MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

BRIEFING

Legislation to establish a national urban development authority and empower complex development projects

Date:	16 November 2017	**Priority:**	High
Security classification:	In Confidence	**Tracking number:**	0854 17-18

Action sought		
	Action sought	**Deadline**
Hon Phil Twyford **Minister of Housing and Urban Development**	Discuss with officials.	22 November 2017
Hon Jenny Salesa **Associate Minister of Housing and Urban Development**	For your information.	

Contact for telephone discussion (if required)				
Name	**Position**	**Telephone**		**1st contact**
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The following departments/agencies have been consulted
Ministry for the Environment Land Information New Zealand Ministry of Social Development

Minister's office to complete:

- ☐ Approved
- ☐ Noted
- ☐ Seen
- ☐ See Minister's Notes
- ☐ Declined
- ☐ Needs change
- ☐ Overtaken by Events
- ☐ Withdrawn

Comments

BRIEFING

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Purpose

This briefing discusses the new legislation:

- that may be required to establish a national urban development authority; and
- that is required to provide more enabling development powers to support complex, large-scale development projects, such as those that form part of your strategy for delivering KiwiBuild.

We describe the core elements that we propose for this new legislation, to test whether these proposals align with your plans for the new authority and the KiwiBuild development projects. We have also attached an A3 summary of the proposals as Annex One.

Further advice

Subject to discussions with you, we propose that this be the first in a series of briefings. We propose to provide further briefings that examine critical issues in greater detail, including the role of local government, the approach to environmental management, how to structure the authority, the approach to compulsory land acquisition and managing Crown land. Other critical issues are listed in Annex Two.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

a **discuss** with officials whether the proposals in this briefing align with your plans for the new national urban development authority and KiwiBuild's large-scale development projects;

b **consider** the summary of submissions to the previous Government's discussion document proposing new legislation for urban development authorities, in Annex Three; and

c **note** that, to be confident of enacting a Bill by the end of 2018, Cabinet would need to authorise initial drafting instructions by December 2017 and give the Bill high priority in the legislative agenda.

Jo Doyle
General Manager,
Housing and Urban Branch
16 / 11 / 2015

Hon Phil Twyford
Minister of Housing and Urban Development
..... / ..... / .....

Background

1. You have committed to establishing a new authority that the Labour Party manifesto describes as "an independent Crown entity with a fast-tracked planning process, tasked with leading large-scale housing developments and cutting through red tape."

2. You have said that the new entity will be a national urban development authority ("UDA") that will "drive the delivery of the 100,000 affordable homes planned under the KiwiBuild programme."

3. If the UDA will be a *statutory* Crown entity (as NZTA and HNZC currently are), new legislation will be needed to establish the UDA. New legislation will also be needed to enable the fast-tracked planning process and cut-through you are seeking.

Connection with KiwiBuild

4. Key components of KiwiBuild will depend on the new legislation. Other components can be delivered under existing legislation.

5. You have announced three methods for delivering KiwiBuild:

   - purchasing new homes off the plans, to de-risk and accelerate suitable developments that the private sector is leading;
   - adopting existing Crown-led development projects, to the extent that they can be re-purposed for KiwiBuild (such as the Tāmaki regeneration); and
   - initiating 10-15 large-scale development projects in partnership with the private sector.

6. Purchasing new homes off the plans does not require any new legislation. Similarly, the existing Crown Land Development Programme can be re-purposed for KiwiBuild without new legislation (see briefing 0801 17-18, dated 6 November). Among Crown-facilitated large-scale development projects, the Hobsonville development is already sufficiently advanced that it doesn't need any new legislation; and the significant central city development projects in Christchurch already have access to their own empowering legislation (Greater Christchurch Regeneration Act 2016).

7. The other projects you are proposing are likely to be large, complex developments seeking a range of social, commercial and urban development outcomes (including a mix of public, affordable and market housing) that need a strong Government role to manage the high risk, mixed objectives and large investment involved. New legislation can better support these types of developments by providing the more enabling development powers you are seeking.

Overview

8. This briefing presents the core elements that we propose form the basis of new legislation to:

   - establish a national urban development authority (if a *statutory* body is preferred); and
   - better enable large-scale, complex urban development projects.

9. It includes the development powers, processes and framework we think will be needed to deliver large and complex development projects for KiwiBuild and to establish the UDA. The purpose of this briefing is to test whether these proposals align with your plans.

10. Our proposals build on previous work MBIE has led towards establishing and empowering urban development authorities in New Zealand, which was developed in response to recommendations the Productivity Commission made in its report, *Using land for housing*. This previous work was canvassed with the public in a discussion document published in February 2017.

Timetable

11. The earliest that new legislation could be enacted is towards the end of next year. To be confident of meeting that timetable would require Cabinet to approve the core policy proposals before this Christmas and to give the Bill high priority in the Government's legislative agenda.

