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Regulatory Impact Statement

Legislation to enable transfers of HNZN houses

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Treasury.

It provides an analysis of options to ensure that the Crown has the authority to transfer HNZN houses without impediment or delay.

The analysis compares the benefits of certainty via legislative change, to the risks of working within existing legislative frameworks to achieve the same objectives. The proposals have been prepared in a short timeframe to ensure they are in place to enable the transfer process. This has also meant that they have been prepared without precise information about the form of the transfers transactions and HNZN's future role in the social housing market – these aspects will continue to develop once the transfers get underway. Consultation for these proposals has focussed on the party most affected, namely HNZN; wide public consultation was not possible within the timeframes of the process. However, the next steps of the SHRP have been widely publicised.

Tom Hall
Manager, Housing

Signature:

Date:

Executive summary

1. This Regulatory Impact Statement assesses the case for proposed legislation to enable Social Housing Reform Programme (SHRP), a programme of reforms to New Zealand's social housing sector.
2. The introduction describes current challenges for the social housing sector, and the objectives for the SHRP. It also presents a list of activities currently comprising the SHRP and the content of a bill designed to enable these activities.
3. The focus of the analysis is on the second of the listed activities: "growing Community Housing Providers (CHPs) through [...] transfers of Housing New Zealand Corporation (HNZC) stock". The analysis considers proposed legislative changes to enable the transfers.
4. The problem is defined as insufficient certainty or control in HNZC's existing legislative framework for Ministers to implement Cabinet's agreed stock transfer policy. The analysis considers two options: a change to legislation to enable the transfers, or the status quo under which Ministers would need to use existing tools to influence HNZC's actions and rely on HNZC's cooperation. The analysis considers impacts on HNZC primarily, and concludes that legislative change better meets the defined objective.
5. A 'transaction mandate' is the proposed solution to the issue presented above. The transaction mandate allows Ministers to act on behalf of HNZC for certain purposes.
s. 9 (2) (h)

Introduction: the Social Housing Reform Programme

6. The SHRP intends to improve the lives of vulnerable New Zealanders by getting them into housing which meets their needs for the duration of that need.
7. The SHRP is designed to address the challenges facing New Zealand's social housing programme. At present about 3650 people have been assessed as having high needs and are waiting to be assigned to social housing and an additional 1300 Housing New Zealand Corporation (HNZC) tenants have applied for a transfer to housing that better meets their needs. Around one third of HNZC properties are in the wrong place or in the wrong size to meet this need. For example, one bedroom accommodation makes up 25 percent of demand but only 9 percent of HNZC supply.
8. Tenants' needs are complex. Around a third of HNZC households are one parent families with children, and around 20 percent are over 65 years of age. In order to be eligible for social housing, tenants must have a case for assistance in addition to a low income. Community housing providers, in addition to HNZC, can offer new and innovative ways of working with these tenants and responding to their complex needs.
9. In December 2014, Cabinet agreed a set of objectives for the SHRP. They are to:
 - a. ensure that people who need housing support can access it and receive social services that meet their needs;
 - b. ensure that social housing is of the right size and configuration, and in the right areas, for those households which need it;
 - c. help social housing tenants to independence, as appropriate;
 - d. encourage and develop a more diverse ownership of social housing, with more innovation and responsiveness to tenants and communities; and
 - e. help increase the supply of affordable housing, especially in Auckland.
10. A wide range of activities are underway to respond to the challenges outlined above, and meet the objectives for the SHRP. These involve a number of Government agencies and include:
 - a. establishing the Ministry of Social Development (MSD) as the single purchaser of social housing places independent of any housing provider, so that access to social housing is no longer determined by who owns the house;
 - b. growing Community Housing Providers (CHPs) through MSD's contracting and transfers of Housing New Zealand Corporation (HNZC) stock;
 - c. an expanded role for CHPs because they are able to respond to the particular needs of tenants;
 - d. making Income Related Rent Subsidies (IRRS) available to non-government CHPs to help those providers to grow;
 - e. the introduction of tenancy reviews to ensure that assistance is provided to those who need it for the duration of their need;
 - f. an ongoing programme of sales, reinvestment, and redevelopment by HNZC as part of its business as usual asset management; and
 - g. housing more families by making better use of HNZC land, by opening it up for redevelopment.
11. Legislative change is required to support and enable these activities.

