treaty of Waitangi compliance (which is something the bill *includes*, subject to the discussion above) and nor are they engagement with iwi, or Treaty settlements. These housing outcomes for Māori are lived experience outcomes for whānau, which involve them experiencing better services and improved opportunities.

3.5.16. As the key delivery agency for government housing the make-up of targeted programmes for Māori through Kāinga Ora is yet to be seen, notwithstanding on-going work on a Māori work programme in the Māori Housing Unit of the Ministry of Housing and Urban Development. To have been relevant to express in a cabinet paper, these targeted programmes must be additional to, and hopefully different, from what has gone before.

3.5.17. This bill would be improved by referencing these cabinet papers and explicitly adopting the language and two-pronged understanding of their approach to the conception and delivery of Māori outcomes.

Recognition of the critical nature of housing as a central element in emotional wellbeing and in cultural experiences of home, kāinga, whānau, and a window through which the world is experienced.

3.5.18. Finally, the Board wishes to express its view that housing is a central element in emotional wellbeing and in cultural experiences of home, kāinga, and whānau, and a window through which the world is experienced.



3.5.19. The broad use of the word kāinga, including in this bill, suggests there is some traction in these conceptions of housing at this time, and that New Zealand is indeed moving along the continuum of a shift toward recognising that the real value of housing is not as real estate.

3.5.20. Kāinga is not just about walls and beam's, it's about hopes and dreams. As has been noted elsewhere in this submission, notwithstanding the mainstream nature of this bill, explicit statements of social, emotional, Treaty of Waitangi and human rights aspirations and obligations should be incorporated in it. They will provide a fundamental basis for Kāinga Ora-Homes and Communities to be a success generally, and also strengthen its mandate to improve housing outcomes for Māori.

Please liaise with the Board's CEO, Brandi Hudson 021 818 301 or brandi.hudson@imsb.maori.nz if you would like to discuss this submission with us.

Naku noa;



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Chairman
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