12. The new Bill is likely to be long and complex. We expect that the Parliamentary Counsel Office may need up to 6 months to draft it. Consequently, if Cabinet approval cannot be secured until February next year, the Bill may not be ready for introduction until the fourth quarter, in which case it would not be enacted until mid-to-late 2019.

Critical issues

13. We propose to provide separate briefings that work through the critical issues that you will need to consider to realise your objectives. These briefings will describe each issue, assess the options and seek your direction. An initial list of these issues is included as Annex One.

14. Because most of the critical issues were raised in the discussion document, we have appended a summary of the stakeholder responses that we received in Annex Two. The extent to which they remain relevant will depend on what positions you prefer in each case.

Consultation with other Ministers

15. As the more enabling development powers being proposed are far-reaching, you will need to work closely with relevant Ministers and your coalition partners to identify and resolve the more sensitive issues. In addition to your own, the relevant portfolios are Environment, Local Government, Conservation, Infrastructure, Land Information, Māori Development, Crown-Māori Relations and Treaty of Waitangi Negotiations.

16. You may wish to forward both this briefing and those that follow to these Ministers and meet to discuss the critical issues prior to commissioning a Cabinet paper.

National urban development authority

17. The scale and complexity of the proposed development projects and any access to more enabling development powers requires a strong Government role in each project and a vehicle through which the Government can play that role. In line with the approach used overseas, you are proposing that the Government establish the UDA to play this role.

18. We propose that the new legislation empower the UDA to authorise the use of a suite of more enabling development powers in any development project that is formally established under the Act. The powers and processes for enabling a development project to access the benefits of the legislation are described further below.

Functions of the UDA

19. The UDA will be able to play the key strategic role identifying, prioritising and coordinating the various development projects required to deliver the Government's objectives for KiwiBuild and urban development more generally. It will be able to do this both across the country as a whole and within particular regions, especially in Auckland, where multiple development projects will need to be established in both greenfield and brownfield locations.

20. The UDA's other functions will depend on the scope you prefer for its role and, in particular, on how you would like to manage the relationship the UDA will need to build with local government in each relevant area. These are critical issues that we will discuss in a further briefing.

Establishing the UDA

21. Whether the new legislation will need to establish the UDA depends on what legal form is preferred. The options are:

    - a **statutory Crown entity**, with a separate board, which must fulfil Government policy, is subject to your direction and must operate within the usual governance arrangements for Crown agencies (which require a statement of intent etc);
    - a **limited liability company**, with a separate board, which can be directed by its shareholder Ministers and operates within a lighter accountability regime;
    - a **departmental agency**, with no separate board and direct accountability to the Minister, but with limitations on its commercial operating powers.

22. If a statutory Crown entity is preferred, then the new legislation would need to establish the UDA. NZTA and HNZC are both examples of statutory Crown entities, established by their own legislation and governed under the Crown Entities Act 2004.

23. If a limited liability company is preferred, the new legislation would not establish the UDA, but would need a mechanism through which the company can be empowered under the legislation (and have its powers removed). The two Crown agencies that already play a role in urban development are both limited liability companies, incorporated under the Companies Act 1993 and governed by the Public Finance Act 1989. These include the Tamaki Redevelopment Company Limited, which operates in Auckland; and Otākaro Limited, which operates in Christchurch. (You are one of the shareholding Ministers of the Auckland company, but not the Christchurch company.)

24. The option to establish a departmental agency would avoid the need for a board and would only need an Order-in-Council to be established. However, this option would encounter the limitations to commercial operating powers flagged in SSC's briefing on establishing a full service public housing provider (such as an inability to borrow), although those limitations could potentially be overcome in other ways. SSC can provide further advice on the best legal form for the UDA.

25. A related issue will be what approach to take to the existing Crown companies, and to HNZC's development functions, especially if they wish to access the more enabling development powers in the legislation.

Community input

26. How to manage the tension between the national UDA, whose board and executive is located in one part of the country (e.g. Auckland), and a development project that is established and pursued at the other end of the country (e.g. Dunedin) will also need to be considered. Some of the equivalent legislation in Australia specifically provides for local representative committees to be established for each project. This is one of the critical issues that we will examine in more detail in a further briefing.

Development powers

27. We propose that the new legislation include the following development powers:

    - **land assembly powers**, including access to powers of compulsory land acquisition and the ability to revoke and exchange reserves;
    - **planning powers**, including the power to override district plans;
    - powers to provide **infrastructure** and amenities, such as roads and water pipes; and
    - **funding** powers to levy charges on developers and land owners to recover the costs of providing that infrastructure.

Land assembly

28. We propose that the new legislation include access to powers of compulsory acquisition. The broad range of purposes for which land can be taken under the Public Works Act 1981 extend to taking land for a wide variety of end uses beneficial to urban (re)development. However, because of inconsistencies and uncertainties in the existing legislation, we will provide you with a separate briefing that addresses the critical issues in greater detail.