Authority to transfer HNZC stock

Status quo and problem definition

12. The Government has agreed to transfer HNZC stock to CHPs, in support of the objective in 9d. above: “to encourage and develop a more diverse ownership of social housing, with more innovation and responsiveness to tenants and communities”.
13. In the coming one to two years, around 1,500 existing houses – with the current tenants and existing subsidies – will be transferred into the social housing market. This means that the community housing sector will receive a larger share of available social housing tenancies, which will allow them to grow their capabilities and leverage related social services to improve tenant outcomes.

s. 9 (2) (h)

18. Accordingly, the problem is defined as follows: the existing legislative framework does not allow the Crown to execute the SHRP transactions with certainty, such that the Crown’s policy of HNZC asset transfers could be subject to impediment and delay.

Objectives

19. The objective follows directly from the problem defined above: to ensure the Crown has the authority to transfer HNZC stock without impediment or delay, consistent with the Government’s policy.

Options and impact analysis

20. Two options may wholly or partly achieve the objective identified above.
21. Option one is to ensure that the Crown has the authority to transact HNZN's stock, by means of new asset transfer provisions. The preferred legal mechanism is a 'transaction mandate' that allows Ministers to act on behalf of HNZN. The features and benefits of a transaction mandate are outlined in paragraphs 41 to 53 below.
22. Option two is to commence a programme of HNZN asset transfers within HNZN's existing legislative framework. This option makes use of the mechanisms outlined in paragraphs 15 and 16, alongside continued negotiation and reliance on HNZN.
23. A scenario where transfers do not occur is not contemplated here, because it does not meet the objective defined above.

Impact analysis: option one

Impact on tenants

24. There is no or minor impact on tenants as a result of selecting option one. The Crown will ensure that transaction processes are designed to minimise impact on current tenants as far as possible.

Impact on potential bidders

25. Option one provides benefits to potential bidders as it provides certainty that the transfers can proceed. This avoids the potential cost of any impediments or delays, allowing bidders to focus on their proposal.

Impact on HNZN

26. HNZN will not have a decision-making role in the transfer under option one. s. 9 (2) (h)
27. More fundamentally, this option changes the relationship between the Crown and HNZN from one at 'arms-length' to one where the Crown has direct control over HNZN's stock. The Crown and HNZN will need to work together to ensure the organisation and its board are equipped to manage HNZN's asset base alongside the ongoing transfer programme.
28. Ring fencing and limiting Ministers' mandate will mitigate the impact of the provisions on HNZN, and provide greater transparency of Ministers' actions under the mandate. This is discussed in detail in paragraphs 41 to 53 below.
29. Additionally, a planned strategic review of HNZN will provide greater understanding of the impact of these provisions on HNZN. The strategic review has been jointly commissioned by the Crown and HNZN to consider the organisations' strategic options in its new competitive environment. The decision to commission a review is an acknowledgment that the SHRP (and the proposed legislation) will impact on HNZN in a number of ways that are not yet well understood.

Impact analysis: option two

Impact on tenants

30. The possibility of uncertain or drawn out transactions under option two may have an impact on tenants, particularly if the transfer has proceeded to a stage where a specific region has been identified and tenants informed.

Impact on potential bidders

31. The impact of option two on potential bidders also stems from the potential for uncertainty and delay. A perception or expectation of uncertainty is likely to discourage participation in the transfer process. Were delays or other complications to manifest, this would have direct cost implications for potential bidders, which would likely translate into a lower price to the Crown and diminished focus on the social outcomes the Crown is seeking.

