



LEGISLATION DESIGN AND ADVISORY COMMITTEE

14 February 2020

Duncan Webb MP
Chairperson
Environment Committee
Parliament Buildings
Wellington

Dear Duncan Webb

Urban Development Bill

Introduction

1. The Legislation Design and Advisory Committee (**LDAC**) has been given a mandate by Cabinet to review introduced Bills against the *Legislation Guidelines* (2018 edition) (**Guidelines**). The Guidelines have been adopted by Cabinet as the government's key point of reference for assessing whether draft legislation is well designed and accords with fundamental legal and constitutional principles.
2. The LDAC's focus is not on policy, but rather on legislative design and the consistency of a Bill with the principles contained in the Guidelines.
3. Our submission is directed at clauses 16, 17 and 18 of the Urban Development Bill (Bill).

Clauses 16 - 18

Effect of proposed provisions

4. Clauses 16 to 18 state that if any of the provisions in one of the specified Acts (the Heritage New Zealand Pouhere Taonga Act 2014, Te Ture Whenua Maori Act 1993, and Marine and Coastal Area (Takutai Moana) Act 2011) is inconsistent with a provision in the Bill the provision in the specified Act will prevail.

Concern about the proposed provisions

5. LDAC has some concerns about whether clauses 16 to 18 best achieve their intended outcome of ensuring any conflict between these Acts has been fully addressed.

6. The salient principle in the Guidelines is that any conflict or interaction between new and existing legislation should be explicitly addressed in the new legislation.¹ The Guidelines provide that where there is an unavoidable or intentional conflict between new legislation and existing legislation, the new legislation should make clear which provision will prevail or how it is intended that the two provisions should operate together.
7. A statement that one Act prevails over another Act, without more specific detail, risks making the law difficult to understand in its full context and may lead to uncertainty or errors. The practical effect of the provisions will be to require users to read the Bill, together with the other Acts, to try and determine what could be a potential inconsistency in provisions.
8. The Bill, and its interactions with other legislation, are already very complex for users. Leaving these issues not clearly resolved increases the complexity and risks undermining its policy intent, as expressed in the Explanatory Note, of effectively facilitating “the delivery of complex or strategically important projects the market would not otherwise deliver, particularly those revitalising urban areas”.
9. In addition, clauses 16 to 18 may not be sufficient on their own to resolve any inconsistency effectively. Often more is needed to ensure two Acts can operate together effectively. We would encourage the Select Committee to be clear about the nature of the potential inconsistency, and whether more specific provisions are legally needed in the Bill to address it.
10. After careful further consideration of the interaction of the Bill with these other regimes, it may be that the clauses still have a role to resolve residual issues which cannot easily be predicted (or simply to highlight to users how other provisions of the Bill have addressed the interaction). In this case, we recommend amending the clauses to be as clear as possible as to their policy intent and legal effect.
11. We note that clause 19 is similar in that it provides that Treaty settlement obligations prevail over the Bill. Our submission does not, however, extend to this clause. LDAC considers that the generic approach taken by clause 19 can more easily be justified on the basis that it is needed to secure for iwi the outcomes from individual Treaty settlements (where reconciliation would be very hard to do at a generic level) and to ensure recognition of the principles of the Treaty.

Recommendations

12. We **recommend** that the policy intent of clauses 16 to 18 be carefully considered to determine whether these clauses are in fact necessary or desirable to deal with potential inconsistencies, or whether a more tailored or different approach is preferable.

¹ *Legislation Guidelines* (2018 edition), chapter 3.2

13. Thank you for considering our submission. We do not wish to be heard in person.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Karl Simpson', written in a cursive style.

Karl Simpson
Chairperson
Legislation Design and Advisory Committee