29. We also propose that the new legislation include powers over existing public land (e.g. land owned by other Crown entities), which will also be canvassed in the separate briefing.

Reserves

30. In certain cases, it may be desirable to re-configure or revoke reserve status on existing reserves within a development project and to do so through more streamlined processes. Accordingly, we propose that the new legislation include powers to make changes to reserves.

31. As there are number of different types of reserves with different values that need to be protected, we will examine the options in a separate briefing.

Planning and consenting powers

32. We propose that the new legislation include a power to override the district plan in the project area, to the extent necessary to facilitate the development project. Another critical issue will be whether there should also be a power to override regional plans. Such powers would enable the UDA to re-write the planning and land use regulations within the project area.

33. We propose that a streamlined consenting process be available, such as the "fast-track application" process already available in the Resource Management Act 1991, but applying to a wider range of resource consents, including consents required under a regional plan. Another critical issue is whether the UDA can be the decision-maker over resource consent applications that apply to its project area (i.e. be the consenting authority).

Infrastructure

34. We propose that the new legislation include powers to construct or change: roads, clean and wastewater networks, stormwater and drainage systems, public transport facilities, and network utilities. We also propose that the legislation include associated powers to carry out any preliminary works, enter onto private land to undertake preliminary assessments, and to create or amend relevant local by-laws.

35. At the end of a development project, we propose that the new legislation include powers for the project manager to vest any new infrastructure in the host territorial authority or other relevant receiving organisation.

Funding for infrastructure inside the project area

36. To enable a development project to fund any new or upgraded infrastructure that it requires, we propose that the new legislation include funding powers:

    - to levy a targeted rate on property owners within the project area; and
    - to levy development contributions on developers building within the project area.

37. We also propose that private investors be able to fund the construction of infrastructure in the project area, supported by a power for the UDA to direct the income from any targeted rate to those private investors.

Cross-border infrastructure funding

38. Where new or upgraded infrastructure *outside* the project area has a benefit for land owners *inside* the area (and vice versa), we propose that the new legislation include a mechanism that ensures the development project and the territorial authority meet the appropriate share of the costs being incurred in the other party's area of responsibility.

Other powers

39. In addition, you may wish to ask us to explore one or more of the following powers:

    - a **value uplift levy** that captures some of the increase in land value that results from a development project (the Ministry of Transport has been exploring how such a levy could work in the context of transport projects);
    - a **development tax** levied on land value that targets land bankers, to incentivise the development of land within a project area; and
    - a power to **coordinate central government agencies**, to ensure they must suitably engage with the needs of a development project.

40. We do not recommend including powers for the UDA to inspect and consent building work under the Building Act 2004. Because the UDA may itself act as a developer (or have a material interest in the work of a private developer), there would be a conflict of interest in enabling it to consent that development work. However, we do recommend exploring ways in which the system of building regulations can better support large-scale development (e.g. through better support for pre-fabrication and off-site manufacturing).

Framework and processes

41. The core part of your strategy for delivering the necessary scale for KiwiBuild is built on a series of urban development projects that have access to more enabling development powers. Given that the goal is to quickly establish and pursue 10-15 large-scale developments, we propose generic legislation that can support multiple development projects, with the flexibility to cater to their different needs.

42. Following the model used overseas, we propose that the new legislation be project-based, which means it focuses on a programme of urban development for each of a number of selected geographic areas ("development projects"). In each case, the legislation would only apply to the discrete geographic area (or areas) in which a single development project is located (the "project area").

43. The legislation would not establish or enable any particular development projects upon its enactment. Instead, the selection of each development project and project area, and their formal empowerment, would be important processes set out in the legislation, outlined further below.

44. In line with the more enabling development powers proposed above, the key objectives of a project-based approach are to:

    a. assemble public landholdings with private landholdings to catalyse development on the required scale;

    b. fast-track planning and consenting processes;

    c. coordinate and integrate the delivery of infrastructure;

    d. spatially plan significant projects; and

    e. partner with private sector developers to deliver those projects (including iwi).

Project objectives

45. To help define what each development project is and to guide the planning and delivery of that project, the objectives for urban development in the project area will need to be identified ("strategic objectives"). Accordingly, we propose that the new legislation require the strategic objectives to be set when a development project is established under the new legislation.

Public benefits

46. Given the importance of working in partnership with local communities, we propose that public benefits lie at the heart of the new legislation, by ensuring no development project can be established without demonstrating that it has the realistic potential to deliver tangible public benefits. These can be stipulated as part of the strategic objectives set for a development project when it is established. Potential objectives could include the volume of housing supply, the speed of delivery, upgraded infrastructure, public and affordable housing, regional economic development and improvements to local amenities.

47. Whether other eligibility criteria are needed to determine which development projects can be established under the Act is one of the critical issues we will discuss in a separate briefing.

Framework

48. We propose that:

    a. while the legislation itself is enduring, any one project's access to the more enabling development powers is restricted to the period required for that development project to realise its strategic objectives, after which those powers cease to be available; and

    b. any type of urban development project is eligible to access the legislation, including those that have no housing component.