Impact on HNZC

32. Under option two, the Crown and HNZC will work within the existing legislative framework to carry out the transfer programme. s. 9 (2) (h)

Consultation

33. Consultation for the proposed asset transfer provisions has been mainly with HNZC. The Ministry of Social Development and Ministry of Business, Innovation and Employment were consulted throughout the process. The State Services Commission (SSC) was also consulted with reference to HNZC's roles and responsibilities as a Crown agent. However, HNZC is the party primarily affected by whether Parliament agrees to legislate, as set out in the analysis above.
34. Consultation with HNZC has been as intensive as possible within the relatively short period prior to the transaction process commencing. The Crown first met with HNZC in October 2014 to hear the organisation's concerns about conducting the transfer programme within the existing legislative framework. In November, officials sought approval from Ministers to explore options for legislative change to address these concerns. The two parties have since met a number of times to discuss options that meet the needs of both, and offer the best possible outcomes for the transfer programme.
35. s. 9 (2) (h)
HNZC has also expressed concern about its ability to manage its ongoing responsibilities, as well as the possibility of costs arising from Ministers' actions as part of the SHRP. It is not proposed that the legislation directly address these issues. However, discussions relating to the legislation have provided a forum for HNZC to raise their concerns, which will be considered as part of a strategic review of HNZC and the commercial design process for the transactions.

Conclusions and recommendations

36. In accordance with the analysis above, the Treasury's recommendation is that legislative change take place to ensure that the Crown has the authority to transact HNZC's stock. There are benefits to all parties from achieving certainty for the transfer programme.

Implementation plan

37. The stock transfer provisions are designed to enable the transaction process to commence in June 2015. Once approved, it is suggested that they be put into force in full at the earliest opportunity.

Monitoring, evaluation and review

38. As noted above, a strategic review has been jointly commissioned by the Crown and HNZC to consider the organisations' strategic options in its new competitive environment. This review will include the impacts of the legislative change proposed here. Details of the strategic review – including its precise timing and content – are yet to be fully agreed.
39. Treasury has recommended that the transaction mandate providing authority to transfer HNZC stock is subject to a review five years following its enactment, as outlined in paragraph 50.
40. Ministers will be required to disclose any use of the mandate to effect the transfer of HNZC stock. This requirement is described in paragraph 51.

Legal mechanism

- 41. This section of the analysis describes the legal mechanism proposed to achieve the objective defined above.
- 42. The mechanism is a ‘transaction mandate’ that allows the Crown to act on behalf of HNZC for certain purposes. The mandate will provide Ministers with the ability to effect transfers of HNZC stock. While there are few precedents for this approach in other statutes, it is broadly analogous to a private law power of attorney – a well-established means of giving effect to transactions by one party on behalf of, and in the name of, another party.

No other legislative mechanism achieves the objective as defined. As alternatives, we considered powers to direct and vesting mechanisms. s. 9 (2) (h)

s. 9 (2) (h)

- 45. s. 9 (2) (h) We have
considered options to constrain the proposed mandate with regards to form (how the provisions are drafted), scope (the range of actions covered and/or the objectives or principles that apply), and timing (how long they are in place).
- 46. The mandate and associated provisions will be recorded as a separate part of the HCA, and it will be clear in the drafting that actions taken under the part are actions taken by Ministers on behalf of HNZC. This approach provides visual clarity that the Government’s intention is that HNZC’s existing statutory arrangements (and operations) are affected only to the extent needed to achieve the stock transfers.

s. 9 (2) (h)

48. It is proposed that use of the mandate be limited to actions carried out for certain purposes, namely implementing the SHRP transactions.s. 9 (2) (h)
49. Finally, the exercise of the mandate could be constrained by time - so that they end or are reviewed after a period of time. Broadly, there are two options. The mandate could be:
- a. statutorily unlimited (i.e. their formal end would be reliant on amendments to the legislation, such as repeal) but that Ministers would monitor their ongoing use and exercise; or
 - b. statutorily limited specifically by way of review.
50. Our preferred approach is for the Bill to include a requirement for Ministers to review the ongoing need for the mandate. We propose that a review be conducted in five years time. This will allow for the outcomes of the strategic review to be formally considered, alongside the ongoing transfer programme. While the review will not necessarily result in changes to the mandate, its presence in the Bill will send a signal that the mandate is intended as an exception to the rule and that there will be a return to business-as-usual for HNZC.
51. We have considered whether Ministers' use of the transaction mandate should be guided by a particular process. Our proposal is that, following exercise of the transaction mandate, Ministers be required to publicly notify the general nature and purpose of that use by means of a statement published in the Gazette and presented to the House of Representatives. This public notification provides transparency regarding Ministers' use of the mandate, allowing Parliament and interested persons to assess whether the exercise is consistent with the purpose outlined in the legislation.

s. 9 (2) (h)