Processes

49. In any one case, the legislation would be triggered by central government deciding to grant a particular development project with access to the development powers. We propose that the process include the following two steps, both of which require public consultation:

    a. first, the assessment and establishment of a development project; and

    b. secondly, the preparation and approval of a detailed development plan for that project.

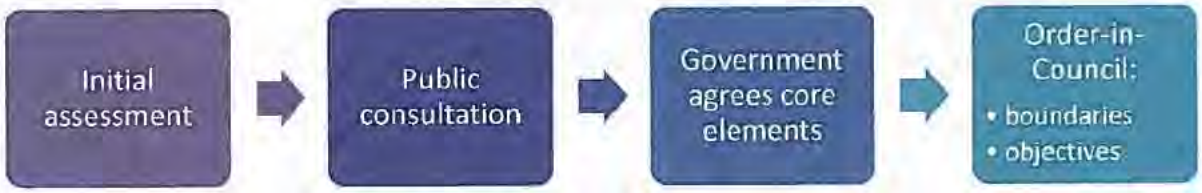
Assessment and establishment

50. We propose that two key choices must be made before the legislation can apply to any one development project:

    a. what the development project is, including the boundary of the project area; and

    b. what the strategic objectives of the development project are.

51. To inform those choices, we propose that the first step is an initial assessment of the proposed development project that is sufficient to enable the UDA to make an informed decision regarding whether to proceed to public consultation:



Development plan

52. The development plan is the planning document that would describe the programme of urban development for a particular development project and show how relevant development powers will be exercised in the project area ("development plan"). Where projects have already commenced (such as Tāmaki), the process would be adapted to accommodate the stage that the project has already reached.

53. Following public consultation on a draft plan, we propose that the UDA publish its recommended plan and that an independent panel consider any objections to that plan. To ensure political accountability for the use of far-reaching powers, we propose that the Minister responsible for the legislation be the final decision-maker.

Māori

54. The proposed legislation has significant implications for Māori. On one hand, there may be an opportunity for Māori developers to take advantage of the legislation to support their development projects. On the other hand, there is the potential for certain development powers to undermine Māori interests if they are inappropriately used.

55. We propose that the new legislation ensure Māori interests are identified and protected, the Te Ture Whenua Māori Act 1993 is upheld, and that Treaty settlements are honoured in each development project. Under the proposed legislation, the Crown would be bound by all of its Treaty settlement obligations, as would the UDA (to the extent they are relevant).

Urban growth agenda

56. Finally, we note that the proposed legislation would not provide a new planning framework for urban areas in general and would not apply to entire districts. Consequently, it will not solve the fundamental issues underlying the planning system that gave rise to the housing shortage and the need for KiwiBuild. Instead, we understand those issues to be the subject of the work you are commissioning on an urban growth agenda.

57. The proposed legislation and the urban growth agenda will complement each other in trying to create a more responsive, more effective urban planning system. We consider that a more fit-for-purpose system would recognise that the general planning framework that applies to business-as-usual developments must be supplemented by a more enabling framework for complex urban development projects, in the same way as it is overseas.

58. In the short-to-medium term, the proposed legislation can provide the more enabling development powers that will better facilitate complex development projects within the current planning system. Longer term, work on the urban growth agenda can include the need for a more enabling approach to complex development projects within the scope of comprehensive reform of the planning system.

Annexes

Annex One: A3 summary of the proposals.

Annex One: Initial list of critical issues: to be examined in further briefings.

Annex Two: Summary of responses to the previous Government's discussion document.

Annex Two: Initial list of critical issues: to be examined in further briefings

1. Organisational functions and form of the UDA:
    a. how to manage local interests in a national organisation?
    b. legal form (statutory Crown entity; company; departmental agency?)
    c. whether to retain the option for more than one urban development authority?
    d. local government and Maori representation on the board?
2. Eligibility criteria: whether to have criteria and what they will be
3. Strategic objectives:
    a. whether to have certain mandatory objectives for every development project?
    b. whether there are mandatory subjects that objectives must address?
4. Local government role:
    a. whether a territorial authority can veto a development project?
    b. whether a regional council can veto a development project?
    c. requirement for high-level agreement (laying out multiple-projects)?
5. Central government role: how to coordinate and require cooperation from departments
6. Private sector role: whether private developments can access the legislation
7. Approval of the development plan:
    a. what discretion does the Minister have?
    b. can the Minister delegate approval?
8. Appeal rights:
    a. over the development plan?
    b. over resource consent decisions?
9. Māori:
    a. whether certain land-owners can opt out of a development project?
    b. whether Māori can draft strategic objectives to protect Māori interests?
10. Land assembly: approach to compulsory acquisition and offer back obligations
11. Resource management system:
    a. approach to Part 2 of the RMA (fundamental purpose and principles)
    b. whether there be a power to override national direction?
    c. whether there be a power to override regional plans?
    d. whether there is a separate independent review of environmental assessments?
    e. whether there is a power to approve resource consent applications?
    f. approach to designations
12. Reserves: what approach to take to the various classes of reserve?
13. Infrastructure:
    a. whether there is a power to require TAs to provide necessary infrastructure?
    b. whether there is a power to change public transport services?

Annex Three: Summary of responses to the discussion document

In February 2017, the previous Government published a discussion document on Urban Development Authorities. The document sought feedback on proposed new legislation to enable central and local government to accelerate and support urban development projects, overseen by urban development authorities.

The Government sought feedback on the overall proposal to enact the new legislation, as well as on 169 specific proposals.

The following table provides a high-level summary of the main themes that arose in meetings and submissions responding to the proposals. The extent to which these responses remain relevant will depend on what approach you prefer.

Organisational form
• There were suggestions for regional, city or district-wide UDAs. • There was a desire for a UDA to be accountable to both central and local government.
Governance and monitoring of a UDA
• Feedback requested clarity on how a UDA board would be appointed. • There were suggestions for both local government representation and Māori representation. • Feedback noted the need for a more collaborative relationship between the two arms of government. • There was a desire for local government to be given a role in the monitoring and evaluation of UDAs and the system as a whole.
That a UDA can be both a regulator and a developer
• There was some concern that UDAs should not act as developers and, instead, should only take on regulatory functions. Reasons included the challenge of non-expert UDAs being developers, the risk of the misuse of power without proper regulatory oversight, and the loss of control and accountability of the UDA. • Those concerns led to the suggestion that UDAs be given the ability to delegate those functions, but other submitters were opposed to UDAs having the ability to delegate.
Whether to include criteria & thresholds for the application of the legislation
• Urban development projects should be of an appropriate scale and complexity to warrant being granted urban development powers. • The legislation should clearly define 'urban' and 'rural'. • 'Locally significant' is too small a test – it should be 'regionally significant' (in addition to 'nationally significant'). • There was concern that the Minister responsible for the legislation will have too much discretion in the process.

Strategic objectives that govern each project's decision-making

- Given that the strategic objectives will become the paramount consideration in decision-making, submitters wanted to ensure the process of developing the objectives is robust, and the contents of the objectives are meaningful.
- On process, the general public wanted to ensure they would be able to participate in the development of the strategic objectives.
- Various submitters wanted clarity regarding the roles of the various parties (e.g. central government, territorial authorities, regional councils, iwi) in developing and approving the strategic objectives.
- On content, submitters suggested the legislation should outline a set of minimum requirements or overarching objectives that all strategic objectives should cover.

Territorial authorities' role

- The support of territorial authorities to the overall proposal is predicated on the power to veto any proposed urban development projects.
- Submitters noted that even if the veto power was removed, having the agreement of both parties to collaborate will be necessary to ensure a project's success.
- As a quid pro quo for the veto power, submitters suggested that TAs should be required to commit to certain aspects of the project at the establishment stage. For example, a shared funding arrangement could help prevent the possibility of a second form of veto (lack of funding, or withholding funding) at a later stage.
- There was concern that the potential use of the veto will cause the process to become overly politicised at the establishment phase, with suggestions that the Minister have the power to appoint an independent third party to resolve disputes between central government and territorial authorities, or that there be principles in the legislation that outline a negotiation process.
- There was concern that the prior agreement of regional councils is not required, when regional councils can provide an integrated regional perspective on development projects.

Regional councils' role

- There were many comments about the role of regional councils and the value they could provide throughout the process. They have key responsibilities for water and air quality, flood protection and natural hazards. Many have a major regional planning role with their territorial authority counterparts.
- Regional councils have an important role in public transport provision under the Land Transport Management Act 2003 and should:
  - have a greater involvement in UDA processes; and
  - be actively involved in the establishment and development plan processes to ensure projects that require changes to public transport systems and networks are planned and implemented in an integrated way.

That public consultation is required for establishment and for the development plan
• It appeared to some submitters that a lot of work is undertaken before the public is even made aware of the proposed project, which led to a perception that consultation will not be genuine. • Councils were concerned that the UDA process would undermine their community consultation processes. • There was concern over who would be the most appropriate party to lead the consultation at each stage. • Submitters felt that principles or guidance is required for the two consultation phases proposed, in particular to clarify how consultation works with the requirements of the LGA and RMA. • There was a desire to specify the time frames for each stage of the process.
Project identification, assessment and establishment
• There was concern about the capability of central government to identify and assess potential projects. Submitters suggested an independent expert panel involved in urban environments could be established to work in collaboration with central and local government to assess and recommend projects to Ministers/TAs. • Māori seek a co-governance role in determining which projects are established. • Infrastructure providers wanted to ensure they are involved in the process from an early stage. • Regional councils also want to have a defined role at the establishment stage.
Central government role
• UDAs need the ability to get central government agencies to the table. • There was concern at how difficult it is to get meetings, engagement or progress with the Ministry of Education, DHBs and Housing New Zealand on their plans for land.
Land assembly
• Mixed support for UDAs having compulsory acquisition powers. • Submitters sought clarity on the public works that UDAs would be authorised to pursue. • There was some enthusiasm for gaining access to unused Crown land. • Iwi were very concerned that the Public Works Act will be used to take more of their land. • There was significant concern at the ongoing offer-back requirements in the Public Works Act for non-housing related developments. • Feedback noted the likely difficulty the offer-back requirements would generate if UDAs wish to transfer public land to developers to deliver the desired outcomes.

Powers over reserves

- Submitters were concerned that scenic, historic and government purpose reserves should not be included in the proposed legislation, as they have important values that should be protected.
- There was a desire to require an equal volume and type of reserves elsewhere if a reserve is revoked or exchanged. Submitters emphasised how important reserves are to people's mental and physical wellbeing, especially where developments create greater housing density.
- Feedback was concerned that "if at all practicable" is not a strong enough phrase in the context of attempting to locate a replacement reserve in close proximity to the community served by the original reserve.
- There was a request that, for those reserve types where the Minister of Conservation is involved, not only the national and international values of the reserves be taken into account, but also the local values of reserves, because many reserves are of great value and importance to their local communities.
- There was also a request that there be a decision-making framework for making changes to reserves, for example a reserve exchange should be given priority over a reserve revocation.
- Feedback was concerned that reserve management plans and by-laws should not be able to be changed without the permission of the relevant local authorities.

Planning and land use

- There was unease at UDAs having access to planning powers.
- Most concern focussed on the potential to override regional plans. Regional policy statements and regional plans are a local expression of national direction and represent the environmental bottom-lines that the community has agreed.
- There was concern at the practical difficulty of overriding regional plans but not national policy statements (NPS) where parts of the regional plans are locally contextualised versions of NPSs.
- Regional plans represent the integrated management of whole catchments and airsheds which need to be treated holistically, in contrast to development projects, which are geographically discrete areas.
- Infrastructure providers were concerned at the uncertainty that overriding the existing plans caused for their long-term planning.
- Developers were enthusiastic about planning powers being available to UDAs to streamline developments at scale.
- There was concern at the lack of transparency if UDAs have consenting powers.
- Feedback was concerned about threats to local democracy, in that plans that had been developed with significant community input could be put aside.
- There was concern about the potential for the RMA to be overridden, particularly Part 2.
- There was a perception that the change in the decision-making hierarchy raised local development interests over national environmental direction and subordinated important environmental bottom-lines to the needs of development.

Resource consenting

- Local authorities were unanimous in opposing any power to transfer their consenting function to UDAs.
- Submitters highlighted issues with the UDA's capacity and capability to undertake the consenting function.
- Local authorities also questioned the waste involved in setting up a parallel system for what could be quite small areas.
- In contrast, developers strongly supported the transfer of consenting powers away from local authorities.

Removal of appeal rights

- The loss of appeal rights was almost unanimously opposed (both at the development plan stage and for resource consenting), with only a couple of developers supporting it. It was characterised as undemocratic and an attack on natural justice, with the loss of an independent decision-maker on issues of contention particularly worrying.
- It was also seen as strengthening the UDA's monopoly power over decision-making.

Designations for infrastructure provision

- There was concern that major infrastructure assets, associated designations and easements that are nationally or regionally significant should be specifically excluded from a UDA's powers under the legislation (e.g. National Grid, oil pipelines, ports, airports).
- Designations were seen as fundamental to the operations of infrastructure providers. A loss of control was considered to have a critical impact on their operations.

Infrastructure

- Feedback noted that infrastructure and its funding for development in greenfields or regeneration projects is a key impediment of progress.
- UDA powers to undertake works could have significant implications for wider infrastructure networks. Any plan to relocate or stop infrastructure requires considerable planning.
- Engagement needs to go beyond consultation to require two-way communication and collaboration to enable a UDA to understand network requirements, potential effects, costs and limitations.
- There is a need to ensure that if there are changes in infrastructure provision or systems, existing levels of service are maintained during and after works.
- Feedback was concerned that UDAs or third parties undertaking works without the necessary knowledge could present risks to both health and safety and security of supply.
- Submitters felt that unreasonable costs must not be passed on to territorial authorities or other providers. Any costs must consider whole-of-system and whole-of-life infrastructure.
- Feedback noted the potential delays to a development if a UDA must wait for full consents on works outside the development project area, which could include land use activities and downstream or discharge effects of the development.

Network utility providers

- Network providers need to be part of early discussions to ensure the costs are borne by the UDA and the technical and operational constraints of utility relocation are captured.
- Electricity and telecommunications providers feel that discussions with them are left too late when plans, particularly for road design, have already been signed off, which puts too much pressure on them and leaves less opportunities for innovation.
- Feedback highlighted that greater clarification is required on how existing property or access rights will be protected for existing assets including easements, designations, authorisations, pipeline certificates and any authorised access rights.

Public transport

- There was concern about how the impact on the existing public transport system will be addressed by a UDA and its consideration of the wider network's and community's needs. Change could affect services, long-term contracts with service providers and have cost implications if services become unprofitable.
- UDA development plans should align with relevant regional land transport and public transport plans. There needs to be a commitment to adhere to regionally agreed priorities. If there is a deviation from these priorities, a UDA needs to demonstrate the benefits from the change and mitigate any problems that may include funding, benefit changes and network ripple effects.
- Having a UDA direct transport agencies and operators to provide additional services could have significant cost implications and affect Long-Term Plan and Regional Land Transport Plan funding and programmes. UDA direction could also trigger the requirement for a formal review of the Regional Land Transport Plan and a re-allocation of public transport funding across the region.

Requiring territorial authorities to upgrade remote infrastructure

- Territorial authorities were wary of any requirement that may impose significant additional, unforeseen, unbudgeted costs on them.
- Proposals may require Long-Term Plans to be amended, which are expensive and drawn out processes. A UDA cannot force a territorial authority or regional council to potentially spend millions of dollars that is not provided for in the annual plan or Long-Term Plan.
- Changing trunk infrastructure inside and outside the project area should be a matter of negotiation and discussion between the UDA, central government and the territorial authority. Any changes to trunk infrastructure should be with the agreement of the asset owner.
- It is unlikely to be efficient or effective for a UDA's specific requirements to be prioritised over broader network requirements. A UDA should only have the power to require a local authority to provide adequate infrastructure capacity for a development, but not be specific on how this outcome is to be achieved.
- If a UDA requires a territorial authority to undertake work on infrastructure, the territorial authority should be compensated and the costs should not fall to ratepayers. However, the proposals provide no mechanism for territorial authorities to recover costs for new or upgraded infrastructure that is not funded by a UDA.

Links with local government planning
• Regional councils and territorial authorities should not be forced to alter agreed Long-Term Plans and Regional Land Transport Plans to deliver a UDA's objectives. Long-Term Plans and other strategic documents are developed through public consultation and reflect the priorities, values, and aspirations of local communities. Ratepayers and residents should not be expected to invest significantly more than planned, whereas this proposal means they won't have a say over significant changes to such plans. • Any changes to strategic planning documents should be treated in the same way as other plan changes and be done in an open, considered and collaborative way, including with UDAs, central government and territorial authorities, in line with the significance policy.
Funding generally
• Infrastructure needs and funding must be an early conversation in UDA preparation. • Moving the focus of decisions on how to fund the costs of growth and infrastructure from territorial authorities to a UDA does not resolve them and it is unclear what specific expertise a UDA could bring beyond identifying the capital investment requirements within specific projects. • Central government contributions and seed funding will be required to ensure that UDA projects occur and, as UDAs will be joint central/local government initiatives, shared funding is appropriate.
Costs of establishment
• There was concern about the costs of establishing and running a development project from initial concept/pre-development through to implementation, which could be significant. Submitters felt it was not clear how a UDA will be capitalised, how funding arrangements will work, how infrastructure will be funded, or how debt will be secured by UDAs without revenue.
Targeted infrastructure charges
• Providing rating powers to fund infrastructure is complicated. • There was unease about unelected persons setting rates. • There was concern that the rates collected are used fairly. These mechanisms may deliver poor outcomes for individuals, such as retired persons, given they may be used indirectly to make people leave their homes. • Annual rating charges are preferable to front end capital charges in terms of their impact on the cost to develop and construct new housing. • There was concern about the burden collection and enforcement of a targeted rate could have on territorial authorities. This would be less of an issue if the UDA was a subsidiary of a territorial authority, but if a UDA is independent there was concern that territorial authorities may be required to prioritise UDA revenue expectations ahead if its own. Territorial authorities will also have the negative consequences of associated levies and rate increases as the public are unlikely to understand the difference between the UDA and the territorial authority. • Territorial authority collection of rates must not be at any additional cost to ratepayers and territorial authorities should be fully compensated for their costs in undertaking these functions.

Development contributions
• Front end capital charges (development contributions) are an input cost that flows through directly to higher sales prices. • Duplication of territorial authority and UDA powers regarding development contributions seem inefficient. Collection and enforcement activities for UDA development contributions would have additional costs for territorial authorities.
Cross-border funding
• While working collaboratively is the most appropriate option, the importance of having statutory tools to break any deadlocks in order to advance projects was recognised. • Territorial authorities do not support an independent decision-maker for these purposes. A territorial authority is obliged to contribute to costs which are seen to benefit a wider group of property owners than those within the development area. Under the proposals, where there is a dispute, this would be resolved by an outside party, who considers the strategic objectives associated with the development as the leading criteria. The priorities of a local council are therefore seen as secondary to those of the UDA, which is unfair to local residents and contrary to democratic principles that align taxation with representation. • Costs recovered should be consistent with development contributions that would normally be collected for a development of this nature and not be set by an independent decision-maker.
Māori interests
• Iwi were concerned that the protections they access through the RMA and regional plans would be diluted by UDAs. • There was concern that Māori environmental and cultural guardianship roles will be undermined by UDA legislation. • Iwi expressed their expectation that they want to play an expanded role in UDAs, not just a token appointment, but full representation in the establishment decision and subsequent governance group; plus desire to be involved in drafting the strategic objectives. • Co-governance is the goal. • There was concern with the potential for UDAs to re-purpose land subject to a right of first refusal, develop that land, and then offer it for sale only once it has been developed. This would remove the commercial opportunity and so undermine the commercial redress that such land is intended to provide in Treaty settlements. • Submitters sought clarification that UDAs would not remove any Treaty rights. • Feedback expressed concern that relationships that have been built up between iwi and councils (both local and regional) may be lost if UDAs are established. There was a desire to ensure that any gains made in those relationships carry over to UDAs. • There were concerns about the potential environmental impact of increased urbanisation, which links back to the strong desire to protect the guardianship role of Māori. • Concerns were expressed that iwi that are not yet settled will be shut out.

National UDA

What are the problems with the status quo?

One size fits all development system

The assumption underlying New Zealand planning and urban development is that one general system can appropriately cater for all circumstances. This means that strategically important urban development projects of national significance are governed by the same general settings as a backyard subdivision

Fragmented land ownership in existing urban areas

Difficulties assembling useful parcels of land at scale from fragmented lots to form commercially viable development projects

Difficulties buying and/or ensuring appropriate development of strategic sites

Limited ability for central government to take action in particular development projects

Public resistance to urban intensification in certain areas. There is a weak focus on national interest and future residents

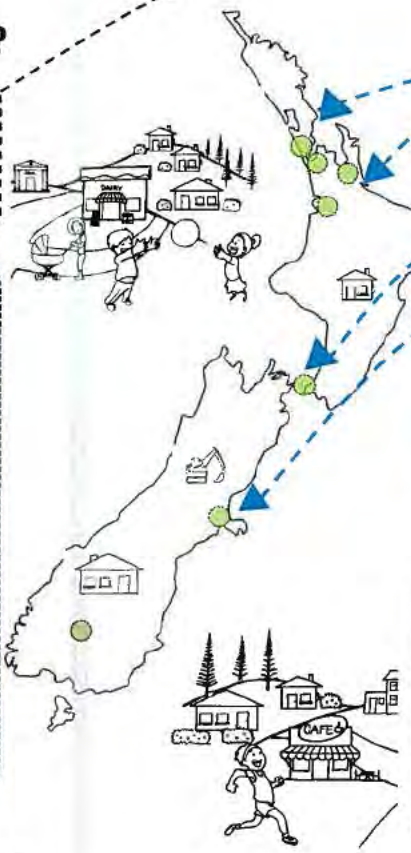
Limits to achieving social outcomes and public benefits (such as affordable housing) through market mechanisms

Limited coordination

Lack of coordination between the different arms of government

Difficulties in funding urban development projects and adequate infrastructure provision to meet growth

Ineffective integration between land use and transport planning and investment; and transport, utility and other service providers in large-scale urban development projects



What would a national UDA look like?

National UDA

Possible options for its legal form

Crown entity
Has a separate board, which must fulfil Government policy, is subject to the Ministers' direction and must operate within the usual governance arrangements for Crown agencies. Examples include HNZC and NZTA.

Or

Limited liability company
Has a separate board, which can be directed by its shareholder Ministers and operates within a lighter accountability regime. An example is Tamaki Regeneration Company.

Or

Departmental agency
Has no separate board and direct accountability to the Minister, but with limitations on its commercial operating powers.

What could the process look like?

Establishment Phase

1. Project is identified
2. High level assessment
3. Public consultation
4. Decision to establish project

Development Plan

5. Development plan prepared

Engagement with community

6. Public consultation

Revise development plan

7. Final draft plan published
8. Objections lodged (if presented)

Objection process

9. Development plan approved

What powers would the UDA need?

Land assembly

- Powers to assemble parcels of land
- Powers to change some reserves

Planning and consenting

- Powers to override existing and proposed district plans and streamlined consenting processes

Infrastructure

- Powers to plan and build infrastructure such as roads and water pipes

Funding

- Powers to buy, sell and lease land and buildings; powers to borrow to fund infrastructure; and powers to levy charges to cover infrastructure costs

Other potential powers

Value uplift levy

A value uplift levy captures some of the increase in land value that results from a development project

Development tax

A development tax levied on land value that targets land bankers, to incentivise the development of land within a project area

Central government Engagement

Powers that ensure central government agencies must suitably engage with the needs of a development project

What are the next steps?

Critical issues